

Submitted Via Federal eRulemaking Portal at www.regulations.gov

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

October 20, 2025

Re: Docket number EAC-2025-0236



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Alejandro Perez
President

Victoria López
Executive Director

Christine K. Wee
Interim Legal Director

Dear General Counsel Kelliher:

On behalf of the American Civil Liberties Union of Arizona, I write in response to the petition filed by America First Legal Foundation (AFL) requesting that the Election Assistance Commission (EAC) start a rulemaking process to consider adding a documentary proof of citizenship (DPOC) requirement to the federal voter registration form. We urge the Election Assistance Commission to deny AFL's request to consider amending 11 C.F.R. § 9428.4 and the federal voter registration form ("Federal Form") to require documentary proof of U.S. citizenship ("DPOC") to register to vote in federal elections through this rulemaking.

Arizona's Current Voter Registration Practices:

We have particular insight into the proposed rule change's likely impact because, for almost two decades, Arizona was the only state to require documentary proof of citizenship to register to vote and remains one of only four states with such a requirement.¹ After the U.S. Supreme Court held that the NVRA preempts Arizona's DPOC requirement in federal elections,² the legislature responded by creating a bifurcated system that limits individuals who have not provided the requisite DPOC to vote in federal, but not state or local, elections.

As explained herein, implementation of Arizona's DPOC requirement has needlessly burdened voters and election officials and has also been prone to significant errors. Yet, notably, the proposal AFL is asking the EAC to consider would impose an even more burdensome and restrictive DPOC requirement than what Arizona has implemented. AFL's proposed rule

¹ Arizona became the first state to require DPOC for voter registration in 2005 following the adoption of Proposition 200 in 2004. Which has since been codified and modified by statute. See A.R.S. § 16-166; H.B. 2492; H.B. 2243. Arizona remained the only state with such a requirement until 2024, when two other states enacted and implemented similar requirements: New Hampshire, and Wyoming. NH HB1569; WY HB156.

² *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013).

would require voters to provide a copy of one of the following with their registration application:

- A U.S. Passport,
- A 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 U.S. citizen or if such identification is otherwise accompanied by proof of U.S. citizenship.³



This extremely limited list is both under and over inclusive. For example, it is not even clear if an U.S. birth certificate would be sufficient. Yet, REAL IDs which in practice often do not indicate citizenship status, are included. (There are “enhanced” driver’s licenses—an “alternative to a REAL ID” available only to citizens. These licenses, however, are optional, available only in five States, and come at an additional fee.)⁴

AFL’s proposed rule would further compound the harm already caused under Arizona’s system by further restricting voters’ options for providing DPOC. Arizona voters can currently satisfy the state’s DPOC requirement by either providing any of several different identification numbers on their voter registration form or by providing a photocopy of any of several different documents establishing citizenship. *See* A.R.S. § 16-166.⁵

Here is the list of the options for establishing DPOC in Arizona:

- (For those with a valid Arizona driver's license or nonoperating identification card issued after October 1, 1996) a license/identification number can be entered on the Arizona Voter Registration Form or register online at azmvdnow.gov.⁶

³ *See* Pet. at para.43.

⁴ U.S. Dep’t of Homeland Sec., *Enhanced Drivers Licenses: What Are They?* (Apr. 27, 2023), *available at* <https://perma.cc/AJ9Z-Y73N>.

⁵ *See also* Arizona Secretary of State guidance, *available at* <https://azsos.gov/elections/voters/registration-requirements>; https://azsos.gov/sites/default/files/docs/az_voter_registration_form_standard_20240613.pdf.

⁶ This provision works because since October 1996, Arizona requires individuals to provide proof of citizenship to obtain a driver’s license and issue licenses and ID cards that document citizenship. *See* Ariz. Rev. Stat. §§ 16-166(F), § 41-1080 (2025).



- An Indian Census Number, Bureau of Indian Affairs Card Number, Tribal Treaty Card Number Tribal Enrollment.
- An Alien Registration Number or a photocopy of U.S. naturalization documents
- A legible photocopy of a birth certificate and supporting legal documentation (i.e., marriage certificate) if the name on the birth certificate is not the same as the voter's current legal name.
- A legible photocopy of the pertinent pages of a U.S. passport.
- A legible photocopy of a Tribal Certificate of Indian Blood or Bureau of Indian Affairs Affidavit of Birth.

