

## Noncitizen Voting Rights: Extending the Franchise in the United States

BY RONALD HAYDUK

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*As the world grows closer in terms of population mobility, capital investment, labor markets, cultural production, and high technology, it is imperative that we create political norms to make these processes of integration consistent with democratic values. The possibilities for exploiting displaced persons are too great if we make capital and labor mobile but political rights immobile. We cannot treat the world as a global economic village but define it as a collection of remote islands for the purposes of political participation. Eventually we may define a human right to democratic participation.*

—Jamin Raskin<sup>1</sup>

The right to vote has been a critical tool for every marginalized group in the United States to

achieve social, economic, and civil rights. Previously excluded groups, including African Americans, women, and younger adults, have gained access to the franchise principally through political struggle. Ultimately they have needed the support of other sectors in society to win political rights. The agitation of the propertyless encouraged sectors of the propertied to extend the franchise; the abolitionist and civil rights movements led whites to enfranchise blacks; the suffragettes compelled men to include women among the voting citizenry; and younger adults, whose participation in the social movements of the 1960s and 1970s, were granted voting rights by older adults.

Why not extend such rights to immigrants too?

Although noncitizen immigrants behave in much the same ways as citizens, they possess fewer rights and benefits.<sup>2</sup> They are subject to all laws, pay taxes, work in every sector of the economy, own businesses, send their children to school, can be drafted and serve in the military, and participate in all

aspects of daily social life. In fact, some of the first Americans killed in the war in Iraq were noncitizens. Yet noncitizens are excluded from selecting representatives who fashion public policy that affects them on a daily basis. This issue cuts to the heart of citizenship and democracy.

Given significant anti-immigrant sentiment in the United States, particularly after September 11 and the war in Iraq, the notion of allowing noncitizens to vote might appear outlandish upon first blush; but once examined, a compelling case can be made for noncitizen voting.<sup>3</sup>

*It's legal.* The Constitution does not preclude it and the courts have upheld voting by noncitizens. In fact, for most of our country's history—from the founding until the 1920s—noncitizens enjoyed voting rights in twenty two states and federal territories.

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*It's rational.* There are good reasons—both moral and practical—for the enfranchisement of immigrants, including notions of equal rights and treatment.

*It's feasible.* Recently, noncitizen voting has been reestablished in several municipalities. New York City and Chicago have permitted noncitizen voting in school board elections, seven municipalities in Maryland and Massachusetts have extended the right to vote for local offices to noncitizens, and nearly a dozen other jurisdictions, including Washington, D.C., San Francisco, Los Angeles, and New York, have considered or are currently moving to establish noncitizen voting.<sup>4</sup> Another twenty countries allow resident aliens to vote.<sup>5</sup>

### **Noncitizen Voting in U.S. History**

“Aliens” voted in local, state, and even national elections in twenty-two states and federal territories from the nation’s founding until the 1920s, and noncitizen immigrants held public offices, such as alderman, coroner, and school board member.<sup>6</sup> Noncitizen voting built on the hallowed principle of the American Revolution: no taxation without representation. Alien suffrage was seen as a way to encourage newcomers to build a stake in our nascent country. As America’s experience dur-

ing the nineteenth century demonstrated, immigrants who declared their intent to naturalize were allowed voting rights because it encouraged integration and assimilation.

### **Reasons for Campaigning for Noncitizen Voting Rights**

Immigrants have reemerged as pivotal players in American politics. Today more than one in ten individuals (11.05 percent) are foreign born—the highest level since 1910, when more than 14 percent were foreign born.<sup>7</sup> Most of the new arrivals have come from Latin America, Asia, and the Caribbean, changing the ethnic and racial composition of the U.S. population. Moreover, an increasing proportion of immigrants are noncitizens: more than eighteen million of the thirty-one million immigrants were noncitizens in 2000.<sup>8</sup> Nearly one in ten families is a “blended” family, having one or more parents who are noncitizens and one or more children who are citizens.<sup>9</sup>

These demographic changes hold significant political implications, especially in the states and metropolitan areas where immigrants are concentrated.<sup>10</sup> Immigration is changing the political arithmetic, propelling parties and politicians who jockey for advantage to adjust

campaign strategies to reflect evolving electoral conditions.

Yet immigrants’ political power lags behind their numbers. Although immigrants increasingly make up a greater proportion of the population, of the thirty-one million foreign-born people who currently live in the United States, more than twelve million *legal* permanent residents remain noncitizens and are barred from voting.

Despite increases in the number of immigrants who have naturalized in recent years—largely in reaction to a host of anti-immigrant legislation—the average time it takes to obtain citizenship is nearly ten years. In fact, the time it takes to become a permanent resident, a prerequisite to apply for citizenship, can take even longer. In addition, the number of naturalization applications that are denied has risen, and other immigrants are deterred from applying altogether.<sup>11</sup> Backlogs in processing applications and increased requirements produce a cumbersome naturalization process that is significantly more difficult and time consuming than it was in earlier times.

These trends and dynamics have generated efforts by immigrant rights groups to reinstate voting

rights for noncitizens. This small but growing mobilization also grows out of past U.S. experience.

