

# **Allowing Non-Citizens to Vote in the United States? Why Not**

**By Stanley A. Renshon**



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**Center for Immigration Studies**

1522 K Street, N.W., Suite 820

Washington, DC 20005-1202

Phone (202) 466-8185

FAX (202) 466-8076

[center@cis.org](mailto:center@cis.org)

[www.cis.org](http://www.cis.org)

## About the Center

The Center for Immigration Studies, founded in 1985, is a non-profit, non-partisan research organization in Washington, D.C., that examines and critiques the impact of immigration on the United States. It provides a variety of services for policymakers, journalists, and academics, including an e-mail news service, a *Backgrounder* series, and other publications, congressional testimony, and public briefings.

## About the Author

Stanley A. Renshon (srenshon@gc.cuny.edu) ([http://web.gc.cuny.edu/dept/POLIT/pages/faculty/m\\_z.htm#renshon](http://web.gc.cuny.edu/dept/POLIT/pages/faculty/m_z.htm#renshon)) is professor of political science and coordinator of the Interdisciplinary Program in the Psychology of Social and Political behavior at the City University of New York Graduate Center. He is also a certified psychoanalyst.

Dr. Renshon has been a Center Fellow since 1999 and is an expert in the areas of citizenship and American national identity. He was president of the International Psychology of Political Psychology, an advisor to the federal government on leadership assessment and decision-making, and writes a column for the Washington-based news journal of opinion *The Politico* called “The Political Mind.”

He has published over 90 articles and 13 books in the fields of presidential leadership and psychology, foreign policy decision-making and American national security, and immigration and American national identity.

His book on the Clinton presidency, *High Hopes: The Clinton Presidency and the Politics of Ambition*, won the 1997 American Political Science Association’s Richard E. Neustadt Award for the best book published on the presidency. It was also the winner in 1988 of the National Association for the Advancement of Psychoanalysis’ Gradiva Award for the best published work in the category of biography. He has also written about the George W. Bush Presidency (*In his Father’s Shadow: The Transformations of George W. Bush*) and the psychology of American national security policy (*Understanding the Bush Doctrine: Psychology and Strategy in an Age of Terrorism*).

Among his books in the area of immigration and American national identity are: *One America?: Political Leadership, National Identity, and the Dilemmas of Diversity*; *America’s Second Civil War: Dispatches From the Political Center*; and *The 50% American: Immigration and National Identity in an Age of Terrorism*.

He has testified before Congress on matters of dual citizenship and immigrant integration into the American national community and has written several other reports for the Center including:

- “The Debate Over Non-Citizen Voting: A Primer,” Washington, D.C. Center for Immigration Studies, 2008. (<http://www.cis.org/articles/2008/back408.pdf>)
- “Becoming an American: The Hidden Core of the Immigration Debate,” Washington, D.C.: Center for Immigration Studies, 2007. (<http://www.cis.org/articles/2007/back107.pdf>)
- *Reforming Dual Citizenship in the United States: Integrating Immigrants into the American National Community*, Washington D.C., Center for Immigration Studies, 2005. (<http://www.cis.org/articles/2005/dualcitizenship.pdf>)
- “Dual Citizenship and American National Identity, Washington, D.C.: Center for Immigration Studies, 2001. (<http://www.cis.org/articles/2001/paper20/renshondual.pdf>)
- “Dual Citizens in America: An Issue of Vast Proportions and Broad Significance” Washington, D.C.: Center for Immigration Studies, 2000. (<http://www.cis.org/articles/2000/back700.pdf>)

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## Summary

In recent years, a concerted effort has been gathering force to allow new immigrants to the United States to vote without becoming citizens. It is being mounted by an alliance of liberal (or progressive, if you prefer) academics and law professors, local and state political leaders most often associated with the Democratic Party or other progressive parties like the Greens, and community and immigration activists. They are working in tandem to decouple the legal standing to vote from American citizenship.

As a result of these efforts, there are several municipalities in the United States that currently allow non-citizens to vote in local elections. Moreover, legislation to allow non-citizens to vote has been introduced in a number of states and localities including Washington, D.C., San Francisco, and New York City.

Advocates of non-citizen voting advance many arguments for their initiatives. They point out that non-citizen voting was, at one time, allowed in a number of early American states and territories and that it is currently allowed in other Western democracies. They argue that it is only fair to allow non-citizens to vote since they shoulder many of the responsibilities of citizens, like paying taxes, but are not formally represented. And, they say, allowing non-citizens to vote will have civic value as a training ground for the responsibilities of citizenship.

The list of possible virtues put forward by advocates for allowing non-citizens to vote is a long one. However, to date, there has been no real assessment of these claims and no analysis of the possible impact of implementing these proposals on the immigration process itself, or more generally on American national politics and political culture.

That is the purpose of this analysis.



## Introduction

Voting is an iconic embodiment in American civic life. Other than standing for public office, American citizens have no stronger collective civic obligations than those that flow from their ability and responsibility to help shape community policy. The vote is a primary vehicle for exercising those civic responsibilities. That is why the extension of the vote to all the country's citizens has historically been a critical measure of America's progress toward living up to its democratic ideals.

Voting is also an essential marker of full community membership in a democratic republic. It is the ultimate reflection of the mutual consent between prospective Americans and the American national community by which immigrants become full, legal, and recognized members. In choosing to enter into the naturalization process, immigrants demonstrate an interest in becoming full members of the American national community as well as a willingness to spend the time and effort necessary to do so. In accepting an immigrant as a full citizen at the end of that process, the community affirms that full membership. In linking the vote to full membership, the community further affirms that new members have shown the requisite attachment and commitment to be trusted with helping to make community decisions.

The Constitution, the Congress, and the courts have enshrined voting as a central, core, and indispensable element of American citizenship and democracy. As early as 1866, the Supreme Court had ruled in *Yick Wo v. Hopkins* that the political franchise of voting was "a fundamental political right, because preservative of all rights."<sup>1</sup> Voting is at the heart of many discussions of civic responsibility, laments regarding its decline, and the many proposals to increase voting participation.

Every state in the United States legally bars non-citizens from voting in national or state elections.<sup>2</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, signed into law by President Clinton, made it a crime for any non-citizen to vote in a federal election.<sup>3</sup> Indeed, the association of voting with citizenship is such settled doctrine in American political culture that it is part of the only major nationwide civics test given to American students.

The National Assessment of Educational Progress (NAEP) Civics Test, last given in 1998, was given again during the 2006 school year to 25,000 students in grades 4, 8, and 12. It used a test question for fourth graders that required these students to "identify that only citizens can vote in the United States" as part of what it defined as "Basic" knowledge. Seventy-nine percent of the fourth

graders who were judged to be operating at a "Basic" level of civic knowledge got that question right; 94 percent of students operating at the "Proficient" level answered that question correctly.<sup>4</sup>

The reader is therefore entitled to wonder why proposals for allowing non-citizens to vote merit much attention. Even advocates of non-citizen voting recognize that, "Many, if not most, American citizens believe that non-citizens do not have a constitutional right to vote. The widespread assumption is that voting is the quintessential right of citizenship and that it belongs only to citizens."<sup>5</sup> Another supporter admits such proposals "might *understandably* be met with surprise or quickly dismissed as absurd."<sup>6</sup> And one of its staunchest advocates says such a proposal "is an idea that is wholly new and *quite radical to many Americans*," and further that, "for a majority of Americans, the idea of non-citizens voting provokes a sense of outrage — an instinctive reaction that this is 'just plain wrong.'"<sup>7</sup>

So, given that allowing non-citizens to vote runs against the grain of American thinking and practice, why is an analysis of such proposals warranted? The answer is that in recent years a concerted effort to gain acceptance and implement the idea that the United States should allow new immigrants to vote without becoming citizens has been gathering force and adherents. That effort has been spearheaded by an alliance that brings together liberal (or progressive) academics and law professors, local and state political leaders most often associated with the Democratic or other progressive parties, and community and immigration activists. They are all working in tandem to decouple having the legal standing to vote from American citizenship.<sup>8</sup> As a *New York Times* reporter notes, "This debate is gaining energy."<sup>9</sup>

It is tempting to dismiss the call for non-citizen voting as an idea that is not likely to get very far. After all, when such a proposal was introduced in the New York City Council, even the generally liberal editorial page of *The New York Times* endorsed Mayor Bloomberg's view that voting "is 'the essence of citizenship'" and that "Extending the most important benefits of citizenship to those who still hold their first allegiance to another country seems counterproductive."<sup>10</sup>

That however, would be a mistake. The movement has had some local success. As a result of these efforts, there are several municipalities in the United States that currently allow non-citizens to vote in local elections and legislation to allow non-citizens to vote has been introduced in a number of jurisdictions, including

Washington, D.C., San Francisco, New York City, and several states, such as Minnesota and Texas. A number of efforts in other cities and states are underway.

Those in favor of allowing non-citizens to vote advance many arguments for their initiatives. They point out that non-citizen voting was, at one time, allowed in a number early American states and territories and that it

is also allowed in other Western democracies. They argue that it is only fair to allow non-citizens to vote since they shoulder many of the responsibilities of citizens, like paying taxes, but are not represented. And, they say, such initiatives have civic value as a training ground for the responsibilities of citizenship. In this paper, we examine a number of those claims.

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# Allowing Non-Citizen Voting: Who, When, Where, Under What Circumstances?

The proposals for non-citizen voting that have been put forward vary widely with regard to four key issues: (1) Who would be able to vote? (2) At what level of the political system would non-citizens be able to vote? (3) How long after arriving would non-citizens be given the vote? (4) What conditions, if any, would be attached to giving non-citizens the right to vote?

Each of these four key issues carries with it larger implications for the potential impact of non-citizen voting on the immigration process itself and more generally on American political culture. For example, proposals to allow both legal and illegal immigrants to vote, or the failure to clearly distinguish between them in some proposals, blur the line between citizens and non-citizens and also between legal and illegal immigrants. Also, allowing illegal immigrants to vote would considerably increase the pool of potential non-citizen voters, and that too has significant implications.

The proposals for non-citizen voting also vary on residency rules — stretching from a low of 30 days to a high of three years. Each time period carries with it implications for the number of potential non-citizen voters as well as their civic preparation for exercising that privilege. Non-citizen voting proposals differ as well on the level of government at which such persons would be allowed to vote — local, state, or federal.

These and other elements present in the varied proposals for non-citizen voting raise two basic questions. First, how prepared are new immigrants to exercise informed judgment about the policy issues that voters face in most elections? Second, what are the implications for immigrants, citizens, and American political culture of allowing non-citizens to vote given the specifics of such proposals?

## Allowing Non-Citizen Voting: Local, State, or Federal?

Some advocates focus on gaining non-citizens the vote in local school board elections.<sup>11</sup> They see voting rights at the local level, in less threatening venues like school board elections, as a bridge to a wider expansion of voting rights for non-citizens.<sup>12</sup> Others focus on gaining voting rights for non-citizens at the municipal governmental level,<sup>13</sup> even though, as one advocate has put it, “it’s admittedly hard to think of any principled way to justify the inclusion of aliens in local elections, but exclude them from state elections.”<sup>14</sup> Further complications are introduced in some non-citizen voting legislative proposals, like that introduced in New York City, that limit voting to the municipal level, but also would allow such voters to register in party primary elections and thus help to select candidates for statewide and even federal leadership positions.<sup>15</sup>

Some advocates specifically focus on allowing non-citizens to have voting rights at the state as well as the local level.<sup>16</sup> They advocate this despite (or perhaps because of) the fact that the U.S. Constitution categorically makes all persons enfranchised in state legislative elections into federal electors and, according to one advocate for allowing non-citizens to vote, “*alien participation in national elections presents a far more troubling proposition.*”<sup>17</sup> So winning rights for non-citizen voting at the state level would have federal voting implications.

Another approach was taken by a measure introduced into both houses of the New York State Assembly on February 5, 2007, that drew no specific limitations on the right to vote, and as a result in effect included federal, state, and local elections in its purview.<sup>18</sup> Still others want the Supreme Court to declare non-citizen voting a federal right, thereby nullifying the overwhelming number of state constitutions that specifically say that voting is a right reserved for citizens.<sup>19</sup> And some see no reason why non-citizens should not be allowed to run for and serve in public office, as well as vote.<sup>20</sup>

### Which Non-citizens Would Be Allowed to Vote?

Advocates also differ on whom they would include as non-citizen voters. Some confine themselves to legal resident aliens.<sup>21</sup> Others simply refer to “all inhabitants of a governed community,” meaning those physically present in a jurisdiction.<sup>22</sup> That could include those in the country illegally or those on student or work visas. Still others specifically include illegal immigrants.<sup>23</sup>

A wholly separate issue arises with other classes of immigrants who are in the country legally, but are not eligible for permanent residency and thus possible citizenship given their special status. The United States has enacted Temporary Protected Status (TPS), which allows members of certain countries to live and work in the United States because of political conflict or natural disasters in their home countries.<sup>24</sup> The list of non-immigrant legal aliens that have benefited from these provisions is a long one.<sup>25</sup> Would temporary protected status immigrants be allowed to vote while they are here?

U.S. immigration law contains a number of other legal non-immigrant statuses that are also not those of permanent residents who are eligible for citizenship. For example, in 2004 the United States admitted 1.5 million foreign citizens and their families through temporary work visas. In 2005 that number was 1.57 million and in 2006 it was 1.7 million.<sup>26</sup> Would these temporary workers and their families be eligible to vote? Some advocates want to do exactly that. Jennifer Gordon notes that many immigrants, including hundreds of thousands here with temporary work permits, do not have green cards; she would let them vote.<sup>27</sup>

Then there are foreign students. In 2004, the United States admitted over a million, along with their families, to study here. In 2005, that number was over a million again and in 2006, the number was 1.1 million.<sup>28</sup> Will these temporary students and their families also be eligible to vote?

Some want to include them too. For example, in the debates that preceded the adoption of non-citizen voting in Takoma Park, Md., the question arose of whether the Charter should specify that only lawfully present residents should be allowed to vote. Mr. Raskin (who helped spearhead the drive) said, “this would be a bad idea as it would deter from the ballot box those you would want to attract. [He said, as an example, persons] here on a student visa who later obtained work visas and arrived several weeks later were technically not present, and it would not be in the city’s best interest to keep track of anyone’s immigration status.”<sup>29</sup>

### How Soon After Arrival?

A third issue in considering such proposals is how soon after arrival would immigrants, whether legal or illegal, be given the right to vote. Proposals vary in how much time living in the country would be required of new immigrants in order to become accustomed to their new homes and develop the kind of knowledge that comes with actual experience.

The non-citizen voting proposal introduced into the New York State Assembly set the voting residency requirement at 30 days.<sup>30</sup> The same 30-day residency period is contained in a Minnesota bill introduced for the 2007-2008 legislative session,<sup>31</sup> and in a bill introduced in the Texas legislature in 1994.<sup>32</sup> Tiao says that non-citizens should be given the vote after being in the United States three months, but argues that two of those three months are “probably unnecessary.”<sup>33</sup> If the New York State or Tiao proposals were followed, immigrants, whether legal or not,<sup>34</sup> would be able to vote almost immediately upon arrival. One consequence of these proposals is that persons with no experience with, or first-hand knowledge of the county or the issues it faces on the local, state, or national level — or in most cases much ability to understand the language in which these issues are discussed, would be granted the vote.

