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ATTORNEY GENERAL OF TEXAS

October 20, 2025

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

Submitted Electronically via Regulations.gov

Re: Comment on Petition for Rulemaking submitted by America First Legal Foundation asking the Commission to amend EAC Regulations and the National Mail Voter Registration Form to require documentary proof of United States citizenship to register to vote in federal elections by the Attorneys General of the States of Texas, Alabama, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Nebraska, Ohio, South Carolina, South Dakota, and West Virginia (Docket No. EAC-2025-0236)

Dear Commissioners of the U.S. Election Assistance Commission:

The Attorneys General of the States of Texas, Alabama, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Nebraska, Ohio, South Carolina, South Dakota, and West Virginia appreciate the opportunity to comment on the Petition for Rulemaking submitted by the America First Legal Foundation ("AFL") to issue a rule requiring documentary proof of citizenship ("DPOC") on federal voter registration forms.

On March 25, 2025, President Trump issued Executive Order 14248, entitled “*Preserving and Protecting the Integrity of American Elections*,” 90 Fed. Reg. 14005 (March 25, 2025) (“EO 14248” or “EO”). The EO explains that “[f]ree, fair, and honest elections unmarred by fraud, errors, or suspicion are fundamental to maintaining our constitutional Republic. The right of American citizens to have their votes properly counted and tabulated, without illegal dilution, is vital to determining the rightful winner of an election.” *Id.* § 1. Thankfully, President Trump declared that “[i]t is the policy of [his] Administration to enforce Federal law and to protect the integrity of our election process.” *Id.* AFL’s Petition for Rulemaking directly advances those objectives.

AFL’s proposal that the U.S. Election Assistance Commission (“EAC”) amend 11 C.F.R. § 9428.4 and the federal voter registration form to require DPOC is animated by several incontrovertible facts. First, the current federal voter registration system fails to achieve the government’s statutory obligations and leaves our voter rolls vulnerable. Second, the current framework impedes state election officials from properly ensuring that only eligible U.S. citizens are permitted to register and vote in federal elections. And third, President Trump’s EO 14248 is consistent with federal law. Accordingly, the proposed rule seeks to enhance the integrity of the voter registration process and ensure that only eligible U.S. citizens are permitted to register and vote in our federal elections.

I. The current federal voter registration system fails to achieve the government’s statutory obligations and leaves our voter rolls vulnerable.

Only United States citizens are legally allowed to vote in federal elections. It is a federal crime for non-U.S. citizens to vote for “President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives.” 18 U.S.C. § 611. So serious is the conduct, in fact, that aliens who vote in violation of federal law are rendered inadmissible and deportable. 8 U.S.C. §§ 1182(a)(10)(D)(i), 1227(a)(6).

The National Voter Registration Act (“NVRA”) mandates that States “accept and use the mail voter registration application form prescribed by the [EAC]...for the registration of voters in elections for Federal office.” 52 U.S.C. § 20505(a)(1). The current form requires only attestation of citizenship without demanding DPOC. 11 C.F.R. § 9428.4(b). It contains the following question: “Are you a citizen of the United States of America?” 52 U.S.C. § 21083(b)(4)(A)(i). And it asks the applicant to “include a statement that . . . specifies each eligibility requirement (including citizenship)” and “requires the signature of the applicant, under penalty of perjury.” 52 U.S.C. § 20508(b)(2); *see also* 52 U.S.C. § 20504(c)(2)(C). The NVRA also empowers the EAC to “require . . . information . . . 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).

The current form does not require any proof of whether the applicant is a U.S. citizen. Instead, the form requires would-be voters to swear, under penalty of perjury, that they are U.S. citizens. While the form warns of potential consequences from providing false information, this ends up being little more than an empty threat because enforcement is nearly non-existent. None of this is theoretical: States have already experienced the real-world consequences that inevitably result from the current flawed system. For example, in 2019 Texas identified nearly 100,000 possible non-U.S. citizens on its voter rolls, many of which would have been prevented from illegally voting if the voter registration form required DPOC. Similarly, Texas was unable to verify the citizenship status of over 450,000 people registered to vote in 2024, forcing the State to flood USCIS with citizenship verification requests. Other States have had similar issues. For instance, Arkansas announced just this month that three noncitizens have been arrested for illegally voting in its elections.

Relying exclusively on self-attestation leaves the door wide open to non-U.S. citizens voting in our elections. And requiring DPOC provides a simple yet far superior alternative. The current voter registration form’s glaring shortfalls make it all but impossible to determine whether would-be voters are U.S. citizens. Thus, EAC should engage in notice-and-comment rulemaking to remedy this sorry state of affairs by amending 11 C.F.R. § 9428.4 and the federal voter registration form to require DPOC as the best means of ensuring that only eligible U.S. citizens are able to register and vote.

II. The current framework ties the hands of state election officials from properly ensuring that only eligible U.S. citizens are permitted to register and vote in federal elections.

A critical component of conducting safe and secure elections is ensuring that only eligible voters are registered to vote. Voters in each of our States are increasingly concerned about the possibility—and sometimes the reality—of non-U.S. citizens registering to vote and voting in our elections. Many States, including Texas, limit voting in state and local elections to U.S. citizens as well. Tex. Elec. Code §§ 11.001(a)(1), 11.002(a)(2), 13.001(a)(2); *see also* TEX. CONST. art. VI, § 2. In Texas, therefore, it is a state jail felony to lie about citizenship status when registering to vote, Tex. Elec. Code § 276.018, and a second-degree felony for a non-U.S. citizen to cast a vote, Tex. Elec. Code § 64.012.

