

## **Voter Registration: A Decades-Long Nonpartisan Agency Practice**

On March 7, 2021, President Biden issued Executive Order (“EO”) 14019 to promote access to voting and voter registration.<sup>1</sup> Among other directives, this EO tasked federal agencies with evaluating how, within their existing authorities, they could expand and promote voter registration opportunities. State agencies throughout the country have successfully provided nonpartisan voter registration services to customers as part of agency transactions with departments of motor vehicles (“DMV”), disability offices, and state public assistance agencies for more than twenty years, as required by the National Voter Registration Act (“NVRA”), and federal agencies should follow their example.

### **The NVRA’s Nonpartisan Requirements**

In implementing the EO, federal agencies should look to NVRA practices as a model for providing nonpartisan voter registration opportunities. The NVRA explicitly requires that voter registration be offered in a completely nonpartisan and voluntary manner, free of undue influence—and therefore provides a longstanding, workable model to emulate. Under the NVRA, agency staff must not:

(A) seek to influence an applicant’s political preference or party registration; (B) display any such political preference or party allegiance; (C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or (D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.<sup>2</sup>

Any federal agency staff offering voter registration opportunities should adhere to these requirements. The NVRA also requires agencies to inform their customers, in specific language, that they have a right to file a complaint if they believe “someone has interfered with [their] right to register or to decline to register to vote, [their] right to privacy in deciding whether to register or in applying to register to vote, or [their] right to choose [their] own political party or other political preference.”<sup>3</sup> In implementing nonpartisan agency voter registration, federal agencies could also provide this accountability mechanism to ensure (and reassure customers) that voter registration is offered in a wholly nonpartisan manner and on a voluntary basis.

### **The Hatch Act Does Not Bar Non-partisan Voter Registration**

In addition, there is no good faith basis for any concern that voter registration through federal agencies would create Hatch Act violations. The Hatch Act prevents federal employees from engaging in partisan political activities during the course of their work. “Partisan political activity” is “activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group”—in other words, activity for or against a *particular* political party, candidate, or group.<sup>4</sup> Offering

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<sup>1</sup> Executive Order 14019 on Promoting Access to Voting, 86 Fed. Reg. 13623 (Mar. 7, 2021), available at <https://www.federalregister.gov/documents/2021/03/10/2021-05087/promoting-access-to-voting>.

<sup>2</sup> 52 U.S.C. § 20506(a)(5).

<sup>3</sup> 52 U.S.C. § 20506(a)(6)(B)(v). Over the past 15 years, Demos and ACLU frequently have engaged in state NVRA compliance work and are unaware of any single instance of a complaint about state agency employee partisanship.

<sup>4</sup> See, e.g., U.S. Dep’t of Justice, “Political Activities” (available at <https://www.justice.gov/jmd/political-activities>); see also *id.* (distinguishing between the permitted activity of “assist[ing] in non-partisan voter registration drives,” and the prohibited activity of “work[ing] to register voters for one party only”).

an opportunity to register to vote in a nonpartisan manner involves no activity for or against a particular candidate or party, and as such is not partisan political activity.

As noted above, personnel with state government agencies such as DMVs are required to provide nonpartisan voter registration services to members of the public and have been doing so since the NVRA went into effect in 1995. Similarly, certain federal personnel already provide nonpartisan voter registration services: the NVRA specifically designates all federal Armed Forces recruiting offices to conduct voter registration for persons receiving services or assistance through those offices.<sup>5</sup> This voter registration through state and federal offices is conducted in a strictly nonpartisan manner. The Hatch Act therefore presents no bar to federal agency voter registration.

### **Training for Nonpartisan Voter Registration Services**

Training agency staff to offer voter registration in a nonpartisan manner is straightforward and simple, and there are many useful models from state agencies and nonpartisan voter registration groups. Excerpts from existing training materials, explaining the requirements to ensure that voter registration services are nonpartisan, are attached as Exhibits A and B.

To safeguard the nonpartisan nature of any voter registration offerings, federal agencies should follow these training models, and could even provide staff with a laminated script or information sheet to share with customers during transactions. Federal agency trainings should provide clear instructions and useful examples for acceptable and unacceptable statements or actions by agency staff during the voter registration process and should occur annually (and for new staff during on-boarding).

