BRENNAN CENTER FOR JUSTICE

July 30, 2025

Sent Via Email

Dear Election Officials:

On behalf of the Brennan Center for Justice at NYU School of Law,[1] I write to offer recommendations in response to the President's Executive Order 14248, *Preserving and Protecting the Integrity of American Elections*, 90 Fed. Reg. 14005 (Mar. 25, 2025), and to urge you not to change your election policies in response to that Order and subsequent federal actions.

Presidential executive orders are instructions to federal agencies, not to any state entities or officers. They cannot change the federal constitution or federal statutes, nor can they change state constitutions or state statutes. Moreover, while they may cajole or persuade, they have no power to direct or instruct state actors or private entities. They are meaningful only to the extent that they operate within the authority granted to the President by federal law to direct other federal actors. And in the most prominent portions of Executive Order 14248, the President lacks the legal authority to mandate the policies he seeks to impose.

Executive Order 14248 (EO 14248) purports to fundamentally alter several aspects of the election systems you administer. But you have no legal obligation to change your own operations in response to the Executive Order. Indeed, federal laws—and, in many cases, state laws—preclude adopting several of the policies purportedly advanced by the Executive Order.

Voter Registration and Documentary Proof of Citizenship

You should not change your voter registration practices in response to EO 14248. Your state law already sets out what information is required to register in the state, and may well preclude requiring information not otherwise required by state law.

EO 14248 purports to direct the Election Assistance Commission (EAC) to require that applicants produce a passport or other documentary proof of citizenship with the federal voter registration form.

[1] The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's system of democracy and justice.

Two courts have preliminarily blocked the EAC from implementing this provision because it violates the Constitution's separation of powers.[2] The president does not have the authority to mandate EAC actions. In addition, for the vast majority of states that are subject to the National Voter Registration Act, the U.S. Supreme Court has affirmed that states may not require documentary proof of citizenship as an additional requirement with the federal form.[3] Federal law requires that you accept and use the standard federal voter registration form for federal elections, which remains unchanged.

Data Sharing

We urge you not to share sensitive data with the federal government in response to EO 14248. Both state and federal law may preclude data sharing, depending on which data is shared, how, and with which federal agencies.

Sections 2(b), 2(c), 3(a), and 5(a) of EO 14248 direct federal agencies to share information with state and local officials and invite sharing from states in return. To date, the U.S. Department of Justice, acting pursuant to the Order, has requested voter information from more than a dozen states and jurisdictions. Not all data sharing contemplated by the Order is problematic, or even new. For example, Section 3(a) directs the Commissioner of Social Security to make available certain data held by the Social Security Administration (SSA). Matching Social Security number, name, and date of birth to new registrant information to verify registrant identity is clearly authorized by federal law like the Help America Vote Act, and that data has already been shared for decades. By contrast, using citizenship data from SSA to verify voter eligibility is unprecedented and potentially problematic, given that SSA's Social Security number database does not provide definitive citizenship information in every instance.

Moreover, Section 3(a) of the Order is much broader than the statutory authorization in HAVA, and other portions of EO 14248 purport to direct federal agencies to collect additional data, or to develop new capacities for the data they hold, bypassing the Constitution and congressional procedural requirements. For example, Section 5 of EO 14248 attempts to coerce states into sharing investigation records. You are not obligated to enter into an information-sharing agreement with the Department of Justice. Indeed, the Tenth Amendment prohibits the federal government from coercing states into cooperation on criminal justice matters or punishing states for declining to cooperate.

