



State of California  
Office of the Attorney General

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ATTORNEY GENERAL

October 17, 2025

*Submitted via Federal eRulemaking Portal*

Executive Director Brianna Schletz  
U.S. Election Assistance Commission  
633 3rd St. NW, Suite 200  
Washington, DC 20001

RE: Comment in Opposition to Petition for Rulemaking to Amend 11 C.F.R. § 9428.4 and the Federal Voter Registration Form to Require Documentary Proof of Citizenship

Dear Executive Director Schletz:

The attorneys general of California, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, and Wisconsin (Signatory States) provide comment in response to the petition for rulemaking submitted by America First Legal Foundation (AFL). Pursuant to 5 U.S.C. § 553(e) and 11 C.F.R. § 200.2, the petition requests that the Election Assistance Commission (EAC) amend 11 C.F.R. § 9428.4 and the federal voter registration form (Federal Form) to require registering voters to submit documentary proof of citizenship (DPOC). Specifically, AFL requests that Federal Form applicants be required to provide one of the following as proof of citizenship: a U.S. passport, State-issued Real ID-compliant driver's license indicating that the applicant is a citizen, an official military identification card that indicates the applicant is a citizen of the United States, or 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. AFL claims that DPOC is essential to enhance the integrity and reliability of voter registration processes, ensuring that only eligible U.S. citizens be permitted to register and vote in federal elections.

The Signatory States strongly oppose the requested rulemaking. Because AFL's petition raises evidence and arguments substantially similar to those previously considered and rejected by this Commission on multiple occasions, a decision to impose DPOC on the Federal Form now, when the underlying facts have not changed, would necessarily constitute an arbitrary agency action. More fundamentally, the requested DPOC requirement is unlawful under the

National Voter Registration Act (NVRA). DPOC is not “necessary” to allow state elections officials to assess the eligibility of prospective voters, and thus, cannot be legally added to the Federal Form. Indeed, imposing DPOC is contrary to both the language and purpose of the NVRA. And not only is it unlawful, but a DPOC requirement would impose untenable, expensive, and unnecessary burdens on state and local elections officials, while inevitably resulting in lower voter registration, disenfranchisement of wide swaths of eligible voters, and damage (both perceived and actual) to the integrity of state and local voting systems. In addition, imposing a DPOC requirement would serve negligible benefits, given the vanishingly small rates of noncitizen registration and voting. Initiating the proposed rulemaking and ultimately imposing a DPOC requirement on the Federal Form would thus violate governing federal law and dramatically alter the makeup of the country’s voting population, substantially diminishing the openness and fairness of federal elections.

**I. REVERSAL OF THE COMMISSION’S MULTIPLE REFUSALS TO IMPOSE A DOCUMENTARY PROOF OF CITIZENSHIP REQUIREMENT ON THE FEDERAL FORM WOULD BE AN ARBITRARY AGENCY ACTION**

Because the relevant circumstances have not changed since the EAC turned away similar petitions for rulemaking, it should deny the petition here. In 2006, after Arizona voters adopted Proposition 200, a ballot initiative that required DPOC for voter registration, the State asked the EAC to add a DPOC requirement to the state-specific instructions for the Federal Form. *See Kobach v. U.S. Election Assistance Com’n*, 772 F.3d 1183, 1188 (10th Cir. 2014). The EAC’s Executive Director denied the request, explaining that “Congress specifically considered whether states should retain authority to require that registrants provide proof of citizenship, but rejected the idea as ‘not necessary or consistent with the purpose of [the NVRA].’” *See* Ltr. of Executive Director Thomas R. Wilkey to Arizona Secretary of State Jan Brewer, at 3 (March 6, 2006). When Arizona asked the EAC’s commissioners to reconsider that denial, the commissioners, by a vote of 2-to-2, declined Arizona’s request, effectively confirming the Executive Director’s denial. *Kobach*, 772 F.3d at 1188; *see Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 19-20 (2013) (*ITCA*) (describing this “inaction” as an “agency action”).

In 2014, Arizona, along with Kansas and Georgia, again asked the EAC to include a DPOC requirement on their state-specific instructions for the Federal Form. *See Kobach*, 772 F.3d at 1188-89. After receiving and reviewing comments from these States, advocacy groups, and state and local officials, the EAC’s Executive Director issued a memorandum of decision denying the States’ request on January 17, 2014. U.S. Election Assistance Comm’n, Dkt. No. EAC-2013-0004, Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form, at 20-21 (Jan. 17, 2014) (EAC 2014 Memo); *see* 79 Fed. Reg. 7439-01 (2014). In that memorandum of decision, the Executive Director again determined that Congress considered and deliberately rejected statutory language that would have allowed states to require DPOC at the time of registration. EAC 2014 Memo at 20-21. As the Executive Director explained, Congress concluded that DPOC was not necessary to fulfill the NVRA’s purposes, and, in fact, posed a risk of eliminating or seriously interfering with voter registration programs that the Act was intended to facilitate. *Id.* The Executive Director also rejected the States’ arguments that existing

safeguards to prevent noncitizens from voting—including the applicant’s attestation of citizenship under penalty of perjury—were meaningless. *Id.* at 28-30. To the contrary, the Executive Director concluded these safeguards served as a “powerful and effective deterrent” because the benefit to a noncitizen of fraudulently registering to vote was “distinctly less tangible” than the risks of fines, imprisonment, or deportation, all of which were explicitly set out on the Federal Form. *Id.* at 30. While the States pointed to “exceedingly small” percentages of noncitizens appearing on voter rolls, they failed to establish that DPOC was necessary for state officials to assess voter eligibility pursuant to the NVRA. *Id.* at 35. The Executive Director’s decision on behalf of the EAC was later upheld by the Tenth Circuit as a valid and final agency action under the Administrative Procedures Act (APA). *See Kobach*, 772 F.3d at 1196-98.<sup>1</sup>