The NVRA—sometimes referred to as the Motor Voter Law—is designed to help easily facilitate voting opportunities for every U.S. citizen by requiring States to offer voter registration at their motor vehicle departments and public assistance agencies. 52 U.S.C. §§ 20501-20511. Non-U.S. citizens lawfully present in the United States can obtain a driver’s license or identification card without providing DPOC, which in turn provides an opportunity for them to illegally register to vote or cast a ballot. Requiring DPOC to register and vote would thwart non-U.S. citizens’ ability to successfully register to vote by merely attesting to their citizenship when applying for a driver’s license or identification card.

Although federal (and sometimes state) law prohibits non-citizens from voting, the current system fails to prevent non-citizens from illegally registering to vote. Federal law also paradoxically prohibits States from requiring voters to present proof of citizenship to vote in federal elections when that proof is not required by the federal form. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 15 (2013). Under any circumstances, this federal prohibition against citizenship verification makes little sense, but it is especially troubling given the scale of the illegal immigration crisis during the Biden Administration. As consolation, the Court in *Inter Tribal Council* indicated that States could petition EAC to include additional requirements, such as DPOC, in the federal form’s instruction. *Id.* at 20. Accordingly, the Court has made it clear that determining whether DPOC should be required on the voter registration form is within EAC’s purview.

Federal law entitles state and local officials to receive information on an individual's citizenship status from the United States Citizenship and Immigration Services ("USCIS") for any purpose authorized by law. Specifically, federal law says state governments may not be prevented from requesting citizenship information from USCIS and requires USCIS to fulfil such information requests. *See* 8 U.S.C. § 1373(a) and (c). Simply: if a State requests citizenship information, USCIS must provide it. But this time intensive task can largely be avoided by requiring DPOC when registering to vote. It is absurd that States have to rely on the cumbersome machinery of the federal government rather than just requiring DPOC in the first place. States should be free to ensure accurate voter registration and, where possible, USCIS should be unburdened from voluminous work that detracts from its core duties.

It is paramount that the States maintain accurate voter registration lists to protect voters from having their ballots voided or diluted by fraudulent votes. The current framework is an impediment—it ties the hands of State election officials to the detriment of the country. EAC could easily correct these deficiencies by amending 11 C.F.R. § 9428.4 and the federal voter-registration form to require DPOC to ensure only eligible U.S.-citizens are able to register and vote. It should do so as expeditiously as possible.

III. President Trump's Executive Order 14248 regarding documentary proof of citizenship is consistent with federal law.

There is no tension between President Trump's EO and EAC's statutory authority. Congress has given EAC statutory rulemaking authority to include a DPOC requirement if, after consultation with the States, EAC deems such a requirement necessary to enable state election officials to assess eligibility. 52 U.S.C. §§ 20508(a)(2), (b)(1). President Trump's EO does nothing more than direct EAC to "take appropriate action to require [DPOC] in its national mail voter registration form." 90 Fed. Reg. 14005 § 2.

EAC has exercised its lawful authority when it considered whether DPOC was necessary in the past.¹ At that time, EAC determined that the attestation regarding citizenship was sufficient. Even if that determination were justifiable at the time—and the States contend it was not—changed circumstances should lead to a changed outcome. EAC is entitled to undergo the same rulemaking procedures it previously conducted to reassess the necessity of DPOC.

The Attorneys General of the States of Texas, Alabama, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Nebraska, Ohio, South Carolina, South Dakota, and West Virginia appreciate the opportunity to comment on the Petition for Rulemaking and urge the U.S. Election Assistance Commission to issue a rule requiring documentary proof of citizenship on federal voter registration forms.

Respectfully,

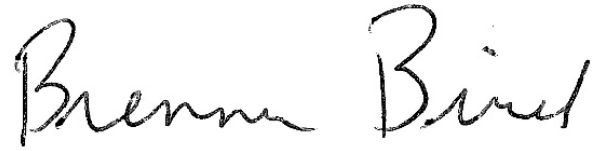
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Ken Paxton
Attorney General of Texas

¹https://www.eac.gov/sites/default/files/eac_assets/1/28/20140117%20EAC%20Final%20Decision%20on%20Proof%20of%20Citizenship%20Requests%20-%20FINAL.pdf#:~:text=Specifically%2C%20the%20States%20request%20that%20the%20EAC,forth%20herein%2C%20we%20deny%20the%20States'%20requests.



Steve Marshall
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Brenna Bird
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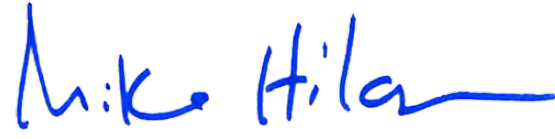
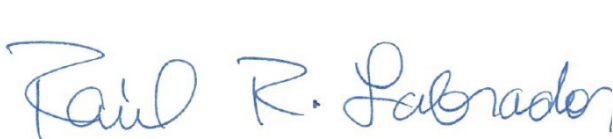
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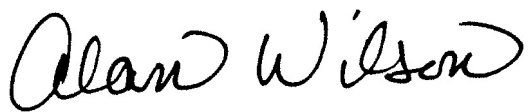
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Attorney General of Ohio

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Alan Wilson
Attorney General of South Carolina

A handwritten signature in black ink that reads "John B. McCuskey". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

John B. McCuskey
Attorney General of West Virginia

A handwritten signature in black ink that reads "Marty Jackley". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Marty Jackley
Attorney General of South Dakota