
THE FRANCHISE OF NONCITIZENS AND UNDOCUMENTED IMMIGRANTS: NEITHER CONSTITUTIONALLY COMPELLED NOR CONSTITUTIONALLY FORBIDDEN

ABSTRACT

In Walt Whitman's vision of American democracy, "not only is America its people, but its people are America."¹ Accordingly, "exclusion from the electoral process is exclusion in the deepest possible sense from the essence of American society."² Today, foreign-born individuals represent more of the U.S. population than they did in 1910, "with . . . approximately 44 million immigrants . . . representing 13.5 percent of the overall population."³ Yet the political process of the United States remains a stark reminder of the xenophobic sentiment following World War I that took the franchise from those deemed to be "outsiders."

This Note proposes an expansion of the right to vote, particularly as it pertains to noncitizens. By expanding the franchise, the political process and sense of political inclusivity throughout the United States will be reinforced, and consequently, the nation's representative democracy will be restored.⁴ Ultimately, this Note recommends this expansion begin at the municipal level, due to the inherent interest noncitizens have in the electorate overseeing their day-to-day affairs. Moreover, the courageous localities that decide to pave the way for an expansion of voting rights will fulfill their functions as "laboratories of

1. James A. Gardner, *Liberty, Community and the Constitutional Structure of Political Influence: A Reconsideration of the Right to Vote*, 145 U. PA. L. REV. 893, 905 (1997) (citing Walt Whitman, *Election Day, November 1884*, in LEAVES OF GRASS 517 (Harold W. Blodgett & Scully Bradley eds., 1965)).

2. *Id.* at 904.

3. Jeanne Batalova & Elijah Alperin, *Immigrants in the U.S. States with the Fastest-Growing Foreign-Born Populations*, MIGRATION POL'Y INST. (July 10, 2018), <https://www.migrationpolicy.org/article/immigrants-us-states-fastest-growing-foreign-born-populations> [<https://perma.cc/ERN3-HQ2J>].

4. Interestingly, the United States has been "demoted from a full democracy to a flawed democracy." Briony Harris, *These Are World's Most Democratic Countries, According to The Economist*, WORLD ECON. F. (Feb. 2, 2018), <https://www.weforum.org/agenda/2018/02/nordic-countries-top-democratic-rankings-2017/> [<https://perma.cc/37HC-KFZP>]. In fact, in 2017 the United States was ranked 21st in an index of the best and worst countries for democracy. *Id.*

democracy,” as so aptly termed by Justice Louis Brandeis.⁵ Indeed, several major U.S. cities have already risen to the challenge and have opened their political communities to those complementing the diversity of the United States.

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5. See Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. 1039, 1073 (2017) (quoting *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932 (Brandeis, J. dissenting))).

I. INTRODUCTION

Within the United States, the presence of lawful noncitizens (hereinafter noncitizens) and illegal aliens (hereinafter undocumented immigrants) is increasing with each passing day.⁶ Accompanying that increase is the controversy surrounding the privileges and rights of these populations.⁷ Of particular importance is the right to participate in the political process—via the right to vote—and whether that right should undergo expansion.⁸ As one of the greatest rights granted to U.S. citizens, the franchise—and its possible expansion—is of the utmost importance.⁹

First and foremost, it is imperative for the following discussion to consider that “so far as the federal Constitution is concerned, alien suffrage is entirely discretionary—neither constitutionally compelled nor constitutionally forbidden.”¹⁰ Throughout history, the voting rights granted to noncitizens and undocumented immigrants have expanded and contracted, particularly before and after the xenophobic sentiment following World War I.¹¹ As a result, in today’s current climate, voting rights of these

6. *Noncitizen*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining *Noncitizen* as “[s]omeone who is not a citizen of a particular place” and *Lawful Noncitizen* as “[a] noncitizen who is present in a country and possesses a valid visa or has been granted permanent residency”); *Alien*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining *Illegal Alien* as someone who “enters a country at the wrong time or place, eludes an examination by officials, obtains entry by fraud, or enters into a sham marriage to evade immigration laws”). However, “today [the phrase] is often viewed as a snarl-phrase,” with many preferring to use the term “undocumented immigrant.” *Id.*; *A Day in the Life of USCIS*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/about-us/a-day-life-uscis> [<https://perma.cc/8LVF-LBG2>]. On an average day, U.S. Citizenship and Immigration Services “[f]ingerprint and photograph 14,000 people at 133 Application Support Centers,” “[g]rant lawful permanent residence to approximately 2,200 people and issue 4,000 Green Cards,” and “welcome 3,195 new citizens at naturalization ceremonies.” *Id.*

7. *See id.*; Benjy Sarlin, *San Francisco Allows Undocumented Immigrants to Vote in School Elections*, NBC NEWS (July 20, 2018), <https://www.nbcnews.com/politics/immigration/san-fransisco-allows-undocumented-immigrants-vote-school-elections-n893221> [<https://perma.cc/9YWK-PYTQ>].

8. *See* Sarlin, *supra* note 7.

9. *See Our Government: Elections & Voting*, WHITE HOUSE, <https://www.whitehouse.gov/about-the-white-house/elections-voting/> [<https://perma.cc/PQ6D-HV4C>].

10. Gerald L. Neuman, “*We Are the People*”: *Alien Suffrage in German and American Perspective*, 13 MICH. J. INT’L L. 259, 292 (1992).

11. Douglas, *supra* note 5, at 1063.

populations may again experience another shift, hopefully as a new wave of expansion.¹²

In particular, there has been movement among several U.S. municipalities to grant the right to vote to the noncitizen and undocumented immigrant populations.¹³ Ideally, however, the states should strive for uniformity in their approaches, whereby these populations may possibly be granted more power within their localities and may be made more readily aware of the risks—including federal prosecution and various immigration issues—involved in exercising their voting rights.¹⁴ Ultimately, the controversy surrounding this issue is incredibly important in the United States, especially given today's political landscape, permeated with anti-immigration inclination.¹⁵

Because matters concerning the federal government are vast and participation in federal elections carries enormous weight through its ability to impact the nation's future, the current prohibition on the participation of noncitizens and undocumented immigrants in federal elections should be left intact. However, matters concerning local governments—for example, school board elections and other municipal elections—should be open to noncitizens because as members of their communities, they are “substantially interested in and significantly affected by” the electorate overseeing their day-to-day affairs.¹⁶ In contrast, support is lacking for the proposition of expanding the franchise to undocumented immigrants who do not pay taxes and who may expose themselves to harsh penalties and possible deportation for their participation in the political process.¹⁷

Historically, an argument has been proffered that “campaigns to ‘restore voting rights to immigrants often come in clusters,’” reflecting a movement within the United States specifically, and around the world generally, “to provide voting rights to non-nationals.”¹⁸ By doing so, greater attention is directed toward the broader issue of immigration reform and the

12. *See id.*

13. *See id.* at 1063–64; Sarlin, *supra* note 7.

14. *See infra* Part V.

15. *See infra* Part V.

16. *See Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630 (1969).

17. *See infra* Part IV.B.

18. Simon Thompson, *Voting Rights: Earned or Entitled?*, HARV. POL. REV. (Dec. 3, 2010), <http://harvardpolitics.com/united-states/voting-rights-earned-or-entitled/> [<https://perma.cc/3D7K-X7FT>].

inclusion of various populations within the U.S. community.¹⁹ However, in response, an opposing argument has been extended that campaigns like these are mere temporary phenomena and are not suggestive of any further aim.²⁰ Regardless of the argument to which one subscribes, it is important to consider “[o]n a broader scale, expansions of the right to vote for municipal elections might lead to voting rights reforms at the statewide or national level.”²¹

Beginning in Part II, this Note considers the different authority granted to the different levels of government with respect to voting. Part III discusses the limitations on political involvement and voter qualification from a historical and statutory perspective, as well as the different rationales provided for these limitations. Part IV outlines current examples of expansions to the right to vote throughout major U.S. cities, while Part V looks to the different arguments made to best ensure the integrity of the U.S. political process. Lastly, Part VI recommends an approach for the state of Iowa in particular.