Reversal of these multiple, reasoned decisions of the Commission, based on the instant petition for rulemaking, would result in an unlawful and arbitrary agency action under the APA. *See Kobach*, 772 F.3d at 1198 (noting that EAC’s acceptance of the States’ DPOC request in 2014 “would have risked arbitrariness” because States “offered little evidence that was not already offered in Arizona’s 2005 request”). As explained more fully below, the arguments and evidence set forth in AFL’s petition are functionally identical to those previously considered and rejected by the EAC. Nothing of import to the EAC’s previous analyses has changed. Like Arizona and Kansas before it, AFL points to vanishingly small percentages of voter registration by noncitizens, with no acknowledgment—let alone analysis—of the substantial and well-documented ways in which a DPOC requirement disenfranchises eligible voters. *See Pet.* at 3, 7-8. Nor has AFL provided evidence of any changed circumstances or different factors not previously evaluated by the Commission. The petition simply asks the EAC to reverse its prior findings and reach a different outcome—based on the same legal arguments. In fact, the petition would present an even more consequential question to the EAC than prior petitions because it seeks to add a DPOC requirement to the Federal Form, which has nationwide reach. The prior petitions would have only affected the states who submitted them. Because nothing in AFL’s petition provides any rational basis for the Commission to walk away from its unequivocal decision-making of the last two decades, the petition should be denied as seeking an arbitrary agency action. *Kobach*, 772 F.3d at 1198; *see Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (an agency may change existing policy, but must justify that change with a non-arbitrary and reasoned explanation).

## **II. BECAUSE DOCUMENTARY PROOF OF CITIZENSHIP REQUIREMENTS ARE NOT “NECESSARY” UNDER THE NVRA, THEY ARE PROHIBITED**

In any event, AFL’s petition can and should be denied on its merits. The specific contents of the Federal Form are governed by the NVRA, which states that the Form can “require only such identifying information . . . and other information . . . as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter

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<sup>1</sup> Although the EAC lacked a quorum of commissions at the time, the Tenth Circuit determined that the Executive Director was permitted to issue a final agency action pursuant to an earlier lawful delegation of authority by the EAC. *Kobach*, 772 F.3d at 1189-94.

registration and other parts of the elections process.” 52 U.S.C. § 20508(b)(1). Here, because Congress and this Commission have repeatedly determined, based on largely the same arguments now reiterated in AFL’s petition, that DPOC is not necessary for this purpose, the requested inclusion of DPOC violates the NVRA.

### **A. Congress’s Determination that DPOC Is Not Necessary Is Binding**

The NVRA was enacted in 1993 to reduce barriers to voter registration, protect the integrity of federal elections, and improve the accuracy of voter registration rolls. *See* 52 U.S.C. § 20501(b). Congress sought to make it possible for federal, state, and local governments to implement the law “in a manner that *enhances* the participation of eligible citizens as voters in elections for Federal Office.” *Id.* (emphasis added).

The NVRA carefully sets out the limits of what can be required by the Federal Form. The Form “may require *only* such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant) as is *necessary* to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process.” 52 U.S.C. § 20508(b)(1) (emphasis added). This provision “at once requires and restricts the inclusion of certain information on the Federal Form.” *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 5 (D.C. Cir. 2016). For a requirement to be “necessary” to the Form, and thus required by law, it must be “essential.” *Mi Familia Vota v. Fontes*, 129 F.4th 691, 713 (9th Cir. 2025) (citations omitted). Information that fails to meet this demanding standard *cannot be required* on the Form. 52 U.S.C. § 20508(b)(1). In addition to this limitation, the NVRA also states that the Federal Form “may *not* include any requirement for notarization or other formal authentication.” *Id.* § 20508(b)(3) (emphasis added).

Congress, through the NVRA, has addressed how a prospective voter must establish their citizenship when registering using the Federal Form, requiring that the applicant attest that they meet “each eligibility requirement (including citizenship)” and sign under penalty of perjury. 52 U.S.C. § 20508(b)(2). Additionally, the Help America Vote Act of 2002 (HAVA) added a second method of attestation to the Federal Form by requiring inclusion of the question “Are you a citizen of the United States of America?” and boxes for the applicant to check to indicate whether they are a citizen or not. *Id.* § 21083(b)(4)(A)(i). The Federal Form also explicitly warns against an applicant providing false information during registration. As the EAC has previously recognized, the Federal Form indicates in bolded red text that an applicant who checks the “No” box for citizenship must not complete the Form. EAC 2014 Memo at 28; *see* OMB Control No. 3265-0015 (Current Federal Form). In the Form’s attestation box, the applicant is again reminded that they are swearing to their citizenship and that their attestation is made “under penalty of perjury,” requiring an acknowledgment that “If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.” OMB Control No. 3265-0015.

The decision to address citizenship through attestation rather than documentary proof reflects the judgment of Congress. Indeed, Congress’s limiting language—restricting the

contents of the Federal Form to “identifying *information*”—evidences a clear intent for this legislative choice. 52 U.S.C. § 20508(b)(1) (emphasis added). “Information” means “knowledge,” “facts,” or “data,” and can be communicated by writing on a form.<sup>2</sup> “Proof,” in contrast, is “something that induces certainty or establishes validity” of that information.<sup>3</sup>

The legislative history also unequivocally substantiates Congress’s intent. Congress considered, but declined to adopt, a DPOC requirement because it was “not necessary or consistent with the purposes of” the NVRA. H.R. Rep. No. 103–66, at 23–24 (1993) (Conf. Rep.); see *League of United Latin Am. Citizens (LULAC) v. Executive Office of the President*, 780 F. Supp. 3d 135, 160 (D.D.C. 2025) (detailing legislative history). Congress specifically determined that the Federal Form’s attestation requirement and attending criminal penalties were “sufficient safeguards to prevent noncitizens from registering to vote.” S. Rep. No. 103–6, at 11 (1993). Indeed, this legislative history provides critical context for Congress’s express prohibition on imposing “other formal authentication.” 52 U.S.C. § 20508(b)(3). Congress’s selection of attestation—to the exclusion of DPOC—conclusively answers the question whether the DPOC requirement now requested is “necessary” for state elections officials to adequately assess an applicant’s citizenship at the time of registration. Congress has answered that question in the negative, and that legislative decision is binding.

