

The ‘Noncitizen’ Voting Rights Deception

By **CARL F. HOROWITZ**

Should noncitizens in this country be eligible to vote? The notion at first glance is outlandish. Yet as Election Day 2012 beckons, an ongoing two-decade-old campaign to grant immigrants — including those here illegally — the right to participate in elections continues to gather support. The movement has had limited success, and then only at the local level. Yet we ignore it at our peril. Indeed, as America’s immigrant population, in absolute and relative numbers, continues to grow,¹ the calls for expanding the franchise in this manner, and at all levels of government, can be expected to grow ever louder.

Justifying immigrant voting isn’t an easy sell. Typically, supporters get around the apprehensions by employing the language of Americanism — “rights,” “justice,” “democracy,” and “tradition.” Their lodestar is a 1993 article by American University law professor Jamin Raskin, “Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage.”² Raskin held that the idea, far from being subversive, is rooted in common sense and history:

Today, with the extraordinary, though still largely unwritten, history of alien suffrage safely hidden from view, the U.S. citizenship voting qualification ropes off the franchise in every American state from participation by non-U.S. citizens. As a marker at the perimeter of the American body politic, the citizenship qualification carries the aura of inevitability that once attached to property, race and gender qualifications...

The current blanket exclusion of noncitizens from the ballot is neither constitutionally required nor historically normal. Moreover, the disenfranchisement of aliens at the local level

is vulnerable to deep theoretical objections since resident aliens — who are governed, taxed and often drafted just like citizens — have a strong democratic claim to being considered members, indeed citizens, of their local communities.

In attempting to blur distinctions between citizen and noncitizen, then, Raskin makes his case on the basis of fairness. Since noncitizens may work, attend school, receive public benefits, and join the military, he and like-minded advocates argue, it’s only fair that they should be allowed to vote. Those Republicans still gloating over their party’s triumphs in the 2010 midterm elections as a “voter tsunami,” and who believe Mitt Romney’s election as president is at hand, should pay special heed. For it is their party, not the Democrats, that courts extinction should such “fairness” be fully realized.

The campaign to grant immigrants voting rights has experienced numerous setbacks. But like advocacy of mass immigration itself, this is a long-range program. Setbacks are to be expected. Two defeated ballot measures in November 2010, one in San Francisco and the other in Portland, Maine, underscore the lengths to which supporters are prepared to go in the face of political opposition and constitutional constraints — and how close they can come to winning.

In San Francisco, voters considered Proposition D, an initiative to create a pilot program allowing non-citizen residents of the city, aged 18 and over, and with one or more children attending public school, to participate in Board of Education elections. By 55-45 percent, voters said “no.” This wasn’t the first time around; in 2004, a similar measure, Proposition F, was turned down by a much narrower 51-49 percent. Neither measure should have appeared on the ballot. During the most recent campaign, the San Francisco City Attorney’s office issued an opinion that Proposition D was in conflict with Article 2, Section 2 of the California constitution, which defines voter eligibility and had been upheld by a state court in 1996.

The Portland referendum, known as Question 4, which voters rejected by 51.5-48.5 percent, would have

Carl F. Horowitz is project director at the National Legal and Policy Center, a Falls Church, Virginia-based nonprofit organization dedicated to promoting ethics in American public life. He has a Ph.D. in urban planning and public policy.

gone further, granting to lawful aliens the right to vote in all municipal elections. Portland might seem an odd place for such a campaign, yet like much of Maine (and for that matter, New England), the city's traditional Yankee Republicanism is yielding to sentimentalized "inclusiveness." Not unrelated, Maine recently has experienced an immigration explosion from Latin America and Africa, particularly Somalia.³ Portland, population 65,000, is now home to an estimated 5,000-7,000 non-citizen immigrants and refugees.⁴

Will Everitt, spokesman for the Maine League of Young Voters, which sponsored the measure, was forthright. "Legal immigrants are an important part of our community," he remarked during the campaign. "They contribute a lot. They're sending their kids to our schools. And they should be able to have a right to vote for say in the school committee."⁵ Claude Rwaganje, an immigrant from the Congo Republic and a Portland resident for more than a dozen years, likewise complained: "We have immigrants who are playing key roles in different issues of this country, but they don't get the right to vote."⁶ Given that a permanent visa holder may apply for U.S. citizenship after only five years of residence, one must ask: What has kept him from becoming a citizen?

