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Submitted via www.regulations.gov

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: Comments on Petition to Issue Rule Requiring Documentary Proof of Citizenship on Federal Voter Registration Forms, Dkt. No. EAC-2025-0236

Dear Mr. Kelliher,

The National Women's Law Center (NWLC) submits these comments in response to the petition submitted by America First Legal Foundation to the Election Assistance Commission (EAC), which would deny millions of eligible voters the ability to register to vote in federal elections.¹ We write in strong opposition to this proposal and urge the EAC to disregard this rulemaking petition and similar proposals that undermine voting rights and conflict with federal law.

For over fifty years, NWLC has fought for gender justice — in the courts, in public policy, and in our society — working across issues that are central to the lives of women and girls, with a particular focus on the needs of LGBTQI+ people, women of color, and women with low incomes and their families. NWLC's work is dependent upon a fair and functioning democracy and the ability of women to freely exercise their right to vote. Further, voter suppression efforts are often part of a broader agenda to attack women's fundamental rights, including abortion access, workplace protections, and social programs. We are strongly opposed to any measures that would restrict voting rights and equal access to the democratic process.

The America First Legal Foundation petition ("the Petition"),² which proposes to amend EAC regulations and the National Mail Voter Registration Form ("the Form") to require documentary proof of citizenship to register to vote in federal elections, would hamper the ability of women, low-income people, people of color, and LGBTQI+ people to register to vote, denying them equal access to our democracy. While the petition purports to protect election security, there is no evidence that noncitizen voting is an issue that impacts the security of our elections and plenty of evidence that this policy change would disenfranchise voters. Indeed, millions of

¹ Petition of America First Legal Foundation for Rulemaking Before the Election Assistance Commission, 90 Fed. Reg. 40825 (Aug. 21, 2025), Dkt. No. EAC-2025-0236, <https://www.federalregister.gov/documents/2025/08/21/2025-15930/petition-of-america-first-legal-foundation-for-rulemaking-before-the-election-assistance-commission>.

² Petition for Rulemaking, America First Legal (July 16, 2025), https://www.eac.gov/sites/default/files/2025-08/America_First_Legal_EAC_DPOC_Rule_Petition.pdf.

people would be denied equal access to voting, a right guaranteed to them by the U.S. Constitution.

The National Voter Registration Act (NVRA), also called the Motor Voter Act, was intended to facilitate voter registration by requiring states to provide citizens with opportunities to register in-person, by mail, and while applying for a driver's license.³ As a part of that effort, the NVRA mandated the use of the Form as a standardized method of registration. The application requires only such identifying information as is necessary to enable state officials to assess the applicant's eligibility to vote. It also requires a statement that specifies each of the eligibility requirements, an attestation that the applicant meets each of those criteria (including citizenship), and a signature under penalty of perjury. Congress established these requirements purposefully, providing a balance between election security and accessibility.

This comment will first outline the negative impact that the Petition would have on women, LGBTQI+ people, people of color, and low-income people. Next, it will explore the lack of evidence behind the false claim that noncitizen voter fraud is a danger to federal elections. Finally, it will discuss why the changes proposed by the Petition would violate federal law and the U.S. Constitution.

I. The proposed rule would suppress millions of eligible voters, particularly impacting women, LGBTQI+ people, people of color, and low-income people.

The proposed change to EAC regulations, rather than meaningfully protecting election security, would instead suppress millions of voters, primarily women, LGBTQI+ people, people of color, and low-income people. The change would require applicants to provide one of the following as proof of citizenship: a U.S. passport, a Real-ID compliant driver's license indicating citizenship, an official military identification card indicating citizenship, or a valid federal or state government-issued photo ID that indicates citizenship.⁴ However, on their own, Real-IDs and most state government-issued photo IDs do not indicate citizenship — they can only prove identity and lawful presence in the U.S. In fact, only five states offer Enhanced Driver's Licenses, which include an indicator of citizenship on state-issued licenses.⁵ If an applicant's ID does not indicate citizenship, it would have to be "otherwise accompanied by proof of United States citizenship" in order to allow registration to vote.⁶

The Petition offers no explanation of what this other proof could be. Similar proposals, such as the SAVE Act, strictly limit the types of proof that qualify to prove citizenship for voter registration purposes.⁷ This will negatively affect the millions of people who do not have ready access to such documents or who have changed their names. Further, the Petition does not consider how this will affect the ability of individuals to register in places statutorily required by the NVRA,

³ See US Dep't. of Justice, *The National Voter Registration Act of 1993 (NVRA)*, (Nov. 1, 2024), <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.