### **Benefits of Nonpartisan Agency Voter Registration**

By offering voter registration during agency transactions, federal agencies would not in any way pressure or influence customers to do something they would not otherwise want to do, but instead would simply provide a streamlined opportunity to register to vote or update voter registration for customers already in the process of providing the information needed for voter registration—much as state agencies have already done for decades without difficulty or partisan bias. By offering a greater number of efficient voter registration options, federal agencies can expand opportunities to participate in our electoral process, while also providing more avenues for customers to keep their voter registration information updated, and thus help election officials maintain more accurate voter lists.

After 25 years of nonpartisan state agency voter registration, the public generally views agency voter registration services as an ordinary and expected part of transactions with DMVs and other agency offices—not as a partisan endeavor. There is every reason to expect that, with comparable safeguards, the public will think the same of federal agency voter registration.

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<sup>5</sup> See Federal Voter Assistance Program, “Military Recruiting Activities” (available at <https://www.fvap.gov/vao/recruiter>). While military personnel are not directly covered by the Hatch Act, they are subject to similar prohibitions on partisan political activity under DoD Directive 1344.10, Political Activities by Members of the Armed Forces.

# **Exhibit A**

Excerpt from Arkansas Department of Human Services, Division of County Operations  
Semi-Annual Voter Registration Training (2016)

# Voter Registration DCO Training Manual

*Register to*



# Contents

- I. An Overview of the National Voter Registration Act (NVRA)**
- II. What Is Our Responsibility**
- III. Requirements to Vote in Arkansas**
- IV. Voter Qualification Question and Answer**
- V. Procedures and Forms**



# Procedures and Forms

## **DCO Employees will NOT:**

1. Seek to influence a client's political preference or party registration;
2. Display any such political preference or party allegiance.



# Procedures and Forms

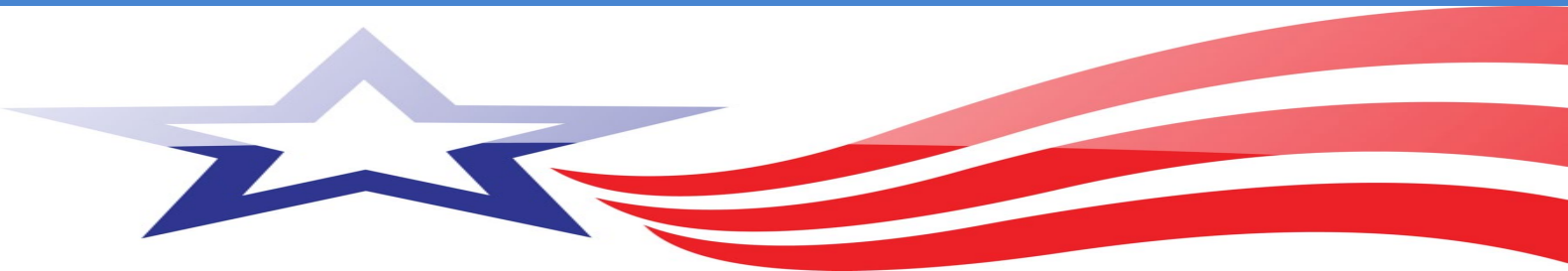
## **DCO Employees will NOT:**

3. Make any statement to a client or take any action, the purpose or effect of which is to discourage the client from registering to vote; or
4. Make any statement to a client or take any action, the purpose or effect of which is, to lead the client to believe that a decision to register or not to register has any bearing on the availability of services or benefits.



