



January 20, 2022

The Honorable Shirley Weber  
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*Via Electronic Mail*

**Re: Designation of Federal Agencies in California as NVRA Voter Registration Agencies**

Dear Secretary Weber:

I write to you on behalf of ACLU Foundation of Northern California (ACLU) to ask that your office designate certain federal agencies providing services to Californians as voter registration agencies under Section 7 of the National Voter Registration Act (NVRA). Designation of federal agencies can help millions of additional eligible Californians register to vote or update their registration and can reduce disparities in democratic participation for low-income voters and voters of color. A recent initiative from the White House, along with related commitments from certain federal agencies, means that now is the time for our state to activate this largely-untapped voter registration resource in the NVRA.

Voter registration remains one of the greatest barriers to political participation in the United States, including in California. We applaud the progress that has been made in our state over recent years through the implementation of much-needed reforms like automatic voter registration at the California Department of Motor Vehicles (DMV) and statewide same day registration. However, California still ranks in the bottom third of all states in the country when it comes to voter registration rates,<sup>1</sup> and there remain 2.8 million eligible but unregistered voters in our state.<sup>2</sup> Studies have shown that these eligible, unregistered voters are disproportionately

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<sup>1</sup> U.S. Census Bureau, Voting and Registration in the Election of November 2020, Table 4a, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

<sup>2</sup> Cal. Secretary of State, 15 Day Report of Registration, (August 30, 2021), *available at* <https://elections.cdn.sos.ca.gov/ror/15day-recall-2021/historical-reg-stats.pdf>.

younger, poorer, people with disabilities, people with limited English proficiency, and people of color.<sup>3</sup> This is not surprising given that requirements to register before casting a ballot were designed, in part, to keep Black people, low-income people, and immigrants from voting.<sup>4</sup> Once a voter is registered, however, disparities in their turnout during elections tend to decrease.<sup>5</sup> For example, in November 2020, 81% of registered California voters across race and ethnicity turned out to vote, compared to just 71% of the state’s overall eligible voter population.<sup>6</sup>

The NVRA was enacted in 1993 to help close disparities in access to democracy by “establish[ing] procedures [to] increase the number of eligible citizens who register to vote.”<sup>7</sup> Indeed, the NVRA has played a major role improving registration and reducing participation gaps over the last 25 years, primarily through voter registrations during transactions with DMVs and public assistance and disability services offices.<sup>8</sup> Nonetheless, one provision of this law remains dramatically underutilized: the NVRA Section 7 requirement that states designate additional voter registration agencies and offices beyond public assistance and state-funded disability services offices, including potentially “federal and nongovernmental offices.”<sup>9</sup>

Although when passing the NVRA Congress found that it is the “*duty* of the *Federal*, State, and local governments to *promote* the exercise of [the] right [to vote],”<sup>10</sup> federal agencies in the past were reluctant to accept designations as NVRA voter registration agencies. Underscoring the NVRA’s original intention regarding federal agencies, however, President Biden recently issued an Executive Order Promoting Access to Voting (the “Order”) that actively encourages implementation of this largely-untapped provision of the NVRA. **The Order mandates that federal agencies accept any NVRA designations by states to the greatest extent practicable** and requires that, if an agency declines such a request, the head of the agency must provide the President with a written explanation for the decision.<sup>11</sup>

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<sup>3</sup> U.S. Census Bureau, *supra* note 1, at Tables 4b, 4c, 6, and 7.

<sup>4</sup> David Litt, TIME, The Racist History of Voter Registration, (June 18, 2020), *available at* <https://time.com/5855885/voter-registration-history-race/>.

<sup>5</sup> *See, e.g.*, Terry Ao Minnis and Niyati Shah, Human Rights Magazine Vol. 45 No. 1, Voter Registration in Today’s Democracy: Barriers and Opportunities, (Feb. 9, 2020), *available at* [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/voting-rights/-use-it-or-lose-it--the-problem-of-purges-from-the-registration/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/voting-rights/-use-it-or-lose-it--the-problem-of-purges-from-the-registration/); Matthew Di Carlo, Albert Shanker Institute, U.S. Voter Turnout (and Registration) in Comparative Perspective, (Nov. 15, 2018), *available at* <https://www.shankerinstitute.org/blog/us-voter-turnout-and-registration-comparativeperspective>.

