



October 20, 2025

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

RE: Docket ID EAC-2025-0236: Petition of America First Legal Foundation for Rulemaking Before the Election Assistance Commission

Via electronic submission at www.regulations.gov/commenton/EAC-2025-0236-0001

Dear Mr. Kelliher:

In this response to the Election Assistance Commission's ("EAC") Notice of Rulemaking Petition ("Petition") from America First Legal Foundation ("AFL"), the Lawyers' Committee for Civil Rights Under Law (the "Lawyers Committee") urges the EAC to reject, as it has multiple times before, the unnecessary, burdensome, and unlawful request to require documentary proof of citizenship ("DPOC") on the National Mail Voter Registration Form ("Federal Form"). In this letter, we detail our concerns with the action AFL has requested from the EAC.

The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity—work that continues to be vital today. Today, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. The Lawyers' Committee has a strong interest in eliminating systemic and structural barriers to the ballot experienced by Black people and other people of color. For over 60 years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination.

The Lawyers' Committee has litigated numerous claims under federal statutes, including the National Voter Registration Act ("NVRA"), the Voting Rights Act of 1965, and the Civil Rights Act. We represent clients in several voting rights cases that involve documentary proof of citizenship, which is at issue the Petition. *See Arizona v. Inter Tribal Council of Ariz., Inc.* ("ITCA"), 570 U.S. 1 (2013); *Kobach v. U.S. Election Assistance Comm'n*, 772 F.3d 1183 (10th Cir. 2014); *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1 (D.C. Cir. 2016); *Ga. Coal. for the People's Agenda, Inc. v. Kemp*, 347 F.Supp.3d 1251 (N.D. Ga. 2018); *Tex. League of United Am. Citizens ("LULAC") v. Whitley*, No. SA-19-CV-074, 2019 WL 7938511 (W.D. Tex. Feb. 27, 2019); *Va. Coal. for Immigrant Rts. v. Beals*, No. 1:24-CV-01778 (E.D. Va.); *League of Women Voters of La. v. Landry*, No. 3:25-CV-413-JWD-SDJ (M.D. La.). We use impact litigation to secure equal opportunity and treatment for members of groups still struggling under the weight



of historical and present-day discrimination.

The Lawyers' Committee opposes AFL's Petition. The right to vote is sacrosanct and "preservative of all rights." *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Limiting the right to vote by requiring DPOC creates unnecessary and burdensome barriers to vote. AFL's Petition seeks a remedy for a nonexistent problem while encouraging the EAC to reverse decades of precedent rejecting similar state requests. AFL presents no compelling reason for the EAC to revisit these conclusions and to ignore the clear limitations of the NVRA. The Lawyers' Committee urges the EAC to reject AFL's requested action.

I. Congress, the Federal Election Commission, EAC, and Courts Have Already Rejected Requests to Require DPOC.

On July 16, 2025, AFL petitioned the EAC to adopt a rule requiring DPOC through the Federal Form. Specifically, AFL requests the EAC to require applicants to provide one of the following documents with a Federal Form:

1. A United States Passport;
2. A state-issued Real ID-compliant driver's license indicating that the applicant is a citizen;
3. An official military identification card that indicates the applicant is a citizen of the United States; or
4. A valid federal or state government-issued photo identification, if such identification indicates that the applicant is a United States citizen or if such identification is otherwise accompanied by proof of United States citizenship.

The Petition alleges that DPOC would enhance the accuracy and integrity of elections. Similar requests have come before Congress, the Federal Election Commission ("FEC"), and the EAC—all of which rejected such requests.

In considering passage of the NVRA, the House-Senate Conference Committee rejected an unnecessary Senate amendment that authorized states to require DPOC. H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.) ("[T]here is concern that it could be interpreted by States to permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act. It could also adversely affect the administration of the other registration programs as well."). Courts recognize that the failure of this proposed amendment affirms DPOC is not "necessary or consistent with the purposes of the [NVRA]." *Id.*; see also *LULAC v. Exec. Off. of the President*, 780 F. Supp.3d 135, 160 (D.D.C. 2025); *California v. Trump*, 786 F.Supp.3d 359, 381 (D. Mass. 2025); *Fish v. Kobach*, 189 F.Supp.3d 1107, 1114-15 (D. Kan. 2016).

When the NVRA was passed, Congress first invested the FEC with the power to regulate the contents of the Federal Form. Pub. L. No. 103-31 §§ 6, 9, 107 Stat. 77, 79, 87 (1993). Like Congress, the FEC rejected requests to include naturalization information on the Federal Form as a basis to determine citizenship status for voter eligibility. 59 Fed. Reg. 32,323, 32,316 (June 23,



1994). The FEC concluded that the “issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury.” *Id.* To require additional information or documentation from applicants was “not absolutely essential to the registration process.” *Id.* Thus, the FEC refused to adopt policies that “unduly” complicate the Federal Form or mislead applicants considering state-specific eligibility requirements. *Id.* at 32,314.

Following enactment of the Help America Vote Act (“HAVA”) in 2002, the EAC assumed all NVRA responsibilities previously assigned to the FEC, including responsibility for the Federal Form. 42 U.S.C. § 15532. In 2006, 12 years after the FEC considered a DPOC requirement, the EAC, too, rejected a request for DPOC requirements (a 2005 request from Arizona) and eight years later, in 2014, rejected three more requests (from Arizona, Georgia, and Kansas in 2013). These rejected requests track AFL’s request.

In those 2013 requests, Arizona, Georgia, and Kansas sought to include state-specific instructions that require DPOC “beyond that currently required by the Federal Form.” EAC Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form, 7Dkt. No. 2013-0004-0429 (Jan. 28, 2014) (“EAC Memo”), at 1. Requests included broad Federal Form instructions to applicants to “provide qualifying evidence of U.S. citizenship prior to the first election day after applying to register to vote.” *Id.* at 4. The EAC interpreted its authority under *Arizona v. ITCA*, 570 U.S. 1 (2013), and the NVRA, 42 U.S.C. § 20508(b)(1), to prescribe only “*necessary* regulations relating to the Federal Form.” EAC Memo at 1 (emphasis added). The EAC did not interpret its constitutional or statutory authority to regulate the Federal Form contents as requiring the Commission to enforce state-specific registration requirements. *Id.* at 27. Nothing in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), affects this interpretation.¹ In light of Congress’s rejection of DPOC requirements on the Federal Form and the FEC’s prior position, the EAC concluded that the “oath signed under penalty of perjury, the words ‘For U.S. Citizens Only’ and later the relevant HAVA citizenship provisions were all that was necessary to enable state officials to establish the *bona fides* of a voter registration applicant’s citizenship.” *Id.* at 22 (citation omitted). Accordingly, the EAC rejected the states’ requests.

Now, AFL reprises the failed requests of Arizona, Georgia, and Kansas to require DPOC for all states on the Federal Form. Unlike these state requests, AFL seeks to enforce no specific state’s DPOC statutory scheme. Instead, the Petition asks the EAC to impose an arbitrary list of documents expressly indicating citizenship, exclusively sourced from President Trump’s enjoined Executive Order 14248. Petition ¶ 43. To date, two federal district courts prohibited enforcement of a DPOC requirement by executive order, holding that the Executive Branch overreached its authority. *LULAC v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 195 (D.D.C. 2025); *California v. Trump*, 786 F.Supp.3d 359 (D. Mass. 2025).