Others are willing to extend that waiting period, but just by a bit. Bedolla, another advocate for allowing non-citizens to vote, argues that “Politically, it would be easier to make the argument for inclusion if an individual had to be living in, and therefore contributing to, their particular community for *six months* or more. But, from a normative standpoint, residency alone should be sufficient to justify political inclusion, and it would be difficult from a legal standpoint to justify unequal treatment in terms of residency once the right to vote has been granted.”<sup>35</sup> So, her position is that for purposes of selling the non-citizen voting argument, advocates should put forward a period of six months, but her real position is that there should be no residency requirements. Six months is also the residency requirement built into a proposal introduced into the New York City Council in 2006.<sup>36</sup> It should be noted that many legislative proposals would not require non-citizens to provide proof of their legal status or residency, but simply to affirm it in registration and voting materials to be sent by mail.<sup>37</sup>

Tiao notes that courts have struck down residency requirements longer than 30 days for citizens who have moved from one locality to another.<sup>38</sup> He questions whether the courts would similarly strike down any residency requirements for non-citizen voters as well, once the right had been granted. The relevant question is whether

the movement of a *citizen* from one state to another is comparable to the movement of an immigrant from his home country to a locality in the United States. Obviously, a citizen has, by definition, either been born and grown up in the United States or successfully completed all the steps involved in becoming a naturalized citizen. A recently arrived immigrant has not. Non-citizen voting advocates like Tiao tout the Supreme Court's decision in *Dunn v. Blumstein* that sets narrow limits on the state's residency requirements. However, that decision's dictum that "a requirement of bona fide residency may be necessary to preserve the political community, and therefore could withstand close constitutional scrutiny" is much less rarely quoted.<sup>39</sup>

Some advocacy groups are willing to set the residency bar a bit higher, but at a price. Global Exchange

says that immigrants should have the right to vote after one year.<sup>40</sup> They also want to reduce the residency requirement for citizenship from five years to one year. Some have suggested that new immigrants be allowed to vote almost immediately upon arrival for a period for five years, which could be extended so long as an application for naturalization is pending.<sup>41</sup> They further suggest that immigrants who vote in a number of primary and general elections be exempt from taking the naturalization test.<sup>42</sup>

And finally, a proposal for non-citizen voting introduced in Washington, D.C., by then Council Member Frank Smith, Jr. (D-Ward 1) contained a provision that only legal residents who have applied for citizenship would be able to vote.<sup>43</sup> This provision, which mirrors the "alien declarant" provisions adopted in some states and Western territories early in American history, will be discussed further below.

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## Removing Most Voting Requirements: A Basic and Major Defect

All of the proposals to offer non-citizen voting — whether for local, state, or national elections, for legal residents or all residents, immediately or only after three months or six months or longer — suffer from a one major defect: *None of the proposals for non-citizen voting requires anything in the way of adequate preparation for exercising this responsibility.*

If advocates' proposals for non-citizen voting are implemented, new non-citizen voters would not have to demonstrate "an understanding of the English language including the ability to read, write, and speak words in ordinary usage in the English language."<sup>44</sup> They will not have to demonstrate "a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States." They will not have to demonstrate that they are of "good moral character" by not, for example, having been convicted of a felony. They will not have to take an oath of allegiance to the United States and renounce allegiance to any foreign country. And they will not have to have been in residence in the United States for five years and for a minimum of 30 consecutive months before naturalization.

These requirements are, of course, those that accompany the naturalization process by which legal immigrants become citizens. Abandoning all of them in order

to give non-citizens the right to vote puts advocates in the paradoxical position of requiring far less for non-citizen than for citizen voting. It is additionally odd, because all of the citizenship requirements — knowing English, knowing about American history and government, having "good moral character," having spent an ample amount of time in the United States in order to better know and understand it, and being willing to commit oneself publicly to your new home while symbolically placing your allegiances to your old country in a position of lesser prominence — would seem to be basic, appropriate, and legitimate requests to make of those who say they want to share and shape the American community's destiny through the vote.

Technically, even legal immigrants are nationals of their country of origin until they formally go through the naturalization process. Psychologically, it is unrealistic to expect that new immigrants will arrive with strong feelings of emotional attachment to the United States. And, factually, it is simply incorrect to assume that an immigrant who has just arrived has anything more than the most rudimentary knowledge and experience of cultural and civic life here. This is true of those who come here with the intention of becoming citizens and spending their lives here. It is even truer of those whose intentions are strictly instrumental.

## Four Steps to a More Useful Discussion

Like other immigration issues, debates about non-citizen voting attract their share of hyperbole, heated rhetoric, and caricature. Therefore, it may be helpful to clear away some of the conceptual and rhetorical underbrush so that the substantive, theoretical, and practical issues can be considered on their own merits. Toward that purpose, what follows are four areas of common conceptual errors and rhetorical excess that can and should be avoided.

### Abstract Political Theories Can Inform, but Cannot Solve Basic Issues of Community Membership

Consideration of non-citizen voting raises basic questions: What is the basis and nature of membership in the American national community? What responsibilities are parts of community membership and on what basis are these responsibilities legitimized? On what basis it is possible to defend the elements that go into the naturalization requirements that are in turn settled doctrine regarding their association with the power to vote and help shape community policy?

Advocates of non-citizen voting depend almost entirely on their reading of political theories to legitimize the severing of voting from citizenship. Arguments about fairness, stakeholders having a voice, and legitimacy figure prominently in their writings. Yet there are a number of other equally valid bases for considering whether non-citizen voting meets legitimate political, psychological, and practical thresholds. Moreover, the range of questions raised by allowing non-citizen voting cannot be adequately answered within the narrow confines of the political theories that advocates select.

This is true for several reasons. First, there is no one political theory to which either advocates or opponents can appeal to settle the many issues that arise from these proposals. Rather, there are a variety of political theories, each with different views on community membership, the role of naturalization, and the nature of citizenship.

Consider the understanding of citizenship. As Neuman details at some length, the theoretical models of unilateral and bilateral liberalism, Republicanism, and Communitarism each come “with a corresponding discourse for justifying naturalization and citizenship policies.”<sup>45</sup> Therefore it is a mistake to argue that “political theory” legitimates non-citizen voting. Only certain theories can be read that way, and even they disagree with each other with respect to important details.

Second, different policy positions can, and often are, derived from the same theory. For example the political theory concept of natural rights can be and has been used to argue both that every person, including non-citizens, has the right to vote, but also that a community, once formed, has the right to define its standards of membership, including the right to reserve voting only for citizens.<sup>46</sup> So, putting forward a political theory as a justification of a particular policy position, without noting that the same theory or alternative theories could be used to develop a different or contrary position, is misleading.

Third, and most importantly, the fact that political theory X might support policy position Y in no way automatically privileges that statement in the discussion that should involve a number of other factors. Elements or interpretations of political theory that support the preferences of non-citizen voting advocates must be considered and weighed in the context of other political, psychological, cultural, and policy factors which may, and often do, carry considerably more weight.

Consider some of the political and community psychology issues that would arise if non-citizen voting were legalized. What would it mean to the legitimacy of elections and their results if a large infusion of non-citizens were to decide or even merely shape the outcome of an election or an issue? Would that result be accorded the same level of legitimacy that accrues to even controversial decisions? Imagine as a thought experiment the extra strains on election legitimacy if non-citizen voters had been instrumental in deciding the 2000 presidential election in Florida. What if non-citizen voters had provided the margin of victory for David Dinkins over Rudy Giuliani in the 1993 Mayor’s race rematch that Giuliani won? The former’s supporters would have exulted, the latter’s supporters would have seethed, and the legitimacy of the results would have surely been contested. Now imagine this on a nationwide scale.

### Advantages Claimed, Little Evidence for Them

Non-citizen voting advocates have realized that a campaign waged entirely on issues of fairness will not be successful. Therefore, in order to be successful in their campaign, they have been advised “to focus on emphasizing the benefits to the nation that would result from extending the franchise.”<sup>47</sup> The list of benefits they propose is a long one.

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In just one article, the author claimed 30 separate benefits that would follow if non-citizens were allowed to vote.<sup>48</sup> These included the following: Non-citizen voting (1) “*may* offer the best hope we have to overcome those circumstances [e.g., the comparatively lower socio-economic status of newcomers and the lack of official language mastery] and avoid newcomers’ slide into political cynicism;” (2) “*may* receive consideration to the extent that citizens who have the right to participate take it upon themselves to press for those interests;” (3) [if they don’t get the vote] “the lesson they *may* internalize is that political decisions should be left to others; [that] one’s own participation is irrelevant;” (4) “if immigrants are originally from countries in which they were allowed to vote and participate [if they can’t get the vote], then the many years they wait to acquire citizenship and the right to vote in their adopted homes *may* lead to a decline in their existing participatory capacities;” (5) “where non-citizen voting is prohibited, newcomers *may* learn that the interests of some residents, and perhaps some citizens, count for less than those of more established, middle-class, and likely white citizens;” (6) “That lesson, in particular, can have explosive consequences... . Where political grievances lack legitimate channels of expression, non-citizen residents have turned, and *may* continue to turn, to illegitimate and often violent means to ensure that those grievances are heard;”<sup>49</sup> (7) “*If* such radical tactics succeed, non-citizen residents *may* internalize the lesson that radical action is more effective than democratic participation;” (8) [or] “If such tactics fail, non-citizen residents *may* become increasingly frustrated and resort to even more radical and more destabilizing political action;” (9) “where non-citizen resident voting is permitted, non-citizens *may* find that their participation makes a difference or, at the very least, that their concerns are heard;” (10) “When non-citizens have an official voice, politicians and decision-makers will have to take their interests into account in making political decisions. In that case, the lessons learned *may* be that all interests are likely to receive a decent hearing when those who hold those interests participate in democratic political life and in some cases that democratic participation can be effective;” (11) “it seems not unreasonable to expect that democratic integration *may* be facilitated through democratic participation;” (12) “the lessons that the alternative arrangement seems to encourage *may* be more damaging to democratic integration than the few problems that could emerge when non-citizens are permitted to vote;” (13) “Non-citizen voting *may* act as a catalyst or focal point for the more robust kinds of political participation that have observable effects on deliberative capacities and democratic commitments;” (14) “To the extent that they

wish their participation to be effective, they will need to learn more about the democratic political system and how to operate within its norms and institutions;” (15) “With a formal political channel through which immigrants’ concerns might be expressed, potential leaders have an incentive to hone their political skills and participate in the democratic political sphere;” (16) “non-citizen voting arrangements *may* provide incentives for political leaders to emerge from immigrant communities;” (17) “non-citizen voting arrangements offer potential leaders an incentive to better organize and mobilize immigrant groups to make political demands through democratic procedures;”<sup>50</sup> “In that case, non-citizen residents who *may* not otherwise have had an opportunity to participate in the democratic process will have that opportunity;” (18) “non-citizen voting *may* act as a catalyst for non-citizen participation in various associations and deliberative forums in civil society which can have positive integrative and educative results;” (19) “non-citizens *may* be encouraged to orient their associative and political activities toward engagement with the democratic state through the channels it offers;” (20) “Offering non-citizens a legitimate route through which they can advocate for their interests increases the likelihood that those non-citizens will support the democratic system thereby facilitating their integration into the norms and practices of multicultural democracies;” (21) “observers have found that deliberative participation can have an educative effect on participants ... [therefore] *If* non-citizen voting arrangements can encourage greater associative and deliberative participation, and associative and deliberative activity *can be* linked to improvements in deliberative capacities and democratic commitments, then we have more reason to adopt non-citizen voting;” (22) “Granting the right to vote in a political community *might* be seen as an act of recognition;” (23) “and *might* contribute to the development of mutual respect;” (24) “We can avoid the emergence of an exclusionary us-vs.-them discourse;” (25) “or, when such a discourse already exists, we take a decisive step toward eliminating that discourse;” (26) “non-citizen voting arrangements *might* serve to integrate and educate non-citizen residents in multicultural democracies;” (27) “Granting non-citizen residents the right to vote in elections *may* be the best means available to begin a process of overcoming participation barriers and improving the lives of immigrants;” (28) granting non-citizen residents the right to vote *may* put greater pressure on governments to provide facilities for language training;” (29) and “such arrangements would satisfy a requirement of democratic legitimacy.”

Munro’s list of virtues even includes (30) rescuing the benefits of non-citizen voting from the alienation and despair it might produce! He writes:

If non-citizens do win the right to vote, they might expect those changes to materialize in short order. However, if only a small proportion of non-citizen residents who are eligible to vote are actually voting, then policy and decision-makers have weaker incentives to be responsive to their interests and deliver those gains. Moreover, those who do participate may discover that in a distorted political environment where money and power influence outcomes as much, if not more, than the participation of politically equal voters, their voices are drowned out. In that case, what was expected to be a cure-all, may in fact turn out to be a source of bitterness, frustration, and increased alienation... *Despite the high expectations that non-citizen voting might produce and despite the distorting influence of money and power in existing multicultural democracies, democratic participation may be the best means we have to combat these pathologies.*<sup>51</sup>

Munro's list of 30 items is extensive, but not unrepresentative of the virtues that are claimed to be the result of allowing non-citizens to vote. Other claimed additional benefits include: (31) "forging progressive political alliances;"<sup>52</sup> (32) allowing non-citizen permanent residents to vote is one way of educating future citizens in civic responsibilities and preparing them for citizenship;<sup>53</sup> (33) allowing non-citizens to vote could benefit "communities of color, the poor and working class, and urban residents" by increasing civil and political rights for all;<sup>54</sup> (34) since "there will always remain the need to counter anti-immigrant sentiment, non-citizen suffrage is the appropriate means to do so;"<sup>55</sup> (35) This participation will foster and facilitate intent to naturalize because they will have an immediate political voice in the communities in which they contribute;<sup>56</sup> (36) it may further a successful democracy;<sup>57</sup> and lastly (37) it "will promote economic prosperity."<sup>58</sup>

I have highlighted the words "if," "could," and "may" in the above list of claims to emphasize a critical point. Every single one of the advantages claimed for non-citizen voting is a claim for which no evidence, other than assertion, is presented. Munro realizes this and says, "To be sure, these hypotheses require empirical verification," but then goes on to say, "I offer no attempt to address the empirical deficiency in this paper."<sup>59</sup> He is not alone.

No advocate of non-citizen voting brings forth any evidence to support the claims with which they attempt to legitimize their preferred policy. Rather, as noted above, advocates argue from their own reading of

political theory and put this forward as "philosophical evidence" to support their own positions. Advocates of non-citizen voting make their arguments with the rhetoric of rights, fairness, democracy, legitimacy, and inventive rationales like "the politics of presence."<sup>60</sup> These arguments turn on advocates' expansive definition of such terms and are, of course, circular. They entail a narrow reading of some political philosophy theories while not engaging other theories that would run counter to their claims, and then presenting their reading as if it proved their point. However advocates' own definitions of these terms cannot constitute evidence any more than the fact that one believes something to be true makes it so. In taking this path advocates ignore the caution advanced by one of their own that, "abstract political theories do not resolve concrete political questions."<sup>61</sup>

### Why Evidence Is Necessary

Nor do advocates' claims necessarily hold up even at a conceptual or theoretical level. Consider the claim that "formal political participation by non-citizen residents might also encourage the development of the deliberative capacities and democratic commitments of those potential citizens."<sup>62</sup> That sounds like a positive thing, but what are "deliberative capacities?" According to Munro, "A deliberative citizen is a citizen who is prepared to and capable of reflecting on her own and others' interests, motives, beliefs, and claims in an impartial fashion, prepared to offer reasons that others could accept to justify their claims, and prepared to revise her preferences, interests, and beliefs when required."<sup>63</sup> This sounds like political theorists' ideal version of the democratic citizen put forward many years ago by Dennis Thompson<sup>64</sup> or perhaps even earlier by Plato. At any rate, as is so often the case with the rhetorical flights of such arguments, no evidence whatsoever is presented to support that contention that non-citizen voting leads to that enlightened state.

