

The Honorable John H. Chun

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

STATE OF WASHINGTON; and,  
STATE OF OREGON,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:25-cv-00602-JHC

BRIEF OF *AMICUS CURIAE* BRENNAN  
CENTER FOR JUSTICE IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PARTIAL  
SUMMARY JUDGMENT

BRIEF OF *AMICUS CURIAE*  
BRENNAN CENTER FOR JUSTICE  
NO. 2:25-CV-00602-JHC

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## STATEMENT OF INTEREST

*Amicus curiae* Brennan Center for Justice at NYU School of Law (the “Brennan Center”) is a nonprofit, non-partisan law and public interest law institute that seeks to strengthen, revitalize, and defend our systems of democracy and justice. The Brennan Center is a leader in the field of the systems and structures of election administration. The Brennan Center has long been dedicated to researching and understanding voting systems and election infrastructure.<sup>1</sup> The Brennan Center’s interest in this case stems from its extensive history of working to ensure that elections are secure and to preserve and protect voting rights across all communities in America.<sup>2</sup> While the Brennan Center supports Plaintiffs’ Motion for Partial Summary Judgment on each of their claims, it offers here its particular experience on voting systems to inform the Court of the harms that will ensue from Section 4(b) of the Executive Order.

## SUMMARY OF ARGUMENT

On March 25, 2025, President Trump issued an Executive Order that will create grave uncertainty and chaos for states’ administration of elections. In particular, Section 4(b) of the Order instructs the Election Assistance Commission (“EAC”) to amend the standards it sets for voting infrastructure, known as the Voluntary Voting System Guidelines (“VVSGs”). Under the Order, the EAC must amend the VVSGs to direct the removal of barcodes and QR codes from ballots, to “review and, if appropriate, re-certify voting systems under the new standards established under subsection (b)(i) of this section, **and to rescind all previous certifications of voting equipment based on prior standards,**” Executive Order § 4(b)(ii) (emphasis added). By its plain terms, this provision would force the EAC to decertify all machines that it previously certified, impacting the vast majority of states.

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<sup>1</sup> See Brennan Ctr. for Justice, *Voting Machines & Infrastructure*, <https://www.brennancenter.org/issues/defend-our-elections/election-security/voting-machines-infrastructure> (last visited July 19, 2025).

<sup>2</sup> The Brennan Center separately represents a set of plaintiffs in *League of Women Voters v. Trump*, No. 1:25-cv-00955 (D.D.C.), who have focused on challenging the constitutionality of Section 2(a) of Executive Order No. 14248, 90 Fed. Reg. 14005 (Mar. 25, 2025) (“Executive Order” or “Order”); that litigation does not involve a challenge to Section 4(b) of the Order.

1 For many years, states have relied on support from the EAC—an independent, bipartisan  
 2 agency—to run elections and operate their voting systems. The EAC’s standards for voting systems  
 3 and the VVSGs provide baseline requirements for voting machine cybersecurity, accessibility, and  
 4 usability that vendors (the manufacturers of electronic voting systems) agree to meet and which  
 5 many states have adopted. Because of the VVSGs, election officials can assure voters that their  
 6 votes are being recorded accurately on technology that operates in accordance with independent  
 7 and authoritative standards, bolstering public confidence in the integrity of our elections.

8 Updating the VVSGs is a painstaking task that requires years of development and testing.  
 9 For this reason, EAC policy ensures that previous certifications remain valid when new versions  
 10 of the VVSGs are under development, so election officials can maintain this important—and in  
 11 some cases, legally required—stamp of approval for their current voting systems until new systems  
 12 become available. The current guidelines—VVSG 2.0—are the first major revision to the VVSGs  
 13 in over 15 years. Four years after that approval, in July 2025, the EAC announced the first voting  
 14 system certified to VVSG 2.0.<sup>3</sup>

15 *Amicus* Brennan Center highlights here the disruptive and far-reaching impacts of Section  
 16 4(b) of the Executive Order on election administration nationwide. **First**, the Order will effectively  
 17 nullify the legality of voting systems across eleven states and the District of Columbia (which, by  
 18 state law, require federal certification), and will deny every state access to a federally-certified  
 19 voting system. It obligates the EAC to establish a *new* VVSG standard, even though the full  
 20 process—for the EAC to develop and adopt new guidelines, for voting system vendors to develop  
 21 compliant systems, for laboratories to test new systems, for the EAC to certify systems, and for  
 22 those systems to hit the market—will take years. In the meantime, states will be unable to rely on  
 23 certification to existing standards, because the Order instructs the EAC to “rescind all previous  
 24  
 25

26 <sup>3</sup> U.S. Election Assistance Comm’n, *The EAC Announces First Certified Voting System to Voluntary Voting System Guidelines (VVSG) 2.0* (July 10, 2025), <https://www.eac.gov/news/2025/07/10/eac-announces-first-certified-voting-system-voluntary-voting-system-guidelines-vvsg>.