II. THE POWER BALANCE BETWEEN LOCAL, STATE, AND FEDERAL VOTING

A discussion of the right to vote would be incomplete without an examination of the power balance among the federal government, state governments, and local governments with respect to election administration and voter qualification as each level of government carries its own weight.²²

19. *See id.* Daniel Tokaji, a professor at Ohio State University’s Moritz College of Law, has opined the argument for noncitizen voting is stronger where there are legal obstacles to the citizenship of immigrants, and as a result, “addressing the naturalization process might therefore be an appropriate first step.” *Id.* While the naturalization process is outside the scope of this Note, its inconsistency with election law in the jurisdictions in which voting rights have been expanded will be explored. Furthermore, the difficulty of the naturalization process is a compelling factor for expanding the franchise for those who are simply unable to complete the process. *See infra* Part V.B.

20. *See* Thompson, *supra* note 18.

21. Douglas, *supra* note 5, at 1043.

22. *See generally* Legal Aid Soc’y of Ne. N.Y., *The Differences Between Federal, State, and Local Laws*, LAWHELP.ORG, <https://www.lawhelp.org/resource/the-differences-between-federal-state-and-loc> [https://perma.cc/AYV6-9MZT]. Topics of federal law include bankruptcy law; federal antidiscrimination and civil rights laws; federal criminal laws; immigration law; patent and copyright laws; and Social Security and Supplemental Security Income laws. *Id.* Topics of state law include business contract law; criminal law; divorce and family law; personal injury law; property and real estate law; welfare, public assistance, or Medicaid law; wills, inheritances, and estate law; and

The separation of power is critical to provide the flexibility necessary to alter the existing political process and how it is carried out across the nation.²³

A. Federal Government's Authority with Respect to Voting

Under the Fifteenth Amendment of the U.S. Constitution, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”²⁴ The Fifteenth Amendment further provides, “The Congress shall have power to enforce this article by appropriate legislation.”²⁵ Importantly, however, “One of the gestures toward states’ rights that the Founders made in writing the Constitution was to give the states a primary role in deciding who gets to vote—not only in state and local elections, but also in federal elections.”²⁶

B. States' Authority with Respect to Voting

In *Arizona v. Inter Tribal Council of Arizona, Inc.*, where the U.S. Supreme Court worked to clarify the competing national and state roles under the U.S. Constitution and the National Voter Registration Act of 1993, the Court reiterated that states have the “primary role in deciding who gets to vote.”²⁷ Although noncitizens and undocumented immigrants are strictly prohibited from participating in federal elections, the Elections Clause under Article I, Section Four, Clause One of the U.S. Constitution seeks to vest states with primary power over the franchise.²⁸ In particular, the Elections Clause allows the states “to prescribe the *time, place, and manner* of electing Representatives and Senators,” while conferring upon Congress “the power to alter those regulations [of the states] or supplant them altogether.”²⁹

workers compensation law. *Id.* Topics of local law include local safety law; rental law; and zoning law. *Id.*

23. See Tivas Gupta, *The Future of Federalism*, HARV. POL. REV. (Sept. 24, 2019), <https://harvardpolitics.com/united-states/the-future-of-federalism/> [<https://perma.cc/R2SH-76KG>].

24. U.S. CONST. amend. XV, § 1.

25. *Id.* amend. XV, § 2.

26. Lyle Denniston, *Constitution Check: Who Decides Who Gets to Vote?*, NAT'L CONST. CTR. (Aug. 28, 2014), <https://constitutioncenter.org/blog/constitution-check-who-decides-who-gets-to-vote/> [<https://perma.cc/4ZMN-6KV7>].

27. *Id.*; see *Arizona v. Inter Tribal Council of Ariz. Inc.*, 570 U.S. 1, 7–15 (2013).

28. See *Inter Tribal Council of Ariz., Inc.*, 570 U.S. at 7–8.

29. *Id.* at 8–9 (emphasis added) (explaining that, under previous cases, “Times,

As the United States is characterized by a “highly decentralized election administration system,” no state administers their election procedure in exactly the same way as any other state.³⁰ While some argue decentralization allows for experimentation and innovation, others argue it leads to inconsistency and mismanagement.³¹ For example, one of the primary differences among election administration at the state level is the appointment or election of a chief election official with ultimate authority over state elections.³²

While this Note relies heavily upon the concept of consistency in election administration to protect the noncitizen and undocumented immigrant populations, it recognizes the value of experimentation and innovation provided by decentralization, for without this separation of power, the present discussion would be moot.³³ That is, without decentralization, there would be no examples of major U.S. cities expanding the franchise from which this Note was inspired. Overall, the alleged fear of inconsistency and mismanagement is nothing more than an attempt to reduce the power of the states to create a unified political system at the state level comparable to the unified political system at the federal level.³⁴

C. Municipalities’ Authority with Respect to Voting

On the local level, election administration is typically carried out by counties, but it may fall on cities or townships, particularly in midwestern and northeastern states.³⁵ Regardless, there are over 10,000 local election

Places, and Manner” are “comprehensive words,” which include “regulations relating to ‘registration’”).

30. See *Election Administration at State and Local Levels*, NAT’L CONF. ST. LEGISLATURES (Feb. 3, 2020), <http://www.ncsl.org/research/elections-and-campaigns/election-administration-at-state-and-local-levels.aspx> [https://perma.cc/5SK3-7LUK].

31. *Id.*

32. See *id.* For example, 24 states (including Iowa) have an elected secretary of state as the chief election official, while 2 states have an elected lieutenant governor serving as the chief election official. Three states have a chief election official selected via the legislature, five states have a chief election official appointed by the governor, nine states have a board or commission to oversee the election administration, and seven states use a combination of a chief election official and a board or commission. *Id.*

33. See Douglas, *supra* note 5, at 1093–94.

34. See *Election Administration at State and Local Levels*, *supra* note 30.

35. *Id.*

administration jurisdictions within the United States, and the size of these jurisdictions vary dramatically in size.³⁶

Locally, election administration may be under the control of “a single individual, a board or commission of elections, or a combination of two or more entities.”³⁷ When two or more entities are used, a division is made between voter registration and administration of the actual election.³⁸ Ultimately, there is much greater flexibility at the municipal level to support experimentation and innovation and a greater opportunity to bring about substantive change through the expansion of the franchise.³⁹

III. LIMITATIONS ON POLITICAL INVOLVEMENT AND VOTER QUALIFICATION

This discussion requires the crucial consideration of the limitations on political involvement and voter qualification and the rationales for each, both historically and currently. Importantly, the U.S. Constitution “does not prohibit anyone from voting” but instead delineates “who cannot be denied the right to vote.”⁴⁰

A. *Historical Overview of Noncitizen and Undocumented Immigrant Populations’ Right to Vote*

From 1776 to 1926, “[n]oncitizen voting . . . was actually the norm in the United States,” whereby “40 states and federal territories allowed noncitizens to vote in local, state and sometimes federal elections.”⁴¹ By 1926, however, every state had passed its own law to prevent noncitizens from voting in local elections, and nearly 70 years later, Congress also passed a law prohibiting undocumented immigrants from voting in federal

36. *Id.* For example, some of the smallest jurisdictions consist of only a few hundred registered voters while the largest jurisdiction in the United States—Los Angeles County in California—consists of more than 4.7 million registered voters. *Id.*

37. *Id.*

38. *Id.*

39. *See id.*

40. Gretchen Frazee, *What Constitutional Rights Do Undocumented Immigrants Have?*, PBS (June 25, 2018), <https://www.pbs.org/newshour/politics/what-constitutional-rights-do-undocumented-immigrants-have> [https://perma.cc/6A9U-AXXP].

