



# NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

Out of Many/**One Union**  
AFGE NVAC/AFL-CIO

## NATIONAL GRIEVANCE

NG-11/5/22

**Date:** November 5, 2022

**To:** Denise Biaggi-Ayer  
Executive Director  
Office of Labor Management Relations  
U.S. Department of Veterans Affairs  
[Denise.Biaggi-Ayer@va.gov](mailto:Denise.Biaggi-Ayer@va.gov)  
*Sent via electronic mail only*

**From:** Thomas Dargon, Jr., Supervisory Attorney, National Veterans Affairs Council (#53)  
("NVAC"), American Federation of Government Employees, AFL-CIO ("AFGE")

**RE:** **National Grievance against the Department of Veterans Affairs for failing to comply with Executive Order 14019 on Promoting Access to Voting**

### STATEMENT OF THE CHARGE

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) ("MCBA"), American Federation of Government Employees/National Veterans Affairs Council ("NVAC" or "the Union") is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs ("Department") for failing to comply with Executive Order 14019 on Promoting Access to Voting by denying administrative leave to AFGE bargaining unit employees to vote in election events.

Specifically, the Department violated and continues to violate Article 2 of the MCBA, Executive Order 14091, guidance from the Office of Personnel Management, and any and all other relevant articles, laws regulations, and past practices not herein specified. The Union reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or otherwise, as necessary.

### STATEMENT OF THE CASE

#### **Background**

On March 7, 2021, President Biden signed Executive Order 14019 on Promoting Access to Voting.<sup>1</sup> In furtherance of the priorities of the Biden-Harris Administration to protect the rights of the American people, Executive Order 14091 made clear that the federal government should take all actions within its power to remove barriers to voting and expand access to the polls.

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<sup>1</sup> See Exhibit A.

*It is the policy of my Administration to promote and defend the right to vote for all Americans who are legally entitled to participate in elections. It is the responsibility of the Federal Government to expand access to, and education about, voter registration and election information, and to combat misinformation, in order to enable all eligible Americans to participate in our democracy.*

*Executive Order 14019 on Promoting Access to Voting*, Sec. 2. President Biden also instructed the Director of the Office of Personnel Management (“OPM”) to issue guidance to executive agencies on the implementation of his directives. *Id.* at Sec. 6. On March 24, 2022, OPM published guidance to executive agencies implementing Executive Order 14091, CPM 2022-05.<sup>2</sup> In relevant part, OPM instructed all agencies to grant federal employees up to four (4) hours of administrative leave to vote on Election Day or participate in early voting and an additional four (4) hours of administrative leave per year to participate as a non-partisan poll worker or observer in federal, state, or local elections. Per OPM guidance, requests for administrative leave are subject only to a “determination by the agency that the employee can be relieved of duty during the specific period of time requested by the employee without significantly impairing mission-essential operations.”

Despite unequivocally clear instructions from President Biden and OPM, management officials within the Department have denied requests for administrative leave to AFGE bargaining unit employees at numerous VA facilities around the country. Management officials have denied or limited the use of administrative leave by employees for unjustified reasons, such as polling locations being open before or after an employee’s tour of duty or due to polling locations being in close proximity to VA facilities. For example, one management official at the Milwaukee VBA Regional Office denied leave requests because, “*We cannot grant administrative leave for voting unless poles [sic] are not open before or after an employees [sic] TOD.*” That is plainly inaccurate. Likewise, in the Health Eligibility Center for Member Services, another management official announced that employees could only receive a limited amount of administrative leave, sometimes as little as thirty minutes. That, too, is inaccurate. As a result of these actions, impacted employees have used personal leave or leave without pay to vote. Violations of Executive Order 14091 have been reported by a number of AFGE Locals, including but not limited to, Local 3 (Milwaukee, WI), Local 96 (St. Louis, MO), Local 446 (Asheville, NC), Local 518 (Atlanta, GA), Local 1020 (Marion, IN), and Local 1667 (Brooklyn, NY).<sup>3</sup>

## **Violations**

By failing to fulfill its obligations, the Department violated and continues to violate, the following:

- Article 2 of the MCBA;
- Executive Order 14091;
- OPM Guidance CPM 2022-05; and,
- Any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

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<sup>2</sup> See Exhibit B.

<sup>3</sup> The Union reserves the right to supplement or revise this list.