In so ruling, the district courts reinforced the reasoning behind the EAC’s 2014 denial of

¹ Letter from U.S. Election Assistance Comm’n, Camden Kelliher, Acting Gen. Counsel, to Eric S. Schmitt, U.S. Sen. (July 31, 2024), <https://www.schmitt.senate.gov/wp-content/uploads/2025/06/Post-Chevron-Working-Group-Report-V2.pdf>, at 76.



states' DPOC requests. AFL understates these rulings as they relate to the EAC's authority to enact such requirements. *See* Petition ¶¶ 38-42. But the district courts clearly held Congress did not intend for the Federal Form to include a DPOC requirement. *LULAC*, 780 F. Supp. 3d at 196 (“[W]hen enacting the NVRA, Congress considered and rejected a proposal that would have allowed States to impose exactly the kind of documentary-proof-of-citizenship requirement that the President’s Executive Order now directs the EAC to adopt”); *California*, 786 F.Supp.3d at 381 (“[The executive order]’s instruction to add a documentary proof of citizenship requirement to the Federal Form conflicts with the will of Congress”). The conclusion that Congress intended to preclude a DPOC requirement on the Federal Form is indisputable.²

AFL only briefly acknowledges prior rejected requests and fails to address them. Petition ¶ 23. AFL provides no compelling reason for the EAC to revisit—much less abandon—its 2014 analysis rejecting states’ rulemaking requests or to engage in rulemaking contrary to legislative intent. *See* Section III.

II. The NVRA and HAVA Do Not Mandate DPOC.

Congress enacted the NVRA in response to the “discriminatory and unfair registration laws and procedures [that] have a direct and damaging effect on voter participation in elections for Federal office,” specifically on Black people and people of color. 52 U.S.C. § 20501(a)(3). The principal purpose is to “increase the number of eligible citizens who register to vote” *Id.* § 20501(b); H.R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.). Working in tandem with the NVRA, HAVA “help[s] improve the equipment used to cast votes, the way registration lists are maintained, and how polling operations are conducted.” *Am. Civ. Rts. Union v. Phila. City Comm’rs*, 872 F.3d 175, 180 (3d Cir. 2017). Adopting a DPOC requirement that limits the number of eligible voters who can register for federal elections would run undermine these purposes.

Neither the NVRA nor HAVA authorizes the federal government to conduct list maintenance and determine voter eligibility on behalf of states. *See* 52 U.S.C. § 20507 (listing duties imposed onto states); 52 U.S.C. § 21083(a)(1)(A) (describing that voter registration lists are “defined, maintained, and administered at the State level”). States—not the federal government—bear primary responsibility for determining voter eligibility and maintaining voter registration lists, stemming from their sole power to prescribe their own voting qualifications, subject to constitutional limitations. *See ITCA*, 570 U.S. 1, 17 (2013) (discussing Congress’s lack of power to “regulate the qualifications of its own electorate”); *see also LULAC*, 780 F. Supp. 3d 135, 157-

² Courts do not preclude states from *asking* EAC to require DPOC but also do not authorize the EAC to conduct rulemakings on proposals contrary to Congressional intent. *LULAC*, 780 F. Supp. 3d 135, 197 (D.D.C. 2025); *California*, 786 F.Supp.3d at 381; *see also Arizona v. ITCA*, 570 U.S. 1, 18-20 (2013) (authorizing Arizona to request rulemaking by the EAC but not requiring nondiscretionary rulemaking from the EAC for an unsubstantiated request); *Kobach v. Election Assistance Comm’n*, 772 U.S. 1183, 1188 (10th Cir. 2014) (“Where the [EAC’s] duty ‘nondiscretionary,’ the *ITCA* majority would have so concluded and arrived at an opposite result. This would, of course, have rendered the Court’s suggested option of [APA] appellate review both unnecessary and inapplicable.”). Indeed, following Arizona’s and Kansas’s renewed requests to include DPOC instructions on the Federal Form after the *ITCA* decision, the Tenth Circuit upheld the EAC’s authority to deny repeated DPOC requests that were preempted by the NVRA. *Kobach v. Election Assistance Comm’n*, 772 U.S. at 1194.



58, 194 (D.D.C. 2025) (“[T]he power to determine voter qualification is left entirely with the States”).

The EAC regulates the contents of Federal Form only to support states’ voter eligibility determinations, and the Federal Form “may require *only* such identifying information . . . *as is necessary* to enable the appropriate State election official to assess the eligibility.” 52 U.S.C. § 20508(b)(1). Congress enumerated such necessary information: (1) Specified eligibility requirements (including citizenship); (2) An attestation that the applicant meets each eligibility requirement; and (3) A signature of the applicant, under the penalty of perjury. *Id.* § 20508(b)(2). HAVA also requires two eligibility questions with accompanying check boxes to indicate U.S. citizenship and the satisfaction of age requirements. 52 U.S.C. § 21083(b)(4)(A). As discussed earlier, Congress rejected the Senate amendment authorizing states to require DPOC. H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.). Therefore, federal statutes do not support requiring DPOC on the Federal Form.

So long as “the States can enforce their citizenship requirements without additional [DPOC] instructions, denial of their request for such instructions does not raise any constitutional doubts.” EAC Memo at 27; *see also ITCA*, 570 U.S. 1, 17 (2013) (“[I]t would raise serious constitutional doubts if a federal statute precluded a State from obtaining the information necessary to enforce its voter qualifications.”). Because states currently can determine voter eligibility from the sworn attestation and checked box indicating U.S. citizenship status on the Federal Form, *id.* at 28-30, the EAC properly determined, contrary to the suggestion in the Petition, that it does not have a constitutional duty to facilitate the gathering of unnecessary citizenship information at a state’s, let alone a private organization’s, request. EAC Memo at 26; Petition ¶ 12.

As demonstrated below, for decades, states have been successfully verifying citizenship information without a DPOC requirement on the Federal Form. *See supra* Section III(B). Far from requiring the EAC to mandate DPOC for voter registration, the NVRA bars such a requirement. As it has done before, the EAC should deny petitions seeking a DPOC requirement. *See* EAC Memo at 28.

III. The Petition Fails to Show that a DPOC Requirement on the Federal Form is Necessary.

AFL cites several meritless rationales for rulemaking requiring DPOC on the Federal Form, including: (1) Alleged instances of non-citizens on voter registration rolls and voting in elections, *see* Petition ¶¶ 8, 22-26; (2) States’ inability to determine eligibility through the Federal Form using current verification methods, *see* Petition ¶¶ 14-21; (3) The untrustworthiness of self-attestations by applicants on voter registration applications, even though they are legally enforceable government documents, *see* Petition ¶¶ 6, 13, 18, 27; and (4) Potential uniformity in voter eligibility confirmation processes through a DPOC requirement, Petition ¶¶ 30-31. These justifications have no basis in fact or law.

