No. 25-1726

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

STATE OF CALIFORNIA; STATE OF NEVADA; COMMONWEALTH OF MASSACHUSETTS; STATE OF ARIZONA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WISCONSIN,

Plaintiffs-Appellees,

v.

PRESIDENT DONALD J. TRUMP, in the official capacity as President of the United States; PAMELA BONDI, in the official capacity as Attorney General of the United States; UNITED STATES ELECTION ASSISTANCE COMMISSION; DONALD L. PALMER, in the official capacity as Chairman of the U.S. Election Assistance Commission; THOMAS HICKS, in the official capacity as Vice Chair of the U.S. Election Assistance Commission; CHRISTY MCCORMICK, in the official capacity as Commissioner of the U.S. Election Assistance Commission; BENJAMIN W. HOVLAND, in the official capacity as Commissioner of the U.S. Election Assistance Commission; PETE HEGSETH, in the official capacity as Secretary of Defense,

Defendants-Appellants.

On Appeal from the U.S. District Court
for the District of Massachusetts

BRIEF FOR *AMICI CURIAE* LEAGUE OF WOMEN VOTERS EDUCATION FUND; LEAGUE OF WOMEN VOTERS OF THE UNITED STATES; LEAGUE OF WOMEN VOTERS OF ARIZONA; HISPANIC FEDERATION; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; OCA-ASIAN PACIFIC AMERICAN ADVOCATES; AND ASIAN AND PACIFIC ISLANDER AMERICAN VOTE IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

(Counsel listed on inside cover)

Wendy Weiser
Sean Morales-Doyle
Eliza Sweren-Becker
Jasleen K. Singh
Andrew B. Garber
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-831
weiserw@brennan.law.nyu.edu
morales-doyles@brennan.law.nyu.edu
sweren-beckere@brennan.law.nyu.edu
singhj@brennan.law.nyu.edu
garbera@brennan.law.nyu.edu

Leah C. Aden
John S. Cusick
Brenda Wright
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
laden@naacpldf.org
jcusick@naacpldf.org
bwright@naacpldf.org

Miranda Galindo
Delmarie Alicea
Cesar Z. Ruiz
LATINO JUSTICE PRLDEF
475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 392-4752
mgalindo@latinojustice.org
dalicea@latinojustice.org
cruiz@latinojustice.org

Ethan Herenstein
Sophia Lin Lakin
Clayton Pierce
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
eherenstein@aclu.org
slakin@aclu.org
cpierce.aclu.org

Sarah Brannon
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
915 15th St. NW
Washington, DC 20001
(740) 632-0671
sbrannon@aclu.org

Niyati Shah
Alizeh Ahmad
ASIAN AMERICANS ADVANCING JUSTICE-AAJC
1620 L Street, NW, Suite 1050
Washington, D.C. 20036
(202) 296-2300
nshah@advancingjustice-aajc.org
aahmad@advancingjustice-aajc.org

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Amici do not have parent corporations, they are not publicly traded companies, and no publicly held corporation owns 10% or more of their stocks.

Date: January 12, 2026

/s/ Ethan Herenstein
Ethan Herenstein

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Amici are plaintiffs in *League of Women Voters Education Fund v. Trump*, No. 1:25-cv-955 (D.D.C. 2025), which was consolidated with *League of United Latin American Citizens v. Executive Office of the President* ("*LULAC*"), No. 1:25-cv-946 (D.D.C. 2025), and *Democratic National Committee v. Trump*, No. 1:25-cv-952 (D.D.C. 2025), separate challenges to Executive Order 14,248.

Amici are the League of Women Voters Education Fund, League of Women Voters of the United States, League of Women Voters of Arizona, Hispanic Federation, National Association for the Advancement of Colored People ("NAACP"), OCA-Asian Pacific American Advocates ("OCA"), and Asian and Pacific Islander American Vote ("APIAVote").[2] These nonprofit,

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[1] All parties have consented to the filing of this brief. In accordance with Rule 29 of the Federal Rules of Appellate Procedure, Amici state that no party authored any part of this brief and that no person other than Amici and its counsel contributed any funds for the preparation or submission of this brief.

[2] Like Amici, the *LULAC* Plaintiffs—League of United Latin American Citizens (LULAC), Secure Families Initiative, and Arizona Students' Association—are nonpartisan voter registration organizations that assist eligible citizens in navigating the voter registration process. Amici and the *LULAC* plaintiffs jointly briefed their challenge to Section 2(a). In addition to that claim, the *LULAC* plaintiffs also challenged Sections 3(d) and 7(a) of the Executive Order. They are filing a separate amicus brief addressing those additional provisions, but they support the

nonpartisan voter registration organizations help eligible citizens navigate the registration process nationwide and have substantial experience developing voter registration tools, educational materials, and programs that increase voter participation, including among communities with historically low registration rates. Their missions and ongoing work would be directly harmed by implementation of Section 2(a) of Executive Order 14,248, which would undermine their voter registration efforts by requiring registrants to produce a passport or other specified citizenship documentation in order to register to vote.

