

Biden Executive Order 14019: Unlawful Interference in State Election Administration

Hans A. von Spakovsky

KEY TAKEAWAYS

President Joe Biden's 2021 Executive Order 14018 constitutes unlawful, potentially partisan interference in the election process.

With few exceptions, the executive branch has no constitutional or statutory authority to engage in voter registration and absentee ballot activities.

This executive order violates multiple federal laws and could cause members of the public who interact with federal agencies to feel intimidated and coerced.

President Joe Biden's 2021 executive order directing executive branch departments and federal employees to use federal resources to get out the vote constitutes unlawful, potentially partisan interference in the election process. It is a dangerous thing for government officials to use resources derived from taxpayers who hold an array of political beliefs in order to obtain an advantage over their political rivals in an upcoming election. Further, the executive branch has no constitutional or statutory authority to engage in voter registration and absentee ballot activities with only certain specified exceptions, none of which are relevant to the executive order. This executive order violates multiple federal laws and could cause members of the public who interact with federal agencies to feel intimidated and coerced.

This paper, in its entirety, can be found at <https://report.heritage.org/bg3845>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Background

On March 7, 2021, President Joe Biden issued Executive Order 14019¹ directing federal agencies to use agency personnel and resources to help the public register to vote and cast ballots based on the patently false claim that “many Americans, especially people of color, confront significant obstacles to exercising th[eir] fundamental right” to vote, including “difficulties with voter registration, lack of election information, and barriers to access at polling places.” The patent falsity of this claim is clear from Census Bureau data on turnout as outlined in a prior Heritage study:

The U.S. Census Bureau’s election survey of voter turnout in the 2020 presidential election is...worth noting because it clearly demonstrated that there has been no wave of “voter suppression” keeping American voters from registering and voting. Instead, the Census Bureau reported that the turnout in the 2020 election at 66.8 percent was the “highest voter turnout of the 21st century,” just short of the record turnout of 67.7 percent of voting-age citizens in the 1992 election. This was higher than the 63.6 percent citizen population turnout in President Barack Obama’s first election as reported by the Census Bureau.²

The same is true with voter registration. The U.S. Census Bureau reports that registration in the 2020 election was higher than in the 2000, 2004, 2008, 2012, and 2016 presidential elections. There simply are no “obstacles” preventing individuals of any race or ethnicity from registering to vote.

Despite its manifestly fraudulent premise, the Biden executive order directs federal agencies to “promote voter registration and voter participation” by:

- Distributing “voter registration and vote-by-mail ballot application forms” and providing “access to applicable State online systems for individuals;”
- Assisting “applicants in completing voter registration and vote-by-mail ballot application forms;”
- Promoting and expanding “access to multilingual voting registration and election information;”
- Issuing “identity documents...in a form that satisfies State voter identification laws;”

- Ensuring that federal employees “participate in early voting” and serve as “poll workers” and election “observers;” and
- Providing “access to voter registration and vote-by-mail ballot applications in the course of activities or services that directly engage with the public.”³

The executive order specifically directed the Attorney General of the United States to “facilitate voter registration and voting...for all eligible individuals in the custody of the Federal Bureau of Prisons,” despite the fact that such eligibility is determined by state law governing the circumstances under which felons can vote; federal officials in the Bureau of Prisons lack the knowledge, training, and authority to make such eligibility determinations. The U.S. Marshals Service was ordered to include such requirements in all “intergovernmental agreements and jail contracts.”⁴ In other words, state and local jails and prisons that house prisoners at the request of the federal government would have to register prisoners to vote and assist them in casting absentee ballots.

In the three jurisdictions that allow incarcerated felons to vote—Maine, Vermont, and the District of Columbia—those individuals (along with others who are in jail awaiting trial or are serving a misdemeanor sentence) can register to vote and cast a ballot on their own through the mail.⁵ No assistance is required from federal or state and local prison officials.

The Secretary of Defense was ordered to establish procedures, including “an online system,” to ensure that “each member of the Armed Forces on active duty [has] the opportunity to register to vote in Federal elections, update voter registration information, or request an absentee ballot.” This includes establishing “a comprehensive end-to-end ballot tracking system for all absentee ballots cast by military and other eligible overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act.”⁶

President Biden directed agencies to solicit “approved” third-party organizations to “provide voter registration services on agency premises.”⁷ The executive order formed an “Interagency Steering Group on Native American Voting Rights” coordinated by the Domestic Policy Council inside the White House to report on how “turnout in Native American communities” could be increased and “provid[e] guidance on how to facilitate the use of Tribal government identification cards as valid voter identification” in elections.⁸

Finally, the executive order directed the head of every federal agency to submit to the White House, within 200 days, “a strategic plan outlining” how the agency would carry out the executive order to “promote voter registration and voter participation.”⁹

