

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION
611 Pennsylvania Ave SE #231
Washington, DC 20003

Plaintiff,

v.

U.S. DEPARTMENT OF THE TREASURY
1500 Pennsylvania Ave NW
Washington, DC 20220,

U.S. DEPARTMENT OF VETERAN
AFFAIRS
810 Vermont Ave NW
Washington, DC 20420, *and*

U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
451 7th Street SW
Washington, DC 20410

Defendants.

Civil Action No.: 1:22-cv-3034

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the production of records in the possession of Defendants U.S. Department of the Treasury (“Treasury”), U.S. Department of Veteran Affairs (“VA”), and U.S. Department of Housing and Urban Development (“HUD”) (collectively, “Defendants”).

2. Executive Order 14019, “Promoting Access to Voting,” called for each agency to submit to a “Strategic Plan” for using social media companies to promote

mail-in voting schemes; expanding “multilingual voter registration and election information”; and using federal agencies for distributing voter registration and mail-in ballots, “soliciting and facilitating approved, nonpartisan third-party organizations and State officials” to provide voter registration services on agency premises, and “assisting” voters “in completing voter registration and vote-by-mail ballot application forms.” Exec. Order No. 14,019, 86 Fed. Reg. 13,623 (Mar. 10, 2021).

3. On September 28, 2021 and December 8, 2021, the White House publicly highlighted examples of these federal agency efforts. *See* FACT SHEET: Biden Administration Promotes Voter Participation with New Agency Steps, White House (Sep. 28, 2021), available at <https://tinyurl.com/2zejsch9>; FACT SHEET: The Biden-Harris Administration is Taking Action to Restore and Strengthen American Democracy, White House (Dec. 8, 2021), available at <https://tinyurl.com/mrxt2wwv>.

4. The Biden administration’s efforts to turn federal agencies into partisan voting operations, and to fortify politically aligned private organizations working to circumvent state election integrity laws with federal taxpayer dollars, have raised significant public corruption concerns and triggered multiple Congressional investigations. Mollie Hemingway, *Yes, Biden Is Hiding His Plan to Rig the 2022 Midterm Elections*, FEDERALIST (June 23, 2022), <https://tinyurl.com/msjk8nz7>.

5. On January 19, 2022, thirty-six Members of Congress asked the Office of Management and Budget to disclose by February 22, 2022, a copy of each agency’s strategic plan; the basis, criteria, and approval authority by which third party organizations would be approved to conduct voter registration activities on federal

agency premises; who specifically within OMB is reviewing and approving these plans; and the role of OMB-OIRA Senior Counsel K. Sabeel Rahman, former President of a leftist 501(c)(3) front group called “Demos”, in the approval or review of the Executive Order and the agency plans. According to Congress, “A cursory review of [Executive Order 14,109] reveals a striking similarity between what this EO calls for and the plan developed by Demos and published on their website in December 2020. What is more, the Demos plan also called for the weaponization of the DOJ to be used as a tool to attack opponents who stand in the way of attempts to federalize elections.” Letter from Ted Budd, Rep., et al., to Shalanda Young, Dir., Off. of Mgmt. and Budget (Jan. 19, 2022), available at <https://tinyurl.com/4hmya9z2>.

6. The Office of Management and Budget did not Comply

7. On March 29, 2022, nine ranking Members in the House of Representatives wrote to Susan Rice, in her capacity as the Director of the Domestic Policy Council, and to the Office of Management and Budget, requesting, by April 29, 2022, written disclosure of, *inter alia*, the criteria for approving third-party organizations to provide voter registration services on federal premises; a list of approved third-party organizations; a list of the states that have requested assistance for voter registration from federal agencies; the approved strategic plans; and the statutory authorities enabling federal agencies to engage in voter registration and share election information. Rodney Davis, Ranking Member, H. Comm. on H. Administration, et al., to Susan Rice, Dir., Domestic Pol’y Council & Shalanda Young, Dir., Off. of Mgmt. and Budget (Mar. 29, 2022), available at

<https://tinyurl.com/yc2bsjrn>. *See also*, U.S. Const. art. I, § 4, cl. 1, which primarily assigned states with the power to establish election laws and administer elections, while delegating a complementary federal legislative role to Congress, not the President.