So, Munro is correct when he points out, "The question, then, is how the enfranchisement of non-citizen residents contributes, *if it does*, to the development of deliberative capacities and democratic commitments among immigrants and potential citizens. Unfortunately, there is very little empirical work of any significance that has addressed this question despite the fact that non-citizen voting has been permitted in some jurisdictions for two or more decades."<sup>65</sup>

While two decades would seem like sufficient time to gather data, it has actually been a bit longer in several jurisdictions.<sup>66</sup> Switzerland allowed foreigners who had been resident for five years in one of its cantons (Neuchatel) to vote in 1849; in 1979 another canton

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(Jura) followed suit. Israel has allowed new residents to vote in local elections as of 1950, but only if they were Jewish. And Sweden and New Zealand did so in 1975. I mention these countries because they are Western, data-rich counties that have had enough historical experience to test some of the claims made by advocates. But they have chosen not to do so.

Moreover, advocates don't have to travel abroad to get data to support their claims. Takoma Park, Md., has allowed non-citizen voting since 1991, well over a decade. That city could easily provide data relevant to assessing the claims of advocates and some participation evidence drawn from that locality is presented below. However, advocates have neither undertaken the research necessary to support any of their claims nor adequately addressed the research that has cast doubt on them.

Consider Munro's claim above that allowing non-citizens to vote will lead them to become citizens. This is a common claim among non-citizen voting advocates. Henry Quintero, President of the Montgomery County Hispanic Alliance, said in support of the initiative to allow non-citizens to vote in Takoma Park, "If people can vote on local issues, we think that will encourage them" to become citizens.<sup>67</sup>

However, there is no reason that we must depend on what Mr. Quintero thinks. There is now data stretching back 17 years in Takoma Park, much more than the five years of residency necessary to stand for naturalization. Have non-citizens there become naturalized Americans at a faster pace than in localities that don't allow non-citizens to vote? Have a larger number become naturalized citizens over time than is the case in localities that do not allow non-citizen voting? We don't know because advocates have never gone beyond making claims.

Advocates have the affirmative obligation to provide evidence for their claims, given that they wish to displace settled cultural, political, and legal practice linking voting and citizenship. However, they have not chosen to make use of the decades of experience both in the United States and abroad that would provide evidence for their claims.

Sometimes in lieu of relevant evidence, advocates cite numbers whose relation to the issue at hand is indirect, at best. So, many arguments for non-citizen voting turn on the large numbers of individuals in a locality who cannot vote because they are not citizens. The working assumption seems to be that large numbers of persons who cannot vote represent a substantial civic problem that must be remedied by allowing all who are "in residence" to vote, regardless of their immigration or naturalization status.

The problem with this argument is two-fold. First, non-citizenship, and thus the inability to vote, is a temporary, wholly remediable condition for legal immigrants. Secondly, the numbers that advocates use to further their argument that higher numbers of non-citizens equal dire circumstances that must be remedied do not distinguish between legal and illegal immigrants or, importantly, those who have started the process toward citizenship and those that haven't chosen to do so.

Whatever these numbers are, they are certainly relevant to the discussion, and doubtless would reduce the overall numbers that advocates use to further their arguments. As Harper-Ho, an advocate of non-citizen voting, notes, "information on immigrant trends in the relevant region is necessary, but not in itself sufficient; a region may attract legal and illegal immigrants of every visa status." Therefore, merely citing the number of foreign-born residents in an area as advocates routinely do<sup>68</sup> is not in itself conclusive.<sup>69</sup>

It is certainly fair to say, as does one political theorist, that "Ultimately, final judgment on the practical effects of non-citizen voting arrangements will have to wait until there is more empirical data and case study material to evaluate — material which is in terribly short supply at present."<sup>70</sup> It would seem fair and appropriate, given the enormous consequences of decoupling voting from citizenship to American political culture and immigration policy for advocates to undertake and provide evidence for their claims.

### Taking Critics' Concerns Seriously

If abstract arguments between opposing theories and views of large meaning-laden concepts like democracy won't do, what will? One valuable approach would be for non-citizen voting advocates to fairly consider the arguments made against their proposals. Advocates pay little attention to the many potentially negative consequences of their proposals.<sup>71</sup> Their usual approach is to explicate the advantages of non-citizen voting, briefly raising and then quickly dismissing potential objections.

Under the heading of "Questionable Loyalty," Harper-Ho mentions and dismisses several concerns that she believes should not stand in the way of allowing non-citizens to vote in the United States. However, some of the issues she raises are not applicable to objections raised about non-citizen voting in the United States. She writes that "One argument [against non-citizen voting] is that since aliens stay in the United States at the discretion of officials, the government would in effect be able to manipulate the electorate by dictating how they should vote."<sup>72</sup> No authority or person writing about this issue

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in the United States is cited, apparently for good reason; no one in the United States is on record as raising that concern. And it turns out that the citation the author provides as evidence is in a paper written about the status and vulnerabilities of aliens in Germany,<sup>73</sup> where foreign workers hold an entirely different and more vulnerable status vis-a-vis German officials than do legal immigrants with permanent resident cards in the United States. Small wonder that Harper-Ho is able to summarily dismiss this objection by writing,

“It is unlikely that the INS would have a vested interest in attempting to swing an election or the means of doing so if it so desired. Noncitizens, like citizens, are not required to vote and so could only be compelled to vote a certain way if they were illegally forced to vote in the first place. Second, even if the INS, or a political candidate working through the INS, could force a noncitizen to vote and to vote in a certain way, it is highly unlikely that this coercion could effectively compel the number of votes needed to swing an election while nonetheless remaining undetected.”<sup>74</sup>

It is hard to discern just how this point advances the cause of non-citizen voting. Harper-Ho is saying that a concern with immigrant vulnerability and manipulation raised in Germany because of the tenuous status of immigrant workers in Germany is not relevant to the United States. Given that opponents of non-citizen voting in the United States have never brought up this issue because it doesn't apply, it is unclear why this author raises the issue in the first place.

An objection that is more relevant to concerns with non-citizen voting in the United States is raised by Harper-Ho. She notes (again quoting Neuman's article on Germany's debates) that “some have argued that even if aliens could vote only at the local level, political parties would have an incentive to favor policies at the national level that would win them alien votes at the local level.”<sup>75</sup> She dismisses this concern by noting, “This argument presumes that all aliens will vote the same way; however, given the diversity of the noncitizen communities in most localities, even if aliens were pressured by political parties or their home governments, it is unlikely that all could be pressured in the same direction.”<sup>76</sup> Here, the author seems to confuse her argument that it would be immigrants dependent upon government officials to remain in the country who were pressured to vote in a particular way with the concern that national parties would go out of their way to be responsive to non-citizen voters at the

local level. At any rate, in support of her view that not “all aliens will vote the same,” she provides a newspaper account discussing “three segments of the Hispanic voting influence in Miami, Florida.”

In reality, this is another pseudo-argument. The concern that arises in this area is not that “all non-citizen voters will vote the same.” It is rather that allowing non-citizens to vote will provide a pool of voters that do precisely what advocates hope they will. As Hayduk argues, in favor of non-citizen voting, “Highlighting the numerous cases where an enlarged electorate would have decided the outcome of a close election of import to such communities would drive home the potential benefits of noncitizen voting to *forge progressive political majorities.*”<sup>77</sup> Why the American political community should support a massive migration of the political center leftward because of a vast influx of progressive voters who lack any of the traditional prerequisites for exercising these responsibilities is unclear.

Harper-Ho's argument falters in another way as well. It is true that it is unlikely that every ethnic, racial, or national group of immigrants will vote in lockstep on every issue. However that does not mean that on some critical issues they will not exert a uniform effect. In this respect consider the group, Hispanics, that Harper-Ho makes the center of her contention that there is nothing to fear along these lines because three Hispanic communities in Florida are different in some important ways, mostly in socio-economic status and markers of assimilation. If she had examined any of a number of surveys of Hispanic persons in the United States, instead of relying on one newspaper article to support her point, she would have found something quite different. There are important areas of American national policy about which Hispanics apparently feel strongly, that are clear from a major 2007 Pew Hispanic Center survey of Latinos.<sup>78</sup>

The Pew report does not present detailed information about the immigration status of its sample, distinguishing only between native-born (who are citizens) and foreign-born who may be legal, naturalized citizens, or neither. It is the “foreign-born” group that most closely approximates the group that would benefit from being able to vote as non-citizens. Of this group, 72 percent believe that the “failure of Congress to enact an immigration reform bill has made life more difficult for Hispanics/Latinos living in this country;”<sup>79</sup> 83 percent believe that “local police should not have anything to do with immigration enforcement;”<sup>80</sup> 66 percent disapprove of “states checking for immigration status before issuing driver's licenses;”<sup>81</sup> 84 percent disapprove of “workplace raids to discourage employers from hiring undocumented and illegal immigrants;”<sup>82</sup> 57 percent of those respondents

think that “the effect of the growing number of undocumented or illegal immigrants on Hispanics/Latinos living in the United States” is positive.<sup>83</sup>

Along similar lines, a 2006 report by Pew<sup>84</sup> found that 51 percent of the foreign-born said that “the United States should allow more Latin Americans to come and work in this country legally;”<sup>85</sup> 78percent said that undocumented or illegal immigrants “help the economy by proving low-cost labor;”<sup>86</sup> 61 percent said “All undocumented immigrants should be allowed to stay in the United States permanently and have a chance to become citizens.”<sup>87</sup> As to enforcement, 63 percent opposed the use of National Guard troops at the border, 60 percent opposed increasing the number of Border Patrol agents, 73 percent opposed the building of more fences, and 50 percent opposed the creation of data bases to facilitate worker verification.<sup>88</sup>

These data strongly suggest that on a range of issues concerned with immigration foreign-born Hispanics have a distinctive and structurally coherent point of view. The nature and direction of these views are consistent with those Hispanics born in the United States, and differ substantially from non-Hispanic Americans. For example, the 2007 Pew survey compared a sample of non-Hispanic Americans with a sample for American and foreign-born Hispanics. To take just one of a number of similar examples, 85 percent of the non-Hispanic sample favored verifying immigration status before issuing a driver’s license, whereas 66 percent of the foreign-born Hispanic sample disapproved.<sup>89</sup> So, the counterargument that “all aliens will vote alike” is misleading. Of course there is no uniform alien view on policy toward a nuclear Iran, but that doesn’t mean, as the data show, that aliens don’t have common views on a host of other issue clusters.

One final argument that critics note and dismiss concerns the view that “noncitizens are not knowledgeable enough to vote intelligently.”<sup>90</sup> This is a serious concern, although I prefer to phrase the issue in terms of adequate preparation rather than voting intelligently. However phrased, though, the issue is fairly basic. It consists of being familiar with American culture, political history and institutions, particular issues, and being conversant enough with the language to follow them.

And how does this advocate respond to these basic issues? She avoids them entirely, choosing instead to equate denial of the vote to non-citizens with the denial of voting rights to women and blacks. She writes, “An argument sometimes levied against noncitizen voting — that they are not capable of voting intelligently — was also commonly advanced to attack voting rights for women and Blacks. In striking down durational residency requirements, the Supreme Court rejected this argument, not-

ing that even long-term residents may not be politically knowledgeable. The Voting Rights Act Amendments have also eliminated literacy tests and other ‘knowledge-based’ screening measures that have historically worked against minorities. Thus, it is unlikely a similar contention against noncitizens would survive judicial review.”<sup>91</sup>

This settles the argument in some circles, but a proposal that has the confidence of its convictions and the substantive integrity to allow itself to be considered on its merits would give a fair hearing to opposing claims. Why is it that new immigrants do not need to know anything about American culture, history, political institutions, and political issues? Why don’t new immigrants need to be somewhat conversant with the English language to follow the political debates? If non-citizen voting advocates have substantive answers to these question they should put them forward instead of drawing inappropriate and tendentious historical parallels.

### Toning Down Political Rhetoric

Heated rhetoric and barely constrained hyperbole accompany much of the advocacy around this issue. One advocate writes that allowing non-citizens to vote is “*required* by principles of Democratic legitimacy.”<sup>92</sup> Another asserts it “*normatively imperative* from the standpoint of fairness and ensuring our democratic institutions operate with the consent of the governed.”<sup>93</sup> Still another simply asserts that not allowing non-citizens to vote is “a form of tyranny.”<sup>94</sup>

Anyone reading through the articles that advocate non-citizen voting will soon come across a number of words with loaded meanings. And they are meant to be evocative. Consider the word “disenfranchised.” Advocates use that term repeatedly to refer to those non-citizens who are here, legally or otherwise, and the fact that they cannot vote. Jamin Raskin states unequivocally “We have more than nine million U.S. citizens who are *disenfranchised*: more than four million who live in Puerto Rico, American Samoa, Guam and the Virgin Islands ...; nearly 600,000 in Washington, D.C. who have no voting representation in Congress.”<sup>95</sup> Along the same lines, Ronald Hayduk argues, “Depending on the estimate there are some 10 to 12 million legal aliens living in the United States which are completely *disenfranchised*.”<sup>96</sup> Finally, the bill introduced in the New York City Council to allow non-citizen voting contained this assertion, “an alarmingly large part of New York City’s population remains *disenfranchised*.”<sup>97</sup>

The problem with this evocative word is that it is inaccurate as a description of non-citizens who are not legally enabled to vote. *Webster’s Dictionary* defines disenfranchised as follows: “to deprive of a franchise, of

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a legal right, or of some privilege or immunity; *especially*: to deprive of the right to vote.”<sup>98</sup> Of course, as it currently stands, non-citizens have no “legal right” to vote; that is precisely what advocates are trying to obtain for them. It follows then they are not disenfranchised.

If advocates are sincerely worried about the numbers of immigrants who cannot vote because they are not citizens, an alternative would be to do everything possible to help new legal immigrants register for citizenship and help them to meet the standards laid out for obtaining it.

A provocative claim made by non-citizen voting advocates is that those who express concern with the attachments of immigrants to the American national community are making accusations of immigrant “disloyalty.” These accusations are based on a faulty premise because they conflate attachment with loyalty. Psychologically, it is quite possible to have multiple loyalties and still be quite attached to a spouse, a child, or a country, for that matter.<sup>99</sup> Yet the psychological fact that individuals do have multiple attachments does not negate the question of what happens when individuals have two core primary attachments like nationality. It is very difficult to be an observant Jew and Muslim at the same time. And it would seem very difficult as well to have equally strong attachments to two countries.

The question therefore is not the existence of multiple attachments, but their organization. Which are primary and which secondary? When conflict arises between or among these identity elements, which will prevail? The question of dual national attachments therefore is not about “loyalty,” but conflicted attachments.

The question of new immigrant attachment arises because they have spent most of their lives developing and consolidating attachments to the countries where they were born and raised. There is nothing unusual about that. It is a fact with which attempts to integrate new immigrants into American society must contend.

It therefore serves little purpose to try and prove that new immigrants are “loyal” because Americans don’t vote in large numbers and therefore Americans’ “citizen loyalty is not impressive.”<sup>100</sup> Nor is accurate to argue that new immigrants, whether legal or not, are “loyal” because they come and stay here<sup>101</sup> or because they “open a small business.”<sup>102</sup> New immigrants, like decades of immigrants before them, come primarily for instrumental reasons. The question for American immigration policy is how to leverage understandable immigrant self-interest into real national attachment.