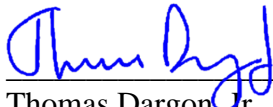
## Remedy Requested

The Union asks that to remedy the above situation, the Department agree to the following:

- To fully comply with the MCBA, OPM guidance, and Executive Order 14091;
- To make-whole adversely affected AFGE bargaining unit employees, including back pay, interest, leave restoration/substitution, and attorney's fees;
- To issue an electronic notice posting to all AFGE bargaining unit employees, signed by the Secretary, concerning the Department's violations;
- To require appropriate management officials to complete remedial training on Executive Order 14091; and,
- To agree to any and all other remedies appropriate in this manner.

## Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waved until the matter is resolved or settled. **The Union's designated representative for this National Grievance is Alec Summerfield, Staff Counsel (NVAC).** Mr. Summerfield is designated to represent the Union in all matters related to the subject of this National Grievance.



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Thomas Dargon, Jr.  
Supervisory Attorney, National VA Council  
Office of the General Counsel  
AFGE, AFL-CIO  
80 F Street, NW  
Washington, DC 20001

cc: Alma L. Lee, President, AFGE/NVAC  
William Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC  
Alec Summerfield, Staff Counsel, AFGE/NVAC

MARCH 07, 2021

# Executive Order on Promoting Access to Voting

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Purpose. The right to vote is the foundation of American democracy. Free and fair elections that reflect the will of the American people must be protected and defended. But many Americans, especially people of color, confront significant obstacles to exercising that fundamental right. These obstacles include difficulties with voter registration, lack of election information, and barriers to access at polling places. For generations, Black voters and other voters of color have faced discriminatory policies and other obstacles that disproportionately affect their communities. These voters remain more likely to face long lines at the polls and are disproportionately burdened by voter identification laws and limited opportunities to vote by mail. Limited access to language assistance remains a barrier for many voters. People with disabilities continue to face barriers to voting and are denied legally required accommodations in exercising their fundamental rights and the ability to vote privately and independently. Members of our military serving overseas, as well as other American citizens living abroad, also face challenges to exercising their fundamental right to vote.

The Constitution and laws of the United States prohibit racial discrimination and protect the right to vote. The Voting Rights Act of 1965 and other Federal statutes implement those protections and assign the Federal Government a key role in remedying disenfranchisement and unequal access to the polls. In passing the National Voter Registration Act of 1993, the Congress found that it is the duty of Federal, State, and local governments to promote the exercise of the fundamental right to vote. Executive departments and agencies (agencies) should partner with State, local, Tribal, and territorial election officials to protect and promote the exercise of the right to vote, eliminate discrimination and other barriers to voting, and expand access to voter registration and accurate election information. It is our duty to ensure that registering to vote and the act of voting be made simple and easy for all those eligible to do so.

Sec. 2. Policy. It is the policy of my Administration to promote and defend the right to vote for all Americans who are legally entitled to participate in elections. It is the responsibility of the Federal Government to expand access to, and education about, voter registration and election information, and to combat misinformation, in order to enable all eligible Americans to participate in our democracy.

**Sec. 3. Expanding Access to Voter Registration and Election Information.** Agencies shall consider ways to expand citizens' opportunities to register to vote and to obtain information about, and participate in, the electoral process.

(a) The head of each agency shall evaluate ways in which the agency can, as appropriate and consistent with applicable law, promote voter registration and voter participation. This effort shall include consideration of:

- (i) ways to provide relevant information in the course of activities or services that directly engage with the public — including through agency materials, websites, online forms, social media platforms, and other points of public access — about how to register to vote, how to request a vote-by-mail ballot, and how to cast a ballot in upcoming elections;
- (ii) ways to facilitate seamless transition from agencies' websites directly to State online voter registration systems or appropriate Federal websites, such as Vote.gov;
- (iii) 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, including:
  - (A) distributing voter registration and vote-by-mail ballot application forms, and providing access to applicable State online systems for individuals who can take advantage of those systems;
  - (B) assisting applicants in completing voter registration and vote-by-mail ballot application forms in a manner consistent with all relevant State laws; and
  - (C) soliciting and facilitating approved, nonpartisan third-party organizations and State officials to provide voter registration services on agency premises;
- (iv) ways to promote and expand access to multilingual voter registration and election information, and to promote equal participation in the electoral process for all eligible citizens of all backgrounds; and
- (v) whether, consistent with applicable law, any identity documents issued by the agency to members of the public can be issued in a form that satisfies State voter identification laws.

(b) Within 200 days of the date of this order, the head of each agency shall submit to the Assistant to the President for Domestic Policy a strategic plan outlining the ways identified under this review that the agency can promote voter registration and voter participation.