8. However, neither the Domestic Policy Council nor the Office of Management and Budget complied.

9. Government action that mobilizes voter registration and funds get-out-the-vote efforts necessarily risk constitutional violations under the Equal Protection Clause. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000), explaining the Equal Protection Clause requires both that the right to vote be granted on equal terms, but also that the state “not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”

10. Accordingly, on June 10, 2022, AFL sent Defendants FOIA requests specifically seeking one specific document, their “Strategic Plans.”

11. None of the Defendants have complied.

12. With the midterm election nearly approaching, the government continues to obstruct investigations into its plans relating to the executive order. *See also*, Found. for Gov’t Accountability, *DOJ Continues to Redact, Suppress Crucial Documents Involving Voter Registration Projects* (Sep. 11, 2022), <https://tinyurl.com/4hhvx59x>.

13. In response to AFL’s requests, each Defendant identified its responsive document, but unlawfully withheld it in full.

14. AFL now seeks to compel Defendants to comply with its duties under FOIA, and to release, by a date certain set by this Court, the responsive documents in full, or, if any valid exemptions apply, release all segregable non-exempt portions thereof.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

16. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

17. AFL is a nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public. All the records AFL receives will be made publicly available on AFL's website for citizens, journalists, and scholars to review and use.

18. Defendant Treasury is an agency of the federal government within the meaning of 5 U.S.C. § 552(f), is located within the District of Columbia, and has possession and control of the records AFL seeks.

19. Defendant VA is an agency of the federal government within the meaning of 5 U.S.C. § 552(f), is located within the District of Columbia, and has possession and control of the records AFL seeks.

20. Defendant HUD is an agency of the federal government within the meaning of 5 U.S.C. § 552(f), is located within the District of Columbia, and has possession and control of the records AFL seeks.

AFL'S FOIA REQUESTS

Treasury Request (2022-FOIA-00481)

21. AFL submitted a FOIA request to Treasury on June 10, 2022, requesting “The Department’s ‘strategic plan,’ that was required by Section 3(b) of Executive Order 14019 (March 7, 2021) on ‘Promoting Access to Voting,’ to be submitted to the Assistant to the President for Domestic Policy by September 23, 2021.” *See* Ex. A at 8.

22. On July 27, 2022, Treasury sent a letter to AFL stating that Treasury located six pages of records responsive to AFL’s request. *See id.* at 13.

23. In that response, Treasury stated “After carefully considering these records, I am withholding six (6) pages in full [because t]he withheld information is protected from disclosure under FOIA pursuant to 5 U.S.C. § 552(b)(5).” *See id.*

24. In that response, Treasury also provided AFL with six fully redacted pages. *See* Ex. B.

25. On July 28, 2022, AFL sent a letter appealing Treasury's determination to withhold release of the responsive records. *See* Ex. A at 1.

26. On September 6, 2022, Treasury sent a letter to AFL "reaffirming Treasury's initial decision" because "the records were properly withheld pursuant to Exemption 5 of the FOIA." *See* Ex. C.

VA Request (22-FI-HQ-01341)

27. AFL submitted a FOIA request to VA on June 10, 2022, requesting "The Department's 'strategic plan,' that was required by Section 3(b) of Executive Order 14019 (March 7, 2021) on 'Promoting Access to Voting,' to be submitted to the Assistant to the President for Domestic Policy by September 23, 2021." *See* Ex. D at 8.

28. On August 10, 2022, VA sent a letter to AFL stating that VA "located 9 pages of responsive records in reference to your request." *See id.* at 13.

29. In that response, VA stated "these documents are being withheld in full under FOIA exemption B5 for deliberative process privilege." *See id.*

30. On September 16, 2022, AFL sent a letter appealing VA's determination to withhold release of the responsive records. *See id.* at 1.

31. On September 19, 2022, VA sent a letter to AFL acknowledging receipt of AFL's appeal. *See* Ex. E.

32. As of the date of this Complaint, AFL has received no further response from VA about this FOIA request.

HUD Request (22-FI-HQ-01341)

33. AFL submitted a FOIA request to HUD on June 10, 2022, requesting “The Department’s ‘strategic plan,’ that was required by Section 3(b) of Executive Order 14019 (March 7, 2021) on ‘Promoting Access to Voting,’ to be submitted to the Assistant to the President for Domestic Policy by September 23, 2021.” *See* Ex. F at 8.