In the consolidated *LULAC* action, the district court first preliminarily enjoined Section 2(a) and later granted summary judgment in Amici's favor, holding that Section 2(a) violates the U.S. Constitution. *League of United Latin Am. Citizens v. Exec. Off. of the President*, 780 F. Supp. 3d 135 (D.D.C. 2025) ("*LULAC I*") (preliminary injunction); *League of United Latin Am. Citizens v. Exec. Off. of the President*, No. 25-cv-946, 2025 WL 3042704 (D.D.C. Oct. 31, 2025) ("*LULAC II*") (summary judgment). Amici's experience litigating the provision at issue in this case gives them a particularly informed perspective on its practical and

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arguments advanced by Amici in this brief.

constitutional defects. It also provides unique insight into how Defendants-Appellants (hereinafter "Defendants") have framed and litigated the meaning of Section 2(a) in the *LULAC* case, highlighting the sharp inconsistencies between their prior concessions and their current positions and the unconstitutionality of Section 2(a) altogether.

INTRODUCTION

Congress tasked the four-member bipartisan Election Assistance Commission ("EAC" or "Commission") with maintaining the national mail voter registration form ("Federal Form"). To prevent one-party control over this important aspect of voting and election administration and to ensure the Federal Form remains an easy and accessible form of registration, Congress specified that the EAC may not change the Federal Form unless a three-member bipartisan majority of commissioners agree that the change is necessary to assess voter eligibility. *See* National Voter Registration Act of 1993 ("NVRA"), Pub. L. No. 103-31, § 9, 107 Stat. 77, 87 (1993) (codified as amended at 52 U.S.C. § 20508); Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, §§ 203, 208, 802, 116 Stat. 1666, 1673–74, 1678, 1726 (2002) (codified at 52 U.S.C. §§ 20923, 20928, 21132).

In Executive Order 14,248, however, the President attempts to unilaterally dictate changes to the Federal Form. Section 2(a) of the order directs that the EAC "shall take appropriate action to require" that registrants using the Federal Form provide a passport or another narrowly-defined documentary proof of citizenship—regardless of

whether the EAC itself determines that the change is necessary. Exec. Order. § 2(a)(i).

Amici, together with the *LULAC* plaintiffs, successfully demonstrated in separate litigation that Section 2(a) violates the constitutional separation of powers. *See LULAC II*, 2025 WL 3042704, at *38 (granting summary judgment and permanently enjoining the enforcement of Section 2(a)).[3]

Drawing on their expertise and experience litigating Section 2(a) in *LULAC*, Amici write to address two critical points.

First, Defendants' representations about the meaning of Section 2(a) in this case diverge sharply from what they told the *LULAC* court. There, they argued that the EAC must implement the President's directive, while also acknowledging that a three-vote majority is required for the Commission to act. Here, by contrast, Defendants assert that Section 2(a) is not a mandate and therefore the EAC is not bound to reach any particular outcome. Instead, they now claim that the EAC has

[3] In addition to the court below and the *LULAC* court, a third federal court has held that Section 2(a) is unconstitutional. *See Washington v. Trump*, No. 2:25-cv-00602, 2026 WL 73866 (W.D. Wash. Jan. 9, 2026).

discretion about whether to implement Section 2(a) and may do so without a majority vote. This shift underscores the illegality of Section 2(a), which Defendants all but initially conceded. And it further highlights the fact that, to avoid that patent illegality, Defendants have now adopted a countertextual construction of Section 2(a) that would render it without any legal impact.

Second, Section 2(a) threatens to disrupt voter registration efforts nationwide. By imposing a documentary proof-of-citizenship requirement with the Federal Form, the order interferes with the work of nonpartisan voter registration organizations, including Amici, which provide essential services to help eligible citizens register. As the *LULAC* court explained, Section 2(a) "would directly interfere with their core activities, including providing voter registration services throughout the Nation." *LULAC II*, 2025 WL 3042704 at 14. These disruptions—harming prospective voters across the country—underscore the urgency of preventing Section 2(a) from taking effect.

ARGUMENT

Amici offer two critical contributions to this Court's consideration of whether to affirm the preliminary injunction against Section 2(a)'s

implementation. First, Defendants' current interpretation of Section 2(a) departs dramatically from the positions they took in *LULAC*. Those prior positions reflected the provision's plain meaning and the governing law applicable to the EAC. Defendants now backpedal from those correct interpretations to evade Section 2(a)'s obvious illegality. Second, Section 2(a) threatens nationwide disruption of voter registration, tying the hands of nonpartisan organizations like Amici and the *LULAC* plaintiffs that work to help Americans participate in democracy. As voter registration organizations, Amici bring important perspectives to this case distinct from those of the state parties to this case.

