



NOVEMBER 2016

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The United States sends election monitors around the world to help discourage fraudulent balloting. But, here at home, it has largely turned a blind eye to the possibility that fraudulent voting by noncitizens could influence the outcome of an election. Our voter registration system is susceptible to abuse by noncitizens.

In addition, noncitizens and illegal aliens are counted when apportioning congressional districts and when allocating state electors under the Electoral College. This means noncitizens play a role in determining how many congressional representatives a state has and exert an indirect influence on presidential elections.

### **U.S. Elections Are Vulnerable to Noncitizen Voting Fraud**

Mass immigration has had a significant effect on American electoral politics. Despite the fact that it is a crime for aliens to vote in federal elections, noncitizens and illegal aliens are counted when apportioning congressional districts.<sup>1</sup> This means that areas with large numbers of illegal alien residents gain additional representatives in Congress.

In addition, there is evidence that both foreign nationals who are lawfully present in the United States and illegal aliens have voted in recent elections. During this election cycle, noncitizens have been discovered on voter registration rolls in both Virginia and Pennsylvania.<sup>2</sup> And the Office of the U.S. Attorney for the Western District of New York recently announced that it charged a Canadian woman with making a false claim to citizenship after she registered and voted in more than 20 elections.<sup>3</sup>

Several past elections – for the presidency and other offices – have been extremely close. Accordingly, ballots cast by noncitizen voters have the potential to improperly alter the outcome of elections. Consider how close the 2000 presidential election was. Could the outcome have been affected by noncitizen voting? The answer is yes.

With the 2016 election fast approaching, and candidates publicly alleging that the system is rigged, the possibility exists that voting by noncitizens could significantly influence the results. Many immigrants' rights groups contend that noncitizen voting constitutes a harmless misunderstanding of the rules and should not cause great concern. However, this approach undermines the rule of law. It also enables individuals whose interests may not coincide with those of the American people to exert influence on our domestic politics. Given the rate at which both the legal and illegal alien populations have been allowed to grow, the United States should be concerned with ensuring that the electoral power of U.S. citizens is not undermined and with protecting the United States from foreign influence through "diaspora diplomacy."

## **Noncitizen Voting Is Illegal**

Elections in the United States are governed by a complicated mix of federal, state, and municipal election laws. As a rule, noncitizens are prohibited from voting and are subject to criminal penalties if they do.

*State Elections:* With very limited exceptions, noncitizen voting is illegal under the relevant statutes of all fifty states.<sup>4</sup> However, laws requiring voting registrants and voters to establish proof of citizenship have been repeatedly challenged in recent years.<sup>5</sup> The most frequent objections to these reasonable measures are that voter fraud is a "myth" and that voter ID requirements will unreasonably interfere with the right to vote.<sup>6</sup> However, these claims seem patently unreasonable given that there have been numerous reports of unlawful voting by aliens but no virtually no reports of voters being disenfranchised.<sup>7</sup>

Marking a disturbing new trend, several municipalities in Maryland have begun allowing noncitizens to vote in town elections; and the City of Chicago now allows noncitizen voting in school advisory council elections.<sup>8</sup> To date, no state has extended noncitizen voting beyond municipal elections. This, however, remains a major area of concern. State efforts to extend the franchise to noncitizens undermine the rule of law; blur the distinctions between citizens and noncitizens; and render U.S. elections susceptible to both fraud and foreign influence.

*Federal Elections:* The National Voter Registration Act of 1993 (NVRA) requires that persons registering to vote in federal elections affirm that they are United States Citizens. Failure to do so is a crime punishable under the following statutes:

- Pursuant to 18 U.S.C. § 611, it is a crime – punishable by a fine and up to one year in prison – for an alien to vote in a federal election.

- Pursuant to 8 U.S.C. § 1227, any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.
- Pursuant to 42 U.S.C. § 1973gg-10(2) any false statement concerning an applicant's citizenship status that is made on a registration form submitted to election authorities is a crime.
- Pursuant to 18 U.S.C. § 911 knowing and willful false assertions of United States citizenship in order to vote are punishable by up to three years in prison.
- Pursuant to 18 U.S.C. § 1015(f) it is a criminal offense for an individual to make a false statement or claim that he or she is a citizen of the United States in order to register or to vote.

