

MEMORANDUM

DATE: May 15, 2024
TO: Public
FROM: Heritage Oversight Project
SUBJECT: Steps States Can Take to Frustrate Biden’s Federally Funded and Partisan Get-Out-The-Vote Election Interference

President Biden signed Executive Order (“E.O.”) 14019, *Promoting Access to Voting*, on March 7, 2021.¹ The E.O. mobilizes the federal government to interfere in American elections. Section 3 of E.O. 14019 tasks agencies with, among other things, finding “ways to provide access to voter registration services and vote-by-mail ballot applications in the course of *activities or services that directly engage with the public.*”² Agencies are instructed to carry out this function by, among other ways, “soliciting and facilitating approved, nonpartisan third-party organizations and State officials to provide voter registration services on agency premises.”³ As detailed below, agencies have already begun implementing E.O. 14019.

Put another way, President Biden ordered federal agencies that provide direct services and engage directly with the American people to explore ways to: (1) use their resources, connections, and relationships with their clientele to facilitate registrations and mass mail-in ballot applications; (2) use federal resources to assist in completing those registrations and applications; and (3) provide space on “agency premises” and resources to “approved” non-governmental organizations (“NGO”) and “state officials” to accomplish these directives.

The E.O. 14019 framework begs a number of questions: How does a state official or NGO get approved? Who are the currently approved NGOs or state officials? Where are the approved agency premises located within each state? The Oversight Project is now making public evidence that demonstrates a left-wing partisan implementation of E.O. 14019.

Executive Order 14019 Has Partisan Origins and Application

E.O. 14019 largely tracks with the goals laid out by Demos, a far-left think tank with close ties to the Biden Administration, in its *Executive Action to Advance Democracy: What the Biden-Harris Administration and the Agencies Can Do to Build a More Inclusive Democracy*.⁴ The Demos blueprint called on the Biden Administration to “direct federal agencies to provide

¹ See *Promoting Access to Voting*, 86 F.R. 13,623 (Mar. 7, 2021).

² *Id.*

³ *Id.*

⁴ See *Executive Action to Advance Democracy*, Demos (Dec. 2020), <https://www.demos.org/sites/default/files/2020-12/Executive%20Action%20to%20Advance%20Democracy.pdf>.

voter registration services.”⁵ In particular, the blueprint called on the Biden Administration to direct “specified federal agencies, in their administration of federal programs, to act as voter registration agencies, including providing voter registration applications, assisting clients to complete applications, and transmitting completed applications to state authorities.”⁶ The similarities of the Demos demand and Section 3 of E.O. 14019 are clear.

On May 1, 2024, the Oversight Project issued a memorandum and supporting documents highlighting the partisan implementation of E.O. 14019 to date.⁷ That memo discussed a July 12, 2021 “Listening Session” with White House staff, officials from the Department of Justice (“DOJ”), and dozens of far-left NGOs about E.O. 14019.⁸ Analysis of these NGOs and their representatives who participated in the Listening Session identified zero Republicans, Independents, or politically conservative individuals. ***Every participant whose party affiliation or political donation history could be identified by the Oversight Project was identified as a Democrat except for one Green Party member.***

At the Listening Session, the NGOs pushed radical, far left ideas on voting. For example, the representative from the Mexican American Defense and Education Fund (“MALDEF”) voiced their support for non-citizens voting in local elections where legally allowed and appeared to articulate the common left-wing view that prohibitions on non-citizens voting should not be enforced *pre*-election via methods widely used elsewhere (*e.g.*, most of Europe) such as requiring appropriate voter ID. Rather, they should only be enforced *post*-election via prosecutions that face any number of obstacles (some deliberately interposed by the very same left-wing groups). Other groups, like the Sentencing Project and Campaign Legal Center, advocated for use of federal resources to register federal pretrial detainees and federal prisoners convicted of misdemeanors. A representative from the Native American Rights Fund advocated for increased ballot drop boxes and polling locations on or near Indian Reservations.