I. Defendants' interpretation of Section 2(a) before this Court marks a clear about-face from their position in *LULAC*.

A. Defendants' Concessions in the *LULAC* Litigation

In *LULAC*, Amici proved that Section 2(a) violates the constitutional separation of powers. *LULAC II*, 2025 WL 3042704, at *26. Their proof rested on two core propositions—one about the meaning of Section 2(a) and the other about the power of the EAC. Defendants expressly agreed with both these positions.

First, Amici argued that Section 2(a)—by its plain terms—directs the EAC to change the Federal Form in accordance with the President's

instruction, regardless of whether a bipartisan majority of commissioners conclude that such a change is necessary to assess voter eligibility. *See* Pls.' Mem. in Supp. of Prelim. Inj. at 6–7 ("Amici's PI Br."), *LULAC*, 780 F. Supp. 3d 135 (D.D.C. 2025) (No. 25-cv-0946), Dkt. No. 34-1.[4] Defendants' counsel—the then-Deputy Assistant Attorney General—repeatedly embraced the position at the *LULAC* preliminary-injunction hearing that Section 2(a) requires the EAC to add a documentary proof-of-citizenship requirement to the Federal Form, regardless of the EAC commissioners' views, because the President has ordered it.

When the court asked whether the EAC would still be required to adopt the documentary proof-of-citizenship requirement even if it concluded that it was unnecessary, Defendants' counsel responded: "Yes." Tr. of Hr'g on Mots. for Prelim. Injs. at 72:22–73:9 ("PI Tr."), Dkt. No. 145-6.[5] The court reiterated that understanding—asking whether the President's order meant that the requirement "will be adopted by EAC

[4] Unless otherwise specified, all references to "Dkt. No." herein are to the *LULAC* docket, 780 F. Supp. 3d 135 (D.D.C. 2025) (No. 25-cv-0946).

[5] For the Court's convenience, Amici have included this transcript, along with key declarations from the *LULAC* litigation, in an appendix to this brief.

even if EAC decides . . . that they do not think it's needed"—and again received the same answer: "Yes." PI Tr. 73:19–74:3. Pressed further on whether the EAC was expected to adopt Section 2(a) "no matter what process they go through," counsel confirmed: "That's the directive." PI Tr. 74:5–9. And when the court reduced the issue to a final yes-or-no question—whether the "president's view is that he has mandated that it be included, that 2(a) be adopted; and therefore, they can go through the whole process, but the bottom line is 2(a) is going to be adopted by EAC"—counsel again answered: "Yes." PI Tr. 74:18–75:4.[6]

Second, Amici argued that the EAC lacks authority to alter the Federal Form unless a bipartisan majority of its commissioners determine that a change is necessary to assess voter eligibility. *See* Amici's PI Br. at 2–3, 21–23. They explained that Congress, through HAVA, established the EAC as a multimember commission that may act

[6] After the *LULAC* court granted a preliminary injunction against Section 2(a), Defendants seemingly tried to change course, advancing the strained reading of Section 2(a) that they now offer to this Court. *See* Defs.' Mem. in Opp'n to Summ. J. at 5, Dkt. No. 163 (arguing that "Section 2(a) merely directs the EAC to begin a process"). The court rejected this new reading as "unworkable." *LULAC II*, 2025 WL 3042704, at *30; *see infra* Part I.C.

only by what is, by practical necessity, a bipartisan majority, and entrusted the Federal Form to its control. *See* HAVA §§ 201, 203, 208, 802 (codified at 52 U.S.C. §§ 20921, 20923, 20928, 21132).

Again, Defendants expressly agreed. The EAC's Executive Director acknowledged in a sworn declaration submitted to the *LULAC* court *by Defendants* that changing the Federal Form requires approval of a proposed regulation "by at least three of the four Commissioners," followed by approval of the revised Federal Form by "[t]hree Commissioners." Decl. of Brianna Schletz ¶¶ 3, 6 (Executive Director, U.S. Election Assistance Commission), Dkt. No. 85-1. Defendants made the same representation in their preliminary-injunction briefing in *LULAC*. *See* Defs.' Resp. in Opp'n to Pls.' Mot. for Prelim. Inj. Opp'n at 6, Dkt. No. 85 ("To implement EO § 2 and add a DPOC requirement, the EAC must follow certain statutory procedures," including that "three Commissioners must . . . approve the issuance of a revised Federal Form."); *see also id.* at 28 ("The EAC needs to prepare a proposed, updated regulation and approve it by a vote of at least three Commissioners."); *id.* ("Three Commissioners would need to approve the issuance of the new form."). Defendants' counsel also acknowledged at

the hearing that that the "EAC, pursuant to 52 U.S.C. 20921, is a bipartisan organization." PI Tr. 61:23–25.

