



Introduction

Center for Election Confidence (“CEC”), is a non-profit organization that promotes ethics, integrity, and professionalism in the electoral process. CEC works to ensure that all citizens can vote freely within an election system of reasonable procedures that promote election integrity, prevent vote dilution and disenfranchisement, and instill public confidence in election systems and outcomes.

CEC submits these comments to the U.S. Election Assistance Commission (“EAC” or “Commission”) in response to the petition for rulemaking, 2025-15930 (90 FR 40825), filed by America First Legal Foundation, which requests amendments to Part 9428, Chapter 11, of the Code of Federal Regulations “to require documentary proof of United States citizenship to register to vote in federal elections.” 90 FR 40825. CEC has a long history of supporting proof of citizenship requirements in federal elections because of their great impact on voters’ confidence in election systems, processes, and outcomes, and is pleased to submit these comments in support of implementing such a requirement.

Overview

Americans by large margins demand voter identification requirements and prohibitions on non-citizen participation in our elections, and CEC is proud to use its voice to amplify their concerns through this comment and other efforts. Yet, the country is no closer to achieving a proof-of-citizenship voter registration requirement today than it was when *Inter Tribal*¹ was handed down over ten years ago.

It is time for this to change.

Despite years of legal battles and other wrangling between the States, federal courts, and the EAC, the problem of requiring documentary proof of citizenship for registration to vote in federal elections has an easy, elegant solution: The Commission should remove itself from the equation and sidestep the ongoing external machinations by simply providing a website address on the federal form for each State’s voter registration instructions, as published by that State.

Better still, this does not require resolving or answering each of the questions raised by previous litigation, administrative requests, other actions, including dicey analyses considering the reach of the Supremacy Clause or the extent of State authority reserved by the Qualifications Clauses. Each of these arguments, while perhaps legally colorable and well-suited for law review articles, textbooks, and appellate briefs, misses the point: the protection of the equal right to vote, undiluted

¹ *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 133 S. Ct. 2247 (2013).

by unqualified non-citizens is an immediate concern and one that should not be subject to the ever-changing currents of administrative law.

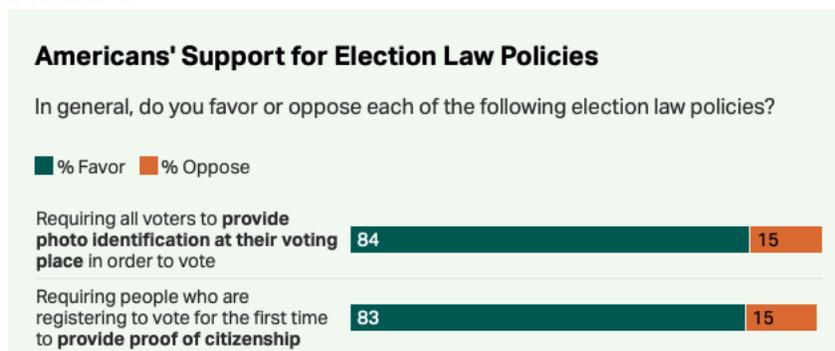
It is CEC’s understanding that the Commission has engaged in preliminary conversations with respect to this solution, and CEC strongly urges the EAC to move forward immediately toward implementation; should further action be available to the Commission, such considerations can continue to be debated over the course of the coming weeks and months. But that debate should not prevent the EAC from acting immediately, nor should it be used as an excuse to prevent decisive action. The American people deserve action today to protect the equal, undiluted right to vote and, thereby, their confidence in elections.

The American People Support Voter ID and Restricting the Franchise Only to Citizens

It is not as if the idea of requiring voter identification and restricting the franchise only to citizens is an unpopular idea with the American public, regardless of the state of the law in this area. On the contrary, the American people overwhelming support protecting the equal right to vote an undiluted ballot through voter identification and prohibitions on non-citizen participation. For most of us, this is a common-sense issue; what is less understandable is the lack of action on the issue through today.

