



June 8, 2022

The Honorable Shalanda Young  
Director, Office of Management and Budget  
725 17th Street, NW  
Washington, D.C. 20503

Dear Director Young:

On March 7, 2021, President Biden signed Executive Order 14019, titled “Promoting Access to Voting.” This order required every federal agency to submit an action plan to the White House detailing efforts those agencies will take to “promote voter registration and voter participation.” In recent months, agencies have slowly begun responding to outside requests to make their plans for complying with this order public and transparent.

What we have seen thus far is of deep concern. Some of these plans provide that agencies will expend federal taxpayer funds or other resources and partner with preapproved outside organizations in order to satisfy the Biden Administration’s directive to engage in voter registration efforts.

As you know, 31 U.S.C. §§ 1341-1355, the Anti-Deficiency Act (“ADA”), specifically prohibits federal employees and officers from making or authorizing expenditures, obligations, or contracts beyond what Congress has appropriated for a given purpose. Subject to certain exceptions, federal employees and officers are also prohibited from accepting voluntary services provided to government agencies. *See* 31 U.S.C. § 1342.

Payments of funds or provisioning of resources by federal agencies to outside organizations for the purposes of voter registration efforts not specifically authorized by Congress would therefore be a violation of the ADA. Furthermore, inviting White House-preapproved outside organizations to volunteer their time and efforts on federal property in furtherance of the Administration’s stated policy of increasing voter registration and participation could be seen as a violation of the ADA.

The ADA specifically provides an enforcement mechanism and, indeed, a reporting obligation. Heads of federal agencies who learn of subordinate federal officers or employees violating provisions of the ADA “shall report immediately” in writing to both the President and Congress “all relevant facts and a statement of their actions taken,” 31 U.S.C. § 1351. I strongly urge all heads of federal agencies to understand and heed this important legal obligation.

The law provides strict penalties for those who refuse or fail to faithfully execute these important duties. Federal employees and officers who expend resources or accept volunteer services unlawfully are subject to specific personnel actions including suspension from duty without pay or removal from office. *See* 31 U.S.C. § 1349(a). Federal employees who knowingly and willfully violate the ADA are even subject to criminal penalties including a fine of up to \$5,000 and imprisonment for up to two years. *See* 31 U.S.C. § 1350.

Director Young, the Anti-Deficiency Act was enacted to prevent the federal bureaucracy from subverting the will of the people's elected representatives. I strongly urge you to take extreme caution when reviewing, approving, and implementing agency action plans for voter registration and participation. I also urge you to follow up with federal agencies after plan approval to ensure they are not straying from those plans and exposing themselves and your office to illegalities and sanctions.

Finally, the White House's demand of all federal agencies that they report back on policies being implemented in furtherance of the voting registration agenda, if construed as a "rule" of general applicability, could be in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-559. From its very inception, federal rulemaking typically must be presented as a proposal, always subject to a public comment period, and not as a foregone conclusion.

Federal agencies' assertions to the OMB and the White House that they will take certain actions presupposes that those actions will be unaffected and undeterred by public input. We expect that all regulatory and other policy proposals initiated as a result of the president's Executive Order 14019 will follow the requirements of the APA where appropriate.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Vought", with a long horizontal stroke extending to the right.

The Honorable Russ Vought  
Former Director of the Office of Management and Budget  
President, Center for Renewing America