⁴ See Petition at 12.

⁵ *Enhanced Drivers Licenses: What Are They?* Department of Homeland Security (Apr. 27, 2023), <https://www.dhs.gov/enhanced-drivers-licenses-what-are-they>.

⁶ Petition at 12.

⁷ Safeguard American Voter Eligibility Act, H.R.22, 119th Cong. (2025), <https://www.congress.gov/bill/119th-congress/house-bill/22>, (proposed bill requiring individuals to provide documentary proof of citizenship to register to vote, including a passport, other government-issued ID indicating citizenship, or government-issued ID along with a birth certificate, naturalization certificate, or other specified document indicating citizenship).

such as by mail, at motor vehicle agencies, or at disability and public assistance offices.⁸ The Petition is unclear whether people will have to send these sensitive documents through the mail, whether photocopies are permissible, how online registrants are expected to provide the documents, or how state workers that conduct registration should determine whether the provided proof of citizenship is sufficient. This is contrary to the very purpose of the NVRA, which was intended to make voting in federal elections accessible to as many eligible voters as possible.

Only about half of American citizens possess a passport. Research shows that an estimated 146 million citizens do not have a passport, compared with 153 million citizens who voted in the 2024 presidential election.⁹ Low-income people and those without higher education are far less likely to have a passport — only one in four citizens with a high school degree or less has a valid passport, along with only one in five citizens with an income below \$50,000.¹⁰ Women, people of color, and trans people, who face higher poverty rates,¹¹ are far more likely to lack a passport, and so they will face additional barriers, being required to possess or acquire additional proof of citizenship in order to register.

A recent study showed that nearly one in ten eligible voters, or over 20 million U.S. citizens, do not have additional proof of citizenship readily accessible.¹² The same study showed that nearly four million citizens lack *any* documentary proof of citizenship, including a birth certificate. This can be due to the document having been lost or destroyed or never having been issued in the first place, for example if the individual was born outside of a hospital, a situation that primarily applies to older people and those who live in the South.¹³ This lack of documentation is also more likely to affect citizens of color: three percent of people of color lack documentary proof of citizenship, compared to only one percent of white people. Additionally, 11 percent of people of color (or over eight million people) cannot readily access the necessary documents, compared to eight percent of white people.¹⁴

Even for those individuals who do have access to their birth certificate, many will face challenges actually using it to register. Adequate documentary proof of citizenship under the proposed regulations is difficult to secure for the millions of people whose legal names do not match the name on their birth certificate. Approximately 84 percent of American women change their surname after marriage.¹⁵ As a result, approximately 69 million married women do not have

⁸ 52 U.S.C. § 20506(a)(2).

⁹ Greta Bedekovics & Sydney Bryant, *The SAVE Act Would Disenfranchise Millions of Citizens*, Center for American Progress (Feb. 3, 2025), <https://www.americanprogress.org/article/the-save-act-would-disenfranchise-millions-of-citizens/>.

¹⁰ Greta Bedekovics & Sydney Bryant, *The SAVE Act: Overview and Facts*, Center for American Progress (Jan. 31, 2025), <https://www.americanprogress.org/article/the-save-act-overview-and-facts/>.

¹¹ See Shengwei Sun, *National Snapshot: Poverty Among Women & Families*, National Women's Law Center at 2 (Jan. 2023), https://nwlc.org/wp-content/uploads/2023/02/2023_nwlc_PovertySnapshot-converted.pdf; *Understanding Poverty in the LGBTQ+ Community*, Human Rights Campaign, <https://www.hrc.org/resources/understanding-poverty-in-the-lgbtq-community>.