(c) The Administrator of the Office of Electronic Government, Office of Management and Budget, shall, consistent with applicable law, coordinate efforts across agencies to improve or modernize Federal websites and digital services that provide election and voting information to the American people, including ensuring that Federal websites are accessible to individuals with disabilities and people with limited English proficiency. As appropriate, the Administrator of the United States Digital Service may support agencies in implementing the strategic plans directed in subsection (b) of this section.

**Sec. 4. Acceptance of Designation Under the National Voter Registration Act.** (a) This order shall supersede section 3 of Executive Order 12926 of September 12, 1994 (Implementation of

the National Voter Registration Act of 1993).

(b) Each agency, if requested by a State to be designated as a voter registration agency pursuant to section 7(a)(3)(B)(ii) of the National Voter Registration Act, shall, to the greatest extent practicable and consistent with applicable law, agree to such designation. If an agency declines to consent to such designation, the head of the agency shall submit to the President a written explanation for the decision.

(c) The head of each agency shall evaluate where and how the agency provides services that directly engage with the public and, to the greatest extent practicable, formally notify the States in which the agency provides such services that it would agree to designation as a voter registration agency pursuant to section 7(a)(3)(B)(ii) of the National Voter Registration Act.

Sec. 5. Modernizing Vote.gov. The General Services Administration (GSA) shall take steps to modernize and improve the user experience of Vote.gov. In determining how to do so, GSA shall coordinate with the Election Assistance Commission and other agencies as appropriate, and seek the input of affected stakeholders, including election administrators, civil rights and disability rights advocates, Tribal Nations, and nonprofit groups that study best practices for using technology to promote civic engagement.

(a) GSA's efforts to modernize and improve Vote.gov shall include:

- (i) ensuring that Vote.gov complies, at minimum, with sections 504 and 508 of the Rehabilitation Act of 1973;
- (ii) ensuring that Vote.gov is translated into languages spoken by any of the language groups covered under section 203 of the Voting Rights Act anywhere in the United States; and
- (iii) implementing relevant provisions of the 21st Century Integrated Digital Experience Act (Public Law 115-336).

(b) Within 200 days of the date of this order, GSA shall submit to the Assistant to the President for Domestic Policy a strategic plan outlining the steps to modernize and improve the user experience of Vote.gov.

Sec. 6. Increasing Opportunities for Employees to Vote. It is a priority of my Administration to ensure that the Federal Government, as the Nation's largest employer, serves as a model employer by encouraging and facilitating Federal employees' civic participation. Accordingly, the Director of the Office of Personnel Management shall take the following actions within 200 days of the date of this order:

(a) coordinate with the heads of executive agencies, as defined in 5 U.S.C. 105, to provide recommendations to the President, through the Assistant to the President for Domestic Policy, on strategies to expand the Federal Government's policy of granting employees time off to vote in Federal, State, local, Tribal, and territorial elections. Such recommendations should include efforts to ensure Federal employees have opportunities to participate in early voting.

(b) Coordinate with the heads of executive agencies, as defined in 5 U.S.C. 105, to provide recommendations to the President, through the Assistant to the President for Domestic Policy,

on strategies to better support Federal employees who wish to volunteer to serve as non-partisan poll workers or non-partisan observers, particularly during early or extended voting periods.

Sec. 7. Ensuring Equal Access for Voters with Disabilities. Within 270 days of the date of this order, the National Institute of Standards and Technology (NIST) within the Department of Commerce shall evaluate the steps needed to ensure that the online Federal Voter Registration Form is accessible to people with disabilities. During that period, NIST, in consultation with the Department of Justice, the Election Assistance Commission, and other agencies, as appropriate, shall also analyze barriers to private and independent voting for people with disabilities, including access to voter registration, voting technology, voting by mail, polling locations, and poll worker training. By the end of the 270-day period, NIST shall publish recommendations regarding both the Federal Voter Registration Form and the other barriers it has identified.

Sec. 8. Ensuring Access to Voting for Active Duty Military and Overseas Citizens. (a) Within 200 days of the date of this order, the Secretary of Defense shall establish procedures, consistent with applicable law, to affirmatively offer, on an annual basis, each member of the Armed Forces on active duty the opportunity to register to vote in Federal elections, update voter registration information, or request an absentee ballot.

(b) Within 200 days of the date of this order, the Secretary of Defense shall evaluate the feasibility of implementing an online system to facilitate the services described in subsection (a) of this section.