A staple of some non-citizen voting advocates is the accusation that those who have qualms about their proposals are anti-immigrant or worse. When the first Latina president of the Los Angeles School Board, Leticia Quezada, proposed allowing non-citizens to vote in school board elections, she ignited a wave of controversy, much of it from African Americans. Her response: “Unfortunately the temperament of this state, particularly in a recession, is significantly anti-immigrant.”<sup>103</sup> She is not alone among advocates in this view. Chung alleges that, “anti-immigrant sentiment will probably prevent non-citizen voting from being a reality in the near future.”<sup>104</sup> Brozovich is certain that that is already the case, stating, “Unlike the past where non-citizens were embraced, present currents suggest rather anti-immigrant currents.”<sup>105</sup> Actually, “embraced” is not, as we shall see, an accurate characterization of non-citizen voting early in America’s history, but that is a matter I will take up shortly.

Accusations that critics of non-citizen voting are “anti-immigrant” reflect a view that there are not serious and legitimate concerns about the proposed policy. If you believe this, as advocates apparently do, then prejudice is a simple and readily available alternative explanation. The problem here is that it is difficult to assess the legitimacy of critics’ arguments if they are caricatured and summarily dismissed. In these circumstances, the anti-immigrant meme is a way of attempting to discredit both the argument and the person making it without addressing the legitimate concerns being raised.

# The Brief History of Non-Citizen Voting in Pre-20<sup>th</sup> Century America

Advocates of non-citizen voting tout the fact that early in American history such practices did exist, although they differ regarding how many states or territories actually allowed it.<sup>106</sup> Advocates make much of this past because in their view it demonstrates that non-citizen voting is not historically novel and they reason from that the country should therefore reestablish it.

The first is true; the second is a non sequitur. There are things in America's past that were not a good idea then and wouldn't be good now, and there are practices that might have been useful at one historical point, but have long outlived their original usefulness. Non-citizen voting falls into the second category.

Non-citizen voting has been illegal in almost every state in the Union for well over a century and no state allows this practice.<sup>107</sup> This raises two immediate questions: Why did such practices develop and why did they decline? Answering these questions is more than a matter of historical curiosity. If the circumstances that encouraged non-citizen voting early in this country's history have changed, the rationale for non-citizen voting is no longer persuasive. If the circumstances have not changed, then the rationale for non-citizen voting adds weight to advocates' efforts to resurrect it.

There is, additionally, the question of why non-citizen voting ended and has almost completely died out. Advocates trace the decline to the anti-immigrant, racist, and xenophobic attitudes of the American public and their political representatives. If this is true, then non-citizen voting died out for reasons unacceptable to a democratic nation. If however, there were other legitimate reasons that it did so, advocates' implied claims that it should be reinstated to make up for an historical wrong carry much less persuasive weight.

## A Varied History

In the colonial period, the line between national and state citizenship was not clearly established. British nationality law coexisted with practices that were valid in a particular colony. Throughout the colonial and early federal period, alien (non-citizen) suffrage was not controversial because voting rights were based on property and race, not citizenship. In the post-revolutionary period, states were dominant in setting the requirements for citizenship and voting and they often limited suffrage to white males with property. The 1787 Constitution adopted the concept of national citizenship and granted

Congress power over naturalization. Yet, this issue was not fully settled for three decades and even thereafter the possibility of state citizenship remained possible.<sup>108</sup> Even during the colonial period and up to the War of 1812, state policies did not universally grant non-citizens the right to vote, though some did.

Aylsworth notes that "During the 19th century, the laws and constitutions of at least 22 states and territories granted aliens the right to vote. This tendency reached its greatest extent in 1875. Even before then it had begun to recede. In the following decades a steady decline set in. The last state constitutions to grant aliens who had declared their intention to become full citizens the full right of suffrage were those of the two Dakotas in 1889. The movement to withdraw the right began with Illinois in 1848. At the opening of the present century, only one-half of the original number, or eleven states, continued to grant this right." The last handful were voided in 1901, 1902, 1908, 1914, 1918, 1921, 1924, and the last, Arkansas, in 1926.<sup>109</sup>

The practice of non-citizen voting was ended by legislation and referendum, duly debated and passed by the people's representatives and signed into law by their governors. It is a point worth underscoring. The process by which the public, their political representatives, and their leaders reached and implemented the decision to link voting and citizenship was debated, carried out through appropriate political channels and procedures, and therefore democratically legitimate.

Why was non-citizen voting adopted in the first place? The answer lies in large part in the competition among states and territories to attract new settlers. It was thought that, "offering immigrants voting rights would . . . would encourage immigrant settlement in the region."<sup>110</sup> Or, as Raskin puts it, "The desire for immigration carried non-citizen voting along."<sup>111</sup> Bedolla, another advocate, also makes the point that after the [Civil] war, states adopted alien suffrage in order to attract new settlers.<sup>112</sup> Neuman makes the same point, about the country's westward expansion and adds the perfectly understandable point that, "As the desire for new immigrants faded, so did the acceptance of alien suffrage."<sup>113</sup>

The practice of non-citizen voting developed in some states and territories in order to attract immigrants. However, it also did so at a time when the concept of national citizenship was in the process of developing and the idea of requiring certain civic competencies for new

citizens began to take hold. These new ideas included debates about length of residency in the United States and the ability to speak and understand English. It seems clear that as an American national identity was developing and consolidating, the question arose as to how to define that identity. America settled on a creedal identity. Americans defined themselves to some degree by their democratic ideals and their values. It followed from that view that it was legitimate to ask immigrants who wanted to become part of the American national community to demonstrate a familiarity with that creed and to be able to act on it by being able to take part in that democratic process. This, in turn, led Congress to undertake the debates and legislation that over time have constituted the history of the naturalization legislation.

### The Demise of Non-Citizen Voting: A Darker View

Some advocates of non-citizen voting have darker views about why the practice of non-citizen voting became extinct. In their view it is explained by American racism, anti-immigrant animus, and xenophobia. Hayduk and Wucker say, “Non-citizen voting rights, however, were largely repealed due to the anti-immigrant sentiment of the late 19th and early 20th centuries.”<sup>114</sup> Then there are the darker accusations, “While there had been episodic and limited non-citizen voting early in the country’s history, aliens were slowly silenced and disenfranchised for mere political and xenophobic reasons.”<sup>115</sup> Harper-Ho says that, “The same hostile attitudes toward foreigners that boiled into post-World War I xenophobia and led to the demise of noncitizen voting rights also sounded the death knell for an era of unlimited immigration.”<sup>116</sup> Finally Tactaquin flatly states that “the anti-immigrant movements and xenophobia following World War I ended the practice. Opposition to non-citizen voting went hand-in-hand with racist movements against the influx of darker-skinned immigrants, fanning fears about the progressive political influences these new immigrants might inspire.”<sup>117</sup>

Advocates make much of the “anti-immigrant” xenophobia that swept the country before and during World War I, a time during which almost the last vestiges of non-citizen voting disappeared. Raskin, like his fellow advocates above, boldly states “Until it was finally undone by xenophobic nationalism attending World War I, alien suffrage figured importantly in America’s nation building process and its struggle to define the dimensions and scope of democratic membership.”<sup>118</sup> Certainly the first was true, but the rationale for non-citizen voting seemed more pragmatic than theoretical. The country wanted immigrants, the Union wanted soldiers before and dur-

ing the Civil War,<sup>119</sup> and some political parties wanted voters.<sup>120</sup>

As to the “xenophobia” that swept away non-citizen voting during WWI, Neuman, who advocates non-citizen voting, provides quite a different perspective. He writes, “The first World War unleashed pervasive hostility against Germans and German culture in the United States. This hostility, along with the shock at the idea of voting by enemy aliens, prompted several more states to abolish alien suffrage at that time.”<sup>121</sup> So, rather than generalized xenophobia, or racist movements against darker skinned immigrants, Neuman’s research leads him to the view that many Americans were upset with giving the right to vote to non-citizen immigrants from a country with which the United States was at war.

In fact, the reasons for either supporting or opposing voting rights for non-citizens were varied. A major impetus for allowing new immigrants to vote was clearly to make immigration more attractive. America was a vast country and new immigrants were needed to help develop it. That major rationale for allowing non-citizen voting is, of course, not relevant today. The United States attracts more than enough immigrants because of the opportunity and freedom it offers to them.

Racism, anti-immigrant sentiment, and xenophobia were certainly a part of some Americans’ attitudes toward immigrants. But there is no evidence that they were the only, primary, or even a substantial part of the reason that state after state decided to stop the practice of non-citizen voting. What is interesting about these darker views is how closely they track progressive advocates’ views of why there is opposition to non-citizen voting today.

It seems quite possible that then, as now, the underlying motivation of so-called “anti-immigrant” sentiment was a worry that new immigrants would not become a part of the American national community. How else to explain the “declarant alien” model adapted by Congress and incorporated into a number of new territorial governing charters?

### The Importance of Alien Declarations

In 1845 the Wisconsin Territory adopted a state constitution that allowed white, male legal aliens to vote *if they declared their intention to apply for citizenship*. Actually, this step had even deeper historical origins. In 1777, Vermont included in its constitution a requirement for voting of a one-year residency and *an oath of allegiance*.<sup>122</sup> The new “declarant alien” model provided a way to allay citizens’ fears about voters not being identified with, willing, or wanting to truly become part of the American community. In addition to Wisconsin, Congress included declarant

alien qualifications in the organic acts of Oregon, Minnesota, Washington, Kansas, Nebraska, Dakota, Wyoming, and Oklahoma Territories.<sup>123</sup> In all nine territories Congress imposed the additional requirement to support the Constitution.<sup>124</sup> Sometimes territories that became states that allowed non-citizen voters, grandfathered in only those non-citizens who had been able to vote when the state was a territory, while mandating that new voters be citizens.<sup>125</sup>

Advocates of non-citizen voting understandably don't emphasize the fact that many of the jurisdictions that allowed non-citizen voting did so on the explicit legal understanding that such persons would become citizens. They understandably don't ask why the idea developed and was put into legal practice that non-citizen voting, if allowed, should be linked with a legal affirmation of intended affiliation or even a formal declaration of attachment as reflected in an oath to the Constitution.

The reasons for adapting these measures seem straightforward. They reflected historical unease with allowing people who had not yet demonstrated an attachment to the community or the laws that governed it to help decide its fate. Were there non-citizens who had

such attachments despite not declaring, or declaring and not following through? No doubt. However, the alternative to public steps reflecting attachment was to simply signal that no community membership or attachment was necessary, or to conduct inquiries into each person's views on these matters — the first of which seems imprudent, the second, impractical.

It is no accident that as the United States developed and matured, “declarant” measures were introduced, as was the requirement of taking an oath to the Constitution. As the idea of the United States as the home of Americans took hold, the question naturally arose about the basis of what united us. The country had clear sectional, racial, religious, political, and economic divisions, not to mention a federal system that had to balance state, local, and national perspectives. Yet, somehow all these elements had to be integrated and a common perspective developed. The answer to this dilemma increasingly came to rest on the idea of citizenship. And a focus on citizenship in turn increasingly led to incorporating what were felt to be reasonable requirements on those wishing to join the American national community. As those requirements took hold, non-citizen voting died.

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## Legality of Non-Citizen Voting

Anyone who spends time researching non-citizen voting will quickly come upon statements by advocates proclaiming its constitutionality. Almost all of their statements are incomplete and therefore, inaccurate. As a result, they are misleading.

### Advocate Views

One advocate of non-citizen voting for example, boldly proclaims, “The Constitution does not preclude it, and courts have upheld it.”<sup>126</sup> The first statement is true, although as advocates surely know, this is actually quite a minimalist statement since the Constitution is silent on a very great number of matters. It is quite possible to locate in the Constitution's 26<sup>th</sup> Amendment which contains the phrase “the right of citizens... to vote...,” a specific linkage tying voting to citizenship.<sup>127</sup> Moreover, as Raskin points out, Section 2 of the 14<sup>th</sup> Amendment “clearly indicat[es] constitutional permission for states to impose citizenship as a voting qualification.”<sup>128</sup>

The statement that “courts have upheld it” is true, as far as it goes, but it does not go very far at all. It does not tell us *which* courts — federal, state, or territorial — and most importantly such vague statements do not tell us *when* “courts” upheld it. Given that the five

Maryland cities that have allowed non-citizen voting have never been subject to any legal tests and measures not yet enacted cannot be legally adjudicated,<sup>129</sup> these kinds of statements must refer to periods earlier in American history.

Indeed, given that the courts have found that non-citizens have no right to vote, it is likely that this statement refers to the early colonial and expansion period of U.S. history. It is therefore misleading to say only that the courts have upheld it. The same problem arises with another advocate's assertion that “No court in the United States has ever found the practice of non-citizen voting unconstitutional.”<sup>130</sup> That too is true as far as it goes. But again, it doesn't go very far. A variety of court rulings have made it quite clear that legal prohibitions against non-citizen voting are absolutely legal and enforceable.

Finally, Jamin Raskin has argued, somewhat misleadingly, “A legal alien *is* a local citizen. In our federal system of government, we do not have a single, unitary definition of citizenship that is vertically imposed upon every level of government for every purpose... This is one reason why the Supreme Court has repeatedly signaled its acceptance of the practice of non-citizen voting.”<sup>131</sup> That first statement is somewhat odd. U.S. naturalization law

does not recognize a special and different legal status for local as opposed to state or national citizens. Raskin's second statement is also odd, as the court had decided, as opposed to "signaled," that making distinctions based on citizenship status is not a "suspect" category requiring special scrutiny.

### Do Non-Citizens Have a Right to Vote?

Even a casual reader of the non-citizen voting literature will be struck by how often advocates make the point that, "the Court in the case of *Minor v. Happersett* cited the practice of noncitizen voting for the proposition that citizenship and suffrage are independent legal categories which do not necessarily imply one another."<sup>132</sup> The *Happersett* case was decided in 1874,<sup>133</sup> and of course there have been many legal and political developments since then. As Eskridge notes, the *Happersett* decision "had a short life and was implicitly renounced in *Wong Kim Ark*," which was decided in 1898.<sup>134</sup> The 19<sup>th</sup> Amendment specifically linking citizenship and voting formally overturned *Happersett* in 1920,<sup>135</sup> although the 14<sup>th</sup> and 15<sup>th</sup> Amendments anticipated that result. As to settled doctrine, Eskridge notes, "Citizenship and Voting were not linked in 1789 or 1868, and they are in 2001."<sup>136</sup>

Let us examine these issues more closely.<sup>137</sup> Perhaps the place to begin is with the fact that the Supreme Court has "emphatically denied that voting is a right or privilege of state or national citizenship" and "has frequently denied that there is a right to vote."<sup>138</sup> Allusions to that right are simply a short hand for being able to participate in state elections on an equal basis with other voters as established by state enabling legislation. So, if there is no right to vote, there cannot be any right to vote for non-citizens.

Cannot such a right be inferred from the Constitution? One advocate thinks so. Rosberg argues that "the Constitution *mandates* non-citizen voting."<sup>139</sup> Why? Because in his view courts must apply the "strict scrutiny" test to a "suspect" category, "alienage."<sup>140</sup> That is, "alienage" is one of the categories like race that falls under "equal protection" claims and thus must therefore meet the "strict scrutiny" test that requires the state to demonstrate a "compelling interest." Since there is no such compelling interest in Rosberg's view, the Constitution requires that non-citizens be given the vote.<sup>141</sup>

This is not a position that even Rosberg's fellow advocates find convincing. Harper-Ho calls this position "radical."<sup>142</sup> Raskin, also an advocate, notes that "even if we follow the doctrinal somersaults required to arrive at Rosberg's position, his argument is not wholly persuasive as a description, historical or normative, of how the

franchise expands in the American polity."<sup>143</sup> Neuman adds that the, "U.S. constitution does not require alien suffrage. I believe that the constitutional text, customary, political theory, and the inclusiveness of naturalization laws, taken together, preclude the conclusion that limiting the franchise to citizens denies resident aliens the equal protection of the laws."<sup>144</sup> These are the legal conclusions of his fellow advocates.

