

Immigration Dilutes the Voting Rights of Citizens

by **James G. Gimpel**
and **James R. Edwards, Jr.**

The next U.S. president will confront a troubling issue similar to that faced by his predecessors 40 years ago. It goes to the heart of fairness and integrity in our federal electoral system. The next president will have spent a lot of time courting voters in states such as California with the most electoral votes. As he turns toward governing, he must correct the distortion immigration places upon the electoral college – diluting the votes of American citizens. Reapportionment and redistricting based on the presence of noncitizens is fundamentally unfair to American citizens, native-born and naturalized alike.

California will gain new House seats following the 2000 census largely as the result of legal and illegal immigration. Texas and Florida are also likely to gain seats because of immigration. According to a report by the Center for Immigration Studies, a Washington, D.C., think tank, 13 U.S. House seats changed hands after 1990 or will change hands after the next census. And the most recent U.S. Census Bureau estimates arrive at similar conclusions about the redistribution of congressional seats.

Because the number of House seats is fixed at 435, gains made by these Sunbelt states translate directly into losses by Rustbelt states. Among the states most likely to lose seats, the CIS report says, are Ohio, Michigan, Pennsylvania, Wisconsin and Mississippi. Kentucky and Colorado will each forego

a new seat. Ninety-eight percent of the residents of these states are U.S. citizens. In most cases, these states' populations have grown, too, just much more slowly because they have received relatively few recent immigrants.

This change of political power through reapportionment means recent immigration trends are having a profound effect on Congress and America's political process. The question arises:

Is it appropriate to dilute U.S. citizens' votes on account of noncitizen settlement patterns? In one sense, these developments are consistent with past trends. Since 1960, the Northeastern and Midwestern states have had to forfeit representation to the faster growing South and West. In 1960, New York had 41 U.S. House seats; today it has 31. Pennsylvania had 27, but today it has 21. Florida, California and Texas have gained seats with every new census.

But the redistribution of seats occurring between 1960 and 1980 was mostly the result of internal migration – citizens moving from state to state. Beginning in 1990, and continuing with the 2000 census, a new force drives reapportionment – immigration.

Counting noncitizens for purposes of apportionment raises some thorny issues. For example, the Supreme Court dictated in a series of cases in the 1960s that congressional and state legislative districts be approximately equal in terms of population. Since the Court's decision in *Wesberry v. Sanders* (1964), states have had to draw their congressional district boundaries on a strictly population basis. In this case, and several related cases, the Justices struck down grossly unequal districts that gave rural voters disproportionate influence vis-a-vis urban voters.

In *Wesberry*, Justice Hugo Black, writing for the majority, argued that the disparities in Georgia's congressional districts meant that votes in some parts of the state were weighted at two or three times that of votes in other parts of the state. To say that a vote is

James G. Gimpel, associate professor of government at the University of Maryland, is most recently the author of Separate Destinations: Migration, Immigration, and the Politics of Places. James R. Edwards, Jr. is an adjunct fellow of the Hudson Institute. They are the authors of The Congressional Politics of Immigration Reform.

worth more in one district than in another would run counter to fundamental American ideas of democratic government, the Court said.

In a similar case, *Reynolds v. Sims* (1964), the Court stated, “Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.” Because malapportioned districts were ruled to be in violation of the Equal Protection Clause of the 14th Amendment, states were forced to reapportion.

Yet immigration-induced reapportionment is introducing the same kind of vote dilution that the Court ruled against in the reapportionment cases. Here’s why. Immigrants tend to geographically concentrate in just a few states – 75 percent in six states.

With immigration-induced reapportionment, some congressional districts wind up encompassing a large noncitizen population, which is not enfranchised. In Southern California, several of these districts exist today. Such districts contain less than half of the citizens – and less than half of the eligible voters – that one finds in typical districts in interior states.

This means the citizens in the high-immigration districts share their representative with relatively few other citizens compared with those in interior states. Plain and simple, this is an issue of vote dilution and raises questions of voting rights.

Take two citizens, George and Susan, who live in different districts of equal population size. George lives in a high-immigrant area and shares his congressman with 25 other citizens. Susan lives in a low-immigrant area and shares her congressman with 50 other citizens. This scheme of including noncitizens in the apportionment count effectively dilutes Susan’s vote, or exaggerates George’s. The math is simple: George’s vote is worth twice as much. The districts are not equal, period.

Whatever happened to the principle of one man, one vote?

Consider also the unequal workloads of the two members of Congress from these districts. Assuming that citizens, on average, are about equally demanding and equally attentive to politics, George’s congressman gets a free ride relative to Susan’s. George’s congressman has to chase down only half the

Social Security checks that Susan’s does. George’s congressman has to respond to only half the constituent mail.

While it may be true that noncitizens and nonvoters contact congressional offices, too, they don’t do so nearly as frequently as citizens. Hence, even granting the concession that members of Congress have to respond to noncitizen requests for assistance, the workloads will still be unequal. Again, it is a fundamental issue of fairness. One member of the U.S. House should not have to spread his staff more thinly to cover his constituents’ demands than another because of the presence of noncitizens. It is citizens of this nation who are being cheated.