Additionally, the Order purports to mandate federal collection and consolidation of state voter files in a manner inconsistent with federal law and, in many cases, state law. Specifically, Section 2(b)(iii) of the Order directs the Department of Homeland Security (DHS), in coordination with "DOGE," to review every state's public voter registration list and voter list maintenance activities, suggesting that these agencies may endeavor to create a nationwide compilation of

---

[2] *League of United Latin Am. Citizens v. Exec. Off. of the President* ("*LULAC"*), No. 25-cv-00946, __F.Supp.3d__, 2025 WL 1187730 (D.D.C. Apr. 24, 2025); *State of California v. Trump*, No. 25-cv-10810-DJC, __ F.Supp.3d __, 2025 WL 1667949 (D. Mass. June 13, 2025). The Brennan Center is counsel to plaintiffs in one of the three cases consolidated in *LULAC*.

[3] *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

voter rolls. To that end, in April, DHS announced an expansion of the range of personal data that can be accessed through the SAVE ("Systematic Alien Verification for Entitlements") program, along with changes to the way that such data may be accessed by states.[4]

Federal law restricts federal agencies' abilities to collect data on individuals. The Privacy Act of 1974 includes strict transparency requirements for any new federal system (or the expanded capacity or use of an existing federal system) that can be searched based on an individual's name or other identifier. 5 U.S.C. § 552a. Willfully violating federal privacy protections is a federal crime. *Id.* § 552a(i); *see also* 42 U.S.C. § 405(r)(8)(D), (F). There are further restrictions for data including First Amendment activity (like registering or voting). *See* 5 U.S.C. § 552a(e)(7). Even where state privacy laws allow *private* actors to collect "public" data, the Privacy Act prohibits the federal government from amassing such data in the same way without an ample period of public notice and comment. 5 U.S.C. § 552a(e)(4).

State and local officials are under no obligation to facilitate federal agencies' violation of federal law in ways that degrade sound data management practices or states' use protections for relevant records. Most states protect sensitive voter information, like Social Security numbers, driver's license numbers, and signatures.[5] And federal courts have upheld state law protections for sensitive voter file data.[6] State and local officials conduct various list maintenance programs designed to keep the voter files accurate and up to date. While those efforts vary in scope and timing, state officials devote a great deal of attention to operating with a scalpel and not a chainsaw: pruning inaccurate information or information of voters who have become ineligible without jeopardizing the eligible registrants who remain. DOGE's track record to date has not been quite as careful, and there is no indication that the DOGE team that will review this data includes individuals with deep knowledge of the many voter registration scenarios that are entirely lawful—like voters who have (temporarily) changed their address but not their residence, or voters with addresses that are kept confidential.

Voting Systems

We urge you not to change anything about the voting systems you use in response to EO 14248. Section 4(b) of EO 14248 purports to direct the EAC to rescind federal certification for previously certified voting systems. Members of the EAC have stated publicly that this requires rescission of certifications only for any system certified to Voluntary Voting Systems Guidelines 2.0. There are several reasons why Section 4(b) is unlikely to affect you.

The EAC's guidance on voting systems is expressly designated by federal statute as *voluntary*. 52 U.S.C. §§ 21101–02. Absent a new federal statute, state and local jurisdictions have authority to decide which voting systems to purchase or deploy, so long as they comply with minimum

[4] *DHS, USCIS, DOGE Overhaul Systematic Alien Verification for Entitlements Database*, U.S. Dep't of Homeland Security (Apr. 22, 2025), https://www.dhs.gov/news/2025/04/22/dhs-uscis-doge-overhaul-systematic-alien-verification-entitlements-database.

[5] *See Access to and Use of Voter Registration Lists*, Nat'l Conference of State Legislatures (July 17, 2025), https://www.ncsl.org/elections-and-campaigns/access-to-and-use-of-voter-registration-lists (collecting state laws).

[6] *Pub. Int. Legal Found., Inc. v. Bellows*, 92 F.4th 36, 56 (1st Cir. 2024) (collecting cases).

existing federal statutory requirements that the Order has no power to alter. Nevertheless, most jurisdictions have found the nonpartisan technical expertise of the EAC's suggestions useful in the past. Eleven states and the District of Columbia have chosen to tie their own procurement processes to Commission guidance, while many others require state voting systems to be tested to federal standards.

