Fair Elections Center

COMMENT OF FAIR ELECTIONS CENTER
DOCKET NUMBER EAC-2025-0236
Submitted October 16, 2025

I. SUMMARY OF COMMENTS

Fair Elections Center[1] submits this comment to express our conviction that the Elections Assistance Commission (EAC) should not—and cannot—make the changes to the national mail voter registration form as requested in the Petition for Rulemaking submitted by America First Legal (hereinafter "Petitioner").[2] Such changes would be plainly arbitrary and capricious.

Specifically, adopting a documentary proof of citizenship (DPOC) requirement would contradict prior EAC decisions during the enactment of 11 C.F.R. § 9428, the regulations establishing the federal mail voter registration application (hereinafter "the Federal Form"), as well as responses to previous requests from states to add a DPOC requirement to their state-specific instructions on the Federal Form. This body previously declined to establish documentary proof requirements for naturalization and citizenship because they were not necessary to validate the eligibility of an applicant and would not serve any additional election security purpose than a citizenship attestation requirement alone. The EAC should decline to add this requirement now because it is not necessary and will disenfranchise many of the millions of otherwise eligible voters in the United States who lack access to DPOC.

II. DISCUSSION

The National Voter Registration Act (NVRA) established the Federal Form so that eligible prospective voters had a backstop for access to voter registration, safeguarding them against undue state restrictions on voter registration for federal elections. As Justice Scalia wrote, "No matter what procedural hurdles a State's own form imposes, the Federal Form guarantees that a simple means of registering to vote in federal elections will be available."[3] This is in keeping

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[1] Fair Elections Center is a nonpartisan, nonprofit 501(c)(3) organization dedicated to removing barriers to voter registration and voting through advocacy and impact litigation.
[2] 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.
[3] *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 12 (2013).

with the overarching express statutory purpose of the NVRA to "establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office."[4] Under the NVRA, the Elections Assistance Commission is charged with developing and implementing the Federal Form in consultation with the Chief Elections Officers of the states.[5] Though the EAC is delegated that authority, the NVRA provides some outer bounds of what the Federal Form may require of voters. Specifically, it states that such a form may "require only such identifying information (including the signature of the applicant) 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" for federal office.[6] It is the EAC—and not the states—charged with making the determination of necessity.[7]

To assess the citizenship of an applicant, the Federal Form currently requires—as it has for three decades—registrants to attest to their U.S. citizenship under penalty of perjury. This attestation—without additional information—is a method of citizenship verification that the EAC and its predecessor, the Federal Election Commission, have both previously decided is sufficient for election officials to determine an applicant's citizenship status, and, therefore, their voter eligibility. Said differently, citizenship attestation satisfies what the NVRA requires: that the Federal Form only ask for information *necessary* to determine a person's eligibility to vote.

Should the EAC agree with Petitioner that a DPOC requirement on the Federal Form is *necessary* to determine an applicant's citizenship status and eligibility to vote, it will be in the face of this body's prior determinations and the weight of the evidence showing the rarity of noncitizens voting. Such a decision would also risk disenfranchising millions of otherwise-eligible voters who lack access to documentary proof of citizenship.

a. The Agency Has Previously Concluded that Documentation of Naturalization and Citizenship is Not Necessary to Establish Eligibility to Vote and Reversing that Decision Would be Arbitrary and Capricious.

The contents of the Federal Form are governed by duly enacted regulations originally adopted through a notice-and-comment rulemaking process by the EAC's predecessor, the Federal Election Commission. Specifically, the contents of the Federal Form are set forth in 11 C.F.R. § 9428.4(a)-(b), which specifies the precise information that the Federal Form requests from an applicant. With regard to citizenship, the regulations instruct that the Federal Form shall "list

[4] 52 U.S.C. § 20501(b)(1).
[5] 52 U.S.C. § 20508.
[6] 52 U.S.C. § 20508(b)(1) (emphasis added).
[7] *League of Women Voters of U.S. v. Harrington*, 560 F. Supp. 3d 177, 186 (D.D.C. 2021).

