

U.S. Election Assistance Commission
633 3rd Street NW, Suite 200,
Washington, DC 20001
Attn: Office of the General Counsel

October 20, 2025

Re: Docket No. EAC-2025-0236
Submitted Via Federal eRulemaking Portal at www.regulations.gov

Dear General Counsel Kelliher:

On behalf of the American Civil Liberties Union of Georgia, we write in response to the petition filed by the America First Legal Foundation (“AFL” or “Petitioner”) requesting that the Election Assistance Commission start a ruling making process to consider adding a requirement of documentary proof of citizenship (“DPOC”) to the federal voter registration form. Georgia is one of the few states that currently has a state law addressing documentary proof of citizenship when registering to vote but is not in enforcement.¹ We submit these comments to request that the Election Assistance Commission (“EAC”) deny AFL’s petition asking the Commission to consider amending 11 C.F.R. § 9428.4 and the federal voter registration form (“Federal Form”) to require DPOC to register to vote in federal elections.

This comment addresses the history of the EAC decision making on this issue.

I. The Petitioner’s request to add DPOC to the Federal Form is inconsistent with the EAC’s and FEC’s prior determinations.

The federal agencies responsible for implementing the federal voter registration form required by the National Voter Registration Act (“NVRA”) have addressed requests to add Documentary Proof of Citizenship requirements to the federal forms numerous times in the 30 years since the NVRA was enacted. As detailed below, each time, the pertinent agency has

¹ See, e.g., *League of Women Voters of U.S. v. Harrington*, 560 F. Supp. 3d 177, (D.D.C. 2021).

properly rejected the request to add DPOC to the federal form. The thirty-year record of rejecting the addition of DPOC to the federal voter registration form is consistent, based on clear NVRA statutory language that the federal form “may require only such identifying information . . . as is necessary to enable the appropriate State official to assess the eligibility of the applicant,” 52 U.S.C. § 20508(b)(1), is based on a substantial record of evidence, and has been upheld by federal courts. *See, e.g., Kobach v. U.S. Election Assistance Commission*, 772 F.3d 1183 (10th Cir. 2014) (upholding decision of EAC denying request to add DPOC to federal registration form); *see also League of Women Voters v. Newby*, 838 F.3d 1, 12-14 (D.C. Cir. 2016) (issuing a preliminary injunction halting DPOC requirements and finding little evidence of noncitizen voting and significant evidence that applying DPOC requirements would lead to citizen disenfranchisement).

A. FEC rejects adding citizenship information in 1994 NVRA rulemaking

In the original 1994 rulemaking for the NVRA, the Federal Election Commission (“FEC”)² published a Notice of Proposed Rulemaking (“NPR”) for the Federal Form. National Voter Registration Act of 1993, 59 Fed. Reg. 11211 (Mar. 10, 1994). The NPR made clear that the NVRA allowed the federal form to only include “information that is ‘necessary’ to assess the eligibility of the applicant and to administer voter registration” and that “information not deemed ‘necessary’ cannot be required on the form” *Id.* According to the NPR, some states requested that the federal form include information on an applicant’s naturalization status. *Id.* at 11215. The FEC rejected this suggestion, finding that “The issue of U.S. citizenship appears to

² Prior to the establishment of the EAC in the Help American Vote Act of 2002, the FEC was the agency responsible for implementing the NVRA.

be best addressed within the oath required by the Act, and signed by the applicant under penalty of perjury as previously proposed.” *Id.*

After receiving public comment on the NPR, the FEC issued a Final Rule on June 23, 1994. National Voter Registration Act of 1993, 59 Fed. Reg. 32311 (June 23, 1994) (to be codified at 11 C.F.R. pt. 8). The FEC reaffirmed its conclusion from the NPR regarding adding information to the Federal Form related to citizenship. The FEC observed that “several commenters stated that information regarding whether or not an individual has become a naturalized citizen is essential in order to assess an individual’s qualification for voting”. *Id.* at 32316. The FEC rejected requiring additional information on naturalization or citizenship, finding it was not necessary “to assess the eligibility of the applicant or to administer voter registration or other parts of the election process.” *Id.* The FEC concluded that “[t]he issue of U.S. citizenship is addressed within the oath required by the Act and signed by the application under penalty of perjury.” *Id.* The FEC did agree to add to the Federal Form, in prominent type, the words “For U.S. Citizens Only.” *Id.*

