

NOTES

CONSENT BY ALL THE GOVERNED: REENFRANCHISING NONCITIZENS AS PARTNERS IN AMERICA'S DEMOCRACY

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I. INTRODUCTION

The United States has been the pioneer of democratic values on the stage of world history for over two hundred years.¹ The foundation of a democracy is the right of the governed to elect their political leaders. As President Lyndon B. Johnson told Congress in 1965, Americans have “fought and died for two centuries” to defend the principle of “government by consent of the governed.”²

Despite these democratic values, one particular group in our country is governed but has lost the right to vote—noncitizen legal permanent residents (“LPRs”).³ Noncitizen LPRs are legal immigrants. They are foreign-born individuals who have been granted legal permanent resident status by the U.S. government. This status allows them to live and work in the country indefinitely. Noncitizen LPRs pay taxes at the local, state, and

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1. See ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES*, at XV (2000).

2. *Id.*

3. This Note refers to this group as noncitizens, noncitizen residents, and noncitizen LPRs interchangeably.

federal levels, they can serve in the military and are eligible for the draft, and they are subject to all the laws of the United States. Although they have all the political, social, and military obligations of citizens, noncitizen LPRs are no longer allowed to vote in any state due to the recent amendments of state constitutions, which have disenfranchised noncitizens and limited the franchise to U.S. citizens. Prior to this disenfranchisement, noncitizens legally voted in local, state, and national elections for over one hundred years.

Recognizing that consent by the governed is fundamental to the function of a democratic society, this Note intends to raise awareness and support for the complete reenfranchisement of noncitizen LPRs at the local, state, and national levels. In an attempt to ascertain the viability of noncitizen reenfranchisement, this Note begins by relying on the academic works of Jamin Raskin and Gerald Rosberg to demonstrate that the recent exclusion of noncitizens from the ballots is neither historically required nor constitutionally mandated. Through a chronological framework, Part II explores the long history of noncitizen voting in the United States and concludes that noncitizens were disenfranchised, not as a result of constitutional or legal arguments, but rather as a result of xenophobia during World War I. Part III reveals that noncitizen voting is constitutional and that states can legally choose to reenfranchise noncitizens.

Building on the premise that noncitizens were disenfranchised for entirely political motivations and that reenfranchisement is constitutionally permissible, Part IV explores the ideological obstacles currently faced by noncitizens in their pursuit of the franchise. Using the experience of women during their fight for enfranchisement and the sexist arguments they encountered as a tool for comparison, Part IV argues that noncitizens are currently being denied the opportunity to vote because of assumptions about them that are as inaccurate and morally reprehensible as the gender stereotypes that confronted women. Part V analyzes and rejects the prevalent solution being offered by politicians and scholars to include noncitizens in the franchise—partial enfranchisement. Part V specifically rejects the conclusion invoked by Raskin and recent works influenced by his leading article that granting noncitizens partial enfranchisement is an adequate and sufficient solution and less troubling than reenfranchising them completely. By comparing the rationales behind partial enfranchisement of noncitizens and women, Part V concludes that partial enfranchisement is as insufficient and insulting to noncitizens as it was to women. In conclusion, Part VI offers an approach to achieving complete reenfranchisement of noncitizens.

This Note is based on the premise that neither history nor the Constitution requires that LPRs become citizens to vote, and it will not discuss immigration law or current naturalization requirements in detail.⁴ It is important to note, however, that under current immigration law, most LPRs are eligible to become naturalized U.S. citizens five years after they have obtained LPR status.⁵ Although LPRs could simply “wait” five years to become citizens and become enfranchised, this Note demonstrates that because LPRs inherit the legal, social, and economic obligations of U.S. citizens immediately upon becoming LPRs, they should not be forced to wait five years to inherit the right to participate in the democratic process.⁶ The fact that many LPRs have already been in the United States as immigrants prior to adjusting their status to LPRs, and that granting LPR status means that the government has made a determination that the LPR is qualified to live and reside *permanently* in the United States further supports the proposition that LPRs should be allowed to integrate into the democratic process immediately after obtaining LPR status.

II. THE HISTORY OF NONCITIZEN VOTING IN THE UNITED STATES: ONE HUNDRED AND FIFTY YEARS OF ENFRANCHISEMENT

Noncitizens played an integral role in shaping the politics of this nation by exercising their right to vote for over one hundred and fifty years. From colonization until 1928, noncitizens had the right to vote in many local, state, and even national elections. Part II explores the history of noncitizen voting. It reveals that voting and citizenship have never been synonymous terms, that noncitizen voting was encouraged by many states and supported openly by Congress, and that xenophobia during World War I led to the disenfranchisement of noncitizens.