### Arguments for Noncitizen Voting

Aside from legal arguments and historical practice, there are moral and political reasons to reenfranchise immigrants. Advocates employ three familiar arguments used in past struggles to expand the franchise to previously excluded groups.

First, a basic tenet of democratic theory is the *social contract*. The legitimacy of government rests on the consent of the governed. Members of democratic communities are rightfully obliged to obey the laws to which they are subject if they possess a means to participate in governance, such as by voting.

Federal, state, and local governments already treat noncitizens—both legal permanent residents and undocumented people—like other community members. The most obvious example is that all residents must pay income taxes regardless of their immigration status. In fact, the overwhelming proportion of immigrants (except refugees) pay more in taxes than they receive in benefits, and more than the average American pays, while contributing positively to the nation's economy on the whole.<sup>12</sup>

Immigrants have the same stake and interest in a community's political decisions as any citizen has. Like other citizens, immigrants tend to become involved and invested in their communities and in the nation when given a voice and a means of participating in social and political processes. Voting is an important means of becoming incorporated and engaged in a polity, not merely the outcome of becoming assimilated.

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A second argument refers to issues of discrimination and bias. Noncitizens are at risk. Discriminatory public policy and private practices—in employment, housing, education, health care, welfare, and criminal justice—are the inevitable by-products of immigrant political exclusion, not to mention xenophobic political campaigning and racial profiling. As Jamin Raskin, a law professor at American University who led the successful campaign to enact noncitizen voting in Tacoma Park, Maryland, stated, “If you can't

vote, you tend to be disregarded politically. It [noncitizen voting rights] has extended real visibility to a formerly invisible population.”<sup>13</sup> That is, groups can be more easily subordinated by depriving them of the vote, and conversely, can attain greater freedoms when they possess the right to vote.

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The main point—one that runs through all three arguments—is fairness. The sixteen-year-old daughter of an immigrant told the Cambridge city council:

It's simply not fair that people who have lived here for so long, who have paid taxes and contributed to the community [speaking about her mother], do not have a right to speak about their own children's education. These people are constantly being affected by all the various laws that are being passed but are not allowed to voice their opinions at all. These are people who are part of the society and are

influenced by changes made, whether in housing, taxes, or security. Therefore, they should be included in the process of making change. They live in the society and look upon it as their home. They certainly deserve a voice in how it is run.<sup>14</sup>

A third argument stresses the benefits that would accrue to other community members. Immigrants strengthen communities: not only do they contribute materially but they also enhance the quality of life and add richness to neighborhoods. Moreover, working class individuals and people of color—particularly in metropolitan regions—face many of the same problems that immigrants do, including discrimination in employment, housing, and education. Forging coalitions can reduce competition and enhance mutual understanding and cooperation. Conversely, the struggle for scarce economic resources, cultural differences, and prejudice can breed intergroup conflict. Universal voting rights can provide a buffer against potential social strife and segmented assimilation. Alliances among competing minority groups in struggles for fair employment practices, in living-wage campaigns, and in access to affordable housing and quality education have

formed the basis of such effective coalitions. Noncitizen political participation could help strengthen potential alliances in electoral contests and public policy formation. Indeed, an enlarged electorate might change electoral outcomes.

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#### Expand the Electorate: Reenfranchise Noncitizen Immigrants

The bottom line is that millions of hard-working members of America's communities who participate in every aspect of economic and social life are excluded from political participation. This is not fair and it need not be this way.

As successful efforts to reinstate noncitizen voting rights show, campaigns based on democratic and moral claims can mobilize noncitizens and their allies. Such campaigns provide immigrants with important means to defend themselves against nativist attacks, and they give other minority groups greater means to forge winning voting blocks that can advance their mutual interests. Challenging the taxation of immi-

grants without representation not only disputes the legitimacy of America's mantle of democratic governance but also provides a rationale and opportunity for organizing a progressive political majority.

In this era of globalization it is time to update America's outmoded and undemocratic electoral arrangements. Just as the civil rights movement extended the franchise to African Americans and others who had been barred from voting, noncitizen voting is the suffrage movement of our time.<sup>15</sup> Dominant political parties and candidates are increasingly turning their attention to immigrants. It would be wise for today's progressives to lead the way.

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#### NOTES

1. Raskin, J. B. "Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage." *University of Pennsylvania Law Review*. 1993, 141, 1391–1470.

2. The terms *immigrants*, *foreign born*, and *aliens* refer to the same persons and are used interchangeably in this article. There are, however, several distinct categories of immigrants, the main distinction being “legal,” or documented, versus “illegal,” or undocumented, immigrants. Legal permanent residents are those who obtain immigrant visas, or green cards, because they are related to a U.S. citizen or permanent resident, possess a needed or desirable job skill or ability, or are spouses or children of green card holders. Other categories of legal immigrants include those seeking asylum, refugees, and nonimmigrant foreigners (such as students, tourists, diplomats, and temporary workers).