Lack of Transparency Regarding Executive Order 14019

Despite numerous requests from Congress and various secretaries of state, as well as requests by other nongovernmental organizations like the Foundation for Government Accountability under the Freedom of Information Act (FOIA),¹⁰ the Biden Administration has refused to make public these strategic plans. In fact, the Department of Justice (DOJ) has asserted executive privilege in order to exempt them from disclosure,¹¹ claiming in a court filing that releasing these plans would cause “public confusion.”¹² This is a bizarre position to take with regard to an executive order that is supposedly intended to help the public by expanding “access to, and education about, voter registration and election information, and to combat misinformation, in order to enable all eligible American to participate in our democracy.”¹³

In July 2023, a federal judge agreed with the Biden–Harris Administration and found that the strategic plans are exempt from release under FOIA because they are privileged presidential communications.¹⁴ The court reasoned that because the President solicited the agencies to submit the strategic plans to Domestic Policy Council Director Susan Rice in order to advise him on future decisions, the plans “fall squarely into the ambit of the presidential communications privilege.”¹⁵ America First Legal has appealed the District Court’s ruling, and oral argument before the D.C. Circuit is scheduled for early September.¹⁶

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. His unanimous consent request to pass the bill was blocked by Senator Alex Padilla (D–CA).

It would seem that the Biden–Harris Administration does not believe that transparency about the government’s efforts, particularly about its plans to provide “election information” to the public, is part of the democratic process and that the public is entitled to that information. This lack of transparency also causes “election official confusion” because it is state and local election officials who are responsible for administering their elections, including processing voter registration applications and absentee ballot requests, that are being deprived of crucial information about what multiple federal agencies are doing and whether they are providing misinformation or otherwise interfering with the state’s efforts.

Secretaries of State Resist

This latter problem was highlighted by the secretaries of state of Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, Montana, Nebraska, Ohio, South Dakota, Tennessee, West Virginia, and Wyoming, who sent a letter to President Biden on August 3, 2022, warning that federal agencies would “produce duplicate registrations, confuse citizens, and complicate the[ir] jobs.” The plans developed by federal agencies, they said, would “duplicate voter registration efforts conducted at the state level and ignore[] codified procedures and programs in our state constitutions.” They asked the President to rescind the executive order, which they noted was issued without “constitutional authority” or “congressional approval.”¹⁷

West Virginia Secretary of State Mac Warner has stated unequivocally that the “White House has no authority to register West Virginia voters” and that state election officials “will not accept applications illegally gathered by federal agents.”¹⁸

The risk that federal actions will confuse voters is also highlighted by the portion of the executive order that directs federal agencies to provide “access to voter registration and vote-by-mail ballot applications in the course of activities or services that directly engage with the public.” In other words, members of federal agency staffs will be directing individuals who are interacting with them—such as individuals applying for Social Security benefits or former members of the military applying for veterans benefits—that they need to register to vote and will be encouraging them to vote by mail with an absentee ballot.

This could confuse and intimidate vulnerable members of the public applying for federal benefits who believe they must register and vote for the political party controlling the White House to ensure that their benefit applications are approved. Since the overwhelming majority of federal personnel at these agencies are not trained election officials and have no knowledge of the specific laws, rules, and regulations governing voter registration and absentee balloting in the states where these members of the public reside, it is highly likely that, in addition to being unable to answer many questions, they will provide the wrong information to potential voters that could lead to their disenfranchisement.

Origins of the Executive Order

An extensive investigation by The Heritage Foundation’s Oversight Project shows that this executive order was based in large part on policies

developed by Demos, which the nonpartisan Capital Research Center has characterized as a “left-wing public policy advocacy group...that advocates a staunchly liberal agenda” and “receives substantial funding from labor unions and progressive foundations.”¹⁹ Demos provided a “road map for the use of Executive power” to reach liberal constituencies, particularly black and Hispanic voters, which raises serious questions about the partisan objectives of this executive order and whether federal resources are being used unlawfully in a systematic, get-out-the-vote program for the political party that currently controls the White House.²⁰

That investigation also revealed that when it comes to the third-party organizations that federal agencies were supposed to bring into agency facilities to “provide voter registration services on agency premises” under the terms of the executive order, only liberal organizations that support the Biden–Harris Administration were solicited.