B. EAC rejects requests to add DPOC to Federal Form in 2006

In December of 2005 the State of Arizona requested that the EAC add proof of citizenship requirements to the Arizona instructions for the Federal Form, in order to comport with the DPOC requirements recently adopted in Arizona in Proposition 200.³ Under the Arizona requirements, registrants would need to provide proof of citizenship in the form of a driver’s license number for license (or non-operating identification license) issued after October

³ Correspondence of Thomas R. Wilkey, Executive Director, Election Assistance Commission, to Jan Brewer, Arizona Secretary of State, March 6, 2006 (“Wilkey Correspondence”), *available at* EAC CERTIFICATION OF ADMINISTRATIVE RECORD, *Kobach v. EAC*, C.A. No. 5: 13-CV-4095, (Nov. 25, 2013), Doc. 79.

l, 1996; a birth certificate, passport, certificate of naturalization, or other forms of identification. Wilkey Correspondence at EAC000002.⁴ The EAC Executive Director Thomas Wilkey, in a letter dated March 6, 2006 to Arizona Secretary of State Jan Brewer, rejected the State’s proposal. *Id.* Wilkey found that the Arizona proposal would require applicants to furnish information beyond the information necessary to establish eligibility, and thus was not consistent with the NVRA. *Id.* at 2-3. Wilkey concluded that: “The State may not mandate additional registration procedures that condition the acceptance of the Federal Form. The NVRA requires states to both ‘accept’ and ‘use’ the Federal Form.” *Id.* at 3. Wilkey further observed that “Congress specifically considered whether states should retain authority to require that registrants provide proof of citizenship, but rejected the idea as ‘not necessary or consistent with the purposes of [the NVRA].’” *Id.*

The State of Arizona did not accept the decision by the EAC Director, and informed the EAC that it intended to apply the State DPOC requirements to Federal Form registrants in Arizona despite the EAC decision,⁵ and in later correspondence requested that the EAC reconsider the decision in the Wilkey Correspondence.⁶ The Chairman of the EAC, Paul

⁴ *Id.*

⁵ Correspondence of Jan Brewer, Arizona Secretary of State to Paul S. DeGregorio, Chairman, U.S. Election Assistance Comm’n (March 13, 2006), *available at* EAC CERTIFICATION OF ADMINISTRATIVE RECORD, EAC000005-6, *see supra* n.3.

⁶ Correspondence of Jan Brewer, Arizona Secretary of State to Paul S. DeGregorio, Chairman, U.S. Election Assistance Comm’n (June 20, 2006). *available at* EAC CERTIFICATION OF ADMINISTRATIVE RECORD, EAC000013-14, *see supra* n.3.

DeGregorio, called for a “Tally Vote” of the four Commissioners to approve the Arizona request.⁷ The Commission affirmed the decision of the Executive Director.⁸

C. EAC rejects requests to add DPOC to Federal Form in 2014

In January 2014, the EAC issued a Memorandum of Decision (“Decision”)⁹ rejecting requests by Arizona, Georgia, and Kansas (together the “States”) to modify the state-specific instructions on the Federal Form to require documentary proof of citizenship to register to vote. The Decision, first, affirmed that the EAC (and FEC) in 1994 and 2006 had specifically considered and determined that the oath signed under penalty of perjury, with the words “For U.S. Citizens Only” and the Federal Form’s two specific questions and check boxes indicating the applicant’s U.S. citizenship, were all that was necessary to enable state officials to establish a voter registration applicant’s citizenship. Decision at 22.¹⁰ The EAC then examined the evidence and arguments submitted and held that the States had not submitted sufficiently compelling evidence that would support the EAC reversing its prior decisions. Decision at 23. Specifically, the States had not demonstrated that requiring additional proof of citizenship was necessary for the States to enforce the citizenship requirement. Decision at 28. Rather, the EAC concluded that proof-of citizenship requirements would make the registration process cumbersome and

⁷ Memorandum from Paul S. DeGregorio, Chairman, U.S. Election Assistance Commission to EAC Comm’rs, Regarding Arizona’s Request for Accommodation (July 6, 2006). *available at* EAC CERTIFICATION OF ADMINISTRATIVE RECORD, EAC000011-12, *see supra* n.3.

⁸ Certification, Before the Election Assistance Comm’n, In the Matter of Arizona Request for Accommodation (July 31, 2006). *available at* EAC CERTIFICATION OF ADMINISTRATIVE RECORD, EAC000010, *see supra* n.3.