<sup>6</sup> Cal. Secretary of State, Historical Voter Registration and Participation in Statewide General Elections 1910-2020, *available at* <https://elections.cdn.sos.ca.gov/sov/2020-general/sov/04-historical-voter-reg-participation.pdf>.

<sup>7</sup> 52 U.S.C. § 20501(b)(1).

<sup>8</sup> *See, e.g.*, Laura Williamson et. al, Dēmos, Toward a More Representative Electorate, (Dec. 21, 2018), 7-10, *available at* <https://www.demos.org/research/toward-more-representative-electorate>.

<sup>9</sup> 52 U.S.C. § 20506(a)(2)-(3)(B)(ii). Although public assistance and disability services offices are required by the NVRA to accept their designations as voter registration agencies, the NVRA states that federal agencies may be designated “with the agreement of such offices.” *Id.* at § 20506(a)(3)(B)(ii).

<sup>10</sup> *Id.* at § 20501(a)(2) (emphasis added).

<sup>11</sup> The White House, Executive Order on Promoting Access to Voting, (March 7, 2021), *available at*

We ask that your office act on the exciting opportunity that the President’s Order creates for our democracy and promptly designate the following federal agencies as NVRA Section 7 agencies, empowering them to provide voter registration services during all covered transactions in California.

## 1. U.S. Citizenship and Immigration Services Naturalization Ceremonies

U.S. Citizenship and Immigration Services (USCIS), part of the Department of Homeland Security, serves more than 800,000 people annually at naturalization ceremonies nationwide.<sup>12</sup> Each year, roughly one in five of these naturalizations is of a California resident.<sup>13</sup> Naturalized citizens experience substantially lower voter turnout than do citizens born in the U.S.,<sup>14</sup> and studies indicate that this disparity is driven largely by barriers to voter registration.<sup>15</sup> Designating USCIS as an NVRA voter registration agency through its naturalization ceremonies can help significantly close the gaps in voter registration and voter turnout for new citizens. In fact, previous California Secretary of State Debra Bowen requested that USCIS accept such a designation in 2009, though at that time the agency chose to exercise its discretion to decline the designation.<sup>16</sup> In light of the recent Order issued by President Biden,<sup>17</sup> now is the time for your office to renew this request to USCIS and to help empower the hundreds of thousands of newly-eligible voters who are naturalized each year in California.<sup>18</sup>

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<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/07/executive-order-on-promoting-access-to-voting/>. Responding to the call in President Biden’s Order to help close voter participation gaps, more than a dozen federal agencies announced this fall that they are taking specific steps to empower the individuals they serve to register to vote. The White House, FACT SHEET: Biden Administration Promotes Voter Participation with New Agency Steps, (Sept. 28, 2021), *available at*

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/28/fact-sheet-biden-administration-promotes-voter-participation-with-new-agency-steps/>.

<sup>12</sup> U.S. Dept. of Homeland Security, Office of Immigration Statistics, U.S. Naturalizations: 2019, (Aug. 2020), *available at* [https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/21\\_0824\\_plcy\\_naturalizations\\_fy2019.pdf](https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/21_0824_plcy_naturalizations_fy2019.pdf).

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

<sup>14</sup> In the 2020 General Election, 67.4% of native-born citizens voted, compared to 60.8% of naturalized citizens. For Latinx naturalized citizens, voter turnout was only 54.5%. U.S. Census Bureau, Voting and Registration in the Election of November 2020, Table 11, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

<sup>15</sup> Tova Andrea Wang & Youjin B. Kim, Dēmos, From Citizenship to Voting: Improving Registration for New Americans, (Dec. 19, 2011), *available at* [https://www.demos.org/sites/default/files/publications/fromcitizenshiptovoting\\_demos\\_2.pdf](https://www.demos.org/sites/default/files/publications/fromcitizenshiptovoting_demos_2.pdf).

<sup>16</sup> Letter from Cal. Secretary of State Debra Bowen to USCIS Director Alejandro Mayorkas, (Sept. 23, 2009), *available at* <https://elections.cdn.sos.ca.gov/nvra/correspondence/pdf/sos-letter-to-uscis-mayorkas-92309.pdf>.