B. The *LULAC* Court's Agreement with the Parties' Plain Reading of Section 2(a)

The *LULAC* court embraced both propositions when it enjoined Section 2(a). As to the meaning of Section 2(a), the court held that "Section 2(a) mandates that the EAC take action to require documentary proof of citizenship on the Federal Form." *LULAC I*, 780 F. Supp. 3d at 184. No other reading, the court explained, could "be squared with the plain text of the Executive Order." *Id.*; *see also LULAC II*, 2025 WL 3042704, at *20. The court likewise explained that, under HAVA, "the EAC may not take '[a]ny action' without 'the approval of at least three of its members,'" which "[i]n practice . . . ensures that the EAC may only take actions that have bipartisan support." *LULAC II*, 2025 WL 3042704 at *6 (quoting 52 U.S.C. § 20928).

Based on these plain readings of Section 2(a) and the statute governing the EAC, the *LULAC* court held that Amici's "constitutional separation-of-powers argument succeeds on the merits." *Id.* at *26. The court explained that the "Constitution assigns responsibility for federal election regulation to the States and to Congress, not to the President."

Id. And Congress, the court emphasized, "has closely guarded its Elections Clause powers," "never assign[ing] any responsibility for the content of the Federal Form to the President or to any other individual in the Executive Branch with the power to act unilaterally." *Id.* at *26–27. Instead, "[t]he power to alter the Federal Form is—and always has been—delegated solely to a bipartisan, independent commission with a duty to make changes only 'in consultation with the chief election officers of the States.'" *Id.* at *27 (quoting 52 U.S.C. § 20508(a)(2)). The President's attempt to unilaterally alter a key feature of federal elections that Congress assigned to a bipartisan decision-making process is therefore unlawful. *See id.* at *31.

C. Defendants' Change in Position Before This Court

Before this Court, Defendants attempt a 180-degree reversal. First, Defendants retreat from the statements made by the then-Deputy Assistant Attorney General regarding the meaning of Section 2(a). Their new position appears to be that the EAC may decide for itself whether a documentary proof-of-citizenship requirement is "necessary" under the NVRA and ignore the Executive Order if it decides it is not. *See* Appellants' Br. 14 (arguing that the challenge is not ripe because it is

"entirely speculative" whether "the EAC will make any finding that a documentary proof-of-citizenship requirement is 'necessary'"). Second, contrary to the EAC Executive Director's sworn declaration and Defendants' prior representations, Defendants now suggest that the EAC may amend the Federal Form without the approval of three commissioners. Appellants' Br. 20–21 n.3.

Not only are these arguments inconsistent with the arguments they made before the *LULAC* court, but they are also impossible to square with the plain meaning of Section 2(a) and HAVA.

Section 2(a)'s text makes its meaning clear. The Executive Order commands the EAC to change the Federal Form regardless of the commissioners' views or whether three of them favor such a change. It directs in no uncertain terms: "By the authority vested in me as President . . . it is hereby ordered [that]: . . . the Election Assistance Commission *shall take* appropriate action to require, in its national mail voter registration form . . . documentary proof of citizenship." Exec. Order § 2 (a)(i)(A) (emphasis added). It imposes a deadline for such action: The EAC must act "[w]ithin 30 days of the date of this order." *Id.* § 2(a) (i). It dictates the precise contours of the mandated requirement,

defining what forms of documentary proof will be sufficient (passports, REAL ID-compliant IDs that indicate citizenship, and official military IDs that indicate citizenship). *Id.* § 2(a) (ii). And it prescribes recordkeeping requirements for the States. *Id.* § 2(a) (i)(B). "In short, there is no mystery about what Section 2(a) purports to require or whether Section 2(a) purports to require it." *LULAC II*, 2025 WL 3042704, at *20.

Defendants' effort to now render Section 2(a) toothless fails not only as a textual matter but also as a practical one. Under their flawed, post-hoc theory, Section 2(a) imposes no obligation on the EAC unless the Commission itself determines that a change to the Federal Form is "necessary" to assess voter eligibility. *See* Appellants' Br. 14. But the district court here made clear that nothing in its injunction "shall prevent" the EAC from independently modifying the Federal Form. *See California v. Trump*, 786 F. Supp. 3d 359, 396 (D. Mass. 2025). Thus, under Defendants' countertextual reading, Section 2(a)'s mandatory directions to the EAC have no meaning. Yet at the same time, Defendants have claimed the public is harmed by the injunction prohibiting its enforcement. *See* Opp'n to Pls.' Mot. for Prelim. Inj. at 27, *California v.*

Trump, 786 F. Supp. 3d 359 (D. Mass. 2025), No. 25-cv-10810, Dkt. No. 91. This again underscores the untenable nature of their position.

HAVA is likewise clear: the EAC must itself determine whether a change to the Federal Form is necessary, and it must do so by a three-member majority. *See* HAVA § 208. Defendants' newfound counterargument rests on a fundamental misunderstanding of the relationship between the actual statutes Congress passes, as reflected in the Statutes at Large, and their subsequent codification in the U.S. Code.

