

Comment by Free Speech For People Opposing Petition of American First Legal Foundation for Rulemaking Before the Election Assistance Commission (EAC) to Amend EAC Regulations and the National Mail Voter Registration Form to Require Unnecessary and Burdensome Documentary Proof of Citizenship to Register to Vote.

Free Speech For People strongly opposes the rulemaking petition to the U.S. Election Assistance Commission (EAC) by America First Legal Foundation that would disenfranchise millions of people, place unnecessary, costly burdens on voters, and run afoul of the National Voter Registration Act (NVRA).

The petition would amend 11 C.F.R. § 9428.4 and the federal voter registration form to require voter registration applicants to provide documentary proof of citizenship (DPOC) via a limited set of documents, namely 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.”¹

Rigorous but reasonable laws already prevent non-citizens from voting. The federal voter registration form already requires registrants to swear, under penalty of perjury, that they are U.S. citizens.² It is illegal to vote in a federal election as a non-citizen and illegal to commit perjury, both of which carry significant penalties—including jail, fines, deportation, and permanent denial of citizenship—that strongly disincentivize ineligible individuals from registering to vote.³ Furthermore, registrants are required to provide detailed personal information that allow election officials to determine whether the applicant is eligible to vote. In other words, election officials—with access to local, state, and federal databases—are already equipped with the information and tools needed to verify citizenship without placing undue, expensive burdens on the voters themselves. These systems can (and

¹ Petition of America First Legal Foundation for Rulemaking Before the Election Assistance Commission, 90 Fed. Reg. 40825 (Aug. 21, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-08-21/pdf/2025-15930.pdf>.

² 52 U.S.C. § 20508(b)(2).

³ 18 U.S.C. § 611; 18 U.S.C. §1621; HILLEL R. SMITH, CONG. RSCH. SERV., IF12767, IMMIGRATION CONSEQUENCES OF UNLAWFUL VOTING BY ALIENS (Sep. 18, 2024).

should) have mechanisms in place to ensure that eligible voters are not wrongly disenfranchised; and the EAC certainly should not be adding new burdens that will unjustly disenfranchise qualified voters.

Non-citizen registration and/or voting is vanishingly rare. The system already works. Government audits and voting data collected by a broad range of organizations demonstrate that non-citizens rarely attempt to vote.⁴ Moreover, a significant percentage of the few incidents of noncitizens registering to vote or actually voting can be attributed to government error. For example, Oregon accidentally automatically registered 1,500 people to vote without having confirmation of their citizenship status, but the state worked quickly to resolve the issue and only four of these individuals may have been noncitizens who actually cast a ballot.⁵ These errors can be resolved by improving databases and providing election workers with accurate training materials. Notably, errors going the other way—improperly disenfranchising voters who in fact are eligible to vote—are far more common.⁶

The rulemaking petition would impose harsh, burdensome requirements on voters. The rule would prohibit registration for anyone who cannot produce a U.S. passport, a state-issued real ID-compliant driver's license, official military identification, or a valid government-issued ID, provided that these documents indicate citizenship. Notably, this limited list does not even include birth certificates. It is difficult, costly, and time-consuming to obtain these documents. Nearly 146 million Americans do not have a valid passport, and more than 21.3 million people—9.1% of voting-age U.S. citizens—don't have or lack ready access to

⁴ 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>; Theresa Cardinal Brown et al., *Four Things To Know About Noncitizen Voting*, BIPARTISAN POLICY CENTER (Mar. 13, 2024), <https://bipartisanpolicy.org/blog/four-things-to-know-about-noncitizen-voting/> (analysis of the Heritage Foundation's data returned fewer than 80 instances of noncitizens voting between 1999 and 2023).

⁵ Dirk VanderHart & Lauren Dake, *Oregon Gov. Calls for DMV to Pause Automatic Voter Registration as a Number of People Mistakenly Added to Voter Rolls Grows*, OPB (Oct. 7, 2024), <https://www.opb.org/article/2024/10/07/oregon-dmv-department-motor-vehicles-voter-registration-voting-vote-elections/>; Joffe-Block, *supra* note 4; Oregon Secretary of State, *Following DMV Review of All Relevant Records, Oregon of State Identifies 9 Potentially Ineligible Voters with Improper Registration Records* (Sept. 23, 2024), <https://apps.oregon.gov/oregon-newsroom/OR/SOS/Posts/Post/dmv-potential-ineligible-voters-improper-registration-records>.