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U.S. Citizenship as a universal eligibility requirement," "[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," and "[p]rovide a field on the application for the signature of the applicant, under penalty of perjury, and the date of the applicant's signature."[8]

Throughout the FEC and EAC's administration of the Federal Form, these agencies' commissioners have considered proposals to require additional proof of one's citizenship status, rejecting such additions each time.[9] Considering these prior decisions, the existing evidence on the impact of DPOC, and virtual absence of noncitizens voting, reversing course on the basis of the Petition to change the Federal Form to include a documentary proof of citizenship requirement would be arbitrary and capricious. *See, e.g.*, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) ("[A]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance."); *Eagle Broad. Grp., Ltd. v. FCC*, 563 F.3d 543, 551 (D.C. Cir. 2009) ("an agency's unexplained departure from precedent must be overturned as arbitrary and capricious.") (citation omitted).

1. Rejecting Petitioner's Request Would Remain Consistent with Proof of Naturalization Findings During Initial Rulemaking to Promulgate 11 C.F.R. § 9428 and the Legislative History of the NVRA Itself.

At the time § 9428 was promulgated, the FEC considered and rejected requests parallel to what Petitioner urges here—to have the Federal Form include a requirement for registrants to provide additional citizenship information.[10] Specifically, during the notice-and-comment period on the Proposed Rule specifying the substance of the Federal Form, the FEC addressed public comments on whether to require proof of naturalization.[11] Interpreting and implementing the NVRA, as Congress empowered it to do, the FEC concluded that such information was not necessary to establish eligibility to vote. In particular, the FEC concluded:

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[8] 11 C.F.R. § 9428.4(b)(1)-(3). On one occasion—the passage of HAVA—Congress mandated specific changes to the Federal Form, spelling out with precision in the statutory language the required changes to the Federal Form. 52 U.S.C. § 21083(b)(4).
[9] Subsequently, after the EAC's Executive Director approved a state request to add DPOC to the form without a vote of the commissioners, the DC Circuit ruled that this action violated the Administrative Procedure Act because the EAC failed to make the determination of necessity under NVRA prior to approving the states' requests, and this failure to comply with the NVRA's statutory requirements violated the APA. *League of Women Voters of U.S.*, 560 F. Supp. 3d at 186.
[10] *See* 59 Fed. Reg. 32311, 32316 (June 23, 1994).
[11] *Id.* at 32316.

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> While U.S. citizenship is a prerequisite for voting in every state, the basis of citizenship, whether it be by birth or by naturalization, is irrelevant to voter eligibility. The issue of U.S. citizenship is addressed within the oath required by the Act and signed by the applicant under penalty of perjury. To further emphasize this prerequisite to the applicant, the words "For U.S. Citizens []" will appear in prominent type on the front cover of the national mail voter registration form. For these reasons, the final rules do not include this additional requirement.[12]

The FEC thus considered and rejected requests similar to that of the Petitioner's, concluding that additional information about naturalization status (beyond the information about citizenship status already sought by the form) was unnecessary to assess eligibility to vote.

Moreover, as the EAC noted in a 2014 Memorandum of Decision rejecting Arizona, Georgia, and Kansas's requests to modify their state-specific instructions to require documentary proof of citizenship for federal form applicants in those states, the NVA's legislative history cautions against an interpretation that documentary proof of citizenship is necessary or consistent with the statute:

> In determining whether and how to implement state-requested revisions to the Federal Form, the EAC has been guided in part by the NVRA's legislative history. When considering the NVRA, Congress deliberated about—but ultimately rejected—language allowing states to require "presentation of documentary evidence of the citizenship of an applicant for voter registration." *See* H.R. Rep. No. 103-66, at 23 (1993) (Conf. Rep.). In rejecting the Senate version of the NVRA that included this language, the conference committee determined that such a requirement was "*not necessary* or consistent with the purposes of this Act," could "permit registration requirements that could effectively eliminate, or seriously interfere with, the mail registration program of the Act," and "could also adversely affect the administration of the other registration programs . . . ." Id. (emphasis added). Congress's rejection of the very requirement that [the states sought was] a significant factor the EAC [took] into account in deciding whether to grant the States' requests. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557, 579-80 (2006) ("Congress' rejection of the very language that would have achieved the result the [States] urge[] here weighs heavily against the [States'] interpretation.").[13]

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[12] *Id.*
[13] Memorandum of Decision Concerning State Requests to Include Additional Proof-of-Citizenship Instructions on the National Mail Voter Registration Form, Dkt. No. EAC-2013-0004-0429 (Jan. 20, 2014), https://www.regulations.gov/document/EAC-2013-0004-0429, at 20–21.

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No justification exists to depart from these previous agency conclusions.

2. Rejecting Petitioner's Request Would Remain Consistent with Proof of Citizenship Findings in Response to Previous State Requests to Incorporate Proof of Citizenship Requirements on the Federal Form

Since the promulgation of § 9248, the Election Assistance Commission has considered and rejected requests by several states to include state-specific instructions on the Federal Form that would, as a precondition to registering to vote in federal elections in those states, require applicants to provide proof of citizenship beyond the citizenship attestation.

In the EAC's 46-page 2014 Memorandum rejecting Arizona, Georgia, and Kansas's requests, it found that a proof of citizenship requirement would cause applicants to submit more information than necessary to enable election officials to assess eligibility.[14] The underlying reasoning for such a determination was, in part, that, "[t]he overwhelming majority of jurisdictions in the United States have long relied on sworn statements similar to that included on the Federal Form to enforce their voter qualifications, and the EAC is aware of no evidence suggesting that this reliance has been misplaced."[15] Though the Commission noted an exceedingly small number of noncitizens had indeed illegally registered to vote, they found the volume to be attributable to a level of human error that is nearly unavoidable in such a bureaucratic process, and that those instances did not provide "cause to conclude that additional proof of citizenship must be required of applicants," to assess their eligibility.[16]

Even further, the EAC noted in their denial that the number of noncitizens who had illegally voted despite the existing attestation was no more reflective of the efficacy of the attestation than the violation of any other law that relies on attestation for enforcement, such as the fraudulent or false filing of tax returns. Notably, the Commission expressly held that "[a]s long as the state is able to identify illegal registration and address any violations…and the occurrence of such violations is rare, then the state is able to enforce its voter qualifications." This 2014 EAC decision was subsequently affirmed by the U.S. Court of Appeals for the Tenth Circuit as consistent with the NVRA and the Administrative Procedure Act (APA).[17]

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[14] *Id.* at 28–37.
[15] *Id*. at 29.
[16] *Id*. at 35.
[17] *Kobach v. United States Election Assistance Comm'n*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied*, 576 U.S. 1055 (June 29, 2015). Most recently, in September 2025, the EAC rejected Louisiana's request to amend the state-specific instructions on the Federal Form to require voter registration applicants to provide additional information to verify citizenship, such as a unique immigration identifier, Form I-94 arrival/departure record number, student and exchange visitor information system ID number, naturalization/citizenship certificate number, and, if known, a

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b. Petitioner Does Not and Cannot Provide Any Actual Evidence to Justify a Change in Policy or Demonstrate that a Documentary Proof Requirement is "Necessary" under the NVRA

Petitioner would lead the Commission to believe that noncitizen voting is a substantially larger issue than the data shows or the evidence they provide supports. Importantly, state-level reviews of actual voter registration data in states like Louisiana and Georgia show that noncitizen voting has been and continues to be a near non-existent anomaly. This finding comports with recent court findings on the issue and is not rebutted by the widely discredited or misconstrued evidence provided by Petitioner.