Section 208 of HAVA provides: "Any action which the Commission is authorized to carry out *under this Act* may be carried out only with the approval of at least three of its members." *Id.* (emphasis added). Section 802(a) of HAVA in turn "transfer[s] to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under section 9(a) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–7(a)) before the date of the enactment of this Act." *Id.* § 802(a). Among those transferred functions is authority over the Federal Form that Congress initially assigned to the Federal Election Commission in the NVRA. Accordingly, when the EAC takes action with respect to the Federal Form, it does so

"under this Act" within the meaning of Section 208 of HAVA—and therefore may proceed only with the approval of at least three commissioners.

Defendants' contrary claim depends entirely on a codification artifact that does not change the supremacy of the Statutes at Large. When HAVA was codified, the codifiers replaced the phrase "under this Act" with "under this chapter." *Compare* HAVA § 208*, with* 52 U.S.C. § 20928. They also placed the three-member voting requirement in Chapter 209 of Title 52, while locating the EAC's responsibility for the Federal Form in Chapter 205. Seizing on this editorial choice, Defendants assert in a footnote that the EAC can amend the Federal Form without a majority consensus because it does not exercise control over the Federal Form under Chapter 209. Appellants' Br. 20 n.3.

This argument fails as a matter of black-letter law. Because only the Statutes at Large are enacted by Congress, "the Code cannot prevail over the Statutes at Large when the two are inconsistent." *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964) (quoting *Stephan v. United States*, 319 U.S. 423, 426 (1943)); *see also Cheney R.R. Co., Inc. v. R.R. Ret. Bd.*, 50 F.3d 1071, 1076 (D.C. Cir. 1995) ("When the two differ, the Statutes

at Large controls."). This principle is especially relevant where, as here, Congress uses a cross-reference such as "this Act," which must be translated during codification once the statute is broken into multiple chapters of the Code. Codifiers routinely address this problem by substituting "this chapter" for "this Act" and by supplying Editorial Notes explaining the substitution. *See* Jarrod Shobe, *Codification and the Hidden Work of Congress*, 67 UCLA L. Rev. 640, 662 (2020). Consistent with that practice, the Editorial Notes to 52 U.S.C. § 20928 expressly clarify that "[t]his chapter, referred to in text, was in the original 'this Act,' meaning Pub. L. No. 107-252 . . . known as the Help America Vote Act of 2002." *See* 52 U.S.C. § 20928 note (References in Text).

Applying that rule, a federal court has already rejected the precise argument advanced here. *See League of Women Voters of the U.S. v. Newby*, 195 F. Supp. 3d 80, 84 n.4 (D.D.C. 2016) ("[T]he Statute at Large version of the HAVA controls here, and it makes the three-member requirement applicable to actions taken in regards to the Federal Form."), *rev'd on others grounds*, 838 F.3d 1 (D.C. Cir. 2016). This Court should do the same.

II. Section 2(a) would directly interfere with Amici's voter registration services, harming voters nationwide.

Section 2(a) would devastate voter registration efforts across the country. As mentioned above, Amici and the *LULAC* Plaintiffs are nonprofit, nonpartisan organizations with a long pedigree of helping register and educate voters in diverse communities in every state in the country.[7] Collectively they help to register many thousands of eligible voters each election cycle; this work is ongoing and occurs on a regular basis every year.[8] They rely on the Federal Form to advance their

[7] *See* Suppl. Decl. of Celina Stewart ("Stewart Decl.") ¶¶ 2–4 (League of Women Voters Education Fund and League of Women Voters of the United States), Dkt. No. 145-7; Suppl. Decl. of Pinny Sheoran ("Sheoran Decl.") ¶¶ 5, 8 (League of Women Voters of Arizona), Dkt. No. 145-8; Suppl. Decl. of Christine Chen ("Chen Decl.") ¶¶ 3–6 (Asian and Pacific Islander American Vote), Dkt. No. 145-9; Suppl. Decl. of Thu Nguyen ("Nguyen Decl.") ¶¶ 3, 10–12 (OCA-Asian Pacific American Advocates), Dkt. No. 145-10; Suppl. Decl. of Tyler Sterling ("Sterling Decl.") ¶¶ 8–9, 13–16 (National Association for the Advancement of Colored People), Dkt. No. 145-11; Decl. of Jessica Guttlein ("Guttlein Decl.") ¶¶ 3–6 (Hispanic Federation), Dkt. No. 145-12; Suppl. Decl. of Juan Proaño ("Proaño Decl.") ¶¶ 2, 9–10 (League of United Latin American Citizens), Dkt. No. 145-13; Suppl. Decl. of Sarah Streyder ("Streyder Decl.") ¶¶ 3, 5, 19 (Secure Families Initiative), Dkt. No. 145-14; Suppl. Decl. of Kyle Nitschke ("Nitschke Decl.") ¶¶ 2–3 (Arizona Students Association), Dkt. No. 145-15.