<sup>17</sup> The fact sheet issued by the White House this September also recognized the value of registering voters at naturalization ceremonies by explicitly including a commitment by the Department of Homeland Security to “invite state and local governments and nonpartisan nonprofit organizations to register voters at the end of naturalization ceremonies.” The Department also promised to “develop a new online resource on voting for recently naturalized citizens.” FACT SHEET, *supra* note 11.

<sup>18</sup> Designation of naturalization ceremonies is particularly important because it will help address the time lag between when an individual becomes a U.S. Citizen and when they might interact with the DMV next. Most individuals who become naturalized are first legal permanent residents and, by showing a green card to the DMV, are eligible to obtain the same Real ID-compliant California driver’s license/ID as U.S. citizens. This means they

## 2. Department of the Interior Services to Native Americans

The White House recently announced a commitment by the Department of the Interior (DOI) to offer any Tribal College and University campuses for NVRA designation by states, wherever possible.<sup>19</sup> There are not currently any accredited Tribal Colleges or Universities in California, but there are several unaccredited schools that are actively working to obtain accreditation.<sup>20</sup> A designation of the DOI now would lay the groundwork for these schools to offer robust NVRA voter registration assistance in the future. Additionally, while the DOI may have less influence over the activities of unaccredited schools, California's Tribal Colleges and Universities should be able to take advantage of the guidance about voter registration activities that the DOI provides to schools in other states. These schools are also more likely to implement the DOI's guidance if they know that your office supports it.

Although California has taken some steps to help Native Americans gain better access to the electoral process, more should be done. Native Americans have the lowest voting rates of any racial group in America largely because they also have one of the lowest voter registration rates.<sup>21</sup> Meanwhile, California's Native American population is increasing: according to 2020 Census data, this population grew in California by 74% over the last decade.<sup>22</sup> The President's Order presents an outstanding opportunity to help improve voter participation among California's growing Native American community.

## 3. Department of Education FAFSA Program

Each year, 17.7 million students seeking financial assistance for college submit the Free Application for Federal Student Aid (FAFSA) administered by the U.S. Department of Education, and nearly two and half million of those students are California residents.<sup>23</sup> Three out

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have no incentive to update their license/ID information after becoming U.S. citizens until license/ID renewal is required five years later. Therefore, most of these new citizens do not have an opportunity to register through the DMV's automatic voter registration system for several election cycles.

<sup>19</sup> FACT SHEET, *supra* note 11; The White House, FACT SHEET: The Biden-Harris Administration is Taking Action to Restore and Strengthen American Democracy, (Dec. 8, 2021), *available at* <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/08/fact-sheet-the-biden-harris-administration-is-taking-action-to-restore-and-strengthen-american-democracy/>.

<sup>20</sup> *See, e.g.*, Emma Hall and Charlotte West, New tribal colleges offer 'sense of belonging' for Native students but hit roadblocks, (Aug. 5, 2021), *available at* <https://calmatters.org/education/higher-education/college-beat-higher-education/2021/08/california-tribal-colleges/>.

<sup>21</sup> R. Johnson, Overcoming Barriers for Native American Voters, (June 25, 2020), *available at* <https://www.pbs.org/wgbh/americanexperience/features/vote-overcoming-barriers-for-native-american-voters/>.

<sup>22</sup> *See* Amanda Ulrich, Census 2020: California population grows 6%, becomes more diverse, (Aug. 12, 2021), *available at* <https://www.desertsun.com/story/news/2021/08/12/census-2020-california-population-grows-diversity/8112412002/>.

<sup>23</sup> Mark Kantrowitz, Saving for College, FAFSA Application Statistics, (Sept. 24, 2020), *available at* <https://www.savingforcollege.com/article/fafsa-application-statistics>.

of every five FAFSA applicants are under the age of 25.<sup>24</sup> Although voter registration and turnout among California's youth has improved in recent election cycles, eligible Californians under the age of 25 remain the most underrepresented age group in our electorate with turnout approximately 20% below the average eligible voter population.<sup>25</sup> Designating the Department of Education, through the FAFSA applications it provides to California residents, as an NVRA voter registration agency would dramatically improve access to democracy for millions of young people and encourage early habits that will positively impact their long term voter participation.