Recent reviews of millions of state-level voter registration records have clearly demonstrated that the number of noncitizens illegally registered to vote remains exceedingly small. For example, Louisiana Secretary of State Nancy Landry conducted a review of the last 40 years of state voting records, ultimately identifying just 390 suspected noncitizen registrants across the four-decade period evaluated. Even these *suspected* non-citizen voters—meaning not even voters who were found to have registered and cast a ballot illegally—accounted for just .01% of the nearly 2.9 million registered voters in Louisiana.[18] A 2024 review of Georgia voter rolls by state election officials identified just 20 noncitizens of the 8.2 million people—just .0002%— that were registered to vote in the state.[19] A 2016 Brennan Center study of 42 jurisdictions across the country, including eight of the ten with the largest populations of noncitizens nationally,

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person's mother's maiden name. Because the EAC General Counsel found this requested addition to require registrants to provide new or additional information, the EAC Commissioners were required to determine if this change was "necessary to assess the eligibility of the applicant and/or to administer voter registration and other parts of the election process and if Louisiana had put forth evidence of necessity." Ex. 3, Letter from EAC Executive Director Brianna Schletz to Louisiana Sec'y of State Nancy Landry at 5 (Sep. 11, 2025), Defendants' Motion to Stay Proceedings, *Nat'l Council of Jewish Women v. Landry*, No. 25-cv-676 (M.D. La. Sep. 29, 2025), Dkt. No. 30-5, https://storage.courtlistener.com/recap/gov.uscourts.lamd.66979/gov.uscourts.lamd.66979.30.5.pdf. Even setting aside the notice-and-comment requirement and other procedural and statutory requirements, upon referral of that question to the EAC Commissioners, the proposed addition was rejected on a 2-2 vote. Because the request did not receive a majority approval as required by the Help America Vote Act, it was ultimately rejected. *See* 52 U.S.C. § 20928 (Requiring that any action of the commission needs approval of at least three commissioners.).

[18] Wesley Muller, *Louisiana election investigation finds 79 noncitizens have voted since 1980s*, LA. ILLUMINATOR (Sept. 4, 2025), https://lailluminator.com/2025/09/04/louisiana-election-investigation-finds-79-noncitizens-have-voted-since-1980s/.

[19] *Georgia citizenship audit finds few noncitizens on voter rolls*, ASSOC. PRESS. (Oct. 23, 2024), https://apnews.com/article/georgia-noncitizens-voter-rolls-14532ef49b66f9cbf34ff483d2534280.

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identified just 30 instances of suspected noncitizen voting, accounting for just .0001% of votes cast in these jurisdictions in 2016.[20]

Recent court opinions following a discovery process and trial also concluded that noncitizen voting is nearly non-existent. In June 2018, a federal trial court struck down a Kansas DPOC law, finding that the provision that blocked 35,000 Kansans from registering to vote over a three-year period violated the NVRA and the U.S. Constitution. Importantly, the court was "unable to find empirical evidence that a substantial number of noncitizens successfully registered to vote" under the state's previous attestation requirement.[21] Though the court found a small number of noncitizens had registered, those instances were "largely explained by administrative error, confusion, or mistake."[22] Notably, the court declined to "rely on extrapolated numbers from tiny sample sizes and otherwise flawed data"—the same data relied on by Petitioner here.[23] This ruling was upheld by the U.S. Court of Appeals for the Tenth Circuit in 2020, and the Supreme Court declined to review it later that year. Similarly, in Arizona, the Ninth Circuit noted that a post 2020 election "audit" there "did not reveal any evidence of voter fraud, yet the Legislature proceeded to enact legislation [expanding the documentary proof requirements in that state] aimed at remedying the voter fraud issue that was contradicted by its own findings."[24]