4. The five-year lapse mandated by the Immigration and Naturalization Act (“INA”) is irrelevant in discussing the legality of LPR voting because it does not determine the electorate; it merely defines when an LPR is eligible for citizenship.

5. See 8 U.S.C.A. § 1427(a) (West 2003).

6. It is also important to consider that some LPRs may not be able to naturalize within five years due to personal situations. For example, some LPRs might not be able to afford the cost of naturalization, which includes a \$260 filing fee. See 8 C.F.R. § 103.7(b)(1) (2003). The right to vote should not depend on issues such as a person’s economic capacity to naturalize.

A. NONCITIZENS BUILD A NATION: COLONIZATION AND
POST-REVOLUTIONARY AMERICA

1. Aliens as “Inhabitant” Voters in the Colonies

During the colonial period, the idea emerged that each colony could define its own electorate.⁷ Generally, voting in the colonies required that voters be local inhabitants and not British citizens.⁸ According to Raskin, this early inclusion of noncitizens in the franchise was not a reflection of universal tolerance, but rather a reflection of the fact that nationalism was of secondary importance in establishing suffrage qualifications in this era.⁹ As long as aliens met the primary gender, race, and property tests, they could possess the right to vote.¹⁰ This meant that colonial America enfranchised white, noncitizen men with property, but not citizen women and white citizen men who lacked the requisite property and wealth requirements.¹¹ Colonial America, therefore, did not consider “voter” and “citizen” as synonymous terms.

2. America Emerges as a Nation Without a Citizenship Requirement for
Voting

The practice of alien suffrage that began in the colonies survived the Revolution of 1776. During this era, aliens voted freely in state, federal, and territorial elections.¹² Throughout the eighteenth century, noncitizen voting was perfectly consistent with the ideals of a self-defined immigrant republic of propertied white men. Noncitizen voting “reflected both an openness to newcomers and the idea that the defining principle for political membership was not American citizenship but the exclusionary categories of race, gender, property, and wealth.”¹³

7. See Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1400 (1993).

8. See *id.* at 1399.

9. See *id.*

10. For example, French Heugonot noncitizens voted in South Carolina in the late seventeenth and eighteenth centuries, and noncitizen Germans voted in Pennsylvania in the mid-eighteenth century. See Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 MICH. L. REV. 1092, 1096 (1977).

11. This early liberalism reflected that “the ethnocentrism of the colonial period was primarily religious and only secondarily nationalistic.” Raskin, *supra* note 7, at 1399 (quoting MAURICE R. DAVIE, *WORLD IMMIGRATION* 37 (1936) (paraphrasing Lawrence Guy Brown)).

12. Some aliens also had the right to serve in local government. For example, the Northwest Ordinance of 1787 gave freehold aliens who had been residents for three years the right to serve in the governance of the territories northwest of the Ohio River. See *id.* at 1402.

13. *Id.* at 1395.

Thus, as Raskin points out, the rationale behind allowing noncitizens to vote was that the propertied, white, male, alien voter was similar enough to other electors so as not to threaten the fundamental cultural and political norms that were defining the new nation.¹⁴ Furthermore, to exclude aliens from voting would have given rise to the “dangerous inference” that U.S. citizenship was the decisive criterion for suffrage at a time when U.S. citizen women and men without property were categorically excluded from the franchise.¹⁵ That noncitizens were allowed to vote in the post-Revolutionary era reveals that from the beginning of America’s history as an independent nation, the states were given the same power as the colonies to define their own electorate. As was true in the colonies, “voter” and “citizen” were not synonymous terms.

For its part, Congress openly encouraged noncitizen voting in the early years of the Republic. For example, Congress, through congressional acts, stated expressly that aliens could vote in the elections for state representatives in Ohio, Indiana, Michigan, and Illinois.¹⁶ The courts in this era also supported states that chose to enfranchise aliens. For example, in 1809, the Pennsylvania Supreme Court in *Stewart v. Foster* found that an alien freeholder, who had lived in the borough and paid local taxes, was entitled as a matter of state law to vote in the election of borough officers.¹⁷

B. XENOPHOBIA RESTRICTS THE VOTE AS A RESULT OF THE WAR OF 1812

The War of 1812 directly contributed to a decline in the support of noncitizen voting in the states. The invasion of foreign troops into American territory produced a militant nationalism and distrust of foreigners.¹⁸ Additionally, a drive for the abolition of property qualifications for voting began shortly after the War. Abolishing property qualifications would mean that *all* white males would be entitled to the