41. John Haltiwanger, *Immigrants Are Getting the Right to Vote in Cities Across America*, NEWSWEEK (Sept. 13, 2017), <https://www.newsweek.com/immigrants-are-getting-right-vote-cities-across-america-664467> [https://perma.cc/WT9P-GM5X].

elections.⁴² Perhaps these legislative prohibitions are illustrative of the aforementioned idea that franchise movements in the United States and around the world are temporary phenomena, rather than a static sentiment. In particular, it has been theorized that the trend of noncitizen voting slowed “amid a tide of immigration to the [United States] from Asia and Eastern Europe.”⁴³ With the wave of immigration that the United States is experiencing from Mexico and other Central American countries, there is no question the issue of noncitizen voting is, once again, prominent in today’s political landscape. However, instead of relying upon its past practice of isolating these populations from their political communities, the United States should adopt a modernized approach that will ensure political inclusivity.

B. Statutory Limitations on the Right to Vote in Federal Elections

Federal statutory law provides:

It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless—

- (1) the election is held partly for some other purpose;
- (2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and
- (3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.⁴⁴

Importantly, the text of 18 U.S.C. § 611 “does not contain the word ‘intentionally’ or the slippery word ‘willfully,’ which sometimes requires proof of knowledge about the law’s commands. . . . Nor does it require that

42. Frazee, *supra* note 40.

43. Haltiwanger, *supra* note 41.

44. 18 U.S.C. § 611 (2018).

any act be done ‘knowingly.’”⁴⁵ As a result, the statute is a “constitutionally-sound general intent offense.”⁴⁶

C. *Consequences for Exercising the Right to Vote in Federal Elections*

Under federal law, any noncitizen found voting in a federal election may be fined up to \$100,000 and imprisoned for one to three years for intentional misrepresentation of citizenship status.⁴⁷ A noncitizen may even be deported for casting a vote, and for noncitizens who are working toward naturalization, being registered to vote may actually provide a basis for being denied citizenship.⁴⁸ On a more local level, some states have imposed their own penalties for breaking the law; however, because elections at the local level are much more common than those at the federal level, “some states allow local governments to decide whether noncitizens can vote in local elections.”⁴⁹ This idea is central to whether the franchise should be expanded at the risk of possible confusion and possible penalization of these populations for inadvertently voting in the wrong elections.⁵⁰

D. *Limiting the Franchise to Those “Primarily Interested”*

In *Kramer v. Union Free School District*, the legislation at issue provided:

[C]ertain New York school districts residents who are otherwise eligible to vote in state and federal elections may vote in the school district election only if they (1) own (or lease) taxable real property within the district, or (2) are parents (or have custody of) children enrolled in the local public schools.⁵¹

In *Kramer*, the “[a]ppellant, a bachelor who neither own[ed] nor lease[d] taxable real property, filed suit in federal court [and claimed the

45. *Kimani v. Holder*, 695 F.3d 666, 669 (7th Cir. 2012) (citations omitted).

46. *United States v. Knight*, 490 F.3d 1268, 1271 (11th Cir. 2007).

47. Wendy Weiser & Douglas Keith, *The Actually True and Provable Facts About Non-Citizen Voting*, TIME (Feb. 13, 2017), <http://time.com/4669899/illegal-citizens-voting-trump/> [<https://perma.cc/8R4T-48QC>] (referring to 18 U.S.C. §§ 611, 3571 (2018)).

48. *Id.*

49. Frazee, *supra* note 40.

50. *See id.*

51. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 622 (1969).

legislation] denied him equal protection.”⁵² In particular, the appellant contended that he and other disenfranchised groups were “substantially interested in and significantly affected by” the school district’s decisions.⁵³ Specifically, he pointed to the community’s interest in the “quality and structure” of public education and the possible “grave consequences to the entire population” that could result from the decisions made by the school board.⁵⁴ In addition, although the appellant did not own property, he claimed the level of property taxation would impact him, namely “as property tax levels affect the price of goods and services in the community.”⁵⁵

Finding the statute permitted inclusion of many persons having only “a remote and indirect interest” in school affairs, the U.S. Supreme Court held the exclusion of others having “a distinct and direct interest” violated the Equal Protection Clause of the Fourteenth Amendment.⁵⁶ The Court held, “[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights,” and any alleged infringement of the right to vote must be “carefully and meticulously scrutinized.”⁵⁷ In addition, due to the democratic nature of society, “[a]ny unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.”⁵⁸ Ultimately, “[w]hether classifications allegedly limiting the franchise to those resident citizens ‘primarily interested’ deny those excluded equal protection of the laws depends, inter alia, on whether all those excluded are in fact substantially less interested or affected than those the statute includes.”⁵⁹

52. *Id.*

53. *Id.* at 630. Other disenfranchised persons include the following:

senior citizens and others living with children or relatives; clergy, military personnel, and others who live on tax-exempt property; boarders and lodgers; parents who neither own nor lease qualifying property and whose children are too young to attend school; parents who neither own nor lease qualifying property and whose children attend private schools. *Id.*

54. *Id.*

55. *Id.*

56. *See id.* at 632.

57. *Id.* at 626 (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)).

58. *Id.*

59. *Id.* at 632.

E. *Prevention of Foreign Influence over the U.S. Political Process*

In *Bluman v. Federal Election Commission*, the plaintiffs were foreign citizens living and working in the United States on temporary work visas and wanting to participate in the campaign process.⁶⁰ In particular, plaintiffs wanted to “donate money to candidates in U.S. federal and state elections, contribute to national political parties and outside political groups, and to make expenditures expressly advocating for and against the election of candidates in U.S. elections.”⁶¹ Importantly, express-advocacy expenditures and political contributions are considered an integral part of the process by which citizens elect officials to government offices.⁶²

Because the U.S. Constitution “recognizes the humanity of all people who are present within its borders,” foreign residents “enjoy many of the same constitutional rights that U.S. citizens do.”⁶³ For example, that enjoyment is typically found throughout the criminal justice system.⁶⁴ However, foreign citizens may be denied certain rights and privileges, including the right to serve as jurors and the right to work as police, probation officers, or public school teachers.⁶⁵ In essence, the U.S. Supreme Court has established that, while the constitutional rights of those in the United States without fully recognized citizenship are “expand[ed] accordingly, generously and easily,” the protections against these populations are *negative* liberty rights.⁶⁶ It is not until a person has become a

60. *Bluman v. FEC*, 800 F. Supp. 2d 281, 282 (D.C. Cir. 2011), *aff’d*, 565 U.S. 1104 (2012).

61. *Id.* at 282–83.

62. *Id.* at 288.

63. *Id.* at 286; Margaret Datiles Watts, *Do Illegal Immigrants Have Constitutional Rights?*, CULTURE LIFE FOUND. (Jan. 16, 2018), <https://www.cultureoflife.org/2018/01/16/illegal-immigrants-constitutional-rights/> [<https://perma.cc/RN7X-5PEW>] (noting those present in the United States legally, illegally, temporarily, or permanently are included within the definition of “person” as referred to by the Constitution).

64. *Bluman*, 800 F. Supp. 2d at 286. The Fifth and Fourteenth Amendments of the U.S. Constitution, among others, apply on the basis of personhood and jurisdiction relevant to the Due Process Clause and the Equal Protection Clause, referring to “people” or “person” instead of “citizen.” See Frazee, *supra* note 40.

65. *Bluman*, 800 F. Supp. 2d at 287. Because the Privileges and Immunities Clause is only applicable to citizens, its protection is not afforded to noncitizens and undocumented immigrants. See Imani Gandy, *Boom! Lawyered: Immigrants’ Constitutional Rights Edition*, REWIRE.NEWS (Jan. 31, 2018), <https://rewire.news/abc/2018/01/31/boom-lawyered-immigrant-constitutional-rights-edition/> [<https://perma.cc/C624-KULS>].