## **B. The Petition for Rulemaking Fails to Establish that DPOC Is Necessary**

Even if the EAC were free to revisit Congress’s legislative choice and make an assessment on the necessity of DPOC on the Federal Form, nothing in AFL’s petition demonstrates that Congress’s initial determination or this Commission’s multiple subsequent determinations are no longer well-founded. To the contrary, the scheme Congress envisioned and enacted into law—where a voter’s citizenship is established via attestation—continues to serve the NVRA’s purposes.

As the EAC explained in 2014, the Federal Form “currently provides the necessary means for assessing applicants’ eligibility,” and the States have “myriad of means available to enforce their citizenship requirements without requiring additional information from Federal Form applicants.” EAC 2014 Memo at 28, 37. Nothing has changed in the intervening eleven years. State elections officials continue to use a variety of ways to verify a prospective voter’s attested citizenship and maintain accurate voter rolls, including department of motor vehicles databases, juror questionnaires, birth records, and other state and federal databases. See EAC 2014 Memo at 38–41. Each of these tools provides extra protection to states seeking to ensure that an attestation of citizenship on the Federal Form is truthful.

Moreover, the penalties for noncitizen registration remain serious. Both federal and state law impose severe criminal penalties for noncitizen registration. See, e.g., 18 U.S.C. § 1015(f) (knowingly false claim of citizenship to register to vote punishable by up to five years in prison

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<sup>2</sup> See Information, noun, 1a *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/information>.

<sup>3</sup> See Proof, noun, 3 *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/proof>.

and up to \$250,000 fine); Cal. Elec. Code § 18100 (felony, punishable by imprisonment for 16 months or two or three years, for willfully causing a person to be registered as a voter, knowing that he or she is not entitled to register); Haw. Rev. Stat. § 19-3.5(2)-(4) (felony for knowingly voting when not entitled to vote; for noncitizen voter registration); Minn. Stat. § 201.014(3) (felony for knowingly voting when ineligible); N.M. Stat. Ann. §§ 1-20-3, 1-20-8 (fourth degree felony, carrying 18 months imprisonment and fine of up to \$5,000, for misrepresentations on voter registration for or ineligible voting); N.Y. Elec. Law § 17-104 (establishing that it is a felony to register or attempt to register to vote knowing that one is not qualified to vote); Or. Rev. Stat. §§ 260.715(1), 260.993(2) (felony punishable by up to five years in prison for a knowingly false claim of citizenship to register to vote); R.I. Gen. L. §§ 17-23-4, 31-27-14 (felony offense, punishable by imprisonment for one to five years, and/or fine up to \$5,000, for any person to fraudulently vote or attempt to vote “not being qualified, notwithstanding that person’s name may be on the voting list at the policy place where the person votes or attempts to vote”); Wash. Rev. Code § 29A.84.130 (felony, punishable by up to five years for knowingly attesting to a false declaration as to voter qualifications). And a noncitizen registering to vote may be subject to a permanent determination of inadmissibility and even deportation. *See, e.g.*, 8 U.S.C. §§ 1182(a)(6)(C)(ii) (false representation of citizenship to obtain benefits under federal law generally renders an alien inadmissible), 1227(a)(3)(D) (false representations of citizenship to obtain benefits under federal law generally renders an alien deportable). As this Commission has concluded, these criminal and immigration consequences “remain a powerful and effective deterrent against voter registration fraud.” EAC 2014 Memo at 30.

AFL denigrates the value of the Federal Form’s attestation requirement as “nearly self-refuting,” arguing that elections officials should not “rely on an applicant’s honesty to prevent dishonesty.” Pet. at 5. But this argument fails to acknowledge the substantial penalties associated with the attestation requirement. The reason attestation is a trustworthy mechanism for establishing citizenship is not the inherent honesty of the applicant, but rather the significant and explicitly listed consequences that attach to a knowing misrepresentation of citizenship information. Indeed, attestation of truth under penalty of perjury (and its attendant potential consequences) is a primary way in which truth is determined in our current regulatory and legal system. *See, e.g.*, Fed. R. Civ. P. 56(c)(1)(A) (civil parties can establish that a fact is not in genuine dispute via deposition, affidavit, or declarations); 26 U.S.C. § 6065 (requiring that tax returns and other declarations submitted to the IRS be made under penalty of perjury); Cal. Code Civ. P. § 2015.5 (requiring any mandatory submission of a sworn statement, declaration, verification, or affidavit be made in writing under penalty of perjury); N.Y. C.P.L.R. § 2106 (requiring sworn affirmations of truth be made under penalty of perjury noting the potential for “fine or imprisonment”).