(c) The Secretary of Defense, in coordination with the Department of State, the Military Postal Service Agency, and the United States Postal Service, shall take all practical steps to establish procedures to enable 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, 52 U.S.C. 20301 *et seq.* Within 200 days of the date of this order, the Secretary of Defense shall submit a report to the Assistant to the President for Domestic Policy with a strategic plan for establishing the aforementioned tracking system.

(d) The head of each agency with overseas employees shall designate an employee to be responsible for coordinating with the Federal Voting Assistance Program, including to promote voter registration and voting services available to the agency's overseas employees. The Director of the Office of Management and Budget may issue guidance to assist agencies in making such designations.

Sec. 9. Ensuring Access to Voter Registration for Eligible Individuals in Federal Custody. (a) The Attorney General shall establish procedures, consistent with applicable law, to provide educational materials related to voter registration and voting and, to the extent practicable, to facilitate voter registration, for all eligible individuals in the custody of the Federal Bureau of Prisons. Such educational materials shall be incorporated into the reentry planning

procedures required under section 4042(a)(7) of title 18, United States Code. The educational materials should also notify individuals leaving Federal custody of the restrictions, if any, on their ability to vote under the laws of the State where the individual resides and, if any such restrictions exist, the point at which the individual's rights will be restored under applicable State law.

(b) The Attorney General shall establish procedures, consistent with applicable law, to ensure the United States Marshals Service includes language in intergovernmental agreements and jail contracts to require the jails to provide educational materials related to voter registration and voting, and to facilitate voting by mail, to the extent practicable and appropriate.

(c) The Attorney General shall establish procedures, consistent with applicable law, for coordinating with the Probation and Pretrial Services Office of the Administrative Office of the United States Courts to provide educational materials related to voter registration and voting to all eligible individuals under the supervision of the Probation and Pretrial Services Office, and to facilitate voter registration and voting by such individuals.

(d) The Attorney General shall take appropriate steps, consistent with applicable law, to support formerly incarcerated individuals in obtaining a means of identification that satisfies State voter identification laws, including as required by 18 U.S.C. 4042(a)(6)(B).

Sec. 10. Establishing a Native American Voting Rights Steering Group. (a) There is hereby established an Interagency Steering Group on Native American Voting Rights (Steering Group) coordinated by the Domestic Policy Council.

(b) The Steering Group shall be chaired by the Assistant to the President for Domestic Policy and shall include the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs or their designees. The Chair may invite the participation of the heads or senior representatives of other agencies, as the Chair determines to be helpful to complete the work of the Steering Group. The Steering Group shall consult with agencies not represented on the Steering Group to facilitate the sharing of information and best practices, as appropriate and consistent with applicable law.

(c) The Steering Group shall engage in meaningful and robust consultation with Tribal Nations and Native leaders to inform the Steering Group regarding concerns and potential areas of focus for the report described in subsection (d) of this section, and to assist the Steering Group in developing that report.

(d) The Steering Group shall study best practices for protecting voting rights of Native Americans and shall produce a report within 1 year of the date of this order outlining recommendations for providing such protection, consistent with applicable law, including recommendations for:

(i) increasing voter outreach, education, registration, and turnout in Native American



communities; increasing voting access for Native American communities (including increasing accessibility for voters with disabilities); and mitigating internet accessibility issues that may hinder voter registration and ballot access in Native American communities;

(ii) increasing language access and assistance for Native American voters, including evaluating existing best practices;

(iii) mitigating barriers to voting for Native Americans by analyzing and providing guidance on how to facilitate the use of Tribal government identification cards as valid voter identification in Federal, State, local, Tribal, and territorial elections;

(iv) facilitating collaboration among local election officials, Native American communities, and Tribal election offices; and

(v) addressing other areas identified during the consultation process.

(e) The Department of the Interior shall provide administrative support for the Steering Group to the extent permitted by law.

**Sec. 11. Definition.** Except as otherwise defined in section 6 of this order, “agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

**Sec. 12. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

March 7, 2021.



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

The Director

March 24, 2022  
CPM 2022-05

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: KIRAN A. AHUJA  
DIRECTOR

Subject: Executive Order on Promoting Access to Voting

The Biden-Harris Administration is committed to supporting and promoting democracy in our nation and protecting the right to vote – core American ideals. One important way to do so is to reduce barriers to voting. That is why the Office of Personnel Management (OPM) is today announcing steps to reduce barriers for Federal employees interested in participating in the democratic process. This guidance advances fundamental goals: to promote democracy, reduce barriers to voting for Federal employees, and to position the Federal government as a model employer. In recent years, more and more private sector employers have provided time off to their employees to vote. With more than 2.1 million civilian employees, the Federal government is the largest employer in the nation. As such, the Federal government has the opportunity to serve as a model employer and set an example for other employers to follow.

