



December 6, 2021

Monty Wilkinson, Executive Director
Executive Office of United States Attorneys
United States Department of Justice
950 Pennsylvania Avenue, NW, Room 2242
Washington, DC 20530-0001

Kristen Clarke, Assistant Attorney General
United States Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW
Office of the Assistant Attorney General, Main
Washington, DC 20530-0001

Dear Director Wilkinson and Assistant Attorney General Clarke,

Campaign Legal Center (“CLC”) writes to follow up on our letter dated June 15, 2021 with implementation suggestions for Executive Order 14019 (“EO 14019”), the Executive Order Promoting Access to Voting. Exec. Order No. 14,019, 86 Fed. Reg. 13623 (Mar. 7, 2021). We would welcome the opportunity to meet with staff at the Executive Office of U.S. Attorneys to detail our recommendations for implementation of that order.

EO 14019 was issued on March 7, 2021, and its aim was to ensure that federal agencies leverage their power, direct their programming, and adopt positions to promote and support civic engagement. EO 14019 (1). Section 3 of the Executive Order required all federal agencies to engage in a self-evaluation to better understand how they can expand voter registration and voting opportunities, *id.* (3)(a), and, within 200 days, submit a strategic plan outlining how they will actually do so, *id.* (3)(b).

On September 28, 2021, 212 after the Executive Order, the White House published a fact sheet sketching out the steps that certain agencies have committed to under the Order. The White House, Fact Sheet: Biden Administration Promotes Voter Participation with New Agency Steps (Oct. 18, 2021). While the fact sheet includes proposed implementation steps from the Department of Justice generally, it does not include proposed steps at the EOUSA.

We write again to encourage you to consider a uniform policy across the U.S. Attorneys' offices of ensuring that individuals who are prosecuted under federal law receive at the time of plea negotiation both written and oral explanations of the impact of any such pleas on their right to vote. This explanation should include not just a specific instruction on whether their guilty plea will cause the loss of the right to vote under their state's laws, but also clarification of how and when they will be able to regain that right. Additionally, each U.S. Attorney's office should designate a contact to assist individuals who received convictions after prosecutions by their office who are attempting to understand how they can regain their voting rights. We recognize that this suggestion departs somewhat from the traditional role of U.S. Attorneys in the adversarial process. But these two policies would go a long way to combatting the persistent and almost always erroneous widespread belief that a felony conviction means a person can never vote again.

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and public education. Our Restore Your Vote Campaign helps restore voting rights to people with past convictions by providing direct rights restoration services, empowering community leaders to understand rights restoration laws, and breaking down the false notion that a felony conviction always means you cannot vote. Since 2017, more than 320,000 people have used our online rights restoration webtools at RestoreYourVote.org and RecupereSuVoto.org. We have directly provided voting rights restoration information to over 15,000 people one-on-one. Through this work, we have gained expertise in the importance of authoritative, individualized explanations and assistance to combat misinformation around voting after a criminal conviction.

Likely more than 24 million Americans have been convicted of felonies,¹ resulting in almost every state in at least the temporary suspension of voting rights.² Across the country, the disproportionate impact of these felony disenfranchisement laws on Black, Indigenous, and People of Color is overwhelming.³ But the vast majority of those individuals have already met their state's requirements for restoration of voting rights and could be voting if they were aware of the rules. In fact, only around five million of those more than twenty-four million are actually disenfranchised under law.⁴ Confusion around voting rights after a felony conviction is rampant, compounded by the patchwork of varying laws across the states, misinformation, and lack of access to authoritative legal information and services. As a result, especially in states with complex disenfranchisement and re-enfranchisement laws, many people with past convictions

¹ Nicholas Eberstadt, "America's Invisible Felon Population: A Blind Spot in US National Statistics," American Enterprise Institute at 4 (May 22, 2019) available at <https://www.jec.senate.gov/public/cache/files/b23fea23-8e98-4bcd-aeed-edcc061a4bc0/testimony-eberstadt-final.pdf>

² Only Maine, Vermont, the District of Columbia, and Puerto Rico do not at least temporarily suspend voting rights when a person is convicted of a felony and sentenced to incarceration. However, Federal convictions *never* result in a suspension of voting rights in Mississippi.

³ Chris Uggen, et al., "Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction," The Sentencing Project at 11 (Oct. 30, 2020) available at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>

⁴ *Id.* at 16.

wrongly believe they cannot vote even when they are eligible. Stories of rare instances where people have been prosecuted for unknowingly voting while ineligible exacerbate this misconception and intimidate eligible voters. This is *de facto* disenfranchisement, and it suppresses the votes of millions of Americans. It is feasible to break this cycle and significantly increase participation in elections.

Executive Order 14019 directs all agencies to consider how to facilitate and increase voter participation. The Executive Office of United States Attorneys is in a unique position to do so. In many states, federal convictions have a different impact on the right to vote than state court convictions. For example, in Mississippi, federal felony convictions never result in a loss of the right to vote, whereas certain state-level convictions do.⁵ But many Mississippians with federal felony convictions sit out elections nonetheless because they wrongly believe they are ineligible. In Alabama, federal convictions only strip a person of the right to vote if the federal crime is the categorical equivalent of one of the “felonies of moral turpitude.”⁶ The people who are convicted of those felonies, however, are generally not equipped to make that legal determination about whether their conviction is or is not disqualifying; U.S. Attorneys are.