### What Have the Courts Said?

There is, however, an even greater impediment for Rosberg's argument. The courts, including the Supreme Court, have directly rejected it. The Supreme Court took up exactly that question in *Sugarman v. Dougall* (413 U.S. 634 (1973)). In that case, the court affirmed a decision that overturned a determination of whether a non-citizen could stand for the New York Civil Service examination. The lower court had ruled that one section of state law limiting the test to U.S. citizens violated the 14<sup>th</sup> Amendment. Justice Blackman, delivering the opinion of the court, said "This Court has never held that aliens have a constitutional right to vote or to hold high public office under the Equal Protection Clause. Indeed, implicit in many of this Court's voting rights decisions is the notion that citizenship is a permissible criterion for limiting such rights."<sup>145</sup>

In *Skafte v. Rorex*, the Supreme Court refused to hear an appeal of a Colorado State Supreme court ruling that held that the state legislature was only required to give a rational explanation for why non-citizens could not vote in a school board election.<sup>146</sup> The claimant in the Colorado case said that state statutes that denied him the right to vote in school board elections violated not only the Equal Protection Clause but also the Due Process and the Supremacy Clauses.<sup>147</sup> These are precisely the strict scrutiny arguments that Rosberg argued underlay the Constitution's requirement that non-citizens be allowed to vote.

The Colorado Supreme Court rejected each claim, finding that on the equal protection argument the United States Supreme Court "has consistently used language suggesting that citizenship with respect to the franchise is not a suspect classification."<sup>148</sup> In fact, the Colorado court concluded that the, "State has a rational interest in limiting participation in government to those persons within the political community. Aliens are not a part of the political community."<sup>149</sup> In denying the appeal in *Skafte*, the Supreme Court simply noted that the case lacked a substantial federal question and summarily invoked the authority of *Sugarman v. Dougall* (see above) and *Kramer v. Union Fee School District*.

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In the *Kramer* case, the Supreme Court found that statutes limiting the franchise gave rise to a strict or “exacting” judicial scrutiny because the right to vote is fundamental and “preservative of other basic civil and political rights.” Yet, the court also ruled that “the states have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot.”<sup>150</sup> Barring non-citizens from the vote did receive the “strict scrutiny” that Rosberg said mandated non-citizen voting, and the court found that it was not only not mandated, but wasn’t unreasonable. Other courts had found similarly.<sup>151</sup>

### Citizen Voting as Settled Doctrine

This paper does not present a detailed evaluation of all the cases that support the exclusion of non-citizens from voting in federal, state, and local elections. Any fair reading of them, eschewing “doctrinal somersaults,” leads to the conclusion that this issue is settled legal doctrine. It is worth considering what that term means.

In the case of voting in relation to citizenship, it means that hundreds of thousands of elections in every part of the country have been organized for almost the last hundred years around this settled principle. It means that

it has become embedded in our national culture, a staple in our nation’s textbooks, and taught to our children. It has permeated every corner of American national culture and therefore become enshrined as a primary civic premise.

Linking citizenship with voting has become such settled doctrine that even Rosberg, the chief advocate of the view that the Constitution requires non-citizen voting, has this to say: “To my knowledge no state has seriously considered extending the franchise to aliens during the past half century, and I very much doubt that any state would now make the move except at the insistence of the Supreme Court. And the Supreme Court’s inclination on the issue is not at all in doubt. The Court has not been very helpful, however, in explaining why aliens have no right to vote.”<sup>152</sup> Neuman adds, “It is probably true, however, that modern constitutional law would uphold an explicit congressional prohibition on alien voting.”<sup>153</sup>

The linkage of voting with citizenship is not only settled in the sense that questions about the legal legitimacy of the relationship have been put to rest. It is settled in that both citizens and the community that they form have come to assume and depend on it.<sup>154</sup> It, and the naturalization process that accompanies it, has also become the chief link through which the national community invites new immigrants to become Americans.

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## The “Other Countries Do It” Bandwagon

Advocates tout the fact that other countries allow legal immigrants to vote in local elections. The implication is that “everyone is doing it,” and the United States should join the bandwagon. The reality is far more complicated.<sup>155</sup>

In perhaps the most sophisticated examination of the factors that lead democratic states to adapt alien suffrage, Earnest found that, “Despite globalization and the institutionalization of international human rights, the study’s 25 democratic states appear to retain a considerable capacity to constitute their political communities.”<sup>156</sup> He continues:

“While the global human rights regime may create systemic pressures on democracies, these pressures *appear to be refracted both through state-level institutions and through the prism of each democracy’s unique historical conceptions of its political community. Rather than democracies converging around a common practice of enfranchising*

*noncitizens, there may be considerable differences among democracies for some time.*”<sup>157</sup>

As it turns out, non-citizen voting rights do not follow one model, but many. Some states allow non-citizen voting only for a limited group of nationals, and not for aliens in general. Many states impose residency requirements. So countries like Portugal, Denmark, and the United Kingdom allow some non-citizens to vote in their national elections, but also impose nationality and residency requirements. Venezuela and Sweden allow all non-citizens to vote, but only in local elections and also impose a residency requirement. Belize and Bolivia allow all non-citizens to vote in local elections, but impose residency requirements.<sup>158</sup>

Advocates of non-citizen voting fail to inform their audiences that many of the countries impose residency requirements that are not significantly different from those required to become a full-fledged citizen in the United States. For example, in two of its nine cantons,<sup>159</sup> Switzerland allows legal immigrants to vote

in local elections, but only after being in residence there for five years.<sup>160</sup> In Uruguay, it's 15 years.<sup>161</sup> In Venezuela, 10-year residents can vote in local elections.<sup>162</sup> In Finland, it's four years.<sup>163</sup> In Norway, it's three years.<sup>164</sup> In Portugal, it's three years. In the Netherlands and Chile, it's five years.<sup>165</sup> Denmark requires a three-year residency for legal immigrants before they can vote in local elections.<sup>166</sup> In Belgium, it's a minimum of five-years of residency.<sup>167</sup> In Korea, it's three years.<sup>168</sup> When the Federal Republic of Germany considered the issue of non-citizen voting, which did not pass, they required eight years of residence and a residence permit.<sup>169</sup> It's true that Ireland allows non-citizens to vote in local elections after a residency of six months and New Zealand does so after a year, but these are the exceptions, not the rule.<sup>170</sup>

As noted, some countries that permit non-citizen voting impose nationality or other membership requirements.<sup>171</sup> In Barbados, it's three years, plus Commonwealth status. Estonia requires permanent residence status. So does Finland. Germany's abortive attempts to enfranchise non-citizens in Schleswig-Holstein and Hamburg required five years and eight years respectively; the Schleswig-Holstein initiative also required non-citizens to satisfy a nationality requirement (i.e. only Danish, Irish, Norwegian, Swedish, and Swiss nationals would qualify after five years of residence). Britain requires citizenship in a Commonwealth state as a qualification for the right

to vote, while in Canada some provinces allow British and Commonwealth citizens to vote in provincial elections. Likewise Portugal and Spain have rights based on reciprocal rights for Portuguese and Spanish emigrants in other states.

The European Union has adopted policies pursuant to the Maastricht Treaty to grant nationals of other member states the right to vote and run for office in local elections.<sup>172</sup> Yet, keep in mind these exceptions to the rule are only for nationals of the European Union and then only for local and not regional or national elections. The right to automatically stand for office and vote in local elections is not granted to non-EU immigrants.<sup>173</sup> Indeed, only five of the pre-2004 European Union's 15 states (Denmark, Finland, Ireland, Netherlands, and Sweden) automatically give voting rights to non-EU citizens.<sup>174</sup> According to Tienda, "the EU is not alone in limiting the national franchise to statutory citizens."<sup>175</sup> Blais et al. studied the voting requirements of 63 democratic countries and found that 48 of them (76 percent) restricted the right to vote to citizens.<sup>176</sup>

In short, everyone is *not* doing it, and those that are vary substantially in what they allow, when, and by whom. Of particular importance to the debate in the United States are two limitations imposed on non-citizen voting by those that allow some form of it: nationality and residence.

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## The Non-Citizen Non-Voting Problem

Almost all of the myriad benefits claimed for non-citizen voting rest on a major assumption: that non-citizens will take advantage of the opportunity if it is presented. The reason for this is quite straightforward. If, where non-citizen voting is allowed, the number of people who register as non-citizens to vote is small, or if those who do register to vote don't actually do so, then almost all of the claimed benefits that follow and for which so much would be sacrificed ring hollow indeed.

As noted, non-citizen voting has been tried in a number of places, including one in this country, that keep fairly good statistics. The results do not support claims of great benefits that will follow from non-citizen voting because even where they are legally able to, they don't register in substantial numbers and those that do register, don't vote.

These are not just my conclusions, but also the conclusions of those who advocate non-citizen voting. One advocate says that "even if we were able to overcome the significant political obstacles to granting immigrant

voting rights, it is unlikely that overwhelming numbers of noncitizens will take the opportunity to vote."<sup>177</sup> Another advocate who has examined the numbers writes, "While rates of immigrant and local voting participation vary across jurisdictions, in nearly all cases the electoral participation of enfranchised non-citizen residents in elections is below the participation rates of citizens."<sup>178</sup>

One further important factor in these non-citizen voting statistics is that we don't know the other very relevant figure of how many non-citizens could have registered but did not. If, for example, 100 non-citizens could have registered to vote, but only 10 did and five of those who registered did vote, it would be misleading to say that 50 percent of non-citizens voted. With that caveat in mind, what are these numbers? In the 1994 and 1998 European Union elections, the rates of non-citizen voting were 5 percent and 9 percent, respectively.<sup>179</sup> Or, to put it another way, 95 percent and 91 percent of those who could vote, did not.

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However, we do not have to rely on Europe to see how few non-citizens are taking advantage of the opportunity that advocates want to provide. We can look to Takoma Park, Md., where legal and illegal immigrants have been able to vote since an enabling law was passed in 1991. Table 1 shows the registration and voting data for both citizens and non-citizens for the seven elections after that measure was passed.

In 1995, 20 out of 195 (10 percent) of aliens who were registered actually voted; in 1997 the figure was 71 out of 287 (25 percent); in 1999 it was 41 out of 334 (12 percent); in 1999 it was 41 out of 334 (9 percent); in 2001 it was 41 out of 475 (9 percent); in 2003 it was 14

out of 460 (3 percent), in 2005 only 23 non-citizens out of 460 registered voted (5 percent). And most recently in 2007, only 10 registered non-citizens voted. In a special election held also held in 2007 to fill a vacancy in one of Takoma Park's six voting wards, "officials took extra steps to get the word out. They mailed a notice, in Spanish and English, to every home. They sent a second notice to every registered voter," yet not one non-citizen voted.<sup>180</sup>

Figures 1 and 2 provide another way of viewing these data.

It is well to keep in mind that these Takoma Park figures only represent the number of non-citizens that advocates were able to register and not the number of non-citizens who could have registered but choose not to do so. Moreover, generally, as the number of non-citizens that advocates were able to register went up, the number of non-citizen voters declined. Citizen registration and voting rates seemed to be more in sync. Jamin Raskin, the American University Law professor and resident of Takoma Park who spearheaded the drive for non-citizen voting, had this to say about its impact on participation: "there has been no fundamental change in the political system, *including — alas — the sadly low rates of participation and turnout.*"<sup>181</sup>

Advocates have a ready excuse for such low levels of voting, given all the desirable benefits that they claim would follow from non-citizen voting:

socio-economic status. That term refers to a composite, interrelated measure of education, income, and job status. According to Bedolla, low levels of immigrant voting, and by extension, non-citizen voting, "is largely due to the fact that socioeconomic status has been found to be the strongest predictor of political participation and most immigrants possess low socioeconomic status."<sup>182</sup>

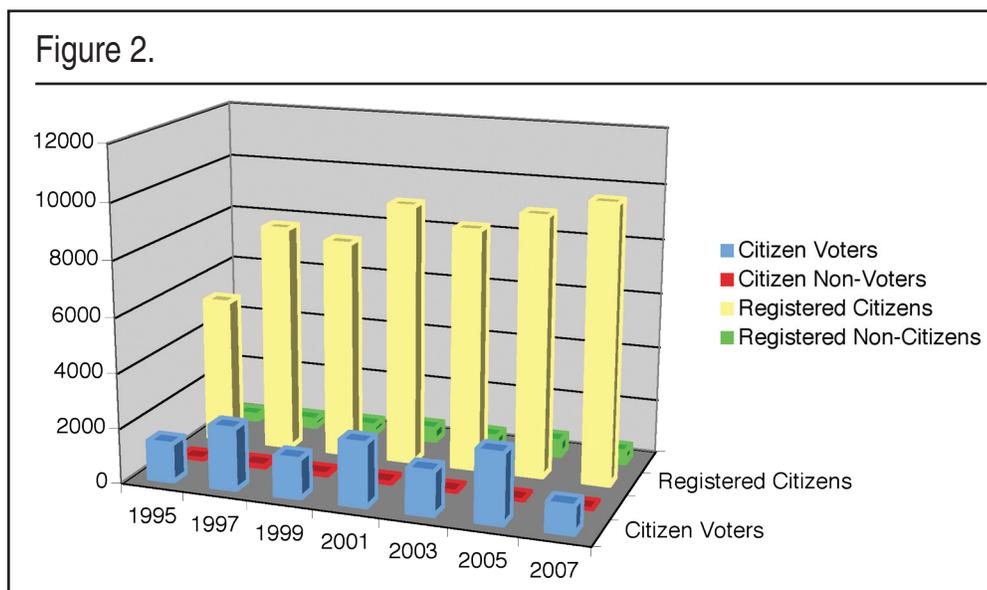
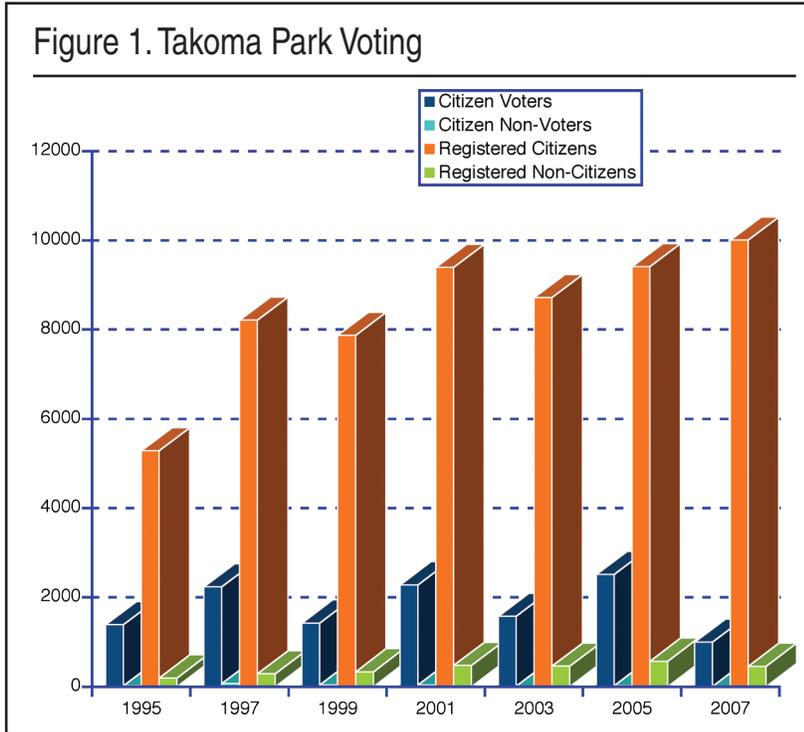


Table 1. Registration and Voting for Citizens and Non-Citizens 1995-2007

Election Year	Citizens Registered	Citizens Voted	Non-Citizens Registered	Non-Citizens Voted
1995	5,286	1,359 (25 %)	195	20 (10 %)
1997	8,314	2,236 (27 %)	287	71 (25 %)
1999	7,873	1,425 (18 %)	334	41 (12 %)
2001	9,397	2,281 (24 %)	475	41 (9 %)
2003	8,720	1,577 (18 %)	460	14 (3 %)
2005	9,410	2,515 (26 %)	570	23 (4 %)
2007	10,007	1,000 (11 %)	455	10 (2 %)
2007*	1,500	204 (17 %)	0	0

\*Special election. Ward 5 only.