1 certifications” of equipment under prior standards.<sup>4</sup> Executive Order § 4(b)(ii). This will prevent  
 2 states from ensuring a smooth transition to new versions of voting systems that meet updated  
 3 federal guidelines.

4 **Second**, the Executive Order would saddle states with immense costs to procure new voting  
 5 systems. This extraordinary burden could not come at a worse time, considering that federal and  
 6 state funding for elections are at their lowest point in years and continue to decline. The  
 7 unpredictability of funding makes it nearly impossible for election officials to quickly procure new  
 8 voting systems following updates to federal guidelines.

9 **Third**, not only will the Order foist enormous funding challenges on states, it will create a  
 10 timing nightmare—it will be virtually impossible for states to field federally-certified election  
 11 equipment in time and before election season. Again, there is much to be done, from start to finish,  
 12 to conduct accurate and secure elections: The process of developing and approving new guidelines,  
 13 designing and certifying new voting equipment, and implementing new election systems in states  
 14 and counties typically takes years.

15 **Finally**, the Executive Order will undoubtedly undermine public trust in elections at a time  
 16 when false conspiracy theories abound on the security of our nation’s voting equipment. The Order  
 17 would unfairly stigmatize our voting systems, sending the wrong message to the voting public that  
 18 current systems do not meet federal standards, even as voters are casting their ballots on those  
 19 systems.

20 Indeed, the Executive Order is already affecting how states run their elections, jeopardizing  
 21 stability and public trust. Some state legislators are already using the Order as an excuse to attempt  
 22 to change their voting systems—for example, an Arizona state legislator asked the State “to  
 23 conduct the 2026 elections using hand-marked, hand-counted paper ballots” and “end funding for  
 24 non-compliant electronic systems and cancel maintenance contracts that will become obsolete  
 25

26 <sup>4</sup> As Plaintiffs have pointed out, the President lacks authority to order changes to election systems guidelines or dictate the outcome of the process for testing and certification of voting systems. *See* Pls’ Mot. for Part. Summ. J. at 21, ECF No. 37.

1 under federal standards.”<sup>5</sup> And we can already see the coming funding crisis as a result of the  
 2 Order: A county in Texas spent \$2.3 million to purchase voting equipment for hand-marked ballots  
 3 in an effort to comply with the Executive Order.<sup>6</sup>

4 The conduct of secure elections is fundamental to safeguarding our democracy. Far from  
 5 enhancing election security, the Executive Order will pose additional and near-impossible  
 6 challenges for states, undermine public confidence in voting systems, and destabilize upcoming  
 7 elections. *Amicus* Brennan Center urges the Court to rule in favor of Plaintiffs on their challenge  
 8 to Section 4(b) of the Executive Order.

## 9 BACKGROUND

### 10 I. THE VOLUNTARY VOTING SYSTEM GUIDELINES ARE CRITICAL TO 11 ELECTION ADMINISTRATION.

12 The EAC is the only federal agency that Congress has tasked with the authority to test and  
 13 certify voting systems. The EAC meets that charge through the VVSGs.<sup>7</sup> As Plaintiffs’ Motion for  
 14 Partial Summary Judgment correctly explains, Congress vested the EAC—an independent,  
 15 bipartisan commission—with the power to guide state election officials in how to best safeguard  
 16 and systematize voting systems across the nation. And Congress defined a specific statutory  
 17 process for modifying the VVSGs, leaving the President no unilateral authority to mandate that  
 18 the EAC update the VVSGs or discard the current guidelines. The Executive Order’s rejection of  
 19 barcodes and QR codes on ballots similarly disrupts and upends time-tested systems and sows  
 20 chaos into states’ election systems. Changing the VVSGs so drastically and quickly, as the  
 21

22 <sup>5</sup> Press Release, Representative Rachel Keshel, *Representative Rachel Keshel Praises President Trump’s Executive*  
 23 *Order to Restore Transparent, Verifiable Elections* (Apr. 7, 2025),  
<https://www.azleg.gov/press/house/57LEG/1R/250407KESHELEO.pdf>.

24 <sup>6</sup> Adam Doe, *Collin County spends \$2.3 million on new hand-marked ballot system*, Cmty. Impact (June 25, 2025),  
 25 <https://communityimpact.com/dallas-fort-worth/mckinney/government/2025/06/25/collin-county-spends-23-million-on-new-hand-marked-ballot-system/>.

26 <sup>7</sup> U.S. Election Assistance Comm’n, *State Requirements and the U.S. Election Assistance Commission Voting System Testing and Certification Program* 3–4 (Aug. 3, 2023), <https://www.eac.gov/sites/default/files/2023-08/State%20Requirements%20for%20Certification%202023.pdf>.

Executive Order demands, would overturn decades of work by the EAC and threaten existing state processes.