Furthermore, even in states where both federal and in-state convictions result in at least a temporary suspension of the right to vote, the process to regain that right may vary. In Tennessee, a person who has lost the right to vote for a federal felony may regain that right after completing certain terms of his or her sentence, but not unless that individual is able to secure a “Certificate of Restoration” completed by a federal authority.⁷ U.S. Attorneys or their designees should be able to complete those Certificates for individuals with federal convictions, or at least assess their records for eligibility and direct them to an official who can complete the certificate. *Id.* Even in states where the rights restoration process for federal convictions mirrors the process for in-state convictions, relevant state-level officials do not always have access to the records that would allow a person to verify whether they can register to vote or not. For example, in Arkansas, a person who has completed all terms of his or her sentence, including payment of legal financial obligations, is eligible to register to vote but in order to do so must present documentary proof of the completion of those terms.⁸ The Arkansas Department of Corrections and county clerks are required under Arkansas law to provide such proof; federal authorities are not.⁹ The U.S. Attorney’s office should provide these documents or at least direct individuals convicted of federal felonies to the offices that can provide them.

If they were voluntarily to assume these duties, the U.S. Attorneys would play a significant role in the effort to combat low turnout rates of individuals with federal felony convictions. The U.S. Attorneys could as a policy provide both written and oral explanations of how plea agreement impacts the loss and restoration of voting rights, with specificity to the convictions and sentences on the table. Additionally, the U.S. Attorney’s offices could designate

⁵ Miss. Const. Art, 12, § 241; WL 2517257 Op. MS Att’y Gen. (2009).

⁶ Ala. Code §17-3-30.1(c)(47).

⁷ Tenn. Code Ann. § 40-29-203.

⁸ Ark. Const. Amend. LI, § 11 (d)(2)(A).

⁹ *Id.* at (d)(2)(B)-(C).

and publicize a contact to provide individualized assistance to people who are seeking to regain their voting rights after a federal conviction. We hope that you will consider this innovative approach.

Through its Restore Your Vote program, CLC has gained valuable insight on how each state's laws treat federal convictions and how individual assistance is necessary to combat *de facto* disenfranchisement. We would be very glad for the opportunity to meet with your office and provide input as you develop policies and to assist with the creation of reference guides for the impact of federal convictions on the right to vote under each state's laws.

Please contact us if you we can provide any assistance in this important endeavor.

Sincerely,

Blair Bowie

Blair Bowie
Legal Counsel & Restore Your Vote
Manager
Campaign Legal Center
Washington, DC 20005
202-736-2201
bbowie@campaignlegal.org



December 6, 2021

General Services Administration
Robin Carnahan, Administrator
1800 F. St. NW
Washington, DC 20006

U.S. Election Assistance Commission
Chair Donald L. Palmer
Vice Chair Thomas Hicks
Commissioner Christy McCormick
Commissioner Benjamin W. Hovland
633 3rd Street NW, Suite 200
Washington, DC 20001

Kristen Clarke, Assistant Attorney General
United States Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, NW
Office of the Assistant Attorney General, Main
Washington, DC 20530-0001

Dear Administrator Carnahan, Chair Palmer, Vice Chair Hicks, Commissioner McCormick, Commissioner Hovland, and Assistant Attorney General Clarke,

Campaign Legal Center (“CLC”) writes to follow up on our letter dated June 15, 2021 with implementation suggestions for Executive Order 14019 (“EO 14019”), the Executive Order Promoting Access to Voting. Exec. Order No. 14,019, 86 Fed. Reg. 13623 (Mar. 7, 2021). We would like to offer to meet with staff at General Services Administration and the Election Assistance Commission to detail our recommendations for ensuring that justice-involved voters are served by a modernized Vote.gov.

EO 14019 was issued on March 7, 2021, and its aim was to ensure that federal agencies leverage their power, direct their programming, and adopt positions to promote and support civic engagement. EO 14019 (1). Section 3 of the Executive Order required all federal agencies to engage in a self-evaluation to better understand how they can expand voter registration and voting opportunities, *id.* (3)(a), and, within 200 days, submit a strategic plan outlining how they will actually do so, *id.* (3)(b). In particular the Order directs the GSA, in coordination with the EAC, to modernize Vote.gov. According to the 21st Century Integrated Digital Experience Act,

“modernizing” a public-facing government website means ensuring that it is accessible, consistent, authoritative, searchable, secure, user-centered, customized, and mobile-friendly. 44 U.S.C. 3501 § 3 (2018).

On September 28, 2021, 212 after the Executive Order, the White House published a fact sheet sketching out some of the steps that certain agencies have committed to under the Order. The fact sheet states that the GSA will “ensure vote.gov is a user-friendly portal for Americans to find the information they need most to register and vote. Available in over ten languages and in a format accessible for voters with disabilities, vote.gov will make it easier for eligible users to register to vote or confirm their registration status. Agencies across the federal government will link to vote.gov to encourage Americans to participate in the electoral process.” The White House, Fact Sheet: Biden Administration Promotes Voter Participation with New Agency Steps (Oct. 18, 2021).

We write again to urge the GSA and EAC to ensure that the modernized vote.gov includes simple and authoritative tools to allow people with felony convictions to determine their eligibility. Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and public education. Our Restore Your Vote Campaign helps restore voting rights to people with past convictions by providing direct rights restoration services, empowering community leaders to understand rights restoration laws, and breaking down the false notion that a felony conviction always means you cannot vote. Since 2017, more than 320,000 people have used our online rights restoration webtools at RestoreYourVote.org and RecupereSuVoto.org. We have directly provided voting rights restoration information to over 12,000 people one-on-one. Through this work, we have gained expertise in the use of technology to promote civic engagement, particularly for this hard to reach community.