[8] *See* Stewart Decl. ¶¶ 7–8; Sheoran Decl. ¶¶ 8, 12–17; Chen Decl. ¶¶ 9–10; Nguyen Decl. ¶¶ 10–12; Sterling Decl. ¶¶ 13–14; Guttlein Decl. ¶¶ 11, 15; Nitschke Decl. ¶ 4.

missions of registering voters, including through providing access to the Form online and translating it into different languages.[9] Indeed, the Federal Form is uniquely essential to their voter registration efforts, as it "consists of a singular form that can be used in almost all states and has simple requirements."[10]

A. If implemented, Section 2(a) would harm Amici's efforts to register voters across the country.

The evidence Amici and the *LULAC* Plaintiffs set out in the *LULAC* court demonstrates that Section 2(a) would make their existing voter registration efforts less effective across the nation and would thwart their registration of countless prospective voters entirely. Indeed, Defendants failed to meaningfully contest as much before the *LULAC* court.[11]

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[9] *E.g.*, Stewart Decl. ¶¶ 3, 7, 11–22; Sheoran Decl. ¶ 10; Guttlein Decl. ¶¶ 15, 20; Sterling Decl. ¶¶ 14–20; Nguyen Decl. ¶ 10; Chen Decl. ¶¶ 8–11, 13; Proaño Decl. ¶¶ 13, 15.

[10] Stewart Decl. ¶ 18; *see* Sterling Decl. ¶¶ 17–20; Chen Decl. ¶ 11; Guttlein Decl. ¶ 11.

[11] *See* Defs.' Resps. to Pls.' Statement of Undisputed Facts ¶¶ 13–14, 17–18, 21–22, 26–29, 119–22, 124, 131, Dkt. No. 163-1. To each of these undisputed facts, Defendants offered only a rote Rule 56(d) objection claiming that the *LULAC* court's scheduling order prohibited Amici from establishing their standing through declarations and other "extrinsic evidence." *See* Dkt. No. 160 at 4–5. The *LULAC* court rejected this argument, explaining that, "[c]ontrary to the Federal Defendant's

For example, Amici and the *LULAC* plaintiffs regularly conduct in-person voter registration events in public spaces like schools, churches, grocery stores, farmers markets, college campuses, and community events.[12] In their experience, prospective registrants tend not to bring copies of their passport or other sensitive documents proving citizenship "during their daily routines."[13] As a result, Section 2(a) would directly impede the effectiveness of these voter registration efforts.[14]

Even in the unlikely event that prospective registrants happened to be carrying the requisite documentation, that is no cure. In the experience of the League of Women Voters of Arizona, LULAC, and NAACP volunteers, voters are often concerned about giving sensitive personal documents to third parties, including trusted voter registration organizations.[15] And many Amici lack the resources, expertise, or willingness to assume the legal and reputational risks inherent in

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arguments, the Court's scheduling order did not place any limits on the presentation of 'extrinsic evidence' or attachments by any party." Dkt. No. 180 at 11.

[12] *E.g.*, Sterling Decl. ¶ 23; Proaño ¶¶ 9, 42.

[13] Sterling Decl. ¶ 24; *see also* Sheoran Decl. ¶¶ 12, 28.

[14] *E.g.*, Sterling Decl. ¶¶ 33, 38; Proaño Decl. ¶ 47.

[15] Sheoran Decl. ¶¶ 30–31; Proaño Decl. ¶ 47; Sterling Decl. ¶ 46.

soliciting, copying, and storing registrants' highly sensitive proof-of-citizenship documents. Organizations such as the League of Women Voters of Arizona, LULAC, and NAACP have built longstanding reputations as trusted organizations that they would not want to jeopardize by requesting to scan and retain copies of sensitive documents like passports.[16] Other Amici, including Hispanic Federation, lack the expertise to verify the range of types of identification required by Section 2(a), and "cannot risk liability by undertaking a proof-of-citizenship verification process."[17]

Section 2(a) would also undermine Amici's multi-state voter registration drives. For example, Hispanic Federation relies on the Federal Form at registration drives with residents of multiple states in settings such as sporting events in New Jersey and Broadway events in New York City.[18] It also uses the Federal Form at registration events in Charlotte, North Carolina, which attracts "out-of-state voters who live in

[16] Sheoran Decl. ¶ 31; Proaño Decl. ¶ 47; Sterling Decl. ¶ 46.

[17] Guttlein Decl. ¶ 13; *see* Sheoran Decl. ¶¶ 31–34; Sterling Decl. ¶¶ 45–47.

[18] Guttlein Decl. ¶ 11.