Like most advocates, Bedolla herself has not conducted any research on these matters and appears simply to be borrowing an explanation that she thinks will rescue non-citizen voting proposals from the fact that the very persons who she says will gain all these enormous benefits don't appear interested in them. Thus, her explanation sidesteps the question: If she agrees that immigrants and non-citizens won't use their vote, why should the American community incur the damage to its civic culture that would accompany the decision to allow non-citizens to vote? Bedolla appears not to realize that her explanation for low immigrant participation rates undercuts the arguments that are put forward regarding the supposed benefits of the non-citizen vote. If the vote

won't be used, how can it be instrumental in providing the many benefits advocates allege?

What of non-citizen voting in Europe? The distinguished European social scientist T. Hammer has examined these data in some depth and concludes, "During the first few years, immigrants' political efficacy may be low because they do not yet know enough about the host country's political culture or even its language. Until those newcomers who have not acquired facility in the language of public discourse do acquire that facility, we can expect them to participate in politics at lower rates."<sup>183</sup>

Not knowing the language or the culture leads to low political efficacy and low voting turnout? Isn't that exactly what the five-year period of the American naturalization process is supposed to remedy?

In the end, the many benefits that advocates say will accrue to both immigrants and American civic culture if non-citizens are allowed to vote seem highly questionable. None of the long list of benefits claimed for allowing non-citizens to vote is possible if they don't actually vote. Overall, the results from Takoma Park seem clear: There is very little to show in the main place where non-citizens have been given the vote. The damage done to American civic culture by allowing non-citizens to vote must be carefully weighed against these very modest gains.

## The Importance of Naturalization as an Attachment Process

For advocates of non-citizen voting, and their allies, the naturalization process is a civic minefield designed to confound, confuse, and ultimately reduce the number of immigrants who become Americans. They stress the steps in the naturalization process as "barriers" to citizenship.<sup>184</sup>

### Complaints

The complaints against the naturalization process are that it takes too much time, that it is too difficult, and that it is unnecessary. However, the "average time" it takes to naturalize is a result of many factors. National security checks have added to the length of time for some, but not all, naturalization applicants. Backlog and surges connected with specific events like increases in the application fee play a role. It is also the case that many immigrants

do not begin the naturalization process at the end of their five-year residency requirement here.

A *New York Times* story about a class action suit to speed naturalization delayed by security checks told the story of an immigrant who was party to the suit.<sup>185</sup> He was very vocal about delays caused by a security check of his background. However, within the story was the information that this immigrant had arrived in the United States in 1994 and had only applied for citizenship in 2003, four years after he was eligible to do so. Data from the Office of Immigration Statistics provide further evidence of the variability of time to go through the naturalization as a function of when immigrants arrive and then when they apply for citizenship. The statistics office found that, "Between 2005 and 2006, the median years spent in legal permanent resident status declined by one year "[from eight to seven years] in most regions [that is for

immigrants from all regions]. This decline may reflect both declines in the application processing times and changes in the demand for or timing of naturalization.”<sup>186</sup> In other words, immigrants are spending less time in permanent resident status before applying for citizenship, an element in the rise in the level of citizenship applications granted, also noted in the same report.

Peter Spiro, a law professor, puts the difficult argument forward forcefully. He writes that “the requirement that naturalization applicants demonstrate English-language literacy presents for many the most formidable obstacle to the acquisition of citizenship.” He would like to lessen the requirement and really sees no need for it. How much of a barrier is it? Even though his own figures are unclear, Spiro claims that “naturalization law is a real instrument of exclusion and subordination.”<sup>187</sup> Not much analytical traction however, is gained by using the term “subordination,” which implies domination and illegal discrimination. More importantly, he never considers the many advantages of, and the importance of, having immigrants learn English.

Finally, Tiao would like to do away with the naturalization requirements altogether. Whether the requirement is five years of residency, knowledge of English and American political principles and practice, good moral character, or an oath of allegiance, Tiao finds each “objectionable as individual prerequisites for suffrage.”<sup>188</sup>

Tiao is aware that “Some commentators argue that the commitment associated with the naturalization process reflects an acceptance of the country and its values, and as such is an important qualification for voting.” Tiao however dismisses this view, “which might seem reasonable on its face.” Why? Because, he argues, “naturalization is too crude a device for distinguishing those who accept the country’s values from those who do not.”<sup>189</sup> Tiao appears to want to substitute no measure for one he finds flawed. Yet that point also misses the larger importance of the naturalization procedure. It is a process by which immigrants acquire the skills and psychological experiences that underlie an eventual attachment to the American national community.

### Structural Barriers and Naturalization Surges

The “structural barriers” argument is not supported by data on naturalization. If structural barriers were indeed the impediment that critics suggest and responsible for the relatively low levels of naturalization, we would expect naturalization rates to remain steady and low. This is not the case. Examining recent figures, Fix and Passel find that “for the first time in over 25 years, we see a rise in the number of naturalized immigrants — from 6.5 mil-

lion in 1990 to 7.5 million in the mid-1990s to over 11 million in 2002. Annual naturalizations surged, peaking at over one million in 1996, and even now remain well above levels of the 1980s.”<sup>190</sup> Several explanations are put forward for this surge – a response to attempts to limit economic benefits to non-citizens, the rise in the cost of renewing green cards, and the relaxation of dual citizenship for countries sending many of their people to the United States.<sup>191</sup>

It is certainly possible to raise questions about whether a surge in naturalization to avoid missing out on economic incentives provides the strongest foundation for national attachment. Yet, the fact remains that the United States has always proceeded on the assumption that it could leverage immigrants’ self-interest in coming here into genuine attachment over time. The surge in immigrant naturalization, therefore, regardless of the motivation, represents one further opportunity and public need to successfully repeat what has traditionally been a successful path to national attachment.

In order for this path to be successful again, however, we must look at the naturalization process through fresh eyes, not as a set of barriers and hurdles, but as part of the process by which immigrants become Americans. Each of the requirements of the naturalization process plays an important role in helping that desirable goal become a reality.

### Naturalization as an Attachment Process

Immigrants come here for opportunity and freedom. Many give up a great deal in doing so. They leave behind the comfort of families, cultural familiarity, and a substantial part of their own personal experience. Their motivations are obviously very strong. In making this trip, many immigrants already exhibit many of the psychological traits that make for success and help define this culture. They are willing to take chances, they are determined to make a better place for themselves and their families, they are willing to work hard for the time it takes to accomplish this, and they are optimistic that they can do so. They are already, in many psychological respects, Americans.

However, psychological traits alone do not an American make. Americans, like the inhabitants of every national culture, are at home with the language, are familiar with how the culture works, are familiar with the political customs and practices through which the national community shapes its future, and have an emotional attachment — even if it is ordinarily latent — to the country of their birth. The question for Americans

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is how best can we help immigrants acquire these basic building blocks of an American identity.

One possible vehicle to help accomplish this purpose is the naturalization process. Although it could be improved in many ways, it is nonetheless one of the few socialization experiences that all immigrants who become citizens go through as a group. In that respect it is somewhat analogous in importance to the public school in socializing Americans (and of course immigrants' children) into their national heritage.

In the United States the naturalization process consists of demonstrating "good moral character," a basic command of English, and passing a civics test. Those tests can be taken at a time after the immigrant has resided in the country for five years, though many do not apply for citizenship as soon as they are able and some never do. Children of immigrants born in the United States are citizens, but there are 750,000-plus (on average) new immigrants who could pass through the naturalization process every year if they chose to do so. At present, getting help in preparing for the test is hardly a systematic process. Immigrants get what help they can primarily from NGOs, immigrant advocacy groups, and to a lesser degree federal and state governments. However, the need remains great and the resources devoted to this important process are small.

For adult immigrants entering a new country and community, the naturalization process is likely to be the single unifying collective experience revolving around

their new community memberships, other than the varied experiences of work. As such, it is an important, but poorly utilized, opportunity for a collective bonding experience. New adult immigrants must learn something about the history, culture, and politics of their new community in order to pass the test. Why not invest in making that experience informative and helpful, while at the same time planting or further nurturing the seeds of emotional attachment? While there is much to learn about a country's traditions, politics, and culture, immigration could be a unifying theme here. In that way the new immigrants' experience could be directly linked the experience of millions who have come before them, thus laying the groundwork for feelings of common fate, similarity, and hopefully emotional attachment.

Each of the five elements of the naturalization process — residency, good character, language facility, civics knowledge, and affirmation — are essential elements in helping immigrants become Americans. You cannot really learn about America without living here. You cannot understand or take part in America without understanding its language. And you cannot begin to form the more enduring attachments to the national community that you have asked to join without first taking an affirmative step in that direction. For all these reasons, naturalization as a requirement of citizenship and voting is not so much a series of hurdles to surmount, but an essential part of becoming American.

## End Notes

- <sup>1</sup> *Yick Yo v. Hopkins*, 118 U.S. 356 (1886). That reasoning and exact phrasing was repeated in the case of *Harper v. Virginia Board of Education* (383 U.S. 663 (1966) when the Supreme Court, in anticipation of the 24th Amendment, struck down poll taxes.
- <sup>2</sup> Gerald M. Rosberg, 1997, "Aliens and Equal Protection: Why Not the Right to Vote?" *Michigan Law Review*, 75:1092; see also Gabriela Evia, 2003, "Consent by All the Governed: Reenfranchising Noncitizens as Partners in America's Democracy," *Southern California Law Review*, 77: 1 (November): 162.
- <sup>3</sup> Section 216. Criminal Penalty for Voting by Aliens in Federal Elections. It is unlawful for any alien to vote in any election for federal office. Violators can be fined and/or jailed for up to one year.
- <sup>4</sup> National Assessment of Educational Progress, 2007, *The Nation's Report Card: Civics 2006*. Washington, D.C.: U.S. Department of Education, p. 17. <http://nces.ed.gov/nationsreportcard/pdf/main2006/2007476.pdf>
- <sup>5</sup> Evia, "Consent by All the Governed," p. 183.
- <sup>6</sup> Virginia Harper-Ho, 2000, "Noncitizen Voting Rights: The History, The Law and Current Prospects for Change," *Law and Inequality*, 18 (Summer): 271 (Emphasis mine).
- <sup>7</sup> Tara Kini, 2005, "Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections," *California Law Review*, 93: 320 (Emphasis mine).
- <sup>8</sup> According to one of the few political scientists who has examined the development of these initiatives, proposals for non-citizen voting represent a "radical decoupling of citizenship and political rights that blurs the distinction between citizen and alien, or between national and foreigner...[speaking] directly to the nature of state sovereignty itself." See David C. Earnest, 2005, "From Ghettos to the Ballot Box: Voting Rights for Noncitizens in Urban Elections," paper prepared for delivery at Annual Convention of the American Political Science Association, Washington, D.C., September 1-4, p. 2.
- <sup>9</sup> Deborah Sontag, 1992, "Noncitizens and Right to Vote; Advocates for Immigrants Explore Opening Up Ballot," *The New York Times*, July 31, p. B1.
- <sup>10</sup> Editorial, 2004, "A Citizen's Right," *The New York Times*, April 19.
- <sup>11</sup> In February 1996, San Francisco Supervisor Mabel Teng proposed legislation allowing legal resident non-citizens to vote in city community college and school board elections. See William Carlsen, 1996, "Plan for noncitizens to vote in school elections: S.F. supervisor wants voice for legal residents," *San Francisco Chronicle*, February 6, p. A13. It was subsequently defeated at the polls.
- <sup>12</sup> Michael Castagna, Walther Chen, Jen Lawrence, and Stancy McHugh, 2005, "Securing Non-Citizen Voting Rights. Determining the Feasibility of Enabling Legislation in Massachusetts." A report prepared for The Massachusetts Immigrant and Refugee Advocacy Coalition, The Cambridge Immigrant Voting Rights Campaign, and the Department of Urban and Environmental Policy and Planning, Tufts University (UEP 255 Field Projects). [http://ase.tufts.edu/uep/academics/field\\_project\\_reports/4-securing\\_noncitizen\\_voting\\_rights.pdf](http://ase.tufts.edu/uep/academics/field_project_reports/4-securing_noncitizen_voting_rights.pdf) (accessed November 9, 2006).
- <sup>13</sup> Ronald Hayduk, 2006, *Democracy for All: Restoring Immigrant Voting Rights in the United States*. New York: Routledge.
- <sup>14</sup> Evia, "Consent by All the Governed," p. 176.
- <sup>15</sup> One section of the New York City Council bill reads, "f- Notice that political party enrollment is optional, but in order to vote in a primary election of a political party, a voter must enroll in that political party." (Emphasis in original). <http://webdocs.nycouncil.info/textfiles/Int%2002452006.htm?CFID=1557046&CFTOKEN=96328468> (accessed December 27, 2007).
- <sup>16</sup> Evia, "Consent by All the Governed," p. 176.
- <sup>17</sup> Gerald L. Neuman, 1992, "'We Are the People': Alien Suffrage in German and American Perspective," *Michigan Journal of International Law*, 13:2, p. 330 (emphasis mine); see also Evia, 2003, "Consent by All the Governed," p.176.
- <sup>18</sup> Bill A-04635 introduced Representative Vito Lopez. <http://assembly.state.ny.us/leg/?bn=A04635&sh=t> (accessed December 25, 2007). The bill summary can be found at <http://assembly.state.ny.us/leg/?bn=A04635> (accessed December 25, 2007).