A. The Myth of Widespread Non-Citizens Registering and Voting.



Non-citizen voting is not a large-, intermediate-, or even small-scale systemic issue. For example, in the 2016 election, incidents involving non-citizen voters in the general election accounted for an estimated 30 out of 23.5 million ballots—0.0001% of the vote.³ Even within the Heritage Foundation’s database dedicated to tracking election offenses, the rate of proven non-citizens voting reported across over one billion votes since the 1980s is less than 0.0001%.⁴ This means that non-citizen voting does not impact the outcome of elections.

In the face of this data, the anecdotal allegations of non-citizen voter registration stem from “misunderstandings, mischaracterizations, or outright fabrications about complex voter data.”⁵ States publicizing instances of alleged non-citizens on registration lists frequently are merely identifying the flagged individuals who have not provided DPOC, as required by state law, or the number of flagged individuals whose citizenship may have changed based on information obtained prior to submission of a voter registration application. In these instances, states inaccurately treat flagged individuals as non-citizens without any individualized inquiry. Consequently, “[h]igh-profile claims of large numbers [of noncitizen voters] are highly likely to be significantly revised down after proper investigation and scrutiny.”⁶ The corollary is that citizens who are eligible to vote are commonly removed and disenfranchised because of flags. This is the case in all instances cited by AFL. *See* Petition, pp. 7-9..

Less than two weeks before the 2014 General Election, the North Carolina State Board of Elections announced that it compared over 10,000 registrants’ voter registration information against North Carolina Division of Motor Vehicles and U.S. Department of Homeland Security (DHS) databases, flagging 1,425 individuals “who are *likely* non-citizens.”⁷ Its audit examined only .15% of its registered voter population and the state did not conduct an individualized inquiry of flagged individuals before issuing the announcement.⁸ Of the 1,454 people who were ultimately flagged in that election, “1,365, or 94 percent, didn’t attempt to vote. Of the 89 who did [travel] to a voting site, 64 were challenged by election officials or stopped for further questions. In nearly two-thirds of the cases, the voter was able to prove [they were] indeed a citizen (30 voters), or the challenge was otherwise dropped (13).”⁹ Eleven flagged people out of 5.7 million voters received

³ Douglas Keith & Myrna Perez, *Noncitizen Voting: The Missing Millions*, BRENNAN CTR. FOR JUST. (May 5, 2017), <https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-missing-millions>.

⁴ Aaron Reichlin-Melnick, *Unpacking Myths about Noncitizen Voting – How Heritage Foundation’s Own Data Proves It’s Not a Problem*, AM. IMMIGRATION COUNCIL (Aug. 1, 2024), <https://www.americanimmigrationcouncil.org/blog/myths-about-noncitizen-voting-heritage-foundation-data/>.

⁵ CTR. FOR ELECTION INNOVATION & RSCH., *Review of Allegations of Noncitizen Registrants and Voters* (2025) <https://electioninnovation.org/research/noncitizen-analysis/>.

⁶ *Id.*

⁷ *Board of Elections Finalizes Citizenship Audit*, N.C. BD. OF ELECTIONS (Oct. 24, 2014), <https://www.ncsbe.gov/news/press-releases/2014/10/24/board-elections-finalizes-citizenship-audit> (emphasis added).

⁸ *Id.*

⁹ Chris Kromm, *Denying a Dream: Charlotte voters snared in N.C. crackdown on alleged non-citizens*, FACING SOUTH (May 15, 2015), <https://www.facingsouth.org/2015/05/denying-a-dream-charlotte-voters-snared-in-nc-crack>.



sustained challenges at the polls—0.00019% of the voter turnout.¹⁰ News articles capture the real impact of voters inaccurately flagged as non-citizens, like Diana Roberts who as a young voter of color experienced voter confusion and intimidation from election workers at the polls. She tried to vote but could not do so.¹¹

When the Texas Secretary of State attempted to purge 98,000 registrants from the voter rolls based on similar citizenship status flags, “the government ha[d] an ‘oops’ movement, realizing that 25,000 names should not have been included,” necessitating “apologi[es] for the failure to seek confirmation of the accuracy, appropriateness, competency and due diligence of the process before the rollout.” *Texas LULAC v. Whitley*, No. SA-19-CA-074, 2019 WL 7938511, at *1 (W.D. Tex. Feb. 27, 2019). Ultimately, the district court ordered the state to stop requiring DPOC for flagged individuals, “as perfectly legal naturalized Americans were burdened with what the Court [found] to be ham-handed and threatening” requests for documentation. *Id.* Recently, unsubstantiated claims of alleged noncitizens on Texas voter registration rolls remain grossly exaggerated. When 6,500 individuals were flagged as *potential* non-citizens before the 2024 General Election, a vast majority of individuals removed simply did not respond to any DPOC request and have not been confirmed as non-citizens to date.¹² Several voters were proven to be falsely flagged before the General Election, but many did not even know they were flagged until a news organization, *not* a state or county election official, contacted the voters.¹³

Other states have attempted to purge registered citizens after flagging them as potential non-citizens. After the Alabama Secretary of State identified 3,251 Alabamians as potential non-citizens, including inaccurately flagged naturalized citizens, a district order entered a preliminary injunction to stop their removal from the registration list. *Ala. Coal. for Immigrant Just. v. Allen*, Nos.: 2:24-cv-1254-AMM, 2:24-cv-1329-AMM, 2024 WL 4510476 at *1 (N.D. Ala. Oct. 16, 2024). Before the 2024 General Election, Virginia announced that it purged 6,303 individuals who were flagged as potential non-citizens in a two-year period, but upon further investigation, the purges included U.S. citizens and only spawned three instances of illegal voting offenses.¹⁴ The Ohio Secretary of State flagged over 600 individuals as potential non-citizens in a state of over 5.8

¹⁰ Letter from N.C. Bd. of Elections, Kim Westbrook Strach, Exec. Dir., to Rep. Chris Millis (Feb. 6, 2015), https://www.facingsouth.org/sites/default/files/Correspondence_2_6_2015.pdf.

¹¹ Chris Kromm, *Denying a Dream: Charlotte voters snared in N.C. crackdown on alleged non-citizens*, FACING SOUTH (May 15, 2015), <https://www.facingsouth.org/2015/05/denying-a-dream-charlotte-voters-snared-in-nc-crack>.

¹² Natalia Contreras, *Texas secretary of state refers 33 potential noncitizen voters for investigation*, VOTEBEAT (June 5, 2025, 3:47 PM) <https://www.votebeat.org/texas/2025/06/05/texas-33-potential-noncitizens-voter-rolls-2024-election/>.