At a July 12, 2021, meeting on the executive order that included representatives from the White House, the Justice Department, other federal agencies, and these third-party non-governmental organizations (NGOs), “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.” There were “zero Republicans, Independents, or politically conservative individuals” invited to the meeting. Moreover, “unredacted notes from a DOJ attorney documenting the substance” of the meeting disclosed that the “NGO talking points focused upon efforts to target historically Democratic voter blocks [*sic*]” and there was “no corresponding evidence of efforts [to] increase voter access and education in likely Republican constituencies.”²¹

Media reports also confirm that the Biden–Harris Administration has worked only with “left-leaning groups” that support it politically. The individuals attending the July 12 meeting included “10 from the American Civil Liberties Union, five from the Campaign Legal Center, three from Demos, three from the Southern Poverty Law Center, five from the Leadership Conference on Civil Rights, two from Black Lives Matter, and many others.”²²

As an example of the political targeting of these federal activities, records obtained by the Heritage Oversight Project show that the Department of the Interior is sending voter registration materials home with every child attending a federally or tribally run school.²³ The Oversight Project’s analysis of the targeted schools in Arizona and New Mexico shows that these schools are located in overwhelmingly Democratic-voting precincts. In Arizona, the targeted schools were located in 33 different voting precincts: 29 leaned Democrat, and four leaned Republican based on election results

for the 2016 and 2020 presidential elections and the 2022 midterm elections.²⁴ In some of the targeted precincts, Democrats carried 90 percent of the vote.²⁵ New Mexico had a similar breakdown. There, the targeted schools were located in 33 precincts: 29 leaned Democrat, three leaned Republican, and one was a swing district.²⁶

This is simply more evidence of the partisan nature and intent of this executive order. As 13 state attorneys general said in a letter to President Biden, “your executive order appears to be a get-out-the-vote effort designed by the Left, to benefit the Left, all paid by federal taxpayers. It is illegal, unethical, and unconstitutional, and that is why it must be rescinded.”²⁷ Texas Attorney General Ken Paxton has pointed out that “allowing political appointees at federal agencies to use taxpayer dollars to influence election efforts runs afoul of our election laws, basic fairness, and the desperate need for election security.”²⁸

Legal Issues

Lack of Constitutional Authority. As the state attorneys general correctly state in their letter, “nowhere does the U.S. Constitution authorize the executive branch to utilize the power, resources, and reach of federal executive agencies to carry out voter registration and voter mobilization activities.”²⁹ When it comes to congressional elections, the Constitution specifies that the “Times, Places and Manner...shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”³⁰ Thus, it is state legislatures that are given primary responsibility to administer congressional elections with ultimate oversight by Congress.

Congressional authority over presidential elections is more restricted, limited solely to determining “the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”³¹ Congress has set the date of the choosing of electors by voters to be the same day as congressional elections.³²

The President is given no constitutional authority to engage in voter administration activities in either congressional or presidential elections and certainly has no authority for such activities in state elections that are governed by state constitutions and state laws.

Lack of Statutory Authority. As the chief law enforcement official of the executive branch, the President does have authority under various federal election statutes, such as the Voting Rights Act,³³ acting through his Attorney General, to enforce the provisions of those statutes. But none of

those federal statutes authorizes the President to engage executive agencies in voter registration, voter mobilization, or election administration or to direct the public to cast ballots by mail or otherwise.

The statutes do authorize the Justice Department to sue states and local jurisdictions that discriminate when they are administering their elections, violating the Voting Rights Act, or not complying with the voter registration and other requirements of the National Voter Registration Act³⁴ or the Help America Vote Act.³⁵ Those statutes, however, do not authorize the executive branch to *take over* the administrative functions of state and local election officials, as well as the work of political parties and third-party organizations, which is what the executive order directs federal agencies to do.

The one acceptable exception applicable to the executive order is in Section 8, where the President directs the Secretary of Defense to take various actions in conjunction with the State Department and other agencies to assist members of the military and overseas civilians in registering and voting through the Federal Voting Assistance Program. The Uniformed and Overseas Citizens Absentee Voting Act, among other provisions, requires states to allow overseas civilians and military personnel to register and vote with absentee ballots in elections. The Federal Voting Assistance Program office at the Pentagon is the designated federal office with “primary responsibility for Federal functions” under this federal statute.³⁶

Violations of Federal Law

Anti-Deficiency Act. Because Congress has not authorized and has not appropriated any funding for the actions being taken by federal agencies and federal personnel pursuant to the executive order, all such activities violate the Anti-Deficiency Act, which prohibits federal agencies from spending funds on activities that Congress has not authorized and for which Congress has not appropriated funding.³⁷

This lack of authority to use any federal funds for voter registration or get-out-the-vote efforts, which is the essence of the Biden executive order, is emphasized by an advisory opinion issued by the U.S. Election Assistance Commission (EAC) on the use of federal funds appropriated under the Help America Vote Act for distribution by the EAC to states. That funding was specifically intended to help states to improve their election administration procedures, yet the EAC advised states that no federal funding could “be used to conduct voter registration drives or get out the vote efforts; including advertising for the event, setting up booths, and paying salaries of employees who register new voters.”³⁸

Federal employees carrying out President Biden’s unlawful directive “are subject to appropriate administrative discipline including where circumstances warrant, suspension from duty without pay or removal from office.”³⁹ Such misbehavior is also a violation of federal criminal law, subjecting the employee to a fine of “not more than \$5,000” or imprisonment “for not more than 2 years, or both.”

