

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 15, 2022

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Walsh:

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. On March 29, 2022, Committee Republican Leaders 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.¹

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.² And, to the extent the Elections Clause contains a federal “fail-safe,”³ 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

¹ Letter from Rep. Rodney Davis et al. to Susan E. Rice, Dir., Domestic Policy Council, & Shalanda Young, Dir., Off. of Mgmt. & Budget (Mar. 29, 2022) <https://republicans-edlabor.house.gov/news/documentsingle.aspx?DocumentID=408179>.

² 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.

³ Even Congress’ role in this space is secondary, and Congress must restrain itself from acting improperly and unconstitutionally.

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.

As laudable as expanding access to information about voter registration is, it is not under the purview of the more than 180 statutes that authorize DOL and its programs. DOL was created in 1913 by “An Act to create a Department of Labor.”⁴ Its purpose was “to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment.” Numerous laws since 1913 have added program and enforcement responsibilities to DOL such that it is now comprised of multiple entities that provide services related to worker protection, income support, workforce development, and labor statistics. DOL has critical work to do on behalf of workers. It is inappropriate for DOL to turn its attention to issues for which it has not been statutorily directed to undertake.

We request you respond in writing to the following questions:

1. Has DOL 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 DOL 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 DOL 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 DOL, and, specifically, what assistance have they requested?
6. Have proper steps been taken to ensure that the actions taken by DOL employees do not violate the *Hatch Act*? If so, please provide a detailed description of the steps taken.
7. Have you taken part as a member of the Native American Voting Rights Steering Group, on which you were made a member under Section 10(b) of the Executive Order? If so, please provide information about your participation, including but not limited to dates and minutes of meetings.

⁴ Pub. L. 62-436.

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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. Rules of the House of Representatives give the Committee on Education and Labor oversight of DOL and the Committee of House Administration oversight of federal elections. Please respond by July 11, 2022. Please send your response and any questions you may have to Joe Wheeler, Professional Staff Member, of the Committee on Education and Labor at Joseph.Wheeler@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,



Virginia Foxx
Ranking Member
Committee on Education and Labor



Rodney Davis
Ranking Member
Committee on House Administration



James Comer
Ranking Member
Committee on Oversight and Reform



Bryan Steil
Ranking Member
Subcommittee on Elections



Glenn Thompson




Tim Walberg



Glenn Grothman



Elise Stefanik



Rick W. Allen



Jim Banks



Russ Fulcher



Fred Keller



Mariannette Miller-Meeks



Burgess Owens



Lisa C. McClain



Diana Harshbarger



Victoria Spartz



Scott Fitzgerald