As explained above, the President has no power to direct the EAC, which Congress established as independent and bipartisan. In addition, federal law precludes agencies like the Commission that are dependent on technical expertise from arriving at a conclusion first and seeking the facts later. Finally, federal statutes require the EAC to follow a specific process for developing new voting system guidelines, including that recommendations be reviewed by multiple advisory bodies, which must request public comment and consider the feedback they receive. 52 U.S.C. §§ 20962, 21102. Federal law does not permit that process to be short-circuited.

State and local election officials are primarily responsible for the security of election systems.[7] Turning over such equipment to anyone, even someone claiming to be from the federal government,[8] may compromise the security of those systems and create exposure to legal risk.

Receipt of Mail Ballots

We urge you not to change your deadlines for receiving mail ballots in response to EO 14248. Your state law sets a deadline for receiving mail ballots, and the president has no authority to change it. A federal court has preliminarily halted the provisions of EO 14248 that mandate "enforcement" of an Election Day ballot-receipt deadline.[9]

The Order incorrectly asserts that all mail ballots must be received by Election Day. This interpretation of federal statutes is wrong. Courts have considered the meaning of federal statutes designating Election Day and, in all but one case, they have held that federal law may require ballots to be *submitted* by Election Day but does not require ballots to be *received* by Election Day.[10] The issue has been raised in several other cases,[11] and may soon be reviewed by the Supreme Court.

---

[7] Gowri Ramachandran, *Requests for Access to Election Data and Equipment Require Balancing Risks and Public Access*, Brennan Ctr. for Justice (June 27, 2025), https://www.brennancenter.org/our-work/research-reports/requests-access-election-data-and-equipment-require-balancing-risks-and.

[8] *See* Patrick Marley & Yvonne Wingett Sanchez, *DOJ hits states with broad requests for voter rolls, election data*, Wash. Post (July 16, 2025), https://www.washingtonpost.com/politics/2025/07/16/trump-voter-fraud-elections/.

[9] *State of California v. Trump*, 2025 WL 1667949.

[10] *See, e.g.*, *Bost v. Illinois State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023), *aff'd on other grounds*, 114 F.4th 634 (7th Cir. 2024); *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354, 372 (D.N.J. 2020); *but see Republican Nat'l Comm. v. Wetzel*, 120 F.4th 200, 202 (5th Cir. 2024) (reversing the district court's decision that upheld Mississippi's ballot-receipt deadline).

[11] *See, e.g.*, *Republican Nat'l Comm. v. Burgess*, No. 24-cv-00198, 2024 WL 3445254 (D. Nev. July 17, 2024) (dismissing for lack of standing), *on appeal*, No. 24-5071 (9th Cir.); Complaint, *Issa v. Weber*, No. 25-cv-00598 (S.D. Cal. Mar. 13, 2025), ECF No. 1.

While this litigation proceeds, your state has an existing deadline for receiving mail ballots, which might include separate dispensation for ballots cast by provisional voters, deployed military and overseas citizens, or others in unusual circumstances. Your current state law is binding. The President's asserted interpretation cannot change the law.

* * *

For the reasons stated above, EO 14248 is unlawful in many respects. You are not bound to comply with the Order's policy directives, and actions to comply may risk violating federal and state laws. What's more, the threats to condition federal funding for state and local elections on compliance with the Order's mandates are not enforceable. For example, as described above, the President does not have the authority to direct EAC actions, including the EAC's disbursement of funds, which are distributed according to parameters established by Congress.

We understand the many challenges that you face as you navigate a complex regulatory landscape with increasing demands and decreasing funds. We hope this analysis helps you to assess the implications of EO 14248. We are available to discuss the provisions described above, along with any other aspect of the Order, at your convenience.

Respectfully,

/s/ Eliza Sweren-Becker
Eliza Sweren-Becker
Brennan Center for Justice