South Carolina, but work in Mecklenburg County, North Carolina."[19] Hispanic Federation uses the Federal Form at these events because "any eligible voter from any state may use [it]," allowing Hispanic Federation "to give the same voter registration form to every attendee, without attempting to distinguish between residents of different states, which would be impracticable."[20] Adding a documentary proof-of-citizenship requirement to the Federal Form would require Hispanic Federation to "immediately suspend [its] in-person voter registration campaigns" because it "does not have the infrastructure to collect documentary proof of citizenship from the people it helps to register to vote."[21]

Amici's reliance on the Federal Form extends to online voter registration, too. APIAVote, in partnership with Rock the Vote, has created an online multilingual voter registration program that translates the Federal Form to several languages, including some not available from the EAC: Ilocano, Thai, and Urdu.[22] Countless individuals and

[19] *Id.* ¶ 12.

[20] *Id.* ¶ 11.

[21] *Id.* ¶ 13.

[22] Chen Decl. ¶ 9.

organizations, such as OCA, rely on this platform to register voters.[23] The League of Women Voters and LULAC likewise host an online registration program through the Rock the Vote platform,[24] and Hispanic Federation also relies on a similar system though TurboVote.[25] These voter registration programs would become "immediately defunct" upon the implementation of Section 2(a) because they are "not designed to collect copies of documents showing proof of citizenship as required by the Executive Order."[26]

In addition to thwarting Amici's various voter registration activities, Section 2(a) would also prevent use of the Federal Form by the millions of United States citizens who are eligible to vote but do not possess or cannot easily access one of the four kinds of proof of citizenship Section 2(a) specifies.[27] It costs as much as $165 to obtain a passport, and

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[23] *Id.* ¶ 13; Nguyen Decl. ¶ 10.

[24] Stewart Decl. ¶¶ 7, 11, 13–14; Proaño Decl. ¶¶ 13–16.

[25] Guttlein Decl. ¶¶ 17–18, 20.

[26] *E.g.*, Chen Decl. ¶¶ 12, 14.

[27] *See* Sterling Decl. ¶¶ 49–52; Stewart Decl. ¶¶ 10, 14, 26–27; Sheoran Decl. ¶¶ 18, 27–29, 34–35; Guttlein Decl. ¶¶ 16–17, 20–22; Chen Decl. ¶¶ 12–14; *see also Newby*, 838 F.3d at 9 (documentary proof-of-citizenship requirements are "new obstacles [that] unquestionably make

less than half of voting-age U.S. citizens had a valid passport in 2023.[28] Black Americans disproportionately lack passports.[29] And over 60% of foreign-born Asian Americans are naturalized citizens,[30] including those who naturalized with their parents as children. Obtaining a naturalization certificate costs more than $500 and can take over five months.[31] Even if Section 2(a) permitted using a birth certificate to prove citizenship (which it inexplicably does not specifically contemplate), millions of Americans—including disproportionate numbers of married

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it more difficult" for organizations including the League of Women Voters and Georgia NAACP to register voters); *Fish v. Schwab*, 957 F3d 1105, 1128 (10th Cir. 2020).

[28] *See* Bureau of Consular Affs., *Passport Fees*, U.S. Dep't of State, https://perma.cc/L9ZJ-9CXE (last visited July 11, 2025), Dkt. No. 145-33; U.S. Dep't of State, *Reports and Statistics: Valid Passports in Circulation by Fiscal Year (1989-2024)* (last updated October 9, 2024), https://perma.cc/EXZ2-TVS8 (160,668,889 valid passports in circulation in 2023), Dkt. No. 145-18; U.S. Census Bureau, *Citizen Voting Age Population by Race and Ethnicity* (January 30, 2025), https://perma.cc/472R-AY7T (total estimated citizen voting age population of 332,387,540 in 2023), Dkt. No. 145-19.

[29] Sterling Decl. ¶ 49.

[30] U.S. Census Bureau, *The Foreign-Born Population in the United States: 2022*, at 7 (2024), https://perma.cc/2QPX-KTF7, Dkt. No. 145-35.

[31] U.S. Citizenship & Immigr. Servs., *G-1055, Fee Schedule*, https://perma.cc/SC3W-H3GD, Dkt. No. 145-36; U.S. Citizenship & Immigr. Servs., *Case Processing Times*, https://egov.uscis.gov/processing-times/, Dkt. No. 145-37.

women and Black and Brown citizens—do not have one that matches their legal name or lack one altogether.[32]

For all these reasons, Amici and the *LULAC* plaintiffs showed "a 'substantial risk' that, 'absent an injunction, . . . citizens will be disenfranchised in the present federal election cycle,'" and Section 2(a) would "interfere[] with 'organized voter registration programs'" which "would 'run[] contrary to'" Congress' specific goal in enacting the NVRA. *LULAC II*, 2025 WL 3042704, at *34–35 (quoting *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12, 13 (D.C. Cir. 2016)) (cleaned up).