¹² Rothschild et. al., *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge*, Center for Democracy and Civic Engagement at 6 (June 2024), <https://cdce.umd.edu/sites/cdce.umd.edu/files/pubs/Voter%20ID%20survey%20Key%20Results%20June%202024.pdf>.

¹³ Hansi Lo Wang, *1 in 10 eligible U.S. voters say they can't easily show proof of their citizenship*, NPR (June 11, 2024, 10:00 AM), <https://www.npr.org/2024/06/11/nx-s1-4991903/voter-registration-proof-of-citizenship-requirement>.

¹⁴ See Rothschild et al. (2024).

¹⁵ See Bedekovics & Bryant (2025).

a birth certificate that matches their legal name. An additional four million married men have also changed their name and will similarly be unable to provide a matching birth certificate.¹⁶ Trans people who have changed their name will also be impacted. Particularly under the current administration, these individuals are far less likely to be able to obtain documents with their legal name and gender.¹⁷ Research shows that while 44 percent of trans adults who changed their names had updated their name on their IDs, only 18 percent had successfully updated their names on their birth certificates.¹⁸

Several states have attempted to pass similar voter registration requirements for state elections, but they have found that the negative effects upon voters outweigh any positives. For example, in Kansas, a law requiring documentary proof of citizenship blocked 30,000 potential voters from registering, 99 percent of whom turned out to be citizens.¹⁹ A report from the Kansas Advisory Committee to the U.S. Commission on Civil Rights found that voters felt they were being asked to pay a fee to obtain their birth certificate, essentially constituting a poll tax.²⁰ Others noted that they needed to travel long distances or wait months before receiving their documents, and single parents (who are more often women) simply lacked the time to go out of their way to get a copy of their birth certificate. Others were concerned that, even if they were able to obtain the necessary documents, trans and gender-nonconforming people risked violence or rejection in cases where their identification photo did not look like them.²¹ In Louisiana, where a state law requiring documentary proof of citizenship is being challenged in court, a mailed request for a birth certificate can take up to ten weeks to process and cost a sizeable fee. Further, there is only one office in the entire state that handles in-person requests for birth certificates.²² These two states are not unique. Most states charge a fee to obtain birth certificates and marriage licenses, effectively levying a poll tax on those eligible voters without the necessary documents.

Last year, New Hampshire passed a law requiring documentary proof of citizenship with disastrous results. Voters reported that they needed to make numerous trips to secure the correct documents before they could register. One voter, who endured a several-hour process to cast her ballot, described the law as “profoundly sexist and limiting.”²³ Town clerks reported that some of the voters who were turned away never returned.²⁴ In Arizona, a documentary proof of

¹⁶ *Id.*

¹⁷ See, e.g., Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025).

¹⁸ Caleb Smith & Greta Bedekovics, *The SAVE Act Could Keep Millions of Transgender Americans from Voting*, Center for American Progress (Feb. 28, 2025), <https://www.americanprogress.org/article/the-save-act-could-keep-millions-of-transgender-americans-from-voting/>.

¹⁹ See *The SAVE Act: How a Proof of Citizenship Requirement Would Impact Elections*, Institute for Responsive Government (Jan. 30, 2025), <https://responsivegov.org/research/the-save-act-how-a-proof-of-citizenship-requirement-would-impact-elections/>.

²⁰ *Voting Rights and the Kansas Secure and Fair Elections Act*, Kansas Advisory Committee to the U.S. Commission on Civil Rights at 12 (Mar. 2017), https://mediad.publicbroadcasting.net/p/kcur/files/201703/KS-Voting-Rights-Report.pdf?_ga=1.256888651.1704001681.1484164029.

²¹ *Id.* at 28.

²² Complaint for Declaratory and Injunctive Relief, *National Council of Jewish Women, et al. v. Landry*, Case 3:25-cv-006760BAJ-EWD at 31 (M.D. La. Aug. 1, 2025), <https://www.democracydocket.com/wp-content/uploads/2025/08/Complaint-08-01-2025.pdf>.