**A. The VVSGs Are Developed by an Independent, Bipartisan Agency.**

The Help America Vote Act (“HAVA”) was passed in the wake of the 2000 presidential election, when prolonged delays in tallying votes brought issues with election administration to the forefront.<sup>8</sup> HAVA set baseline operational requirements and provided funding for states to administer elections.<sup>9</sup> In order to assist states with complying with the new law, Congress created the EAC, a bipartisan advisory agency.<sup>10</sup> Among the EAC’s mandatory duties under HAVA is promulgating the VVSGs. 52 U.S.C. § 20922(1).

The VVSGs are a “set of specifications and requirements against which voting systems can be tested to determine if they meet required standards.”<sup>11</sup> The latest version, VVSG 2.0, adopted in 2021, contains detailed guidelines for the design and implementation of voting systems with the goal of ensuring all voting systems possess “basic functionality, accessibility, and security capabilities.”<sup>12</sup> The VVSGs are designed to be used by voting system manufacturers and laboratories as they design, build, and stress-test voting systems acquired by states and local jurisdictions for use in elections.<sup>13</sup>

HAVA sets forth the procedure for the EAC to develop and adopt new versions or modifications of the VVSGs. 52 U.S.C. § 20962. The EAC must publish notice of the proposed guidelines or modification of guidelines in the Federal Register and provide an opportunity for public comment and a public hearing on the record. *Id.* § 20962(a). The EAC must also consider

<sup>8</sup> Wendy Underhill, *The Help America Vote Act: 20 Years Later*, Nat’l Conf. of State Legislatures (June 1, 2022), <https://www.ncsl.org/state-legislatures-news/details/the-help-america-vote-act-20-years-later>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> U.S. Election Assistance Comm’n, *Voluntary Voting System Guidelines* (Jan. 31, 2025), <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>.

<sup>12</sup> U.S. Election Assistance Comm’n, *Requirements for the Voluntary Voting System Guidelines 2.0* 5 (Feb. 10, 2021), [https://www.eac.gov/sites/default/files/TestingCertification/Voluntary\\_Voting\\_System\\_Guidelines\\_Version\\_2\\_0.pdf](https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf).

<sup>13</sup> *Id.* at 9.

1 recommendations by the Technical Guidelines Development Committee. *Id.* §§ 20961,  
 2 20962(b)(1). Further, the EAC must submit the proposed guidelines to the Board of Advisors and  
 3 the Standards Board for additional comment and review. *Id.* § 20962(b), (c). HAVA created these  
 4 three entities and established detailed membership requirements for each to ensure that a wide  
 5 range of viewpoints is considered, including the views of state and local officials that run elections,  
 6 and that expertise and consensus drive all modifications to the VVSGs. Finally, the EAC must vote  
 7 to adopt any new guideline or modification, which cannot occur until 90 days have passed since  
 8 the EAC submitted the proposed guidelines to the Board of Advisors and Standards Board. *Id.* §  
 9 20962(d). The certification process predictably takes a long time. Prior to the 2021 publication of  
 10 VVSG 2.0, the last VVSG modification was in 2015, when VVSG 1.1 was published.<sup>14</sup>

11 A key feature of the VVSGs is that they are developed by a bipartisan, independent agency,  
 12 in collaboration with technical experts and based on public input. The EAC consists of four  
 13 members—no more than two of whom may be affiliated with the same political party—appointed  
 14 by the President with the advice and consent of the Senate. 52 U.S.C. § 20923. The EAC’s balanced  
 15 structure also creates stability for elections by allowing states and other interested parties to plan  
 16 their voting systems using one set of guidelines without fear that the rules are going to change with  
 17 every new Presidential administration.<sup>15</sup>

#### 18 **B. States Rely on the VVSGs to Test, Certify, and Implement Their** 19 **Voting Machinery.**

20 Though “voluntary,” the VVSGs have in practice become a fundamental component of  
 21 state election systems. State reliance on the VVSGs takes several forms, from requiring that a  
 22 state’s voting systems have been tested to VVSG standards, to mandating that the state purchase

23  
 24 <sup>14</sup> U.S. Election Assistance Comm’n, *supra* note 11; *see also* Underhill, *supra* note 8 (“Since the adoption of VVSG 1.0 in 2005, updates have been slow in coming, and vendors have been slow to adapt to new guidelines.”).

25 <sup>15</sup> *See* Emily Burns & Maha Quadri, *Independent Agencies Must Remain Independent*, Campaign Legal Ctr. (Apr. 22,  
 26 2025), <https://campaignlegal.org/update/independent-agencies-must-remain-independent> (“Congress specifically insulated independent agencies and the civil servants running them from partisan influence and political pressure to ensure they could focus on long-term public good and not the short-term political whims of the president or party leaders.”).

1 machines that have been officially certified by the EAC.<sup>16</sup> Many states have enacted laws or  
 2 regulations that require their voting systems to comply with the VVSGs. In total, the current voting  
 3 systems of eleven states and Washington, D.C. would be out of compliance with their own states’  
 4 laws if the Executive Order takes effect. While other states do not specifically require certification,  
 5 their incorporation of federal guidelines and testing processes demonstrates an intent to use  
 6 federally-certified voting systems and the value of doing so; these states too would face disruptive  
 7 impacts from the Order.