#### **4. Department of the Treasury IRS Financial Services**

The U.S. Department of the Treasury, through the Internal Revenue Service (IRS), oversees several financial services for people who are low-income, elderly, disabled, or have limited English proficiency. For example, the IRS's Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs provide free tax return preparation assistance to eligible individuals. Each year hundreds of VITA and TCE organizations help millions of taxpayers prepare their tax returns.<sup>26</sup> Similarly, Low-Income Taxpayer Clinics (LITC) are organizations that receive matching grants from the IRS to represent low-income people who have a dispute with the IRS, as well as to provide tax-related outreach and education for people who speak English as a second language.<sup>27</sup> By designating California VITA, TCE, and LITC organizations under the jurisdiction of the Department of the Treasury as voter registration agencies,<sup>28</sup> your office can help bring improved voting access to millions of taxpayers who are exactly the kind of underrepresented individuals that Section 7 of the NVRA was designed to empower.

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<sup>24</sup> Federal Student Aid, U.S. Dept of Edu, FAFSA Data by Demographic Characteristics: 2019-20 Application Cycle, available at <https://studentaid.gov/data-center/student/application-volume/fafsa-school-state>.

<sup>25</sup> In 2020, turnout among eligible voters under 25 was 47.4%, compared to 67.4% of all eligible voters. For Latinx and Asian-American youth, turnout was just 39.3% and 34.7%, respectively. Center for Inclusive Democracy, California's Youth Vote: November 2020 General Election, (March 2021), available at <https://static1.squarespace.com/static/57b8c7ce15d5dbf599fb46ab/t/6046dc2eb3cdf877325d04cd/1615256623442/US+CID+California%E2%80%99s+Youth+Vote++2020+General+Election.pdf>.

<sup>26</sup> U.S. Treasury Dept., Internal Revenue Service, IRS announces 2022 Tax Counseling for the Elderly and Volunteer Income Tax Assistance Program Grants, (Updated Oct. 13, 2021), available at <https://www.irs.gov/newsroom/irs-announces-2022-tax-counseling-for-the-elderly-and-volunteer-income-tax-assistance-program-grants>; IRS Tax Volunteers, (Updated Oct. 19, 2021), available at <https://www.irs.gov/individuals/irs-tax-volunteers>.

<sup>27</sup> U.S. Treasury Dept., Internal Revenue Services, Low Income Taxpayer Clinics (LITC), available at <https://www.taxpayeradvocate.irs.gov/about-us/low-income-taxpayer-clinics-litc/>.

<sup>28</sup> The voter engagement potential of the Department of the Treasury is reflected in the White House's recent fact sheet, where it committed to "include information about registration and voter participation in its direct deposit campaigns for Americans who receive Social Security, Veterans Affairs, and other federal benefits payments." FACT SHEET, *supra* note 11.

## 5. Veterans Affairs Services

With a million and a half former service members, California is home to 8.4% of the nation's total veteran population.<sup>29</sup> Almost one-half of all veterans receive at least one benefit from the U.S Department of Veterans Affairs (VA).<sup>30</sup> These services include medical, housing, vocational rehabilitation, and employment assistance for veterans, such as the Veteran Readiness and Employment Program and the Application for Disability Compensation for former service members with disabilities, the Transitional Assistance Program for service members transitioning to civilian life, the Personalized Career Planning and Guidance Program for veterans seeking educational and career support, and the GI Bill for veterans seeking educational benefits.<sup>31</sup> If designated as NVRA Section 7 agencies, all of these programs would be able to provide opportunities for veterans in California to register to voter or update their voter registration, improving access to democracy for former service members.

## 6. Health and Human Services

The U.S. Department of Health and Human Services (HHS) administers a number of programs to promote access to health and well-being for underserved individuals and families. The HHS public health programs provided to Californians include Indian Health Services (IHS) facilities, which deliver healthcare to American Indians and Alaska Natives and provides funding for tribally and federally-run Native health programs.<sup>32</sup> HHS programs serve hundreds of millions of Americans nationwide, including by providing health coverage to more than 2.6 million people through IHS.<sup>33</sup> By offering voter registration services<sup>33</sup> during covered California transactions as designated NVRA agencies, these HHS program providers are well positioned to help close disparities in our democracy while also improving public health and well-being.<sup>34</sup>

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<sup>29</sup> U.S. Census Bureau, 2019: ACS 1-Year Estimates Subject Tables, Veteran Status, *available at* <https://data.census.gov/cedsci/table?q=veterans&tid=ACSST1Y2019.S2101&hidePreview=true>.