²³ Todd Bookman & Josh Rogers, *NH's new ID requirements send some would-be voters home to grab passports, birth certificates*, New Hampshire Public Radio (Mar. 11, 2025, 5:24 PM), <https://www.nhpr.org/nh-news/2025-03-11/nhs-new-id-requirements-send-some-would-be-voters-home-to-grab-passports-birth-certificates>.

²⁴ Ramer et al., *New Hampshire town elections offer a preview of citizenship voting rules being considered nationwide*, AP News (Mar. 25, 2025, 7:53 PM), <https://apnews.com/article/save-act-voting-proof-citizenship-new-hampshire-5105986c3fc354d3d61ec3480b49c788>.

citizenship law has acted as a significant hindrance to registration for thousands of eligible voters. The law, which has been in place since 2005, blocked over 38,000 applicants in the first three years after its implementation, all without any evidence that any of these applicants were noncitizens.²⁵

II. The proposed rule is based on a manufactured and sensationalized claim, which misrepresents the extent and impact of noncitizen registration and voting in federal elections.

The petitioners assert that a documentary proof of citizenship requirement would protect a vulnerable system from fraudulent registrations, claiming that “alarming numbers” of noncitizens have successfully voted in federal elections.²⁶ However, the Form already requires certain identification requirements: applicants must include the last four digits of their Social Security Number or a driver’s license number for verification purposes. If they do not have that information, they will be required to bring identification the first time that they vote in a federal election. Additionally, the Form requires applicants to attest, under penalty of perjury, that they are citizens of the United States.²⁷ The petitioners claim that this reliance on self-attestation leaves the system open to fraud from ineligible individuals. They cite anecdotal evidence to further their claim that this issue is pervasive and affects federal elections on a significant scale. However, this concern is entirely manufactured and has a negligible impact on federal elections.

First, there are severe penalties for noncitizens who illegally vote, including removal and a permanent loss of the ability to become a citizen,²⁸ something that green card holders are not willing to intentionally risk. It is more likely that those few noncitizens who register to vote do so mistakenly or after having been given incorrect information. For example, in North Carolina, a state audit after the 2016 election revealed 41 noncitizens having cast a ballot (out of nearly 4.8 million votes in the state). Of those, most said they were not aware they were prohibited from voting and had been misinformed about the law.²⁹ Further, these mistakenly cast votes were all detected by the existing controls in the system, and they amounted to less than 0.001 percent of the total votes cast in the election — far too few to ever meaningfully affect the outcome of the election. Meanwhile, a more recent audit in Georgia found only 20 noncitizens had registered to vote in prior elections, just nine of whom had actually voted, out of 8.2 million registered voters in the state.³⁰ The Texas Secretary of State reported that she flagged 33 “potential noncitizens” who voted in the November 2024 election, out of 11.3 million total votes.³¹ Similar results were

²⁵ Ian Vandewalker, *Analysis: The Effects of Requiring Documentary Proof of Citizenship to Register to Vote*, Brennan Center for Justice at 3, <https://www.brennancenter.org/sites/default/files/2021-09/Requiring%20Citizenship%20to%20Register%20to%20Vote.pdf>.

²⁶ Petition at 8.

²⁷ 11 C.F.R. § 9428.4(b).

²⁸ 8 U.S.C. §§ 1182(a)(10)(D)(i), 1227(a)(6)(A).

²⁹ See North Carolina State Board of Elections, *Post-Election Audit Report: General Election 2016* at 4-5 (Apr. 21, 2017), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf (discussing the results of the state’s audit as well as the investigation which followed the discovery of noncitizen voting).

³⁰ Stanley Dunlap, *Georgia GOP secretary of state reports audit found 20 noncitizens registered to vote out of 8.2M*, Georgia Recorder (Oct. 23, 2024, 6:56 PM), <https://georgiarecorder.com/briefs/georgia-gop-secretary-of-state-reports-audit-found-20-noncitizens-registered-to-vote-out-of-8-2m/>.