8         The laws of eleven states and Washington, D.C. require their voting systems to be federally  
 9 certified, meaning the machines must be both tested to federal standards by a federally accredited  
 10 laboratory and approved by the EAC itself.<sup>17</sup> Delaware, for example, mandates that voting systems  
 11 “must be certified by the United States Election Assistance Commission, or designated federal  
 12 authority, as meeting or exceeding the voluntary voting systems standards or guidelines as  
 13 promulgated by the United States Election Assistance Commission . . . .” Del. Code Tit. 15, §  
 14 5001A(c). Georgia’s regulations similarly require that “[p]rior to submitting a voting system for  
 15 certification by the State of Georgia, the proposed voting system’s hardware, firmware, and  
 16 software must have been issued Qualification Certificates from the EAC.” Ga. Comp. R. & Regs.  
 17 590-8-1-.01(d)(1). Implementation of the Executive Order—specifically the requirement to  
 18 rescind all prior certifications—threatens to leave these states without any voting system that  
 19 complies with these legal requirements. Because the EAC certifies systems according to the  
 20 VVSGs, these states effectively incorporate the VVSGs as a necessary component for voting  
 21 system certification.

22         Approximately 25 states mandate some combination of testing by a nationally accredited  
 23 laboratory or testing to the VVSGs for voting systems seeking certification.<sup>18</sup> These states  
 24 explicitly incorporate federal standards and practices into their statutes and regulations, giving

25 <sup>16</sup> See U.S. Election Assistance Comm’n, *supra* note 7, at 2.

26 <sup>17</sup> *Id.* at 3–4.

<sup>18</sup> *Id.*

1 them the force of law and demonstrating an intent to use only those voting systems that are tested  
 2 and certified to the VVSGs, even if certification itself is not expressly required. For example, New  
 3 Mexico requires that: “All voting systems certified for use in the state shall be tested by an  
 4 independent authority and shall comply with all requirements in the Election Code and the most  
 5 recent voluntary voting system guidelines adopted and implemented by the United States election  
 6 assistance commission.” N.M. Stat. § 1-9-14(A). Arizona requires that its voting machines “have  
 7 been tested and approved by a laboratory that is accredited pursuant to the help America vote act  
 8 of 2002.” Ariz. Rev. Stat. § 16-442(B). Maryland likewise requires both that its systems have been  
 9 “examined by an independent testing laboratory that is approved by the U.S. Election Assistance  
 10 Commission” and that the systems are “shown by the testing laboratory to meet the performance  
 11 and test standards for electronic voting systems established by the Federal Election Commission  
 12 or the U.S. Election Assistance Commission[.]” Md. Code, Elec. Law § 9-102(d)(2).

13 And even as to other states that do not expressly mandate adherence to the VVSGs, the  
 14 guidelines still play a critical role in their elections. Two states use the VVSGs as a model for their  
 15 own voting system guidelines. California law demands that “the Secretary of State shall adopt  
 16 standards that meet or exceed federal voluntary voting system guidelines set forth by the United  
 17 States Election Assistance Commission”—effectively using the VVSGs as a baseline for more  
 18 stringent state voting standards. Cal. Elec. Code § 19101(a). Alaska similarly considers whether  
 19 the “Federal Election Commission has certified the voting machine or vote tally system” as a factor  
 20 when deciding whether to certify a voting system. Alaska Stat. Ann. § 15.20.910. In these states,  
 21 the VVSGs have a strong albeit indirect influence on the certification process.

22 Moreover, because the specialized companies that manufacture and sell voting systems  
 23 must meet the needs of as many jurisdictions as possible to be commercially viable, the economic  
 24 reality is that nearly every major voting system in use by states has been federally certified.<sup>19</sup> As

25 <sup>19</sup> See Karen L. Shanton, Cong. Rsch. Serv. R47592, *Federal Standards and Guidelines for Voting Systems: Overview*  
 26 *and Potential Considerations for Congress* Summary (2023), <https://www.congress.gov/crs-product/R47592>  
 (“[W]idespread adoption of the [VVSGs] by states under their own state laws means that the VVSG have significant  
 influence in practice, shaping the kinds of voting systems vendors develop and market.”).

1 a result, the impact of the Executive Order would drastically constrain the market for voting system  
2 equipment for all states, even those that do not mandate compliance with the VVSGs in some form.