Petitioner's evidence asserting that noncitizen voting is a larger problem than that demonstrated by the findings discussed above is largely misrepresented or widely discredited. First, Petitioner cites a Pew Research study that found "24 million nationwide voter registrations were inaccurate,"[25] claiming that this proves the existence of a "long-running, alien voter fraud crisis." Importantly, this Pew Research study concluded that most of 24 million inaccuracies were due to entirely benign, explainable discrepancies such as voters dying or moving jurisdictions without updating or cancelling previous registrations.[26] The study made no mention of how many inaccuracies, if any, were due to citizenship issues. Second, Petitioner claims that the existence Arizona's 50,000 federal-only voters—meaning voters who could not satisfy the state's DPOC requirement—proves that there are a significant number of noncitizen voters in the state. Petitioner neglects, however, to address the probability that those voters are among the nearly

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[20] Douglas Keith et al., *Noncitizen Voting: The Missing Millions*, BRENNAN CTR. FOR JUST. (May 5, 2017), https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-missing-millions.
[21] *Fish v. Kobach*, 309 F. Supp. 3d 1048, 1102 (D. Kan. 2018), *aff'd sub nom*. *Fish v. Schwab*, 957 F.3d 1105 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 965, (2020).
[22] *Id*. at 1102.
[23] *Id*.
[24] *Mi Familia Vota v. Fontes*, 129 F.4th 691, 726 (9th Cir. 2025).
[25] *Inaccurate, Costly, and Inefficient: Evidence That America's Voter Registration System Needs an Upgrade*, PEW CTR. ON THE STATES (Feb. 2012), https://www.pew.org/-/media/legacy/uploadedfiles/pcs_assets/2012/pewupgradingvoterregistrationpdf.pdf.
[26] *Id*. at 4.

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21.3 million otherwise-eligible people nationwide who cannot readily access DPOC.[27] Finally, Petitioner cites a blog that claims "10-27% of noncitizens in the U.S. are now registered to vote." Importantly, this blog analyzes data from a very large sample of 2022 census data with incredibly small sub-samples of noncitizen respondents to draw this conclusion, a methodology similar to a previous study on the issue that was denounced and discredited by over 200 professional political scientists. This cohort of scientists agreed that the dynamics of a large overall sample of survey respondents and very small sub-sample of self-reported noncitizens means that "response error explains nearly all of the supposed noncitizens in [the] sample who vote."[28]

In sum, contrary to Petitioner's claims, the data undeniably shows that instances of noncitizen voting remain exceedingly rare, and Petitioner fails to provide any data to the contrary. The evidentiary basis of the EAC's previous conclusions regarding the efficacy and sufficiency of a citizenship attestation to validate a person's eligibility to vote has not changed. Reversing prior agency determinations against the overwhelming weight of evidence would be arbitrary and capricious, and making Petitioner's requested change would be contrary to law.

c. The EAC Must Consider the Impacts of Requiring DPOC—Ignored by Petitioner—That Will Reduce the Number of Eligible Voters Who Register to Vote, Contravening the NVRA's Purpose

Petitioner focuses narrowly on the asserted benefit of adding a DPOC requirement to the Federal Form; however, the EAC must consider the broader impact of such a policy decision in determining whether the change is necessary to assess eligibility and administer voter registration, as well as how such a decision comports with the spirit and purpose of the NVRA. The petition before the Commission describes the risk of noncitizens voting as extraordinarily large and the potential disenfranchising impact of a DPOC requirement as "vanishingly small." This description, however, could not be farther from the truth.