¹³ *Id.*

¹⁴ Bob Lewis, *Clean voter rolls are essential, but Youngkin’s late, politically driven ‘purge’ deserves challenge*, VA. MERCURY (Oct. 18, 2024, 5:27 AM), <https://virginiamercury.com/2024/10/18/clean-voter-rolls-are-essential-but-youngkins-late-politically-driven-purge-deserves-challenge/>. The Lawyers’ Committee was one of the counsels for the plaintiffs in the lawsuit challenging this voter purge. *Virginia Coalition for Immigrant Rights, et al. v. Beals*, Dkt. No. 1:24-cv-01778 (E.D. Va. Oct. 7, 2024).



million voters in the same election.¹⁵ But in all elections in the state since 2019, only 12 cases have resulted in criminal charges.¹⁶ In the 2020 election, the broad rate of voter fraud of all types in Ohio was 0.0005%.¹⁷

Pennsylvania had also grossly overestimated potential non-citizen reports in 2018, when it first reported that over 100,000 people on the rolls might be ineligible due to citizenship status and then narrowed the list down to 8,698 individuals upon further review.¹⁸ Yet, only 544 ballots have potentially been cast by non-citizen voters out of 93 million votes cast in the state in 17 years of elections.¹⁹ Further, Louisiana's investigation of state voting records uncovered only 79 non-citizens voting since the 1980s.²⁰ Similarly in Georgia, the Secretary of State's 2024 audit found only 20 non-citizens registered out of its 8.2 million voters.²¹ In Kansas, only 5 non-citizens voted over a twenty-year period, whereas upwards of 31,000 people were prevented from voting because of DPOC requirements in a two-year period.²² Minnesota has 3 examples of non-citizen registrants or voters across ten years of elections between 2015 and 2024, in which over 13.4 million voters were cast in general and primary elections.²³ This amounts to 0.00002% of Minnesota votes.

Drafting a DPOC rule around such a statistical rarity disenfranchises eligible citizens who do not have acceptable documentation--for no good reason, as there are virtually no non-citizen voters in federal elections.

B. States' Current Ability to Determine Voter Eligibility Without a DPOC Requirement on the Federal Form.

AFL laments states' inability to verify voter eligibility through state and federal databases. Petition ¶¶ 14-21. Critically, many states engage in database crosschecks to comply with state

¹⁵ Anna Staver, *Ohio Secretary of State Refers 78 Noncitizen Voter Cases for Prosecution*, CLEVELAND.COM (Sept. 17, 2025, 10:39 AM), <https://www.cleveland.com/news/2025/09/ohio-secretary-of-state-refers-78-noncitizen-voter-cases-for-prosecution.html>.

¹⁶ *Id.*

¹⁷ Marty Schladen, *Noncitizen voting is very rare in Ohio and America. Not having proof of citizenship isn't.*, NEWS 5 CLEVELAND (Mar. 29, 2025, 6:15 PM), <https://www.news5cleveland.com/news/state/noncitizen-voting-is-very-rare-in-ohio-and-america-not-having-proof-of-citizenship-isnt>.

¹⁸ Julian Routh, *State Review of Voter Registrations Narrows List of Potentially Ineligible Voters to 8,698*, PITTSBURGH POST-GAZETTE (July 27, 2018, 5:46 PM), <https://www.post-gazette.com/news/politics-local/2018/07/27/Pennsylvania-voter-registration-illegal-election-non-citizens-vote/stories/201807270155>.

¹⁹ *Id.*

²⁰ Wesley Muller, *Louisiana election investigation finds 79 noncitizens have voted since 1980s*, LA. ILLUMINATOR, (Sept. 4, 2025), <https://lailluminator.com/2025/09/04/louisiana-election-investigation-finds-79-noncitizens-have-voted-since-1980s/>.

²¹ Stanley Dunlaw, *Georgia GOP secretary of state reports audit found 20 noncitizens registered to vote out of 8.2M*, GA. RECORDER (Oct. 23, 2024), <https://georgiarecorder.com/briefs/georgia-gop-secretary-of-state-reports-audit-found-20-noncitizens-registered-to-vote-out-of-8-2m/>.

²² Letter from Clayton Barker, Deputy Sec'y of State, to Pat Proctor, Chair, Kansas House Comm. on Elections (Jan. 21, 2025),

https://www.kslegislature.gov/li/b2025_26/committees/ctte_h_electns_1/documents/testimony/20250121_05.pdf.

²³ Virgil Wiebe, *Needles in Haystacks: Noncitizen Voting Violations in Minnesota* (U. St. Thomas, Legal Stud. Rsch. Paper No. 24-08, 2024), <https://ssrn.com/abstract=4839678>.



statutory requirements and policies by consulting several databases, including the U.S. Department of Homeland Security's ("DHS") Systematic Alien Verification for Entitlements ("SAVE") program, the Social Security Administration ("SSA") database, state motor vehicle department databases, the National Association for Public Health Statistics and Information Systems ("NAPHSIS") database, and juror report summaries. *See Mi Familia Vota v. Fontes*, 719 F.Supp.3d 929, 953-58 (D. Ariz. 2024) (overviewing Arizona's use of SAVE, SSA, NAPHSIS, juror report summaries, and Department of Transportation data); Settlement, *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB (W.D. Tex. Apr. 26, 2019) (describing Texas's use of SAVE and Department of Public Safety data); *Ga. Coal. for People's Agenda, Inc. v. Kemp*, 347 F.Supp.3d 1251, 1255 (N.D. Ga. 2018) (describing Georgia's use of Department of Driver Services, SSA, and later SAVE data). Misleading reports by state election officials, *see supra* Section III(B), reflect only individuals whose citizenship status could not be confirmed through any databases. These databases confirm the citizenship of an overwhelming majority of applicants. Given the rarity of non-citizen voting, the conclusive identification of any instances where non-citizens appeared on registration lists demonstrates that states already effectively determine eligibility without a DPOC requirement on the Federal Form. *See infra* Section III(C) (citing the successful prosecution of individuals by federal and state offices).

While the Lawyers' Committee does not endorse the use of the SAVE program,²⁴ we note that in cases involving the verification of citizenship status for voter registration purposes, states have embraced its use. *See Fair Fight Action, Inc. v. Raffensperger*, 634 F.Supp.3d 1128, 1162 (N.D. Ga. 2022) (describing that 63% of individuals whose citizenship data could not be verified through Georgia motor vehicle records were confirmed as citizens through SAVE data); Reply Br. Mot. to Dismiss, *Va. Coal. for Immigrant Rts. v. Beals*, 2025 WL 1841308 (E.D. Va. Jan. 9, 2025) (referring to SAVE as a safeguard for naturalized citizens).²⁵ At least 20 states use SAVE data for list maintenance or voter registration purposes.²⁶ Contrary to AFL's portrayal, *see* Petition ¶ 17, states' complaints related to the SAVE program have not gravitated towards its inability to verify citizenship for undocumented individuals or individuals born as U.S. citizens. Instead, they have sought expanded access with more frequent cross-checks to decrease verification delays. *Mi*

²⁴ The SAVE program is an online service for government agencies "to verify immigration status and U.S. citizenship of applicants seeking benefits of license." *SAVE*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/save> (last accessed Oct. 19, 2025). By engaging in a federal program that pools immigration records and is not designed to flag records of individuals born as U.S. citizens, states' use of the SAVE program is discriminatory against naturalized citizens.

²⁵ *See also* Letter from N.C. Bd. of Elections, Kim Westbrook Strach, Exec. Dir., to Rep. Chris Millis (Feb. 6, 2015), https://www.facingsouth.org/sites/default/files/Correspondence_2_6_2015.pdf, at 4 ("It is likely that DMV and SAVE data will be of greater use as regular auditing tools.").

