



MEMORANDUM

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Thomas Hicks, Vice Chair
Christy McCormick, Commissioner
Benjamin W. Hovland, Commissioner
U.S. Election Assistance Commission
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SUBJECT: Comment for Election Assistance Commission regarding petition for rulemaking submitted by America First Legal Foundation asking the Commission to require documentary proof of United States citizenship on the National Mail Voter Registration Form.

The U.S. Election Assistance Commission (“EAC”) is soliciting public comment in response to a petition for rulemaking submitted by the America First Legal Foundation (“AFLF”). The petition asks the Commission to amend 11 CFR § 9428.4 and the National Mail Voter Registration Form (“Federal Form”), promulgated pursuant to the National Voter Registration Act (“NVRA”), to require documentary proof of United States citizenship (“DPOC”) to register to vote in federal elections.

On behalf of Campaign Legal Center and Democracy Defenders Fund, we submit this public comment strongly opposing AFLF’s petition (“Pet.”), docket EAC-2025-0236.

Campaign Legal Center (“CLC”) is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis and development, and public education. Consistent with that mission, CLC advocates for transparent and accessible government processes that give everyday Americans a meaningful opportunity to participate in civic life and affect the systems that dictate how we choose our leaders.

Democracy Defenders Fund (“DDF”) is a nonprofit organization at the forefront of the battle to restore American democracy, purpose built to counter the authoritarian threats we face today. DDF brings together national, state, and local partners across the country to defend the foundations of our democracy in the court of law and in the court of public opinion.

Together, CLC and DDF oppose the addition of a DPOC requirement for voter registration applicants using the Federal Form for three main reasons. First, AFLF’s petition inappropriately asks the EAC to impose the President’s will on the Commission. Second, a DPOC requirement on the Federal Form would contravene the commands of Congress, as well as previous EAC decisions on this same subject. Finally, a DPOC requirement would severely burden without sufficient justification the ability of eligible Americans to register and vote.

I. America First Legal Foundation’s Petition Mirrors the President’s Unlawful Executive Order.

On March 25, 2025, President Trump issued Executive Order 14,248, which purports to direct the EAC to require a stringent set of documentary proof of citizenship from voter registration applicants using the Federal Form. 90 Fed. Reg. 14,005 (Mar. 25, 2025). But as AFLF’s petition openly acknowledges, Pet. at 10, multiple federal courts have already preliminarily enjoined this DPOC mandate as inconsistent with the constitutional separation of powers, *see League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135 (D.D.C. 2025) (“*LULAC*”); *California v. Trump*, No. 25-CV-10810-DJC, 2025 WL 1667949 (D. Mass. June 13, 2025).

Both courts to consider the matter thus far have held that the President does not have authority to dictate the outcome of EAC rulemaking to mandate the inclusion of a DPOC requirement on the Federal Form. Section 2(a) of Executive Order 14,248 “purports to require the EAC to amend the Federal Form and dictate the precise contents of the new rule.” *LULAC*, 780 F. Supp. 3d at 185. “But neither the Constitution nor any statute explicitly grants the President the power to dictate the contents of the Federal Form. On the contrary, both the Constitution’s Election Clause and the NVRA vest control over federal election regulation in other actors, leaving no role for the President.” *Id.* at 194 (citing U.S. Const. art. I, § 4, cl. 1; 52 U.S.C. §§ 20505, 20508).

AFLF’s petition asks the EAC to adopt DPOC requirements *identical* to those mandated by the Executive Order. *Compare* Exec. Order § 2(a) *with* Pet. at 11–12. AFLF is asking

the EAC to rubber stamp that which the courts have unambiguously stated the President does not have legal authority to direct—i.e., adoption of virtually identical language describing the precise forms of DPOC that would satisfy the Federal Form’s requirements. Granting AFLF’s petition would inappropriately sanction the President’s unwillingness to confine his exercise of authority within constitutional limits. *LULAC*, 780 F. Supp. 3d at 194.