To the extent that third-party organizations have been brought into federal facilities or are carrying out any of the other activities in which the President has directed federal personnel to engage, federal employees who are directing, coordinating, or accepting those services are also violating the Anti-Deficiency Act, which prohibits the acceptance of “voluntary services” by a federal agency “except for emergencies involving the safety of human life or the protection of property.”⁴⁰ Obviously, voter registration and voter mobilization activities do not fall within either of those exceptions.

The U.S. Department of Justice is responsible for enforcing the criminal provisions of the Anti-Deficiency Act, although executive branch agency managers, supervisors, and officers have the authority to enforce the disciplinary proceedings outlined in the statute.

National Voter Registration Act. The list of activities in which federal agencies, departments, and offices are directed to engage pursuant to the executive order qualifies them as voter registration agencies. Acting as a voter registration agency without the permission of state officials is a violation of the National Voter Registration Act (NVRA).⁴¹ The NVRA allows federal offices to act as voter registration agencies only if they have been “designate[d]” by the “State” to engage in those activities. Yet federal offices throughout the country are acting in direct violation of federal law as voter registration agencies without having received such a designation.

As an example, the Department of Health and Human Services (HHS) has told its federal health centers that they can engage in voter registration activities, including “making available voter registration materials to patients, encouraging patients to register to vote, assisting patients with completing registration forms, sending completed forms to the election authorities, providing voter registration materials in waiting rooms, and allowing private” organizations to “conduct on-site over registration.”⁴² In other words, HHS is telling health care providers to take advantage of their sensitive fiduciary relationship with vulnerable individuals who are suffering from medical and health problems to “assist” them to register and vote, enabling providers to persuade vulnerable patients who are dependent on them to vote in ways that advantage particular issues and particular candidates. This is an inherently coercive relationship.

Even more troubling is the fact that the Biden–Harris Administration specifically decided in February to mail “voter registration information to every person—more than 20 million last year—who signs up for health insurance through the Affordable Care Act.”⁴³ The Administration also has decided to provide aliens who are beneficiaries of the Deferred Action for Childhood Arrivals (DACA) administrative amnesty program with access to health insurance through the Affordable Care Act. Thus, aliens will be encouraged to register to vote through official correspondence that they receive from the federal government. This is a recipe for illegal conduct, as well as for violations of state and federal laws prohibiting aliens from registering and voting, by the 100,000 DACA aliens that the Administration estimated could receive health coverage.⁴⁴

The U.S. Attorney General is given authority to enforce the NVRA, but there is also a private right of action for any “person aggrieved by a violation” of the law.⁴⁵ This provides states with the opportunity to file suit against the Administration over the executive order.

The Hatch Act. The Hatch Act prohibits an extensive list of political activities by federal employees, who may not use their “official authority or influence for the purpose of interfering with or affecting the result of an election.”⁴⁶ To the extent that federal employees are persuading, influencing, urging, or inducing individuals to register and vote in a partisan manner, or interfering in the election process, they are potentially violating the Hatch Act.

Violations are investigated by the U.S. Office of Special Counsel, “an independent federal investigative and prosecutorial agency” that has responsibility for enforcing the Hatch Act and “partisan political activity by government employees.”⁴⁷ To the extent that “individuals principally employed by state, District of Columbia, or local executive agencies...work in connection with programs financed in whole or in part by federal loans or grants,” the Hatch Act’s prohibitions also apply to such state and local government employees.⁴⁸

Possible State Responses to the Executive Order to Stop Unlawful Activities

U.S. Department of Justice. Unfortunately, only the U.S. Department of Justice can enforce criminal violations of the Anti-Deficiency Act⁴⁹ by federal employees; states do not have the authority to prosecute federal employees under this federal law. This Administration has demonstrated a cavalier disregard for the law and the fact that the President has no

constitutional or statutory authority to authorize his executive order. Therefore, as we have seen since the order was issued, the Justice Department has refused to carry out its duty to enforce this law.

Similarly, no disciplinary actions of any kind have been taken within any federal agencies against federal employees carrying out the President's unlawful directive. It seems obvious that none of the President's political appointees have any intention of complying with the law, and states have no remedy against such blatant lawlessness.

Inspectors General. The inspectors general of federal agencies can investigate violations of the Anti-Deficiency Act. The secretaries of state and state attorneys general who have asked President Biden, without success, to rescind his executive order should file complaints with the inspectors general of all federal agencies in their states that are unlawfully acting as voter registration agencies and demand investigations of possible violations of the Anti-Deficiency Act.

Freedom of Information Act. Although the Justice Department resisted complying with disclosure requests, some federal agencies—either through error or through inadvertence—have turned over some limited information about their compliance with the executive order. States should file FOIA requests with all federal agencies in their states to obtain information on voter registration activities being conducted by those agencies, including all communications with other federal agencies, the White House, and any nonprofit organizations about those activities. Such demands should be followed up with litigation to the extent that federal agencies fail to comply with the provisions of federal law that require the disclosure of such information.