To their credit, Portland voters rejected such appeals. But they did so by a slim margin on a measure that, as in the case of San Francisco, shouldn't have gone to a vote. The City's Charter Commission had voted 7-5 that March against putting the issue on the ballot. And Portland's measure was in violation of state voter eligibility requirements. Apparently, that didn't bother the petitioners.

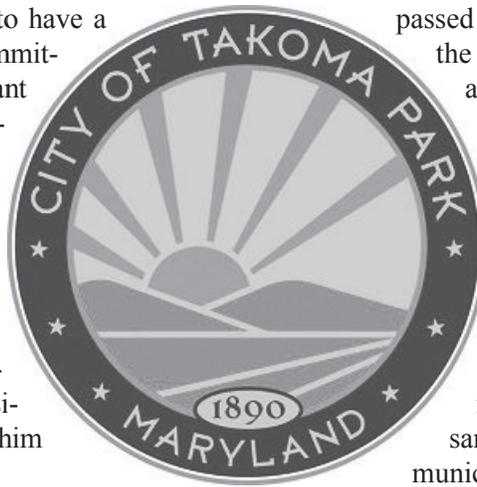
Public officials aren't necessarily shy about expressing support for the idea. The driving force behind San Francisco's Proposition D, for example, was City Board of Supervisors President David Chiu. The Taiwanese-born Chiu argued that since about a third of local public school students had immigrant parents or guardians, those adults should be able to vote on who runs the schools.⁷ In New Haven, Connecticut, Mayor John DeStefano, having made a national reputation for himself as an affirmative-action booster (on the losing side) in the 2009 U.S. Supreme Court decision, *Ricci v. DeStefano*,⁸ is also a booster of noncitizen voting, including by illegal immigrants.⁹ "We're a place of differences," he rationalized. "We're a place that sees a

strength and places a value on welcoming folks from all over." DeStefano dismissed critics as scapegoat hunters: "These are hard times right now in America. Part of human nature is when you're angry to look for someone else to blame for your problems. I understand that." New Haven, with an official population of 130,000 and an estimated 10,000 to 12,000 illegal immigrants, has a "sanctuary" policy of prohibiting police from asking suspects about their immigration status.

DeStefano would feel right at home in localities that *have* made immigrant voting rights a reality. The first out of the starting gate, a little over two decades ago, was the City of Takoma Park (Montgomery County), Maryland, current population 17,000, a suburb of Washington, D.C. In November 1991, local voters passed a referendum allowing noncitizens the right to vote in municipal elections and to run for public office. Pursuant to that, the city council, in February 1992, passed a resolution, and then, on March 31, 1992, amended its municipal charter.

Any notion that Takoma Park meant to apply this law only to legal immigrants runs up against the fact that several years earlier, in 1985, the City declared itself a sanctuary city, barring police and other municipal employees from assisting in the enforcement of federal law against suspected illegal immigrants, an ordinance the city council unanimously reaffirmed in October 2007.¹⁰ The ordinance continued undisturbed until March 2012, when Montgomery County, belatedly, began participating in the U.S. Immigration and Customs Enforcement's Secure Communities program, launched in 2008, under which local police fingerprint arrestees and then match prints against an FBI-ICE database. Unlike ICE's 287(g) program, Secure Communities doesn't deputize local law enforcement. But it does state that persons found to be immigrants, whether legal or not, and who constitute a serious threat to public safety, face deportation.