³¹ Natalia Contreras, *Texas secretary of state refers 33 potential noncitizen voters for investigation*, Votebeat Texas (June 5, 2025, 3:47 PM), <https://www.votebeat.org/texas/2025/06/05/texas-33-potential-noncitizens-voter-rolls-2024-election/>.

found in Ohio, Iowa, Michigan, and Louisiana, where audits revealed that registration and voting among noncitizens made up a tiny fraction of a percent of votes cast in the state, nowhere near enough to affect an election.³²

Voter fraud is simply not the pervasive, sinister threat that the petitioners have made it out to be. In 2017, the Brennan Center for Justice published a report looking into the extent of voter fraud in the 2016 election.³³ The study showed that rumors of voting among noncitizens conflict with the reality that actual instances occur at a “vanishingly rare” rate. Specifically, incident rates were found to be between 0.0003 and 0.0025 percent. Actual instances of noncitizen registration, such as those cited by the petitioners, are traceable to far more benign, logical causes. For example, many cases of what appear to be illegal registrations are caused by clerical or typographical errors, matching errors, or simple voter errors. Matching errors sometimes result in eligible citizens being flagged as noncitizens. Government databases can be outdated and include individuals who have since been naturalized, resulting in exaggerated figures.³⁴ The Petition cites voters purged from Virginian voter rolls;³⁵ however, an analysis showed Virginia was unable to point out any noncitizens among those removed. Instead, local registrars found that any inconsistencies generally resulted from mistakes made by eligible voters during registration.³⁶

The petitioners’ examples of so-called alarming rates of voter fraud rely on studies that have been thoroughly debunked. For example, consider their claim that 10-20 percent of noncitizens are illegally registered to vote, sourced from a 2024 report on fraudulent voting.³⁷ A Cato Institute analysis of that report found that it based its results on a study that was mis-designed. In that study, the number of noncitizens who said they voted in a federal election was equal to the margin of error on a study of that size.³⁸ In fact, 200 political scientists signed a letter contesting the findings of the original study, pointing out that it based its conclusion on a sample of 339 self-reported noncitizens out of a total of 30,000 respondents. After the study, it was revealed that some of those respondents incorrectly identified themselves, and the author even testified that the true number is less than one percent.³⁹ Further, incorrect registration does not

³² Jessica Huseman, *Noncitizen voting and the SAVE Act: The rhetoric vs. the research*, Votebeat (Apr. 28, 2025, 5:00 AM), <https://www.votebeat.org/2025/04/28/noncitizen-voting-is-rare-research-shows-save-act/>; Gabriella Sanchez & Kevin Morris, *Louisiana’s Chief Election Official Confirms Lack of Widespread Noncitizen Voting*, Brennan Center for Justice (Sept. 12, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/louisianas-chief-election-official-confirms-lack-widespread-noncitizen>.

³³ See Justin Levitt, *The Truth About Voter Fraud*, Brennan Center for Justice (Nov. 9, 2017), https://www.brennancenter.org/media/179/download/Report_Truth-About-Voter-Fraud.pdf?inline=1.

³⁴ *Id.* at 19.

³⁵ Petition at 8.

³⁶ Andrew Garber & Eileen O’Connor, *Supreme Court Helps Virginia Illegally Purge Voters*, Brennan Center for Justice (Oct. 31, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/supreme-court-helps-virginia-illegally-purge-voters>.

³⁷ See James Agresti, *Study: 10 to 27% of Non-Citizens Are Illegally Registered to Vote*, Just Facts (May 13, 2024), https://www.justfacts.com/news_non-citizen_voter_registration.

³⁸ See Alex Nowrasteh, *Noncitizens Don’t Illegally Vote in Detectable Numbers*, Cato Institute (Nov. 25, 2020, 11:52 AM), <https://www.cato.org/blog/noncitizens-dont-illegally-vote-detectable-numbers>; Ansolabehere et al., *The Perils of Cherry Picking Low Frequency Events in Large Sample Surveys*, Harvard University Cooperative Election Study (Nov. 5, 2014), <https://cces.gov.harvard.edu/news/perils-cherry-picking-low-frequency-events-large-sample-surveys>. (discussing large sample surveys which expect a low level of measurement error, leading to a significant overstatement in the number of noncitizens who vote in federal elections).