66. Watts, *supra* note 63.

fully recognized citizen of the United States that they are vested with the full scope of constitutional rights.⁶⁷ Overall, however, *Yick Wo v. Hopkins* and *Plyler v. Doe* are instructive in guaranteeing these populations receive due process and equal protection under the U.S. Constitution.⁶⁸

Pertinently, “[i]t is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government.”⁶⁹ In justifying this difference and in resolving the issue at bar, the U.S. District Court for the District of Columbia held government—at the federal, state, and local levels—could exclude foreign citizens from activities “intimately related to the process of democratic self-government.”⁷⁰ Specifically, “government may bar foreign citizens (at least those who are not lawful permanent residents of the United States) from participating in the campaign process that seeks to influence how voters will cast their ballots in the elections.”⁷¹

Ultimately, it is because of the “sovereign’s obligation to preserve the basic conception of a political community” that the United States has a compelling interest in “limiting the participation of foreign citizens in activities of American democratic self-government” and in “preventing foreign influence over the U.S. political process.”⁷² In an effort to protect such a compelling interest, Congress went as far as to codify the limitation via 52 U.S.C. § 30121, which is directed toward contributions and donations by foreign nationals.⁷³ However, if these so-called foreign citizens, either as

67. *Id.*

68. *Plyler v. Doe*, 457 U.S. 202, 210–12 (1982); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); Shawn S. Sidhu & Ramnarine Boodoo, *U.S. Case Law and Legal Precedent Affirming the Due Process Rights of Immigrants Fleeing Prosecution*, 45 J. AM. ACAD. PSYCHIATRY & L. 365, 366–67 (2017).

69. *Bluman*, 800 F. Supp. 2d at 288.

70. *Id.* at 287 (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)).

71. *Id.* at 288.

72. *Id.* at 287–88.

73. 52 U.S.C. § 30121 (2018).

It shall be unlawful for[(1) a foreign national, directly or indirectly, to make—(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election; (B) a contribution or donation to a committee of a political party; or (C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 30104(f)(3)[]; or (2) a person to solicit, accept, or receive a

noncitizens or undocumented immigrants, are “substantially interested in and significantly affected by” the U.S. political process, particularly at the local level, these populations are certainly part of the political community that is trying to be preserved.⁷⁴ Therefore, these populations may deserve the right to participate in the political community via the right to vote.

IV. CURRENT EXAMPLES OF EXPANSIONS TO THE RIGHT TO VOTE

From school board elections to local government elections, municipalities across the United States are expanding the voting rights of noncitizens and undocumented immigrants.⁷⁵ However, in doing so, municipalities must exercise caution to minimize the risk of individuals accidentally registering for federal or state elections while trying to register for local elections due to the possibility of exposing these individuals to prosecution.⁷⁶ There is a clear disconnect among the relevant legislations, and while noncitizens and undocumented immigrants may be granted the right to vote, they are unlikely to do so if it will subject them to possible punishment.⁷⁷

Since the initial successful campaigns expanding the franchise, at least another dozen campaigns have launched, some providing voting rights only to the documented population and some expanding “voting rights to all noncitizens regardless of status.”⁷⁸ While “[s]ome measures have been passed by a majority of the voters in a jurisdiction” via ballot proposal, “other measures have been passed by elected representatives as local laws.”⁷⁹

The following discussion focuses on specific campaigns in four jurisdictions that have successfully expanded—or deeply considered the expansion of—the right to vote. Other jurisdictions that have considered similar campaigns include the following: Connecticut, Maine, Massachusetts,

contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national. *Id.*

74. *See Bluman*, 800 F. Supp. 2d at 287 (citing *Foley v. Connelie*, 435 U.S. 291, 295–96 (1978)); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630 (1969).

75. *See, e.g., Sarlin*, *supra* note 7.

76. *Id.*

77. *See id.*

78. *Current Immigrant Voting Practices and Movements in the U.S.*, RON HAYDUK, <http://ronhayduk.com/immigrant-voting/around-the-us/> [https://perma.cc/N3GL-EBU9].

79. *Id.*

Minnesota, New York, North Carolina, Puerto Rico, Texas, Vermont, Washington, D.C., and Wisconsin.⁸⁰ Furthermore, the fact that “[g]lobally, at least 45 countries allow immigrant voting, at the local, regional and even national levels” demonstrates the acceptance of, and importance placed upon, immigrant voting.⁸¹

A. Maryland’s Expansion of the Right to Vote

Perhaps at the forefront of this type of expansion is the state of Maryland, where for at least the past three decades, eleven towns have allowed noncitizen voting, including: Barnesville, Chevy Chase Sections 3 and 5, College Park, Garrett Park, Glen Echo, Hyattsville, Martin’s Additions, Mount Rainer, Somerset, and Takoma Park.⁸²

In College Park, Maryland, for example, the city council approved a provision “to allow undocumented immigrants, student visa holders and residents with green cards to vote in local elections.”⁸³ Councilwoman Christine Nagle told the *New York Times*, “The mayor and City Council are not deciding national policy. We make decisions about trash pickup, snow removal and equipment for the parks. We have shared concerns with our neighbors regardless of whether they are U.S. citizens.”⁸⁴ Stated differently, these neighbors—including both noncitizens and undocumented immigrants—are “substantially interested in and significantly affected by” decisions pertaining to trash pickup, snow removal, and equipment for the parks and thus, deserve to vote for the individuals making such decisions.⁸⁵

B. San Francisco’s Expansion of the Right to Vote

Since approving a 2016 referendum, San Francisco has allowed undocumented immigrants to register to vote in school board elections, following the example of other municipalities that allow noncitizens to participate in local elections.⁸⁶ Under this referendum, “[n]oncitizens, including those without legal status, can vote only in school board races and

80. *Id.*

81. *See id.*

82. *Id.*

83. Haltiwanger, *supra* note 41.

84. *Id.*

85. *See Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630 (1969); Haltiwanger, *supra* note 41.

86. Sarlin, *supra* note 7.

only if they are parents, legal guardians, or caregivers to children under the age of 19.”⁸⁷ However, newly eligible voters under the provision who are not citizens must use a separate form to register, containing a printed warning that voters’ information will be accessible by Immigration and Customs Enforcement (ICE) and a recommendation that voters consult an immigration attorney before registering.⁸⁸ This disconnect between the relevant election law and immigration law does not necessarily invite participation by these populations in the school board elections.⁸⁹

Naturally, the implementation of San Francisco’s franchise expansion was not without controversy.⁹⁰ In particular, one opponent, Adam Putnam, argued:

The right to vote should not be allowed or practiced by anyone who was not born in our country or who has not taken the necessary, legally required steps to become a citizen of our nation. This right is too precious to grant to those who have not earned it.⁹¹

In response, proponents argued an expansion was logical, “given estimates that about one-third of children in the school system have foreign-born parents.”⁹² Regardless of whether these children are U.S. citizens and belong to parents that are noncitizens or undocumented immigrants or whether these children are themselves noncitizens and undocumented immigrants, they are “substantially interested in and significantly affected by” the actions of the school board and the school district.⁹³

In addition, some proponents supported an expansion amongst the broad concern over the disempowerment of and mistreatment toward noncitizens and undocumented immigrants.⁹⁴ Specifically, David Chiu, a

87. *Id.*

88. *Id.* This kind of registration form may serve a deterring, rather than an encouraging, purpose in increasing political participation amongst these populations.

89. *See id.*

90. *See id.*

91. *Id.* (emphasis added). In establishing “legally required” steps to naturalization through the process of law-making that has characterized our representative society, it would appear to be a natural expansion of that process to legalize the right to vote for these populations. *Id.*

92. *Id.*

93. *See Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630 (1969); Sarlin, *supra* note 7.