²⁶ The following states maintain an active agreement with USCIS to access SAVE information for voter registration and list maintenance purposes: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Michigan, Mississippi, Missouri, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Texas, and Virginia. *SAVE Agency Search Tool*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/save/about-save/save-agency-search-tool> (last visited October 16, 2025). Ten states without publicized agreements (Arkansas, Kentucky, Montana, Nebraska, New Hampshire, Oklahoma, South Dakota, Utah, West Virginia, and Wyoming) indicate that they may be using SAVE data, too, after signing onto a letter requesting DHS for expanded access into SAVE data. *See* Letter from Wes Allen, Ala. Sec'y of State, et al., to Kristi Noem, Sec'y of Homeland Sec. (Feb. 27, 2025), <https://www.sos.alabama.gov/sites/default/files/press/Final%20Jt.%20SoS%20SAVE%20Letter.pdf>.



Familia Vota v. Fontes, 719 F.Supp.3d 929, 963-64 (D. Ariz. 2024); *Fair Fight Action*, 634 F.Supp.3d at 1224. Further, at a time when the federal government is alarmingly pooling personal and sensitive information,²⁷ states can and have made requests to other government agencies to expand their access to immigration information without requiring any action on behalf of the EAC to make updates to the Federal Form.²⁸

Even though DHS officials once described SAVE data as “incomplete,”²⁹ the United States Citizenship and Immigration Services (“USCIS”), which is housed within the DHS, “considers SAVE to be generally reliable,” with naturalization records normally reflected in the SAVE database within 24 hours of a naturalization. *Mi Familia Vota*, 719 F.Supp.3d at 955. At least two courts found the SAVE program to increase the reliability of citizenship status verification compared to other methods. *Mi Familia Vota v. Fontes*, 719 F.Supp.3d 929, 960 (D. Ariz. 2024); see also *Fair Fight Action, Inc. v. Raffensperger*, 634 F.Supp.3d 1128, 1162 (N.D. Ga. 2022) (speaking of SAVE’s ability to remedy pending citizenship flags although declining to enforce it as a remedy when the state indicated it was in the process of implementation). The Trump administration has even recently announced that it has run over 33 million voters through the SAVE program.³⁰

States do not need SAVE, though. Many states appear not to use the program at all. Citizenship verification is and has been successfully occurring in states for decades using the information necessary to determine eligibility by federal statute—the sworn attestation and specific question asking about citizenship status. See 52 U.S.C. § 20508(b)(2). Where the EAC is charged with only regulating information that is necessary to enable the states’ assessment of voter eligibility, a DPOC requirement on the Federal Form is not required here.

C. The Trustworthiness of a Voter Registration Attestation.

Deeply troubling is AFL’s treatment of the Federal Form’s attestation and oath swearing that an applicant is a U.S. citizen. See Petition ¶¶ 6, 13, 18, 27. Registrants via the Federal Form

²⁷ See Letter Agreement Providing for Information Sharing Between the Department of Homeland Security (DHS), U.S. Citizenship & Immigr. Servs. (USCIS) & the Soc. Sec. Admin. (SSA) Regarding Citizenship (May 25, 2025), https://www.ssa.gov/foia/resources/proactivedisclosure/2025/May%2015,%202025%20SSA-DHS-USCIS%20Agreement_Redacted.pdf (entering into a data-sharing agreement between DHS, USCIS, and SSA specifically for voter registration purposes); Priscilla et al., *DOGE is building a master database for immigration enforcement, sources say*, CNN (Apr. 25, 2025, 2:32 PM), <https://www.cnn.com/2025/04/25/politics/doge-building-master-database-immigration> (describing plans to share personal identifying information between the Internal Revenue Service, the Department of Government Efficiency, U.S. Immigration and Customs Enforcement, DHS, and USCIS).

²⁸ See Letter from Wes Allen, Ala. Sec’y of State, et al., to Kristi Noem, Sec’y of Homeland Sec. (Feb. 27, 2025), <https://www.sos.alabama.gov/sites/default/files/press/Final%20Jt.%20SoS%20SAVE%20Letter.pdf>.

²⁹ Charles Babington, *Florida can tap federal list in voter purge effort*, SARASOTA HEARLD-TRIB. (July 15, 2012, 12:01 AM), <https://www.heraldtribune.com/story/news/2012/07/15/florida-can-tap-federal-list-in-voter-purge-effort/29108620007/>.

³⁰ Jude Joffe-Block & Miles Parks, *33 million voters have been run thorough the Trump administration citizenship check*, NAT’L PUB. RADIO (Sept. 11, 2025, 1:37 PM), <https://www.npr.org/2025/09/10/nx-s1-5477367/save-election-citizenship-data-trump>.



must attest under penalty of perjury that they are U.S. citizens “to the best of [their] knowledge.” They also acknowledge that they may be fined, imprisoned, deported, and refused entry into the United States for false information provided on the Federal Form. The vast majority of non-citizen residents have no intention or motivation to risk the severe consequences of illegally registering to vote under the threat of prosecution and deportation, whether they knew voting or registering to vote was a criminal offense or not.³¹ Yet, AFL calls this legally enforceable oath “self-refuting” and “inherently inadequate.” Petition ¶¶ 6, 13.

Sworn attestations are trustworthy documents that are “considered reliable evidence for many purposes.” EAC Memo at 29. In fact, government agencies and courts heavily rely on similar sworn oaths and declarations to establish facts in a plethora of circumstances, from tax statements to criminal and civil legal disputes. *Id.*; Fed. R. Civ. P. 56(c)(1)(A) (relating to the use of affidavits and declarations in the court record); 26 U.S.C. § 6065 (requiring tax documents to be made under penalty of perjury). Because “[f]ederal courts, Congress, and federal agencies rely upon truthful information . . . to make informed decisions,” the prosecution of false statements and penalty of perjury broadly undergirds reliability in voter registration statements on the federal level.³² To suggest otherwise and demand a presumption of distrust in an applicant’s attestation reflects a deep mistrust in our governmental and legal systems that extends well beyond election-related matters, which is a very dangerous notion.

Further, the threat of prosecution and deportation based on false statements made on voter registration forms is not hypothetical. The federal government and states publicize the formation and work of well-funded election integrity units to investigate and prosecute all instances of election offenses. There are countless examples of recent, high-profile, state and federal prosecutions of election offenses due to eligibility deficiencies and the submission of a false attestation on a voter registration application, including in Alabama,³³ Arizona,³⁴ Arkansas,³⁵

³¹ See Hillel R. Smith, Cong. Rsch. Serv., IF 12767, *Immigration Consequences of Unlawful Voting by Aliens* (2024) (listing an adjustment of immigration status, revocation of a temporary protected status, ineligibility for voluntary departure, ineligibility for naturalization, and deportation as all immigration-related consequences from an election offense).

³² Charles Doyle, Cong. Rsch. Serv., 98-907, *False Statements and Perjury: An Abridged Overview of Federal Criminal Law* (2024).

³³ *Undocumented Individual Charged in Connection with Voting Fraud and Passport Fraud*, U.S. ATTY. OFF. OF THE N.D. OF ALA. (Sept. 5, 2024), <https://www.justice.gov/usao-ndal/pr/undocumented-individual-charged-connection-voting-fraud-and-passport-fraud>.