### **Noncitizen Voting Is Easy**

The United States does not currently issue any general-use document intended to confirm both identity and citizenship. While a U.S. passport may be used for both these purposes, it is a travel document. Most people seek a passport when planning a trip and only a relatively small proportion of the population holds a passport at any given time.<sup>9</sup>

As a result, the preferred form of documentary identification in the United States is the drivers' license. Drivers' licenses are issued by the states, pursuant to a widely varying body of state-specific laws and regulations. Currently, twelve states and the District of Columbia allow illegal aliens to obtain a drivers' license.<sup>10</sup>

Congress attempted to address these issues with the Real ID Act, enacted May 11 2005, which established standards for state-issued licenses and other identity documents – including verification of immigration status. However, only 24 states and territories are currently compliant.<sup>11</sup> Many of the allegedly compliant states have continued issuing licenses and state ID cards to illegal aliens and short-term visitors.<sup>12</sup> Others – such as Delaware Utah – have continued to issue “driving privilege cards” or other non-license documents.<sup>13</sup>

The intentions behind the Real ID Act also continue to be thwarted by certain provisions of the NVRA. These provisions, known as the “Motor-Voter Law,” require state departments of motor vehicles to act as voter registration proxies. The information supplied by license applicants doubles as voter registration information and the registration process has become nearly automatic. Because so many states

continue to issue driver's licenses to noncitizens, it is relatively easy for aliens to commit voter fraud through the Motor-Voter system. When renewing a driver's license by mail, they simply check the boxes indicating that they wish to be registered as voters and affirming that they are a U.S. citizen. Most often, they are added to the voter rolls without any attempt to verify the applicant's citizenship.

### **There Are Few Deterrents to Noncitizen Voting**

There have been a significant number of alien voter violations alleged in recent years. Yet, there appears to be a stunning lack of federal interest in this issue. The U.S. Election Assistance Commission published its last report on Election Crimes a decade ago in December 2006.<sup>14</sup> This 23-page report mentioned noncitizen voting once, only to note that it had been addressed in media reports. The most recent version of the Department of Justice's report *Federal Prosecution of Election Offenses* was issued in 2007.<sup>15</sup> Ostensibly a manual addressing how the Justice Department handles federal election offenses it devotes only three and a half pages to noncitizen voting violations.

Reports of alien voter prosecutions are difficult to find. The Heritage Foundation notes that as few as 300 cases involving voter fraud have been successfully prosecuted since 2010.<sup>16</sup> Apart from the aforementioned case in the Western District of New York, voter prosecution cases do not appear to be a priority for the Justice Department. The same appears to be true for U.S. Immigration and Customs Enforcement (ICE). The ICE website lists a 2011 arrest of an illegal alien charged with voter fraud.<sup>17</sup> No other election-related prosecutions appear to have been posted. A diligent search of the Internet will produce several accounts of state arrests for egregious instances of illegal voting but this is clearly not a prominent issue for state prosecutors.

Federal and state lack of interest in election offenses is not an indication that noncitizen voting is a minor problem. It is only an indication that election authorities are failing to prosecute violators. Inattention to the phenomenon of noncitizen voting and a failure to impose effective penalties against those who cast votes fraudulently has rendered laws against such activity a paper tiger, without deterrent effect. If the problem is allowed to continue, it will inevitably lead to questions about whether the results of U.S. elections truly reflect the political inclinations of the American people.

### **How Much Noncitizen Voting Is Going On?**

There is widespread awareness that illegal immigration is a massive and growing problem in the United States. Estimates of the illegal population vary between 11 and 20 million. FAIR believes there are likely between 11 to 13 million illegal residents. In

addition to the illegal aliens already in the country, the Census Bureau estimates that the illegal alien population is growing by a minimum of 500,000 per year.

Combining the estimated numbers of both legal and illegal aliens, there appear to be at least 26 million non-U.S. citizens in the United States at any given time. The bulk of them are lawful permanent residents and illegal aliens (a total of 22 million). The balance consists of roughly 1.6 million tourists and other brief-stay visitors; and approximately 2.4 million long-term visa-holders, such as students and temporary workers

Many politicians are taking firm stances on issues affecting migrants, including amnesty, entitlements and sanctuary city policies. This gives noncitizens a significant incentive to register as voters and cast a ballot. For example, in East Chicago, Indiana, a city with 30,000 residents, voting fraud was so systemic in 2003 that the State Supreme Court ordered a new election with heightened verification.<sup>18</sup> When unlawful voters were prohibited from casting a ballot the outcome of the election changed.