14. See *id.* at 1401. As part of the historical analysis in his argument, Raskin draws attention to the fact that aliens were allowed to vote during the post-Revolutionary War era as long as they were white and held property because they appeared to have enough in common with the general electorate to avoid threatening fundamental American values. Although he seems to criticize this rationale as a façade for not including other groups (such as nonwhite men and women, who were seen as more threatening to American values), he uses this rationale to argue that aliens today should be allowed to vote only in local elections where aliens share the values of American citizens, but not on political issues at the state or national level. See *id.* at 1452; *infra* Part V.

15. See Raskin, *supra* note 7, at 1401.

16. *Id.* at 1402.

17. See *Stewart v. Foster*, 2 Binn. 110, 118–19 (1809).

18. See Rosberg, *supra* note 10, at 1097–98. Also, note that after the events of September 11, 2001, Americans experienced a similar distrust of foreigners and extreme nationalism as a result of the foreign invasion by terrorists.

ballot. The prospect of abolishing property qualifications aroused anti-alien sentiments because, without property qualifications, states that allowed alien suffrage would have to extend the vote to an “obviously more threatening” class of aliens—poor noncitizens without property.¹⁹ As a result of these xenophobic reactions, states that joined the Union after the War of 1812 restricted the vote to citizens, and many states that had previously allowed noncitizen voting reversed their position.²⁰

C. POST-WAR OF 1812 EXPANSION: DECLARANT ALIEN PROVISIONS AND THE NEED FOR IMMIGRATION COUNTER XENOPHOBIC RESTRICTIONS

The post-War of 1812 trend away from noncitizen suffrage was countered in the mid-nineteenth century by the need and desire for immigration. In the hopes of encouraging rapid settlement, many territories and states enfranchised noncitizens. “Declarant alien” provisions were instrumental in reviving the practice of noncitizen voting. Declarant alien provisions extended full voting rights to “[w]hite persons of foreign birth who shall have declared their intention to become citizens.”²¹ Declarant alien provisions “succeeded in weakening the force of nationalist opposition to alien suffrage” because, in theory, only noncitizens on a “*pathway* to citizenship” were being allowed to vote.²² The practical implication, under federal law, however, was that an alien who declared an intention to become a citizen did not have to abandon his or her original nationality, did not become legally obligated to actually become a citizen, and did not have to pledge an oath of allegiance to the United States.²³ Thus, noncitizens (not would-be citizens) once again won the right to vote in local, state, and national elections.

The first state to adopt a declarant alien provision was Wisconsin. Wisconsin’s formula was attractive to other states because they did not want Wisconsin to have a competitive edge in attracting immigrants.²⁴ For example, because alien suffrage was instrumental in attracting immigrants to the Northwest Territories, Congress passed an organic act for the Oregon Territory that embodied a declarant alien provision. It was followed by

19. See Raskin, *supra* note 7, at 1404.

20. See *id.*

21. *Id.* at 1406.

22. *Id.* at 1407.

23. *Id.* at 1406.

24. Rosberg, *supra* note 10, at 1098.

parallel provisions for the territories of Minnesota, Washington, Kansas, Nebraska, Nevada, Dakota, Wyoming, and Oklahoma.²⁵

Even during the post-War of 1812 trend away from alien suffrage, the courts emphasized Congress's historical commitment to noncitizen voting, calling attention to the fact that aliens could be inhabitant-voters without being citizens. For example, in 1840, the Illinois Supreme Court in *Spragins v. Houghton* denied that the terms "citizen" and "inhabitant" were interchangeable, citing evidence of aliens voting as inhabitants pursuant to congressional legislation.²⁶ The court found that it was "well understood" that "the right of suffrage was extended to aliens" in the Northwest Territory to encourage immigration.²⁷ The court invoked Congress's historic commitment to the democratic inclusion of inhabitants, finding that references in the Illinois Constitution to "citizen" did not change the inclusive meaning of "inhabitants" in the electoral provision.²⁸ Thus, by the mid-nineteenth century, America continued to define voting rights as belonging to white property owners, and not to the broad category of "citizens" that would have included women, the poor, and (a growing concern during the Civil War) blacks.