Not only does Arizona's scheme provide more options for voters who may not have access to the limited documents allowed under the proposed rule, it also allows many voters to satisfy the requirement by simply providing one of their identification numbers. This means that many voters in Arizona do not have to comply with the burdensome task of having to photocopy and submit documents with personal identifying information with their voter registration form. In contrast to Arizona law, it is also unclear whether a U.S. birth certificate or naturalization papers can be used as DPOC under the AFL's proposed rule, despite such documents being the clearest proof of citizenship.

Finally, AFL's proposal would prohibit U.S. citizens from using tribal IDs to register to vote. Under the Indian Citizenship Act of 1924, all American Indians are United States citizens. 8 U.S.C. § 1401(b). As such, Native Americans should be allowed to easily register to vote, and tribal IDs should satisfy any additional documentary proof of citizenship requirement. Moreover, Native Americans are even less likely than other citizens to have documentation included in the proposed rule's restrictive list. For example, because tribal IDs can be used for domestic travel, Native Americans have less reason to have obtained a REAL ID.⁷

There are 22 federally recognized tribes in Arizona; most of which issue governmental IDs that currently allow their members to participate in state and federal elections. AFL's proposal threatens these citizens' ability to register to vote and participate in federal elections moving forward.

Taken together, there is absolutely no question that AFL's proposed rule change would be far more burdensome than what Arizona currently requires. The failure to designate birth certificates, U.S. naturalization documents, and tribal IDs as proof of citizenship for the purposes of voter registration raises questions about whether AFL's proposal will effectively

⁷ See *Acceptable Identification at the TSA Checkpoint*, TSA (last visited Oct. 20, 2025), <https://www.tsa.gov/travel/security-screening/identification>.

allow U.S. citizens to vote or if excluding certain citizens from voting is AFL's true motivation.

The AFL's Proposed Rule Change is Unlawful

Moreover, regardless of the types of documentary proof of citizenship accepted under Arizona law or under AFL's proposal, adding any such requirement on the federal form would be unlawful. Imposing a documentary proof of citizenship requirement on federal voter registration forms submitted in Arizona would violate the Ninth Circuit's recent ruling in *Mi Familia Vota v. Fontes*, 129 F.4th 691, 719 (9th Cir. 2025). The *Mi Familia Vota* court addressed the requirements of the National Voter Registration Act ("NVRA"), which permits the EAC to require "only such identifying information . . . as is necessary" to establish voter eligibility. 52 U.S.C. § 20508(b)(1) (emphasis added). In evaluating a number of claims brought in response to more recent changes to Arizona statute regarding voter registration requirements, the court in *Mi Familia Vota* determined that the meaning of "necessary" in Section 9 of the NVRA is "essential." *Mi Familia Vota*, 129 F.4th at 719 (citing *Williams v. Taylor*, 529 U.S. 420, 431, (2000), *Necessary*, Black's Law Dictionary (12th ed. 2024). *Necessary*, Oxford English Dictionary, (2d ed. 1989)). The court then held that per this meaning of the plain language of the NVRA, documentary proof of citizenship is "not legitimately necessary for registration" and, as such, the NVRA prohibits requiring it as part of registration for federal elections. *Id.* The court found that documentary proof of citizenship is not necessary because a registration form's citizenship checkbox requirement supplies proof of citizenship through an attestation. *Id.*

Problems Arising from Arizona's Documentary Proof of Citizenship Requirement:

In addition to this relevant legal finding that conflicts with the request in AFL's petition, Arizona's experiences of state officials implementing its law demonstrate why any system requiring documentary proof of citizenship with voter registration is likely to wrongfully disenfranchise voters and burden election officials. Most telling is that even though Arizona's law has been in place for almost 20 years, election officials in Arizona are still having trouble with its implementation. Just last year, election officials discovered a coding error in the Arizona Motor Vehicle Division ("MVD") database impacting approximately 218,000 already registered voters— arising from confusion about whether some older Arizona driver's licenses qualified under Arizona law to prove citizenship for registration.⁸ As a result, there was a serious concern about whether these

⁸ Jerod MacDonald, Evoy, *Number of voters affected by MVD citizenship proof 'glitch' grows to 218,000*, AZ MIRROR (Sept. 30, 2024), available at <https://azmirror.com/briefs/number-of-voters-affected-by-mvd-citizenship-proof-glitch-grows-to-218000/>.