Likely more than 24 million Americans have been convicted of felonies,¹ resulting in almost every state in at least the temporary suspension of voting rights.² Across the country, the disproportionate impact of these felony disenfranchisement laws on Black, Indigenous, and People of Color is overwhelming.³ But those vast majority of those individuals have already met their state’s requirements for restoration of voting rights and could be voting if they were aware of the rules. In fact, only around five million of those more than twenty-four million are actually disenfranchised under law.⁴ Confusion around voting rights after a felony conviction is rampant, compounded by the patchwork of varying laws across the states, misinformation, and lack of access to authoritative legal information and services. As a result, especially in states with complex disenfranchisement and re-enfranchisement laws, many people with past convictions wrongly believe they cannot vote even when they are eligible. Stories of rare instances where people have

¹ Nicholas Eberstadt, “America’s Invisible Felon Population: A Blind Spot in US National Statistics,” American Enterprise Institute at 4 (May 22, 2019) available at <https://www.jec.senate.gov/public/cache/files/b23fea23-8e98-4bcd-aeed-edcc061a4bc0/testimony-eberstadt-final.pdf>

² Only Maine, Vermont, the District of Columbia, and Puerto Rico do not at least temporarily suspend voting rights when a person is convicted of a felony and sentenced to incarceration.

³ Chris Uggen, et al., “Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction,” The Sentencing Project at 11 (Oct. 30, 2020) available at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>

⁴ *Id.* at 16.

been prosecuted for unknowingly voting while ineligible exacerbate this misconception and intimidate eligible voters.

This is *de facto* disenfranchisement, and it suppresses the votes of millions of Americans. It is feasible to break this cycle and significantly increase participation in elections. If the modernized Vote.Gov includes an easy-to-use, accurate, and authoritative source on disenfranchisement and rights restoration, following the model of RestoreYourVote.org, it will be well on the way to meeting the standards of the 21st Century Integrated Digital Experience Act, fulfilling the mandate of the Executive Order, and extending the franchise to potentially millions of eligible voters.

User-centered, searchable, and customizable: Combatting misinformation and *de facto* disenfranchisement requires individualized information that is specific to the person seeking to understand their voting rights. This can be accomplished at scale by building a tool that allows individuals to find answers to their questions about the details of their convictions and receive instructions based on the voting laws of their state of residence. At RestoreYourVote.org, we begin with the question of where the individual resides, then have built out a logic tree of questions based on the law of that state. When the individual reaches the end of the questionnaire, if they are eligible to vote, the tool directs them to a website to register to vote online. If they are not yet eligible, the site provides an explanation of what they must do to become eligible in their state. For people who have more complicated cases, or are unsure of the answers to certain questions, we provide a hotline and email address to request individual, one-on-one assistance. Vote.gov should also provide all of these features.

Authoritative: The EAC is already required to collect information from every state on their voter registration eligibility requirements.⁵ A revamped Vote.gov should take that information, verify it, and turn it into a user-friendly interface. It can provide an authoritative break down of each states' laws that will give people with felony convictions the confidence they need to overcome misconceptions around their eligibility so that they can register to vote.

Currently, the EAC aggregates state-by-state eligibility information on the National Voter Registration Form.⁶ It is the duty of the individual Secretaries of State to provide the language and to update the EAC when the laws change.⁷ However, over the last several years, CLC has alerted the EAC to inaccuracies in the felony disenfranchisement language provided by several states.⁸ Felony disenfranchisement laws have changed frequently in recent years; more than half of states have reformed their disenfranchisement and rights restoration laws in the last 25 years.⁹ To ensure the authority of the National Voter Registration form and revamped Vote.gov, the EAC must take

⁵ Under the NVRA, the Federal Form must accurately "specif[y] each eligibility requirement" for applicants. 52 U.S.C. § 20508(b)(2)(A). This requirement governs the Federal Form as well as any state-issued mail-in voter registration form used to register voters for federal elections. 52 U.S.C. § 20505(a)(2).

⁶ *Id.*

⁷ To ensure the Federal Form's accuracy, a state's chief election official must notify the EAC of any changes in the state's voter eligibility requirements within 30 days. 11 C.F.R. § 9428.6.

⁸ See e.g., "CLC Letter to EAC Regarding NVRA Non-Compliance" (Aug. 24, 2018) <https://campaignlegal.org/document/clc-letter-eac-regarding-nvra-non-compliance-nevada-tennessee-and-arizona>; see also, <https://campaignlegal.org/cases-actions/advocating-state-voter-registration-forms-comply-nvra> (cataloguing letters to states regarding inaccurate statements of eligibility requirements on the federal registration form).

⁹ Uggen, et al., at 4.

the initiative to verify the information being sent by the states and stay apprised of changes in state laws.

Accessible: Plainly, Vote.gov should add accessible features for users with disabilities. But accessibility in this context also means using plain, understandable language to describe laws. The eligibility requirements as sent by the states not only need to be verified, but also need to be translated from verbose Legalese to simple English (and the many other common languages.)

Through its Restore Your Vote program, CLC has gained valuable insight on using technology to fight *de facto* disenfranchisement from building and running RestoreYourVote.org. We would be very glad for the opportunity to meet with your office and provide input as you work to modernize Vote.gov.

Please contact us if you we can provide any assistance in this important endeavor.

Sincerely,

Blair Bowie

Blair Bowie
Legal Counsel & Restore Your Vote
Manager
Campaign Legal Center
Washington, DC 20005
202-736-2201
bbowie@campaignlegal.org



December 6, 2021

Crosby Kemper, Director
Katherine H. Maas, Chief of Staff
Institute of Museum and Library Services
955 L'Enfant Plaza North, SW
Suite 4000
Washington, D.C. 20024

Re: Implementation of Executive Order 14019

Dear Director Kemper and Ms. Maas,

Campaign Legal Center (“CLC”) writes to commend the Institute of Museum and Library Service’s commitment to taking action under Executive Order 14019 to promote and protect the right to vote. We reach out to recommend the inclusion of information and materials directed to assist tens of millions of justice-involved voters. Likely more than 24 million Americans have been convicted of felonies,¹ resulting in almost every state in at least the temporary suspension of voting rights.² Tens of thousands more have been arrested, jailed, convicted of non-felonies, and/ or charged with felonies, all of which amount to contact with the criminal legal system that can lead a person to wrongly believe themselves disenfranchised. In addition to the recommendations below, we would be happy to provide additional materials or meet with members of your team who are working on this project.