D. THE CIVIL WAR: EXPANSION, PEAK

During the Civil War, the issue of noncitizen voting became a point of contention. Immigrants were overwhelmingly hostile to slavery, and as a result, southerners tried to reduce and northerners tried to expand the political influence of aliens.²⁹ In the North, voting became the crucial dividing line between draftable and undraftable aliens. Any alien male between the ages of twenty and forty-five, who had voted, was subject to the draft along with U.S. citizens.³⁰

After the Civil War, however, noncitizen voting regained ground. Raskin and Rosberg point out that at least thirteen new southern states,

25. See Raskin, *supra* note 7, at 1407–08.

26. See *Spragins v. Houghton*, 3 Ill. (2 Scam.) 377, 402–05 (1840).

27. *Id.* at 409.

28. See *id.* at 407–08.

29. Raskin, *supra* note 7, at 1409.

30. The Enrolment Act, often described as the first precedent for the modern selective service system, included in the draft males between the ages of twenty and forty-five "of foreign birth who shall have declared on oath their intention to become citizens." *Id.* at 1413 (quoting the Enrolment Act, Mar. 3, 1863, ch. 75, 12 Stat. 731). This resulted in aliens, who had declared their intention to naturalize, to renounce their plans to avoid the draft. As a result, President Abraham Lincoln announced that all declarant aliens who had already voted could not renounce their declarations of intent and had to serve in the War. See *id.* at 1412–13.

likely anxious to lure new settlers, adopted declarant alien suffrage.³¹ As Rosberg notes, “[B]y the end of the nineteenth century nearly one-half of the states and territories had had some experience with voting by aliens, and for some the experience lasted more than half a century.”³²

E. WORLD WAR I: DISENFRANCHISEMENT

The late nineteenth century witnessed a revival of alien suffrage through declarant alien provisions. This revival, however, peaked at the end of the Civil War and came to a drastic end at the turn of the twentieth century with the rise of World War I. Antiforeigner sentiments ran high during this era, as had been the case during the War of 1812. Unlike the era of the War of 1812, which saw immigration needs counter xenophobic restrictionism, Congress did not need to encourage immigration into the territories. On a national scale, the era of open and unlimited immigration was coming to an end. During this time, the national government was “making it increasingly difficult to get into the United States,” while the states, for their part, “were taking political privileges away from” those aliens who had already gained admission.³³

Thus, one by one, states amended their constitutions or passed statutes to disenfranchise aliens. Most states achieved this by amending their constitutions to define their electorate as “U.S. citizens.” Choosing to define the electorate as “citizens” was no longer problematic for the states since the “most feared” were already voting: blacks, women, and nonproperty holding men. Now, the newly feared foreigners were excluded. In 1928, for the first time in over one hundred years, a national election was held in which no alien in any state had a right to vote for any office.³⁴ Aliens throughout the United States, who had shaped the face of this country through the ballot box for over a century, were slowly silenced and disenfranchised for mere political and xenophobic reasons.

III. THE CONSTITUTION DOES NOT PROHIBIT NONCITIZEN VOTING

The motivation to disenfranchise aliens was purely political. Constitutionally, alien suffrage is not only permissible but has been directly

31. *Id.* at 1414; Rosberg, *supra* note 10, at 1099.

32. Rosberg, *supra* note 10, at 1099.

33. *Id.* at 1100.

34. See Leon E. Aylsworth, *The Passing of Alien Suffrage*, 25 AM. POL. SCI. REV. 114, 114 (1931).

and indirectly encouraged by Congress and the courts. This part illustrates that there is no legal mandate for disenfranchising aliens.

A. THE CONSTITUTION DOES NOT HAVE A CITIZENSHIP REQUIREMENT FOR VOTING

As America was born, a national concept of citizenship emerged. In the Constitution, the Framers specifically declared that the president, representatives, and senators must be citizens of the United States.³⁵ The Constitution explicitly declares that only the president has to be a natural-born citizen, while members of the House and Senate can be naturalized citizens.³⁶ As Rosberg notes, however, “there was little effort . . . to declare specifically that only citizens could vote”³⁷ The Framers’ “complete silence as to a citizenship qualification for federal *voting* [implies] that they did not intend to create a U.S. citizenship suffrage qualification.”³⁸

Instead, Article I, Section 2 of the Constitution grants the States the power to define voter qualifications for state and federal elections.³⁹ Voters that are enfranchised by the State for state legislative elections are thereby enfranchised to vote in federal elections. The members of the House of Representatives are chosen by the people of the state, and the electors in each state must have the qualifications requisite for electors of the most numerous branch of the state legislature. Senators are chosen by the legislature of the state, whose members are elected by the voters of the state. Each State must appoint in such manner, as the legislature thereof may direct, the electors to elect the president and vice president. Thus, as the Supreme Court stated in *Minor v. Happersett*, “The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters.”⁴⁰