Other groups identified particular government agencies that predominantly interact with historically Democratic Party voting constituencies to implement E.O. 14019’s federal voter registration tasking. For example, the American Civil Liberties Union (“ACLU”) suggested using federal programs to register voters including Head Start (a federal preschool program for low-income families) and Social Security because those recipients “are lower income and have disabilities.” Demos suggested the federal public housing agency, the Department of Housing and Urban Development (“HUD”), as a vehicle to register low-income persons in public housing by “*requiring public housing authorities to include this.*” A speaker from the Native American Rights Fund suggested means for expanding Native American voter registration to include “*food*

⁵ *Id.*

⁶ *Id.*

⁷ See The Oversight Project, *Memorandum on EO 14019 Partisan Implementation*, The Heritage Foundation (May 1, 2024), https://oversight.heritage.org/OP_Memo_on_EO_14019_Partisan_Implementation_5.1.2024.pdf.

⁸ See *id.*

distribution sites could be helpful, as could service sites for children and families, like head start, Bureau of Indian education.”

Partisan state actors have recently announced partnerships with Biden Administration government entities. On March 19, 2024, the Small Business Administration (“SBA”) announced an agreement with the Michigan Department of State (“MDOS”) pursuant to E.O. 14019 “to promote civic engagement and voter registration in Michigan” that will run through January 1, 2036.⁹ The agreement contains a memorandum of understanding under which MDOS will “create a unique URL for the SBA to use to drive online visitors to register to vote. The SBA’s Michigan field office may also allow MDOS officials to conduct in-person voter registration at the SBA’s small business outreach events.”¹⁰ In September 2023, MDOS announced a partnership with the Department of Veterans Affairs to operate pilot voter registration sites at two Detroit and one Saginaw location.¹¹ In the 2020 Presidential election, to the extent publicly reported numbers can be accurately relied upon, President Biden won Wayne County (which contains Detroit) by more than 300,000 votes and carried Saginaw county by about 300 votes while winning statewide by just over 154,000 votes.¹²

Michigan Secretary of State Benson is a left-wing partisan who has embraced policy positions that undermine election security. She’s called President Trump “a threat to democracy.”¹³ In 2019, Benson’s office worked with a “Zuckerbucks”-affiliated NGO to alter Michigan absentee voter laws to promote mass mail in ballots while circumventing the Michigan state legislature.¹⁴ Later that year, Benson accepted a position as the co-chair of the NGO’s Circle of Advisors.¹⁵

Benson appears to deploy the media tactic that anyone who questions the security of elections in Michigan or any other state, or tries to improve the security of elections, is a threat to democracy. For example, in March 2024, the Republican National Committee sued Benson to

⁹ *SBA Administrator Guzman Announces Agency’s First-Ever Voter Registration Agreement with Michigan Department of State*, U.S. Small Business Administration (March 19, 2024), <https://www.sba.gov/article/2024/03/19/sba-administrator-guzman-announces-agencys-first-ever-voter-registration-agreement-michigan> (last visited May 15, 2024).

¹⁰ *Id.*

¹¹ *See Three Michigan VA locations will pilot voter registration sites*, Michigan Department of State (Sept. 19, 2023) <https://www.michigan.gov/sos/resources/news/2023/09/19/three-michigan-va-locations-will-pilot-voter-registration-sites> (last visited May 15, 2024).

¹² *See Live election results: 2020 Michigan results*, Politico (2020) <https://www.politico.com/2020-election/results/michigan/> (last visited May 15, 2024).

¹³ Jocelyn Benson, *I’m Michigan’s Chief Election Official. Trump’s Still a Threat to Democracy.*, <https://www.thedailybeast.com/im-michigans-chief-election-official-trumps-still-a-threat-to-democracy> (last visited May 15, 2024).

