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Submitted via www.regulations.gov

October 20, 2025

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

**Re: Petition of America First Legal Foundation for Rulemaking Before the
Election Assistance Commission**

Dear Mr. Kelliher:

MALDEF (Mexican American Legal Defense and Educational Fund) respectfully submits the following comment in response to a petition for rulemaking regarding voter registration. On August 21, 2025, the Election Assistance Commission (EAC) published a Federal Register notice regarding a rulemaking petition from the America First Legal Foundation (AFLF).¹ In that petition, AFLF requested that EAC “amend 11 C.F.R. § 9428.4 and the federal voter registration form to require Documentary Proof of Citizenship (DPOC).”² EAC sought comments on the rulemaking petition and stated that it “will not consider the petition’s merits until after the comment period closes.”³

Founded in 1968, MALDEF is the nation’s leading Latino legal civil rights organization. Often described as the “law firm of the Latino community,” MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of education, employment, voting rights, and immigrant rights. MALDEF works to strengthen voting rights and bolster civic engagement and participation within the Latino community. Among MALDEF’s top priorities is ensuring that all eligible voters can exercise their rights to participate in the democratic process without undue barriers or interference.

¹ Petition of America First Legal Foundation for Rulemaking Before the Election Assistance Commission, 90 Fed. Reg. 40,825 (Aug. 21, 2025).

² Petition to Issue Rule Requiring Documentary Proof of Citizenship on Federal Voter Registration Forms 1 (July 16, 2025).

³ Petition of America First Legal Foundation for Rulemaking Before the Election Assistance Commission, 90 Fed. Reg. at 40,825.

Latino voters face many barriers to the ballot box, from a lack of access to materials in their chosen language to outright voter suppression.⁴ At the same time, Latinos comprise a rapidly growing percentage of eligible voters across the United States.⁵ The Latino Data Hub estimates that nearly 33 million eligible voters in the United States are Latino.⁶ Latinos represent the second largest group of eligible voters in the United States and the second fastest-growing racial and ethnic minority voter group.⁷ Still, in the 2020 election, Latinos had the lowest voter registration and turnout rates among all racial and ethnic minorities.⁸ Nationwide, the average percentage of eligible voters who have registered to vote is 72.7%.⁹ In 2020, 66.8% of eligible voters cast their ballots, but only 61.1% of eligible Latino voters were registered to vote, and only 53.7% of them voted.¹⁰ Federal efforts should focus on initiatives and policy that boost voter participation, rather than suppress it. MALDEF opposes AFLF's request to the EAC to amend the federal voter registration form to require documentary proof of citizenship.

Rulemaking Process

The Administrative Procedure Act (APA) § 553(e) provides that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”¹¹ This right to petition “applies to all agencies covered by the APA” and “covers a variety of agency actions[.]”¹² While the APA does not contain many provisions regarding rulemaking petitions, APA § 555(b) does state that “[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”¹³

Importantly, a rulemaking petition does not relieve an agency of its procedural obligations under the APA. The petition merely initiates the process; the agency must still follow all required steps, including notice-and-comment.¹⁴ Indeed, even if the agency publishes a Federal Register notice inviting public input on the petition, that input does not substitute for the formal notice-and-comment period mandated by the APA—regardless of whether the petition is ultimately granted.¹⁵

In the rulemaking petition at issue, AFLF requested that the EAC amend 11 C.F.R. § 9428.4 and the federal voter registration form to add a requirement that applicants provide DPOC from among the following: “U.S. Passport, State-issued Real ID-compliant driver’s license indicating that the applicant

⁴ Juliana Phan et al., *Key Facts About Eligible Voters in Nevada*, LATINO DATA HUB (July 31, 2024), <https://latinodatahub.org/#/research/voter-profile-nevada>.

⁵ *Id.*; Phan et al., *Key Facts About Latino Eligible Voters in Arizona*, LATINO DATA HUB (Aug. 7, 2024), <https://latinodatahub.org/#/research/voter-profile-arizona>; Juliana Phan & Xalma Palomino, *Key Facts About Latino Eligible Voters in California*, LATINO DATA HUB (Aug. 14, 2024), <https://latinodatahub.org/#/research/voter-profile-california>.

⁶ *Democracy and Voting*, LATINO DATA HUB, <https://latinodatahub.org/#/issue-areas/democracy-and-voting> (last accessed Oct. 9, 2025).

