



Noncitizens, Voting Violations and U.S. Elections

July 2020

“If aliens might be admitted indiscriminately to enjoy all the rights of citizens at the will of a single state, the Union might itself be endangered by an influx of foreigners, hostile to its institutions, ignorant of its powers, and incapable of a due estimate of its privileges.”

Joseph Story, Supreme Court Justice
Commentaries on the Constitution of the United States (1833)

Key Highlights

- Voting by noncitizens, including illegal aliens, is expressly prohibited by law.
- About a dozen jurisdictions now permit noncitizens, and even illegal aliens, to vote in local elections.
- In 2014, a study estimated that approximately 6.4 percent of noncitizens voted in the 2008 presidential election and that 2.2 percent voted in the 2010 midterm elections.
- The U.S. and the United Kingdom are the only democracies that do not have voter identification requirements.
- According to a 2018 survey, a large majority of Americans – including Republicans, independents, and Democrats – opposes voting by noncitizens and illegal aliens.

One of the keys to the proper functioning of a representative democracy is voter integrity. Without measures in place to ensure free and fair elections, the idea of political freedom holds no value. While America’s electoral process is more developed and secure than that of many other nations, our voter registration system remains susceptible to abuse by noncitizens. This is a topic worth revisiting, particularly in light of recent concern about foreign meddling in our elections. The push toward voting by mail – in the context of the COVID-19 pandemic – makes ensuring that only U.S. citizens are voting an even more urgent priority.

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.¹ This means that areas with large numbers of illegal alien residents gain additional representatives in Congress. This also translates into more electors under the Electoral College for such states, which means that noncitizens also exert an indirect influence on presidential elections.

In addition, there is evidence that both foreign nationals who are lawfully present in the United States and illegal aliens – who have already broken the law by their unauthorized presence in the country – have voted in recent elections. During the 2016 election cycle, noncitizens were discovered on voter registration rolls in both Virginia and Pennsylvania.² And the Office of the U.S. Attorney for the Western District of New York charged a Canadian woman with making a false claim to citizenship after she registered and voted in more than 20 elections.³

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 – and how tight recent congressional and gubernatorial elections, have been. Could the outcomes have been affected by noncitizen voting? The answer is probably yes.

With the 2020 election fast approaching, 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. Even worse, a small but vociferous and radical minority of open-borders enthusiasts has claimed that noncitizen voting is actually a good thing!⁴ *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

Proponents of noncitizen voting point out that the practice was common throughout much of U.S. history. This is true, but also quite misleading. Yes, aliens were often allowed to vote from the 1780s into the early twentieth century. However, this was a way to encourage the settlement and development of America’s vast territories. Moreover, noncitizen had to fulfill certain conditions to vote, e.g. the ownership of 50 acres of land and two years of residency in a territory, or declared intent to become a U.S. citizen.

In addition, there were ethno-racial and socio-economic aspects to noncitizen voting in the early Republic. As one proponent of alien voting (and a current Democratic Congressman from Maryland) admitted: “the early spirit of political openness toward aliens was perfectly compatible with the exclusionary definition of ‘the American people as Christian white men of property.’”⁵

With the expansion of voting rights during the early twentieth century – including, in particular, to women – the practice was brought to an end, with Arkansas being the last state to outlaw noncitizen voting (in 1926). In addition, the First World War not only energized patriotic sentiments but also brought home the potential threat posed to the integrity of our elections by allowing the citizens/subjects of hostile powers to vote.⁶

Currently, 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.⁷ However, laws requiring voting registrants and voters to establish proof of citizenship have been repeatedly challenged in recent years.⁸ 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.⁹ 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.¹⁰

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.¹¹ San Francisco allows illegal aliens to vote in school board elections. In total, as of June 2018, three states allow noncitizens to vote in municipal or town elections, and seven more allow noncitizens to cast ballots in certain special district 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, also known as the “Motor Voter Act”) 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.¹²

As a result, the preferred form of documentary identification in the United States is the driver's license. Driver's licenses are issued by the states, pursuant to a widely varying body of state-specific laws and regulations. Currently, 15 states and the District of Columbia allow illegal aliens to obtain a driver's license.¹³

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. While 48 states¹⁴ are indeed compliant, many of the allegedly compliant states have continued issuing licenses and state ID cards to illegal aliens and short-term visitors.¹⁵ Others – such as Delaware and Utah – have continued to issue “driving privilege cards” or other non-license documents.¹⁶

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 drivers' 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 2006.¹⁷ 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 2017.¹⁸ Ostensibly a manual addressing how the Justice Department handles federal election offenses it devotes only about 5 pages (out of 296) to noncitizen voting violations.