The problem is not unique to Indiana. A 2013 *National Hispanic Survey* study by Republican pollster John McLaughlin asked a sample of 800 likely Hispanic voters if they were American citizens. 13 percent admitted they were not.<sup>19</sup>

In 2014, a study released by a team of professors from Old Dominion University and George Mason University estimated that approximately 6.4 percent of noncitizens voted in the 2008 presidential election. They also surmised that 2.2 percent voted in the 2010 midterm election.<sup>20</sup> In addition, the study estimated that 80 percent of noncitizens who appeared to have voted cast their ballots in favor of one party. Noncitizens are believed to have voted in these elections in numbers great enough to have affected the outcome.

Nate Silver, an acclaimed statistician with the forecasting firm Five Thirty Eight, calculated that states with newly implemented voter ID laws will experience turnout decrease by as much as 2.4 percent of the registered voter population.<sup>21</sup> Opponents of voter ID laws claim that any decreases in voter turnout are evidence that legal voters have been disenfranchised – discounting the possibility that the reductions are due to decreased participation by non-citizens. But, as Silver has noted, this argument doesn't make sense because the vast majority of adults in America hold some form of photo identification and states with voter ID laws offer qualifying documentation at minimal or no cost. While it is impossible to prove that Silver's entire 2.4 percent estimated turnout decrease is entirely attributable to noncitizen voters, it is highly likely that foreign nationals without authorization to vote will constitute the majority of this

group. And Silver's numbers are consistent with the results of other studies more specifically focused on reducing unlawful noncitizen voting.

If we take the mean of these three estimates -- 7.25 percent -- and apply it to just the 22 million non-citizen residents currently in the United States, then approximately 1.6 million non-citizens vote every year. According to the high and low estimates here, that number could be as high as 2.9 million (at 13 percent of 22 million), or as low as 528,000 (2.4 percent of 22 million). Both are unacceptably high numbers.

### **Conclusion**

There is enough evidence of noncitizen voting to indicate that it is an ongoing problem that may have a significant effect on American electoral politics. Due to the low risk of penalty, and the lack of effective controls, alien voting is easy. In states without ID requirements, the only check against noncitizens registering to vote is a box on the application form asking registrants to confirm they are U.S. citizens. Given the fact that this affirmation is rarely verified and few violators are ever prosecuted, it is a pointless exercise that does nothing to deter voter fraud. In states with voter ID requirements, the lack of a single, standardized document that demonstrates both identity and citizenship makes voter fraud all too easy.

If the United States wants to eliminate the possible appearance of elections determined by fraudulent voting, procedures must be adopted to verify the eligibility of new voter registrants, and to verify the identity of voters when they cast ballots, with the application of penalties for those who register and/or vote fraudulently. If there is no real penalty for illegal voting, it is unreasonable to expect that an "honor system" to keep ineligible persons from voting will be effective.

The good news is that the problem could be relatively easily addressed through true compliance with the Real ID Act, the implementation of voter ID requirements for all federal, state and local elections, and the consistent use of an automated eligibility verification system like USCIS' *Systematic Alien Verification for Entitlements* program which provides a fast, secure and efficient verification service for federal, state and local benefit-granting agencies to verify a benefit applicant's immigration status or naturalized/derived citizenship.

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<sup>1</sup> In *Evenwel v. Abbott* the Supreme Court of the United States held that both non-citizens (i.e., aliens lawfully present in the U.S.) and illegal aliens may be counted when apportioning congressional districts.