⁹ Memorandum of Decision Concerning State Requests to Include Additional Proof of Citizenship Instructions on the National Mail Voter Registration Form, Docket No. EAC-2013-0004, U.S. Election Assistance Comm’n (January 17, 2014), *available at* EAC NVRA Related Documents, (March 11, 2022), <https://www.eac.gov/voters/nvra-related-documents>.

¹⁰ Relying on the Supreme Court’s decision, *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) (2013).

discourage citizens from registering, thus undermining the fundamental purpose for which Congress enacted the NVRA. Decision at 41-43.

In reviewing whether the 2014 decision violated the Administrative Procedure Act (“APA”), 5 U.S.C. § 551, et. seq., the Tenth Circuit held that the EAC’s conclusion was rationally connected to the evidence and was fully consistent with the EAC’s prior reasonable interpretation of the NVRA regarding requests to add a proof-of-citizenship requirement. *Kobach*, 772 F.3d at 1198. The court credited that the EAC considered and addressed in significant detail five alternatives to requiring documentary evidence of citizenship that states can use to ensure that noncitizens do not register using the Federal Form. *Id.* at 1197. The Tenth Circuit agreed with the EAC that the States “simply did not provide the EAC enough factual evidence” to warrant reversing its prior decisions. *Id.* at 1198. Moreover, the court concluded that because the States offered little evidence that was not already considered and rejected by the EAC in 2006, changing course in 2014 would be arbitrary and capricious under the APA. *Id.* (citation omitted).

II. There is no evidence before the EAC that warrants changing its prior determinations.

Petitioner repeats the arguments made in prior petitions rejected by the EAC and the Tenth Circuit. America First Legal does not submit any additional reliable evidence that would warrant the EAC to reconsider whether proof-of-citizenship is necessary to enforce citizenship requirements. Rather, Petitioner offers the same platitudes that prior proponents of a proof-of-citizenship requirement proffered: that proof-of-citizenship is “essential to enhance the integrity and reliability of voter registration processes, ensuring that only eligible U.S. citizens are permitted to register and vote in federal elections [and] . . . to preserv[e] the appearance and reality of free and fair elections and to ensure that only U.S. citizens vote in federal, state, and

local elections.” Petition ¶ 1. These platitudes are not evidence. The question before the EAC is whether there is evidence not previously considered to warrant the EAC reversing its long-standing and well-reasoned position that requiring all applicants to submit proof-of-citizenship is not necessary to enable state election officials to determine an applicant’s eligibility.

A. Evidence of registration by non-citizens

In 2014, the AZ, GA and KS argued that a sworn statement that the applicant is a citizen as required by the Federal Form is “virtually meaningless” and “not proof at all.” Decision at 29. (citing EAC000045-605). America First Legal similarly argues that “self-attestation [of citizenship] is inherently inadequate as it depends on the honesty of applicants, leaving the system vulnerable to fraudulent registrations by foreign citizens.” Petition ¶ 6.

The EAC addressed this argument in 2014 and found “[t]he overwhelming majority of jurisdictions in the United States have long relied on sworn statements similar to that included on the Federal Form to enforce their voter qualifications, and the EAC [was] aware of no evidence suggesting that this reliance has been misplaced.” Decision at 29. Indeed, the EAC noted that “a written statement made under penalty of perjury is considered reliable evidence for many purposes.” Decision at 29.

As for evidence of voting by non-citizens, in 2014, the States submitted sworn declarations from Arizona and Kansas state and county election officials that they had identified non-citizens as having registered to vote. The EAC concluded that (a) the evidence failed to establish that the registration of noncitizens is a significant problem in either state, sufficient to show that the States are, by virtue of the Federal Form, currently precluded from assessing the eligibility of Federal Form applicants, and to the contrary, (b) the evidence submitted reflected the States’ ability to identify potential non-citizens and thereby enforce their voter qualifications

relating to citizenship, even in the absence of the requested changes to the Federal Form.

Decision at 31-36.

The recent evidence from Georgia about incidents of non-citizen voting continued to demonstrate that this is not a significant problem. In 2024, the Georgia Secretary of State Brad Raffensperger conducted an audit of the Georgia voter registration rolls on non-citizens voting. This audit found that just 20 noncitizens were registered to vote out of over 8.2 million registered voters.¹¹

The anecdotal evidence submitted by Petitioner here, even if assumed to be valid, suggests that out of tens of millions of registrations, a miniscule number of noncitizens may have registered to vote. This evidence appears to be similar in magnitude to the evidence the EAC considered in 2014 and which did not “cause [it] to conclude that additional proof of citizenship must be required of applicants for either state to assess their eligibility.” Decision at 35-36.¹² As the EAC noted, “[o]ccasional occurrences of unlawful registrations are no more reflective of the inefficacy of the existing oaths and attestations for voter registration than are the occasional violations of any other laws that rely primarily on oaths and attestations, such as those prohibiting the filing of false or fraudulent tax returns.” Decision at 35-36.