3. I draw on the work of other scholars and immigrants rights advocates, including Raskin, “Legal Aliens, Local Citizens”; Rosberg, G. “Aliens and Equal Protection: Why Not the Right to Vote?” *Michigan Law Review*, 1977, 75, 1092–1136; Shimmelman, W. A. *Local Voting Rights for Non-U.S. Citizen Immigrants in New York City*. Unpublished report prepared for the Center for Immigrants Rights. New York, 1992; Gordon, J. “Let Them Vote” In O. Fiss and others, *A Community of Equals: The Constitutional Protection of New Americans*. Boston: Beacon Press, 1999; Harper-Ho, V. “Noncitizen Voting Rights: The History, the Law and Current Prospects for Change.” *Law and Inequality Journal*, 2000, 18, 371–322; Brozovich, E. “Prospects for Democratic Change: Non-Citizen Suffrage in America.” *Hamline Journal of Public Law & Policy*, 2002, 23, 403–453; Aleinikoff, T. A., and Klusmeyer, D. *Citizenship Policies for an Age of Migration*. Washington, D.C.: Carnegie Endowment for International Peace, 2002. In addition,

advocates in states and locales that have successfully pressed for immigrant voting rights or are currently working to pass such legislation—such as Jamin Raskin in Takoma Park, Maryland; Natalie Smith in Cambridge, Massachusetts; and Vladimir Morales in Amherst, Massachusetts—have developed arguments for the reinstatement of noncitizen voting. There is no central source, however, for information about such campaigns, organizations, and individuals.

4. On the heels of the civil rights movement and social unrest, New York City and Chicago granted noncitizens the right to vote in school board elections in the late 1960s. In the late 1990s and again in 2003, Amherst and Cambridge, Massachusetts, passed legislation that would allow noncitizens to vote in local elections, and similar campaigns are under way in other jurisdictions in Massachusetts, including Somerville, Chelsea, and Everett. Since the early 1990s, five communities in Maryland have allowed noncitizens to vote in local elections: Takoma Park, Barnesville, Martin’s Additions, Somerset, and Chevy Chase. In Washington, D.C., the current mayor, Anthony Williams, supports noncitizen voting. See *Washington Post*, Nov. 10, 2002, p. B8. Arlington, Virginia, permits resident aliens to vote in school board elections. See Earnest, D. “Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm.” Paper presented at the annual convention of the American Political Science Association, Philadelphia, Pa., Aug. 28–31, 2003. In New York State, legislation to reestablish noncitizen voting was reintroduced in 2003; it now has more than a dozen sponsors. In New York City, several public officials, including members of the 2003 City Charter Revision Commission,

and candidates for city council and mayor have stated their support for extending noncitizen voting from only school board elections to all municipal elections or said they are open to considering such legislation. In Texas, Representative Alonzo introduced a bill (HR 2816) in the mid-1990s that would have allowed voting rights for legal noncitizens in local elections. In 2002 a Denver activist, Hank Lamport, considered running for city council on a platform to allow noncitizens to vote in local elections. Again, no complete list exists of all jurisdictions that have or are currently engaged in such efforts.

5. Earnest, “Noncitizen Voting Rights.”

6. Raskin, “Legal Aliens, Local Citizens.”

7. Unless otherwise noted, all data on immigrants are from the U.S. Bureau of the Census and the Immigration and Naturalization Service.

8. In 1970, only three of the nine million immigrants were noncitizens (six million were naturalized immigrant citizens); in 1980, approximately five of the thirteen million immigrants were noncitizens; in 1990, the number of noncitizens jumped to a majority of all immigrants—twelve of the nearly twenty million; and in 2000, more than eighteen out of the thirteen million immigrants were noncitizens.

9. Fix, M. E., and Zimmerman, W. *All Under One Roof: Mixed-Status Families in an Era of Reform*. Washington, D.C.: Urban Institute, 1999.

10. Six states—California, New York, Florida, Texas, Illinois, and New Jersey (in that order)—and eight metropolitan regions—Los Angeles, New York City, Miami, Anaheim, Chicago, Washington, D.C., Houston, and San Francisco—are home for the overwhelming majority of new immigrants.

11. Spiro, P. J. "Questioning Barriers to Naturalization." *Georgetown Immigration Law Journal*, 1999, 13, 479.

12. Foner, N., Rumbaut, R., and Gold, S. (eds.) *Immigration Research for a New Century*. New York: Russell Sage Foundation, 2001.

13. Donn, J. "Massachusetts Town Considers Granting Vote to Noncitizens." Associated Press, Oct. 21, 1998.

14. Cambridge City Council Public Meeting, May 5, 2003.

15. Of course other electoral reform would need to be enacted if more democratic electoral politics and outcomes are to be achieved, including Election Day registration, the restoration of voting rights for felons, effective campaign finance reform, ballot access reform, and the inauguration of alternative representational schemes (such as proportional representation or instant run-off voting). See Hayduk, R., and Mattson, K. (eds.). *Democracy's Moment: Reforming the Amer-*

*ican Political System for the Twenty-First Century*. Lanham, Md.: Rowman & Littlefield, 2002.

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