94. Sarlin, *supra* note 7.

Democratic assemblyman, argued the provision would “send a message to [President] Donald Trump” and others of similar beliefs that immigrants are valued within the San Francisco voting community.⁹⁵ This argument is strengthened when juxtaposed with the metaphorical characterization of the United States as a “melting pot” that has continuously placed great value on the contribution and involvement of these populations.⁹⁶

C. Chicago’s Expansion of the Right to Vote

Similarly, Chicago’s noncitizens have been allowed to vote in school board elections and serve on school boards for the city’s 550 local school councils since 1989.⁹⁷ Interestingly, despite expectations of a 10 to 15 percent increase in Hispanic parent turnout, participation only increased by 3 percent, perhaps demonstrating the confusion and fear these populations face when participating in the political process and supporting the need for a consistent approach.⁹⁸

D. New York City’s Attempted Expansion of the Right to Vote

New York City was the first municipality to expand part of the franchise to all residents through its school board system created in 1969.⁹⁹ Called “one of the thrusts of the Civil Rights-era movement for greater community control” by researcher Ron Hayduk, the extension “allowed any parent of a kid [in city public schools], regardless of status, to vote.”¹⁰⁰ However, after being dissolved in 2002 by then-Mayor Michael Bloomberg,

95. *Id.*

96. Krissy A. Katzenstein, Note, *Reinventing American Immigration Policy for the 21st Century*, 41 VAND. J. TRANSNAT’L L. 269, 271 (2008); see Sarlin, *supra* note 7.

97. Frazee, *supra* note 40; Tara Kini, Comment, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 CALIF. L. REV. 271, 311 (2005). It is important to acknowledge, however, that local school councils act more as individual advisory councils with significantly less decision making authority. *Id.* Compromised of “the principal, six parent representatives, two community representatives, two teacher representatives, and one student representative (at the high school level),” the local school councils select principals, renew the contracts of principals, approve School Improvement Plans, and approve the budgets of the schools. *Id.* at 311, n.224.

98. *Id.* at 311, 319; see *supra* Part IV.B.

99. Felipe de la Hoz, *Why Don’t We Let Noncitizen Residents Vote?*, VILLAGE VOICE (Nov. 7, 2017), <https://www.villagevoice.com/2017/11/07/why-dont-we-let-noncitizen-residents-vote/> [<https://perma.cc/7XG4-BHYE>].

100. *Id.*

noncitizen voting rights have been nonexistent in New York City.¹⁰¹ Recent campaigns have surfaced to return noncitizen voting rights, particularly with the formation of the New York Coalition to Expand Voting Rights, also known as “iVote.”¹⁰²

Since 2005, bills have been introduced to the New York City Council on three separate occasions to allow noncitizens to participate in municipal elections.¹⁰³ iVote’s initial proposal “called for all immigrants, regardless of immigration status, to gain the right to vote”; however, in the wake of September 11, 2001, a proposal like this was deemed “unfeasible.”¹⁰⁴ These kinds of proposals are framed as “restoration[s] of rights,” but they have not garnered enough attraction or support.¹⁰⁵ In fact, Mayor Bill de Blasio has not endorsed the bills in their most recent forms.¹⁰⁶ Importantly for the present discussion and the influence of the noncitizen voting base, “New York City has the largest foreign-born population of any city in the nation,” and within this population, “approximately 1.5 million were noncitizens as of 2011.”¹⁰⁷

V. ENSURING THE INTEGRITY OF THE U.S. POLITICAL PROCESS

Ultimately, the uniform resolution of such a controversy is of the utmost importance to the future of the United States and its political integrity, meeting the needs of the United States in general and the needs of noncitizens and undocumented immigrants in particular. Because the federal government must ensure equal and fair treatment to all when exercising the right to vote under the Equal Protection Clause, there must remain some semblance of uniformity in federal elections.¹⁰⁸

Although the Constitution has provided the political process with the necessary decentralization to maintain “strong local control” and a “unifying central government,” it may be possible to override some of that

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *See, e.g., id.*

106. *Id.*

107. *Id.*

108. *See* Bradley Blakeman, *The Time Has Come for National Voting Standards*, THE HILL (Feb. 8, 2017), <https://thehill.com/blogs/pundits-blog/civil-rights/318545-the-time-has-come-for-national-voting-standards> [<https://perma.cc/TYA7-2MMW>].

decentralization.¹⁰⁹ If each state was held to a uniform standard for federal elections, it would be “costly and inefficient” for the state not to follow the same or a similar standard for its state and local elections.¹¹⁰ Although many argue this decentralization is necessary to preserve liberty and provide security over technological advancement, the political process must be unified—directly as to federal elections, and in turn, indirectly as to state and local elections—in an effort to bring certainty to a considerably chaotic exercise of citizenship.¹¹¹ In addition, this uniformity would protect noncitizens and undocumented immigrants from potential prosecution by providing clarity and consistency.¹¹²

A. Considering the Lack of Citizenship and Lack of Effort

In support of the argument that the right to vote should not be expanded, some contend the lack of community and membership among citizens, noncitizens, and undocumented immigrants is enough of a reason to deny such an expansion.¹¹³ In addition, some maintain there is nothing “tyrannical about citizens ruling noncitizens when the noncitizens have the opportunity to become citizens and members.”¹¹⁴

Because lawful, permanent residents have a “more significant attachment to the United States” than temporary residents as either

109. Memorandum from Charlie Hendrix, Legal Clerk, Nebraskans for Civic Reform (July 29, 2010) (on file at <https://www.civicnebraska.org/wp-content/uploads/2011/01/The-Legal-Effect-of-Uniformity-in-Elections.pdf> [<https://perma.cc/HB9Q-QWZ>]); see Blakeman, *supra* note 108.

110. Blakeman, *supra* note 108.

111. See J. Christian Adams, *No, We Don't Need National Voting Standards*, THE HILL (Feb. 13, 2017), <https://thehill.com/blogs/pundits-blog/state-local-politics/319189-no-we-dont-need-national-voting-standards> [<https://perma.cc/9TPH-AQVS>].

112. See Blakeman, *supra* note 108.

113. See Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1445–46 (1993).

114. *Id.* at 1448. Tangentially, there has been debate regarding the accessibility and fairness of such an “opportunity.” Some argue the process—comprised of various eligibility requirements and a ten-step naturalization process—is unreasonably complicated, unnecessarily drawn out, and unjustly uncertain. *How to Apply for U.S. Citizenship*, USA.GOV (Nov. 30, 2018), <https://www.usa.gov/become-us-citizen> [<https://perma.cc/RT2S-VXUZ>]. However, in contrast, some argue the process is meaningful and is not so difficult as to deter individuals from working toward citizenship, as evidenced by the 752,800 individuals naturalized during 2016. *Naturalization Fact Sheet*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/news/fact-sheets/naturalization-fact-sheet> [<https://perma.cc/FD7L-JK3W>].

noncitizens or undocumented immigrants, it may be assumed the latter group has “primary loyalty to other national political communities, many of which have interests that compete with those of the United States.”¹¹⁵ The concept of primary loyalty must be paired with the concept of “dual loyalty,” which is the notion of divided allegiance between one’s home country and one’s host country.¹¹⁶ Often compared to bigamy, dual nationality—and in turn, dual loyalty—is deemed an “improbable balancing act.”¹¹⁷ In essence, there is a concern that noncitizens or undocumented immigrants may not vote in the best interests of the United States or may rely too heavily upon their own cultural biases than upon their newfound American values.¹¹⁸

In addition, some maintain “voting is the crux of citizenship and should be limited to those who have lived and worked in the country for a substantial amount of time.”¹¹⁹ For example, in one of New York City’s more

115. See *Bluman v. FEC*, 800 F. Supp. 2d 281, 291–292 (D.C. Cir. 2011) *aff’d*, 565 U.S. 1104 (2012).

116. See Abdi M. Kusow & Matt DeLisi, *Conceptualizing American Attitudes Toward Immigrants’ Dual Loyalty*, SOCIUS (June 16, 2016), <https://journals.sagepub.com/doi/full/10.1177/2378023116651877> [<https://perma.cc/2VD8-RGP4>].