Jamin Raskin, now doubling as a Maryland Democratic state senator whose district partly encompasses Takoma Park, played a key role in getting the ball rolling. He and a local activist, George Leventhal, also a Democrat, co-chaired a campaign, Share the Vote, to urge passage of the noncitizen voting measure in 1991. Leventhal, now an at-large member of the Montgomery County Council, stands by the campaign today: "A foreigner might have a different foreign policy interest,



but when you are talking about choosing a mayor or a city council member, your interests are equal to your neighbor. If you own a home, if you want your garbage picked up or your street paved, that really doesn't address the issue of national citizenship."¹¹ Several other Montgomery County communities also have ordinances allowing noncitizen voting: Barnesville, Garrett Park, Glen Echo, Martin's Additions, Somerset, and a portion of Chevy Chase.

At least one Maryland lawmaker, Delegate Patrick McDonough, a suburban Baltimore Republican, doesn't like this development. In February 2012 he introduced a proposal (HB 473) — no action has been taken yet — to prohibit noncitizens from voting in municipal elections anywhere in the state. "If Osama bin Laden were alive today and he moved to Takoma Park, he could register to vote and hold office," he noted. "That's how ridiculous the system is."¹²

Ridiculous, yes, but the idea for years has been in place outside Maryland. In Massachusetts, the municipalities of Amherst, Cambridge, and Newton within the past decade passed ordinances allowing noncitizens the right to vote, though the respective measures have failed to gain state approval. The State of Illinois revised its school code in 1988 to authorize cities with population over 500,000 (translation: Chicago) to allow community residents and parents of children in public schools, regardless of citizenship, the right to vote in school site council elections. New York City from 1970 until a decade ago had such an ordinance in effect.¹³ And in the City Heights section of San Diego, noncitizens may vote in area planning committee elections. State governments have yet to produce similar results, but not for want of trying. Connecticut, Maine, Minnesota, New York, and Texas each have considered proposals to create statewide voting rights for noncitizens.

Those who provide intellectual and moral justifications also think big. At a University of Tennessee conference in April 2011, William Robinson, a sociologist at the University of California, Santa Barbara, stated: "One of the most important calls we can make for social justice globally is to abolish the distinction between immigrants and citizens."¹⁴ Radical doyenne and City University of New York political scientist Frances Fox Piven, in attendance, responded thereafter, "Immigrants should have the right to vote if they live here."¹⁵ Piven, along with her late husband, Richard Cloward, remember, were the original forces behind the 1993 "motor voter" federal law whose effect (and likely intent) has been to facilitate voter registration fraud. Gabriela Evia Ryan, a practicing lawyer in the Los Angeles area, sees

noncitizen eligibility in local elections as a stepping stone to something bigger. She wrote in the *Southern California Law Review* in 2003: "It is admittedly hard to think of any principled way to justify the inclusion of aliens in local elections, but exclude them from state elections. The problem is that the U.S. constitution categorically makes all persons enfranchised in state legislative elections into federal electors, and alien participation in national elections presents a far more troubling proposition."¹⁶ George Washington University political scientist David Earnest sees other nations as models for our own. He estimated, approvingly, in a paper nearly a decade ago that a fourth of the world's democracies allow noncitizen voting.¹⁷ Alien suffrage, he argues, may be conducive to domestic tranquility, having occurred "with relatively little violence."



Political Scientist Ronald Hayduk, "noncitizen" voting advocate and co-founder of the Immigrant Voting Project.

If one person has emerged as the de facto leader of noncitizen voting, it would be Ronald Hayduk, who, like Piven, is a political scientist at City University of New York. He is also co-founder and director of the New York-based Immigrant Voting Project.¹⁸ In a 2004 article, "Democracy for All: Restoring Immigrant Voting Rights in the U.S.,"¹⁹ Hayduk, like Raskin before

him, argued immigrant voting is rooted in American history, adding a revival could be a catalyst for radical economic and political realignment:²⁰

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, education and so on. Common interests can forge common ground, reduce competition and strife, and enhance mutual understanding and cooperation. On the other hand, the struggle for scarce economic resources, cultural differences and prejudice can breed inter-group conflict. Universal voting rights can provide a buffer against potential social strife or segmented assimilation.

Hayduk made his real intent even clearer at the very end:²¹

Making common cause among immigrants — and with other people of color, African-Americans — is crucial to forge a progressive agenda. Together they are, after all, the emerging working-class majority. Of course, invoking the need for working-class solidarity across racial and ethnic lines will not alone overcome the multiple and significant challenges progressives face in forging and sustaining such alliances. Still, it is a start.