Reports of alien voter prosecutions are difficult to find. The Heritage Foundation maintains a database of less than 1,200 successfully prosecuted instances of voter fraud going back to the 2000s (and, in a few cases, the 1980s and 90s).¹⁹ During the Obama years, apart from the aforementioned case in the Western District of New York, voter prosecution cases did not appear to be a priority for the Justice Department. The same appears to have been true for U.S. Immigration and Customs Enforcement (ICE). The ICE website lists only two cases of an illegal alien charged with voter fraud: one in 2011, and another in 2012.²⁰

Under the Trump administration, noncitizen voting appears to be a much higher priority. In August 2018, the Justice Department charged nineteen noncitizens for unlawfully voting in 2016.²¹ In April 2019, a permanent resident from Mexico was sentenced to one month in federal prison for illegally voting in the November 2016 election.²² And a federal investigation into noncitizen voting, and a ballot-tampering scheme, in North Carolina is ongoing.²³

A diligent internet search will produce several accounts of state arrests for truly egregious instances of illegal voting, but this is clearly not a prominent issue for most 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. Based on its most recent estimate, calculated in 2019, FAIR believes that there were approximately **14.3 million illegal residents in the United States**.²⁴ 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 27.1 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 23.5 million). The balance consists of roughly 1.5 million tourists and other brief-stay visitors; and approximately 2.1 million long-term visa-holders, such as students and temporary workers.²⁵

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. When unlawful voters were prohibited from casting a ballot the outcome of the election changed.²⁶

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.²⁷

In 2014, a peer-reviewed 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.²⁸ 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 in some races.

More recently, in January 2019, a top Pennsylvania state legislator called upon Harrisburg to immediately remove from the voting rolls the names of **11,198 noncitizens**, whom the state confirmed are registered to vote, in spite of their ineligibility.²⁹

Also in January 2019, the Texas Secretary of State, David Whitley, informed voter registrars that the Texas Department of Public Safety has identified as many as **95,000 noncitizens** who appear to have registered to vote.³⁰ The agency estimated as many as 58,000 of those people voted “in one or more Texas elections” (at some point since 1996). These numbers show that noncitizen voting is far from a myth.

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.³¹ 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 noncitizens. 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 the three estimates in the previously discussed studies – 7.25 percent – and apply it to just the 23.5 million non-citizen residents currently in the United States, then approximately 1.75 million non-citizens vote every year. According to the high and low estimates in the studies, that number could be as high as 3.1 million (at 13 percent of 23.5 million), or as low as 564,000 (2.4 percent of 23.5 million). Both are unacceptably high numbers, especially considering that many elections are often decided by mere hundreds of votes or less.

Last, but not least, the American people overwhelmingly oppose voting by noncitizens. According to a 2018 survey, taken shortly after San Francisco allowed illegal aliens to vote in municipal school board elections, **71 percent of respondents were opposed**. This included 91 percent of Republicans, 70 percent of independents, and 54 percent of Democrats.³²

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. Most democratic nations in the world – including, for example, Mexico and India – have Voter ID laws to prevent election fraud. The United States and the United Kingdom are the only industrial democracies that do not require Voter ID.³³

Footnotes and endnotes

¹ In *Evenwel v. Abbot* the Supreme Court of the United States held that both noncitizens (i.e., aliens lawfully present in the U.S.) and illegal aliens may be counted when apportioning congressional districts.

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³ 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>

⁴ Gustavo Arellano, *Los Angeles Times*, “Let noncitizens vote. What’s the worst that could happen?,” July 25, 2018, <https://www.latimes.com/opinion/op-ed/la-oe-arellano-noncitizen-voting-20180725-story.html>

⁵ Jamin B. Raskin, “Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage,” *University of Pennsylvania Law Review*, Vol. 141, No. 4 (Apr., 1993), pp. 1391-1470. As of January 2017, Jamie Raskin represents Maryland’s 8th Congressional District in the U.S. House of Representatives.

⁶ Jeff Duncan, *National Review*, “The Left’s Next Target: Noncitizen Voting,” February 26, 2019,

<https://www.nationalreview.com/2019/02/noncitizen-voting-the-lefts-next-target/>

⁷ See U.S. Vote Foundation, *State Voting Requirements and Information*,

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⁸ 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>

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¹⁰ 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*, Lifezette, October 2, 2016, available at: <http://www.lifezette.com/polizette/bombshell-1000-illegal-votes-cast-eight-virginia-localities/> ; J. Christian Adams, *Yes, Virginia, Aliens Are registered or Voting... and in Pennsylvania, by the Thousands*, PJ Media, October 3, 2016, available

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¹² U.S. Department of State, *U.S. Passports and International Travel*, available at: <https://travel.state.gov/content/passports/en/passports/statistics.html>

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¹⁶ *Ibid.*

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