The Commission should reject AFLF’s attempt to inappropriately impose the President’s will on the agency.

II. Both Congress and the EAC Have Already Considered and Declined to Add a DPOC Requirement to the Federal Form.

The EAC should likewise reject AFLF’s petition because adding a DPOC requirement to the Federal Form would violate federal law and the express will of Congress—a conclusion that the Commission itself has previously correctly reached.

First, in passing the NVRA, Congress explicitly considered and refused to require documentary proof of citizenship to register to vote using the Federal Form. The Senate Committee on Rules and Administration, for example, made clear that requiring applicants to attest to their U.S. citizenship under penalty of perjury, reinforced by criminal penalties, provided “sufficient safeguards to prevent noncitizens from registering to vote.” S. REP. 103-6, 11; *see also* 52 U.S.C. § 20508(b)(2).

Congress went so far as to specifically reject an amendment that would have permitted States to require voter registration applicants to produce documentary proof of citizenship. *See Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183, 1195 n.7 (10th Cir. 2014) (“Both houses of Congress debated and voted on the specific question of whether to permit states to require documentary proof of citizenship in connection with the Federal Form, and ultimately rejected such a proposal.”) (citations omitted). In so doing, Congress determined that even providing this option to States: (1) “was not necessary or consistent with the purposes of [the NVRA]”; (2) “could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the [NVRA]”; and (3) could “adversely affect the administration of the other registration programs as well.” H.R. CONF. REP. 103-66, 23, 1993 U.S.C.C.A.N. 140, 148. Neither did Congress add a DPOC requirement when it subsequently amended the NVRA through the passage of the Help America Vote Act (“HAVA”) in 2002.

The NVRA mandates that the Federal Form may only require information that is “*necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U.S.C. § 20508(b)(1) (emphasis added). Congress has already decided that DPOC is *not* necessary, either in connection with the Federal Form or as a requirement imposed by individual States. The Supreme Court affirmed as much in *Arizona v. Inter Tribal Council of Arizona*, finding that the “fairest reading” of the NVRA “is that a state-imposed

requirement of evidence of citizenship not required by the Federal Form is inconsistent with the NVRA's mandate that States accept and use the Federal Form.” 570 U.S. 1, 15 (2013) (cleaned up). Adding a DPOC requirement to the Federal Form would thus contravene Congress's clear instructions. Any disagreement by AFLF (or even the President) is immaterial.

Second, if Congress's intent were not enough, the agencies tasked with promulgating the Federal Form have similarly declined to impose a DPOC requirement. As early as 1994—the year after the NVRA was enacted—the Federal Election Commission (“FEC”) ¹ rejected commenters' requests to require information regarding naturalization on the Federal Form, explaining that to do so was not “absolutely essential to the registration process” because, while U.S. citizenship is a prerequisite for voting in every state “. . . [t]he issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury.” 59 Fed. Reg. at 32,316. ²

Since assuming responsibility for the Federal Form in 2002, the EAC has also rejected requests to add state-specific instructions to the Federal Form that would require documentary proof of citizenship. ³ Indeed, as recently as last month, the EAC rejected a request from Louisiana to add a proof of citizenship requirement to its State-specific instructions on the Federal Form. ⁴

In addition to emphasizing that Congress explicitly rejected an amendment to allow States to require documentary proof of citizenship on the Federal Form, the EAC has explained that the FEC and EAC each:

specifically considered and determined, in their discretion, that the oath signed under penalty of perjury, the words ‘For U.S. Citizens Only’ and later the relevant HAVA citizenship provisions, *see* 42 U.S.C. § 15483(b)(4)(A) (adding to the Federal Form two specific questions and check boxes indicating the applicant's U.S. citizenship), were all that was necessary to enable state officials to establish the bona fides of a voter registration applicant's citizenship. ⁵

¹ When enacted in 1993, the NVRA delegated the responsibility for prescribing the Federal Form to the FEC. The Help America Vote Act of 2002 transferred all functions the FEC previously exercised under 52 U.S.C. § 20508(a) to the EAC. *See* 52 U.S.C. § 21132.

