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Written Testimony of the Southern Poverty Law Center

Submitted to the U.S. House Committee on Small Business

In connection with its June 4, 2024 hearing entitled
“Weaponizing Federal Resources: Exposing the SBA’s Voter Registration Efforts”

Hearing June 4, 2024
Organizational Testimony Submitted June 11, 2024



On behalf of the Southern Poverty Law Center (SPLC) Action Fund, we write to provide our insights regarding the issues addressed during the House Committee on Small Business’ hearing “Weaponizing Federal Resources: Exposing the SBA’s Voter Registration Efforts.” We appreciate the opportunity to share our expertise on nonpartisan agency voter registration, a longstanding and appropriate exercise of the responsibility of government at all levels to protect and advance the fundamental right to vote. We respectfully request this statement be included as part of the official hearing record.

The Southern Poverty Law Center: 50 Years of Protecting Civil Rights in the South

The Southern Poverty Law Center (SPLC) has for fifty years worked to expand and safeguard civil rights protections, primarily through the courts. Since its founding, SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless and the forgotten. Our lawsuits have toppled institutional racism and have made significant progress in stamping out remnants of Jim Crow segregation; destroyed some of the nation’s most violent white supremacist groups; and protected the civil rights of children, women, people with disabilities, immigrants and migrant workers, the LGBTQ community, incarcerated people, and many others who faced discrimination, abuse or exploitation. In 2019—after six years of witnessing the unrelenting attack on the right to vote across our states—we added a new legal practice group focused on voting rights. Since that time, we have brought cases defending and expanding the voting rights of residents of the Deep South. Because state legislatures and executives in our states often target people of color, we are particularly focused on protecting the rights of these communities.

Our expertise stems from our deep roots in a region that has always been at the forefront of suppressing and oppressing people of color, and our approach to voting rights advocacy and litigation is informed by our longstanding relationships with communities of color that have for centuries been on the frontlines of resisting that oppression in Alabama, Florida, Georgia, Louisiana, and Mississippi.

Voter Registration and Participation Rates are Chronically Low Across the United States

The United States is something of an outlier among our peers; our voter participation rates consistently rank lower than many other developed democracies.¹ In the last presidential election, 2020, voter turnout overall was just 67 percent,² which, while historic by U.S. standards, is lower than many other democratic nations. When we drill down by race and ethnicity, we see even more concerning trends – voter participation rates among communities of

¹ Drew DeSilver, “Turnout in U.S. has soared in recent elections but by some measures still trails that of many other countries,” Pew Research Center, November 1, 2022, <https://www.pewresearch.org/short-reads/2022/11/01/turnout-in-u-s-has-soared-in-recent-elections-but-by-some-measures-still-trails-that-of-many-other-countries/>.

² Voting and Registration in the Election of November 2020 – Table 1, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.



color lag well behind those of white communities; in 2020, 71 percent of white Americans voted, compared to 63 percent of Black Americans, 60 percent of Asian Americans, and 54 percent of Latinx Americans.³ Native Americans voted at rates 17 percent lower than that of white Americans in 2020.⁴ These gaps are not a fluke; they persist across election, year after year.⁵

Part of the explanation for these persistent and deeply concerning gaps is the presence of significant barriers to voting in states across the country, barriers that often impact voters of color most severely. Especially in the 11 years since the Supreme Court gutted the Voting Rights Act (VRA) of 1965, these barriers have grown, including in the Deep South, where voters of color in several states previously enjoyed the protections of the law.⁶ As a result, there is a growing racial turnout gap between white voters and voters of color.⁷

Another part of the explanation is the fact that significant numbers of eligible American voters are not registered to vote, which is the primary prerequisite for voting in virtually every U.S. state. During the 2020 elections, only 73 percent of eligible adults were registered to vote, meaning tens of millions of eligible people would not have been able to vote if they had showed up to the polls.⁸ Again, the overall rates mask disparities by racial and ethnic groups; Black, Asian, Latinx, and Native communities were all registered at lower rates than white communities.⁹

Chronically low registration and participation rates plague the U.S. in part because getting and staying registered to vote is in many places a needlessly complicated and time-consuming process. Registration deadlines in many states come weeks before Election Day, and well before candidate and issue campaigning peaks and people have become fully interested in elections.¹⁰ Would-be voters in these states who decide to vote in the weeks before an election but have missed the registration deadline are out of luck. Further, some voters who do attempt to register to vote have their applications held up or rejected. For years the state of Georgia employed an

³ Voting and Registration in the Election of November 2020 – Table 4b, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

⁴ Report of the Interagency Steering Group on Native American Voting Rights, the White House, March 2022, <https://www.whitehouse.gov/wp-content/uploads/2022/03/Tribal-Voting-Report-FINAL.pdf>.