3 **C. Barcode and QR Code Technology Is Widely Used in Voting Systems**  
4 **Across the Nation.**

5 In its mandate to the EAC to revise the VVSGs, the Executive Order specifically demands  
6 that the EAC develop new guidelines that prohibit the use of barcodes and QR codes to encode  
7 votes. Executive Order § 4(b)(i). That alone would cause a sea change to election systems across  
8 the country. The vast majority of voting systems on the market rely on components or machines  
9 that encode votes using a barcode or QR code. Today, 1,954 counties in forty states have some  
10 voting machines that use QR codes or barcodes to record votes.<sup>20</sup> The same goes for the two largest  
11 vendors of voting systems in use today, ES&S and Dominion, whose machines collectively cover  
12 72% of all voters nationwide.<sup>21</sup>

13 Barcodes and QR codes are commonly used in ballot marking devices (“BMDs”), which  
14 allow individuals to make their selections on an electronic screen and print a voter-verifiable paper  
15 ballot with the voter’s selections encoded in the barcode, in addition to human-readable text.<sup>22</sup>  
16 Election jurisdictions use BMDs to satisfy federal accessibility requirements because they allow  
17 for the use of assistive technology, like audio and tactile interfaces, for voters with print  
18 disabilities.<sup>23</sup> And some states and counties use BMDs for all voters,<sup>24</sup> as these systems can support  
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22 <sup>20</sup> Verified Voting, *Understanding the Election Tech Implications in the Trump Administration’s Executive Order* (Apr.  
23 9, 2025), <https://verifiedvoting.org/blog-executive-order-apr-2025/>.

24 <sup>21</sup> See Verified Voting, *Voting Equipment Database*, <https://verifiedvoting.org/equipmentdb/> (last visited July 19, 2025).

25 <sup>22</sup> Verified Voting, *supra* note 20.

26 <sup>23</sup> See Lou Ann Blake, *BMDs: The Common-Sense Voting Solution*, Nat’l Fed’n of the Blind (Apr. 26, 2019), <https://nfb.org/index.php/blog/bmds-common-sense-voting-solution>.

<sup>24</sup> Verified Voting, *supra* note 20.

1 more ballot styles and languages and provide greater accessibility to all voters, without the need  
 2 for a different ballot for voters who self-identify as disabled.<sup>25</sup>

3 There is no evidence that barcodes or QR codes reduce the accuracy of vote tallying.<sup>26</sup>  
 4 Moreover, an estimated 98% of all votes cast in the 2024 general election—including those cast  
 5 using BMDs—were cast in a way that maintained a paper record of the vote.<sup>27</sup> Because these voter-  
 6 verifiable paper records that BMDs print also contain human-readable text, they can be audited  
 7 after an election just like hand-marked paper ballots to confirm that a voter’s ballot was counted  
 8 as the voter intended. By requiring states to immediately purchase new voting systems, these new  
 9 provisions would therefore add an enormous and unnecessary burden that cannot be justified by  
 10 accuracy concerns.

## 11 ARGUMENT

### 12 I. IMPLEMENTATION OF THE EXECUTIVE ORDER WOULD DISRUPT 13 ELECTIONS NATIONWIDE.

14 Upending the existing process for drafting and publishing the VVSGs will have far-  
 15 reaching and burdensome consequences for states. First, the Executive Order would leave some  
 16 states without compliant voting systems. Second, the Order will force states to spend millions to  
 17 purchase and distribute new voting systems. Third, the Order’s implementation timeline is entirely  
 18 unworkable. In particular, the many states that require their voting systems to satisfy federal testing  
 19 or certification under the VVSGs would be caught in a catch-22: They either continue to use their  
 20 current voting systems, which may be deemed noncompliant and lead to severe financial  
 21 consequences; or they implement an alternative system at their own cost, a near impossible task.

22 <sup>25</sup> See Brennan Ctr. for Justice, *Brennan Center Overview of Voting Equipment* (May 31, 2018),  
 23 <https://www.brennancenter.org/our-work/research-reports/brennan-center-overview-voting-equipment>; Lou Ann  
 Blake, *supra* note 23.

24 <sup>26</sup> See Jessica Huseman, *Why Trump wants to ban barcodes on ballots, and what it means for voters and election*  
 25 *officials*, Votebeat (Mar. 28, 2025), <https://www.votebeat.org/2025/03/28/trump-executive-order-elections-bans-barcodes-qr-codes-explained/>.

26 <sup>27</sup> See Derek Tisler & Lawrence Norden, *Some Good News for Donald Trump: We Already Use Paper Ballots*, Brennan  
 Ctr. for Justice (Aug. 23, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/some-good-news-donald-trump-we-already-use-paper-ballots>.

**A. The Executive Order Would Strand Many States Without Legally Compliant Voting Systems.**

The Executive Order’s unilateral elimination of existing standards puts states in an untenable position. The Order directs the EAC to establish new voting guidelines, effectively tossing out the prior VVSGs, and to “rescind [within 180 days of the Order] all previous certifications of voting equipment based on prior standards.”<sup>28</sup> This reverses the EAC’s existing policy, called the “lifecycle policy,” which *explicitly* states that the process of adopting new VVSGs “does not affect the status of any EAC certified voting system.”<sup>29</sup> Indeed, election systems “may only be decertified upon a vote of the Commissioners and following the process detailed in the EAC’s Testing and Certification Program Manual.”<sup>30</sup>

The VVSG lifecycle policy creates an important backstop that avoids stranding states without workable voting machines. Upon adoption of new VVSGs, the policy sets an expiration date after which manufacturers cannot submit new machines running the previous VVSG version for testing.<sup>31</sup> That policy is designed to ensure a smooth transition between standards so states can take the time necessary to implement updated regulations without undue financial burdens, preserve the systems’ functionality, and train election workers and inform the electorate. The Order instead pulls the rug out from under states, mandating the development of a new set of VVSGs without leaving remaining certifications in place.