³⁹ See Alex Kasprak, *‘10 to 27%’ of Noncitizens Are Illegally Registered to Vote?*, Snopes (May 26, 2024), <https://www.snopes.com/fact-check/non-citizens-voting/>; Schaffner et al., <https://www.courthousenews.com/wp-content/uploads/2018/03/Kansas-Voter-ID-LETTER.pdf>.

necessarily mean that a fraudulent vote will be cast. A Heritage Foundation database cited by the petitioners found less than 100 instances of noncitizens voting between 2000 and 2024.⁴⁰ The petitioners cite to this same database, however, they artificially inflate their numbers by including other ineligible voters. Even then, they are only able to point to 200 cases over the same period.⁴¹

Further, the petitioners misrepresented Arizona voting data to falsely claim that noncitizen voting is substantial enough to affect the outcome of an election.⁴² Because of Arizona's rigid restrictions on registering to vote, including requiring proof of residency and documentary proof of citizenship, many Arizona voters are only registered to vote in federal elections.⁴³ For example, in October 2020, there were 36,000 federal-only voters in Arizona, concentrated on college campuses,⁴⁴ and by January 2, 2025, this number had increased to 50,000.⁴⁵ The petitioners baselessly assumed that, merely because about 40,000 of these registrants did not provide documentary proof of citizenship, as many as 25 percent of them were actually noncitizens, ineligible to vote. And they claimed that because this number was about the same as the margin in the 2020 election, this was enough to swing the election.⁴⁶ It is challenging to debunk such an absurd claim, but we will try. First, the estimate of 25 percent of registered voters being noncitizens is more than 1000 times the rate of noncitizens registering to vote found across numerous studies (see discussion above). Second, these federal-only registered voters were primarily college students, who are statistically less likely to have a passport or access to their birth certificate, making documentary proof of citizenship more difficult to provide. Third, extremely thorough analyses of the 2020 election result in Arizona have been conducted, and there was found to be no substantial voting manipulation,⁴⁷ let alone a rate of 25 percent of federal-only registered voters being noncitizens. And yet on the basis of this risible claim, the petitioners would expand this inequitable system across the country and deny millions of eligible voters the opportunity to participate in federal elections.

Requiring documentary proof of citizenship would not only address a non-existent problem, but it would also be an expensive and inefficient way of doing so. States would have to make time-consuming and costly changes to their voter registration processes. Those that cannot do so would have to create programs like Arizona's federal-only system, increasing inefficiencies and

⁴⁰ See *Election Fraud Map*, Heritage Foundation (2025), <https://electionfraud.heritage.org/search> (select Fraud Sub-category: Alien, then search).

⁴¹ Petition at 8.

⁴² Petition at 7.

⁴³ Ian Vandewalker, *Analysis: The Effects of Requiring Documentary Proof of Citizenship to Register to Vote*, Brennan Center for Justice at 4, <https://www.brennancenter.org/sites/default/files/2021-09/Requiring%20Citizenship%20to%20Register%20to%20Vote.pdf>.

⁴⁴ Jen Fifield & Kae Petrin, *Arizona's federal-only voters are concentrated on college campuses, data show*, Votebeat Arizona (Dec. 18, 2023, 6:07 PM), <https://www.votebeat.org/arizona/2023/12/18/arizona-federal-only-voters-concentrated-college-campuses-proof-of-citizenship/>.

⁴⁵ Federal Only Registrants as of January 2nd, 2025, Arizona Secretary of State's Office, <https://perma.cc/GH53-BBN9>.

⁴⁶ Even on its own terms, this argument is obviously wrong. 25 percent of the number of federal-only registered voters in 2020 was only 9,000, which is less than the 2020 election margin. Only by applying 2025 registered voters to the 2020 election margin can these numbers be manipulated to align.