AFL’s simplistic dismissal wholly ignores the cost-benefit analysis associated with fraudulent noncitizen voting. As this Commission has explicitly recognized, “the benefit to a non-citizen of fraudulently registering to vote is *distinctly less tangible* than the loss of access to his or her home, job, and family that would come with deportation.” EAC 2014 Memo at 30 (emphasis added). In reaching that conclusion, the EAC referenced evidence from various litigations that established the common-sense proposition that noncitizens (especially those in the country illegally) are extremely unlikely to risk criminal prosecution and jeopardize their living

situation by registering their names and addresses with the government for purposes of casting a single unlawful vote. *See id.*; *see also Dep't of Commerce v. New York*, 588 U.S. 752, 768 (2019) (noting Census Bureau data showing that noncitizen households historically respond to the census at lower rates and crediting Bureau's explanation that discrepancy was likely attributable to noncitizens' reluctance to answer questions about citizenship).

AFL maintains that the force of criminal and immigration penalties associated with false attestation is “undermined by [their] nearly non-existent enforcement.” Pet. at 2. But criminal prosecutions and immigration consequences associated with fraudulent noncitizen voting, even if rare, undoubtedly occur. Indeed, AFL acknowledges as much, repeatedly referencing data collected by the Heritage Foundation showing convictions for ineligible voting, including cases involving noncitizens. *See* Pet. at 3, 8 & n.47. Noncitizens who illegally register to vote or vote have been prosecuted and convicted in various states and have been subject to adverse immigration consequences resulting from their election activities.<sup>4</sup> The existence of such enforcement actions wholly refutes AFL's suggestion that the current penalties attached to the Federal Form's attestation requirement are meaningless. To the contrary, the broad federal and state laws available to prosecute fraud in the states' election processes, as well as the severe immigration consequences associated with noncitizen voting, lend credibility to a prospective voter's attestation of citizenship and afford states the ability to ensure enforcement of their voter qualifications through prosecutions and referrals in appropriate cases.

It is true that the confirmed cases of unlawful noncitizen registration and voting are exceedingly rare. For instance, the Heritage Foundation database referenced throughout the petition reveals that for the period between 1982 and 2025—time in which approximately two billion votes were cast in federal elections—there were only 98 documented convictions for noncitizen registration or voting.<sup>5</sup> But this dearth of statistical evidence disproves, rather than supports, the substance of AFL's claim that DPOC is “necessary” under the NVRA. The lack of prosecutions for voter fraud suggests that the Federal Form's attestation requirement adequately ensures that state officials are able to determine an applicant's citizenship. As this Commission explained eleven years ago, “there is no evidence in the record to suggest that the small number of criminal referrals is attributable to anything other than the strength of the deterrent effect resulting from the existence of these criminal laws.” EAC 2014 Memo at 38.

AFL insists that there is an “alien voter fraud crisis,” citing various headline-grabbing statistics about noncitizens purportedly illegally registered to vote. Pet. at 3, 8. But every one of these examples falls apart under even cursory scrutiny. For example, AFL's audacious claim that “10-20% of aliens are illegally registered to vote” can be traced back to a thoroughly debunked blog post. As an analysis by the Cato Institute reveals, this statistic, originally pressed by James

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<sup>4</sup> *See* Heritage Foundation's Election Fraud Database, <https://electionfraud.heritage.org/search> (as of Sept. 22, 2025); *see also, e.g., Green Card Holder Who Voted Illegally Could Face Deportation*, PBS News (Feb. 12, 2017), <https://www.pbs.org/newshour/nation/green-card-holder-voted-illegally-face-deportation>.

<sup>5</sup> *See* Heritage Foundation's Election Fraud Database, <https://electionfraud.heritage.org/search> (as of Sept. 22, 2025).



Agresti, appeared in a 2014 analysis by Jesse Richman and others of the Cooperative Congressional Election Study (CCES) that has come “under intense critical scrutiny.”<sup>6</sup> In fact, Richman’s analysis provided subsequent researchers with a prime example of how “‘low-level measurement error’” can result in “‘large prediction errors in large sample surveys.’”<sup>7</sup> Adjusting for Richman’s errant analysis, this same data revealed a percentage rate for noncitizen voters far closer to 0 percent than 1 percent.<sup>8</sup>

The petition’s state-specific statistics fare no better. AFL claims that nearly 100,000 noncitizens were identified on Texas’s voter rolls in 2019, and that 6,500 noncitizens were removed from Texas rolls in 2021. Pet. at 3. But the 2019 numbers were almost immediately walked back by the Texas Secretary of State, with that office acknowledging the use of a flawed methodology that counted substantial numbers of eligible naturalized citizens.<sup>9</sup> As for the 6,500 removed in 2021, a subsequent gubernatorial press release (not cited by AFL) qualified that number as “potential” noncitizens, with a subsequent analysis by the Texas Secretary of State shrinking that number to be 581.<sup>10</sup> AFL further claims that 1,454 noncitizens were registered in North Carolina in 2014, Pet. at 3, 8, but a 2016 audit revealed the presence of only 41 noncitizens on rolls, in an election where 4.8 million votes were cast statewide.<sup>11</sup> The petition next cites 3,251 supposed noncitizens removed from rolls in Alabama in 2024 and groups of 6,303 and 1,481 noncitizens removed from rolls in Virginia that same year. Pet. at 3. But these removals were blocked by federal courts, in part because these numbers contained numerous eligible voters who simply did not receive or respond to mail notices seeking to confirm citizenship.<sup>12</sup> Indeed, as to Virginia, only three actual prosecutions for illegal voting occurred

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<sup>6</sup> See Walter Olson, *Shedding Light on the Incidence of Illegal Noncitizen Voting*, Cato Institute (May 22, 2024), <https://www.cato.org/blog/shedding-light-incidence-illegal-noncitizen-voting>.

<sup>7</sup> *Id.* (quoting Stephen Ansolabehere, et al., *Perils of Cherry Picking Low Frequency Events in Large Sample Surveys*, Harvard Univ., (Nov. 5, 2014), <https://cces.gov.harvard.edu/news/perils-cherry-picking-low-frequency-events-large-sample-surveys>).