EO 14019 was issued on March 7, 2021, and its aim was to ensure that federal agencies leverage their power, direct their programming, and adopt positions to promote and support civic engagement. EO 14019 (1). Section 3 of the Executive Order required all federal agencies to engage in a self-evaluation to better understand how they can expand voter registration and voting opportunities, *id.* (3)(a), and, within 200 days, publish a strategic plan outlining how they will

¹ Nicholas Eberstadt, “America’s Invisible Felon Population: A Blind Spot in US National Statistics,” American Enterprise Institute at 4 (May 22, 2019) available at https://www.jec.senate.gov/public/_cache/files/b23fea23-8e98-4bcd-aeed-edcc061a4bc0/testimony-eberstadt-final.pdf

² Only Maine, Vermont, the District of Columbia, and Puerto Rico do not at least temporarily suspend voting rights when a person is convicted of a felony and sentenced to incarceration. However, Federal convictions *never* result in a suspension of voting rights in Mississippi.

actually do so, *id.* (3)(b). On September 28, 2021, 212 after the Executive Order, the White House published a fact sheet sketching out some of the steps that certain agencies have committed to under the Order. Among those is a commitment from the Institute to “create and distribute a toolkit of resources and strategies that libraries, museums, and heritage and cultural institutions can use to promote civic engagement and participation in the voting process.” We write to emphasize the importance of this toolkit including materials for justice-involved voters and to offer our assistance in developing those.

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and public education. Our Restore Your Vote Campaign helps restore voting rights to people with past convictions by providing direct rights restoration services, empowering community leaders to understand rights restoration laws, and breaking down the false notion that a felony conviction always means you cannot vote. Since 2017, more than 320,000 people have used our online rights restoration webtools at RestoreYourVote.org and RecupereSuVoto.org. We have provided information on the restoration of voting rights to over 15,000 people one-on-one. Through this work, we have gained expertise in the importance of authoritative, accessible materials to combat misinformation around voting after a criminal conviction.

Across the country, the disproportionate impact of felony disenfranchisement laws on Black, Indigenous, and People of Color is overwhelming.³ But those vast majority of those individuals have already met their state’s requirements for restoration of voting rights and could be voting if they were aware of the rules. In fact, only around five million of the more than twenty-four million Americans who have been convicted of felonies are actually disenfranchised under law.⁴ Confusion around voting rights after a felony conviction is rampant, compounded by the patchwork of varying laws across the states, misinformation, and a lack of access to authoritative legal information and services. As a result, especially in states with complex disenfranchisement and re-enfranchisement laws, many people with past convictions, or indeed any contact at all with the criminal legal system, wrongly believe they cannot vote even when they are eligible. Stories of people prosecuted for unknowingly voting when they were ineligible exacerbate this misconception and intimidate eligible voters. This is *de facto* disenfranchisement, and it suppresses the votes of millions of Americans. It is feasible to break this cycle and significantly increase participation in elections.

A little bit of support and information can make all the difference for these would-be voters. In our experience, librarians in particular can be a very important resource to people to seeking to understand their voting rights. We recommend that your agency’s toolkits include state-specific information about when a person loses the right to vote and when and how a person may regain it, including any applicable application materials for rights restoration. We can help develop and provide those materials. Additionally, we recommend including training materials to help staff assist someone in determining their eligibility to vote. Our website RestoreYourVote.org includes step-by-step questions to assist in making that determination in each state. Moreover, in certain

³ Chris Uggen, et al., “Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction,” The Sentencing Project at 11 (Oct. 30, 2020) available at <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/>

⁴ *Id.* at 16.

states with complicated laws, like Alabama,⁵ Tennessee,⁶ and Arizona,⁷ we have developed thorough manuals on how to navigate the rights restoration process. At minimum, we recommend including an index of non-partisan, non-profit local organizations that can help provide assistance as the person navigates the process.

Our democracy works best when all eligible voters can participate but all too often eligible voters sit out elections because of a lack of authoritative information. President Biden's Executive Order provides the Institute an important opportunity "to expand access to voter registration and accurate election information" and "to ensure that registering to vote and the act of voting be made simple and easy for all those eligible to do so." EO 14019 at § 1. As an organization that is deeply involved in efforts to address felony disenfranchisement across the country, we have worked hard to understand the challenges that come with facilitating ballot access for justice-involved voters, and we would welcome the opportunity to work with you to implement the terms of EO 14019 or in any future work your agency does on this topic.

If you have any questions or would like to accept our offer to meet, please do not hesitate to reach out to us at bbowie@campaignlegalcenter.org or 202-736-2201. Thank you for your time and consideration of this matter.

Sincerely,

Blair Bowie

Blair Bowie
Legal Counsel & Restore Your Vote Manager
Campaign Legal Center
Washington, DC 20005
202-736-2201
bbowie@campaignlegal.org

⁵ Campaign Legal Center, "Alabama Rights Restoration Manual" (Mar. 31, 2021)

<https://campaignlegal.org/document/alabama-rights-restoration-manual>

⁶ Campaign Legal Center, "Tennessee Voting Rights Restoration Manual" (Nov. 15, 2019)

<https://campaignlegal.org/document/tennessee-voting-rights-restoration-manual>

⁷ Campaign Legal Center, "RestoreYourVote Arizona: Arizona Activist Manual" (Aug. 26, 2021)

<https://campaignlegal.org/document/restoreyourvote-arizona-arizona-activist-manual>



December 6, 2021

Hon. Merrick Garland, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Director Ronald L. Davis, U.S. Marshal Service
U.S. Marshals Headquarters
1215 S Clark Street
Arlington, VA 22202