³⁴ *Surprise Man Sentenced for Illegal Voting*, U.S. ATTY’S OFF. OF THE D. OF ARIZ. (Mar. 25, 2022), <https://www.justice.gov/usao-az/pr/surprise-man-sentenced-illegal-voting>; ARIZ. ATTY. GEN. OFF., CRIMINAL DIVISION - FRAUD & SPECIAL PROSECUTION SECTION, PROSECUTIONS RELATED TO ILLEGAL VOTING BY INDIVIDUALS SINCE 2010 (2025), https://www.azag.gov/sites/default/files/2025-05/LOG_ILLEGAL_VOTING_%26_ELECTION_CASE_DISPOSITIONS.pdf.

³⁵ Sonny Albarado, *Three Arkansas residents arrested and charged with voting illegally last year*, ARK. ADV. (Oct 3, 2025, 12:02 PM), <https://arkansasadvocate.com/briefs/three-arkansas-residents-arrested-and-charged-with-voting-illegally-last-year/>.



California,³⁶ Florida,³⁷ Georgia,³⁸ Iowa,³⁹ Kansas,⁴⁰ Minnesota,⁴¹ Missouri,⁴² Montana,⁴³ New Hampshire,⁴⁴ New Jersey,⁴⁵ Pennsylvania,⁴⁶ Tennessee,⁴⁷ Texas,⁴⁸ and West Virginia.⁴⁹ There is evidence that these prosecutions have disproportionately affected people of color, with indications that they are convicted of more severe offenses and sentenced with steeper penalties, including longer incarceration times, than White defendants. Confusion around voter eligibility is very common, even when it comes to their citizenship status.⁵⁰ These examples scare individuals away from the election process, not towards intentional perjury violations.

³⁶ CAL. RSCH. BUREAU, CRB LITERATURE REVIEW ON VOTER FRAUD IN CALIFORNIA, 2020-2024 (2025), <https://selc.senate.ca.gov/system/files/2025-08/devin-lavelle-crb-voter-fraud-presentation-senate-elections-2025-08-26-ada.pdf>.

³⁷ Ashley Lopez, *20 were charged for voter fraud in Florida. Advocates say a broken system is to blame*, NAT'L PUB. RADIO (Aug. 22, 2022, 5:00 AM), <https://www.npr.org/2022/08/27/1119750187/florida-voter-fraud-charges-desantis-felon-rights>.

³⁸ Zoë Richards, *Georgia Republican Party official voted illegally nine times, judge rules*, NBA NEWS (Mar. 28, 2024, 11:04 PM), <https://www.nbcnews.com/politics/politics-news/georgia-republican-party-official-voted-illegally-nine-judge-rules-rcna145563>.

³⁹ *Dorland given probation in election misconduct case*, OSCEOLA SENTINEL-TRIB. (June 13, 2024, 6:03 PM), <https://www.osceolaiowa.com/news/local/2024/06/13/dorland-given-probation-in-election-misconduct-case/>.

⁴⁰ John Bresnahan & Ally Mutnick, *Kansas Republican Rep. Steve Watkins charged with voter fraud*, POLITICO (July 14, 2020, 9:14 PM), <https://www.politico.com/news/2020/07/14/kansas-gop-rep-watkins-indicted-for-voter-fraud-362072>.

⁴¹ Matt Sepic, *Couple admits submitting hundreds of fake voter registration forms*, MPR NEWS (July 10, 2025, 4:00 AM), <https://www.mprnews.org/story/2025/07/10/couple-admits-submitting-hundreds-of-fake-voter-registration-forms>.

⁴² Gabe Swartz, *Multiple River Bend Board Members Plead Guilty to Election Offense*, KCTV 5 (Feb. 13, 2025, 6:00 PM), <https://www.kctv5.com/2025/02/13/multiple-river-bend-board-members-plead-guilty-election-offense/>.

⁴³ *Montana man sentenced for falsifying voter registration*, ASSOC. PRESS. NEWS (June 8, 2021, 6:35 PM), <https://apnews.com/article/montana-voter-registration-government-and-politics-e2b2ebb368a202c70ab190cad4adcfa>.

⁴⁴ Ethan Dewitt, *Former Republican Rep. Tony Merner pleads guilty to wrongful voting, loses right to vote*, N.H. BULLETIN (Aug. 22, 2024, 6:27 PM), <https://newhampshirebulletin.com/briefs/former-republican-rep-troy-merner-pleads-guilty-to-wrongful-voting-loses-right-to-vote/>.

⁴⁵ *Former Atlantic City Councilman Admits Submitting False Voter Registrations*, U.S. ATTY. OFF. OF THE D. OF N.J. (Mar. 13, 2024), <https://www.justice.gov/usao-nj/pr/former-atlantic-city-councilman-admits-submitting-false-voter-registrations>.

⁴⁶ *Montgomery County Man Sentenced for Election Fraud Offenses*, U.S. ATTY. OFF. OF THE E.D. OF PENN. (Jan 9, 2025), <https://www.justice.gov/usao-edpa/pr/montgomery-county-man-sentenced-election-fraud-offenses>.

⁴⁷ Sam Levine, *The Black woman sentenced to six years in prison over a voting error*, GUARDIAN (Feb. 3, 2022, 10:00), <https://www.theguardian.com/us-news/2022/feb/03/fight-to-vote-tennessee-pamela-moses-convicted>.

⁴⁸ Taylor Goldenstein, *Ken Paxton's beefed-up 2020 voter fraud unit closed 16 minor cases, all in Harris County*, HOUS. CHRON. (Dec. 27, 2020, 5:10 PM), <https://www.houstonchronicle.com/politics/texas/article/Ken-Paxton-s-beefed-up-2020-voter-fraud-unit-15820210.php>.

⁴⁹ *Kanawha County woman sentenced in voter registration fraud case*, SEC'Y OF STATE KRIS WARNER (Nov. 19, 2019), <https://sos.wv.gov/newsarchive/Pages/11-19-2021-A.aspx>.

⁵⁰ See Gustavo Solis, *Thousands of adoptees were never given US citizenship. Now they risk deportation*, KPBS (July 18, 2025, 6:00 AM), <https://www.kpbs.org/news/border-immigration/2025/07/18/thousands-of-adoptees-were-never-given-us-citizenship-now-they-risk-deportation> (describing how upwards to 70,000 individuals who were adopted as children currently are not U.S. citizens because their parents did not complete paperwork at the time of adoption and how many do not know if they are U.S. citizens).



For these reasons, the EAC has correctly found “that the possibility of potential fines, imprisonment, or deportation (as set out explicitly on the Federal Form) appears to remain a powerful and effective deterrent against voter registration fraud.” EAC Memo at 29-30. The EAC should continue treating such attestations on the Federal Form as sufficient to protect against non-citizen voting.