Recent public polling by Gallup just before the 2024 presidential election confirms that large majorities of Americans—84% and 83%, respectively—support requiring photo voter identification to vote and the provision of proof of citizenship to register to vote.² A Pew Research Center survey from earlier in 2024 tells the same story, that over 80% of Americans support identification for voters.³

FIGURE 1.⁴



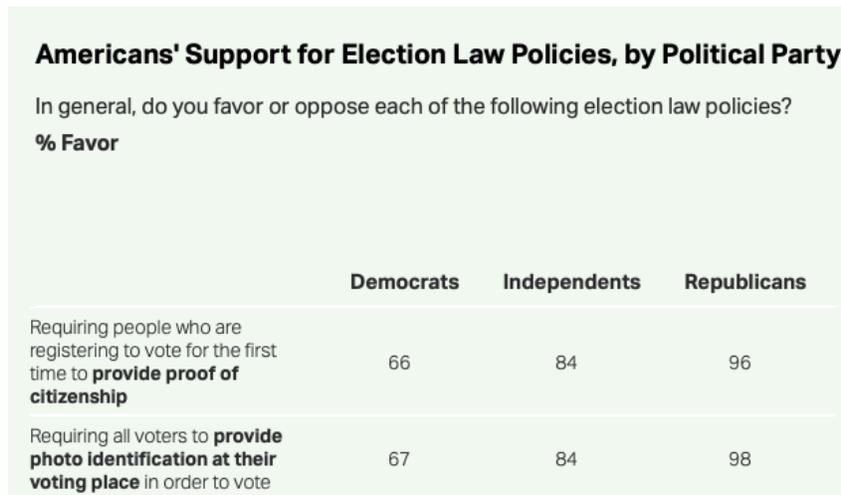
² Megan Brenan, *Americans Endorse Both Early Voting and Voter Verification*, Gallup (Oct. 24, 2024), <https://news.gallup.com/poll/652523/americans-endorse-early-voting-voter-verification.aspx>.

³ *Bipartisan Support for Early In-Person Voting, Voter ID, Election Day National Holiday*, Pew Research Center (Feb. 7, 2024), <https://www.pewresearch.org/politics/2024/02/07/bipartisan-support-for-early-in-person-voting-voter-id-election-day-national-holiday/>.

⁴ Brenan, *supra* note 2.

This remains true across demographic and partisan boundaries, rare areas of agreement in a politically polarized country. Pew Research Center notes that its survey reported overwhelming support across the parties, with 95% percent of Republicans and 69% of Democrats supporting policies that would require voters to prove their eligibility.⁵

FIGURE 2.⁶



Support holds true across racial boundaries, as well, with 75% of Black Americans, 81% of White Americans, 84% of Asian Americans, and 85% of Hispanic Americans supporting these policies.⁷

FIGURE 3.⁸



As the saying goes, the best time to listen to the will of the American people to clear the path for photo voter identification and proof of citizenship requirements was yesterday, but the second-best time is today. And it is time for the EAC to act by stepping aside.

No More Pointing to Misunderstood Procedural Issues as Roadblocks to Substantive Reform

The Commission is intimately familiar with the history of litigation and administrative requests that led to the current stalemated mismatch between State voter qualifications and the federal voter

⁵ *Bipartisan Support, supra* note 3.

⁶ Brenan, *supra* note 2. Note that this chart has been shortened for readability purposes.

⁷ *Bipartisan Support, supra* note 3.

⁸ *Id.* Note that this chart has been shortened for readability purposes.

registration form. There is no need to rehash each of those here as copious amounts of ink have been spilled in the press, in the courts, and in the academic journals concerning each step along the way. And there is no doubt that other comments will devote space to explaining each to the Commission as they see fit.

What is necessary here, then, is simply a single, vital point: that the continuing practice of drowning any decision within the details of past declarations is unproductive to substantive reform, as evidenced by the lack of any significant changes in position occurring over the past decade-and-a-half.⁹ As discussed *infra*, EAC would best serve the public by taking an off-ramp to side-step the debate entirely, at least for now.

Before returning to what the EAC should do, a brief answer to some key arguments that keep the country's election integrity protections stalled is needed.