B. Section 2(a)'s effect would be especially severe in Arizona.

The harm foretold by Section 2(a) is particularly acute in Arizona, where citizens without documentary proof of citizenship have no option but the Federal Form to register to vote. Arizona has implemented a

[32] *E.g.*, Luona Lin, *About 8 in 10 Women in Opposite-Sex Marriages Say They Took Their Husband's Last Name*, Pew Research Center (Sept. 7, 2023), https://perma.cc/UDK5-EXNM, Dkt. No. 145-38; Susan J. Pearson, *The Birth Certificate: An American History* 257, 259 (2021), Dkt. No. 145-40; Betsy L. Fisher, *Citizenship, Federalism, and Delayed Birth Registration in the United States*, 57 Akron L. Rev. 49, 55–58, 65–73 (2024).

documentary proof-of-citizenship requirement for its state voter registration form. *See* Ariz. Rev. Stat. § 16-166(F). This law has had a tumultuous, disenfranchising impact. Following years of litigation, that culminated in the Supreme Court's decision in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013), Arizona prospective voters who lack documentary proof of citizenship cannot use the state registration form but are currently able to use the Federal Form in order to register to vote for federal elections.

Amici and other *LULAC* Plaintiffs are well versed in the nuances of Arizona's bifurcated voter registration system and regularly help register eligible voters who lack documentary proof of citizenship using the Federal Form.[33] If Section 2(a) is permitted to go into effect, they will be prevented from registering individuals who lack qualifying proof of citizenship entirely.[34] The result would be the disenfranchisement of Arizonans who lack ready access to qualifying forms of citizenship,

[33] *E.g.*, Sheoran Decl. ¶¶ 12, 23, 28–30, 35–38; Proaño Decl. ¶¶ 39–40, 44–46; Streyder Decl. ¶ 18; Nitschke Decl. ¶¶ 8–14, 16.

[34] *E.g.*, Sheoran Decl. ¶¶ 18, 27; Proaño Decl. ¶¶ 39, 46; Streyder Decl. ¶ 18; Nitschke Decl. ¶¶ 8–14, 16.

including members of at least one *LULAC* Plaintiff.[35]

As the *LULAC* court held, because of Arizona's extant documentary proof-of-citizenship requirement, "any action to implement Section 2(a) under these circumstances would increase voter confusion and interfere with [Amici's] ongoing voter registration efforts." *LULAC II*, 2025 WL 3042704, at *33.

* * *

The *LULAC* court correctly found the threat of Section 2(a) to Amici's essential voter registration work represented imminent and irreparable harm. *LULAC II*, 2025 WL 3042704, at *32–33. Likewise, and as relevant here, the court recognized that "[t]he public interest . . . favors permitting as many qualified voters to vote as possible," *id.* at *34 (quoting *Newby*, 838 F.3d at 12) (alterations in quotation), which would be jeopardized by Section 2(a). For substantially similar reasons, this Court should leave undisturbed the district court's preliminary injunction against Section 2(a).

[35] *See* Decl. of J. Doe 1 ¶¶ 5–7, Dkt. No. 145-29; Decl. of J. Doe 2 ¶¶ 7–9, Dkt. No. 145-30.

CONCLUSION

For the forgoing reasons, the Court should affirm the district court's preliminary injunction.

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Respectfully submitted,

/s/ Ethan Herenstein

Ethan Herenstein
Sophia Lin Lakin
Clayton Pierce
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
eherenstein@aclu.org
slakin@aclu.org
cpierce.aclu.org

Sarah Brannon
AMERICAN CIVIL LIBERTIES UNION FOUNDATION, INC.
915 15th St. NW
Washington, DC 20001
(740) 632-0671
sbrannon@aclu.org

Niyati Shah
Alizeh Ahmad
ASIAN AMERICANS ADVANCING JUSTICE-AAJC
1620 L Street, NW, Suite 1050
Washington, D.C. 20036
(202) 296-2300
nshah@advancingjustice-aajc.org

Wendy Weiser
Sean Morales-Doyle
Eliza Sweren-Becker
Jasleen K. Singh
Andrew B. Garber
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-831
weiserw@brennan.law.nyu.edu
morales-doyles@brennan.law.nyu.edu
sweren-beckere@brennan.law.nyu.edu
singhj@brennan.law.nyu.edu
garbera@brennan.law.nyu.edu

Leah C. Aden
John S. Cusick
Brenda Wright
NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
laden@naacpldf.org
jcusick@naacpldf.org
bwright@naacpldf.org

aahmad@advancingjustice-aajc.org

Miranda Galindo
Delmarie Alicea
Cesar Z. Ruiz
LATINO JUSTICE PRLDEF
475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 392-4752
mgalindo@latinojustice.org
dalicea@latinojustice.org
cruiz@latinojustice.org

Counsel for Amici Curiae

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Date: January 12, 2026

/s/ Ethan Herenstein
Ethan Herenstein

Counsel for Amici Curiae

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I hereby certify that on January 12, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system.

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/s/ Ethan Herenstein
Ethan Herenstein

Counsel for Amici Curiae