⁵ Voting and Registration Tables, 1960-2022, U.S. Census Bureau, <https://www.census.gov/topics/public-sector/voting/data/tables.html>.

⁶ Written Testimony of the Southern Poverty Law Center, submitted to the U.S. Senate Committee on the Judiciary in connection with its hearing entitled “The Right Side of History: Protecting Voting Rights in America,” March 12, 2024, <https://www.splcenter.org/sites/default/files/statement-senate-judiciary-hearing-protecting-voting-rights-0312024.pdf>.

⁷ Kevin Morris & Coryn Grange, *Growing Racial Disparities in Voter Turnout, 2008-2022*, Brennan Center for Justice, March 2, 2024. <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>

⁸ *Supra* note 2, U.S. Census Bureau. Note that in states with same-day registration, if unregistered voters who showed up to vote had the correct identification, they could register and vote at the polls.

⁹ *Supra* note 3.

¹⁰ “Voter Registration Deadlines,” National Conference of State Legislatures, December 11, 2023, <https://www.ncsl.org/elections-and-campaigns/voter-registration-deadlines>.



error-prone and discriminatory policy called “exact match,” which flagged, and in some cases rejected, tens of thousands of registration applications from eligible voters for minor typos or data entry errors.¹¹ Not unlike other registration barriers that impact voters of color more severely, this policy disproportionately affected the registration applications of Georgians of color.¹² Finally, even for those who jump through the hoops and manage to get registered to vote, staying registered can be a challenge, especially in states with aggressive purge policies and permissive challenge laws. Eligible voters in many states who have made it onto the registration rolls find their status in jeopardy due to list maintenance policies that may erroneously remove them or target them for removal because they have not voted frequently enough in the eyes of state officials.¹³ Other voters find themselves the targets of frivolous and discriminatory voter challenges pursued by anti-voter activists in a coordinated effort to burden election boards, intimidate voters, and undermine confidence in elections.¹⁴

We are a nation with chronically low voter registration and participation rates and steep and growing barriers to both registering and voting. Given that context, government action to make registration more accessible, especially to historically disenfranchised communities—like that pursued by the Small Business Administration in Michigan and other federal agencies across the country—is a significant positive step that should be celebrated. It is also appropriate and effective in the context of a developed democracy.

Federal Agency Voter Registration is an Appropriate, Congressionally-Encouraged Activity to Remedy these Challenges in our Democracy

In a developed democracy, one of the proper roles of government is to ensure all eligible citizens are registered to vote and able to cast a ballot that counts. This is how many of our peer democratic nations approach voter registration,¹⁵ and it should be the standard in the United States, as well.

Congress took an important step toward beginning to realize this vision thirty years ago when it passed the National Voter Registration Act (NVRA) of 1993.¹⁶ Leaning into its broad power to

¹¹ Stanley Augustin, “Georgia Largely Abandons Its Broken ‘Exact Match’ Voter Registration Process,” April 5, 2019, <https://lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>.

¹² Eugene Scott, “Georgia’s held-up voter registrations reinforce black Americans’ fears about voting rights,” Washington Post, October 12, 2018, <https://www.washingtonpost.com/politics/2018/10/12/georgia-voter-registrations-being-held-reinforces-black-americans-fears-about-voting-rights/>.

¹³ *Protecting Voter Registration: An Assessment of Voter Purge Policies in Ten States*, Demos, August 10, 2023, <https://www.demos.org/research/protecting-voter-registration-assessment-voter-purge-policies-ten-states>.

¹⁴ Kate Hamilton, “Frivolous Mass Challenges to Voter Eligibility Damaging to Democracy,” Campaign Legal Center, October 6, 2022, <https://campaignlegal.org/update/frivolous-mass-challenges-voter-eligibility-damaging-democracy>.

¹⁵ *Supra* note 1, Pew Research Center. See also Jennifer S. Rosenberg and Margaret Chen, *Expanding Democracy: Voter Registration Around the World*, Brennan Center for Justice, 2009, <https://www.brennancenter.org/sites/default/files/legacy/publications/Expanding.Democracy.pdf>.