¹⁴ *See Logan Washburn, Exclusive: Zuckerberg Nonprofit Helped Shift Michigan’s 2020 Voting Rules*, The Federalist (Mar. 25, 2022), <https://thefederalist.com/2022/03/25/exclusive-zuckerberg-connected-nonprofit-helped-shift-michigans-2020-voting-rules/> (last visited May 15, 2024).

¹⁵ *See id.*

force her to review the state’s voter rolls.¹⁶ The lawsuit alleges “at least 53 Michigan counties have more active registered voters than they have citizens who are over the age of 18. That number is impossibly high.”¹⁷ Benson bashed the lawsuit in a statement, saying the suit is a “PR campaign masquerading as a meritless lawsuit filled with baseless accusations that seek to diminish people’s faith in the security of our elections.”¹⁸ The lawsuit is still pending.

On or about March 3, 2024, Benson sat for an interview with MeidasTouch Network.¹⁹ In the interview she explained that her office was working with the Secretaries of State in Arizona, Georgia, Pennsylvania, Nevada, and Wisconsin to battle a “common adversary.”²⁰ It is clear from watching the interview that Benson views anyone questioning or otherwise raising the alarm on the security of American elections or using the legal system to challenge abnormalities in the electoral system as an *adversary*. She explained that the six common adversary Secretaries of State further built out their teams in the 2022 election, and in the runup to the 2024 election, the six offices “are all talking, all working together” to develop “common strategies” on combating lawsuits and other methods that promote election integrity.²¹ These Secretaries of State have refused to answer questions from at least one media organization on the level of their coordination.²²

The Biden Administration Has Resisted Efforts at Transparency About E.O. 14019

Conservative NGOs and Republican Members of Congress have sought information about how the Biden Administration is implementing E.O. 14019. In courtrooms across the country and in the halls of Congress, the Biden Administration and Congressional Democrats have fought efforts to provide transparency about E.O. 14019.

Voter integrity groups like the Foundation for Government Accountability (“FGA”) and America First Legal Foundation (“AFL”) have sought to obtain information about E.O. 14019 through Freedom of Information Act (“FOIA”) requests. The Biden Administration has refused to produce the requested records and both entities filed lawsuits seeking records related to E.O.

¹⁶ See Complaint, *Republican National Committee et. al. v. Benson et. al.*, No. 1:24-cv-00262 (W.D. Mich. filed Mar. 13, 2024), available at https://prod-static.gop.com/media/documents/1_Complaint_1710344302.pdf (last visited May 15, 2024).

¹⁷ *Id.* at ¶ 3.

¹⁸ Lauren Irwin, *RNC Files Lawsuit against Michigan Secretary of State over State’s Voter Rolls*, The Hill, <https://thehill.com/homenews/state-watch/4530604-rnc-files-lawsuit-against-michigan-secretary-of-state-over-states-voter-rolls/> (last visited May 15, 2024).

¹⁹ See MeidasTouch, *Michigan Sec State DROPS THE HAMMER on Self-Destructing GOP* (Mar. 3, 2024), YouTube, https://www.youtube.com/watch?v=McQJFo_Mgsg (last visited May 15, 2024).

²⁰ *See id.*

²¹ *See id.*

²² See Brianna Lyman, *Secretaries Of State Won’t Explain “Coordinated” Plan For 2024 Election*, The Federalist (Mar. 21, 2024), <https://thefederalist.com/2024/03/21/secretaries-of-state-wont-explain-coordinated-effort-to-fight-common-adversary-in-2024/> (last visited May 15, 2024).

14019. On April 20, 2022, FGA sued DOJ seeking DOJ’s E.O. 14019 strategic plan and other documents related to the E.O.²³ FGA has won some victories and forced the production of some documents about the EO, but President Biden’s DOJ continues its refusal to produce the strategic plan and other key documents.²⁴ FGA’s suit remains ongoing.