Even if the EAC moved quickly to adopt a new set of standards, states would not be able to immediately comply. Four years after VVSG 2.0 was adopted, just one voting system has been certified to these guidelines, and that new system was only certified in July 2025.<sup>32</sup> The two largest

<sup>28</sup> Executive Order § 4(b)(ii) (“Within 180 days of the date of this order, the Election Assistance Commission shall take appropriate action to review and, if appropriate, re-certify voting systems under the new standards established under subsection (b)(i) of this section, and to rescind all previous certifications of voting equipment based on prior standards.”).

<sup>29</sup> U.S. Election Assistance Comm’n, *VVSG Lifecycle Policy 4* (June 16, 2023), [https://www.eac.gov/sites/default/files/TestingCertification/VVSG\\_Lifecycle\\_Policy\\_9\\_22.pdf](https://www.eac.gov/sites/default/files/TestingCertification/VVSG_Lifecycle_Policy_9_22.pdf).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> U.S. Election Assistance Comm’n, *supra* note 3.

1 voting system vendors—ES&S and Dominion—have not even submitted systems for testing to  
 2 VVSG 2.0 yet. It is therefore unclear when widespread VVSG 2.0-compliant voting systems will  
 3 be available for states to purchase, let alone voting systems that have been certified to a *new* and  
 4 undeveloped set of guidelines that vendors have not yet considered. The Order thus sets a standard  
 5 that is unattainable in the near term.

6 The short timeline and disruptive changes mandated by the Executive Order will make it  
 7 difficult, if not impossible, to procure EAC-certified voting machines. Additionally, as described  
 8 *supra* Part I.B, many state laws link voting systems to the VVSGs. Thus, many states will not have  
 9 access to the voting machines that are required by their own laws, leaving jurisdictions open to  
 10 increased post-election investigations, audits, and civil suits—while voters are in limbo.

11 The Order’s targeting of barcodes and QR codes also affects the majority of voting systems  
 12 currently in use, forcing states to develop and adopt new vote counting procedures on the fly and  
 13 precariously close to election season. Most voting systems on the market have components that  
 14 use barcodes in conjunction with a human-readable paper ballot to record or tabulate votes. In  
 15 Georgia and South Carolina, as well as most or many counties in Arkansas, Delaware, New Jersey,  
 16 Ohio, Pennsylvania, Tennessee, Texas, and West Virginia, *all* in-person voters cast ballots on  
 17 components that encode votes in barcodes or QR codes.<sup>33</sup> As explained below, it would be  
 18 incredibly costly for these jurisdictions to replace their voting systems and implement new  
 19 counting procedures to even attempt to comply with the Executive Order.<sup>34</sup>

20 **B. It Would Be Prohibitively Expensive to Implement Any System that**  
 21 **Complies with the Executive Order.**

22 The Executive Order will impose significant, unfunded compliance costs on states. Voting  
 23 equipment is expensive, generally at least several thousand dollars for each machine.<sup>35</sup> In a series

24 <sup>33</sup> Verified Voting, *The Verifier — Manufacturers — November 2026*,  
 25 <https://verifiedvoting.org/verifier/#mode/navigate/map/makeEquip/mapType/normal/year/2026> (last visited June 10,  
 2025).

26 <sup>34</sup> Huseman, *supra* note 26.

<sup>35</sup> Verified Voting, *The Price of Voting* 55 (Mar. 2021), <https://verifiedvoting.org/wp-content/uploads/2021/03/Price-of-Voting-FINAL2.pdf>.

of studies conducted from 2014 to 2024, the Brennan Center analyzed the cost of replacing or updating voting systems across the country.<sup>36</sup> Replacing a single voting machine costs approximately \$5,000.<sup>37</sup> And the cost of replacing even a subset of voting equipment in about half the states would be approximately \$203 million.<sup>38</sup> Replacing all voting machines would cost even more. These figures are not hypothetical:

- In 2019, Georgia awarded Dominion Voting Systems a \$107 million contract to replace all of the state's voting systems with machines that encode votes in a QR code.<sup>39</sup>
- In 2018, Ohio allocated \$104.5 million for the Secretary of State to purchase new voting systems for the state.<sup>40</sup>
- And in 2023, Connecticut Governor Ned Lamont announced that the state would spend \$25 million to replace voting machines in the state.<sup>41</sup>

The costs faced by state officials charged with election administration are not limited to the purchase of the voting machines. Jurisdictions must expend resources to train workers on the new machines and educate voters on any new voting procedures.<sup>42</sup> One federal district court has already preliminarily enjoined several provisions of the Executive Order, based in part on the irreparable harm it would impose on states through the time, cost, and effort associated with compliance.<sup>43</sup>

Worse, all of this comes at a time when federal funding for election equipment is declining. From 2020 through 2024, Congress appropriated \$205 million for election funding—a steep drop

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<sup>36</sup> Ruby Edlin, Megan Maier & Warren Stewart, *Costs for Replacing Voting Equipment in 2024*, Brennan Ctr. for Justice (Feb. 7, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/costs-replacing-voting-equipment-2024>.