¹⁶ National Voter Registration (NVRA) Act, Pub. L. 103-31 (1993), <https://www.congress.gov/bill/103rd-congress/house-bill/2/text>.



regulate federal elections under the Elections Clause of the U.S. Constitution,¹⁷ Congress passed this bipartisan law:

- (1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for federal offices;
- (2) to make it possible for federal, state, and local governments to implement this chapter in a manner that enhances the participation of eligible citizens as voters in elections for federal office;
- (3) to protect the integrity of the electoral process; and
- (4) to ensure that accurate and current voter registration rolls are maintained.¹⁸

In the NVRA, Congress finds that “it is the duty of the federal, state, and local governments to promote the exercise of that right,” referring to the fundamental right to vote.¹⁹ Importantly, Congress did not confine this duty to the state and local governments; it accurately identified that the federal government also has a responsibility and a role to play. Further, in addition to enumerating specific state agencies that must provide voter registration services to the eligible citizens they serve—state departments of motor vehicles, state offices providing public assistance and serving people with disabilities, and armed forces recruitment offices²⁰—Congress also required each state to which the law applies to designate additional agencies to voluntarily provide voter registration services.²¹ Congress expressly named federal agencies as among these additional agencies that can be designated, as long as the federal agency agrees to the designation,²² and mandated that “all departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the states in carrying out subsection (a),”²³ which is to say, designation as a voter registration agency and provision of nonpartisan voter registration services.

It could not be clearer, then, that Congress always intended for federal agencies to engage in nonpartisan voter registration services, just as many state agencies have for decades. Indeed, the Veterans Health Administration has been assisting patients with information on registration and voting since 2008, when the Bush Administration issued a directive that the agency do so.²⁴ This directive has been expanded and extended twice since, once in 2014 during the Obama

¹⁷ U. S. Constitution, art. I, sec. IV, cl. 1: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”

¹⁸ 52 U.S.C. § 20501.

¹⁹ *Id.*

²⁰ 52 U.S.C. § 20504(a), 52 U.S.C. § 20506(a)(2), and 52 U.S.C. § 20506(c).

²¹ 52 U.S.C. § 20506(a)(3)(A).

²² 52 U.S.C. § 20506(a)(3)(B)(ii).

²³ 52 U.S.C. § 20506(b).

²⁴ U.S. Department of Veterans Affairs, Veterans Health Administration, “VHA Directive 2008-053: Voting Assistance for VA Patients,” September 8, 2008, (updated by subsequent directive; see note 26).



Administration²⁵ and again in 2019 during the Trump Administration.²⁶ Additionally, the Department of Defense, through its obligations to provide voter registration services under the NVRA, has been working with states to do so since the NVRA took effect in 1995, and federal military installations have served as voter registration agencies since the passage of the Military and Overseas Empowerment (“MOVE”) Act in 2009.²⁷

It is in furtherance of this Congressionally identified duty, and with the authority conferred by this federal law, that Executive Order 14019 on Promoting Access to Voting was issued in March 2021.²⁸ This important Executive Order encourages federal agencies to consider what they can do, “as appropriate and consistent with applicable law,” to promote access to registration and voting among the eligible constituents they serve.²⁹ In response, several federal agencies, including but not limited to the Small Business Administration, have taken steps to make it easier for the eligible people they serve to avail themselves to the democratic process.³⁰ These steps, while in many cases modest, represent meaningful progress within the federal government toward beginning to meet its duty to promote the fundamental right to vote. When realized, they will strengthen our democracy.

Federal Agency Voter Registration, like State Agency Voter Registration, is Non-Partisan

As detailed above, any voter registration activities taken by federal agencies pursuant to Executive Order 14019 flow from the NVRA and follow the model for voter registration services carried out by dozens of U.S. states over decades. Which is to say, these activities are strictly non-partisan. The NVRA includes explicit protections against partisanship, stating that those individuals providing voter registration services “shall not”:

- (A) seek to influence an applicant’s political preference or party registration;
- (B) display any such political preference or party allegiance;
- (C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or
- (D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.³¹

²⁵ U.S. Department of Veterans Affairs, Veterans Health Administration, “VHA Directive 1060: Voting Assistance for VA Patients,” March 31, 2014 (updated by subsequent directive; see note 26).

