

No. 24-1716

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**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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DAWN KEEFER, et al.,

*Plaintiffs-Appellants*

v.

PRESIDENT UNITED STATES OF AMERICA, et al.,

*Defendants-Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA  
HONORABLE JENNIFER P. WILSON  
CASE NO. 1-24-cv-00147

**BRIEF OF THE FOUNDATION FOR GOVERNMENT  
ACCOUNTABILITY AS *AMICUS CURIAE*  
IN SUPPORT OF APPELLANTS AND REVERSAL**

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit

Local Appellate Rule 26.1.1, amicus discloses that:

The Foundation for Government Accountability (FGA) is a non-profit, tax-exempt organization. FGA has no parent corporation, and no publicly held company has 10% or greater ownership in it.

### RULE 29 STATEMENTS

Amicus files this brief with the consent of all parties. *See* Fed. R. App. P. 29(a)(2). No party or party's counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief. No person other than amicus contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. P. 29(a)(4)(E).

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

The Foundation for Government Accountability (“FGA”) is a nonpartisan, non-profit organization that seeks to enhance the lives of all Americans by improving welfare, the workforce, healthcare, and election integrity policy at the state and federal levels. Launched in 2011, FGA promotes policy reforms that seek to free individuals from government dependence, restore dignity and self-sufficiency, and empower individuals to take control of their futures, including through free, fair elections that inspire confidence and encourage participation.

Since its founding, FGA has helped achieve more than 1000 reforms impacting policies in 42 states and the federal government in policy areas related to welfare, healthcare, the workforce, and election integrity. FGA advances its mission by conducting innovative research, deploying outreach and education initiatives, and equipping policymakers with the information they need to achieve meaningful reforms. FGA recently filed *amicus curiae* briefs in the United States Supreme Court in *Hile v. Michigan*, *Loper Bright Enterprises v. Raimondo*, *CFPB v. Community Financial Services Association of America*, *Biden v. Nebraska*, and *Azar v. Gresham*; in the Tenth and Eleventh Circuits in *League of Women Voters*

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<sup>1</sup> All parties have consented to this filing. No party’s counsel authored this brief in whole or in part. No party nor any party’s counsel contributed money that was intended to fund preparing or submitting the brief. No person other than amici, their members, and their counsel contributed money related to the preparation or submission of this brief.

*v. Florida Secretary of State and VoteAmerica, Inc. v. Schwab*; in the Northern District of Ohio in *Northeast Ohio Coalition for the Homeless v. LaRose*; and in the Federal District Court for the Middle District of Pennsylvania in the proceedings below.

In this case, through executive order, President Biden directed several agencies and their political appointees to unconstitutionally and unlawfully regulate elections in a way that harms Appellants in their roles as legislators and candidates. Since this case directly implicates FGA's core election integrity mission, FGA files this amicus curiae brief in support of Appellants.

### **SUMMARY OF ARGUMENT**

The Constitution gives state legislatures the authority to govern the "Times, Places, and Manner of holding elections" unless Congress passes legislation governing the same. U.S. Const. Art. I, §4, cl. 1. Executive Order (EO) 14019 turns that constitutional provision on its head, launching an unprecedented voter registration and mobilization effort carried out by federal agencies without congressional approval and in partnership with third-party organizations approved by the Biden administration. *See* 86 Fed. Reg. 13623, 13623-24 (Mar. 7, 2021). This scheme violates both the Constitution and the National Voter Registration Act (NVRA), which only allow federal agencies to be involved in voter registration activities when properly designated by a state. *See* 52 U.S.C §§20502, 20506; U.S. Const. Art. I, §4, cl. 1. Because these agencies continue to act *ultra*



*vires* under the direction of Executive Order 14019, they are violating the Administrative Procedure Act. *See* 5 U.S.C. 706(2)(C). And because they continue to use non-appropriated funds to carry out the EO, they are also violating the Anti-Deficiency Act. *See* 31 U.S.C. §1341. To make matters worse, the White House and its federal agencies have developed and executed this scheme under a cloak of darkness, hiding their efforts and partners from public view. Fred Lucas, *'Privilege': What the White House Doesn't Think You Should Know About Biden's Order on Mobilizing Voters*, The Daily Signal (May 22, 2024), [bit.ly/3XBkvrf](https://bit.ly/3XBkvrf).

This unconstitutional, illegal scheme creates an environment that disadvantages Appellants as conservative candidates for office. Courts have held that such a government-created disadvantage confers standing. “[W]hen regulations illegally structure a competitive environment—whether an agency proceeding, a market, or a reelection race—parties defending concrete interests (e.g. retention of elected office) in that environment suffer legal harm under Article III.” *Shays v. FEC*, 414 F.3d 76, 87, (D.C. Cir. 2005).