The Hatch Act. If states uncover evidence of partisan political activity by federal agencies in their states or nonprofit organizations acting on behalf of those agencies in government offices, they should file complaints with the U.S. Office of Special Counsel, the federal agency charged with enforcement of the Hatch Act.

The Hatch Act also covers state and local government employees who work in connection with programs financed in whole or in part with federal funds. Accordingly, to the extent that state employees who work in agencies that receive or distribute federal funds are cooperating with federal agencies to engage in partisan political activity, states should also file complaints with the U.S. Office of Special Counsel over their actions and take whatever disciplinary actions are possible under state law.

National Voter Registration Act. States should consider filing lawsuits under the NVRA against any federal agencies within their states that are

acting as voter registration agencies without the permission of and required designation under the NVRA by state officials.

In states in which the chief election official, such as a secretary of state, has provided such a designation, the state legislature should terminate that designation through legislative action, or the governor should do so if he has the legal authority under state law to override the election official's designation. State law should be reviewed to determine whether the secretary of state has the legal authority to make such a designation or whether that power resides in the state legislature.

For states that do not terminate that designation, election officials should audit the voter registrations that have been sent over for any indicia of partisanship or other problems such as registration of aliens, felons whose voting rights have not been restored, and duplicate or multiple registrations of the same individual.

Administrative Procedure Act. In a recently filed lawsuit against the Biden–Harris Administration over the President's executive order—*America First Policy Institute v. Biden*—the challengers, including Ohio Secretary of State Frank LaRose, allege that the order violates the Administrative Procedure Act (APA), which sets out requirements for new rules and regulations of a federal agency. The APA requirements include publication and notice of the rule, an opportunity for the public to comment on the rule, and an explanation of the substantive reasons and justification for the new rule that is not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁵⁰

There seems to be little doubt that the “strategic plans” that federal agencies have put in place to carry out the extensive requirements of this executive order fall within the APA's requirements. If an agency's new rule, regulation, or program will “affect individual rights and obligations,” it is a substantive rule within the APA's coverage requirements.⁵¹ As the America First Policy Institute says in its complaint:

Proponents of the EO estimate that these agency actions will register 3.5 million additional voters, which thereby directly affects the individual rights of those 3.5 million persons. Registering 3.5 million voters, coupled with [get-out-the-vote] efforts to encourage those voters to participate in an upcoming election, also has a substantial impact on the outcome of those elections, thereby indirectly affecting the rights of many millions of other voters.⁵²

The Biden–Harris Administration made no attempt to comply with the APA's notice-and-comment requirements. In fact, by asserting executive

privilege and refusing to comply with FOIA, the Administration has done everything it can to prevent disclosure of all of the actions it is taking to carry out the executive order. Furthermore, the Biden–Harris Administration has failed either to provide any data supporting the need for this executive order or to show that it was “the product of reasoned decision-making.”⁵³ By failing to comply with these statutory requirements, by acting without congressional approval, and by spending funds that have not been appropriated by Congress, the federal agencies implementing this executive order are acting arbitrarily and capriciously and are clearly abusing their discretion.

Current Litigation. Lawsuits similar to the one filed by the America First Policy Institute and the Ohio secretary of state have also been filed by the secretaries of state of Missouri (Jay Ashcroft) and Arkansas (John Thurston); by the Republican National Committee (RNC), the Trump campaign, and a township election official in Michigan (Ryan Kidd); and by nine states (Iowa, Kansas, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, and North Dakota).

In the suit filed by Missouri and Arkansas (*Ashcroft v. Biden*), the states claim that the executive order and resulting actions of federal agencies:

1. Have no “congressional authorization in violation of the Separation of Powers;”
2. Impose “burdens and costs upon state and local government to respond to this federally mandated election scheme in violation of constitutional principles of federalism;”
3. Violate the “Elections Clause of the Constitution;” and
4. Direct “federal executive branch employees to violate the Hatch Act... and engage in forbidden partisan political activity.”⁵⁴

The lawsuit filed by the RNC and the Trump campaign claims that:

5. The designation of federal agencies in Michigan, local offices of the U.S. Small Business Administration and the U.S. Department of Veterans Affairs, as voter registration agencies by the governor violates Section 7 of the NVRA and Michigan state election law because, under state law, only the legislature has the authority to make that designation, not the governor;

6. The secretary of state likewise has no authority to enter into agreements with the U.S. Small Business Administration and the Department of Veterans Affairs and that designating their offices in Michigan as voter registration agencies violates both Michigan law and the NVRA; and
7. The unlawful designations and their acceptance by federal agencies violate the Administrative Procedure Act, which bars actions by federal agencies that are “not in accordance with the law” and “in excess of statutory...authority.”⁵⁵