⁶ See, e.g., Jude Joffe-Block, *U.S. Citizens Are Among the Voters Removed in Virginia's Controversial Purge*, NPR (Oct. 30, 2024), <https://www.npr.org/2024/10/29/nx-s1-5169204/virginia-noncitizen-voter-purge>; Morgan Gstalter, *Texas Secretary of State Resigns After Botched Voter Purge*, THE HILL (May 27, 2019), <https://thehill.com/homenews/state-watch/445682-texas-secretary-of-state-resigns-after-botched-voter-purge/>; Michael Kaplan et al., *Eligible Voters Are Being Swept Up in Conservative Activists' Efforts to Purge Voter Rolls*, CBS NEWS (Dec. 4, 2023), <https://www.cbsnews.com/news/eligible-voters-swept-up-conservative-activists-purge-voter-rolls/>;

a document that allows them to prove citizenship.⁷ The rule would most significantly burden married people—primarily women—who have changed their names, young people, the elderly, Latino voters, new Americans, low income voters, and active duty military personnel and their families.⁸

Federal law does not allow the rule that America First proposes. The NVRA standardized procedures for federal election registration to encourage voting while ensuring that only eligible voters are able to register and cast ballots. And while the NVRA does give the EAC authority to create and revise the federal registration form, it also constrains this authority. The registration form “may 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 registration and other parts of the election process.”⁹ The DPOC that this rule would require falls outside these parameters, because it is not “necessary” to determine voting eligibility. The states have the information and technology needed to make those determinations, and in fact have used this information with success for decades. And there are additional steps that states can take to further improve this process. For example, the Electronic Registration Information Center (ERIC) helps states improve election integrity by sharing data across states—though unfortunately, a number of states have withdrawn from this program, including states that claim to have concerns about voter fraud.¹⁰

⁷ Greta Bedekovics & Sydney Bryant, *The SAVE Act Would Disenfranchise Millions of Citizens*, AMERICAN PROGRESS (Feb. 3, 2025), <https://www.americanprogress.org/article/the-save-act-would-disenfranchise-millions-of-citizens/>; see also U.S. DEPT OF STATE BUREAU OF CONSULAR AFFAIRS, REPORTS AND STATISTICS: U.S. PASSPORTS, <https://travel.state.gov/content/travel/en/about-us/reports-and-statistics.html>, last accessed Oct. 17, 2025 (tracking valid passports in circulation by fiscal year, counting fewer than 170 million passports in circulation in 2024, a number that includes passports issued to children and counting passport books and cards as separate passports); Kevin Morris & Cora Henry, *Millions of Americans Don’t Have Documents Proving Their Citizenship Readily Available*, BRENNAN CENTER (June 11, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/millions-americans-dont-have-documents-proving-their-citizenship-readily>.

⁸ See *The SAVE Act: How a Proof of Citizenship Requirement Would Impact Elections*, INST. FOR RESPONSIVE GOV’T (Jan. 30, 2025), <https://responsivegov.org/research/the-save-act-how-a-proof-of-citizenship-requirement-would-impact-elections/> (examining the groups of voters most likely to be disenfranchised by the SAVE Act, a bill that would require DPOC but which included birth certificates as acceptable DPOC). Prior efforts to impose DPOC requirements on voters have resulted in the disenfranchisement of eligible voters. *Fish v. Schwab*, 957 F.3d 1105, 1115 (10th Cir. 2020) (finding that 99% of the people disenfranchised by Kansas’s DPOC requirement were eligible to vote; while the rate of noncitizens with voter registration represented 0.002% of all registered voters in a fourteen year period and may have merely been “administrative anomalies”).

⁹ 52 U.S.C. § 20508(b)(1) (emphasis added).

¹⁰ Miles Parks, *Republican States Swore Off a Voting Tool. Now They’re Scrambling to Recreate It*, NPR (Oct. 20, 2023), <https://www.npr.org/2023/10/20/1207142433/eric-investigation-follow-up-voter-data-election-integrity>; Wendy Underhill, *More Withdrawals from Voter Data Group ERIC Likely*, NAT’L CONF. STATE LEGISLATURES (June 20, 2023), <https://www.ncsl.org/state-legislatures-news/details/more-withdrawals-from-voter-data-group-eric-likely>.

This is not the first time that voter suppression tactics have masqueraded as fraud prevention. America First's petition is a brazen attempt to undermine voting rights, keep people with limited resources from the polls, and make our elections less free, less fair, and less democratic. The EAC should reject this proposal, and instead ensure that all eligible voters have fair opportunities to register and vote.

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