But if the lower court’s decision is allowed to stand and candidates like Appellants lack standing to challenge this scheme, it could usher in a new era of political corruption. Relying on the lower court’s decision as precedent, incumbent Presidents will be able to use the full resources and weight of the federal government to tip the scale of elections to keep themselves and their allies

in power without any judicial accountability. This would endanger the democratic ideals and principles of federalism that are the foundation of our nation. The judiciary must step in, stop this unprecedented EO, and restore the constitutional balance of power before it's too late.

## ARGUMENT

### I. Appellants have standing as candidates.

The intent and effect of EO 14019 is to harm conservative candidates' shot at a fair election. Such a harm cannot be ignored by the court as “[a]n election that is operated unlawfully has an effect on candidates’ interests, which impacts them in a ‘personal and individual way.’” *Trump v. Wis. Elections Comm’n*, 983 F.3d, 919, 924 (7th Cir. 2020).

EO 14019 was the brainchild of a New York-based organization that shared it with the Biden Administration. *Executive Action to Advance Democracy: What the Biden Harris Administration and the Agencies Can Do to Build a More Inclusive Democracy*, Demos (Dec. 3, 2020), [bit.ly/48vxP2a](https://bit.ly/48vxP2a); *Demos Applauds Biden’s Executive Order Aimed at Facilitating Voter Registration, Urges Strong Follow-Through*, Demos (March 7, 2021), [bit.ly/49InIbd](https://bit.ly/49InIbd). After sharing the plan with the administration, two key leaders of the organization were hired by the White House in roles where they could assist in its execution. Stewart Whitson, *Biden’s Unlawful Plan to Federalize Elections*, *The American Spectator* (Oct. 22, 2021), [bit.ly/3OTS1Up](https://bit.ly/3OTS1Up).

EO 14019 uses the resources of the federal government to register voters of its choice (under this President, Democrat voters) by ordering administrative agencies to work with the administration's hand-picked private third-party organizations to assist in registering certain targeted voter groups. Not only that, but the government has gone to extensive lengths to stonewall attempts of members of Congress and private organizations to obtain information on how and by whom the EO is being implemented. *See, e.g., Budd, Hagerty, Colleagues Renew Demand for Transparency on Taxpayer-Funded Voter Mobilization*, Off. of U.S. Sen. Ted Budd (2023), [bit.ly/42PQnZQ](https://bit.ly/42PQnZQ); *see also The Found. For Gov't Accountability v. United States*, 2:22-cv-252 (M.D. Fla.).

But details have slowly trickled out. FGA has discovered that the agencies implementing EO 14019 are targeting voters receiving government welfare services and benefits, the same group of voters that have historically voted Democrat. *See, e.g., Rich Morin, The Politics and Demographics of Food Stamp Recipients*, Pew Research Center (July 12, 2013), [pewrsr.ch/42M6HKW](https://pewrsr.ch/42M6HKW); *see also* The Maxwell School of Citizenship and Public Affairs, *Maxwell School Poll: 2004-2007 Survey on Inequality and the American Public*, Roper iPoll, [bit.ly/3UO7gCj](https://bit.ly/3UO7gCj); *see also Long-Term Unemployed Survey*, Kaiser Family Foundation/NPR (Dec. 2011), [n.pr/49o1ziH](https://n.pr/49o1ziH).

For example, HHS turned nearly 1,400 community health centers, which have more than 14,000 service delivery sites across the country (including in

Pennsylvania), into voter registration agencies, where “approved” third-party groups can conduct voter outreach efforts on site. Briefing Room, *Fact sheet: Biden-Harris administration releases report on Native American Voting Rights*, The White House (2022), [bit.ly/3zm2enK](https://bit.ly/3zm2enK). According to the National Association of Community Health Centers 2022 one-year estimate, the total number of patients seen by Pennsylvania community health centers was 816,444 in one year. National Association of Community Health Centers, *Pennsylvania Health Center Fact Sheet* (Feb. 2024), [bit.ly/3KWGyB7](https://bit.ly/3KWGyB7).

The administration has done the same with the Department of Labor’s 2,300 American Job Centers, and with HUD’s more than 3,000 public housing authorities that manage 1.2 million housing units—and some of these job centers and housing authorities are in Pennsylvania. *US Department of Labor issues guidance to states, territories to designate American Job Centers as voter registration agencies*, U.S. Dep’t of Labor (2022), [bit.ly/4bOOYHc](https://bit.ly/4bOOYHc); Fred Lucas, *HUD Pushes Voter Registration Drives in Public Housing Under Biden’s Executive Order*, *The Daily Signal* (2022), [dailysign.al/3IdvyxK](https://dailysign.al/3IdvyxK).