²⁶ U.S. Department of Veterans Affairs, Veterans Health Administration, “VHA Directive 1060: Voting Assistance for VA Inpatients and Residents,” October 23, 2019, <https://www.va.gov/vhapublications/publications.cfm?pub=1>.

²⁷ Military and Overseas Voter Empowerment (MOVE) Act, Pub. L. No. 111-84 (2009), <https://www.congress.gov/bill/111th-congress/senate-bill/1415/text>.

²⁸ Executive Order 14019 on Promoting Access to Voting, White House, March 7, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>.

²⁹ *Id.*, Sec. 3(a).

³⁰ See White House fact sheets, September 2021 – present.

³¹ 52 U.S.C. § 20506(a)(5)



These protections have been effective at preventing improper partisanship in state agency voter registration for decades. There is simply no evidence of partisanship or other improper conduct on the part of state agency staff providing voter registration services to their clients. Even those Secretaries of State who suggest federal agency action to promote voter registration to their residents is partisan or otherwise inappropriate will in the same breath sing the praises of the voter registration programs at their states' DMVs and other state agencies,³² programs that flow from the very same federal law from which the federal agency voter registration activity in question flows.

Further, some federal agencies have been engaged in nonpartisan voter registration for decades, as well, also with no evidence of partisanship or other wrongdoing. As detailed above, Armed Forces recruitment offices have been required to offer voter registration services since the passage of the NVRA and have been doing so without issue. In more recent years, the VA has also been offering voter registration information and assistance to patients, again without reports of any improper political influence or activity.

Finally, a separate federal law, the Hatch Act, provides express prohibitions on partisan political activities—including activity directed toward the success or failure of a candidate or political party—by federal employees while on the job.³³ There are severe penalties for those who those who violate this law, including termination of federal employment. Federal agency voter registration is already explicitly nonpartisan, and the Hatch Act provides a backstop in the unlikely event a federal employee was to break the law.

More Robust Federal Agency Voter Registration, and Other Steps, Can Strengthen Democracy

As Congress itself found, in a democracy it is the duty of the government at all levels, including the federal government, to promote the fundamental right to vote. Our democracy is strongest when all eligible people can cast a ballot that counts, and the government has a critical role to play in moving us toward realization of that ideal. Executive Order 14019 and the federal agency actions that flow from it, including the agreement between the Small Business Administration and the state of Michigan at question in this hearing, are necessary and appropriate steps in the process of building a multiracial, inclusive democracy. Importantly, they help counter the backsliding in that project that our nation has experienced over the last several years. As such, Congress should applaud such activity among federal agencies and encourage more to follow the SBA's and other federal agencies' leads.

³² House Committee on Small Business full committee hearing: "Weaponizing Federal Resources: Exposing the SBA's Voter Registration Efforts," June 4, 2024, Testimony of Indiana Secretary of State Diego Morales, <https://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=406003>.

³³ 5 U.S.C. 7323(a) and 7324(a). See also "Political Activities," U.S. Department of Justice, <https://www.justice.gov/jmd/political-activities>.



Additionally, while federal agency action to promote voter registration and participation is good and helpful, alone it is not enough to stave off attacks on the fundamental right to vote and on our democracy by those who would take us backward. To truly protect and advance the right to vote, Congress must also pass legislation strengthening and modernizing the Voting Rights Act of 1965 and instituting national minimum standards for election administration; Congress must pass the John R. Lewis Voting Rights Advancement Act³⁴ and the Freedom To Vote Act.³⁵ Finally, Congress must also allocate significant federal funding for state and local election administration in the FY25 appropriations process and continue to provide robust, regular federal funding in future years, so that state and local election officials and administrators have the resources they need to run safe, secure, accessible elections.³⁶

³⁴ H.R. 14, John R. Lewis Voting Rights Advancement Act, 118th Congress, <https://www.congress.gov/bill/118th-congress/house-bill/14>.

³⁵ H.R. 11, Freedom To Vote Act, 118th Congress, <https://www.congress.gov/bill/118th-congress/house-bill/11>.

³⁶ Letter to Congressional Appropriators in Support of Federal Funding Election Administration in the FY25 Appropriations bills, signed by Southern Poverty Law Center Action Fund, Campaign Legal Center, Common Cause, League of Conservation Voters, League of Women Voters, SEIU and 46 other voting and civil rights organizations, May 1, 2024, <https://www.splcactionfund.org/sites/default/files/letter-supporting-federal-funding-election-administration-fy25.pdf>.