117. For the present discussion, bigamy is defined as “the act of marrying one person while legally married to another.” *Bigamy*, BLACK’S LAW DICTIONARY (10th ed. 2014); Anupam Chander, *Flying the Mexican Flag in Los Angeles*, 75 FORDHAM L. REV. 2455, 2455 (2007). The idea is that, similar to the conflicting loyalty present in bigamy, the conflicting loyalty present within an individual of dual nationality is irreconcilable. Ultimately, it is this dynamic that creates a sense of fear regarding the harm to the U.S. political process that may result from “people who disperse their political allegiances.” *Id.*

118. See Jeff Duncan, *The Left’s Next Target: Noncitizen Voting*, NAT’L REV. (Feb. 26, 2019), <https://www.nationalreview.com/2019/02/noncitizen-voting-the-lefts-next-target/> [<https://perma.cc/V5HY-SXMZ>].

119. Thompson, *supra* note 18. For the political process, domicile and residency are of the utmost importance in determining voter registration. In particular, residency involves where one lives and for how long one has lived there, and thus, there is a question of how long a noncitizen or undocumented immigrant must be a resident of a community before he or she is entitled to vote. *Voter Registration Is All About Residency (and Domicile)*, CANVASS (Nat’l Conf. of St. Legislatures), May 2016, at 2 [hereinafter *Voter Registration*]. Although there is no relevant dicta regarding the residency requirements for these populations, in *Oregon v. Mitchell*, the U.S. Supreme Court held the only acceptable limitation of Section 202 of the Voting Rights Act of 1965 was a 30-day residency requirement for registration of fully-recognized citizens in a presidential election; however, each State could still impose a different durational residency requirement for a non-presidential election. See *Oregon v. Mitchell*, 400 U.S. 112, 117–19 (1970). Similarly, in *Dunn v. Blumstein*, the Court held a one-year residency requirement was unconstitutional as a penalty to fully recognized citizens for exercising

recent campaigns to expand voting rights to noncitizens, the proposed bill would have allowed participation of noncitizens living in the United States legally for a minimum of six months.¹²⁰ However, while the bill's sponsor, Councilmember Danny Dromm, argued the unfairness of denying voting rights to law-abiding and tax-paying noncitizens, Councilmember Peter Vallone, Jr. claimed the residency requirement was not enough.¹²¹ Specifically, he claimed, "Someone in the country that short a time doesn't have a stake in the future of the city."¹²² In essence, if noncitizens hope to reap the rewards of citizenship, they must make the commitment to become U.S. citizens by working to obtain citizenship via the naturalization process, which inherently requires the noncitizens to be present in the United States for a substantial amount of time.¹²³

B. Acknowledging the Need for Accountability and Fairness

In support of the argument that the right to vote should be expanded, one must consider a familiar maxim fervent throughout the United States: "No taxation without representation."¹²⁴ More generally, such a maxim is pointed at the idea that government must rest on the consent of the governed.¹²⁵ In application to the current controversy, as individuals within the United States, noncitizens and undocumented immigrants are under the control of the government and therefore, deserve a voice in how this control is exercised. Stated differently, "Under a prevailing theory of democracy, the government is legitimate only by the consent of the governed, which includes

their constitutional right to travel. *See* 405 U.S. 330, 331–33 (1972). In 2016, 26 states had "durational residency requirements, ranging from as short as 10 days to as long as 30 days," while the remaining 24 states did not have any such requirements but were able to "impose a cutoff date for registration." *Voter Registration*, *supra*. While these statistics pertain to fully recognized citizens, they demonstrate the particularly imprecise and unsettled nature of residency requirements relevant to these populations in particular. *See id.*

120. Erin Durkin, *City Council Weighing Bill That Gives Noncitizen Immigrants Right to Vote*, N.Y. DAILY NEWS (May 9, 2013), <http://www.nydailynews.com/news/politics/council-weighs-bill-give-noncitizen-immigrants-voting-rights-article-1.1340007> [<https://perma.cc/E5RR-QU95>].

121. *Id.*

122. *Id.*

123. *See id.*; Thompson, *supra* note 18.

124. *See* Raskin, *supra* note 113, at 1441–42.

125. *See* Robert A. Dahl, *Democracy*, ENCYCLOPEDIA BRITANNICA (Dec. 20, 2018), <https://www.britannica.com/topic/democracy/The-legitimacy-of-government> [<https://perma.cc/96N4-ZCTK>].

noncitizens who must follow the law; those with equal responsibilities in society should have an equal right to vote.”¹²⁶

Similarly, “[b]ecause aliens lack votes, the principal currency in which democratic politicians trade, they are made especially susceptible to official discrimination and hostility in the political system.”¹²⁷ The absence of noncitizens and undocumented immigrants allows xenophobic initiatives to run rampant and allows decisionmakers and politicians to “earn votes without incurring the risk of losing other votes,” namely those of noncitizens and undocumented immigrants.¹²⁸

Moreover, while some claim an expansion of voting rights would threaten the political process of the United States, it is important to remember:

Immigration law already provides for deportation of alien persons who engage in espionage, sabotage, revolutionary activity, terrorism, or any conduct that “would have potentially serious adverse foreign policy consequences for the United States.” Moreover, our constitutional regime regards it as *presumptively illegitimate* to exclude groups of persons from voting because it is thought that they will somehow think or vote differently from the incumbent electorate. But even assuming that an alien’s reluctance to surrender her nationality in accordance with American naturalization law demonstrates a potential conflict in national loyalties, *there is no reason to think that this conflict has any relevance at the local level.*¹²⁹

Importantly, noncitizens are “often just as involved in their communities as citizens” and as such, “should be afforded equal voting rights.”¹³⁰ This may corroborate the idea proffered in *Kramer* of a party being “substantially interested in and significantly affected by” an action.¹³¹ Limiting the franchise to fully recognized citizens fails to account for the

126. Douglas, *supra* note 5, at 1065.

127. Raskin, *supra* note 113, at 1442.

128. *Id.* (quoting Yann Moulier-Boutang, *Resistance to the Political Representation of Alien Populations: The European Paradox*, 19 INT’L MIGRATION REV. 485, 489 (1985)).

129. *Id.* at 1451–52 (emphasis added).

130. Thompson, *supra* note 18.

131. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630 (1969); *see* Thompson, *supra* note 18.

inherent issues in the naturalization process.¹³² For example, an individual may “know enough to contribute helpfully to community decision-making, but still be unable to attain citizenship” via the naturalization process due to a technicality, such as the preparation and submission of Form N-400.¹³³

In particular, these populations are “substantially interested in and significantly affected by” local elections—for city council, for mayor, and for school board, among others.¹³⁴ These local elections are “extremely important and meaningful,” as individuals are typically closer with their local elected officials than with their elected member of Congress, the Governor, or the President.¹³⁵ Most importantly, the outcomes of local elections often have significant impacts on local policies, which in turn have greater impacts on individuals than that of state laws or federal laws.¹³⁶ Because there is much more at stake in local elections, “[p]articipatory democracy and political community flourishes at the local level.”¹³⁷

In looking to expand the right to vote, doing so at the local level may affirm the importance of voting while increasing voter access.¹³⁸ In turn, this may drive a sense of “[p]olitical inclusiveness,” which creates an increase in legitimacy of elected officials.¹³⁹ In addition, this may bring about greater collaboration, participation, and responsiveness between the voters and the elected officials, which will ensure active community debate.¹⁴⁰ Overall, there is much support in favor of expanding the franchise, particularly to noncitizens, due to their involvement in the community and the impact such an expansion will have on the political process.¹⁴¹

132. *See supra* Part V.A.