⁷ RODRIGO DOMINGUEZ-VILLEGAS & MICHAEL RIOS, FROM ELIGIBILITY TO THE BALLOT BOX: EXAMINING THE RACIAL AND ETHNIC VOTER TURNOUT GAPS IN THE U.S. AND CALIFORNIA (2022), <https://latino.ucla.edu/research/voter-turnout-gaps-2020/>; Phan et al., *supra* note 5.

⁸ *Id.*

⁹ DOMINGUEZ-VILLEGAS & RIOS, *supra* note 7.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 553(e) (2023).

¹² MAEVE P. CAREY, CONG. RESEARCH SERV., R46190, PETITIONS FOR RULEMAKING: AN OVERVIEW 4 (2020).

¹³ 5 U.S.C. § 555(b) (1966)

¹⁴ CAREY, *supra* note 12, at 5.

¹⁵ *Id.* at 6–7.

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.”¹⁶ AFLF claimed that such an addition “aligns with the statutory requirements of the National Voter Registration Act (NVRA) and Supreme Court precedent,” but this claim is incorrect.¹⁷ In fact, AFLF’s proposed amendment would exceed the existing statutory and regulatory requirements governing the federal voter registration form.¹⁸

Under the National Voter Registration Act (NVRA) of 1993, a voter registration application “may require only the minimum amount of information necessary to prevent duplicate voter registrations; and enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process[.]”¹⁹ Additionally, a voter registration application “shall include a statement that states each eligibility requirement (including citizenship); contains an attestation that the applicant meets each such requirement; and requires the signature of the applicant, under penalty of perjury[.]”²⁰ The NVRA, therefore, not only authorizes the EAC to create the federal voter registration form, but also “sets limits on the contents of that form.”²¹ The Help America Vote Act (HAVA) requires that the mail voter registration form include “[t]he question ‘Are you a citizen of the United States of America?’” and corresponding boxes to check in response.²² Likewise, the Code of Federal Regulations provides that the voter register application must “[s]pecify each eligibility requirement (including citizenship)” and “[c]ontain an attestation on the application that the applicant, to the best of his or her knowledge and belief, meets each of his or her state’s specific eligibility requirements[.]”²³

Adding a DPOC requirement to the federal voter registration form would be duplicative. Allegations of widespread non-citizen voting lack factual basis.²⁴ It is already a federal crime for a non-citizen to vote or to register to vote unlawfully.²⁵ Additionally, penalties for non-citizen voting are already severe: non-citizens who unlawfully register to vote or unlawfully vote in an election risk never being able to naturalize.²⁶ Non-citizen voting is, in fact, an “exceedingly rare” phenomenon: a 2017 Brennan Center study found that of the 23.5 million votes cast in the 2016 election, only 30 suspected non-citizen voting instances arose, or 0.0001 percent of votes cast.²⁷

¹⁶ Petition to Issue Rule Requiring Documentary Proof of Citizenship on Federal Voter Registration Forms 11–12 (July 16, 2025).

¹⁷ *Id.* at 11–12.

¹⁸ National Voter Registration Act (NVRA) of 1993, Pub. L. No. 103-31, 107 Stat. 79 (May 20, 1993) § 5(c)(2); Contents, 11 C.F.R. § 9428.4(b) (2009).

¹⁹ National Voter Registration Act (NVRA) of 1993 § 5(c)(2)(B).

²⁰ *Id.* § 5(c)(2)(C) (internal numeration omitted).

²¹ *League of Women Voters of United States v. Newby*, 838 F.3d 1, 10 (D.C. Cir. 2016). *See also Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 18–20 (2013) (describing without consideration NVRA as “act[ing] as both a ceiling and a floor with respect to the contents of the Federal Form”).

²² 52 U.S.C. § 21083(b)(4)(A)(i).

²³ Contents, 11 C.F.R. § 9428.4(b) (2009).

²⁴ *The Biden-Harris Border Crisis: Noncitizen Voting: Hearing Before the H. Subcomm. on the Constitution & Ltd. Gov’t*, 118th Cong. (2024) (statement of Andrea E. Senteno, Regional Counsel, MALDEF) [hereinafter Senteno].

²⁵ *Id.*

²⁶ *Id.*

²⁷ Allison Anderman, *The Damage from Conspiracy Theories About Noncitizen Voting*, BRENNAN CTR. (Oct. 10, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/damage-conspiracy-theories-about-noncitizen-voting>; DOUGLAS KEITH ET AL., BRENNAN CTR., NONCITIZEN VOTING: THE MISSING MILLIONS (2017).