Similarly, in October 2022, AFL sued 14 federal agencies seeking their strategic plans submitted to the White House under E.O. 14019.²⁵ The Biden DOJ took the unusual step of arguing that the strategic plans were exempt from public disclosure as privileged presidential communications. Put differently, DOJ asserted that the plans were prepared for the personal use of the President and his closest advisors. A D.C. District Court judge agreed, finding “[t]he presidential communication privilege applies in this case because the strategic plans were solicited by President Biden through E.O. 14019 and received by his immediate White House advisors for use in briefing and advising him on voting rights issues.”²⁶ The judge wrote further that Section 3 of E.O. 14019 “is more reasonably read as tasking agencies to brainstorm and identify ways that they ‘*can* promote voter registration and voter participation’ with future possible actions, not merely to report on actions already taken.”²⁷ This reading is in tension with the actions taken by multiple agencies to implement E.O. 14019. AFL has appealed the ruling to the D.C. Circuit Court of Appeals.

To put this into context, President Biden signed an Executive Order to purportedly increase voter registration for *all* Americans and has mobilized the entire apparatus of the federal government to achieve that goal. Meanwhile, his Justice Department has argued—and a federal judge has agreed—that each agency’s plans to achieve that goal should be shielded from public view because of a legal privilege particular to the President. **The Biden Administration’s secrecy and efforts to oppose transparency is another data point suggesting that E.O. 14019 is nothing more than a partisan endeavor to register and deliver mass mail-in ballots to historically Democratic party voting constituencies.**

Congress has also sought information about E.O. 14019. In multiple instances, the Biden Administration and Congressional Democrats have blocked efforts at transparency on the E.O. Most recently, on May 7, 2024, Rep. Roger Williams, Chairman of the House Small Business Committee issued deposition subpoenas to two SBA officials after they declined to appear for voluntary transcribed interviews about SBA’s coordination with the Michigan Secretary of

²³ See generally, Complaint, *Foundation for Gov’t Accountability v. Dep’t of Justice*, No. 2:22-cv-00252 (M.D. Fla. filed Apr. 20, 2022), available at <https://thefga.org/wp-content/uploads/2022/09/2022.04.22-Doc-1-Complaint.pdf>.

²⁴ See *FGA v. Department of Justice*, The Foundation for Government Accountability, <https://thefga.org/fga-v-doj/> (last visited May 15, 2024).

²⁵ See *Am. First Legal Found. v. U.S. Dep’t of Agric., et. al.*, No. 22-cv-3029, 2023 WL 4581313 (D.D.C. July 18, 2023).

²⁶ *Am. First Legal Found.*, 2023 WL 4581313, at *6 (emphasis in original).

²⁷ *Id.* at *7.

State’s Office to implement E.O. 14019.²⁸ SBA has also refused to comply with Committee document requests on the topic.²⁹ The subpoenas compel the SBA officials to appear for depositions on May 21 and May 23, 2024. In addition, Senator Bill Hagerty (R-TN) has led oversight efforts on E.O. 14019 in the U.S. Senate. On May 2, 2024, Senator Hagerty sought unanimous consent to pass S. 4239, a bill to require the head of each agency to submit to Congress and make publicly available information relating to the implementation of E.O. 14019, but was blocked by Senator Alex Padilla (D-CA).

Oversight Project Releases Never-Before-Seen E.O. 14019 Records

Please visit the Oversight Project’s website containing E.O. 14019 records here:

<https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019>.

The Oversight Project has conducted significant oversight of E.O. 14019. To date, we have sent approximately 1,600 FOIA requests to federal agencies about the Biden Administration’s administration of the E.O. In addition, on May 10, 2024, the Oversight Project sued the Small Business Administration for records about their coordination with the Michigan Secretary of State’s Office discussed earlier in this memorandum.³⁰ The Oversight Project is working to obtain records from state and local governments on this topic as well.

The E.O. ordered all federal agencies to develop strategic plans to support implementation of the E.O. and submit them to the White House by September 23, 2021.³¹ Despite the Biden Administration and congressional Democrat’s efforts to block any transparency into the implementation of E.O. 14019, the Oversight Project was able to obtain a number of strategic plans, relevant communications with left-wing NGOs, internal agency communications about the E.O., and other documents related to the implementation of the E.O. With this memorandum, we are releasing the records we have been able to obtain about E.O. 14019.³² The website of records will be updated as we obtain additional records.