As discussed above, state level voter registration investigations spanning decades have found almost non-existent levels of noncitizen voting. Additionally, the experience of both Kansas and Arizona in implementing DPOC, along with recent studies, show that requiring documentary proof of citizenship nationwide has the potential to disenfranchise millions of voters. Most

[27] Jillian Andres Rothschild, et al., *Who Lacks ID in America Today? An Exploration of Voter ID Access, Barriers, and Knowledge* 6 (June 2024), https://fairelectionscenter.org/wp-content/uploads/2025/02/Voter-ID-survey-Key-Results-June-2024.pdf.
[28] Ex. H, Open Letter to Richman, Memorandum in Support of Plaintiffs' Motion to Exclude the Testimony and Report of Jesse T. Richman, *Fish v. Kobach*, No. 16-cv-2105 (D. Kan. Aug. 25, 2017), Dkt. No. 390-9, https://storage.courtlistener.com/recap/gov.uscourts.ksd.110435/gov.uscourts.ksd.110435.390.9_1.pdf.

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notably, a DPOC requirement would erect barriers to registration for millions of Americans who cannot readily access DPOC and would directly undermine certain voter registration efforts.

1. Recent Study Data on DPOC Access Demonstrates the Barriers Americans Would Face

Importantly, over 9% of voting-age citizens—nearly 21.3 million people—cannot readily access documentary proof of citizenship according to the University of Maryland Center for Democracy and Civic Engagement.[29] Not all demographics would be impacted equally by a DPOC requirement—for example, an estimated 69 million American women who lack paperwork with their current name due to name changes during marriage would be unable to use documents like their birth certificate to prove their citizenship.[30] That means nearly 40% of women in this country would be unable to register using the Federal Form or would have to navigate extraordinarily complicated legal and bureaucratic processes to acquire the documentation necessary to do so. This would essentially eviscerate the protections for many voters that the Federal Form offers, namely safeguarding would-be voters from unduly burdensome or restrictive state-level registration requirements. This directly undermines the explicit purpose of the NVRA, to "establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office."[31]

These findings are consistent with the real-world experiences of Arizona and Kansas, in which tens of thousands of voters in each of those states were either unable to register or required to vote only in federal elections.[32]

2. Changing The Federal Form Would Significantly Burden Voter Registration Efforts Contrary to the NVRA's Purpose

In creating the Federal Form and requiring that it be widely distributed to "organized voter registration programs," the NVRA set out to encourage voter registration through community

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[29] Rothschild, *supra* note 26, at 6.
[30] *The Safeguard American Voter Eligibility (SAVE) Act is a Trick* (Mar. 25, 2025), LEAGUE OF WOMEN VOTERS, https://www.lwv.org/blog/safeguard-american-voter-eligibility-save-act-trick.
[31] 52 U.S.C. § 20501(b)(1).
[32] John Hanna, *Kansas once required voters to prove citizenship. That didn't work out so well*, ASSOC. PRESS (Dec. 29, 2024), https://apnews.com/article/kansas-noncitizen-voting-proof-of-citizenship-50d56a0b8d1f0fde15480aab3db67f4f; Nicholas Riccardi, *Eligible to Vote in Arizona? Prove It*, L.A. TIMES (Nov. 5, 2005), https://www.latimes.com/archives/la-xpm-2005-nov-05-na-arizona5-story.html.

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voter registration drives.[33] Documentary proof of citizenship requirements undermine this important purpose of the NVRA by impeding voter registration drives.

Many citizens who are otherwise perfectly qualified potential registrants do not possess a birth certificate or passport, and even if they do, they do not typically carry any of the approved types of documents to places where civic organizations conduct voter registration drives, such as bus stops, shopping malls, markets, college campuses, and community centers. Moreover, even if a potential registrant possessed the listed documentation at a registration drive location, it would be logistically and financially impractical for voter registration organizations to photocopy the documents at the drive site. At some registration locations (e.g., public transit facilities, such as bus stops), it is not even feasible to have a dependable source of electricity, much less operate a photocopier.

In sum, because of the costs and logistics involved, running a community voter registration drive that meets documentary proof requirements is impractical. Therefore, making this change would further undermine the NVRA's statutory purpose.

III. Conclusion

For the foregoing reasons, the EAC should not and cannot adopt the changes to the Federal Form urged by Petitioner in its request for rulemaking.

[33] 52 U.S.C. § 20505(b).

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