individuals would be able to vote in the 2024 federal election. Litigation was filed, and then, per an emergency ruling by the Arizona Supreme Court, these individuals were able to cast full ballots in that election.⁹ But this mistake outside of voters' control created a real risk that those voters might be wrongfully disenfranchised simply because of the confusion and risk of error inherent to implementing a DPOC requirement. This risk existed even though all parties involved agreed that these long-time voters were U.S. citizens.¹⁰ In addition to the risk of disenfranchisement, the mistake also continues to cause significant voter confusion and considerable election official resources are still being diverted to correcting the error as the issue has not been completely resolved even now, a year after it was discovered.¹¹ AFL asserts in its petition that the proposal it is asking the EAC to consider would reduce the administrative burdens that arise from differing state and federal requirements. *See* Pet. at para. 30. But they provide no explanation or support for this contention. The problem outlined above arose in Arizona not because of the dual voter registration system, but because of confusion about what documents were sufficient to comply with the state law and lack of communication with voters. AFL provides no explanation or evidence that the rule they propose would not create similar, if not greater, problems.

Proposed Change would Prevent Thousands of Arizonans from Voting in Federal Elections:

Per Arizona's current law, if an individual does not provide any documentary proof of citizenship, they cannot vote in state elections. *See* A.R.S. § 16-166. But under the EAC's current regulation, an otherwise eligible individual must be able to register and vote in all federal elections even if they do not provide any documentary proof of citizenship.¹² However, if the AFL's proposed rule change is adopted, these individuals in Arizona will not be able to vote in any elections. There have historically been thousands of individuals in Arizona who are registered as federal-only voters, meaning that they did not provide any documentary proof of citizenship when they registered to vote. For example, as of July 2023, there were 19,439 active federal-only voters in Arizona who registered without providing DPOC.¹³ And as of January 2, 2025, there were more than 48,000

⁹ *See* Richer v. Fontes, CV-24-0221-SA, 2024 WL 4299099 (Ariz. Sept. 20, 2024).

¹⁰ *See Id.* at *2.

¹¹ Manuelita Beck, *Arizona AG Says Voters Hit by MVD Error Should Get Full Ballots; But Counties Don't Have to Listen*, ABC15 ARIZONA (last accessed Oct. 19, 2025), <https://www.abc15.com/arizona-ag-says-voters-hit-by-mvd-error-should-get-full-ballots-but-counties-dont-have-to-listen>; Jen Fifield/Votebeat, *Arizona counties defy attorney general opinion on voters caught in proof-of-citizenship error*, AZ MIRROR (Sept. 9, 2025), <https://azmirror.com/2025/09/09/arizona-counties-defy-attorney-general-opinion-on-voters-caught-in-proof-of-citizenship-error/>.

¹² *See* 11 C.F.R. § 9428.4; *Arizona v. Inter Tribal Counsel of Arizona, Inc.*, 570 U.S. 1 (2013); *see also* n.3.

¹³ *Mi Familia Vota v. Fontes*, 129 F.4th 691, 704(9th Cir. 2025).



federal-only voters in Arizona.¹⁴ Presumably, many of these voters lack easy access to documentary proof of their U.S. citizenship, or they would have provided it with their voter registration. Accordingly, many eligible voters would likely be disenfranchised from federal elections if this proposal were implemented. AFL asserts in its petition that it is problematic that these Arizona voters have not provided any documentary proof of citizenship. *See* Pet. at para. 22. But they provide absolutely no evidence to suggest that there is any reason to believe that any of these voters are not U.S. citizens. These individuals all registered to vote providing the attestation that they are citizens required on either the federal voter registration form or the Arizona state voter registration form. Moreover, available data shows that many otherwise voting-eligible U.S. citizens do not have access to documentation required under laws like Arizona's and that non-citizen voting is vanishingly rare.¹⁵

Burden on Election Officials:

A requirement of documentary proof of citizenship in a voter registration form will require States and local governments to devote substantial resources to update their processes to review documentary proof of citizenship. Regardless of the method implemented, any change to our current registration process that requires documentary proof of citizenship will burden the state and local election officials who administer federal elections.