<sup>30</sup> U.S. Census Bureau, Benefits Received by Veterans and Their Survivors: 2017, (Nov. 2021), *available at* <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p70br-175.pdf>.

<sup>31</sup> U.S. Dept. of Veterans Affairs, Veterans Benefits Administration, (Updated Jan. 22, 2021), *available at* <https://www.benefits.va.gov/benefits/about.asp>.

<sup>32</sup> U.S. Dept of Health & Human Services, Programs & Services, *available at* <https://www.hhs.gov/programs/index.html>.

<sup>33</sup> U.S. Dept of Health & Human Services, Agency Financial Report: Fiscal Year 2020, *available at* <https://www.hhs.gov/sites/default/files/fy-2020-hhs-agency-financial-report.pdf>.

<sup>34</sup> The White House's recent fact sheet also included commitments from HHS to "launch a new access hub to connect older adults and people with disabilities to information, tools and resources to help them understand and exercise their right to vote" and for IHS to "offer its patients assistance with voter registration." FACT SHEET, *supra* note 11.

## 7. Social Security Administration

The Social Security Administration (SSA) currently provides financial assistance and anti-poverty programs for almost 70 million elderly and disabled Americans nationwide through Social Security benefits, Supplemental Security Income (SSI), or both.<sup>35</sup> Almost 10% of these individuals are California residents, more than any other state.<sup>36</sup> These programs form the foundation for retirement, life insurance, and disability insurance for millions of vulnerable people across our state. Your office can substantially expand access to registration and voting for these individuals by designating the SSA, through its administration of Social Security and SSI benefits in California, as a voter registration agency under the NVRA. Californians with disabilities receiving SSI benefits would be particularly well served by your designation of the SSA as an NVRA agency. According to the U.S. Census Bureau, in 2020, people with disabilities were 3% less likely than people without disabilities to report being registered to vote.<sup>37</sup> By designating the SSA, your office can help close this gap.

### *Conclusion*

President Biden's recent Order, along with the emerging voter outreach commitments from over a dozen federal agencies, means that now is the time to employ the largely unused provision of the NVRA which provides your office with the authority to designate federal voter registration agencies in California. Several other states – including Michigan and Maryland<sup>38</sup> – are currently also considering designation of federal agencies which serve the residents of their states. California should continue to help lead the nation in increasing access to democracy. We respectfully ask that your office promptly designate these federal agencies that serve California residents as NVRA voter registration agencies. We also ask that you use this list as a starting point and consider the designation of additional federal agencies under NVRA Section 7, if you believe such designation would reduce barriers to voting for underrepresented people. We would greatly appreciate the opportunity to meet with your team to discuss next steps for these designations and provide any support which we can to your office.

Thank you for your commitment to making our democracy fairer and more inclusive, and we look forward to hearing from you soon.

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<sup>35</sup> Social Security Administration, Monthly Statistical Snapshot: October 2021, Table 1, (Nov. 2021), *available at* [https://www.ssa.gov/policy/docs/quickfacts/stat\\_snapshot/index.html?qs](https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/index.html?qs).

<sup>36</sup> Social Security Administration, OASDI Beneficiaries by State and County: 2019, (July 2020), *available at* [https://www.ssa.gov/policy/docs/statcomps/oasdi\\_sc/2019/oasdi\\_sc19.pdf](https://www.ssa.gov/policy/docs/statcomps/oasdi_sc/2019/oasdi_sc19.pdf).

<sup>37</sup> U.S. Census Bureau, Voting and Registration in Election of November 2020: Table, (April 2021), *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

<sup>38</sup> See Bennett Leckrone, Maryland Matters, Fair Elections Advocates Urge State Bd. of Elections to Allow More Federal Agencies to Register Voters in Md., (Oct. 1, 2021), *available at* <https://www.marylandmatters.org/blog/fair-elections-advocates-urge-state-bd-of-elections-to-allow-more-federal-agencies-to-register-voters-in-md/>.

Sincerely,



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