¹¹ Olivia Rubin, *Georgia voter roll audit finds only 20 noncitizens out of 8 million registered voters*, ABC News (Oct. 23, 2024), <https://abcnews.go.com/US/georgia-voter-roll-audit-finds-20-noncitizens-8/story?id=115072461>; Ga. Sec’y of State Brad Raffensperger, *Raffensperger Announces “Only American Citizen Voting” Audit* (Jul. 11, 2024), <https://sos.ga.gov/news/raffensperger-announces-only-american-citizen-voting-audit>.

¹² Petitioner does cite to two surveys that Petitioner characterizes as having found that 10-20% of aliens are illegally registered to vote. From that the author surmises that roughly 1 million to 2.7 million aliens would vote in the 2024 election. Pet. at n.51(citing James Agresti, Study: 10% to 27% of Non-Citizens Are Illegally Registered to Vote, JUSTFACTS (May 13, 2024), However, the study cited by Petitioner itself notes that there is a great deal of uncertainty about the results and number of challenges.

B. States are not precluded from using other means to enforce the requirements.

Petitioner contends that although the form warns that providing false information may lead to legal consequences, including being “fined, imprisoned,” and, for aliens, “deported from or refused entry to the United States,” the credibility of this threat is undermined by its nearly non-existent enforcement. Petition ¶ 5. But this issue was also previously addressed by the EAC in 2014, which found that States are not “precluded...from obtaining the information necessary to enforce their voter qualifications,” and that the required oaths and attestations contained on the Federal Form are sufficient to enable the States to effectuate their citizenship requirements. Decision at 40. Petitioner does not offer any evidence to contradict EAC’s prior finding. Notably, in reaching this conclusion in 2014, the EAC considered a number of mechanisms for enforcing the attestation requirement, including criminal investigations and access to databases to confirm citizenship status collected by driver licensing agencies, the federal Systematic Alien Verification for Entitlements (SAVE) database, and the Electronic Verification of Vital Events (EVVE) database. Decision at 38-40. The EAC in 2014 found that cumulatively these other measures are sufficient to enable states to obtain the information needed to verify citizenship of registrants, and that therefore adding DPOC is not necessary. Decision at 40-41. Petitioner adds nothing new to rebut the EAC’s prior determination, and its Petition fails to address several of the methods the EAC described in 2014 to enable states to verify citizenship without DPOC.

III. The requested changes would undermine the purposes of the NVRA.

The EAC must also consider whether the proof-of-citizenship requirement and related instructions requested by Petitioner undermine or negate the objective of the NVRA to “increase the number of eligible citizens who register to vote in elections for Federal office” and to “enhance[] the participation of eligible citizens as voters in elections for Federal office.” 52

U.S.C. § 20501(b). Congress itself determined that proof-of-citizenship instructions are generally “*not necessary* or consistent with the purposes of this Act,” could “permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act,” and “could also adversely affect the administration of the other registration programs....” H.R. Conf. Rep. No. 103-66, at 21 (1993) (emphasis added).

Based on the evidence before it in 2014, the EAC held both that adding a proof-of-citizenship requirement would likely hinder eligible citizens from registering to vote in federal elections and discourage the conduct of organized voter registration programs, undermining the statutory purposes of the Federal Form. Decision at 41-43.

Petitioner does not address this issue, thus providing no basis to overturn the EAC’s well-reasoned prior determination that adding DPOC requirements would undermine the purposes of the NVRA by hindering registration. Indeed, Petitioner offers no evidence to support its contention that EAC must reconsider its prior decisions that proof-of-citizenship undermines the core purpose of the NVRA. The sole assertion by Petitioner on this point is the banal observation—offered *without evidence or citation*—that most U.S. citizens have photo identification so requiring DPOC will have minimal impacts. Petition ¶ 29. The evidence and conclusions reached by EAC in 2014 that requiring documentary proof-of-citizenship would discourage or prevent millions of eligible citizens from registering to vote remain unchallenged.