D. A Lack of Uniformity Across States’ Eligibility Verification Process with a DPOC Requirement on the Federal Form.

While states’ list maintenance process must be uniform and nondiscretionary, *see* 52 U.S.C. § 20507(b)(1), the NVRA does not require the EAC to create unity across state eligibility verification processes. In fact, “the Commission [is expected] to play an advisory role to the States and to facilitate the exchange of information among the States,” instead of facilitating federal interference into states’ voter registration processes. H.R. Rep. No. 103-66, at 22 (1993) (Conf. Rep.). Under Section 9 of the NVRA, Congress envisioned the FEC’s and EAC’s role as limited and rejected assigning the Commission the authority to institute, or even regularly recommend to Congress, perceived improvements to the registration process across all states. *Id.*

Even if uniformity was a desired goal, a DPOC requirement on the Federal Form would not create it in voter eligibility determinations. States already employ unique list maintenance procedures and accept differing records indicating citizenship status. A DPOC requirement by the EAC would only apply to the Federal Form. Since President Trump’s Executive Order, many states have already opposed the DPOC requirement on the Federal Form. *See California*, 786 F.Supp.3d 359 (suit brought by Arizona, California, Colorado, Connecticut, Delaware, Hawai’i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Wisconsin); *Washington v. Trump*, 2:25-cv-0602-JHC (W.D. Wash. Filed Apr. 4, 2025) (suit brought by Oregon and Washington). Even if a DPOC requirement were implemented federally, states could maintain their own voter registration forms and registration guidelines for state elections without a DPOC requirement. For states that do not wish to implement DPOC for state elections, the Petition’s requested rulemaking would further bifurcate eligibility verification processes.

States that implement or tried to implement their own DPOC requirement are not in lockstep with the DPOC requested in the Petition. For example, Alabama, Arizona, Georgia, Kansas, and Wyoming authorize tribal identification as acceptable citizenship documentation.⁵¹ Texas does not expressly accept tribal identification as documentary proof but it uniquely accepts an applicant’s “parent’s Certificate of Naturalization along with [the applicant’s] birth certificate”

⁵¹ Ala. Code § 31-13-28(k)(6), (10) (allowing proof of citizenship via the voter’s “Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number” or “American Indian card, with KIC classification, issued by the United States Department of Homeland Security”); Ariz. Rev. Stat. Ann. § 16-166 (F)(6)(allowing only Bureau of Indian Affairs card number, tribal treaty card number or tribal enrollment number); Ga. Code Ann. § 21-2-216(g)(2)(F)(same as Arizona); Kan. Stat. Ann. § 25-2309(l)(6), (10)(same as Alabama); Wyo. Stat. Ann. § 22-1-102(a)(lvi)(B).



if applicants became a citizen as a result of a parent's naturalization.⁵² Alabama, Kansas, Texas, and Wyoming statutes accept consular reports, while Arizona and Georgia do not.⁵³ Alabama and Kansas also accept final adoption decrees and hospital records created at the time of birth, as long as they include an applicant's U.S. birthplace.⁵⁴ All of these states accept birth certificates.⁵⁵ Yet, AFL's requested rulemaking would not accept any of these documents. Recently imposing a DPOC requirement, Louisiana does not list its acceptable DPOC.⁵⁶ Therefore, it is difficult to estimate how Louisiana would map onto the Petition's requested rulemaking. Unless states change their statutory or regulatory schema, each of these states would be forced to administer separate DPOC verification processes for federal and state races, which would not create uniformity.

Importantly, the statutes in many states do not accept the Petition's requested list of appropriate documentation of citizenship. Kansas accepts military records that include a U.S. birth place but in AFL's petition, such "records" could be inadequate if the applicant does not possess an official military identification card.⁵⁷ Alabama, Arizona, Georgia, and Texas do not expressly accept military records as DPOC. These states' driver's licenses and identification cards also would not comply with the Petition's DPOC list, where state cards must "indicat[e] that the applicant is a citizen." Petition ¶ 43. Alabama, Arizona, Georgia, and Kansas require state identification cards that indicate the *provision* of DPOC.⁵⁸ Wyoming only requires that its state identification cards "do not contain any indication that the person is not a United States citizen," meaning acceptable DPOC should include cards that do not indicate any citizenship at all.⁵⁹ REAL-ID cards that do not indicate citizenship on the card—exclusively used by a majority of states—would not fall into the Petition's acceptable DPOC. In fact, New Hampshire election officials already advertise that its REAL-ID licenses are not documentary proof of citizenship.⁶⁰

AFL's Petition disregards the existing uniformity through the Federal Form with no existing federal DPOC requirement. States already accept statements of citizenship on the voter registration form to be evidence of citizenship status for state and federal races. Requiring DPOC for the Federal Form creates disunity for the states that do not currently require DPOC for state elections while exacerbating disunity for states' DPOC requirements that do not line up to the

⁵² Settlement, *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB (W.D. Tex. Apr. 26, 2019), https://www.aclutx.org/sites/default/files/4-25-10_voter_purge_settlement_agreement.pdf.

⁵³ Ala. Code § 31-13-28(k)(7); Kan. Stat. Ann. § 25-2309(l)(7); Wyo. Stat. Ann. § 22-1-102(a)(lvi)(H); Settlement, *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB.

⁵⁴ Ala. Code § 31-13-28(k)(11), (13); Kan. Stat. Ann. § 25-2309(l)(11), (13).

⁵⁵ Ariz. Rev. Stat. Ann. § 16-166 (F)(2); Ala. Code § 31-13-28(k)(2); Kan. Stat. Ann. § 25-2309(l)(2); Ga. Code Ann. § 21-2-216(g)(2)(B); Wyo. Stat. Ann. § 22-1-102(a)(lvi)(J); Settlement, *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB.

⁵⁶ See La. Stat. Ann. § 18:104(D)(2).

⁵⁷ Kan. Stat. Ann. § 25-2309(l)(12).

⁵⁸ Ariz. Rev. Stat. Ann. § 16-166 (F)(1); Kan. Stat. Ann. § 25-2309(l)(1); Ga. Code Ann. § 21-2-216(g)(2)(A); Ala. Code § 31-13-28(k)(1).

⁵⁹ Wyo. Stat. Ann. § 22-1-102(a)(lvi)(A).

⁶⁰ N.H. SEC'Y OF STATE, REGISTERING TO VOTE IN NEW HAMPSHIRE, at 1(2025), https://www.sos.nh.gov/sites/g/files/ehbemt561/files/inline-documents/sonh/registering-to-vote-in-new-hampshire-february-2025_3.pdf.



Petition's requested rulemaking.

IV. A DPOC Requirement on the Federal Form Impacts People Who Cannot Readily Access Acceptable Documents, Disproportionately Infringing on the Voting Rights of People of Color.

A DPOC requirement disparately impacts voters who have difficulties obtaining access to acceptable documents, which would subvert the purpose of the NVRA. 52 U.S.C. § 20501(a)(3). These voters include hospitalized individuals, victims of natural disasters, disabled individuals, eligible incarcerated voters, impoverished individuals, and individuals who have undergone legal name changes that are not reflected on acceptable documents, including many married people and transgender people. People of color disproportionately are overrepresented in these groups.⁶¹

Access to DPOC is not universal, and a DPOC requirement would burden many voters. Only 53.1% of Americans possess a valid passport.⁶² The vast majority of state-issued Real-IDs do not indicate citizenship.⁶³ Even if an expanded DPOC list included all driver's licenses, Congress intended for registration opportunities and NVRA protections to extend to individuals who do not possess a driver's license, specifically within impoverished and disabled populations. H.R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.) ("The only way to assure that no State can create an agency registration program that discriminates against a distinct portion of its population is to require that the agencies designated in each State include an agency that has regular contact with those who do not have driver's licenses."). The creation in the NVRA of voter registration duties explicitly for non-motor vehicle agencies demonstrates that populations without driver's licenses should not shoulder the burden of documentation requirements. *Id.*; 52 U.S.C. § 20506.