Re: Implementation of Executive Order 14019

Dear Attorney General Garland and Director Davis,

Campaign Legal Center (“CLC”) writes to follow up on our letter dated June 15, 2021, suggesting ways to implement Executive Order 14019 (“EO 14019”), the Executive Order Promoting Access to Voting. Exec. Order No. 14,019, 86 Fed. Reg. 13623 (Mar. 7, 2021). We would like to offer to meet with staff at the U.S. Marshall Service who are working on implementing the Executive Order to detail our recommendations. Earlier this Fall, we organized a listening session for the Bureau of Prisons to hear from stakeholders and policy experts. We found that meeting enormously useful and would be glad to do the same for the U.S. Marshall Service. CLC urges the U.S. Marshal Service to include in its contracts with all jails a meaningful requirement that the facilities provide access to the ballot for all eligible citizens in their custody and to work with advocates to develop that contractual language.

EO 14019, issued on March 7, 2021, aims to ensure that federal agencies leverage their power, direct their programming, and adopt positions to promote and support civic engagement. EO 14019 (1). Section 3 of the Executive Order required all federal agencies—including the Marshal Service—to engage in a self-evaluation to better understand how they can expand voter registration and voting opportunities, *id.* (3)(a), and, within 200 days, publish a strategic plan outlining how they will actually do so, *id.* (3)(b). In particular, EO 14019 specifies that the Attorney General create policies and procedures to ensure the Marshal 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.” *Id.* (9)(b).

On September 28, 2021, 212 days after the Executive Order, the White House published a fact sheet sketching out some of the steps that certain agencies have committed to under the Order. Among the three steps listed for the Department of Justice is, “the Department will... provide information about voting to individuals in federal custody, facilitate voting by those who remain eligible to do so while in federal custody, and educate individuals before reentry about voting rules and voting rights in their states.” However, no further details, plans, or timelines have yet been made public.

The remainder of this letter details suggestions for how the Department can accomplish these goals. CLC’s recommendations come from our deep expertise in identifying and removing barriers to the ballot for justice-involved voters, including our work with jurisdictions across the country to make democracy accessible to eligible incarcerated voters. CLC is a non-partisan, non-profit organization dedicated to supporting and advancing American democracy through the practice of law. Our Restore Your Vote program helps restore voting rights to people with past convictions by providing direct rights restoration services and empowering community leaders to understand and monitor implementation of rights restoration laws. We also have significant experience creating information materials about voting for people in custody, advising officials on how to facilitate ballot access for incarcerated voters, and helping individuals navigate complicated rights restoration laws after release.

EO 14019, along with the Justice Department initiative announced by the Attorney General, creates an important opportunity for the Marshal Service to provide national leadership on a long-overlooked democracy issue: jail-based disenfranchisement. To that end, this letter first will offer general background on the problem of jail-based disenfranchisement to help your agency understand the barriers to the ballot box that incarcerated and justice-involved voters face. Then, the letter will outline an analytical framework to assist you in identifying best practices for facilitating voting and elections in correctional settings. Finally, the letter will offer specific suggestions for the Marshal Service to consider as it moves forward implementing the mandates of EO 14019.

In particular, we believe the Marshal Service should consider:

- Requiring that local jails address the 6-factors discussed below for facilitating elections and voting in correctional settings in their jail policies in jail contracts;
- Promulgating guidance and best practices to assist jails in facilitating voting and elections for incarcerated voters; and
- Collaborating with partners and advocates to drive innovation and further efforts to support the enfranchisement of incarcerated eligible voters.

The U.S. Marshal Service is uniquely positioned to prompt large-scale reform in this space. Most jails are decentralized rather than run by a state or federal agency, which means advocates often must go jail-to-jail, working for incremental progress one local institution at a time. Because the U.S. Marshal Service contracts with jails all across the country, though, it can leverage its position to prompt national reform and innovation in this space.

We appreciate your time and attention to this important issue, and we hope you find this letter helpful. Please do not hesitate to reach out to us if you have any questions or if could be of any further help as you move forward implementing EO 14019.

I. Jail-Based Disenfranchisement

As an initial matter, it is important to be clear: the majority of the nearly 700,000 people incarcerated in jails in the United States are eligible to vote. This is because jail populations are largely comprised of people being held pretrial (which never impacts voter eligibility) or for low-level misdemeanor convictions (which only impacts voter eligibility in a small handful of states). In 1974, the Supreme Court affirmed this right in *O'Brien v. Skinner*, when it found that the state could not deprive otherwise eligible voters of their right to vote simply because they are incarcerated. 414 U.S. 524, 531 (1974).

Although many incarcerated voters are eligible to vote, few can exercise that right because the realities of incarceration make doing so difficult or, in some circumstances, impossible. This is known as jail-based disenfranchisement;¹ the reasons for it are many and important to understand in order to address the problem.

First, many jailed voters do not know that they retain their right to vote. While many justice-involved voters know that contact with the criminal justice system can impact voter eligibility, they do not know exactly how felony disenfranchisement laws do (or do not) apply to them.² Ascertaining eligibility can also be more complicated for incarcerated people with previous convictions, who may be unable to obtain information about their criminal record or the additional paperwork required to understand the law and register to vote. Voters can also feel at high risk in this circumstance. Because voting while ineligible is illegal, incarcerated voters who must navigate this maze behind jail walls may risk criminal consequences if they make mistakes.