<sup>8</sup> *Id.*; see also Jude Joffe-Block, *6 Facts About False Noncitizen Voting Claims and the Election*, NPR (Nov. 5, 2024), <https://www.npr.org/2024/10/12/nx-s1-5147789/voting-election-2024-noncitizen-fact-check-trump> (summarizing data and critiques of Richman’s errant methodology); Nate Cohn, *Illegal Voting Claims, and Why They Don’t Hold Up*, New York Times (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/upshot/illegal-voting-claims-and-why-they-dont-hold-up.html> (noting Richman’s subsequent concession that “[t]he high-end estimates [of noncitizen voting from his study] are likely incorrect.”).

<sup>9</sup> Richard Gonzales, *Federal Judge Orders Texas to End ‘Flawed’ Effort to ID Noncitizen Voters*, NPR (Feb. 27, 2019), <https://www.wunc.org/2019-02-27/federal-judge-orders-texas-to-end-flawed-effort-to-id-noncitizen-voters>.

<sup>10</sup> Lexi Churchill, et al., *Gov. Greg Abbott Boasted that Texas Removed 6,500 Noncitizens from Its Voter Rolls. That Number was Likely Inflated*, The Texas Tribune and ProPublica, (Oct. 15, 2024), <https://www.texastribune.org/2024/10/15/texas-noncitizen-voter-roll-removal-included-americans/>.

<sup>11</sup> Sara Pequeno, *Republican Really Want You to Think Noncitizen are Voting in Droves. They’re Not*, USA Today (July 11, 2024), <https://www.usatoday.com/story/opinion/columnist/2024/07/11/house-passes-save-act-republicans-target-voting/74343679007/>.

<sup>12</sup> See *Alabama Coal. for Immigr. Justice v. Allen*, 2024 WL 4510476 (N.D. Ala. Oct. 16, 2024); *Virginia Coal. for Immigr. Rights v. Beal*, 2024 WL 4577983 (E.D. Va. Oct. 25, 2024); see also Hansi Lo Wang, *A Federal Judge has Ordered Alabama to Stop Trying to Purge Voters Before Election Day*, NPR



between January 2022 and July 2024 (none of which were for noncitizen voting), with officials finding that many of the supposed noncitizens ensnared in attempted voter purges were indeed eligible, but simply neglected to check a citizenship box when registering to vote through the DMV.<sup>13</sup> As for the over 100,000 purported noncitizens on the voter rolls in Pennsylvania in 2018, Pet. at 8, state elections officials forcefully countered in court documents that there was “no evidence to back up” this claim, which was made by an outside legal group dedicated to purging state voter rolls.<sup>14</sup>

In short, all of the statistical evidence cited by AFL as support for the argument that DPOC is necessary under the NVRA to stop noncitizens from registering has been thoroughly discredited and repudiated. The truth is well-documented and simple: noncitizens are not registering to vote or voting in significant numbers in U.S. elections.<sup>15</sup> The Federal Form’s

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(Oct. 16, 2024), <https://www.npr.org/2024/10/16/nx-s1-5154148/alabama-noncitizen-voter-purge-lawsuit>; Jude Joffe-Block, *U.S. Citizens Are Among the Voters in Virginia’s Controversial Purge*, NPR (Oct. 30, 2024), <https://www.npr.org/2024/10/29/nx-s1-5169204/virginia-noncitizen-voter-purge>.

<sup>13</sup> Gregory S. Schneider, et al., *Youngkin Stokes Fear of Vast Noncitizen Voting in Virginia. Records Don’t Show It*, The Washington Post (Oct. 9, 2024), <https://www.washingtonpost.com/dc-md-va/2024/10/09/youngkin-noncitizen-voters-virginia/>.

<sup>14</sup> Marc Levy, *State Disputes Claim 100K Noncitizens Registered to Vote*, Associated Press (Feb. 28, 2018), <https://apnews.com/general-news-033c89a4d0d646d386a63117c0c72a11>.

<sup>15</sup> Recent audits and investigations conducted by state officials, nonprofit organizations, and news organizations consistently reveal a vanishingly small number of suspected noncitizen voters, comprising only a fraction of a percentage of votes cast in recent elections. *See, e.g., Review of Allegations of Noncitizen Registrations and Voters*, The Center for Election Innovation & Research (July 2025), <https://electioninnovation.org/research/noncitizen-analysis/>; Jude Joffe-Block, *6 Facts About False Noncitizen Voting Claims and the Election*, NPR (Nov. 5, 2024), <https://www.npr.org/2024/10/12/nx-s1-5147789/voting-election-2024-noncitizen-fact-check-trump> (summarizing data). For example, a study of 42 jurisdictions with high noncitizen populations found only 30 cases of suspected noncitizen voting in the 2016 Presidential Election across jurisdictions representing 23.5 million votes—an incident rate of 0.0001 percent. Douglas Keith & Myrna Perez, *Noncitizen Voting: The Missing Millions*, Brennan Center (May 5, 2017), <https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-missing-millions>. State-level audits and reviews conducted by elections officials have revealed similar findings. The North Carolina State Board of Elections identified just 41 individuals with immigration status (e.g., a green card) who cast a ballot out of the state’s 4.8 million voters in the 2016 Presidential Election. N.C. State Bd. of Elections, *Post-Election Audit Report at 2*, (April 21, 2017), [https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report\\_2016%20General%20Election/Post-Election\\_Audit\\_Report.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf). A similar audit conducted by the Georgia Secretary of State in 2024 found only 20 noncitizens on the state voter roll out of the state’s 8.2 million voters, only 9 of whom had any record of casting a ballot. *Georgia Citizenship Audit Finds Few Noncitizens on Voter Rolls*, AP (Oct. 23, 2024), <https://apnews.com/article/georgia-noncitizens-voter-rolls-14532ef49b66f9cbf34ff483d2534280>. And a recent review conducted by the Michigan Department of State produced a similar result—only 15 credible cases of possible noncitizen voting identified out of more than 5.7 million ballots cast, for an incident rate of only .00028 percent. Mich. Dep’t of State, *Michigan Department of State review confirms instances of noncitizen voting are extremely rare* (April 3, 2025), <https://www.michigan.gov/sos/resources/news/2025/04/03/michigan-department-of-state-review-confirms-instances-of-noncitizen-voting-are-extremely-rare>.