<sup>2</sup> Public Interest Legal Foundation/Virginia Voters Alliance, *Alien Invasion in Virginia: The Discovery and Coverup of Noncitizen Registration and Voting* (September 2016), available at:

[https://publicinterestlegal.org/files/Report\\_Alien-Invasion-in-Virginia.pdf](https://publicinterestlegal.org/files/Report_Alien-Invasion-in-Virginia.pdf) and Brendan Kirby, *Illegal Alien Voters Uncovered in Philly Are “Tip of the Iceberg,”* Lifestreet October 5, 2016, available at:

<https://www.lifestreet.com/polizette/illegal-voters-uncovered-philly-just-tip-iceberg/>

<sup>3</sup> U.S. Attorney’s Office – Western District of New York, *Cheektowaga Woman Arrested, Charged With Voter Fraud* (October 2016), available at: <https://www.justice.gov/usao-wdny/pr/cheektowaga-woman-arrested-charged-voter-fraud>

<sup>4</sup> See U.S. Vote Foundation, *State Voting Requirements and Information*, available at:

<https://www.usvotefoundation.org/vote/sviddomestic.htm>

<sup>5</sup> Pro Publica, *2016 Election Lawsuit Tracker: The New Election Laws and the Suits Challenging Them* (November 2016), available at: <https://www.propublica.org/article/2016-election-lawsuit-tracker-new-election-laws-suits-challenging-them>

<sup>6</sup> Justin Levitt, *The Truth About Voter Fraud* (Brennan Center for Justice, 2007), available at:

<https://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf>

<sup>7</sup> See Neil W. McCabe, *Illegal Foreign Voting in Virginia Covered Up by Soros-Backed Democratic Officials, Says Report*, Breitbart.com, October 2, 2016, available at: <http://www.breitbart.com/big-government/2016/10/02/virginia-illegal-voting-fraud-coverup/>; Jim Stinson, *Bombshell: Over 1,000 Illegal Voters in Eight Virginia Localities*, Lifestreet, October 2, 2016, available at:

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<http://www.thepoliticalinsider.com/virginia-voter-fraud-thousands-illegal-aliens-registered-vote/>; John

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<http://thefederalist.com/2016/10/13/voter-fraud-real-heres-proof/>

<sup>8</sup> National Conference of State Legislators, *Voting by Nonresidents and Noncitizens* (February 2015), available at: <http://www.ncsl.org/research/elections-and-campaigns/non-resident-and-non-citizen-voting.aspx>

<sup>9</sup> U.S. Department of State, *U.S. Passports and International Travel*, available at:

<https://travel.state.gov/content/passports/en/passports/statistics.html>

<sup>10</sup> National Conference of State Legislatures, *States Offering Driver’s Licenses to Immigrants* (July 2015), available at: <http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>

<sup>11</sup> U.S. Department of Homeland Security, *Secure Driver’s Licenses: Current Status of States and Territories*, available at: <https://www.dhs.gov/current-status-states-territories#>

<sup>12</sup> See National Conference of State Legislatures at note 4.

<sup>13</sup> *Ibid.*

<sup>14</sup> U.S. Election Assistance Commission, *Election Crimes: An Initial Review and Recommendations for Future Study* (December 2006), available at:

[https://www.eac.gov/assets/1/workflow\\_staging/Page/57.PDF](https://www.eac.gov/assets/1/workflow_staging/Page/57.PDF)

<sup>15</sup> U.S. Department of Justice, *Federal Prosecution of Election Offenses* (7<sup>th</sup> Ed. May 2007), available at:

<https://www.justice.gov/sites/default/files/criminal/legacy/2013/09/30/electbook-rvs0807.pdf>

<sup>16</sup> [http://thf\\_media.s3.amazonaws.com/2015/pdf/VoterFraudCases-8-7-15-Merged.pdf](http://thf_media.s3.amazonaws.com/2015/pdf/VoterFraudCases-8-7-15-Merged.pdf)

<sup>17</sup> U.S. Immigration and Customs Enforcement, *Illegal Alien Arrested, Charged With Voter Fraud* (March 2011), available at: <https://www.ice.gov/news/releases/illegal-alien-arrested-charged-voter-fraud>

<sup>18</sup> Jason Snead, *The Daily Signal*, “There Are Nearly 300 Cases of Voter Fraud in America,” August, 2015, <http://dailysignal.com/2015/08/11/nearly-300-cases-the-extent-of-voter-fraud-in-america/>

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<sup>20</sup> Jesse T. Richman, Gulshan A. Chattha, David C. Earnest, “Do Non-Citizens Vote In U.S. Elections?,” December, 2014, <http://www.sciencedirect.com/science/article/pii/S0261379414000973>

<sup>21</sup> Nate Silver, *FiveThirtyEight*, “Measuring the Effects of Voter Identification Laws,” July, 2012

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