<sup>37</sup> *See id.*

<sup>38</sup> *Id.*

<sup>39</sup> Maggie Miller, *Georgia awards contract for new voting machines*, The Hill (July 29, 2019), <https://thehill.com/policy/cybersecurity/455211-georgia-awards-contract-for-new-voting-machines/>.

<sup>40</sup> S.B. 135, 132nd Gen. Assemb. (Ohio 2018).

<sup>41</sup> Caroline Nihill, *Connecticut to Spend \$25M on new voting machines*, Statescoop (Sept. 28, 2023), <https://statescoop.com/connecticut-to-spend-25m-on-new-voting-machines/>.

<sup>42</sup> U.S. Gov't Accountability Off., GAO-18-294, *Observations on Voting Equipment Use and Replacement* 28 (2018), <https://www.gao.gov/assets/gao-18-294.pdf>.

<sup>43</sup> *California v. Trump*, No. 25-cv-10810-DJC, 2025 WL 1667949, at \*15-17 (D. Mass. June 13, 2025).

1 from 2017–2019 funding levels (\$805 million).<sup>44</sup> In 2025, Congress allocated just \$15 million for  
 2 election funding.<sup>45</sup> And the Executive Order neither provided any additional funding to offset the  
 3 cost of replacing election equipment nor indicated that the White House would seek further  
 4 appropriations from Congress.

5 The Order only further burdens an untenable funding situation for states responsible for  
 6 conducting elections. The uncertainty of federal funding presents extraordinary challenges to states  
 7 seeking to schedule election expenditures in advance.<sup>46</sup>

8 **C. The Timeline for Implementing New Guidelines and Voting Systems—**  
 9 **Even If They Were Available—Is Infeasible.**

10 Aside from these crushing funding challenges, the implementation timeline for compliance  
 11 will be nearly impossible for states. Indeed, creating a *new* version of the VVSGs would require  
 12 significant development, testing, and certification. That is no small matter—for context, VVSG  
 13 2.0 was the product of a *15-year effort*, taking into account feedback from cybersecurity experts,  
 14 voters, local officials, and policy experts. VVSG 2.0 was approved in 2021, with the first system  
 15 certified to VVSG 2.0 just this month, four years later.<sup>47</sup> Thus, the process of developing and  
 16 approving an updated VVSG 2.0, and testing and certifying new voting systems to these updated  
 17 guidelines realistically will take years.<sup>48</sup>

18 And updating the VVSGs and buying new machines are just the tip of the iceberg for states  
 19 conducting elections. States will also need several months after receiving the machines to deliver  
 20 them to each jurisdiction, train workers on the machines, update logic and accuracy testing  
 21 procedures and post-election audit protocols to ensure the machines count votes accurately, and

22 <sup>44</sup> Derek Tisler, *States Must Take the Lead on Election Security*, Brennan Ctr. For Justice (Dec. 19, 2024),  
 23 <https://www.brennancenter.org/our-work/research-reports/states-must-take-lead-election-security>.

24 <sup>45</sup> U.S. Election Assistance Comm’n, *Election Security Grant* (Apr. 23, 2025), <https://www.eac.gov/grants/election-security-funds>.

25 <sup>46</sup> See Ruby Edlin et al., *supra* note 36.

26 <sup>47</sup> U.S. Election Assistance Comm’n, *supra* note 3.

<sup>48</sup> Nat’l Conf. of State Legislatures, *Executive Order on Elections: Implications for States* (Apr. 25, 2025),  
<https://www.ncsl.org/elections-and-campaigns/executive-order-on-elections-implications-for-states#toc4>.

1 educate the public on how to use the machines.<sup>49</sup> Many states do not have the luxury of time. New  
 2 Jersey and Virginia have statewide elections in just a few months. Some states have primary  
 3 elections in about a year.<sup>50</sup> The result of the Executive Order would be a scramble to implement a  
 4 process that should instead be undertaken with deliberation and care to ensure a secure, trustworthy  
 5 election.