OPM is taking these actions today to implement Executive Order (EO) 14019 on Promoting Access to Voting, issued by President Biden on March 7, 2021. Section 6 of E.O. 14019 required OPM to coordinate with the heads of executive agencies to provide recommendations to the President, through the Assistant to the President for Domestic Policy, on (1) strategies to expand the Federal Government's policy of granting employees time off to vote in Federal, State, local (i.e., county and municipal), Tribal, and territorial elections (including strategies on how to ensure Federal employees have opportunities to participate in early voting), and (2) strategies to better support Federal employees who wish to volunteer to serve as non-partisan poll workers or non-partisan observers, particularly during early or extended voting periods. (E.O. 14019 may be found at <https://www.govinfo.gov/content/pkg/DCPD-202100209/pdf/DCPD-202100209.pdf>.)

OPM is now issuing this guidance pursuant to direction from the Administration to implement its recommendations under EO 14019. Accordingly, effective immediately, executive branch agencies (as defined in 5 U.S.C. 105 but excluding the Government Accountability Office) should grant administrative leave for the purpose of voting or serving as a non-partisan poll worker or non-partisan observer, subject to certain conditions and limitations described in the sections below. Delivery of agency missions is the top priority for Federal employees, so agencies should require that employees obtain the approval of their supervisors before using the authorized administrative leave, so that the use of this leave does not significantly disrupt agency operations. At the same time, voting is a civic responsibility and this new policy is intended to

encourage agencies to remove barriers to voting so all Federal employees, regardless of personal circumstance or party affiliation, can lead by example through civic participation.

## **Policy**

Subject to the “additional considerations” listed below, agencies should adhere to the following policy on administrative leave for voting-related activities:

- Agencies should allow employees to use up to 4 hours of administrative leave for voting in connection with each Federal general election day. The administrative leave may be used for voting on the Federal general election day or for *early* voting (i.e., voting prior to Federal general election day, as authorized by their jurisdiction).
- Agencies should allow employees to use up to 4 hours of administrative leave for voting in connection with each election event (including primaries and caucuses) at the Federal, State, local (i.e., county and municipal), Tribal, and territorial level that does not coincide with a Federal general election day. (If an election simultaneously involves more than one level, it is considered to be a single election event.) This administrative leave may be used for voting on the established election day or for early voting, whichever option is used by the employee with respect to an election event.
- For Federal special Congressional elections not held on the date of a Federal general election, agencies should allow employees to use up to 4 hours of administrative leave for voting. This administrative leave may be granted for voting on the established date of a special election or for authorized early voting in connection with that election.
- Agencies should also allow employees to use up to 4 hours of administrative leave *per leave year* to serve as a non-partisan poll worker or to participate in non-partisan observer activities at the Federal, State, local (i.e., county and municipal), Tribal, and territorial level. (A “leave year” begins on the first day of the first pay period commencing on or after January 1 of the given year and ends on the day before the first day of the next leave year.) This leave is in addition to any administrative leave an employee uses to vote.

## **Additional considerations**

- Scheduling of administrative leave for the above-described purposes is subject to a determination by the agency that the employee can be relieved of duty during the specific period of time requested by the employee without significantly impairing mission-essential operations.
- If an employee needs to spend less than 4 hours to vote, only the needed amount of administrative leave should be granted.
- An agency should strive to accommodate employee leave requests by making necessary operational adjustments.

- Agencies should inform all employees of the availability of administrative leave for voting and non-partisan poll worker or non-partisan observer purposes.
- Administrative leave may not be used during a nonworkday or during overtime work hours outside the tour of duty established for leave charging purposes.
- Administrative leave may be used for any travel time to and from the employee's voting poll location.
- An employee may use administrative leave for voting in connection with each covered election event in which the employee participates by voting. However, an employee is limited to 4 hours of administrative leave for voting per election event.
- An employee may use up to 4 hours of administrative leave *per leave year* for the purpose of serving as a non-partisan poll worker or non-partisan observer, including training periods. If those duties require the employee to be absent for a longer period of time, the employee must use annual leave (accrued or advanced), earned compensatory time off, or credit hours earned under a flexible work schedule. An employee may also request leave without pay according to agency internal policies and any applicable collective bargaining agreement.

### **Additional Information**

For additional information, agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Component-level human resources offices must contact their agency headquarters for assistance. Employees must contact their agency human resources offices for further information on this memorandum.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Work-Life Coordinators