34. On September 21, 2022, HUD sent a letter to AFL stating that HUD “an eight (8) page document was located.” *See id.* at 13.

35. In that response, HUD stated it was “withholding this document in full under the deliberative process privilege of Exemption 5 of the FOIA, 5 U.S.C. § 552 (b)(5).” *See id.*

36. On September 23, 2022, AFL sent a letter appealing HUD’s determination to withhold release of the responsive records. *See id.* at 1.

37. On September 26, 2022, HUD sent two e-mails to AFL acknowledging receipt of AFL’s appeal. *See* Ex. G.

38. As of the date of this Complaint, AFL has received no further response from HUD about this FOIA request.

CLAIMS FOR RELIEF

Count One (Violation of FOIA by Treasury), 5 U.S.C. § 552

39. AFL repeats paragraphs 1-38.

40. AFL properly requested records within the possession, custody, and control of Treasury.

41. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b)(5).

42. Treasury improperly withheld the responsive records under FOIA pursuant to 5 U.S.C. § 552(b)(5).

43. AFL properly appealed Treasury's determination to withhold the responsive records in full.

44. Treasury improperly affirmed its initial determination to withhold the responsive records in full upon appeal.

45. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

46. Defendant Treasury has violated FOIA by failing to provide a lawful reason for the withholding of the responsive records and segregate exempt information in otherwise non-exempt responsive records.

Count Two (Violation of FOIA by VA), 5 U.S.C. § 552

47. AFL repeats paragraphs 1-46.

48. AFL properly requested records within the possession, custody, and control of VA.

49. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b)(5).

50. VA improperly withheld the responsive records under FOIA pursuant to 5 U.S.C. § 552(b)(5).

51. AFL properly appealed VA's determination to withhold the responsive records in full.

52. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

53. Alternatively, the Court may review this unexhausted claim because it is substantially similar to Count I's exhausted claim. *See* Memorandum Op. and Ord. at 3, *Jones v. Fed. Bureau of Prisons*, No. 03-1647 (D.D.C. May 18, 2004) (citing *Wilbur v. CIA*, 355 F.3d 675, 677 (D.C. Cir. 2004); *Hidalgo v. FBI*, 344 F.3d 1256, 1258-59 (D.C. Cir. 2003)).

54. Defendant VA has violated FOIA by failing to provide a lawful reason for the withholding of the responsive records and segregate exempt information in otherwise non-exempt responsive records.

Count Three (Violation of FOIA by HUD), 5 U.S.C. § 552

55. AFL repeats paragraphs 1-54.

56. AFL properly requested records within the possession, custody, and control of HUD.

57. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b)(5).

58. HUD improperly withheld the responsive records under FOIA pursuant to 5 U.S.C. § 552(b)(5).

59. AFL properly appealed HUD's determination to withhold the responsive records in full.

60. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

61. Alternatively, the Court may review this unexhausted claim because it is substantially similar to Count I's exhausted claim. *See* Memorandum Op. and Ord. at 3, *Jones v. Fed. Bureau of Prisons*, No. 03-1647 (D.D.C. May 18, 2004) (citing *Wilbur v. CIA*, 355 F.3d 675, 677 (D.C. Cir. 2004); *Hidalgo v. FBI*, 344 F.3d 1256, 1258-59 (D.C. Cir. 2003)).

62. Defendant HUD has violated FOIA by failing to provide a lawful reason for the withholding of the responsive records and segregate exempt information in otherwise non-exempt responsive records.

REQUEST FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Order Defendants to produce, by a date certain, all non-exempt records responsive to AFL's FOIA requests, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under claim of exemption;
- ii. Order Defendants to segregate exempt information in otherwise non-exempt responsive records.
- iii. Enjoin Defendants from improperly withholding any non-exempt records responsive to AFL's FOIA requests;

- iv. Order Defendants to grant AFL's requests for fee waivers;
- v. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant AFL such other and further relief as this Court deems proper.

Dated: October 6, 2022

Respectfully submitted,

/s/ Michael Ding
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