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SUBMITTED VIA FEDERAL RULEMAKING PORTAL

Re: Docket No. EAC-2025-0236

To the Election Assistance Commission:

The Homeless Advocacy Project (“HAP”), by and through its undersigned counsel, submits this comment in opposition to the Petition of America First Legal Foundation for Rulemaking Before the Election Assistance Commission.

If adopted, the proposed regulation would effectively bar thousands of homeless citizens in Pennsylvania, and countless more around the country, from registering to vote using the National Mail Voter Registration Form (“federal form”). As detailed below, very few Pennsylvanians experiencing homelessness have a U.S. passport or other documents proving citizenship as would be required under the proposed regulation. Two barriers to applying for a passport are nearly insurmountable for many individuals experiencing homelessness: obtaining a birth certificate and paying the application fee.

“Wealth, like race, creed, or color, is not germane to one’s ability to participate intelligently in the electoral process.” *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 668 (1966). If adopted, the proposed regulation would deny large numbers of individuals experiencing homelessness their statutory right to use the federal form to register to vote. The Commission should deny the petition for rulemaking on that basis.

The Homeless Advocacy Project

Established in 1990, HAP is the only legal services organization dedicated to providing direct civil legal services to individuals and families experiencing homelessness in Philadelphia. HAP also advocates for the needs of Philadelphia’s homeless population, promoting positive changes in policies that impact those needs.

Since its inception, HAP has conducted legal clinics by reaching out to its clients in places where they live and eat, such as homeless shelters, transitional housing sites, and social service providers throughout Philadelphia. By recruiting and training volunteer attorneys, legal assistants, and law students to staff these clinics, HAP is able to provide free legal counseling and representation to a population not adequately served by other legal services programs. HAP also collaborates with shelter providers, homeless advocates, and community service providers to connect clients with other social services. Annually HAP holds approximately 200 in-person and virtual legal clinics at fifteen sites throughout Philadelphia. Since HAP's first legal clinic in December 1990, HAP's staff and volunteers have helped more than 68,000 people and have provided more than \$118 million worth of free legal services to clients experiencing homelessness.

For many of HAP's clients, a first step in overcoming homelessness is obtaining government-issued identification. Simple as that sounds, there are real barriers to the process, including cost, missing paperwork, and complicated bureaucracies. Every year, HAP helps hundreds of Philadelphians obtain their birth certificates, including those whose births were never registered.

Obtaining a Birth Certificate is Difficult or Impossible for Many People Whose Births Were Never Recorded

A basic document required for a native-born citizen when applying for a U.S. passport is a birth certificate. HAP assists hundreds of people every year to obtain birth certificates, both through attorneys on HAP's staff and through outside attorneys who volunteer at HAP clinics on a pro bono basis. Since 2010, HAP has handled nearly 13,000 birth certificate matters. The majority of HAP's clients are transient and experience housing instability. As a result, their personal belongings—including important documents such as birth records—are lost, misplaced, or destroyed by others.

The HAP clients who have the most trouble acquiring a birth certificate are those whose births were never properly recorded, or who are unable to provide complete information needed to locate their original birth records. For example, HAP volunteers worked for several years to obtain a birth certificate for a client who was born in the 1950s on a farm in Virginia to a family of migrant farmworkers, and who as an infant was taken to

Florida where he entered the child welfare system and was legally adopted. No birth record was ever filed. One of HAP's law firm partners, after a lengthy struggle, managed to obtain all of his adoption records but was unable to secure, through administrative avenues, the issuance of a delayed birth certificate in Florida. Another partner law firm, which had a Florida office, took over the case to obtain a court order to issue the birth record. Since the adoption paperwork indicated that HAP's client was born in Virginia, the Florida court refused to enter an order. A similar effort made in Virginia was unavailing, on the grounds that there was no "proof" he was born in Virginia. Despite years of work, HAP's pro bono volunteers were unable to obtain a birth certificate for this client and, consequently, he was unable to obtain a state ID or public benefits.

Similarly, another older HAP client who was born in his family's home in South Carolina lacks identification and—despite HAP's efforts—has been unable to secure it. The midwife who delivered him never made sure that the birth was recorded. A HAP volunteer obtained South Carolina school records that documented his birth, as well as a Social Security Administration Numident record, which verified his name, date of birth, and parents' names. South Carolina refused to issue a delayed birth record because a second erroneous birth date is included in the Numident record in addition to the correct date of birth.

These examples are not atypical. Numerous older HAP clients face a predicament common to Black people whose births were never officially recorded in the Jim Crow-era South.¹ Obtaining a delayed birth certificate from a distant state is often a difficult, expensive, and time-consuming process.² Completing this process may require a client to travel back to his or her county of birth and to appear in court with an in-state attorney, which

¹ "For decades, many low-income African American women in the South gave birth in family homes instead of hospitals, aided by midwives The births often went unrecorded. Tens of thousands of babies were born off the grid" Alfred Lubrano, *Search for ID Adds to a Life of Challenges*, Phila. Inquirer, Mar. 27, 2014, at A1.

² In a lawsuit successfully challenging Pennsylvania's photo identification requirement for voting (in which HAP served as an organizational petitioner), several witnesses testified about their inability to complete this process. See *Applewhite v. Commonwealth*, No. 330 M.D. 2012, 2014 WL 184988, at *30, *41 (Pa. Commw. Ct. Jan. 17, 2014).

is far beyond the reach of the population HAP serves. See, e.g., S.C. Dep't of Pub. Health, *Birth Certificates*, <https://dph.sc.gov/public/vital-records/birth-certificates> (last visited Oct.16, 2025) (“The process of establishing a delayed birth record can be long and require many documents to be submitted. Sometimes it is impossible to get the required documents and the only option is for someone to present what they have to a judge who will then decide what information to put on the birth certificate.”).