The lawsuit filed by Kansas on behalf of itself and eight other states against the President and numerous Cabinet Secretaries also alleges violations of the Administrative Procedure Act and the Tenth Amendment for “authorizing federal agencies to engage in voter registration activities that relate to state elections” without constitutional or statutory authority.⁵⁶

The partisan nature of the federal government’s actions in Michigan was noted by Representative Pete Stauber (R–MN) during a House Committee on Small Business hearing when he pointed out that “approximately 91 percent of Michiganders are registered to vote.” Why, asked Stauber, would the Small Business Administration be concentrating on Michigan “rather than states with lower registration numbers if the executive order is meant to increase voter registration in a nonpartisan way?”⁵⁷

The answer seems obvious: Michigan is a battleground state, and the Biden–Harris Administration wants to increase the likelihood that the Democrat Party’s presidential nominee, Kamala Harris, will win the state. The “express intent” of this executive order, says Ben Weingarten of RealClearInvestigations, is “increasing election participation among minority groups that tend to vote disproportionately Democrat.”⁵⁸

Parker Thayer, a researcher at the Capital Research Center, adds that the Biden executive order is “the fulfillment of a plan going on since 2016.... Left-wing donors wanted this for a long time. It will save a lot of money if the government does the[ir] get-out-the-vote work.... This isn’t Joe Biden caring about democracy.”⁵⁹

Conclusion

States have viable causes of action under federal law against the Biden–Harris Administration’s executive order that violates both the Constitution and federal law and interferes in the election process administered by the

states. The Administration in effect has admitted the partisan nature of this effort that is intended to “boost turnout among key voting blocs”—in other words, voting blocs that will help their side of the political aisle—rather than all voters regardless of their political affiliation.⁶⁰

Federal resources should not be used to help *any* political party or its candidates in the election arena. That is an abuse of our governmental structure that is reminiscent of third-world dictatorships. The states should act to stop what amounts to unlawful, partisan interference by executive branch agencies in the administration of elections and the voting and registration process. We are not Venezuela—even if some federal and state officials would like us to be.

Hans A. von Spakovsky is Manager of the Election Law Reform Initiative and Senior Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.