² National Voter Registration Act of 1993, 59 Fed. Reg. 32,311 (June 23, 1994) (codified at 11 C.F.R. pt. 8).

³ *See* U.S. Election Assistance Comm'n, Dkt. No. EAC-2013-0004, Mem. Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Voter Registration Form (Jan. 17, 2014) (describing rejection of 2006 request from Arizona and 2013 requests from Arizona, Georgia, and Kansas to modify the Federal Form to include state instructions requiring documentary proof of citizenship).

⁴ Letter from Brianna Schletz, Exec. Dir., Election Assistance Comm., to Nancy Landry, La. Sec'y of State (Sept. 11, 2025) (Ex. 1, Case No. 3:25-cv-00413-JWD-SDJ (M.D. La.), ECF No. 54-1).

⁵ U.S. Election Assistance Comm'n, Dkt. No. EAC-2013-0004, Mem. Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Voter Registration Form, at 22.

Likewise, when the EAC’s then-Executive Director unilaterally approved requests from Arizona, Georgia, and Kansas to add a DPOC requirement to their state-specific instructions on the Federal Form in 2016, his action was preliminarily enjoined. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 15 (D.C. Cir. 2016). Then-Executive Director Newby’s action was ultimately permanently enjoined because the Commission had not made any determination that a DPOC requirement was “necessary” to assess voter eligibility or administer the process of voter registration. *League of Women Voters of U.S. v. Harrington*, 560 F. Supp. 3d 177, 188–89 (D.D.C. 2021).

In short, federal law limits the Commission’s discretion to add a DPOC requirement to the Federal Form. Both Congress and the agencies responsible for maintaining the Federal Form—including the EAC itself—have repeatedly found that DPOC is not “necessary” to assess voter eligibility. As outlined below, nothing about current conditions justifies a change in approach.

III. Existing Law and State Voter List Maintenance Practices are Sufficient to Prevent Noncitizen Voting.

Putting aside the mandate of Congress and the EAC itself, adding a DPOC requirement to the Federal Form is not “necessary” because existing state voter list maintenance practices are already sufficient to ensure that noncitizens do not register and vote. AFLF’s examples of supposed voter fraud by noncitizens ignore any evidence beyond initial press releases announcing the opening of investigations into *potential*—not confirmed—wrongdoing and, as a result, are deeply misleading. *See* Pet. at 8. The overwhelming weight of credible evidence demonstrates that widespread voter fraud simply does not exist. For example:

- Following the 2020 general election, Former Attorney General Bill Barr declared that the Department of Justice found no evidence of “widespread fraud.”⁶
- In Texas, the Secretary of State himself admitted that he erroneously included 25,000 eligible voters on his list, and a federal court concluded both that the State’s program was “a solution looking for a problem” and that the evidence proved “there is no widespread voter fraud.” *Tex. League of United Latin Am. Citizens v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019). Indeed, Texas Secretary of State David Whitley “accepted responsibility and apologized for the failure to seek confirmation of the accuracy, appropriateness, competency and due diligence of the process before the rollout.” *Id.* Secretary Whitley ultimately resigned amidst criticism of this attempted voter purge.⁷

⁶ Michael Balsamo, *Barr Says No Election Fraud Has Been Found by Federal Authorities*, NPR (Dec. 1, 2020), <https://www.npr.org/2020/12/01/940819896/barr-says-no-election-fraud-has-been-found-by-federal-authorities>.

⁷ Wade Goodwyn, *Texas Voting Chief Who Led Botched Voter Purge Resigns*, NPR (May 28, 2019), <https://www.npr.org/2019/05/28/727528998/texas-voting-chief-who-led-botched-voter-purge-resigns>.