The types of documents include:

- Guidance from the Office of Personal Management (“OPM”) for the heads of Executive Departments and Agencies for the implementation of E.O. 14019;

²⁸ See *Chairman Williams Subpoenas Two SBA Employees for Agency’s Refusal to Comply with Investigation*, U.S. House Committee on Small Business, (May 7, 2024),

<https://smallbusiness.house.gov/news/documentsingle.aspx?DocumentID=405968> (last visited May 15, 2024).

²⁹ *Id.*

³⁰ See generally, Complaint, *Heritage Foundation, et al., v. U.S. Small Business Administration*, No. 24-cv-01363 (D.D.C. filed May 10, 2024).

³¹ *Promoting Access to Voting*, 86 F.R. 13,623 (Mar. 7, 2021).

³² See *The Oversight Project, Biden Bucks: Executive Order 14019*, The Heritage Foundation (Apr. 5, 2024), <https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019> (last visited May 15, 2024).

- The E.O. 14019 Strategic Plan from the U.S. Railroad Retirement Board and Peace Corps;³³
- Internal communications surrounding the E.O. 14019 strategic plans from multiple federal agencies;
- Marketing materials for E.O. 14019 implementation from multiple federal agencies and left-wing NGOs; and
- Correspondence between federal agencies and left-wing NGOs about E.O. 14019.

The OPM guidance, issued on March 24, 2022, authorizes up to four hours of paid administrative leave for federal employees to serve as non-partisan poll watchers, or to vote in federal elections at any time the polls are open.³⁴ In the 2020 election, the largest federal employee union, the American Federation of Government Employees (“AFGE”), endorsed Joe Biden, and internal AFGE polling found that its members favored Joe Biden over President Trump by 45 points.³⁵ In the 2016 election, 95% of the political donations from federal employees went to Hillary Clinton.³⁶ In the 2020 election, nearly 60% of political donations from federal workers went to Joe Biden.³⁷

The Department of Interior (“DOI”) sought to “include GOTV language in remarks/speeches to *certain audiences*.”³⁸ Agency ethics officials raised concerns to the Deputy Solicitor of the Department that targeting GOTV remarks to certain audiences and not others could raise potential Hatch Act violations after consultations with the Office of Special Counsel. Ethics officials made multiple rounds of edits and had discussions with the Solicitor about how agency officials can legally discuss GOTV efforts in remarks about E.O. 14019. It is unclear

³³ The Department of Justice argued in a filing against FGA that “officials within the White House believed that agencies would not make their strategic plans public” and that “nothing in the text of EO 14019 suggested the President intended the strategic plans to be made public.” Defendant’s Renewed Motion for Summary Judgment at 19, *FGA v. Dep’t of Just.*, No. 2:22-cv-00252 (M.D. Fla. filed Mar. 25, 2024), ECF No. 74.

³⁴ See Office of Personnel Management (OPM) EO 14019 Guidance Memorandum, at 4, available at <https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019> (last visited May 15, 2024).

³⁵ *Largest Federal Union Endorses Biden for President*, The American Federation of Government Employees (July 20, 2020), <https://www.afge.org/publication/largest-federal-union-endorses-biden-for-president/> (last visited May 15, 2024).

³⁶ Eric Katz, *Federal Employees Are Donating Almost Exclusively to Hillary Clinton*, Government Executive (Oct. 26, 2016), <https://www.govexec.com/pay-benefits/2016/10/federal-employees-are-donating-almost-exclusively-hillary-clinton/132667/> (last visited May 15, 2024).

³⁷ Eric Katz, *Federal Employees Donate \$1.8M in Presidential Race, Mostly to Biden*, Government Executive (Oct. 27, 2020), <https://www.govexec.com/workforce/2020/10/federal-employees-donate-18m-presidential-race-mostly-biden/169604/> (last visited May 15, 2024).