attestation requirement, backed by criminal and immigration penalties, is more than sufficient to allow state elections officials to assess voter eligibility. *See Fish v. Schwab*, 957 F.3d 1105, 1142 (10th Cir. 2020) (affirming that, after a trial on the merits, the plaintiff “failed to demonstrate that substantial numbers of noncitizens successfully registered to vote notwithstanding the attestation requirement”). Accordingly, the overwhelming evidence before the EAC supports only one rational conclusion: a DPOC requirement is unnecessary under the NVRA.

### **III. THE ADVERSE EFFECTS OF REQUIRING DPOC CUT STRONGLY AGAINST THE PETITION FOR RULEMAKING**

Because AFL has failed to establish that DPOC is “necessary” to allow state elections officials to adequately assess the eligibility of prospective voters, the NVRA affirmatively bars the inclusion of such a requirement on the Federal Form. 52 U.S.C. § 20508(b)(1); *Newby*, 838 F.3d at 5. But the requirement’s severe adverse consequences—which are wholly unaddressed in the petition and affect both the state and local governments that administer federal elections and voters—also weigh heavily against initiating the requested rulemaking.

#### **A. A DPOC Requirement Will Result in Severe Burdens on State and Local Governments**

Requiring DPOC on the Federal Form would raise numerous questions for state and local election administration. The requested requirement would impose a significant burden on the voter registration systems maintained at the state and local level and impede the work of those offices more generally, as states would be forced to divert resources from ongoing mission-critical work to address required changes. For example, it is unclear how DPOC would be accepted and reviewed by state and county elections officials; where images of DPOC would be scanned and uploaded to state voter registration databases; how much capacity the existing election management systems have to handle this new information; whether county elections officials could retain copies of DPOC, input the necessary information into their election management systems, and provide that information to state databases; what exact modifications would need to occur to state voter registration databases to ensure that sensitive DPOC-related information will be kept secure; what modifications local elections officials will have to make to their election management systems to be able to record DPOC and then transmit that record to statewide voter registration databases; how much these changes will cost; how long they will take to implement; and whether adequate staffing is available to implement the changes in a timely and effective manner. In other words, implementation of a DPOC requirement raises a host of practical challenges that would require a massive undertaking at the state and local level in the Signatory States.<sup>16</sup>

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<sup>16</sup> Six states are exempt from the NVRA, including its requirement that covered states accept the Federal Form, because they either did not have a voter registration system or allowed voter registration on Election Day when the law was passed. *See* 52 U.S.C. § 20503(b). All Signatory States except Minnesota and Wisconsin are subject to the NVRA. Because Minnesota voluntarily accepts the Federal Form as one method of voter registration, imposition of a DPOC requirement would create potential voter confusion and administrative burdens. Wisconsin voluntarily accepts the Federal Form from voters covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) but does not otherwise currently

For example, any implementation of a DPOC requirement on the Federal Form would require significant changes to federally mandated statewide voter registration databases. Integrating requirements for DPOC and recording that information in such databases would require modifying the databases to include new fields for recording the new DPOC-related information. Many Signatory States' databases currently do not record DPOC. Doing so would be a significant undertaking because it requires designing the changes, programing a software update to enact those changes, and thoroughly testing and implementing the update to ensure that it works correctly and is secure before it is rolled out.

And seemingly small problems can complicate this process. For example, AFL's DPOC requirement contemplates certain specified documents, but also includes government-issued identification, "if such identification is otherwise accompanied by proof of United States citizenship." Pet. at 12. It is unclear, however, what precise documents could constitute "proof of United States citizenship." This ambiguity would make it difficult for states to determine how to revise their voter registration databases to account for such unknown documents. This simple problem is merely representative of the countless questions and obstacles that arise when updating a statewide voter registration database. And such seemingly small changes to state elections infrastructure can be extremely time-consuming and costly. In California, for example, past changes to VoteCal have taken up to a year or longer to implement and have cost over \$1 million. Although it is not possible to predict exactly how long implementing DPOC would take or how much it would cost, the Signatory States that accept the Federal Form from all registrants anticipate that it would be a fundamental change to their systems of voter registration.

Furthermore, the impact of a DPOC requirement would be amplified by the necessity of making corresponding changes at the local level. In California, for instance, county elections officials in each of the State's 58 counties oversee their own county's election management systems, and each of those systems would have to be modified to ensure that they could record the DPOC-related information. In turn, these county-level election management systems must be able to communicate the DPOC information to the statewide VoteCal database. Indeed, county elections officials in California have already expressed significant concerns about the feasibility of implementing a DPOC requirement into their election management systems, as well as the cost of implementation, the extensive testing of the election management systems with VoteCal that would be needed, and how the requirement would ultimately be administered. Likewise, in New York, where the State's 62 counties are also largely responsible for overseeing their elections and registration of voters in their respective counties, implementing DPOC requirements would require costly and time-consuming overhauls of each county's registration processes and voter databases, as well as the state-level system, NYSVoter. In any given year, voters in the Signatory States may go to the polls multiple times—in New York, for example, voters may participate in five or more primary and general elections between local races and county-wide elections—requiring substantial time and resource expenditure that elections officials do not have to divert to implementing a DPOC requirement.