- Similarly, in 2024, the Tennessee Secretary of State sent letters to nearly 14,000 voters accusing them of voting while ineligible based on data from the state driver's license agency that purportedly indicated they were not U.S. citizens, and demanding that these voters provide DPOC or face potential criminal prosecution.⁶ After facing criticism over the accuracy of the data, however, the Tennessee Secretary of State confirmed that no voters would have their registrations cancelled as a result of this program, which wrongfully identified thousands of U.S. citizens as purportedly ineligible.⁸
- The Alabama Secretary of State similarly acknowledged that the State's list maintenance program, rather than successfully identifying and removing noncitizens, improperly removed thousands of eligible U.S. citizens from the voter rolls. *See* Prelim. Inj. Hr'g Tr., *Ala. Coal. for Immigrant Just. v. Allen*, No. 2:24-cv-01254-AMM, at 5, 13–16 (N.D. Ala. Oct. 18, 2024), ECF No. 91. A federal court issued a preliminary injunction barring this process, *see* Prelim. Inj. Hr'g Tr., *Ala. Coal. for Immigrant Just.*, No. 2:24-cv-01254-AMM, at 13–16, and Alabama has actually abandoned the list maintenance program now touted by AFLF.
- Likewise in Virginia, a federal court concluded that the State's process of identifying and removing alleged noncitizens from the voter rolls did not confirm that the individuals removed "were, in fact noncitizens," and "at least some eligible citizens . . . [whose] registrations [were] canceled and were unaware that this was even so." *Va. Coal. for Immigrant Rights v. Beals*, 2024 WL 4601052, at *2 (4th Cir. Oct. 27, 2024) (internal quotation marks omitted).

In short, the specious examples of noncitizen voting put forward by AFLF do nothing to support the necessity of adding a DPOC requirement to the Federal Form.

IV. A DPOC Requirement Would Impose Substantial and Unnecessary Burdens on the Ability of Eligible U.S. Citizens to Register to Vote.

Rather than prevent noncitizen voting, a DPOC requirement—especially one as restrictive as that proposed by AFLF and the Executive Order—would do far more to ensure that eligible U.S. citizens are unable to vote than it would to keep a small handful of noncitizens off the voter rolls.

⁸ Jonathan Mattise & Kimberlee Kruesi, *Tennessee Won't Purge Voter Rolls of People Who Disregard a Letter Asking Them to Prove Citizenship*, AP News (July 17, 2020), <https://apnews.com/article/voting-citizenship-tennessee-7802df69609bc54eb55d9296f6321100>.

For example, half of Americans do not have a current U.S. passport⁹ and obtaining one costs a minimum of \$165.¹⁰ The nearly 50% of Americans who lack a current U.S. passport will be unable to avail themselves of this method of proving their citizenship without paying the fees to obtain a passport (and also, potentially, the underlying documents required as part of a passport application), functionally imposing a financial cost on the franchise for millions of Americans. There is no acceptable policy justification for putting a price tag on the fundamental right to vote; “[t]o introduce wealth or payment of a fee as a measure of a voter’s qualifications is to introduce a capricious or irrelevant factor.” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 666 (1966); *see also id.* (“Wealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process.”).

Similarly, according to data collected by the U.S. Department of Homeland Security (“DHS”), only about 56% of driver’s licenses and identification cards in circulation as of January 2025 were REAL ID-compliant, and DHS projected that a significant number of Americans still lacked a REAL ID-compliant license or other identification card by the implementation date of May 7, 2025.¹¹ Twenty-two states, in fact, had a less than 40% REAL ID compliance rate at that time. Even for those Americans who *do* have a REAL ID-compliant license, a REAL ID that also indicates U.S. citizenship on its face (sometimes called an “Enhanced License”) is only available in six states—Michigan, Minnesota, New York, Vermont, Wyoming, and Washington—and only for the payment of an additional fee.¹²

Most military IDs too do not indicate U.S. citizenship, and in any event, military IDs are necessarily only available to military servicemembers and their families, rendering this option unavailable to the vast majority of eligible voters.