At least Hayduk, to one's knowledge, hasn't sought or obtained a position with the Obama administration. Another advocate of noncitizen voting, Paul Tiao, has done both.²² A former federal prosecutor, as of late he has been serving as special counsel to FBI Director Robert Mueller. He also came close to being the Department of Labor's top cop. President Obama in May 2010 nominated Tiao for DOL Inspector General. A year later Tiao withdrew his name in the face of opposition from Republican senators. While his history of union partisanship was a stumbling block, even more troubling to lawmakers was an article he published back in 1993, "Non-Citizen Suffrage: An Argument Based on the Voting Rights Act and Related Law."²³ All lawful permanent residents, maintained Tiao, should be eligible to vote, in federal, state, and local elections. He also favorably referred to the Takoma Park ordinance, which "technically extended suffrage to all non-citizens, including undocumented aliens." In the late Nineties, Tiao would help found a political action committee, the Asian American Action Fund.

That raises the issue of political affiliation. Whether or not one wants to admit it, making noncitizens into voters would benefit Democrats far more than Republicans. Analyzing nationwide voting patterns, University of Maryland political scientist James Gimpel, in a February 2010 paper for the Center for Immigration Studies, concluded that "large-scale immigration has caused a steady drop in presidential Republican vote shares throughout the country."²⁴ And Mark Hugo Lopez, in a paper for the Pew Hispanic Center, concluded from various polls following the 2010 elections that with the exception of Florida, Democratic candidates won the Latino vote, and usually by wide margins. Lopez cited the U.S. senate race in California, where Democratic incumbent Barbara Boxer won 65 percent of the Latino vote and Republican challenger Carly Fiorina won a mere 29 percent. In the gubernatorial race in that state, added Lopez, Hispanics preferred Democrat Jerry Brown to Republican Meg Whitman by 64 percent to 31 percent.²⁵

Abdirizak Daud, a Somali noncitizen in his early 40s and a resident of Portland, Maine, is a perfect example of why Republicans *should* be alarmed. Daud, who arrived in Minneapolis in 1992 and moved to Portland in 2006, had nine children as of 2010, several of whom attended the latter's public schools. During the Question 4 campaign, he complained he lacked say in how those schools are run. Moreover, he remarked, his limited English-speaking proficiency, plus his lack of knowledge of U.S. history and government, rendered him unable to pass a citizenship test (as well they should!). Remarked Daud: "I like the Democrats. I want to vote for Democrats, but I don't have citizenship."²⁶

People like Will Everitt and Ronald Hayduk, of course, are working to fix this problem. For the time being, they have been reduced to denouncing the unfairness of the current system. But what exactly is unfair about it? Not even every citizen gets to vote, the most obvious classes of ineligibility being persons under age 18 and adults (in certain states) with a felony record. More broadly, citizenship in any country is inherently exclusionary; it requires "barriers" of some sort. That is, certain persons — i.e., citizens — should enjoy certain rights unavailable to others. Otherwise, *there would be no point of distinguishing between citizen and noncitizen*.

Several other points should be made in rebuttal to noncitizen voting.

First, allowing immigrants to vote would be a tacit admission that nothing can be done about immigrant vote fraud. Former Federal Election Commission

Member Hans von Spakovsky, in a 2008 paper for The Heritage Foundation,²⁷ noted there are more than a million illegal immigrants in Florida alone, and that the U.S. Department of Justice has prosecuted more cases of noncitizen vote fraud in that state than in any other. This is of enormous significance given Florida's status as the foremost swing state. This past spring, the state election supervisor estimated that as many as 2,700 non-U.S. citizens may be unlawfully registered to vote.²⁸ Immigration-issues consultant David Simcox published a report in 2008 on why a combination of high levels of immigration, weak enforcement of voting laws, and ethnically oriented get-out-the-vote campaigns can constitute a potent force for determining state and federal elections.²⁹

Second, the notion that immigrants are “disenfranchised” ignores an inescapable reality: By becoming eligible, they would dilute the preferences of voters who *are* citizens. Assuming a hypothetical situation in which 5,000 ballots are cast in an election, 4,000 by citizens and 1,000 by noncitizens, the citizen vote would realize only 80 percent of its actual preferences. Citizens, not noncitizens, would be disenfranchised.