133. Thompson, *supra* note 18; *see N-400, Application for Naturalization*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/n-400> [<https://perma.cc/CP7T-XH42>]. Form N-400 is the “Application for Naturalization” and consists of 20 pages of questions and requires a filing fee of \$640.00, along with a fee of \$85.00 for biometrics. *See id.*

134. *See Kramer*, 395 U.S. at 630; Douglas, *supra* note 5, at 1042.

135. Douglas, *supra* note 5, at 1042.

136. *Id.* at 1042–43.

137. *Id.* at 1043.

138. *Id.* at 1070.

139. *Id.* at 1071.

140. *Id.*

141. *See id.* at 1070–71.

VI. WHAT ABOUT THE STATE OF IOWA?

While major U.S. cities have worked to pave the way for an expansion of voting rights, the state of Iowa has taken a much more conservative approach by refusing to join those efforts, at least for now.¹⁴²

A. *Current State of Affairs Within the State of Iowa*

Looking at the statutory law of the state of Iowa, one must be a citizen of the United States in order to qualify to register to vote as an eligible elector.¹⁴³ Furthermore, one must be an Iowa resident with no claimed right to vote in any other place and must be at least 18 years old by election day.¹⁴⁴

Looking to the political sentiment within the state of Iowa in 2013, Secretary of State Matt Schultz attempted to establish a procedure for “removing voters from registration rolls if they [are unable to] prove citizenship.”¹⁴⁵ The procedure would have allowed the Office of the Iowa Secretary of State to send a letter to anyone whose name showed up as a noncitizen on voter rolls or in other databases and anyone in receipt of this letter would have “30 days to file a challenge to the removal.”¹⁴⁶ If there was no answer to the first letter, the rule provided for a second letter to be sent with an additional 30-day response period.¹⁴⁷ One member of the Iowa Citizens for Community Improvement argued, “Schultz’s proposed voter-suppression rules will unfairly target Latino immigrants, intimidate voters from exercising their rights and could result in voters[] being purged from the rolls without cause.”¹⁴⁸

In a lawsuit brought by the American Civil Liberties Union of Iowa and the League of the United Latin American Citizens of Iowa against the procedure, after nearly two years of litigation, “a Polk County judge ruled

142. See IOWA CODE § 48A.5(2)(a) (2019); *Voter Registration*, IOWA SECRETARY ST., <https://sos.iowa.gov/elections/voterinformation/voterregistration.html> [<https://perma.cc/U9DQ-8HD6>].

143. IOWA CODE § 48A.5(2)(a) (2019).

144. *Voter Registration*, *supra* note 119.

145. *Iowa Secretary of State Pushes Ahead with Noncitizen Voting Rule*, OMAHA WORLD-HERALD (Jan. 3, 2013), https://www.omaha.com/news/iowa-secretary-of-state-pushes-ahead-with-noncitizen-voting-rule/article_48ab45eb-8123-5fa8-9611-d490111a576b.html [<https://perma.cc/V2B7-DP7D>].

146. *Id.*

147. *Id.*

148. *Id.*

that Schultz exceeded his authority in issuing the rules, invalidated them and assessed costs associated with the lawsuit to the [Office of the Iowa Secretary of State].”¹⁴⁹ While the appeal to the Iowa Supreme Court initiated by Schultz was voluntarily dismissed, Paul Pate, the succeeding Secretary of State, stated, “I will not tolerate diluting the power of the vote by allowing ineligible people to participate at the polls.”¹⁵⁰ From this statement, it is clear the position of the Secretary of State—both historically with Schultz and at present with Pate—is not a position open to the inclusion of noncitizens in the state of Iowa’s political community.¹⁵¹

According to Pate in a statement on October 17, 2017, “As for specific concerns that have been raised regarding the rules . . . non-citizens are forbidden under Iowa and U.S. law from registering to vote and participating in elections. . . . Why anyone would be opposed to removing non-citizens from the voter rolls is baffling.”¹⁵² From this statement, again, it is clear the current political landscape in the state of Iowa is not open to the expansion of voting rights to noncitizens and undocumented immigrants.

Interestingly, there is not a great deal of discourse relevant to the controversy expressing public sentiment throughout the state of Iowa; rather, the discourse is the product of politics and politicians. Certainly, Pate and Governor Kim Reynolds—who has been hesitant to restore felon voting rights to fully-recognized citizens—align more with the movement toward voter suppression of noncitizens.¹⁵³ However, there are entities such as the American Civil Liberties Union of Iowa and the League of the United Latin

149. Veronica Fowler, *Victory! Iowa Secretary of State’s Voter Removal Rule Blocked by Judge*, ACLU IOWA (Mar. 6, 2014), <https://www.aclu-ia.org/en/news/victory-iowa-secretary-states-voter-removal-rule-blocked-judge> [https://perma.cc/H88B-F4QC]; Jason Noble, *Controversial Iowa Voter Rules Will Not Take Effect*, DES MOINES REG. (Mar. 13, 2015), <https://www.desmoinesregister.com/story/news/politics/2015/03/13/voter-registration-lawsuit-resolved-rules-invalidated/70280104/> [https://perma.cc/RWM8-QWMT].

150. Noble, *supra* note 149.

151. *See id.*

152. *Statement from Secretary of State Paul Pate on Public Comments Submitted Regarding Administrative Rules*, IOWA SECRETARY ST. (Oct. 17, 2017), https://sos.iowa.gov/news/2017_10_17.html [https://perma.cc/HN62-TJKU].

153. *See* Rekha Basu, *For New York Inmates, Voting in Midterms Was ‘Profound, Empowering Experience’*, DES MOINES REG. (Nov. 29, 2018), <https://www.desmoinesregister.com/story/opinion/columnists/rekha-basu/2018/11/29/what-mean-felons-get-voting-rights-restored-iowa-kim-reynolds-registerny-justice-reform-midterms/2141419002/> [https://perma.cc/RUQ3-XU93]; *Statement from Secretary of State Paul Pate on Public Comments Submitted Regarding Administrative Rules*, *supra* note 152.

American Citizens, among others, that may counteract this alignment by beginning a campaign for the expansion of the franchise within the state of Iowa.¹⁵⁴

Perhaps the best location for a campaign to begin in the state of Iowa would be Johnson County, which has recently started to consider expansion.¹⁵⁵ After attending an election conference in Washington, D.C., Johnson County Auditor Travis Weipert began asking individuals throughout the area if noncitizen voting was important to them.¹⁵⁶ The inquiry solicited responses from individuals such as Domg Domg Zhengs, an international student at the University of Iowa originally from Shanghai, as well as Mazahir Salih, an Iowa City councilwoman and Center for Worker's Justice of Eastern Iowa community organizer originally from Sudan.¹⁵⁷ Both individuals spoke to their desire for greater political involvement and the ability to truly establish themselves in their community.¹⁵⁸ According to Weipert, although such an expansion poses a slippery slope, "[a]nything is possible."¹⁵⁹ While the movement in Johnson County has simply been an exercise of conceptualization, it certainly represents a shift in attitudes, particularly on the part of a political leader who otherwise had no duty to bring up the matter for public debate.

B. *Recommending an Approach for the State of Iowa*

Among the first to grant AfricanAmerican men the right to vote in 1868, the state of Iowa has "long been at the forefront in making elections

154. See Noble, *supra* note 149.

155. Johnson County is comprised of Coralville, Hills, Iowa City, Lone Tree, North Liberty, Oxford, Shueyville, Solon, Swisher, Tiffin, University Heights, and a subdivision of West Branch. *About Johnson County*, JOHNSON COUNTY IOWA, <https://www.johnson-county.com/> [<https://perma.cc/JGL3-G95A>]. Home to approximately 147,001 individuals, Johnson County is the fourth largest county in the state of Iowa. *Iowa Counties by Population*, IOWA DEMOGRAPHICS, https://www.iowa-demographics.com/counties_by_population [<https://perma.cc/A94G-5V4U>]; see also Chantelle Navarro, *Johnson County Residents Ponder the Right to Let Non-Citizens Vote in Local Elections*, KCRG-TV9 (Jan. 15, 2019), <https://www.kcrg.com/content/news/Johnson-County-residents-ponder-the-right-to-let-noncitizens-vote-in-local-elections-504409051.html> [<https://perma.cc/DUW6-WZZE>].