Congress enacted the National Voter Registration Act ("NVRA") with the express goal of streamlining and standardizing voter registration for federal elections—one form to rule them all. Congress designed the statute to "increase the number of eligible citizens who register to vote in elections for Federal office" while also "protect[ing] the integrity of the electoral process" and "ensur[ing] that accurate and current voter registration rolls are maintained."¹⁰ Central to the NVRA is the requirement that states "accept and use" the uniform federal registration form created by the EAC as a sufficient method of registering voters for federal elections.

In other words, no matter the muddling of the waters since the early 1990s, it was not Congress's intention at passage to displace the actual *qualifications* for voting, which varied (and continue to vary) from state to state. The NVRA, at its core, was an efficiency statute that set baseline requirements for the manual act of recording and submitting an individual's information on the appropriate form for purposes of registering to vote, which Congress determined was too confusing, onerous, or frustrating in many situations.¹¹ The NVRA's voter registration provisions

⁹ Except, of course, movement by those on the Left toward the majoritarian position in favor of voter identification requirements. Miles Parks, *Democrats Are Now Open To New Voter ID Rules. It Probably Won't Win Over The GOP* (Aug. 28, 2021 7:00 a.m. ET), <https://www.npr.org/2021/08/28/1031164994/democrats-are-now-open-to-new-voter-id-rules-it-probably-wont-win-over-the-gop>.

¹⁰ 52 U.S.C. § 20501.

¹¹ See H. Rpt. 103-66, at 17 (1993) (*available from* the Library of Congress or commercial databases. On file with CEC).

The voter registration form must, in addition to the requirements set forth in the bill, include in print that is identical to the attestation statement, a statement of voter eligibility requirements, penalties for submitting a false application, and that the fact of declining to register and place of registration are confidential and will be used only for registration purposes. A similar change was made for the mail registration application.

[E]ach State shall accept and use a mail voter registration application form promulgated by the [EAC]. In addition, a State may develop and use its own form which meets the criteria of the [EAC] form. Notarization or other formal

are the congressional answer to a paperwork problem, not a massive substantive policy change. This also explains the statute’s passing reference to the national voter registration form including only such information “necessary” for a state to determine a person’s eligibility for voting—Congress did not want its clean, new federal voter registration form to be cluttered. But Congress also made no determination with respect to what information was “necessary” or not, clearly recognizing the Constitution’s reservation of that determination to the several States.¹²

Indeed, while seminal cases such as *Inter Tribal* play an important role in this discussion, it is important to note that not only is there on-going discussion concerning whether the Supreme Court reached the constitutional question in its holding in that case,¹³ but also to remember that the Constitution reserves to the States the authority to set voter qualifications for federal elections—a reserved authority not subject to the Supremacy Clause.¹⁴

For too long, all parties in this conversation concerning the inclusion of documentary proof of citizenship instructions on the federal form when such requirements are imposed by a given state have focused on whether such qualifications are valid under the NVRA or whether administrative requests for inclusion of such instructions have triggered the correct regulatory mechanisms.

But all of this misses the point: the EAC must not be able to overrule state voter qualifications by virtue of the NVRA because setting voter qualifications is an area of competence reserved to the States, not delegated by them to the Federal government.¹⁵ In other words, the Congress does not have the constitutional authority to give the EAC (or any other federal agency) the power to decline to enforce voter qualifications imposed by the States subject to their reserved constitutional authority, limited by the Reconstruction and Voting Rights Amendments.¹⁶ While the Supreme Court may not yet have decided the question of the constitutionality of the federal form purporting to impose voter qualifications different from those imposed by the States,¹⁷ the Constitution is clear: the States alone establish voter qualifications, subject to limitations imposed by the

authentication is not allowed. Forms shall be readily available for public and private distribution, especially for organized registration programs.

¹² 52 U.S.C. § 20504(c)(2). *See also* H. Rpt. 103-66 at 17.

¹³ *See, e.g.*, Brief of Center for Election Confidence, Inc. as *Amicus Curiae* Supporting Appellee and Affirmance, p. 12 n. 2, *Public Interest Legal Foundation v. Knapp*, No. 25-1128 (4th Cir. May 12, 2025) (citing H. Rpt. 118-386 (2024) (*available at* <https://www.congress.gov/committee-report/118th-congress/house-report/386/1>)).