By showing the ideologically skewed implementation of EO 14019, Appellants have thus shown that the EO has caused them as candidates to suffer “[t]he inability to compete on an equal footing due to the application of allegedly biased criteria has been recognized in many contexts as an injury in fact sufficient to support constitutional standing.” *Nelson v. Warner*, 472 F. Supp. 3d 297, 304

(S.D. W. Va. 2020) (citing *Nat. L. Party of U.S. v. FEC*, 111 F. Supp. 2d 33, 44 (D.D.C. 2000)). Appellants have also met the requirements for Article III standing as “candidates who allege that they were forced to compete in an illegally structured campaign environment have stated a sufficient injury for the purposes of Article III.” *La Botz v. FEC*, 889 F. Supp. 2d 51, 56 (D.D.C. 2012) (citing *Shays v. FEC*, 414 F.3d 76, 85 (D.C. Cir. 2005) and *Nat. L. Party*, 111 F. Supp. 2d at 44)).

The harms to Appellants are thus not generalized, as the district court erroneously found, but are precisely the type of injury long recognized as sufficient for standing. For Appellants’ injury to be generalized, it would need to be “shared in substantially equal measure by all or a large class of citizens.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). But across the pool of partisan candidates, the impact of this EO will be felt almost entirely by conservative candidates, including Pennsylvania Republican legislators, and will not be shared by all candidates in “equal measure.” The EO is a plan produced by a left-leaning organization, executed by a Democratic administration, with the assistance of private third-party organizations hand-picked by that Democratic administration.

The D.C. Circuit’s decision in *Shays* is instructive on Appellants’ candidate standing. In *Shays*, two congressmen challenged several FEC regulations that permitted election practices prohibited by the Bipartisan Campaign Finance Reform Act of 2002 (BCRA). 414 F.3 at 85. The D.C. Circuit held that the

congressmen had standing as *candidates* to challenge the regulations because they would be forced to “compete for office in contests tainted by BCRA-banned practices,” which would subject the congressmen to “intensified competition.” *Id.* at 85-86.

Here, Appellants face a similar but even more tainted election scenario. The Biden administration and Democrats in the Pennsylvania executive branch are designating federal agencies inside Pennsylvania as voter registration agencies—a power specifically reserved to the Pennsylvania legislature. *See* 52 U.S.C. §§20502, 20506; U.S. Const. Art. I, §4, cl. 1. This also violates Pennsylvania law. 25 Pa. Cons. Stat. Ann. §1101 *et seq.*; Pa. Const. Art. II, §1. These federal agencies, by engaging in voter registration and other election-related activities outside of their statutory authority, are violating the Administrative Procedure Act. 5 U.S.C. §706(2)(C). The administration’s efforts to carry out EO 14019 are not authorized by the NVRA or any other federal statute. *See* 52 U.S.C. §§20502, 20506. These efforts thus “‘form[] no part of the power to be conferred upon the national government’ by the Elections Clause.” *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 17 (2013) (quoting *The Federalist*, No. 60, at 371 (A. Hamilton)). Finally, the implementing agencies are violating the Anti-Deficiency Act by carrying out election-related activities with no Congressional appropriation. *See* 31 U.S.C. §1341. These unlawful actions create an illegal

structure that hurts Appellants' ability to compete for elected office on equal footing.

As in *Shays*, the candidates here will be forced to compete in elections tainted by unlawful practices if the implementation of EO 14019 is allowed to proceed. Moreover, given the clear evidence (described in detail below and elsewhere) that the Biden administration and other Democrats are working with left-leaning organizations to implement this EO and the fact that the Biden administration is targeting Democrat-leaning individuals for voter registration, it is obvious that the Appellants will be subject to unfair competition—even more unfair than the competitive harms that conferred standing in *Shays*. The Appellants need only show that the administration's secret and illegal scheme in EO 14019 has disadvantaged their electoral prospects. Because Appellants have done so, they have standing as candidates to sue.

**II. EO 14019 is bad public policy and allows the sitting President to abuse the power of the federal government to benefit partisan allies.**

Through EO 14019 the sitting President is abusing the power of the federal government to create a direct electoral benefit for himself and his political party. Executive Order 14019 provides that “[e]xecutive departments and agencies should partner with . . . election officials to protect and promote the exercise of the right to vote, eliminate discrimination and other barriers to voting, and expand access to voter registration and accurate election information.” 86 Fed. Reg. 13623 (Mar. 7, 2021). The EO further states that this includes “combat[ing]

misinformation” and “assisting applicants in completing voter registration and vote-by-mail ballot application forms.” *Id.* In the ensuing years, federal agencies have implemented EO 14019 in ways that favor the President and his party.