Federal law does not require documentary proof of citizenship. Voters must already attest to their eligibility to vote under penalty of perjury suffices.²⁸ The protections in place have already ensured that modern elections are secure. Furthermore, while the U.S. Supreme Court has not specifically addressed whether the EAC may lawfully issue a rule requiring DPOC as a component of the federal voter registration form, the D.C. Circuit has held that NVRA establishes boundaries for the information that the federal voter registration form may require.²⁹ The request by AFLF to require documentary proof of citizenship on the federal registration form raises the question of whether such a change would exceed the statutory provisions of the NVRA.³⁰ The APA instructs courts to “hold unlawful and set aside agency action...in excess of statutory jurisdiction, authority, or limitations[.]”³¹ AFLA’s petition for rulemaking therefore goes beyond the kind of policymaking that rulemaking petitions are meant to prompt.

Adding a DPOC requirement to the federal voter registration form could effectively disenfranchise millions of eligible U.S. citizen voters and would disproportionately affect eligible Latino voters.³² According to a March 2025 study conducted by the Center for Democracy and Civic Engagement and the University of Maryland, more than 21.3 million eligible voters, nine percent of eligible voters in the United States, lack or lack easy access to DPOC.³³ Approximately eleven percent of adult U.S. citizens of color lack or lack easy access to DPOC, whereas approximately eight percent of adult white U.S. citizens lack or lack easy access to DPOC.³⁴ Furthermore, three percent of voting-age U.S. citizens of color lack any DPOC, whereas one percent of white voting-age U.S. citizens lack DPOC.³⁵ Likewise, in a study of restrictive state voting bills in the wake of the 2020 election, voting policy scholar Kevin T. Morris found that “whether we consider the observed...or potential...impacts of voter ID laws...there is consistent and convincing evidence that the impacts of [restrictive voting laws] fall hardest on voters of color. In short, these bills appear to have racial *motivations*, and they will almost certainly have racially discriminatory *effects*.”³⁶

Finally, the EAC has previously rejected states’ requests to add DPOC requirements to the federal voter registration form, and the EAC’s executive director has even provided “no fewer than five alternatives to requiring documentary evidence of citizenship that states can use to ensure that noncitizens do not register using the Federal Form.”³⁷ AFLF provided neither compelling evidence that non-citizen voting occurs outside of extremely rare happenstance, nor sufficient reason that an additional, burdensome DPOC requirement would combat this effectively nonexistent issue.

²⁸ National Voter Registration Act (NVRA) of 1993 § 5(c)(2); 11 C.F.R. § 9428.4(b) (2009).

²⁹ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 18–20 (2013); *League of Women Voters*, 838 F.3d at 10.

³⁰ National Voter Registration Act (NVRA) of 1993 § 5(c)(2)(B).

³¹ 5 U.S.C. § 706(b)(C).

³² Senteno, *supra* note 24; Anderman, *supra* note 27.

³³ JILLIAN ANDRES ROTHSCHILD ET AL., CTR. FOR DEMOCRACY & CIVIC ENGAGEMENT, WHO LACKS DOCUMENTARY PROOF OF CITIZENSHIP? 3 (Mar. 2025).

³⁴ *Id.* at 4.

³⁵ JILLIAN ANDRES ROTHSCHILD ET AL., CTR. FOR DEMOCRACY & CIVIC ENGAGEMENT, WHO LACKS ID IN AMERICA TODAY?: AN EXPLORATION OF VOTER ID ACCESS, BARRIERS, AND KNOWLEDGE 6 (June 2024).

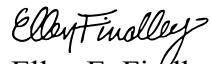
³⁶ Kevin T. Morris, *A Right Restricted: Racial Threat and the Sponsorship of Restrictive Voting Laws*, 8 J. RACE, ETHNICITY & POL. 421, 441 (2023) (*italics in original*).

³⁷ *Kobach v. U.S. Election Assistance Comm’n*, 772 F.3d 1183, 1197 (10th Cir. 2014) (reviewing the EAC’s decision to deny states’ request for addition of DPOC requirement to federal voter registration form).

For the foregoing reasons, MALDEF requests that the EAC deny AFLF's petition for rulemaking. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or efindley@maldef.org.

Thank you.

Sincerely,



Ellen E. Findley
Legislative Staff Attorney