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- <sup>19</sup> Rosberg, "Aliens and Equal Protection," p. 1092-1135.
- <sup>20</sup> Jamin B. Raskin, 1993, "Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage," *University of Pennsylvania Law Review* 141 (April): p. 1452.
- <sup>21</sup> Harper-Ho, "Non-citizen Voting Rights," p. 272.
- <sup>22</sup> Raskin, "Legal Aliens," p. 1392.
- <sup>23</sup> Ronald Hayduk, 1998, "Immigration, Race, and Community Revitalization," Paper prepared for the Aspen Institute, Project on Structural Racism and Community Revitalization, p. 33, <http://www.aspeninstitute.org/atf/cf/%7BDEB6F227-659B-4EC8-8F84-8DF23CA704F5%7D/Hayduk.pdf> (accessed November 17, 2006); see also Paul Tiao, 1993, "Non-Citizen Suffrage: An Argument Based on the Voting Rights Act and Related Law," *Columbia Human Rights Law Review*, 25:171, FN 49.
- <sup>24</sup> Ruth Ellen Wasem and Karma Ester, 2006, "Temporary Protected Status: Current Immigration and Policy Issues," CRS Report to Congress, January 27. <http://www.ilw.com/immigdaily/news/2006,0207-crs.pdf> (accessed December 26, 2007).
- <sup>25</sup> In 1990, when Congress enacted the TPS statute, it also granted TPS for one year to nationals from El Salvador who were residing in the United States. Subsequently, the Attorney General, in consultation with the State Department, granted TPS to aliens in the United States from the following countries: Kuwait from March 1991 to March 1992; Rwanda from June 1995 to December 1997; Lebanon from March 1991 to March 1993; the Kosovo Province of Serbia from June 1998 to December 2000; Bosnia-Herzegovina from August 1992 to February 2001; and Angola from March 29, 2000 to March 29, 2003; and Sierra Leone from November 4, 1997 to May 3, 2004.
- Rather than extending Salvadoran TPS when it expired in 1992, the former Bush Administration granted "Deferred Enforced Departure" (DED) to a then-estimated 190,000 Salvadorans through December 1994. The first Bush Administration also granted DED to about 80,000 Chinese following the Tiananmen Square massacre in June 1989, and the Chinese retained DED through January 1994. On December 23, 1997, President Clinton instructed the Attorney General to grant DED to the Haitians for one year. In prior years, various administrations have given EVD status to Poles (July 1984 to March 1989), Nicaraguans (July 1979 to September 1980), Iranians (April to December 1979), and Ugandans (June 1978 to September 1986). Lebanese had been handled sympathetically as a group, getting EVD on a case-by-case basis since 1976, prior to receiving TPS from 1991 to 1993. Other countries whose nationals have benefited in the past from a status similar to EVD include Cambodia, Cuba, Chile, Czechoslovakia, Dominican Republic, Hungary, Laos, Rumania, and Vietnam. See Wasem and Ester, "Temporary Protected Status," pp.CRS4-5.
- <sup>26</sup> Department of Homeland Security, 2007, "Annual Flow Report- 2006," Office of Immigration Statistics, July, Table 3. [http://www.dhs.gov/xlibrary/assets/statistics/publications/NI\\_FR\\_2006\\_508\\_final.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/NI_FR_2006_508_final.pdf) (Accessed December 27, 2007).
- <sup>27</sup> Jennifer Gordon, 1999, "Let Them Vote," in Joshua Cohen & Joel Rogers (eds.), *A Community of Equals*. Boston: Beacon Press, p. 47.
- <sup>28</sup> *Ibid.*
- <sup>29</sup> Raskin's testimony is reported in "Information Package Re: Non-U.S. Citizen Voting Rights in Takoma, Park," City of Takoma Park, Md., ND. Information package supplied to author by Jesse Carpender, City Clerk, available from author.
- <sup>30</sup> Bill A-04635 introduced Representative Vito Lopez. <http://assembly.state.ny.us/leg/?bn=A04635&sh=t> (accessed December 25, 2007).
- <sup>31</sup> Minnesota House of Representatives, H.F. no, 1899. A bill for an act relating to elections; proposing an amendment to the Minnesota Constitution, article VII, section 1; authorizing local units of government to permit permanent resident noncitizens to vote in local elections. <http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H1899.0.html&session=ls85> (accessed December 28, 2007).
- <sup>32</sup> <http://www.legis.state.tx.us/tlodocs/74R/billtext/html/HB02816I.HTM> (accessed January 6, 2008).
- <sup>33</sup> Tiao, "Non-Citizen Suffrage," p. 197.
- <sup>34</sup> *Ibid.* 181, fn. 49.

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- <sup>35</sup> Lisa García Bedolla, 2006, "Rethinking Citizenship: Noncitizen Voting and Immigrant Political Engagement in the United States," p. 17 (emphasis mine). In Taeku Lee, Karthick Ramakrishnan, and Ricardo Ramirez (eds.), *Transforming Politics, Transforming America: The Political and Civic Incorporation of Immigrants in the United States*, Charlottesville: University of Virginia Press. <http://orion.oac.uci.edu/~lgarciab/Rethinking%20Citizenship%20.pdf> (accessed November 9, 2006).
- <sup>36</sup> See City Council Int 0245-2006. The text of the bill may be found at: [http://webdocs.nycouncil.info/textfiles/Int%200245-2006.htm?CFID=1557046&CF\\_TOKEN=96328468](http://webdocs.nycouncil.info/textfiles/Int%200245-2006.htm?CFID=1557046&CF_TOKEN=96328468) (accessed December 23, 2007).
- <sup>37</sup> The proposals that have been introduced in local and state legislatures allow registration by mail, and of course once you are an officially certified voter, you are entitled to an absentee ballot.
- <sup>38</sup> Tiao, "Non-Citizen Suffrage," p. 202.
- <sup>39</sup> 405 U.S. 330, 34344 (1972); see also Neuman, "'We Are the People,'" p. 314.
- <sup>40</sup> Deborah James, 2001, "Ten Ways to Democratize the U.S. Political System," in Kevin Danaher, ed. *Democratizing the Global Economy: The Battle Against the World Bank and the IMF*, Monroe, Me.: Common Courage Press. <http://www.globalexchange.org/countries/americas/unitedstates/democracy/twelveWays.html> (Accessed November 26, 2006).
- <sup>41</sup> Louis DeSipio and Rodolfo de la Garza, 1993, "Save the Baby, Change the Bathwater, and Scrub the Tub: Electoral Participation After Seventeen Years of Voting Rights Act Coverage," *Texas Law Review*, 71: 1474, pp. 12, 17-18; See also Louis DeSipio and Rodolfo de la Garza, 1998, *Making Americans, Remaking America*, Boulder, Colo.: Westview, pp. 96-101; and Louis DeSipio, 1996, *Counting on the Latino Vote: Latinos as a New Electorate*, Charlottesville, Va.: University of Virginia Press.
- <sup>42</sup> The quotes in the preceding two paragraphs are drawn from DeSipio and de la Garza, "Save the Baby, Change the Bathwater, and Scrub the Tub," pp. 17-18.
- <sup>43</sup> Shaun Sutner, 1992, "Measures Designed to Enlarge Voter Rolls Stir Debate," *The Washington Post*, May 21, p. J1; see also Charles W. Hall, 2004, "Non-citizens Prepare to Vote in Arlington Primary for School Board," *The Washington Post*, May 22, and Deborah Sontag, 1992, "Noncitizens and Right to Vote," *The New York Times*, July 31.
- <sup>44</sup> This and the requirements that follow are drawn from the Immigration and Nationality Act §312 (1, 2), 8 U.S.C. §1423. See also Neuman, "'We Are the People,'" p. 310, footnote 322.
- <sup>45</sup> Gerald L. Neuman, 1994, "Justifying U.S. Naturalization Policies," *Virginia Journal of International Law*, 35:217, p. 242. Or consider what Neuman points out elsewhere: "Although popular sovereignty is largely a theory of the ultimate source of political power, rather than a recipe for the structuring of individual government institutions, a nationalist interpretation of popular sovereignty could justify the conclusion that the people should never share their political power with nonnationals. Both the nationalist-communitarian and liberal-individualist perspectives have been represented in the United States, outside the alien suffrage debate as well as inside it." See Neuman, 1992. "'We Are the People,'" p. 310, footnote 323.
- <sup>46</sup> Jamin Raskin and Matthew Spalding, 2005, "Debate Club: Should Non-Citizens Be Permitted to Vote?" *Legal Affairs* (on line), May 5, pp.3-5, 8. [http://www.legallaaffairs.org/webexclusive/dc\\_printerfriendly.msp?id=42](http://www.legallaaffairs.org/webexclusive/dc_printerfriendly.msp?id=42) (accessed November 23, 2006, pp. 3-5).
- <sup>47</sup> Evia, "Consent by All the Governed," p.178.
- <sup>48</sup> Daniel Munro, 2006, "City Citizenship and Democratic Multiculturalism," Paper prepared for the Annual Meeting of the Canadian Political Science Association June 1-4, pp. 1, 3, 5, 9, 10, 11, 12, 14, 15, 16, <http://www.cpsa-acsp.ca/papers-2006/Munro.pdf> (emphasis mine).
- <sup>49</sup> "If they [non-citizens] are left without political voice, their only outlet may be social unrest and outright violence of the kind that erupted during the riots by the Latino community in Mount Pleasant in the District of Columbia." See Harper-Ho, "Noncitizen Voting Rights," p. 298.
- <sup>50</sup> On this point see also Harper-Ho, "Noncitizen Voting Rights," p. 295.
- <sup>51</sup> Munro, "City Citizenship and Democratic Multiculturalism," p. 22 (emphasis mine).

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- <sup>52</sup> Ronald Hayduk, "Immigration, Race, and Community Revitalization," p. 34.
- <sup>53</sup> Harper-Ho, "Noncitizen Voting Rights," p. 298.
- <sup>54</sup> *Ibid.* p. 299.
- <sup>55</sup> Elise Brozovich, 2002, "Prospects for Democratic Change: Non-Citizen Suffrage in America," *Hamline Journal of Public Law & Policy* 23:403 (Spring): 443.
- <sup>56</sup> *Ibid.* p. 452.
- <sup>57</sup> April Chung, 1996, "Noncitizen Voting Rights and Alternatives: A Path Towards Greater Asian Pacific American and Latino Political Participation," *UCLA Asian Pacific American Law Review*, 4, 164.
- <sup>58</sup> Evia, "Consent by all the Governed," p. 180.
- <sup>59</sup> Munro, "City Citizenship," pp. 3, 9.
- <sup>60</sup> Raskin, "Legal Aliens," p. 1,392.
- <sup>61</sup> *Ibid.* p. 1,453.
- <sup>62</sup> Munro, "City Citizenship," p.1.
- <sup>63</sup> *Ibid.* p.11.
- <sup>64</sup> Dennis Thompson, 1970, *The Democratic Citizen: Social Science and Democratic Theory in the 20<sup>th</sup> Century*, New York: Cambridge University Press.
- <sup>65</sup> Munro, "City Citizenship," p. 8 (emphasis added).
- <sup>66</sup> The following data are drawn from Ron Hayduk and Michele Wucker, 2004, "Immigrant Voting Rights Receive More Attention," Migration Policy Institute, November 1. <http://www.migrationinformation.org/USfocus/display.cfm?id=265> (accessed November 9, 2006).
- <sup>67</sup> Quoted in Michael S. Arnold, 1993, "Getting Out the Vote Among Hispanics: Takoma Park Pamphlet Reflects Liberal Rules," *The Washington Post*, Sept. 30, 1993, p M01.
- <sup>68</sup> "Today, one out of five residents of California is a non-citizen, or over 4.6 million people. There are 12 localities in California where non-citizens are an outright majority of the population. In Los Angeles, non-citizens make up one-third of the adult population." Jamin Raskin, 2005, "Debate Club: Should Non-Citizens Be Permitted to Vote?," *Legal Affairs* (on line), May 5, p. 6. [http://www.legalaffairs.org/webexclusive/dc\\_printerfriendly.msp?id=42](http://www.legalaffairs.org/webexclusive/dc_printerfriendly.msp?id=42) (Accessed November 23, 2006); see also Joaquin Avila, 2003, "Political Apartheid in California: Consequences of Excluding a Growing Noncitizen Population," UCLA Chicano Research Studies Center, Latino Policy & Issues Brief No. 9 (December). [http://www.chicano.ucla.edu/press/siteart/LPIB\\_09Dec2003.pdf](http://www.chicano.ucla.edu/press/siteart/LPIB_09Dec2003.pdf).
- <sup>69</sup> Harper-Ho, "Noncitizen Voting Rights", p. 305. She goes on to say, "Once the class of noncitizen voters to be targeted is identified (i.e. resident aliens, resident aliens who have applied for naturalization, etc.), the number of noncitizens in that class becomes the relevant noncitizen population figure. Of key interest is the population of resident aliens relative to the total population." Of course, those numbers are not an argument by themselves, but an irreducible part of making a specific argument, namely that the number of non-citizens relative to citizens creates an argument for non-citizen voting.
- <sup>70</sup> Munro, "City Citizenship," p. 2.
- <sup>71</sup> However, for one exception to this general statement see Ronald Hayduk, 2004, "Democracy for All: Restoring Immigrant Voting Rights in the U.S.," *New Political Science*, 26:4.
- <sup>72</sup> Harper-Ho, "Noncitizen Voting Rights," p. 299.
- <sup>73</sup> Neuman, "'We Are the People'" p. 279. It should be noted that Neuman's article details a number of objections (pp. 279-283) raised in Germany in connection with the debate about allowing aliens to vote in local elections, but does not present any evidence on any of the matters he raises.
- <sup>74</sup> Harper Ho, "Noncitizen Voting Rights," pp. 299-300.
- <sup>75</sup> *Ibid.* p. 300.
- <sup>76</sup> *Ibid.*
- <sup>77</sup> Hayduk, "Immigration, Race and Community Revitalization," p. 34. (emphasis mine).

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- <sup>78</sup> Pew Hispanic Center, 2007, “2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill,” Washington, D.C., December 19. <http://pewhispanic.org/files/reports/84.pdf>
- <sup>79</sup> *Ibid.* p. 46.
- <sup>80</sup> *Ibid.* p. 45.
- <sup>81</sup> *Ibid.*
- <sup>82</sup> *Ibid.*
- <sup>83</sup> *Ibid.* p. 42.
- <sup>84</sup> Pew Hispanic Center, 2006, “2006 Survey of Latinos: The Immigration Debate,” Washington, D.C., July 13. <http://pewhispanic.org/files/reports/68.pdf>. The Toplines report on the actual questions and respondents’ answers can be found at <http://pewhispanic.org/files/other/68.1.pdf>. The data that follow are drawn from the Toplines report.
- <sup>85</sup> *Ibid.* p. 11.
- <sup>86</sup> *Ibid.*
- <sup>87</sup> *Ibid.*
- <sup>88</sup> *Ibid.* pp. 12, 13.
- <sup>89</sup> Pew Hispanic Center, “2007 National Survey of Latinos,” pp. 14, 45.
- <sup>90</sup> Harper-Ho, “Noncitizen Voting Rights,” p.303.
- <sup>91</sup> *Ibid.* pp. 303-304.
- <sup>92</sup> Munro, “City Citizenship,” p. 2 (emphasis mine).
- <sup>93</sup> Bedolla, “Rethinking Citizenship” (emphasis mine).
- <sup>94</sup> Munro, “City Citizenship,” p. 3. Here Munro paraphrases Michael Walzer whose direct quote is “Indeed, the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history.” See Walzer, 1983, *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, p. 62.
- <sup>95</sup> Raskin, “Debate Club: Should Non-Citizens Be Permitted to Vote?” p. 4 (emphasis mine).
- <sup>96</sup> Hayduk, “Immigration, Race, and Community Revitalization,” p. 37 (emphasis mine).
- <sup>97</sup> <http://webdocs.nyccouncil.info/textfiles/Int%200245-2006.htm?CFID=1557046&CFTOKEN=96328468> (accessed December 4, 2006).
- <sup>98</sup> <http://www.m-w.com/dictionary/disenfranchised> (emphasis in original).
- <sup>99</sup> I take up the psychology of national attachments at greater length in Stanley A. Renshon, 2005, *The 50% American: Immigration and National Identity in an Age of Terror*, Washington, D.C.: Georgetown University Press.
- <sup>100</sup> Brozovich, “Prospects for Democratic Change,” p. 427.
- <sup>101</sup> Kini, “Sharing the Vote,” p. 318.
- <sup>102</sup> Hayduk, “Immigration, Race, and Community Revitalization,” p. 33.
- <sup>103</sup> Sontag, “Noncitizens and Right to Vote.”
- <sup>104</sup> Chung, “Noncitizen Voting Rights and Alternatives,” p. 181.
- <sup>105</sup> Brozovich, “Prospects for Democratic Change,” pp. 443, 452, 453.
- <sup>106</sup> Advocates put forward different numbers and calculations of just how many states and/or territories did allow non-citizen voting. Tienda finds an upper limit of 35 states. In 2000, Harper-Ho put the number at 22. In 2004, Hayduk put also put the number at 22 states, but later changed his mind and upped the number to 40. See Marta Tienda, 2002, “Demography and the Social Contract,” 2002 Presidential Address Population Association of America, p. 38 (also Office of Population Research Princeton University Working Paper No. 2002-04, <http://opr.princeton.edu/papers/opr0204.pdf> (Accessed November 24, 2006); Harper Ho, “Noncitizen Voting Rights,” p. 273; Hayduk, “Democracy for All: Restoring Immigrant Voting Rights in the U.S.,” *New Political Science*, p. 499; and also Hayduk, 2006, *Democracy for All*, p. 16.