# Procedures and Forms

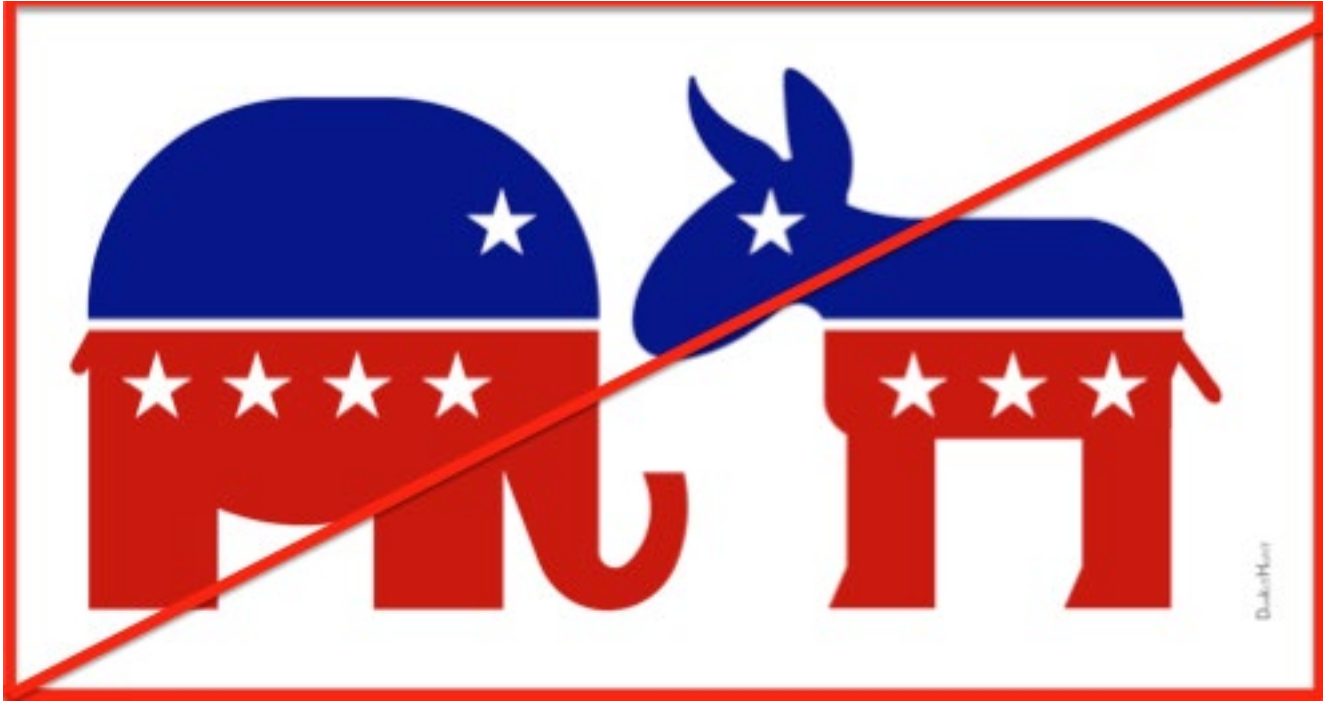
4. The client may contact the Secretary of State's office at 1-800-247-3312, if he/she feels that his/her rights have been infringed upon.
5. The County Clerk is responsible for determining the eligibility of voter registration applicants.
6. You must retain the Agency Based Declination Statement for 24 months.





## **Exhibit B**

Excerpt from ACA Volunteer Navigator Voter Registration Training (2015)



This is **not** legal advice

# NON-PARTISAN MEANS...

Not advocating, encouraging suggesting,  
or implying the preference of one  
political candidate or party over  
another.

# NON-PARTISAN MEANS...

YOU **CANNOT** :

Advise clients about which party to join or which candidate to support

Make comments, or sounds

Dissuade clients with a different political party from your own from registering

Only ask people who seem like they are part of your party to register

Wear or display partisan clothing, buttons, or stickers



# NON-PARTISAN MEANS...

YOU CAN :

- ✓ Talk about how important **voting** is
- ✓ Highlight **important issues**  
in a non-partisan way

# Non-Partisan Voter Registration

## Activity: Non-Partisan or Not Allowed

1. A Navigator is wearing a Joe Biden t-shirt in the office while performing her work duties.

Non-Partisan

or

Not Allowed

2. During enrollment, it becomes apparent the client cares about education. The assister explains that registering to vote can help the client contribute to this issue.

Non-Partisan

or

Not Allowed

# Non-Partisan Voter Registration

Activity: Non-Partisan or Not Allowed

3. There is a poster in the organization's office lobby endorsing Jon Bon Jovi, who is running for governor.

Non-Partisan or  Not Allowed

4. During enrollment the client indicates that they belong to the Republican Party, the assister does NOT offer her the opportunity to register to vote.

Non-Partisan or  Not Allowed



# Non-Partisan Voter Registration

Activity: Non-Partisan or Not Allowed

5. A Navigator says, “I know you really care about raising the minimum wage. Make sure to register and vote Democrat—they’re going to make it happen this year!”

Non-Partisan

or

Not Allowed

# Additional considerations regarding Voter Registration

1. Voter Registration will not affect your client's enrollment and it is voluntary
2. Your client's information will not be retained by your organization

# Additional considerations regarding Voter Registration

## **REMEMBER!!!**

- No incentives
- Ask everybody
- Privacy
- U.S. Citizens
- ONLY Assisting