Second, election and corrections officials often do not realize that incarcerated individuals retain their voting rights.³ Jailed voters must rely on these individuals to provide them with the information, resources, and assistance they need in order to cast their ballots. If these institutional actors are misinformed, they can make mistakes or, worse, refuse to assist an incarcerated voter, leading to that voter's disenfranchisement.⁴

Finally, even if incarcerated voters and institutional actors know incarcerated voters can vote, casting a ballot while incarcerated is enormously difficult. Jail walls are built to restrict access to information and visitation, to deprive individuals of their autonomy, and to separate people from the outside community. Election infrastructure is not designed to overcome these barriers. For a person in jail, accessing even the most basic things one might need in order to request a ballot—a pen, an envelope, the request form, information about where and how to submit that form—can be time-consuming and costly. Delay prone jail-mail systems make it challenging to timely submit

¹ Dana Paikowsky, *Jails As Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail*, 54 HARV. C.R.-C.L. L. REV. 829 (2019).

² Emily Rong Zhang, *New Tricks for an Old Dog: Deterring the Vote Through Confusion in Felon Disenfranchisement*, 84 Mo. L. Rev. 1037, 1040 (2019).

³ Erika Wood & Rachel Bloom, *De Facto Disenfranchisement*, ACLU and Brennan Center for Justice (2008); Julia Rentsch, *Advocates Push to Enfranchise Jailed Colorado Voters*, Reporter-Herald (Aug. 25, 2018), http://www.reporterherald.com/news/election/ci_32095057/advocates-push-enfranchise-jailed-colorado-voters,

⁴ *Lewis v. San Mateo County*, No. C 96-4168 FMS, 1996 WL 708594, at *1 (N.D. Cal. Dec. 5, 1996) (describing the case of a man who was disenfranchised because a jail official failed to provide him with election materials).

voter registrations, ballot request forms, and absentee ballots, and few states provide any means of voting to people who are incarcerated after the state's absentee deadline passes. Officials can deny requests and spread misinformation, and strict ID laws as well as restrictions on third-party voter assistance can complicate the task even further.

In most jurisdictions, incarcerated voters have no support and no safety net. Unsurprisingly, the participation rate in most jails is close to 0%.⁵ Because people of color and low-income people are disproportionately jailed, they are also disproportionately impacted by jail-based disenfranchisement. In many states, too, voters can be prevented from voting only because they cannot pay cash bail. The assessed bail thus functions as poll tax.

Jail-based disenfranchisement is not only widespread, but predictable. States and localities do not stop arresting, arraigning, and incarcerating people in the lead up to elections. Thus, every Election Day, eligible voters *will be incarcerated* in pretrial detention and for misdemeanor convictions. Even though states and localities can and should be prepared to serve this population of voters, they almost uniformly fail to make election infrastructure accessible to the eligible voters they incarcerate. It is time for the government to step up and begin addressing this solvable problem.

II. Addressing the Problem: Best Practices for Jail Policy

After working with jurisdictions across the country to address the problem of jail-based disenfranchisement, we have seen firsthand that there is no one-size-fits-all solution. Every state (and even locality) may have different election laws, policies, and procedures governing voter registration and voting. Every jail, too, will have its own individualized needs and challenges. While erecting a polling place inside a jail might make sense for a large urban jail, for example, this reform may be unnecessary and wasteful for a smaller, more rural jail environment.

No matter what approach a jurisdiction takes to solving these problems, however, these complicated challenges require nothing less than comprehensive solutions. To that end, at a minimum, every jurisdiction should have a jail voting policy and infrastructure that provides for six things:

- i. Voter education: This requires jails consider how to make information about voting and elections accessible to incarcerated people. Jurisdictions may use more than one kind of outreach, including engaging in individualized outreach (which is a best practice), providing materials at intake and/or upon release, hanging posters, making announcements, canvassing the jail, sending out notices, and hosting civic engagement classes or events.
- ii. Voter registration: This requires jails consider how to provide jailed voters with meaningful opportunities to register to vote. Similar to above, these efforts could require different kinds of outreach and support. While some of these efforts can be

⁵ *Unlock the Vote Arizona: Procedures for Jail-based Voting by County, July 2020*, The Arizona Coalition to End Jail-based Disenfranchisement (July 2020) <https://www.votefromjail.org/wp-content/uploads/2020/07/July-JBV-Report.pdf>; *Ballots for All: Ensuring Eligible Wisconsin Voters in Jail Have Equal Access to Voting*, ACLU of Wisconsin and All Voting is Local (July 2020) https://allvotingislocal.org/wp-content/uploads/2020/07/ACLU-AVL-2020_Jail-Voting-Access-Report-FINAL-07012020.pdf.

more passive (*i.e.*, distributing registration forms), jails can provide more affirmative assistance, including identifying those who are eligible to register, informing them about their eligibility, and working with them to submit registration paperwork.

- iii. Absentee voting: This requires jails consider how to provide jailed voters with meaningful opportunities to vote absentee. In addition to requiring much of the same outreach as described above, jails should also consider means of securing the privacy of the ballot, ensuring that the jail's mail policies (and jail bureaucracy) do not unduly delay voting, and making available the necessary instrumentalities of voting (pens, pencils, stamps, IDs, etc.).
- iv. Election Day voting and/or voting for late-jailed voters: While the majority of individuals who vote from jail do so by absentee ballot, some voters will be incarcerated after the absentee ballot request deadline has passed. Jails should work with local election officials to ensure these late-jailed voters have access to an alternative means of casting their ballots. This could mean making the jail a vote center or polling place, or providing access using emergency voting or voting via agent.
- v. Collaboration: The most successful jail voting programs rely on collaboration. Jails should be in communication with local election officials and community groups to coordinate their civic engagement activities. Election officials and community groups can also aid jails in doing this work, for example by coming into the jail to run programming, assist in the facilitation of voting, provide the jail with training, and create voter education materials for dissemination by the jail.
- vi. Accountability: In order to ensure that a jail's policies and practices actually do provide jailed voters with access to the franchise, jails must commit to transparency and accountability on these issues. Specifically, jails should publish their jail voting policies and practices both internally and externally (*i.e.*, in jail handbooks and on jail websites) and track and publish data on civic participation in the jail. Jails also should designate at least one a staff person who will be accountable for coordinating this programing and who can act as a liaison between the jail, voters, election officials, and the community.