We don’t have to confine ourselves to hypothetical examples. Consider Congresswoman Lucille Roybal-Allard’s immigrant-heavy 33rd congressional district in California. In 1996, only 58,000 votes were cast in this congressional race (and Roybal-Allard won with 82 percent of the vote). Now consider Congressman James Traficant’s 17th district in Ohio – a district that could easily be lost, or reconfigured, after the 2000 census. In Traficant’s 1996 re-election, 239,968 votes were cast (Traficant won easily, as did Roybal-Allard, with 91 percent of the vote).

Both incumbents are Democrats and were overwhelmingly popular, and yet, something smells funny. What is amiss is that Traficant’s district contains very few noncitizens and Roybal-Allard’s contains thousands. The prospect that Traficant’s district could disappear because his constituents happen to have been born in this country is simply outrageous. That it would happen and further dilute U.S. citizens’ votes because of the presence of noncitizens – including illegal aliens – is appalling.

Solving this inequity is a difficult challenge, but several possibilities come to mind. First, we could simply stop counting noncitizens for purposes of apportionment. Both Article I, Section 2 of the Constitution and the 14th Amendment explicitly exclude Indians not taxed from apportionment. Further, the 14th Amendment, Section 2 recognizes that the right to vote may legitimately be denied to some.

The Supreme Court has favored counting both citizens and noncitizens in reapportionment cases, but

such an interpretation of the Constitution seems to go against the Founders' intent. Moving to count only citizens for purposes of apportioning representation should not require a constitutional amendment. However, in light of judicial activism and the lack of political will to stand up to liberal jurists and highly motivated interest groups, perhaps the constitutional amendment route will ultimately be required to effect this change.

Beyond original intent, the case can be made on equal protection grounds, as it was by Judge Alex Kozinski of the Ninth Circuit Court of Appeals in 1990. In a California case, *Garza v. County of Los Angeles*, Kozinski authored a dissenting opinion pointing out that apportionment by population can result in unequally weighted votes and that assuring equality in voting power might well call for districts of unequal population. Noncitizens, who cannot vote, should not be counted because counting them dilutes citizens' votes. Kozinski concluded, "If, as I suggest, one person one vote protects a right uniquely held by citizens, it would be a dilution of that right to allow noncitizens to share therein." Kozinski's opinion in this case is consistent with the cord that only citizens may vote as a benefit of citizenship, and therefore only citizens' residence should count in apportioning political representation. At a minimum, illegal aliens should not count in apportioning representation.

Another solution would be to aggressively promote citizenship and naturalization. Some say the naturalization process should be streamlined and shortened. However, the naturalization process needs less streamlining and more rigor imposed to make it meaningful. It has become watered down with test questions more along the lines of Trivial Pursuit than American Government 101. The naturalization process today hardly ascertains one's genuine understanding of and attachment to America's history, American ideals and founding principles.

New citizens are supposed to command English. But again the naturalization system imposes minimal requirements. Many who naturalize could not carry on a simple conversation in English, and this fact is painfully evident to INS testers. English proficiency should become an enforced requirement.

The Clinton administration pushed to naturalize a million new Democratic voters in time for the 1996

election. This effort corrupted the process, with many of the new "citizens" not having undergone the required FBI background check. Thus, many immigrants with criminal backgrounds were naturalized.

Citizenship should again be considered a privilege, something individuals must strive to achieve. It should take real effort, not be rendered meaningless. This nation has largely given up on civic education and patriotic duties as being culturally imperialistic vestiges of a xenophobic and unenlightened past. Streamlining the naturalization process would likely result in cheapening citizenship to the point of no return.

Yet another solution would be to reduce immigration levels by up to half. Currently, the United States admits roughly a million legal immigrants each year, mostly on the basis of having a family member here already. Another 300,000 illegal aliens migrate annually.

Multiculturalism and a group rights mentality work against the assimilation ethic that characterized earlier waves of American immigration. And the growing trend of dual nationality and dual citizenship further undermine the commitment we expect of newcomers. Thus, today's immigrants are less likely to assimilate, much less to naturalize.

Further, the current wave of immigrants largely lacks a high school education, English language proficiency and work skills. America is admitting great numbers of people destined to fail in an advanced, skills-based economy. This fact further contributes to their likelihood of remaining outside the mainstream of American civic life.

Cutting immigration levels would reduce the impact of noncitizens on citizens' votes, barring another policy change to address the vote dilution problem. Reducing immigration levels would also make more manageable the battle for re-establishing the assimilation ethic. It would increase the likelihood that those immigrants who were admitted would of necessity have to assimilate, because they could no longer separate themselves into ethnic enclaves, as now happens in high-immigrant-receiving states.

Until America gets a handle on the vote dilution problem caused by immigrant concentration, every American voter suffers from unequal representation.

This situation presents a curious problem. But the only solution appears to be dealing with our current immigration *flow* in one way or another. It will be up to the next American president to address this problem and find a solution that restores integrity to our system of representative government. ■