The burdens and challenges created by a system requiring documentary proof of citizenship with voter registration can be seen by looking at the significant litigation that the law in Arizona has generated. A list of most of the many different lawsuits, proceedings, and court decisions addressing the specific implementation of Arizona's law is attached to this document. This law was first implemented in Arizona in 2004 and has been the subject of some type of litigation virtually the entire time it has been in effect.

No Evidence Supports Need for Additional DPOC Requirement:

¹⁴ Ariz. Sec'y of State, Federal Only Registrants as of January 2nd, 2025, <https://perma.cc/8U2R-VFPG> (last visited July 10, 2025).

¹⁵ See, e.g., *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge*, CENTER FOR DEMOCRACY AND CIVIC ENGAGEMENT at 6 <https://fairelectionscenter.org/wp-content/uploads/2025/02/Voter-ID-survey-Key-Results-June-2024.pdf> (finding that approximately 10%, or 21.3 million people cannot readily access DPOC); CHRISTOPHER FAMIGHETTI ET AL, NONCITIZEN VOTING: THE MISSING MILLIONS, BRENNAN CENTER FOR JUSTICE 1 (2017) ("Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions.").

Finally, it should be noted that in none of these many court proceedings has any evidence of voting by non-citizens in Arizona ever been presented. In fact, the findings and declaration provided by the Secretary of State for Proposition 200 when it was put on the ballot do not even mention voting.¹⁶ There has never been any findings that “illegal immigrants” have ever registered to vote or voted in Arizona, nor has there ever been any claim that the federal voter registration form has been used by any non-citizens to register to vote.¹⁷



Conclusion:

For the above reasons, the ACLU of Arizona respectfully urges the EAC to deny the AFL's rule change request.

Sincerely,

A handwritten signature in blue ink that reads "Lili Nimlo". The signature is written in a cursive, flowing style.

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¹⁶ Robert R. Kengle, *To Accept or To Reject: Arizona v. Inter Tribal Council of Arizona, the Elections Clause, and the National Voter Registration Act of 1993*, 57 HOWARD L.J., 2014 Vol. 57 No. 759, 775 n. 83 (2014).
(citing Proposition 200, ARIZ. SEC'Y OF STATE (2004), available at <http://www.azsos.gov/election/2004/Info/PubPamphlet/english/prop200.pdf> (last visited Feb. 18, 2014)).

¹⁷ See, e.g., *Mi Familia Vota* at 704 (“Before passing the Voting Laws, the Arizona Legislature (the ‘Legislature’) did not establish that any non-citizens were registered to vote in Arizona. Neither House Speaker Toma nor Senate President Petersen recalled the Legislature being presented with or considering evidence of non-citizen voter fraud in Arizona. The allegation that persons who were not citizens swayed the election results was apparently fanciful.”)

List of Arizona cases about Proposition 200

ITCA Case History

- *Gonzalez v. Arizona*, No. CV-06-1268-PHX-ROS, 2013 WL 7767705 (D. Ariz. Sept. 11, 2013) (ordering final judgment for plaintiffs).
- *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013) (holding that the NVRA preempts Arizona's evidence of citizenship requirement as applied to Federal Form applicants).
- *Gonzalez v. Arizona*, 677 F.3d 383 (9th Cir. 2012) (en banc rehearing by the Ninth Circuit affirming the three-judge panel).
- *Gonzalez v. Arizona*, 624 F.3d 1162 (9th Cir. 2011) (three-judge panel reversed denial of permanent injunction with respect to provision of documentary proof of citizenship, but upheld it with respect to proof of identification before voting at polls).
- *Gonzales v. Arizona*, No. CV-06-1268-PHX-ROS, No. CV-06-1362-PCT-JAT, No. CV-06-1575-PHX-EHC, 2008 WL 11395512 (D. Ariz. Aug. 20, 2008) (comprising two actions and denying request for permanent injunction of Arizona's proof of citizenship requirements).
- June 27, 2008: *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, 2008 WL 11395500 (D. Ariz. June 27, 2008) (denying in part and granting in part motion to dismiss for lack of standing).
- *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, 2008 WL 11395499 (D. Ariz. Feb. 5, 2008) (granting motion to dismiss seven of plaintiffs' claims).
- *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, 2007 WL 9724581 (D. Ariz. Aug. 28, 2007) (granting partial summary judgment to Arizona on nine of plaintiffs' claims).
- *Gonzalez v. Arizona*, 485 F.3d 1041 (9th Cir. 2007) (upholding denials of preliminary injunctive relief and motion to intervene).
- *Gonzalez v. Arizona*, No. CV 06-1268-PHX-ROS, No. CV 06-1362-PHX-ROS (cons), No. CV 06-1575-PHX-ROS (cons), 2006 WL 8431038 (D. Ariz. Oct. 11, 2006) (presenting findings of fact and law associated with the denial of preliminary injunctions in three consolidated cases).
- *Gonzalez v. Arizona*, No. CV 06-1268 PHXROS, CV 06-1362 PHXROSCON, CV 06-1575 PHXEHC, 2006 WL 2246365 (D. Ariz. Aug 2, 2006) (denying motion to intervene and granting motion to transfer and consolidate).
- *Gonzalez v. Arizona*, 435 F.Supp.2d 997 (D. Ariz. 2006) (holding that proof of citizenship requirement does not conflict with NVRA).