## 6 **II. THE ORDER UNDERMINES PUBLIC TRUST IN VOTING SYSTEMS.**

7 Public trust in elections is a critical foundation of our democracy. Time and again, the  
 8 Supreme Court has recognized the importance of avoiding actions that “undermine public  
 9 confidence in the fairness of elections and the perceived legitimacy of the announced outcome.”  
 10 *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 672 (2021); *see also Purcell v. Gonzalez*, 549  
 11 U.S. 1, 4 (2006) (“Confidence in the integrity of our electoral processes is essential to the  
 12 functioning of our participatory democracy.”); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S.  
 13 181, 197 (2008) (“[Public confidence in elections] encourages citizen participation in the  
 14 democratic process.”). By sowing confusion and mistrust in the equipment needed to run our  
 15 elections today, the Executive Order will undermine public trust in elections—and our  
 16 democracy.<sup>51</sup>

17 Facing public criticisms over the security and accuracy of voting systems in recent years,  
 18 state officials have consistently pointed to federal certification in public education efforts to  
 19 reassure voters that their voting systems have been independently tested and that a bipartisan  
 20 federal commission has determined that the systems meet security best practices. For example:

- 21 • Oregon’s election integrity webpage highlights that all machines have “passed  
 22 federal lab tested certification . . . .”<sup>52</sup>

23 <sup>49</sup> Jessica Huseman, *State Lawmakers Need to Consider Practical Realities When it Comes to Elections*, Votebeat (Feb.  
 24 13, 2023), <https://www.votebeat.org/2023/2/13/23594541/voting-machines-costs-state-lawmakers-procurement/>.

25 <sup>50</sup> Nat’l Conf. of State Legislatures, *supra* note 48.

26 <sup>51</sup> *See, e.g.,* Layla Ferris, *False claims about machines “switching” votes are going viral. Here’s what to know*, CBS  
 News (Oct. 24, 2024), <https://www.cbsnews.com/news/false-claims-machines-switching-votes-what-to-know/>.

<sup>52</sup> Oregon Sec’y of State, *Election Integrity*, <https://sos.oregon.gov/elections/Pages/security.aspx> (last visited July 17,  
 2025).

- Ohio’s election security fact sheet explains that “[f]ederal and bipartisan state experts test, examine, and certify all voting equipment as secure.”<sup>53</sup>
- Arizona’s webpage on securing elections emphasizes that “[a]ll equipment used in Arizona must be certified by . . . the [EAC] . . . .”<sup>54</sup>

State election directors, in particular, have emphasized the importance of public trust in effectively administering elections.<sup>55</sup> The National Association of State Election Directors (“NASED”) wrote a letter to the EAC in advance of the 2024 election after the EAC announced it would stop certifying new machines running VVSG 1.0 for administrative reasons.<sup>56</sup> NASED stressed that states and localities should be able to continue to buy and use systems running the older version of the VVSG, which were still acceptable and safe for public use.<sup>57</sup> The letter underscored that “[h]istory has proven that false information will spread regarding the seemingly bureaucratic components of the EAC’s voting system testing and certification program.”<sup>58</sup> NASED also noted that previous false information “resulted in dozens of lawsuits against states across the country claiming that their voting systems are uncertified and casting doubt on election results.”<sup>59</sup> The Executive Order will cast doubt on voting systems that are currently secure and effective, as well as the EAC’s certification process, which in turn will further undermine public faith in the integrity of elections.

NASED’s letter also highlights the importance of ensuring a seamless transition between versions of the VVSGs to avoid gaps in compliance. As described in *supra* Part I.A, the EAC’s lifecycle policy allowed states to continue using voting systems running previous versions of the

<sup>53</sup> Ohio Sec’y of State, *Election Security Fact Sheet*, <https://www.ohiosos.gov/elections/voters/secure/> (last visited July 17, 2025).

<sup>54</sup> Arizona.Vote, *How we secure Arizona’s elections*, [https://www.arizona.vote/secure\\_elections](https://www.arizona.vote/secure_elections) (last visited July 17, 2025).

<sup>55</sup> Abby Vesoulis, *States Are Trying to Stop Election Meddling. But the Real Risk is Public Confidence*, Time (Mar. 5, 2019), <https://time.com/5543649/2020-elections-voter-security-states/>.

<sup>56</sup> Nat’l Ass’n of State Election Dirs., *NASED Letter to US Election Assistance Commission Regarding Deprecation of the VVSG 1.0* (Mar. 17, 2023), <https://www.nased.org/news/nasedletter031723>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

VVSGs while they undertake the lengthy transition to new voting systems. The EAC's prior process also gave jurisdictions enough time to smoothly transition to a new version of the VVSGs. The Executive Order discards these critical protections. By directing the EAC to "rescind all previous certifications" of machines, the Order overturns the established approach to decertification upon which states and localities have come to rely. Executive Order § 4(b)(ii). This will create a rushed and unprecedented timeline, resulting in chaos and sowing mistrust in elections.

### CONCLUSION

Section 4(b) of the Executive Order, if implemented, will leave states scrambling to secure federally certified equipment and will foment public mistrust in voting systems. For the foregoing reasons, along with the reasons articulated by Plaintiffs, the Court should rule in favor of Plaintiffs on their challenge to Section 4(b) of the Order, maintaining the status quo and allowing the bipartisan, independent EAC to work as designed to make elections more efficient, accessible, and secure.

I certify that this memorandum contains 5,606 words, in compliance with the Local Civil Rules.

1 DATED this 24th day of July 2025.

2 s/ Michael Rosenberger

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