Third, while supporters often cite historical examples of immigrant voting, their evidence is rather selective. It is true that a number of states, including during their territorial period, allowed noncitizens to vote; Arkansas in 1926 was the last state to ban the practice. But as City University of New York political scientist Stanley Renshon argued in a pair of 2008 papers for the Center for Immigration Studies,³⁰ these cases were the exceptions, not the rule. And even as exceptions, the intent was never to achieve ethno-religious “diversity,” but to establish a workable polity in sparsely populated territory, often with the motive of gaining admission to the union.

Fourth and finally, the notion that paying taxes morally necessitates a grant of voting rights is on shaky ground. It isn't “fair,” say Raskin, Hayduk, and their like, that noncitizens pay taxes yet don't get to vote on who imposes them. What these enthusiasts ignore is that noncitizens, like citizens, receive goods and services in return for those taxes. As Renshon notes: “(T)he truth is that immigrants from most countries enjoy an immediate rise in their standard of living because of this country's advanced infrastructure, for example, hospitals, electricity, communications. They also get many services for their taxes like public transportation, police, trash collection, and so on.”³¹ Moreover, many noncitizens don't pay any personal income taxes even if they are gainfully employed, largely thanks to the

Earned Income Tax Credit, now the most costly means-tested cash benefit.³²

Noncitizen voting rights should be seen as part of a larger campaign to render the idea of citizenship meaningless. Immigration enthusiasts, ironically claiming the patriotic high ground, view America as having an obligation to serve as a canary in a coal mine for Global Diversity. Portland's Will Everitt unwittingly revealed the essence of the project when he remarked, “This is about diversity and I think diversity equals democracy.”³³ Should he and his allies prevail, our nation will have sealed its reputation as the world's foremost patsy — assuming by then we still could be called a nation. ■

Endnotes

1. According to the Census Bureau, the nation's combined legal and illegal immigrant population in 2010 was 40 million, up from 31.1 million in 2000 and 19.8 million in 1990. The 2010 figure represented 12.9 percent of the total U.S. population. By contrast, the respective figures for 2000 and 1990 represented only 11.1 percent and 7.9 percent of the total population. See Steven A. Camarota, “A Record-Setting Decade of Immigration: 2000 to 2010,” Washington, D.C.: Center for Immigration Studies, Backgrounder, October 2011.
2. Jamin B. Raskin, “Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage,” *University of Pennsylvania Law Review*, April 1993 (141), pp. 1391-1470.
3. This is significant given the high tendency of Somalians to engage in crime, much as public officials deny the reality. See Matthew Richer, “New England's Emerging Refugee Disaster – Smoldering Issue in New Hampshire Primary,” <http://www.vdare.com>, December 14, 2011. Arranging sham “marriages” to facilitate illegal entry by Africans appears to be a growth industry in Maine in particular. See David Hench, “Witnesses Detail Workings of Sham Wedding Scheme,” *Portland Press Herald*, March 24, 2011.
4. Josie Huang, “Non-Citizen Voting Battle Heats Up in Portland,” MPBN (www.mpbn.net), October 19, 2010.
5. Quoted in Douglas Kennedy, “Maine Ballot Initiative Seeks to Extend Vote to Legal Immigrants,” <http://politics.blogs.foxnews.com/2010/08/27>
6. “Cities Weigh Letting Noncitizens Vote,” Associated Press, October 25, 2010.
7. “Board Gets Another Look at Non-Citizen Voting Plan,” July 19, 2010, <http://blog.sfgate.com/cityinsider>