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accept it. Wisconsin's burdens resulting from a DPOC requirement would accordingly be limited to the context of UOCAVA registrations.

Additionally, the requested DPOC requirement raises troubling timing concerns as the Signatory States prepare for next year's elections. As an example, New York administers partisan primaries and, as a result, requires that registered voters declare a party by February 14th in order to participate in the primaries. To do so, the State's elections officials instruct voters to use the New York State voter registration form, itself statutorily mandated to "conform with" the Federal Form, *see* N.Y. Elec. Law § 5-210(5). However, if DPOC is required, this February deadline provides only a very short window for New York's local elections officials to adjust their registration systems or force voters to use noncompliant registration forms, which potentially jeopardizes the validity of those registrations.

It is also clear that imposition of a DPOC requirement would necessitate substantial investment and re-training by the states at the local level. This would include significant education and coordination with local elections officials on topics such as: (1) the new requirements and the documents that suffice (e.g., whether copies can be provided in the mail, or whether a registrant must present original documents in person), (2) how to implement the requirement to record DPOC and its related information, and (3) ceasing use of the old Federal Form. Thus, to roll out the changes needed to administer AFL's requested DPOC requirement, Signatory States would be required to organize a significant roadshow of in-person trainings, generate written advisories, and engage in constant follow-up based on feedback. And beyond the initial startup burdens, the Signatory States that accept the Federal Form from all registrants would also have an ongoing responsibility to ensure that local elections officials are complying with the new requirement so long as it remains in effect. These substantial and costly administrative burdens—all in service of a documentation requirement that is not necessary for adequate evaluation of a voter's eligibility—cut squarely against AFL's request.

### **B. A DPOC Requirement Will Result in Wide-Spread Disenfranchisement of Eligible Voters**

The requested DPOC requirement would also inevitably result in disenfranchisement of eligible voters. As explained above, AFL provides a list of certain acceptable documentation for proving a registering voter's citizenship, including, "[a] U.S. Passport, State-issued Real ID-complaint driver's license indicating that the applicant is a citizen, an official military identification card that indicates the applicant is a citizen of the United States, or 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." Pet. at 12. This limited list of permissible documents raises a multitude of concerns for voters' access to the ballot. For example, otherwise eligible citizens might not have qualifying DPOC readily available, the DPOC might not match their current identification due to a name change (e.g., when a spouse changes their last name to match their partner's), or the required documents may have been lost or destroyed (e.g., in one of the fires or other natural disasters that has impacted many states like California in recent years). Indeed, there are specific problems associated with each of AFL's categories of documentation:

- U.S. Passport. Approximately half of Americans do not have a valid passport,<sup>17</sup> nor is obtaining one a simple undertaking. Those applying for their first passport must pay \$165,<sup>18</sup> and regular processing times can take over a month.<sup>19</sup>
- REAL ID. No standard-issue state REAL ID driver's licenses indicate U.S. citizenship.<sup>20</sup>
- Military Identification. Next Generation Uniformed Services Identification (USID) cards do not affirmatively indicate citizenship.<sup>21</sup>
- Federal or State Government-Issued Photo Identification Otherwise Accompanied by Proof of Citizenship. As noted, it is unclear what this refers to specifically, beyond the documents above. If this refers to birth certificates, a fee is typically charged to obtain a certified copy of a birth record. In California, for instance, a certified birth certificate costs \$29 per copy.<sup>22</sup> And more than 9% of citizens of voting age likely do not have documents that prove their citizenship readily available.<sup>23</sup>

Given these substantial gaps in access to the required documentation amongst the American citizen population, imposing a DPOC requirement will almost certainly result in disenfranchisement of many otherwise eligible voters. But the Commission need not rely on inference (obvious as it may be) to make such a finding. The few states that have experimented with DPOC in voter registration establish conclusively that such requirements result in severe barriers to the vote. In Kansas, when state officials enforced a DPOC requirement for voter registration, “over 18,000 Kansans stood to lose the right to vote” in state elections. *Fish v. Kobach*, 840 F.3d 710, 752 (10th Cir. 2016). In affirming an injunction against the state law, the Tenth Circuit noted that many citizens “faced financial and administrative obstacles to obtaining

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<sup>17</sup> U.S. Dep't of State, Expanding Passport Agencies Across the United States (June 18, 2024), <https://2021-2025.state.gov/expanding-passport-agencies-across-the-united-states/> (identifying that 48% of Americans have a passport).

<sup>18</sup> U.S. Dep't of State, Passport Fees, <https://travel.state.gov/content/travel/en/passports/how-apply/fees.html> (last visited Apr. 18, 2025).

<sup>19</sup> U.S. Dep't of State, Get Your Process Time, <https://travel.state.gov/content/travel/en/passports/how-apply/processing-times.html> (last visited Apr. 18, 2025).

<sup>20</sup> See, e.g., California DMV, What is REAL ID?, <https://www.dmv.ca.gov/portal/driver-licenses-identification-cards/real-id/what-is-real-id/> (last visited Apr. 28, 2025).

<sup>21</sup> See Next Generation Uniformed Services ID Card, DOD Common Access Card, <https://www.cac.mil/Next-Generation-Uniformed-Services-ID-Card/>.