⁴⁷ Jord MacDonald-Evoy, "Mark Brnovich's office debunked election fraud claims. He Kept those conclusion secret." AZ Mirror, Feb. 22, 2023, <https://azmirror.com/2023/02/22/mark-brnovichs-office-debunked-election-fraud-claims-he-kept-those-conclusions-secret/>.

confusion in the voter registration process.⁴⁸ Under federal law, agencies like EAC are required to complete a cost-benefit analysis of proposed regulations and explore possible alternatives⁴⁹ — such an egregious waste of federal and state resources could not possibly satisfy those conditions.

III. The proposed rule would violate federal law and the Equal Protection Clause of the Fourteenth Amendment, denying millions a fundamental right to vote and access to the democratic system.

The petitioner's request cuts against the very foundation of the NVRA. The statute was enacted with the intention of increasing "the number of eligible citizens who register to vote in elections for Federal office,"⁵⁰ and it specifically mentions "discriminatory and unfair registration laws" that disproportionately harm certain groups as a motivation for enacting the law.⁵¹ Further, it states that the Form can require only the minimum amount of information necessary to "enable State election officials to assess the eligibility of the applicant."⁵² Even while considering the NVRA, Congress rejected a proposal that would allow states to enact documentary proof of citizenship requirements, finding that it was not consistent with the aim of the NVRA.⁵³ When the Trump Administration attempted to mandate a documentary proof of citizenship requirement,⁵⁴ several entities filed lawsuits challenging the executive order.⁵⁵ In April 2025, a federal court blocked the EAC from implementing this mandate, concluding that the President did not have the authority to simply require the EAC to amend the Form.⁵⁶ The same court also concluded that it was not the place of the judiciary to second-guess Congress's judgment of whether a documentary proof of citizenship requirement was necessary.⁵⁷

The Federal Election Commission, the agency originally responsible for overseeing the Form, also declined to add such a requirement, saying that the only information that is necessary to establish citizenship is the statutorily required self-attestation signed by the applicant.⁵⁸ After being given responsibility over the Form, the EAC agreed, rejecting state requests to amend the Form to require documentary proof of citizenship. The EAC stated that this would require applicants to "submit more information than is necessary" to assess eligibility,⁵⁹ admitting that such a change would conflict with statutory authority. A separate case deciding the EAC's scope of authority to allow states to amend the Form also concluded that such requirements

⁴⁸ Katy Owens Hubler, *9 Things to Know About the Proposed SAVE Act*, National Conference of State Legislatures (Mar. 27, 2025), <https://www.ncsl.org/state-legislatures-news/details/9-things-to-know-about-the-proposed-save-act>.

⁴⁹ Exec. Order No. 12,866, 58 Fed. Reg. 51735 (Sept. 30, 1993).

⁵⁰ 52 U.S.C. §20501(b)(1).

⁵¹ 52 U.S.C. §20501(b)(3).

⁵² 52 U.S.C. §20504(c)(1)(B)(ii).

⁵³ *LULAC, et al. v. Executive Office of the President*, No. 25-0946 (D.D.C. 2025) at 70 (mem. op.) (citing Congressional committee reports), <https://cases.justia.com/federal/district-courts/district-of-columbia/dcdce/1:2025cv00946/279032/104/0.pdf?ts=1745574779>.

⁵⁴ Exec. Order No. 14,248, 90 F.R. 14005 (Mar. 25, 2025).

⁵⁵ *LULAC, et al.* at 21-22; see also *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013), <https://supreme.justia.com/cases/federal/us/570/1/>.

⁵⁶ *Id.* at 71.

⁵⁷ *Id.* at 82.

⁵⁸ Brief in Support of Motion for Preliminary Injunction at 5, *LULAC, et al. v. Executive Office of the President*, No. 25-0946 (D.D.C. 2025), Campaign Legal Center, <https://campaignlegal.org/sites/default/files/2025-04/034-1%20-%20Brief%20in%20Support%20of%20League%20and%20LULAC%20Plaintiffs%27%20PI%20Motion.pdf>.