Endnotes

1. President Joseph R. Biden Jr., Executive Order 14019, “Promoting Access to Voting,” March 7, 2021, *Federal Register*, Vol. 86, No. 45 (March 10, 2021), pp. 13623–13627, <https://www.govinfo.gov/content/pkg/FR-2021-03-10/pdf/2021-05087.pdf> (accessed August 21, 2024).
2. Hans A. von Spakovsky, “The Latest Election Data Show—Once Again—That ‘Voter Suppression’ Claim Is Just Propaganda,” Heritage Foundation *Backgrounders* No. 3761, April 19, 2023, https://www.heritage.org/sites/default/files/2023-04/BG3761_0.pdf. See also Hans von Spakovsky, “Tenth Anniversary of *Shelby County*: Cause for Celebration,” Heritage Foundation *Legal Memorandum* No. 345, November 17, 2023, <https://www.heritage.org/sites/default/files/2023-11/LM345.pdf>.
3. Biden, Executive Order 14019, § 3(a)(iii).
4. *Ibid.*, § 9(b).
5. Kira Lerner, “The District of Columbia Allows Incarcerated People to Vote, a Rarity in the U.S.,” *Virginia Mercury*, June 21, 2022, <https://viriniemercury.com/2022/06/21/the-district-of-columbia-allows-incarcerated-people-to-vote-a-rarity-in-the-u-s/> (accessed August 21, 2024).
6. Biden, Executive Order 14019, § 8.
7. *Ibid.*, § 3(a)(iii)(C).
8. *Ibid.*, § 10.
9. *Ibid.*, § 3(b).
10. 5 U.S.C. § 552.
11. Fred Lucas, “DOJ Keeps Plan Secret for Biden’s Executive Order,” *The Daily Signal*, March 22, 2024, <https://www.dailysignal.com/2024/03/11/doj-keeps-plan-secret-for-bidens-election-executive-order/>. Two exceptions are the Office of the U.S. Trade Representative and the Railroad Retirement Board, two agencies that have little interaction with the public. *Ibid.*
12. Fred Lucas, “DOJ Cites ‘Public Confusion’ as Reason to Keep Documents on Biden Order Secret,” *The Daily Signal*, October 21, 2022, <https://www.dailysignal.com/2022/10/21/doj-cites-public-confusion-as-reason-to-keep-documents-on-biden-order-secret/>. The Heritage Foundation’s Oversight Project has managed to obtain some strategic plans from agencies in response to Freedom of Information Act requests. See Heritage Foundation Oversight Project, “Biden Bucks: Executive Order 14019,” May 16, 2024, <https://www.heritage.org/the-oversight-project/election-integrity/biden-bucks-executive-order-14019>.
13. Biden, Executive Order 14019, § 2.
14. *America First Legal Foundation v. Department of Agriculture*, 2023 WL 4581313 (D.D.C. Jul. 31, 2023).
15. *Ibid.*, p. 7.
16. U.S. Court of Appeals for the District of Columbia Circuit, “Public Calendar from 06/14/2024 Through 10/20/2014,” <https://www.cadc.uscourts.gov/internet/sixtyday.nsf/fullcalendar?OpenView&count=1000> (accessed August 21, 2024).
17. Letter from Alabama Secretary of State John Merrill, Arkansas Secretary of State John Thurston, Florida Secretary of State Cord Byrd, Georgia Secretary of State Brad Raffensberger, Idaho Secretary of State Lawrence Denney, Indiana Secretary of State Holli Sullivan, Louisiana Secretary of State Kyle Ardoin, Mississippi Secretary of State Michael Watson, Montana Secretary of State Christi Jacobsen, Nebraska Secretary of State Bob Evers, Ohio Secretary of State Frank LaRose, South Dakota Secretary of State Steve Barnett, Tennessee Secretary of State Tre Hargett, West Virginia Secretary of State Mac Warner, and Wyoming Secretary of State Ed Buchanan to President Joe Biden, “Subject: Rescind Executive Order 14019,” August 3, 2022, <https://bloximages.chicago2.vip.townnews.com/wvnews.com/content/tncms/assets/v3/editorial/c/a8/ca8f974a-1402-11ed-b2fd-5f15aaed78cb/62ebd97975628.pdf.pdf> (accessed August 21, 2024).
18. Chris Dickerson, “Warner Says W.Va. Will Not Accept Voter Registrations Collected by Biden Administration,” *West Virginia Record*, April 10, 2024, <https://wvrecord.com/stories/657657196-warner-says-w-va-will-not-accept-voter-registrations-collected-by-biden-administration> (accessed August 21, 2024).
19. Capital Research Center InfluenceWatch, “Demos,” <https://www.influencewatch.org/non-profit/demos/> (accessed August 21, 2024).
20. Memorandum, “New Document Highlights Partisan Application of Biden’s FedGov Get-Out-The-Vote Operation,” Heritage Foundation Oversight Project, May 1, 2024, https://oversight.heritage.org/OP_Memo_on_EO_14019_Partisan_Implementation_5.1.2024.pdf?_gl=1*1ov949s*_gcl_au*MjAzOTU0NDg0LjE3MTgxMjkzMjE.*_ga*MTU0NTAxOTUwNi4xNjM3Mdc4NzI3*_ga_W14BT6YQ87*MTcyNDIIMTY5Mi41NjguMS4xNzI0MjUxNzQyLjEwLjAuMA...
21. *Ibid.*
22. Byron York, “Joe Biden’s Secret Voter Plan,” *Washington Examiner*, September 12, 2022, <https://www.washingtonexaminer.com/daily-memo/2089628/joe-bidens-secret-voter-plan/> (accessed August 21, 2024).
23. See FOIA productions 21–23 in Heritage Foundation Oversight Project, “Biden Bucks: Executive Order 14019.”
24. Heritage Foundation Oversight Project, “Biden Election Rigging—Arizona,” posted June 26, 2024, <https://x.com/OversightPR/status/1806129503250387188>.