For example, in April 2022, the U.S. Department of Education sent a “dear colleague” letter to universities in most states and Washington, D.C., including those located in the Commonwealth of Pennsylvania. Federal Student Aid, GEN-22-05, Requirements for Distribution of Voter Registration Forms (Apr. 26, 2024), [bit.ly/3xniNPK](https://bit.ly/3xniNPK). The letter instructed parties to make “a good faith effort to distribute voter registration forms to their students.” *Id.* It further clarified that the use of Federal Work Study funds “to support voter registration activities” was permissible, whether they occur “on or off-campus.” *Id.* Additional guidance released earlier this year instructs that such “work” can include “broad-based get-out-the-vote activities.” Federal Student Aid, GEN-24-03, Use of Federal Work-Study Funds for Voter Registration, (Feb. 26, 2024), [bit.ly/3KZZlvj](https://bit.ly/3KZZlvj). All of this was designed to increase young voter registration, a group that disproportionately votes Democratic. Monica Potts and Holly Fuong, *Voters under 30 are trending left of the general electorate*, ABC News, (Oct. 23, 2023), <https://bit.ly/4cBiZda>.

The administration has also targeted voters who are low-income and welfare-dependent—again, groups that tend to vote more Democratic. For example, the U.S. Department of Agriculture had issued letters to state agencies



administering Supplemental Nutrition Assistance Program and Women, Infants, and Children programs, instructing them to promote voter registration and voting information with federal funds. The White House, *Fact Sheet: Biden-Harris Administration Releases Report on Native American Voting Rights* (Mar. 24, 2022), [bit.ly/3RJhUrq](https://bit.ly/3RJhUrq).

Likewise, the IRS has implemented the EO through the Stakeholder Partnerships Education and Communication (“SPEC”) program, a network of national and local organizations that prepare tax returns for free for those whose incomes are below \$54,000. IRS, *Become an IRS Partner to Help in your Community* (May 9, 2024), [bit.ly/45OHh0T](https://bit.ly/45OHh0T). In June 2022, the IRS declared that the SPEC program must “encourage[e] SPEC Partners to provide . . . information to taxpayers at their local VITA/TCE sites either during the filing season or throughout the year.” U.S. Dep’t of the Treasury, *Fact Sheet: Guidance for Promoting Voter Registration at VITA/TCE Sites for SPEC Partners*, Pub. 5665 (June 2022), [bit.ly/3xsDdH3](https://bit.ly/3xsDdH3). This includes providing information on “[h]ow to engage in other non-partisan efforts (such as outreach campaigns) that promote voter participation.” *Id.*

The White House has papered over the partisan nature of EO 14019 by declaring that the third-party non-profit organizations that it has hand-picked for federal voter registration are non-partisan, *see* 86 FR 13623 (Mar. 10, 2021), but simply stating that they are non-partisan does not make it so. So far, among those

third-party organizations that are publicly known, not a single one is conservative or even politically moderate. *See* E-mail from Devontae Freeland, Spec. Ass't. Off. of White House Counsel (July 12, 2021, 5:03:34PM EST), [bit.ly/3VDU3dY](https://bit.ly/3VDU3dY).

While EO 14019 is unquestionably aimed at politically benefitting Democrats, it is not hard to envision a way by which a future Republican administration could implement a similar order to benefit its allies. This could be done by utilizing federal agencies to target and turnout rural voters, veterans, homeowners, or other groups of people who tend to vote for Republicans. *See Changing Partisan Coalitions in a Politically Divided Nation*, Pew Research Center (Apr. 9, 2024), <https://pewrsr.ch/45M5x3A>. Such a scheme would equally exceed the limits of the law, and again articulates why it is bad policy for the mechanisms of the federal government to be leveraged by the party in control of the executive branch each election.

Because of the Administration's secrecy, so much about EO 14019 is still unknown. But what *is* known leaves no doubt that the President's voter registration and mobilization scheme is targeting Democrat voters to advantage Democrat candidates. This plainly impacts the manner in which Pennsylvania runs its elections and how conservative candidates compete within them. The unconstitutional and secretive nature of this EO, in defiance of congressional demands and court orders for more information, will unfairly tilt the electoral playing field in favor of the President's party, subjecting candidates like

Appellants to tainted elections and intensified competition. As a result, Appellants have standing to challenge EO 14019, and the order dismissing this case must be reversed.

### CONCLUSION

This Court should reverse.

Respectfully Submitted,

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## COMBINED CERTIFICATIONS

I certify the following:

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This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 2,801 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word version 2308 in 14-point Times New Roman.

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Dated: July 3, 2024

/s/ David J. Craig  
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### **CERTIFICATE OF SERVICE**

I certify that on this 3rd day of July, 2024, the foregoing *Amicus Curiae* Brief for the Foundation for Government Accountability was filed electronically through the court's CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

Dated: July 3, 2024

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