AFL's Petition does not even provide an alternative for those who do not possess an acceptable document, such as an attestation form (which would replicate the attestation on the

⁶¹ See Amber Mirajkar et al., *Racial Disparities in Patients Hospitalized for COVID-19*, 115 J. NATL. MED. ASSOC. 436 (2023) (finding that of over 45,000 admitted patients across 178 hospitals, 22% of the admitted individuals were Black, 35% were Hispanic, and 37% were White); *Infographic: Adults with Disabilities: Ethnicity and Race*, CTR. FOR DISEASE CONTROL (Apr. 7, 2025), <https://www.cdc.gov/disability-and-health/articles-documents/infographic-adults-with-disabilities-ethnicity-and-race.html> (reporting that one in four Black adults have a disability and three in ten Native Americans have a disability compared to one in five White adults and one in six Hispanic and Asian adults); Tatiana M. Davidson et al., *Disaster Impact Across Cultural Groups: Comparisons of Whites, African Americans, and Latinos*, 52 AM. J. CMTY. PSYCH. 97 (2013) (explaining that Black and Hispanic populations are at a higher risk of disaster exposure and are disproportionately affected by them); *Racial and Ethnic Disparities*, PRISON POL'Y INITIATIVE (Oct. 16, 2025), https://www.prisonpolicy.org/research/racial_and_ethnic_disparities/ (reporting that 37% of the incarcerated population in jails and prisons are Black); ANDREW R. FLORES ET AL., *RACE AND ETHNICITY OF ADULTS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES 2* (2016) (estimating that Hispanic and Black people are more likely to identify as transgender than White people, compared to their makeup of the population); EMILY A. SHRIDER, *POVERTY IN THE UNITED STATES: 2023*, at 4 (2024) ("Hispanic (any race), Black, Two or More Races, and American Indian and Alaska Native individuals were overrepresented" as impoverished).

⁶² CTR. FOR AM. PROGRESS, *PASSPORT POSSESSION, BY STATE* (2025), <https://www.americanprogress.org/wp-content/uploads/sites/2/2025/01/SAVEact-tables.pdf>.

⁶³ CTR. FOR AM. PROGRESS, *The SAVE Act: Overview and Facts* (Jan 31, 2025) <https://www.americanprogress.org/article/the-save-act-overview-and-facts/>.



voter registration form). It is not clear that a birth certificate would prove citizenship, either. Over 21 million eligible voters do not readily have access to documentary proof of citizenship.⁶⁴ Citizens of color are more likely than white citizens to lack easy access to their documents.⁶⁵ For hospitalized and eligible incarcerated voters⁶⁶ who are restrained from any free travel by the government, DPOC requirements are especially burdensome because these voters must solely rely on others to obtain access to DPOC. Virtually every hospitalized and incarcerated voter—hundreds of thousands of people at any given time—could be disenfranchised by a DPOC requirement without hospital or jail staff assistance. Individuals with disabilities that restrict their movement may be less likely to possess a passport. Furthermore, individuals may have simply lost their copies of accepted documents and face barriers to obtaining replacements, especially if they have also lost the underlying documents (e.g., a birth certificate) that support the application for identification. Obtaining replacement copies of underlying documents, like birth certificates, can take several weeks and sometimes cost hundreds of dollars.

When natural disasters occur close to elections, individuals may have their documentary proof of citizenship destroyed with no opportunity to obtain new copies. Again, even if individuals have underlying documents to obtain replacements for identifying documents, it can take weeks to months to replace licenses, birth certificates, and passports. Unfortunately, this is not a hypothetical scenario. Last September and October, mere weeks before the 2024 General Election and for some states days before critical voter registration and absentee ballot deadlines, Hurricane Helene and Hurricane Milton devastated communities in Florida, Georgia, North Carolina, South Carolina, and Tennessee.⁶⁷ In South Carolina, the devastation was so significant that a court ordered the state to extend its voter registration deadline by 10 days.⁶⁸ In natural disasters, where catastrophic loss includes access to fundamental identifying documents, the number of people who could be impacted by DPOC requirements unnecessary for the Federal Form is not “vanishingly small.” Petition ¶ 29.

If the EAC moves forward with AFL’s requested rulemaking, a DPOC requirement on the Federal Form would create a logistical nightmare for millions of United States citizens who lack

⁶⁴ Kevin Morris & Cora Henry, Millions of Americans Don’t Have Documents Proving Their Citizenship Readily Available, BRENNAN CTR. FOR JUST. (June 11, 2024) <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>

⁶⁵ Hansi Lo Wang, *1 in 10 eligible U.S. voters say they can’t easily show proof of their citizenship*, NAT’L PUB. RADIO (June 11, 2024) <https://www.npr.org/2024/06/11/nx-s1-4991903/voter-registration-proof-of-citizenship-requirement>.

⁶⁶ In every state, detained individuals who are awaiting trial maintain voter eligibility if they are not concurrently serving out a sentence or permanently disenfranchised from a prior felony conviction. This population amounts to roughly 457,000 people in a local jail in 2025. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2025*, PRISON POL’Y INITIATIVE (Mar. 11, 2025), <https://www.prisonpolicy.org/reports/pie2025.html>. Most states do not restrict voter eligibility if a person is incarcerated and serving out time only for a misdemeanor conviction. A small handful of jurisdictions also enable incarcerated citizens to vote from a jail or prison regardless of a felony conviction (the District of Columbia, Maine, Puerto Rico, and Vermont) or as long as the individual is not convicted of a disqualifying felony offense (Alabama, Alaska, Mississippi, and Tennessee).

⁶⁷ Sarah J. Eckman et al., Cong. Rsch. Serv., IN 12442, Elections and Hurricanes Helene and Milton (2024).

⁶⁸ *Id.*



access to acceptable documentation close to Election Day. For many, a DPOC requirement would equate to their inability to participate in federal elections. Assuredly, this burden would fall heavily on voters of color. The EAC should not engage in any rulemaking that would disenfranchise such an enormous population of voters.

V. Conclusion

We appreciate the opportunity to comment on the Election Assistance Commission's Notice of a Rulemaking Petition regarding the creation of a documentary proof of citizenship requirement on the National Mail Voter Registration Form. As an organization dedicated to combating racial discrimination and barriers to the ballot for all voters, the Lawyers' Committee strongly opposes the requested rulemaking by America First Legal Foundation. We urge the EAC to deny AFL's Petition and to not establish such a requirement on the Federal Form. If you have any questions or need additional information, please contact Robert Weiner, Director of the Voting Rights Project, at rweiner@lawyerscommittee.org.

Sincerely,

/s/ Robert Weiner

Robert Weiner
Director, Voting Rights Project
Lawyers' Committee for Civil Rights Under Law
rweiner@lawyerscommittee.org