Facilitating elections in jails can and should be a routine part of jail management. Because this has not been the norm in America thus far, our challenge is to find effective ways to merge elections and corrections infrastructure. This project will take time, creativity, and innovation. By addressing each of these six criteria in their jail voting policies, though, jails can begin this work with a strong foundation that will safeguard the rights of incarcerated voters.

Encouraging and facilitating civic participation in this setting can have long term benefits. Formerly incarcerated individuals who vote are less likely to recidivate.⁶ On the other hand, however, even short terms of incarceration have been shown to lead to decreased future civic participation.⁷ Jails already incarcerate the people who are most often left out of our democracy,

⁶ Guy Padraic Hamilton-Smith & Matt Vogel, *The Violence of Voicelessness: The Impact of Felony Disenfranchisement on Recidivism*, 22 BERKELEY LA RAZA L.J. 407 (2012); Christopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 205 (2004).

⁷ Ariel White, *Misdemeanor Disenfranchisement? The Demobilizing Effects of Brief*

specifically people of color, low-income individuals, people with disabilities—all populations that have long been targeted by vote suppression. In America, the two of the factors that correlate most with regular civic participation are education and income.⁸ In a word, individuals who are most likely to be incarcerated in jails across the country are the same ones who are most likely to feel (and be) excluded from the democratic process.

By supporting civic engagement and civic learning inside their jails, corrections officials can begin to disrupt this damaging cycle of disempowerment. They can think about how to encourage and support community engagement not only for those who are currently incarcerated, but also for those who are being released. They can develop programming to assist individuals who need IDs (not only to vote, but to access benefits and community support), to inform people about rights restoration upon their release or after convictions, and to build knowledge about the voting process. In this way, supporting incarcerated individuals in exercising their constitutional rights can contribute to our much longer-term project of building a more robust and inclusive democracy.

III. Recommendations

While the barriers to the ballot box that incarcerated voter face are great, they can be overcome, especially if correctional officials take an active role in providing incarcerated voters with the support and resources they need to register to vote and vote.

After the passage of EO 14019, the U.S. Marshals has a clear mandate to prompt these powerful officials to do just that. Pursuant to that mandate, we recommend the U.S. Marshals take the following three actions:

1. Require in new contracts that jails create jail voting policies and procedures that include each of the six factors outlined above; **at minimum**, the U.S. Marshals must include a term in its contracts that requires jails to provide meaningful access to the right to vote for eligible individuals in their custody;
2. Create and disseminate guidance and best practices to assist jails in facilitating voting and elections for incarcerated voters; and
3. Collaborate with partners and advocates to drive innovation and further efforts to support the enfranchisement of incarcerated eligible voters.

As a federal law enforcement agency, the U.S. Marshals will serve as an example to state and local agencies in how it addresses this often-overlooked civil rights issue. Because correctional officials exercise direct control over the activities, movements, and information available to incarcerated voters, they have an outsized ability to make a real difference in this space. Your involvement and leadership, then, will be instrumental to this nascent effort to removing the barriers to the ballot box that prevent incarcerated people from exercising their right to vote.

Jail Spells on Potential Voters, 113 AM. POL. SCI. REV. (2019), <https://www.cambridge.org/core/journals/american-political-science-review/article/misdemeanor-disenfranchisement-the-demobilizing-effects-of-brief-jail-spells-on-potential-voters/2FEDEE197EA55768312586DA2FEFB8F9>.

⁸ *Voter Turnout*, MIT Election + Data Science Lab, Massachusetts Institute of Technology, <https://electionlab.mit.edu/research/voter-turnout>.

IV. Conclusion

Our democracy works best when all eligible voters can participate. By impeding access to the ballot box for incarcerated eligible voters, jail-based disenfranchisement represents a profound democratic failure. EO 14019, however, has created an important opportunity for the U.S. Marshals—and other federal law enforcement agencies—to serve as leaders in remedying this longstanding problem.

As an organization that is deeply involved in efforts to address jail-based disenfranchisement across the country, we have worked hard to understand the challenges that come with facilitating democracy in correctional settings, and we would welcome the opportunity to work with you to implement the terms of EO 14019 or in any future work your agency does on this topic. If you have any questions, please do not hesitate to reach out to us at bbowie@campaignlegalcenter.org or 202-736-2201. Thank you for your time and consideration of this matter.

Sincerely,

Blair Bowie

Blair Bowie, Legal Counsel &
Restore Your Vote Manager
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005

Cc: Kristin Clarke, Assistant Attorney General
U.S. Department of Justice, Civil Rights Division
Justin Levitt, Domestic Policy Council
White House
Chiraag Baines, Domestic Policy Council
White House



December 6, 2021

Denis McDonough, Secretary
Dr. Neil Evans, Performing the Delegable Duties of the Assistant Secretary for Information and Technology and Chief Information Officer
United States Department of Veterans Affairs
810 Vermont Ave NW, Washington, DC 20420

Re: Implementation of Executive Order 14019

Dear Secretary McDonough and Dr. Evans,

Campaign Legal Center (“CLC”) writes to commend the Department of Veterans Affairs’ commitment to taking action under Executive Order 14019 to promote and protect the right to vote.¹ We reach out to recommend that your implementation include information and materials directed to assist justice-involved Veterans in understanding and, where necessary, restoring their right to vote. In addition to the recommendations below, we offer to provide additional materials and to meet with members of your team who are working on this project.