As a result, the only way for many Americans to satisfy AFLF’s proposed DPOC requirement would be to provide a state- or federally-issued photo ID accompanied by other “proof of U.S. citizenship.” It is unclear, however, what documents would satisfy this requirement, creating the potential for inconsistent or unequal enforcement across states. Moreover, one recent study by the University of Maryland Center for Democracy and Civic Engagement indicates that 9% of voting-age citizens across the country—nearly 21.3 million eligible voters—lack ready access to proof-of-citizenship documents, such as a

⁹ *See* Brennan Ctr. for Justice, House Bill Would Hurt American Voters (Jan. 14, 2025), <https://perma.cc/HM66-3H6G>; YouGov, Adults Under 30 Are More Likely Than Older Americans to Have a Current U.S. Passport (Aug. 31, 2023), <https://perma.cc/5845-LNRK> (survey results reflecting that 43% of Americans have a passport); Decl. of Tyler Sterling, ¶ 24, Case No. 1:25-cv-00946-CKK (D.D.C.), ECF No. 34-1.

¹⁰ Bur. of Consular Affairs, Passport Fees, U.S. Dep’t of State, <https://perma.cc/9BDE-2ANH> (last visited Oct. 16, 2025); Bur. of Consular Affairs, Get Your Processing Time, U.S. Dep’t of State, <https://perma.cc/L988-P8Y5>, Case No. 1:25-cv-00946-CKK (D.D.C.), ECF No. 34-1.

¹¹ Minimum Standards for Driver’s Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes, 90 Fed. Reg. 2432 (Jan. 14, 2025) (to be codified at 6 C.F.R. pt. 37).

¹² U.S. Dep’t of Homeland Sec., *Enhanced Drivers Licenses: What Are They?*, <https://www.dhs.gov/enhanced-drivers-licenses-what-are-they> (last visited Oct. 20, 2025).

U.S. passport or birth certificate.¹³ Nearly 15 million Americans across the political spectrum—a disproportionate number of whom are Black, Hispanic or Latino, or between the ages of 18 and 29—do not have a driver’s license at all. Another study indicated that 15% of voters over the age of 80 and nearly one-fourth of voters between the ages of 18 and 29 lack access to current citizenship documents that meet AFLF’s proposed requirements.¹⁴ Additionally, about 80% of married women in the United States change their names upon marriage, and approximately one-third of those women who do so lack citizenship documents that reflect their current legal name.

Notably, identification cards issued by Tribal governments—including Enhanced Tribal IDs—would not satisfy AFLF’s proposed DPOC requirement, even when accompanied by other proof of citizenship documents. This is true even though under federal law, every member of a federally-recognized Tribe is a U.S. citizen at birth. *See* 8 U.S.C. § 1401(b). For Native American voters who use their Tribal ID as their primary form of identification, this will create an additional barrier to voter registration.

* * *

For the reasons explained above, CLC and DDF strongly oppose the addition of a DPOC requirement for voter registration applicants using the Federal Form. A DPOC requirement on the Federal Form would contravene the commands of Congress, and the EAC itself on the same subject. And, critically, the addition of a DPOC requirement would severely burden the ability of eligible Americans to register and vote. CLC and DDF thus urge the EAC to reject AFLF’s petition.

¹³ Jillian Andres Rothschild, Samuel B. Novey, & Michael J. Hammer, *Who Lacks Documentary Proof of Citizenship?*, Ctr. For Democracy & Civic Engagement (Mar. 2025), <https://cdce.umd.edu/sites/cdce.umd.edu/files/Who%20Lacks%20Documentary%20Proof%20of%20Citizenship%20March%202025.pdf>.

¹⁴ *The SAVE Act: How a Proof of Citizenship Requirement Would Impact Elections*, Institute for Responsive Government (Jan. 30, 2025), <https://responsivegov.org/research/the-save-act-how-a-proof-of-citizenship-requirement-would-impact-elections/>.