¹⁴ U.S. Const. art I, § 2, cl. 2; U.S. Const., amend XVII, cl. 3 (together, the Qualifications Clauses). *See also* U.S. Const., amends. XV, XIX, XXIII, and XXVI (collectively, the Reconstruction and Voting Rights Amendments), which restrict the reserved authority of States to set voter qualifications based on specific criteria outlined in these amendments. *Compare with* U.S. Const., art. I, § 4 (the Elections Clause), which, unlike the Qualifications Clauses, the U.S. Supreme Court has held to have certain preemption characteristics. *Inter Tribal*, 133 S. Ct. at 2253-54.

¹⁵ *But see Kobach v. EAC*, 772 F.3d 1183 (10th Cir. 2014), *cert. denied* no. 14-1164 (U.S. 2015).

¹⁶ U.S. Const., amends. XV, XIX, XXIII, and XXVI.

¹⁷ *See, e.g., Kobach v. EAC*, no. 14-1164 (U.S. 2015), *cert. denied*.

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Reconstruction and Voting Rights Amendments,¹⁸ and the Supremacy Clause only impacts areas of superior federal competence.¹⁹

Voter qualifications set by the States pursuant to their constitutionally reserved authority and subject to the limits of the relevant Amendments *are* the lawful voter qualifications for federal elections held in that state, no matter what the EAC does or does not list on the federal form.²⁰ This means that the Commission should not lose sight of the undeniable fact that no matter its decision concerning the underlying petition for rulemaking, the EAC must find a way forward to respect the States' broad and superior authority to set voter qualifications in federal elections.

But we have been through all of these arguments before, and at least some other comments will disagree with CEC's framing. And instead of resolving this issue, these procedural and legal arguments spin the issue in circles, drawing the conversation further from the real issues facing American voters.

It is time to admit that the protection of the equal right to vote, undiluted by unqualified non-citizens, cannot and should not be subject to the ever-changing currents of administrative law or by the members of an unelected commission, no matter how qualified.

The Solution Is Easier than Opponents Admit and Can Be Implemented Immediately

CEC wholeheartedly and unequivocally supports proof of citizenship requirements in federal elections and will not back down from that position.

But as voters continue to wait decades for the complex questions underlying such debate to be decided, the American people's confidence in our election processes, procedures, and outcomes languishes, with polling from the most recent presidential election showing that only 34% of Americans are "very confident" that "noncitizens [who] try to cast a ballot . . . will be stopped."²¹ There is no reason for this destructive stalemate to continue while the scholars, litigators, and elected representatives discuss. In fact, it is reasonable to assume that voters' confidence will continue to suffer as this debate drags on further.

¹⁸ U.S. Const. art I, § 2, cl. 2; U.S. Const., amend XVII, cl. 3 (together, the Qualifications Clauses). *See also* U.S. Const., amends. XV, XIX, XXIII, and XXVI (collectively, the Reconstruction and Voting Rights Amendments).

¹⁹ *See, e.g.,* Dan Schweitzer, *The Law of Preemption* 2d ed. 2, Nat'l Attys. General Trng. And Rsch. Institute. ("At bottom, [the 64 words of the Supremacy Clause] give Congress the power to override state law *in any area where Congress has authority to act.*"(emphasis added) (*citing and quoting Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) ("We begin with the axiom that, under our federal system, the States possess sovereignty concurrent with that of the Federal Government, subject only to the limitations imposed by the Supremacy Clause."))).

²⁰ *Contra Kobach v. EAC*, 772 F.3d 1183 (10th Cir. 2014). *But see Kobach v. EAC*, no. 14-1164 (U.S. 2015) (*cert. denied*).

²¹ *Harris, Trump Voters Differ Over Election Security, Vote Counts and Hacking Concerns* 22, Pew Research Center (Oct. 24, 2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/10/PP_2024.10.24_election-security_report.pdf.