EO 14019 was issued on March 7, 2021, and its aim was to ensure that federal agencies leverage their power, direct their programming, and adopt positions to promote and support civic engagement.² Section 3 of the Executive Order required all federal agencies to engage in a self-evaluation to better understand how they can expand voter registration and voting opportunities³ and within 200 days, publish a strategic plan outlining how they will actually do so.⁴ On September 28, 2021, 212 days after the Executive Order, the White House published a fact sheet sketching out some of the steps that certain agencies have committed to under the Order. Among those is a commitment from the VA to

provide materials and assistance in registering and voting for tens of thousands of inpatients and residents, including VA Medical Center inpatients and residents of VA nursing homes and treatment centers for homeless veterans. The Department will also

¹ Exec. Order No. 14,019, 86 Fed. Reg. 13623 (Mar. 7, 2021)

² *Id.* at (1).

³ *Id.* (3)(a).

⁴ *Id.* (3)(b).

facilitate assistance in registering and voting for homebound veterans and their caregivers through VA's home-based and telehealth teams.⁵

We write to emphasize that these programs should include materials and direct assistance for justice-involved Veterans and we offer our assistance in developing that program.

Our recommendations come from our deep expertise in identifying and removing barriers to the ballot for justice-involved voters. Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and public education. Our Restore Your Vote Campaign helps restore voting rights to people with past convictions by providing direct rights restoration services, empowering community leaders to understand rights restoration laws, and breaking down the false notion that a felony conviction always means you cannot vote. Since 2017, more than 320,000 people have used our online rights restoration webtools at RestoreYourVote.org and RecupereSuVoto.org. We have provided information on the restoration of voting rights to over 15,000 people one-on-one. Through this work, we have gained expertise in the importance of authoritative, accessible materials to combat misinformation around voting after a criminal conviction and of individualized assistance to help would-be voters navigate complicated laws and processes.

As the VA has acknowledged, a significant number of Veterans have interacted with the criminal legal system.⁶ In particular, many of the Veterans targeted by the agency's planned EO implementation actions – namely Veterans experiencing homeless and inpatients for mental health problems or substance abuse – are even more likely to have had contact with the criminal legal system.⁷ Across the country, more than 24 million Americans have been convicted of felonies,² resulting in almost every state in at least the temporary suspension of voting rights.³ Tens of thousands more have been arrested, jailed, convicted of non-felonies, and/ or charged with felonies, all of which amount to contact with the criminal legal system that led a person to wrongly believe themselves disenfranchised. Across the country, the disproportionate impact of felony disenfranchisement laws on Black, Indigenous, and People of Color is overwhelming.⁴ But the vast majority of those individuals have already met their state's requirements for restoration of voting rights and could be voting if they were aware of the rules. In fact, only around five million of those more than twenty-four million are actually disenfranchised under law.⁵ Confusion around voting rights after a felony conviction is rampant, compounded by the patchwork of varying laws across the states, misinformation, and a lack of access to authoritative legal information and services. As a result, especially in states with complex disenfranchisement and re-enfranchisement laws, many people with past convictions, or indeed any contact at all with the criminal legal system, wrongly believe they cannot vote even when they are eligible. Stories of people prosecuted for unknowingly voting when they were ineligible exacerbate this misconception and intimidate eligible voters. This is *de facto* disenfranchisement, and it suppresses the votes of millions of Americans. It is feasible to break this cycle and significantly increase participation in elections.

⁵ The White House, Fact Sheet: Biden Administration Promotes Voter Participation with New Agency Steps (Oct. 18, 2021).

⁶ Mike Richman, "Veterans and the criminal justice system" (Sept. 7, 2018) <https://www.research.va.gov/currents/0918-VA-researcher-examines-Vets-who-collide-with-criminal-justice-system.cfm>

⁷ *Id.*

A little bit of support and information can make all the difference for these would-be voters. We recommend that the voter registration materials and assistance provided to Veterans include state-specific information about when a person loses the right to vote and when and how a person may regain it, including any applicable application materials for rights restoration. We can help develop and provide those materials. Additionally, we recommend including trainings on rights restoration to the VA staff who will be providing these services. Our website RestoreYourVote.org includes step-by-step questions to assist in making that determination in each state. Moreover, in certain states with complicated laws, like Alabama,⁸ Tennessee,⁹ and Arizona,¹⁰ we have developed through manuals on how to navigate the rights restoration process. At minimum, we recommend including an index of non-partisan, non-profit local organizations that can help provide assistance as the person navigates the process.

Our democracy works best when all eligible voters can participate but all too often eligible voters sit out elections because of a lack of authoritative information. President Biden’s Executive Order provides the VA an important opportunity “to expand access to voter registration and accurate election information” and “to ensure that registering to vote and the act of voting be made simple and easy for all those eligible to do so.” EO 14019 at Sec. 1. As an organization that is deeply involved in efforts to address felony disenfranchisement across the country, we have worked hard to understand the challenges that come with facilitating ballot access for justice-involved voters, and we would welcome the opportunity to work with you to implement the terms of EO 14019 or in any future work your agency does on this topic. If you have any questions, please do not hesitate to reach out to us at bbowie@campaignlegalcenter.org or 202-736-2201. Thank you for your time and consideration of this matter.

Sincerely,

Blair Bowie

Blair Bowie, Legal Counsel &
Restore Your Vote Manager
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005

⁸ Campaign Legal Center, “Alabama Rights Restoration Manual” (Mar. 31, 2021)

<https://campaignlegal.org/document/alabama-rights-restoration-manual>

⁹ Campaign Legal Center, “Tennessee Voting Rights Restoration Manual” (Nov. 15, 2019)

<https://campaignlegal.org/document/tennessee-voting-rights-restoration-manual>

¹⁰ Campaign Legal Center, “RestoreYourVote Arizona: Arizona Activist Manual” (Aug. 26, 2021)

<https://campaignlegal.org/document/restoreyourvote-arizona-arizona-activist-manual>