³⁸ See Communications involving the Department of the Interior and E.O. 14019 – Production 3, at 4–18 (emphasis added), available at <https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019> (last visited May 15, 2024).

based on the currently available documents what groups DOI intended to target with GOTV language or what that draft language was.

The Peace Corps is engaging in widespread voter registration efforts in foreign countries shipping ballots via diplomatic pouches, supplementing English-only ballot registration forms with translated materials in Arabic, and using lenient federal laws that circumvent voter identification laws for overseas citizens.³⁹

Likewise, The Office of the United States Trade Representative, is actively engaged in creating social media posts highlighting important election related dates, such as the “15th Amendment anniversary re: Black men suffrage,” and openly working with “non-partisan” leftist organizations like Asian Americans Advancing Justice, Mexican American Legal Defense and Educational Fund, National Pan-Hellenic Council, and the Brennan Center for Justice, to develop and amplify these social media engagements.⁴⁰

States Can Fight Back Against This Partisan Executive Order

There are avenues for States to push back against the partisan implementation of the Executive Order.

First. States could vigorously attack application of E.O. 14019 as to *Presidential Elections*. Presidential elections are governed by the Electors clause of the Constitution, which by its text and original understanding gives zero warrant for Congressional action.⁴¹ States are well within their powers to pass laws solely governing presidential elections. To be sure, different procedures for Presidential Elections impose increased administrative burdens and costs, but those are justified by insulating at least that electoral process from partisan Executive Branch action. States are also well within their rights to challenge existing federal action as it relates to a presidential election. Or, put differently, a state statute that is preempted as to congressional elections under the Elections clause of the constitution is not preempted as to presidential elections under the Electors clause.

³⁹ See Peace Corps EO 14019 Compliance Plan, at 2–3, available at <https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019> (last visited May 15, 2024).

⁴⁰ US Trade Representative (USTR) EO 14019 Draft Correspondence, at 2, available at <https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019> (last visited May 15, 2024).

⁴¹ See U.S. Const. Art. II, § 1, cl. 2 (“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”); *McPherson v. Backer*, 146 U.S. 1, 35 (1892) (holding state legislatures have plenary power over appointing electors).

Second. The partisan political activity inherent in the plans and actions of the federal employees involved raise serious concerns over widespread violations of the Hatch Act.⁴² States could aggressively pursue complaints on this ground.

Third. We understand that many agencies are claiming that they have been designated to engage in “voter registration activities under the National Voter Registration Act (“NVRA”). Section 7 of the Act provides that “Federal and nongovernmental offices” can only engage in the type of activities directed by the Executive Order if a state “designate[s]” that office to act as a voter registration agency.⁴³ States could take all appropriate action to remove and attack designations of federal agencies to act under the NVRA that States did not make, or that were made by State officials without appropriate authority. States should take a particularly close look at places like college campuses and state prisons.

Fifteen Secretaries of State warned the White House in a 2022 letter voicing their objections to the Executive Order, that having federal agencies intrude into the registration process which is administered by the states “will produce duplicate registrations, confuse citizens, and complicate the job of our county clerks and election officials.” The Executive Order, said the secretaries, “was issued without Constitutional authority nor Congressional approval” and they demanded that President Joe Biden rescind it.⁴⁴

Conclusion

New evidence revealed in the memorandum further confirms the Oversight Project’s earlier conclusion that E.O. 14019 is a partisan endeavor to improve President Biden’s reelection chances. Despite the failure of the U.S. Congress to solve for this threat to election integrity, states can mitigate the damage, but only if they act immediately.

⁴² 5 U.S.C. §§ 7323, 7324.

⁴³ 52 U.S.C. § 20506 (a)(3)(B)(ii).

⁴⁴ See Letter of August 3, 2022, to President Joe Biden, from the Secretaries of State of Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, Nebraska, Ohio, South Dakota, Tennessee, West Virginia, and Wyoming.