25. Heritage Foundation Oversight Project, “For example, of the 7 precincts in Navajo county, the Democrat-leaning precincts voted in excess of 90% for Democrats in some elections,” posted June 26, 2024, <https://x.com/OversightPR/status/1806129514696614151>.
26. Heritage Foundation Oversight Project, “Biden’s Election Rigging Plan for Harris—New Mexico,” posted June 26, 2024, <https://x.com/OversightPR/status/1815760475944030327>.
27. Letter from Louisiana Attorney General Jeff Landry, Alabama Attorney General Steve Marshall, Arizona Attorney General Mark Brnovich, Arkansas Attorney General Leslie Rutledge, Indiana Attorney General Todd Rokita, Kentucky Attorney General Daniel Cameron, Mississippi Attorney General Lynn Fitch, Montana Attorney General Austin Knudsen, Nebraska Attorney General Doug Peterson, Oklahoma Attorney General John M. O’Connor, South Carolina Attorney General Alan Wilson, Texas Attorney General Ken Paxton, and Utah Attorney General Sean D. Reyes to President Joseph R. Biden, Jr., September 28, 2022, [https://www.texasattorneygeneral.gov/sites/default/files/images/press/EO%2014019%20Multistate%20letter%20\(FINAL\).pdf](https://www.texasattorneygeneral.gov/sites/default/files/images/press/EO%2014019%20Multistate%20letter%20(FINAL).pdf) (accessed August 21, 2024). Cited hereafter as Attorneys General Letter, September 28, 2022.
28. Press release, “Paxton Slams Biden’s Executive Order Designed to Use Taxpayer Funds to Aid the Left in Future Elections,” Office of Texas Attorney General Ken Paxton, October 10, 2022, <https://www.texasattorneygeneral.gov/news/releases/paxton-slams-bidens-executive-order-designed-use-taxpayer-funds-aid-left-future-elections> (accessed August 21, 2024).
29. Attorneys General Letter, September 28, 2022.
30. U.S. Const., art. I, § 4, cl. 1.
31. U.S. Const., art. II, § 1, cl. 2.
32. 3 U.S.C. § 2.
33. 52 U.S.C. § 10101 *et seq.*
34. 52 U.S.C. § 20101 *et seq.* The limited federal responsibilities under the NVRA were implemented through President Bill Clinton’s Executive Order 12926. See President William J. Clinton, Executive Order 12926, “Implementation of the National Voter Registration Act of 1993,” *Federal Register*, Vol. 59, No. 177 (September 12, 1994, pp. 47227–47228, <https://www.archives.gov/files/federal-register/executive-orders/pdf/12926.pdf> (accessed August 21, 2024).
35. 52 U.S.C. § 20901 *et seq.*
36. 52 U.S.C. § 20301 *et seq.*
37. 31 U.S.C. § 1517.
38. U.S. Election Assistance Commission, Funding Advisory Opinion No. FAO-08-005, https://www.eac.gov/sites/default/files/document_library/files/FAO-08-005_EAC_1.pdf (accessed August 21, 2024).
39. 31 U.S.C. § 1518.
40. 31 U.S.C. § 1342.
41. 52 U.S.C. § 20506(a)(3).
42. U.S. Department of Health and Human Services, Health Resources and Services Administration, Health Center Program, “Voter Registration and Health Centers,” last reviewed March 2022, <https://bphc.hrsa.gov/compliance/scope-project/voter-requirements> (accessed August 21, 2024).
43. Eugene Scott, “VP Harris to Announce Biden Team’s Plans to Boost Voting Access,” *Axios*, February 27, 2024, <https://www.axios.com/2024/02/27/kamala-harris-voting-rights-2024> (accessed August 21, 2024).
44. Press release, “Biden–Harris Administration Finalizes Policies to Increase Access to Health Coverage for DACA Recipients,” U.S. Department of Health and Human Services, May 3, 2024, <https://www.hhs.gov/about/news/2024/05/03/hhs-finalizes-policies-increase-access-health-coverage-daca-recipients.html> (accessed August 21, 2024).
45. 52 U.S.C. § 20510(a) and (b).
46. 5 U.S.C. § 7323.
47. See U.S. Office of Special Counsel, “About OSC,” <https://osc.gov/Agency> (accessed August 21, 2024).
48. U.S. Office of Special Counsel, “State, D.C., or Local Employee Hatch Act Information,” <https://osc.gov/Services/Pages/HatchAct-StateLocal.aspx#tabGroup11> (accessed August 21, 2024).
49. 31 U.S.C. § 1341.
50. *America First Policy Institute v. Biden*, Case No. 2:24-152 (N.D. Texas July 11, 2024). The Administrative Procedure Act is codified at 5 U.S.C. § 701 *et seq.*
51. *Texas Savings and Community Bankers Association v. Federal Housing Finance Board*, 201 F.3d 551, 556 (5th Cir. 2000).
52. *America First Policy Institute v. Biden*, Complaint, p. 75.
53. *Ibid.*, p. 77.
54. *Ashcroft v. Biden*, Case No. 4:24-01062 (E.D. Missouri July 31, 2024), Complaint, p. 8.

55. *Republican National Committee v. Whitmer*, Case No. 1:24-00720 (W.D. Michigan July 15, 2024), Complaint, pp. 16–21.
56. *Montana v. Biden*, Case No. 6:24-01141 (D. Kansas August 13, 2024).
57. Brianna Lyman, “Biden Order Instructing Federal Agencies to Meddle in Elections Is Unlawful, Suit Alleges,” *The Federalist*, July 15, 2024, <https://thefederalist.com/2024/07/15/biden-order-instructing-federal-agencies-to-meddle-in-elections-is-unlawful-suit-alleges/> (accessed August 21, 2024).
58. Ben Weingarten, “Here’s Fresh Evidence Biden’s Using Your Tax Dollars to Turn Out Democrat Votes,” *The Federalist*, May 13, 2024, <https://thefederalist.com/2024/05/13/heres-fresh-evidence-bidens-using-your-tax-dollars-to-turn-out-democrat-votes-in-2024/> (accessed August 21, 2024).
59. M. D. Kittle, “Targeting Felon Votes with ‘Bidenbucks,’ Democrats Court the ‘Criminal Caucus,’” *The Federalist*, May 29, 2024, <https://thefederalist.com/2024/05/29/targeting-felon-votes-with-bidenbucks-democrats-court-the-criminal-caucus/> (accessed August 21, 2024).
60. Scott, “VP Harris to Announce Biden Team’s Plans to Boost Voting Access.”