

Congress of the United States

Washington, DC 20515

June 15, 2022

The Honorable Kiran Ahuja
Director
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Dear Director Ahuja:

We write today to inquire about the Executive Order on Promoting Access to Voting, E.O. 14019, which President Joe Biden signed on March 7, 2021, and to share our concerns about the lack of constitutional and statutory authority for federal agencies to engage in any activity beyond its stated mission, including federal voting access and registration activities. We recently sent a letter of inquiry to the Directors of the Domestic Policy Council and the Office of Management and Budget and, to date, received no response.

We are certain you agree with us that every eligible voter who chooses to vote must have the opportunity to vote, and that every lawful vote must count, and increased voter registration and participation is a goal we share. Yet, our system requires that our actions must comport always with the Constitution and other federal law. According to Article I, section 4 of the Constitution, states have the primary role in establishing election law and administering elections.¹ And, to the extent the Elections Clause contains a federal “fail-safe,”² it is the Congress to whom the Constitution delegates that power, not the President. The President’s role is limited to enforcing enacted legislation passed by Congress; therefore, the President must exercise great restraint when attempting to act on election law.

We are concerned that this Executive Order goes beyond the power of the President and the statutory authority given to federal agencies, specifically (1) Directing federal agencies to assist states with voter registration if a state requests assistance; (2) Expanding the use of vote.gov and suggesting agencies add a link to it on their websites; and (3) Proposing ways to increase federally funded government employee participation in the voting process.

Section 6 of the Executive Order specifically tasks the Office of Personnel Management (OPM) “to coordinate with heads of executive agencies” to expand time off for federal employees in connection with elections and on strategies to support work by federal employees as poll workers and observers. In addition, the Order’s more general terms also appear to apply to OPM. Our general concerns described above therefore apply equally to OPM.

¹ Ranking Member Rodney Davis, *The Elections Clause: States’ Primary Constitutional Authority Over Elections*, Report, U.S. H. of Reps., Comm. on H. Admin. Republicans (Aug. 12, 2021), https://republicans-cha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf.

² Even Congress’ role in this space is secondary, and Congress must restrain itself from acting improperly and unconstitutionally.

We request you respond in writing to the following questions:

1. Has OPM submitted a plan in response to the Executive Order? If yes, has the agency made any updates to the plan originally submitted? If so, what changes have been made? Please provide copies of the plan submitted, including any and all changes.
2. What statutory authorities enable OPM to engage in voter registration and share election information? How does engaging in activities related to voter registration further the agency's mission?
3. Has OPM estimated the amount of funding it will require to implement these plans? If so, please send the estimate. Where will the funding come from?
4. The Executive Order directs agencies to consider soliciting and facilitating approved, third-party organizations and state officials to provide voter registration services on agency premises. What are the criteria for such approval, including the responsible parties or clearance process for such approval? Please provide a list of third-party entities that have been solicited and a list that have been approved, to date.
5. Which states, if any, have requested assistance for voter registration from OPM, and, specifically, what assistance have they requested?
6. Have proper steps been taken to ensure that the actions taken by OPM employees do not violate the Hatch Act? If so, please provide a detailed description of the steps taken.

We share the same goal of protecting every eligible citizen's right to vote and that every lawful vote must count. However, we must follow the paradigm as established by the Constitution. States have the primary role in establishing election law with Congress playing a secondary role. As the federal government, we must exercise caution to ensure the actions we take are constitutional.

We look forward to hearing from you. The Committee on Oversight and Reform has primary legislative jurisdiction over “[g]overnment management ..., generally,” and the “[o]verall economy, efficiency, and management of government operations and activities” pursuant to House Rule X. Additionally, the Committee is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Rules of the House of Representatives give the Committee of House Administration oversight of federal elections. Please respond by June 29, 2022. Please send your response and any questions you may have to Daniel Flores, Senior Counsel of the Committee on Oversight and Reform at Daniel.Flores@mail.house.gov and Caleb Hays, General Counsel and Deputy Staff Director, of the Committee on House Administration at Caleb.Hays@mail.house.gov.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Rodney Davis
Ranking Member
Committee on House Administration



Jody Hice
Ranking Member
Subcommittee on Government Operations



Glenn Grothman
Ranking Member
Subcommittee on National Security



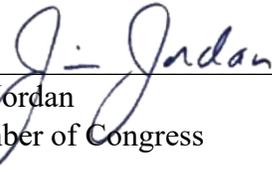
Michael Cloud
Ranking Member
Subcommittee on Economic and Consumer Policy



Ralph Norman
Ranking Member
Subcommittee on Environment



Nancy Mace
Ranking Member
Subcommittee on Civil Rights and Civil Liberties



Jim Jordan
Member of Congress



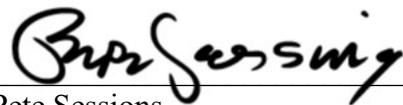
Virginia A. Foxx
Member of Congress



Bob Gibbs
Member of Congress



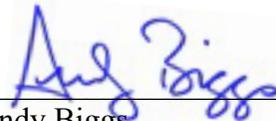
Clay Higgins
Member of Congress



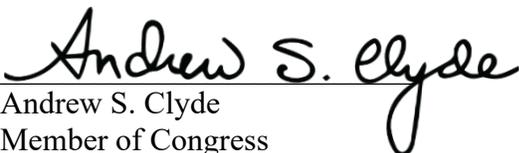
Pete Sessions
Member of Congress



Fred Keller
Member of Congress



Andy Biggs
Member of Congress



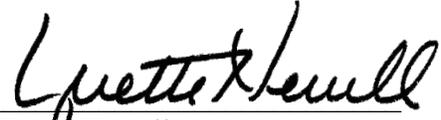
Andrew S. Clyde
Member of Congress



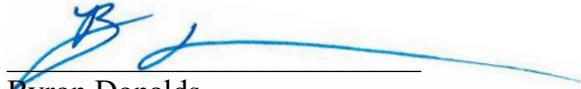
C. Scott Franklin
Member of Congress



Jake LaTurner
Member of Congress



Yvette Herrell
Member of Congress



Byron Donalds
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Zoe Lofgren, Chairwoman
Committee on House Administration

The Honorable Gerald E. Connolly, Chairman
Subcommittee on Government Operations

The Honorable Stephen F. Lynch, Chairman
Subcommittee on National Security

The Honorable Raja Krishnamoorthi, Chairman
Subcommittee on Economic and Consumer Policy

The Honorable Ro Khanna, Chairman
Subcommittee on Environment

The Honorable Jamie Raskin, Chairman
Subcommittee on Civil Rights and Civil Liberties