⁵⁹ *Id.* at 5-6.

“substantially limit” voter registration efforts.⁶⁰ In that case, the court noted that the documentary proof of citizenship law in Kansas caused one organization’s registration numbers to drop by as much as 85 percent in certain counties and cease altogether in others.⁶¹ That court ultimately decided that the Executive Director of the EAC had exceeded his authority under the statute because he failed to show that these documents were necessary to prove citizenship.⁶²

Finally, these new regulations would place an unconstitutional, undue burden on the right to vote, denying millions of eligible voters a constitutionally protected right. Under the Fourteenth Amendment, the states may not “deny to any person within its jurisdiction equal protection of the laws.”⁶³ Laws that have a discriminatory impact on certain groups’ ability to exercise fundamental rights violate this Equal Protection Clause. The U.S. Supreme Court has ruled that the right to vote is one that is “preservative of other basic civil and political rights,” and that any laws that could threaten that right are subject to judicial scrutiny.⁶⁴ The courts generally apply the *Anderson-Burdick* balancing test to determine if a voting law violates the First and Fourteenth Amendments. This test balances a state’s interest and justifications behind such a law with the burden that it places on the right to vote.⁶⁵ If the burden outweighs the state’s interest, then the law is unconstitutional.

In 2020, the 10th Circuit Court of Appeals addressed the question of whether Kansas’ documentary proof of citizenship requirement violates the Equal Protection Clause of the Fourteenth Amendment. The court weighed the burden imposed by the documentation requirement against the state interest in enacting the law, and applying the *Anderson-Burdick* balancing test, concluded that the requirement was unconstitutional.⁶⁶ The court found the fact that 31,089 voters were prevented from registering proves that the law placed a significant burden on the right to vote and therefore merited heightened scrutiny. While the state did have a legitimate interest in protecting election security and preventing voter fraud, that interest was “insufficiently weighty to justify the limitations on the right to vote.”⁶⁷ This was largely due to the lack of evidence that election security was threatened or that widespread voter fraud was occurring in Kansas, as well as the fact that the documentation requirement did not actually further the state’s interest in safeguarding the electoral process. As we have outlined above, the same would certainly be true for a federal documentary proof of citizenship requirement imposed through the Form.

⁶⁰ See *League of Women Voters et al. v. Newby*, No. 16-5196 at 9 (D.C. Cir. Sept. 26, 2016), https://www.lwv.org/sites/default/files/2024-09/2016-09-26_DCCir_opinion-grant-pi.pdf; see also *League of Women Voters et al. v. Newby*, No. 16-5196, 2016 WL 4729502 (D.C. Cir. Sept. 9, 2016) (“Judgment”).

⁶¹ *Id.*

⁶² *Id.* at 10.

⁶³ U.S. Const. amend. XIV §1

⁶⁴ See *Legal Tests in Voting Cases*, Democracy Docket (June 7, 2023) (citing *Reynolds v. Sims*, 377 U.S. 533 (1964)), <https://www.democracydocket.com/analysis/legal-tests-used-in-voting-cases/>.

⁶⁵ *Id.*

⁶⁶ *Fish v. Schwab*, No. 18-3133 (10th Cir. 2020) at 44, <https://cases.justia.com/federal/appellate-courts/ca10/18-3133/18-3133-2020-04-29.pdf?ts=1588176048>.

⁶⁷ *Id.* at 55.

The right to vote is one that is fundamental to American democracy. The Petition proposes to amend regulations that would suppress millions of eligible voters to address an issue that is entirely fabricated. Instead of securing elections in any meaningful way, the requirement would subject women, LGBTQI+ people, people of color, and low-income people to unlawful barriers to registering to vote and to participating in our democracy. We urge the Election Assistance Commission to reject America First Legal's ill-advised Petition and to maintain the current Federal Form, consistent with the aims of the National Voter Registration Act.

Should you have any questions, please contact me at agill@nwlc.org. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'AGill', with a long, sweeping horizontal stroke extending to the right.

Alison Gill
Director of Nominations & Democracy
National Women's Law Center