2024 MVD Case (200,000 extra voters)

- *Maricopa Cnty. Recorder Richer v. Ariz. Sec’y of State Fontes*, No. CV-24-0221-SA, 2024 WL 4299099 (Ariz. Sept. 20, 2024) (denying Richer’s request for relief, denying motion to intervene by Arizona’s Senate President and Speaker of the House but granting alternative motion to file as *amicus curiae*).

2018 CLC Case

- *League of United Latin Am. Citizens of Ariz. v. Reagan*, No. CV17-4102 PHX DGC, 2018 WL 5983009, 2018 U.S. Dist. LEXIS 194065 (D. Ariz. Nov. 14, 2018) (denying plaintiff’s motion to enforce consent decree against Arizona).
 - Consent Decree, *League of United Latin Am. Citizens of Ariz. v. Reagan*, No. CV17-4102 PHX DGC, 2018 U.S. Dist. LEXIS 194065 (D. Ariz. June 18, 2018) (consent decree accessible [here](#) or from filings associated with case on Westlaw and Lexis).
 - [Docket](#) on court listener (No. 2:17-cv-04102)
 - No case history on either Westlaw or Lexis.

Mi Familia Vota Case History:

- *Mi Familia Vota v. Fontes*, 152 F.4th 1153 (9th Cir. 2025) (denying motion for *en banc* rehearing).
- *Mi Familia Vota v. Fontes*, 129 F.4th 691 (9th Cir. 2025)
- *Republican Nat’l Comm. v. Mi Familia Vota*, 145 S.Ct. 108 (2024) (partially staying May 2, 2024 district court order).
- *Mi Familia Vota v. Fontes*, 111 F.4th 976 (9th Cir. 2024) (vacating partial stay of injunction that barred enforcement of law).
- *Mi Familia Vota v. Fontes*, No. 24-3188, No. 24-3559, No. 24-4029, 2024 WL 3629418 (9th Cir. 2024) (granting in part and denying in part motion to partially stay judgment).
- *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 2244338 (D. Ariz. May 2, 2024) (entering judgment against Arizona).
- *Mi Familia Vota v. Fontes*, 719 F.Supp.3d 929 (D. Ariz. 2024) (one-hundred-sixty-one-page opinion deciding several issues of law, including standing and whether several Arizona laws were preempted by the NVRA).
- *Toma v. U.S. Dist. Ct. for the Dist. of Ariz.*, 144 S.Ct. 443 (2023) (denying application for stay with no associated opinion).
- *In re Toma*, No. 23-70179, 2023 WL 8167206 (Nov. 24, 2023).
- *In re Toma*, No. 23-70179, 2023 WL 8183568 (9th Cir. Nov. 16, 2023).
- *In re Toma*, No. 23-70179, 2023 WL 8183567 (9th Cir. Oct. 12, 2023).
- *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2023 WL 8183146 (D. Ariz. Sept. 26, 2023).

- *Mi Familia Vota v. Fontes*, 691 F.Supp.3d 1077 (D. Ariz. 2023) (deciding cross motions for summary judgment).
- *Mi Familia Vota v. Fontes*, 691 F.Supp.3d 1105 (D. Ariz. 2023).
- *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2023 WL 8183070 (D. Ariz. Feb. 16, 2023).