Regardless of whether the Commission agrees with the argument that the NVRA could not have displaced state authority to set voter qualifications for federal elections, and even setting aside whether the Commission believes a documentary proof of citizenship requirement is a worthwhile policy goal, the EAC is not well-suited to referee, at a national level, the various arguments about voter qualifications in each state.

This proposition is supported not only by the text of the EAC's authorizing statute, the Help America Vote Act of 2002,²² but also the Conference Report that accompanied that bill to final passage by Congress. Such report cements the EAC as an "assistive" agency, as its name implies, establishing the Election *Assistance* Commission simultaneously with three *advisory* boards and stipulating the agency's role as a "national *clearinghouse*" (emphasis added) with limited regulatory and operational authority, decidedly not as a center for deciding national election policy.²³ Rather, disagreements about the appropriateness, lawfulness, or even constitutionality of state policy decisions should be considered individually by courts of competent and relevant jurisdiction, not by an administrative agency of the Executive Branch of the federal government.²⁴

So those who may argue that each of these esoteric questions must be resolved before the nation sees voter identification and proof of citizenship requirements may very well not be seeking resolution, but simply to delay. As it stands today, each State, a sovereign constituent of our Union, has, according to the will of its own people, its own constitution, and the amendment-limited powers reserved to it by the federal constitution, determined the appropriate qualifications for voters within its purview, and the federal Constitution applies those requirements to federal elections held in that state.²⁵

In truth, it is time for the Election Assistance Commission, the federal agency charged with promulgating the national voter registration form, to call for a time out in the fraught battle of words slung through complaints, briefs, and journal articles. Even if the EAC does have the discretion that the *Inter Tribal* court suggests it maintains, a federal agency operating with wise discretion would recognize when to throw in the towel, at least for a cool down at halftime.

The solution here, even if only interim while the fight picks back up after the game break concludes, is simpler than nearly any commentator would have the agency or the interested public believe. The EAC should promulgate a new national voter registration form that, rather than attempting to regurgitate, reformulate, or interpret any state's eligibility requirements, should simply provide a reference to each state's website where that state explains its own eligibility requirements, including—importantly for this comment—those states that require documentary proof of citizenship. It is CEC's understanding that the EAC has engaged in at least preliminary discussion on this matter. It is time now for the Commission immediately to implement this simple

²² *Codified at* 52 U.S.C. § 20501 *et seq.*

²³ H. Rpt. 107-730, at 68 (2002), <https://www.congress.gov/107/crpt/hrpt730/CRPT-107hrpt730.pdf>.

²⁴ *Compare* U.S. Const., art. II, U.S. Const., art. III, *and* U.S. Const., amend. X.

²⁵ U.S. Const. art I, § 2, cl. 2; U.S. Const., amend XVII, cl. 3.

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solution and to remove itself from the middle of the fray. Give election integrity a winning day today, even as the arguments over the ultimate answer continue.

Conclusion

One issue that unites a divided America is the widespread opinion that only eligible American citizens should be permitted to vote in federal elections, with support topping 80%—unheard of in so many other areas.

Yet, while the American people have clearly decided their position on the issue of proof of citizenship requirements, the implementation policies necessary to effect this decision remain mired in a never-ending debate over the appropriateness of one method or another. Sorting through this morass is not a task for which the EAC, as an assistive agency focused primarily on advice and information collection, is well-suited.

Other commenters will no doubt offer well-considered perspectives on the underlying issue, but the debate itself does not assist the administration of American elections. The U.S. Election Assistance Commission should break the logjam by choosing a new path.

While the debate rages on for additional years over possible, final answers, the Center for Election Confidence urges the Commission to step back from the argument gracefully and to promulgate a new version of the national voter registration form that removes the current descriptions of state eligibility requirements and instead includes a reference to websites operated by each state where the states themselves explain their own eligibility requirements. Such a decision would not only provide many steps forward in the march toward stable voter confidence and election integrity by permitting the enforcement of state documentary proof of citizenship requirements for registration to vote in federal elections, but it would also return arguments over state policies concerning voter qualifications to where they belong, in the courts instead of before a federal agency.

Respectfully submitted this 20th day of October 2025 by **Center for Election Confidence, Inc.**

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