156. Navarro, *supra* note 155.

157. *Id.*

158. *See id.*

159. *Id.*

more accessible.”¹⁶⁰ Ahead of the U.S. Supreme Court, the state of Iowa declared slavery was not allowed, desegregated public schools, and granted same-sex couples the right to marry.¹⁶¹ With “a proud record of laws and court decisions that have established precedents that expanded civil rights and equality before they were adopted on the national level,” the state of Iowa has done a rather outstanding job of adapting its laws to reflect the changing attitudes of its citizenry over time.¹⁶² Now, as the United States has become home to many more individuals, the state of Iowa must continue to adapt as it works to reflect the inclusion of individuals without citizenship.¹⁶³

The state of Iowa can do so by first eliminating any blanket barrier to franchise expansion at the local level. By doing so, each locality or municipality may then exercise discretion in whether to expand the right to vote. However, unlike the expansion granted to undocumented immigrants in San Francisco, the expansion granted throughout the state of Iowa may be better received if granted to noncitizens, instead of undocumented immigrants.¹⁶⁴ In particular, because the very definition of a *lawful noncitizen* requires the presence of a valid visa or a grant of permanent residency, there is inherent in such a definition an interest, perhaps rising to the level of being “substantially interested in and significantly affected by” a government action.¹⁶⁵ Undocumented immigrants may not be perceived to possess such an interest, and thus, there may not be as compelling an argument for their right to vote.

160. Paul D. Pate, *Iowa Expands Voting Rights*, DES MOINES REG. (Aug. 5, 2015), <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/08/05/iowa-expands-voting-rights/31199205/> [<https://perma.cc/QGP9-ZBFT>].

161. Iowa Dep’t. of Cultural Affairs, *Iowa: Leader in Civil Rights and Equality*, IOWA.GOV, <https://iowaculture.gov/history/education/educator-resources/primary-source-sets/iowa-leader-civil-rights-and-equality> [<https://perma.cc/C9R5-3VE2>].

162. *Id.*

163. *See id.*

164. *See supra* Part IV.B.

165. The United States Department of State is authorized to issue two different types of visas, both of which may provide the visa holder with an interest substantial enough to warrant the right to vote. With a nonimmigrant visa (NIV) for temporary stay, an individual is permitted to travel to the United States during the validity of the visa to accomplish a particular purpose. Most nonimmigrant visas are issued to business visitors, students, specialty workers, or tourists. With an immigrant visa (IV) for permanent residence, an individual is permitted to live and work in the United States indefinitely. *See Directory of Visa Categories*, U.S. DEPT. OF STATE—BUREAU OF CONSULAR AFFAIRS, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html> [<https://perma.cc/22ZX-SKTR>].

Moreover, franchise expansion throughout the state of Iowa should begin with school board elections, as this starting point may ease the transition for those in opposition while also allowing for further expansion later into other types of local elections and municipal elections. Overall, the state of Iowa has a rather exceptional opportunity to create an approach to the current controversy based upon the experiences of major U.S. cities as they have expanded the right to vote to meet the needs of today.¹⁶⁶ Perhaps such a transition can begin in Johnson County as it has already opened the floor to public debate.¹⁶⁷

VII. CONCLUSION

Throughout its existence, the United States has been characterized by the typically warm welcome it extends toward noncitizens.¹⁶⁸ In turn, however, this welcome is coupled with questions of how to include these populations within society, particularly within the political process.¹⁶⁹ “Neither constitutionally compelled nor constitutionally forbidden,” the United States has great latitude in the franchise of noncitizens and undocumented immigrants.¹⁷⁰

There is a particular power balance among local, state, and federal voting that is necessary for the decentralization promised under the U.S. Constitution but also may provide flexibility in expanding the franchise.¹⁷¹ While there have been valid viewpoints put forth regarding the need to limit the political process to those with a primary interest and to protect the political process from foreign influence, major U.S. cities are finding ways to reconcile such viewpoints with the need to include these populations.¹⁷² In particular, these cities are looking beyond the citizenship requirement and naturalization process to the substantial interest of noncitizens and undocumented immigrants as present within the political community of the United States.¹⁷³ Moreover, they are seeking to bring a sense of

166. *See supra* Part IV.

167. *See supra* Part VI.A.

168. *See supra* Part I.

169. *See supra* Part I.

170. *See* Douglas, *supra* note 5, at 1062–63; *see also, supra* Part I.

171. *See supra* Part II.

172. *See supra* Part III, IV.

173. *See supra* Part V.

accountability and fairness to the controversy by looking to provide adequate representation that is sure to increase political inclusiveness.¹⁷⁴

Although the state of Iowa is often found leading the way and making elections more accessible, there is room for each state to join the movement toward the expansion of the franchise.¹⁷⁵ In particular, each state—including the state of Iowa—may do so by first eliminating any blanket barrier to expansion and allowing each locality or municipality to make the decision independently.¹⁷⁶

Ultimately, because matters concerning the federal government are vast, and participation in federal elections carries enormous weight through its ability to impact the nation's future, the current prohibition on the participation of noncitizens and undocumented immigrants in federal elections should be left intact.¹⁷⁷ To the contrary, matters concerning the local governments—for example, school board elections and other municipal elections—should be open to noncitizens because as members of their communities, they are “substantially interested in and significantly affected by” the electorate overseeing their day-to-day affairs.¹⁷⁸ As for undocumented immigrants, because the risk of harsh penalties and possible deportation is high, there does not exist a compelling argument for expanding the franchise to this population.¹⁷⁹

Justice Brandeis once referred to the states as “laboratories of democracy” that may experiment with different legislation to find unique solutions tailored toward each individual state.¹⁸⁰ In particular, “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹⁸¹ Considering the United States is comprised of 50 states, among its cities, counties, and townships, the nation has the opportunity to truly capitalize upon this possible experimentation as “test tubes of

174. *See supra* Part V.

175. *See supra* Part VI.

176. *See supra* Part VI.

177. *See supra* Part I.

178. *See Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 630 (1969); *see also supra* Part I.

179. *See supra* Part I.

180. Douglas, *supra* note 5.

181. *Id.* (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

democracy.”¹⁸² Because this kind of experimentation has already occurred throughout major U.S. cities,¹⁸³ these cities have, in effect, unofficially designated themselves as so-called “test tubes.”¹⁸⁴

By beginning the campaign at the municipal level, specifically by expanding the voting rights of noncitizens in school board elections and other municipal elections, “[l]ocal voting rights, then, can serve as catalysts for broader reforms as they ‘trickle across’ to other municipalities and ‘trickle up’ to states and Congress.”¹⁸⁵ The United States—and each of its individual states—must live up to its metaphorical characterization as a “melting pot” and continue to value the contribution and involvement of noncitizens.¹⁸⁶ In doing so, it must reconsider the franchise of these populations, which is “neither constitutionally compelled nor constitutionally forbidden.”¹⁸⁷

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182. *See id.* (citing Richard Briffault, *Home Rule and Local Political Innovation*, 22 J. L. & POL. 1, 31 (2006)).

183. *See supra* Part IV.

184. *See* Douglas, *supra* note 5 (citing Richard Briffault, *Home Rule and Local Political Innovation*, 22 J. L. & POL. 1, 31 (2006)).

185. *Id.* at 1039.

186. *See* Katzenstein, *supra* note 96.

187. Douglas, *supra* note 5, at 1062–63.

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