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- <sup>107</sup> See Leon E. Aylsworth, 1931, “The Passing of Alien Suffrage,” *American Political Science Review*, 25, pp. 114-116.
- <sup>108</sup> This paragraph draws on Neuman, “‘We Are the People,’” pp. 292-93.
- <sup>109</sup> Aylsworth, “The Passing of Alien Suffrage,” pp. 114-115.
- <sup>110</sup> Harper-Ho, “Noncitizen Voting Rights,” p. 277.
- <sup>111</sup> Raskin, “Legal Aliens, Local Citizens,” p. 1407.
- <sup>112</sup> Bedolla, “Rethinking Citizenship.”
- <sup>113</sup> Neuman, “‘We Are the People,’” p. 299.
- <sup>114</sup> Hayduk and Wucker, “Immigrant Voting Rights Receive More Attention.”
- <sup>115</sup> Evia, “Consent by All the Governed,” p. 5; see also Harper-Ho, “Noncitizen Voting Rights,” p. 282.
- <sup>116</sup> Harper-Ho, “Noncitizen Voting Rights,” p. 282.
- <sup>117</sup> Catherine Tactaquin, 2004, “Voting Rights for Immigrants,” *Poverty and Race*, 13:6 (November/December), p. 7. <http://www.prrac.org/pdf/tactaquinovdec2004.pdf> (accessed November 22, 2006).
- <sup>118</sup> Raskin, “Legal Aliens, Local Citizens,” p. 1,397.
- <sup>119</sup> *Ibid.* pp. 1,407-08.
- <sup>120</sup> Neuman. “‘We Are the People,’” p. 297.
- <sup>121</sup> *Ibid.* pp. 299-300.
- <sup>122</sup> *Ibid.* p. 293.
- <sup>123</sup> This paragraph draws heavily on Harper-Ho, “Noncitizen Voting Rights,” p. 277. There was no mechanism to see whether or not “declarant aliens” actually followed through with their pledge. This approach parallels modern practice in which the renunciation oath taken at the time of becoming an American citizen does not keep new citizens from having dual citizenship.
- <sup>124</sup> Neuman, “‘We Are the People,’” p. 299.
- <sup>125</sup> *Ibid.*, p. 299, footnote 255; see also Raskin, “Legal Aliens, Local Citizens,” p. 1,407.
- <sup>126</sup> Hayduk, “Democracy for All,” p. 501.
- <sup>127</sup> Karin Scherner-Kim, 2000, “The Role of the Oath of Renunciation in Current U.S. Nationality Policy — to Enforce, to Omit, or Maybe to Change?” *Georgetown Law Journal*, 88: pp. 329, 337 n 50.
- <sup>128</sup> Raskin, “Legal Aliens, Local Citizens,” p. 1334. That section reads, “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, *and citizens of the United States*, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.” (emphasis mine)
- <sup>129</sup> Raskin, in a memo to the City of Takoma Park, advised, “Research reveals that the town of Somerset, in Chevy Chase, has had such a policy for many years and that it has never been challenged, either *by* a private party or the Attorney General. Thus, there *is* strong factual precedent for thinking that municipal enfranchisement of resident non-citizens would create no legal problems.” See Information Package Re; Non-U.S. citizen Voting Rights in Takoma, Park,” City of Takoma Park, Maryland, ND, p. 9.
- When a bill to allow non-citizen voting came before the New York City Council, Mayor Bloomberg’s director of legislative affairs wrote a legal memo arguing that the proposal was inconsistent with the city charter and would require a referendum. Memorandum dated November 14, 2005 from Karen E. Meara. Director City Legislative Affairs to Bill Perkins, Chair-Committee on governmental Operations, Council of the City of New York. (available from the author).
- <sup>130</sup> Evia, “Consent by All the Governed,” p. 161.

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<sup>131</sup> Jamin Raskin and Matthew Spalding, 2005, “Debate Club: Should Non-Citizens Be Permitted to Vote?,” *Legal Affairs* (on line), May 5 (Emphasis mine). [http://www.legalaffairs.org/webexclusive/dc\\_printerfriendly.msp?id=42](http://www.legalaffairs.org/webexclusive/dc_printerfriendly.msp?id=42) (Accessed November 23, 2006.)

<sup>132</sup> Raskin. “Legal Aliens, Local Citizens,” p. 1,417; Brozovich, “Prospects for Democratic Change,” p. 408; Harper-Ho, “Noncitizen Voting Rights,” p. 287; Evia, “Consent by All the Governed,” p. 159.

<sup>133</sup> *Minor v. Happersett*, 88 U.S. 162 (1874).

<sup>134</sup> William N. Eskridge, 2001, “The Relationship Between Obligations and Rights of Citizens,” *Fordham Law Review*, 69: 1,721-1,751.

<sup>135</sup> “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 sex.” See Eskridge, “The Relationship Between Obligations and Rights of Citizens,” pp. 1,732-33.

<sup>136</sup> *Ibid.* p.1,733.

<sup>137</sup> The author makes no representations to either constitutional or legal expertise. Rather, what follows is informed lay commentary.

<sup>138</sup> Rosberg, “Aliens and Equal Protection,” p. 1,108.

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.* p. 1,105.

<sup>141</sup> It is of course quite possible to mount a counterargument that in using the word “citizen” specifically in relationship to the right to take part in federal elections, the court was quite deliberately linking the two. For example, Stein argues that “The following set of words appears in the Constitution as the object of its textual commandments: person, inhabitant, and citizen. The word “person” is used when the Constitution refers to members of the human race in general; the term “inhabitant” is used to address a subset of “persons” defined by some geographic boundary, usually a state; a “citizen” is specifically a “person” who is “born or naturalized in the United States.” Thus, the term “citizen” refers to a subjective quality of a person, i.e. the condition of being born or naturalized in the United States, while the term “inhabitant” only delineates the geographic location or bounds of “persons.” These words

are not interchangeable. Of the above terms, the term “citizen” is consistently, and exclusively, used in language pertinent to the right to participate in federal elections. The 15<sup>th</sup> Amendment avers that “[t]he 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.” Using materially the same language, the 19<sup>th</sup> Amendment proscribes denying a “citizen” the right to vote based on “account of sex.” The 24<sup>th</sup> Amendment prevents “the rights of citizens of the United States” to vote from being “denied or abridged . . . for failure to pay a poll tax or any other tax.” Similarly, the right to vote is guaranteed to “citizens . . . who are 18 years of age or older” by the 26<sup>th</sup> Amendment. Thus, it is clear that the text of the Constitution implicitly limits the right to participate in federal elections to persons born or naturalized in the United States — i.e. citizens. See Jonathan Stein, “Compassionately Safeguarding Citizen Voting Rights,” unpublished manuscript, Fordham University Law School (in author’s possession), nd.

<sup>142</sup> Harper-Ho, “Noncitizen Voting,” n. 103.

<sup>143</sup> Raskin, “Legal Aliens, Local Citizens,” pp. 1,431-32.

<sup>144</sup> Neuman, “‘We Are the People,’” p. 310, footnote 324.

<sup>145</sup> U.S. 634, 649, p. 413-414.

<sup>146</sup> 533 P.2<sup>nd</sup> 830 (Colo. 1976) *appeal dismissed*, 430 U.S. 961 (1977).

<sup>147</sup> *Ibid.* Skaft 533 P2<sup>nd</sup>. at 830.

<sup>148</sup> *Ibid.* at 832.

<sup>149</sup> *Ibid.*

<sup>150</sup> *Kramer* 395 U.S.621 (1969) at 625.

<sup>151</sup> In *Foley v. Connelie*, 435 U.S. 291, 297 (1978) the court ruled that “although we extend to aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens.”

<sup>152</sup> Rosberg, “Aliens and Equal Protection,” p. 1,100.

<sup>153</sup> Neuman, “‘We Are the People,’” p. 324.

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- <sup>154</sup> A case arose recently (*Dickerson v. United States* 530 U.S. 2000) which again tested the constitutionality of the Miranda warnings. Writing for the majority in affirming them Chief Justice Renquist said, “Whether or not we agree with Miranda’s reasoning and its resultant rule... the principles of *stare decisis* weight heavily against overruling it now.” Further, “Miranda has become embedded in routine policy practice to the point where the warnings have become part of our national culture.” <http://supct.law.cornell.edu/supct/pdf/99-5525P.ZO> (accessed December 10, 2006).
- <sup>155</sup> David C. Earnest, 2006, “Neither Citizen Nor Stranger: Why States Enfranchise Resident Aliens,” *World Politics* (January), pp. 267-68.
- <sup>156</sup> *Ibid.* pp. 266-267.
- <sup>157</sup> *Ibid.* p. 271-272 (emphasis mine).
- <sup>158</sup> *Ibid.* Figure 1-Scope of Rights, p. 259.
- <sup>159</sup> David C. Earnest, 2004, “Voting Rights for Resident Aliens: Nationalism, Postnationalism and Sovereignty in an Era of Mass Migration,” Unpublished dissertation, Washington, D.C.: The George Washington University. The other six considered but rejected such proposals. See Jan Rath, 1990, “Voting Rights,” in Zig Layton-Henry (ed.) *The Political Rights of Migrant Workers in Western Europe*, Newbury Park, Calif.: Sage Publications, p. 128.
- <sup>160</sup> These numbers from Hayduk and Wucker, “Immigrant Voting Rights Receive More Attention;” see also The Immigration Voting Project-Belgium <http://www.immigrantvoting.org/World/Belgium.html>; “Immigrant suffrage at risk,” *The Copenhagen Post*, November 23, 2005, [http://www.cphpost.dk/print.jsp?o\\_id=92345](http://www.cphpost.dk/print.jsp?o_id=92345) (accessed November 22, 2006).
- <sup>161</sup> David C. Earnest, 2003, “Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm?” Paper prepared for delivery at annual convention of the American Political Science Association, Philadelphia, August 28-31, p. 16.
- <sup>162</sup> *Ibid.*
- <sup>163</sup> *Ibid.* p. 12.
- <sup>164</sup> *Ibid.*
- <sup>165</sup> *Ibid.* p. 17.
- <sup>166</sup> “Immigrant suffrage at risk,” *The Copenhagen Post*.
- <sup>167</sup> “Belgium grants all expats local voting rights,” *Expatica*, February 20, 2004. [http://www.expatica.com/actual/article.asp?subchannel\\_id=24&story\\_id=4889](http://www.expatica.com/actual/article.asp?subchannel_id=24&story_id=4889) (accessed November 24, 2006).
- <sup>168</sup> Kim Rahn, 2006, “Foreigners Cast Ballots for 1<sup>st</sup> Time,” *The Korea Times*, May 31.
- <sup>169</sup> Neuman, ““We Are the People,”” p. 283.
- <sup>170</sup> Earnest, “Noncitizen Voting Rights,” p. 16.
- <sup>171</sup> The following data are contained in a personal communication between David C. Earnest and the author, November 27, 2006. On file with the author.
- <sup>172</sup> Tienda, “Demography and the Social Contract.”
- <sup>173</sup> “[T]he fact that resident aliens and third-country nationals lack equivalent rights [to EU citizens] and, hence, remain excluded from both the national, local and supranational arena, represents a major challenge to the normative-based idea of good governance.” See Stephen Day. 2000, “Dealing with Alien Suffrage: Examples from the EU and Germany,” Paper presented to the Ionian Conference, Corfu, Greece, May 19-22, p. 2. <http://www.lse.ac.uk/collections/EPIC/documents/ICDay.pdf>
- <sup>174</sup> Karin Mayr, 2003, “Immigration and Majority Voting on Income Redistribution: Is there a Case for Opposition from Natives?” Unpublished paper, University of Warwick, p. 2; see also David C. Earnest, 2006, “Neither Citizen or Stranger: Why States Enfranchise Aliens,” *World Politics*, 58 (January), p. 266.
- <sup>175</sup> Tienda, “Demography and the Social Contract..,” p. 39.
- <sup>176</sup> A. Blais, L. Massicotte, and A. Yoshinaka, 2001, “Deciding who has the right to vote: a comparative analysis of election laws,” *Electoral Studies*, 20:1 (March), pp. 41-62. Two years later, though, Earnest prepared a paper that listed 23 countries as allowing non-citizen voting. See Earnest, “Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm.”

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- <sup>177</sup> Bedolla, "Rethinking citizenship," p. 17.
- <sup>178</sup> Munro, "City Citizenship," p.14.
- <sup>179</sup> These figures are drawn from "Elections to the European Parliament: Voting Rights and Eligibility for Citizens of the European Union" <http://europa.eu/scad-plus/printversion/en/lvb/l23025.htm> (accessed December 6, 2006). In 1994 a figure of 5.9 percent was drawn from Commission of the European Communities, Third Report from the commission on citizenship of the Union, Brussels, 07.09.2001. [http://www.southern-cross-group.org/archives/Overseas%20Voting/2001%20-%2009/European\\_Commission\\_Third\\_Report\\_EU\\_Citizenship\\_7\\_Sept\\_2001.pdf](http://www.southern-cross-group.org/archives/Overseas%20Voting/2001%20-%2009/European_Commission_Third_Report_EU_Citizenship_7_Sept_2001.pdf) (Accessed December 4, 2006.)
- <sup>180</sup> Reynolds Holding, 2007, "Voting Block," *Time*, April 12.
- <sup>181</sup> Raskin and Spalding, "Debate Club."
- <sup>182</sup> On the correlates of political participation see Sidney Verba, Kay Lehman Schlozman, and Henry Brady, 1995, *Voice and Equality: Civic Voluntarism in American Politics*, Cambridge: Harvard University Press.
- <sup>183</sup> T. Hammar, 1990, "The Civil Rights of Aliens," In Z. Layton-Henry (ed.), *The Political Rights of Migrant Workers in Western Europe*, London: Sage Publications. p. 87.
- <sup>184</sup> Peter J. Spiro, 1999, "Questioning Barriers to Naturalization," *Georgetown Immigration Law Journal* 13: 479-517.
- <sup>185</sup> Julia Preston, 2007, "Federal Suit is Seeking to Expedite Citizenship," *The New York Times*, December 5.
- <sup>186</sup> John Simanski, 2007, "Naturalizations in the United States: 2006," Department of Homeland Security, Office of Immigration Statistics, May, page 4; see also Table 7. [http://www.dhs.gov/xlibrary/assets/statistics/publications/Natz\\_01\\_Sec508Compliant.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/Natz_01_Sec508Compliant.pdf) (Accessed December 27, 2007.)
- <sup>187</sup> Spiro, "Questioning Barriers to Naturalization," p. 480.
- <sup>188</sup> Tiao, "Non-Citizen Suffrage," p. 202.
- <sup>189</sup> *Ibid.* p. 213.
- <sup>190</sup> Michael Fix and Jeffrey S. Passel, 2003, "Trends in Naturalization," The Urban Institute, Policy Brief No. 3, p.2, <http://www.urban.org/publications/310847.html>
- <sup>191</sup> *Ibid.* p. 3.



Center for Immigration Studies  
1522 K Street, N.W., Suite 820  
Washington, DC 20005  
202.466.8185 (phone)  
202.466.8076 (fax)  
center@cis.org  
www.cis.org