HAP Clients Face Many Other Barriers to Getting Birth Certificates

Even for HAP clients whose births were recorded, the barriers to obtaining birth certificates are often high. One type of barrier is a Catch 22: you need photo identification to obtain a birth certificate, and you need a birth certificate to obtain photo identification. Compare Pa. Dep't of Health, *Acceptable ID*, <https://www.pa.gov/agencies/health/programs/vital-records/acceptable-id> (last visited Oct.16, 2025) (listing requirements for birth certificates), with Pa. Dep't of Transp., *Identification and Residency Requirements For U.S. Citizens* (Sept. 2023), <https://www.pa.gov/content/dam/copapwp-pagov/en/penndot/documents/public/dvspubsforms/bdl/bdl-publications/pub%20195us.pdf> (last visited Oct.16, 2025) (listing requirements for Pennsylvania photo identification cards).

Pennsylvania allows applicants for birth certificates who lack photo identification to substitute by submitting “two different types of acceptable documentation that verifies your name and current mailing address,” including a “Lease/Rental Agreement, Utility Bill, Vehicle Registration or insurance policy, Tax Return/W-2 form, Social Security Statement, [or] Bank or Credit Card Statement.” Pa. Dep't of Health, *Acceptable ID*, *supra*. “If the applicant does not have any of the above alternate documentation, two pieces of current mail to verify name and address are acceptable.” *Id.* HAP's clients by definition do not have a stable residence, and often they have no reliable way to receive mail. The majority of clients HAP serves cannot provide any of the alternative documents, and only very rarely would a client be able to produce two of them. HAP is able to help clients who were born in Pennsylvania to navigate this Catch 22, because an attorney can apply for a birth certificate on a client's behalf and can provide the attorney's own photo identification to support the application. See Pa. Dep't of Health, *Ordering a Birth Certificate*, <https://www.pa.gov/>

[agencies/health/programs/vital-records/birth-certificates](#) (last visited Oct.16, 2025). Outside of Philadelphia, however, it is very difficult to find a Pennsylvania attorney experienced in birth-certificate matters.

Wait times present another set of barriers. Pennsylvania birth certificates often take several weeks to arrive, and birth certificates from other states can take longer. Yet another barrier is indigency. Although Pennsylvania waives the birth certificate fee for people experiencing homelessness, many other states do not provide such a waiver, and these fees can be prohibitively high for HAP's clients. *E.g.*, N.Y. State Dep't of Health, *Birth Certificates*, https://www.health.ny.gov/vital_records/birth.htm (last visited Oct.16, 2025) (listing birth certificate fees of \$30 for mail orders and \$45 plus a vendor fee for online and phone orders, and noting "[w]e are currently experiencing significant delays in order processing"); Del. Health & Soc. Servs., *Application for a Certified Copy of a Delaware Birth Certificate*, <https://dhss.delaware.gov/wp-content/uploads/sites/10/dph/pdf/birth.pdf> (June 2021) (last visited Oct.16, 2025) (listing fee of \$25).

Passports and Other Forms of “Documentary Proof of Citizenship” Are Inaccessible to Most HAP Clients

While slightly fewer than half of all Americans have a passport, it is exceptionally rare for a HAP client to possess an unexpired U.S. passport or other documentary proof of citizenship listed in the proposed regulation.

Without a birth certificate, obtaining a U.S. passport is a complex and time-consuming endeavor. If a HAP client does not have a birth certificate, the client must obtain a Letter of No Record, complete a Birth Affidavit, and provide early public or private records or documents that prove the client's existence. The Letter of No Record must be issued by the state, have the client's name and date of birth, list the birth years searched, and explicitly state that no birth certificate is on file.³ The early public or private records must be from the first five years of the client's life, such as a baptism certificate, U.S. Census record, early school record, family bible record, or doctor's records of post-natal care. Lastly, the client must include a Birth Affidavit signed in front of a passport agent, passport acceptance

³ In Pennsylvania, the Letter of No Record costs \$20.

agent, or notary public. This prolonged process requires ample financial resources along with the assistance and cooperation of numerous individuals—luxuries most HAP clients do not have.

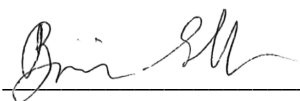
Even if a HAP client has a birth certificate and other application materials needed for U.S. passport, the non-waivable application fees of \$165 for a passport book or \$65 for a passport card (not to mention other costs, such as for photographs) put passports financially out of reach for the individuals HAP serves, many of whom have no income or very limited financial means. The proposed regulation would allow, as an alternative to a U.S. passport, a state-issued driver's license or photo identification if it indicates "that the applicant is a United States citizen," but in Pennsylvania, as in most states, driver's licenses and non-driver photo identification cards do not indicate citizenship.

Conclusion

Many of HAP's clients view the right to vote as an important privilege. As one former client put it, the right to vote is meaningful to her because it allows her to express her voice through the lens of her prior experiences and to help others by bringing about change. Consistent with 52 U.S.C. § 21083(b)(4)(A)(i) and 52 U.S.C. § 20508(b)(2)(A), the current regulation already requires individuals seeking voter registration to attest to their citizenship under penalty of perjury. For individuals experiencing homelessness, the proposed regulation would create an insurmountable barrier to using the federal form to register to vote, disenfranchising many of this country's most vulnerable citizens.

This Commission should deny the petition for rulemaking.

Respectfully,



Benjamin D. Geffen
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