<sup>22</sup> See Cal. Dep't Pub. Health, Vital Records Fees, <https://www.cdph.ca.gov/Programs/CHSI/Pages/Vital-Records-Fees.aspx> (last visited Apr. 28, 2025); see also Greta Bedekovics, et al., *The SAVE Act: Overview and Facts*, Ctr. for Am. Progress (Jan. 31, 2025), <https://www.americanprogress.org/article/the-save-act-overview-and-facts/> (as many as 69 million American women have changed their surname after marriage and do not have access to a birth certificate with their legal name).

<sup>23</sup> Kevin Morris, et al., *Millions of Americans Don't Have Documents Proving Their Citizenship Readily Available*, Brennan Ctr. (June 11, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>.

DPOC,” which meant that “there was an almost certain risk that thousands of otherwise qualified Kansans would be unable to vote.” *Id.* at 753.<sup>24</sup> The same occurred recently in New Hampshire, where a state law requiring DPOC prevented otherwise eligible voters from registering and voting in local elections.<sup>25</sup>

The experience of Arizona likewise illustrates the disenfranchising effect of DPOC requirements. As explained above, Proposition 200 created a state-law requirement for DPOC at the time of voter registration. *Mi Familia Vota*, 129 F.4th at 703. In *ITCA*, the Supreme Court held that this law was preempted by the NVRA, as applied to registrations submitted by Arizonans using the Federal Form. *ITCA*, 570 U.S. at 15. In the wake of *ITCA*, Arizona established dual systems of voter registration, accepting registrations from voters without DPOC as eligible to vote in federal elections only, while registering voters with DPOC to vote in both federal and state elections. *Mi Familia Vota*, 129 F.4th at 704.<sup>26</sup> As of December 2024, there were nearly 34,000 actively registered federal-only voters in Arizona.<sup>27</sup> Analysis by the Brennan Center has revealed that federal-only voters are more likely to be younger, nonwhite, politically independent voters, who live in lower-income and less educated neighborhoods when compared to the rest of the electorate.<sup>28</sup> The devastating effects of DPOC for access to the ballot (especially for certain demographic groups of eligible voters) are clear. Indeed, because Arizona limits its DPOC requirement to a voter’s *initial* registration, and AFL’s petition would also apply the requirement more broadly to re-registration (when a voter moves, for example), there is strong reason to believe that the experience in Arizona understates the anti-democratic effects of the DPOC requirement requested here.<sup>29</sup>

The statistics on possession and availability of DPOC, as well as the real-world experience in states that have implemented DPOC, present a stark picture. The requirement that AFL seeks to add to the Federal Form will inevitably result in the disenfranchisement of large swaths of eligible voters. And this Commission has previously recognized as much. In its 2014 denial of Kansas and Arizona’s requests for DPOC, the EAC explained that a DPOC requirement

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<sup>24</sup> See also Ian Vandewalker, *The Effects of Requiring Documentary Proof of Citizenship*, Brennan Center (July 19, 2017), <https://www.brennancenter.org/our-work/research-reports/effects-requiring-documentary-proof-citizenship>.

<sup>25</sup> Holly Ramer, et al., *New Hampshire Town Elections Offer a Preview of Citizenship Voting Rules Being Considered Nationwide*, The Associated Press (Mar. 25, 2025), <https://apnews.com/article/save-act-voting-proof-citizenship-new-hampshire-5105986c3fc354d3d61ec3480b49c788>.

<sup>26</sup> See also Kevin Morris, et al., *Arizona’s Show-Your-Papers Requirement Hurts Voters*, Brennan Center (Feb 19, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/arizonas-show-your-papers-requirement-hurts-voters>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*; Jen Fifield, et al., *Arizona Federal-Only Voters Are Concentrated on College Campuses, Data Shows*, VoteBeat Arizona (Dec. 18, 2023), <https://www.votebeat.org/arizona/2023/12/18/arizona-federal-only-voters-concentrated-college-campuses-proof-of-citizenship/>.

<sup>29</sup> See Kevin Morris, et al., *Arizona’s Show-Your-Papers Requirement Hurts Voters*, Brennan Center (Feb 19, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/arizonas-show-your-papers-requirement-hurts-voters>.

“would likely hinder eligible citizen from registering to vote in federal elections, undermining a core purpose of the NVRA.” EAC 2014 Memo at 42. That remains the case today and conclusively weighs against granting the petition.

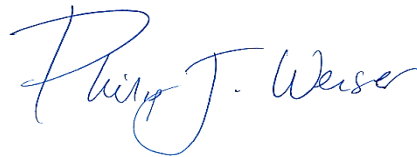
#### IV. CONCLUSION

The EAC exists to facilitate ready access to the ballot for the country’s millions of eligible voters. The instant petition for rulemaking asks the Commission to depart from that mission. Under the NVRA, the EAC can only impose requirements on the Federal Form that are “necessary” for state officials to assess a prospective voter’s eligibility. As determined by Congress and this Commission (repeatedly), attestation of citizenship, backed by criminal and immigration penalties, along with the various tools available to states to cross-check citizenship, adequately serves this purpose. Because DPOC is not necessary, it cannot be legally added to the Federal Form. And even if the EAC could consider adding it, the substantial burdens on state and local election infrastructure, as well as DPOC’s well-documented disenfranchisement of significant numbers of eligible voters, weigh sharply against AFL’s request. This is particularly true when considering the exceedingly rare instances of voter fraud committed by noncitizens. The Signatory States thus urge the Commission to deny AFL’s request for rulemaking.

Sincerely,



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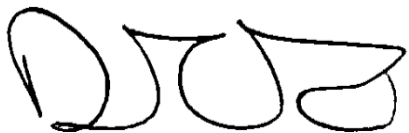
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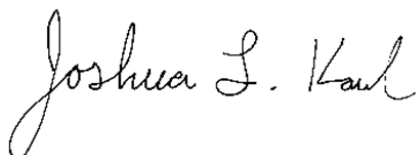
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