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OCA
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APIA VOTE
ASIAN & PACIFIC ISLANDER AMERICAN VOTE

May 15, 2025

Camden Kelliher
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001

Re: Implementation of Section 4(b) of Executive Order No. 14248

Dear Mr. Kelliher,

On behalf of the Brennan Center for Justice, the American Civil Liberties Union, the League of Women Voters, the Legal Defense Fund, the National Association for the Advancement of Colored People, Latino Justice, Hispanic Federation, Asian Americans Advancing Justice-AAJC, OCA-Asian Pacific American Advocates, and APIAVote, we write to express our concern that the U.S. Election Assistance Commission (“EAC”) is taking action, in violation of the U.S. Constitution, to implement Executive Order No. 14248, (“Executive Order” or “Order”) titled “Preserving and Protecting the Integrity of American Elections.” Specifically, we understand that the EAC has begun to take steps toward implementation of Section 4(b) of the Order, pertaining to voting system guidelines and certification of voting equipment.

The undersigned are plaintiffs and their counsel challenging Section 2(a) of the Order in the consolidated action *LULAC v. Executive Office of the President*, 1:25-cv-946-CKK.¹ The U.S. District Court for the District of Columbia issued a preliminary injunction halting implementation of Section 2(a). The Court’s memorandum opinion is attached hereto as Exhibit A (“PI Op.”). In its opinion, the Court explained that the President has no authority to regulate federal elections under the Constitution.

Namely, “the President has no constitutional power over election regulation that would support [the Executive Order’s] unilateral exercise of authority. The Constitution vests that power in the States and Congress alone.” PI Op. at 71. The Court’s preliminary injunction did not concern Section 4(b) of the Executive Order. Its reasoning, though, applies to that provision: the President lacks authority to compel EAC action. Thus, any step by the EAC to implement the mandates of the Order, including Section 4(b), violates the Constitution’s separation of powers. On May 5 and 6, 2025, the EAC’s Board of Advisors (“Board”) met for the Board’s 2025 annual meeting.² The meeting agenda included “Discussion on the Implementation of the Executive

¹ Counsel confirm that they did not raise any claims related to Section 4(b) in this action on behalf of these Plaintiffs.

² “2025 EAC Board of Advisors Annual Meeting,” U.S. Election Assistance Commission, May 5, 2025, <https://www.eac.gov/events/2025/05/05/2025-eac-board-advisors-annual-meeting>.

Order to Protect the Integrity of American Elections.”³ During the meeting, Commissioners reportedly explained that the EAC is already considering steps to implement Section 4(b) of the Order, and sought input from Board members with respect to that implementation.

Section 4(b) purports to direct the EAC to amend the Voluntary Voting System Guidelines (“VVSG”) 2.0, “to rescind all previous certifications of voting equipment based on prior standards,” and, if appropriate, re-certify voting systems under amended VVSG 2.0 guidelines. But any changes to the VVSG must follow the specific timelines and processes set by federal law, *see* 52 U.S.C. § 20962, including (but not limited to) a public notice and a comment period, consultation by the Technical Guidelines Development Committee, and a majority vote of the Commissioners.

The President cannot mandate the outcome of this process. As the Court clearly said, “[t]he President lacks the authority to direct the outcome of the rulemaking process that Congress has assigned to the EAC.” PI Op. at 76. If the President could unilaterally dictate the content of the VVSG, “Congress’s careful structural choices would be for naught.” *Id.* at 77.

Currently, 11 states and Washington D.C. require their voting systems to be federally certified.⁴ If the EAC were to reach the predetermined outcome mandated by the Order, these jurisdictions could be left without any legally-permissible voting system until a voting system could be certified to comply with the amended VVSG 2.0—a process that, based on past practices, could take years. There is no voting system on the market that is certified to the VVSG 2.0, let alone a new set of guidelines. Even if such a system became available, states could be forced to spend hundreds of millions of dollars to purchase new systems so that they could comply with their own laws. And for states that do not require all voting systems used in the state to be federally certified, the loss of certification signifying compliance with federal election security standards could cause significant harm to public confidence among these states’ voters.

The Constitution expressly reserves to Congress and the states the authority to set regulations for federal elections. The President has no power to mandate voting system guidelines. We thus urge the EAC to take no further action to implement Section 4(b) of the Executive Order, or any other provision purporting to direct the EAC’s actions.

Respectfully submitted,

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³ “Board of Advisors 2025 Annual Meeting,” U.S. Election Assistance Commission, May 5, 2025, https://www.eac.gov/sites/default/files/2025-05/board_of_advisors_2025_agenda_v5_05_01_25_508.pdf.

⁴ U.S. Election Assistance Commission, State Requirements and the U.S. Election Assistance Commission Voting System Testing and Certification Program, August 3, 2023, <https://www.eac.gov/sites/default/files/2023-08/State%20Requirements%20for%20Certification%202023.pdf>.

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