8. *Ricci v. DeStefano*, U.S. Supreme Court, 07-1428, 08-328 (2009).
9. Michael Melia, "Connecticut Mayor Seeks to Let Illegal Immigrants Vote," Associated Press, December 21, 2011.
10. Steve Hendrix, "Takoma Park Stays Immigrant 'Sanctuary,'" *Washington Post*, October 30, 2007.
11. Quoted in Aaron Kraut, "Takoma Park Stands by Non-U.S. Citizen Voting Law," *Washington Post*, March 14, 2012.
12. Ibid.
13. In 2002, the New York State legislature scrapped the city's elected community school boards in favor of a system with more mayoral control.
14. Quoted in Brenda Walker, "'Social Justice' Demands Open Borders," <http://blog.vdare.com/archives/2011/05/08/social-justice-demands-open-borders/>
15. Ibid.
16. Gabriela Evia, "Consent by All the Governed: Reenfranchising Noncitizens as Partners in Democracy," *Southern California Law Review*, November 2003, Vol. 77, No. 1, p. 176.
17. David C. Earnest, "Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm," paper presented to the annual convention of the American Political Science Association, Philadelphia, August 28-31, 2003. See also David C. Earnest, "From Ghettos to the Ballot Box: Voting Rights for Noncitizens in Urban Elections," paper presented to the annual convention of American Political Science Association, Washington, D.C., September 1-4, 2005.
18. The other co-founder of the Project is Michele Wucker, president of the New York-based World Policy Institute.
19. Ronald Hayduk, "Democracy for All: Restoring Immigrant Voting Rights in the U.S.," *New Political Science*, Vol. 26, No. 4, December 2004, pp. 499-523. The author later would make this article the basis for a book by the same name (New York: Routledge, 2006).
20. Ibid., p. 511.
21. Ibid., p. 523.
22. Carl F. Horowitz, "Labor Department IG Nominee Favors Immigrant Voting Rights; Co-Founded Union Supported PAC," Falls Church, Va.: National Legal and Policy Center (www.nlpc.org), August 8, 2010.
23. Paul Tiao, "Non-Citizen Suffrage: An Argument Based on the Voting Rights Act and Related Law," *Columbia Human Rights Law Review*, 1993 (25).
24. James G. Gimpel, "Immigration, Political Realignment, and the Demise of Republican Political Prospects," Washington, D.C.: Center for Immigration Studies, Background, February 2010, p. 1. A subsequent CIS paper by the author concludes that the Republican Party and the allied Tea Party's successes in the 2010 midterm elections had little to do with Hispanic support — and to the extent they did, occurred primarily over issues other than immigration. See James G. Gimpel, "Latino Voting in 2010: Partisanship, Immigration Policy, and the Tea Party," Washington, D.C.: Center for Immigration Studies, Background, November 2011.
25. Mark Hugo Lopez, "The Latino Vote in the 2010 Elections," Washington, D.C.: Pew Hispanic Center, November 3, 2010.
26. Quoted in "Cities Weigh Letting Noncitizens Vote."
27. Hans A. von Spakovsky, "The Threat of Non-Citizen Voting," Washington, D.C.: The Heritage Foundation, Legal Memorandum No. 28, July 10, 2008.
28. Marc Caputo and Steve Bousquet, "State Data Leads to Questions About Nearly 2,700 Voters," *Tampa Bay Times*, May 10, 2012.
29. David Simcox, *How Many Non-Citizen Voters? Enough to Make a Difference: The Impact of Non-Citizen Voting on American Elections*, Petoskey, Mich.: Social Contract Press, 2008.
30. Stanley A. Renshon, "The Debate Over Non-Citizen Voting: A Primer," Washington, D.C.: Center for Immigration Studies, Background, April 2008; "Allowing Non-Citizens to Vote in the United States? Why Not," Washington, D.C.: Center for Immigration Studies, Center Paper 26, September 2008. In each case, the author thoroughly surveys the sources of support for noncitizen voting.
31. Ibid.
32. Edwin Rubenstein, "Importing Poverty: Immigrants Even Poorer Than We Thought," *Vdare.com*, November 29, 2011.
33. Quoted in Kennedy, "Maine Ballot Initiative Seeks to Extend Vote to Legal Immigrants."