35. See Rosberg, *supra* note 10, at 1097. See also U.S. CONST. art. II, § 1.

36. See U.S. CONST. art. I, § 2 (requiring a House representative to have been a citizen of the United States for seven years); U.S. CONST. art. I, § 3 (requiring U.S. senators to have been a citizen of the United States for nine years); U.S. CONST. art. II, § 1 (requiring that the president of the United States be a “natural-born citizen”).

37. Rosberg, *supra* note 10, at 1097.

38. Raskin, *supra* note 7, at 1421.

39. U.S. CONST. art. I, § 2.

40. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 170 (1874).

B. THE WORD “CITIZEN” IN THE FOURTEENTH AMENDMENT AND IN THE SUFFRAGE AMENDMENTS DOES NOT DISENFRANCHISE NONCITIZENS

The States have the power to define and regulate voter qualifications, “as long as states do not restrict the rights of the core electorate laid out in . . . the Constitution.”⁴¹ The provisions in the Constitution that define the rights of the core electorate are the Fifteenth Amendment (prohibiting race restrictions), the Nineteenth Amendment (prohibiting gender restrictions), the Twenty-Fourth Amendment (prohibiting the poll tax), and the Twenty-Sixth Amendment (granting eighteen-year-olds the right to vote).⁴² This Note refers to these amendments collectively as the “Suffrage Amendments.”

According to Raskin, noncitizen voting does not offend the Suffrage Amendments despite their explicit use of the word “citizen.”⁴³ The Fifteenth Amendment states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”⁴⁴ According to Raskin, “[this] language specifies only that states may not *exclude* any citizen from the franchise” on the discriminatory bases set forth, “not that the states may not *include* noncitizens in the franchise.”⁴⁵

Raskin looks beyond the plain language of the Fifteenth Amendment to its legislative history and finds that senators who contemplated the Amendment made it clear that they wanted to preserve the right of the States to enfranchise white aliens.⁴⁶ In 1869, Senator Charles Sumner proposed an amendment that would have extended the Fifteenth Amendment’s reach to ban racial discrimination in voting not only against citizens but against noncitizens as well. Many senators opposed this amendment because they wanted to preserve the right of the States to enfranchise white aliens while excluding Chinese aliens.⁴⁷ Arguing against this amendment, Illinois Senator Lyman Trumbull stated:

41. Virginia Harper-Ho, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 LAW & INEQ. 271, 288 (2000).

42. See U.S. CONST. amend. XV; U.S. CONST. amend. XIX; U.S. CONST. amend. XXIV; U.S. CONST. amend. XXVI; Raskin, *supra* note 7, at 1425.

43. See Raskin, *supra* note 7, at 1425–31.

44. U.S. CONST. amend. XV, § 1.

45. Raskin, *supra* note 7, at 1425. Raskin illustrates and advocates the legality of noncitizen voting, but does not conclude his analysis by advocating that states today should include noncitizens in the franchise. See *infra* Part V.

46. See Raskin, *supra* note 7, at 1425–26.

47. *Id.* at 1427.

Now, in some of the states citizenship is not a requisite to suffrage; persons who are not citizens vote in some of the States of the Union. There would be nothing in this amendment . . . to prevent those States [from] discriminating against persons who are not citizens on account of race or color Citizenship and the right of suffrage were never synonymous terms But if this amendment . . . is adopted it will not be in the power of [states that allow noncitizens to vote] to discriminate against persons who are not citizens on account of race or color.⁴⁸

Trumbull's statement illustrates two important points: (1) the reiteration, even in the discourse of protecting the rights of citizen-voters, that not all voters were citizens, and (2) that the Fifteenth Amendment was not meant to overrule a State's power to enfranchise aliens, if it so chose.

Thus, the inclusion of the word "citizens" in the Fifteenth Amendment was likely not intended to disenfranchise noncitizens. Similarly, the use of the word "citizen" in the other Suffrage Amendments does not disenfranchise noncitizens. Raskin cites two compelling arguments supporting this proposition. First, he contends that citizenship and suffrage continue to be distinct legal categories, since, as was observed in *Minor v. Happersett*, today in the United States not all citizens possess the right to vote (such as children and ex-felons in some states) and not all voters are citizens (such as noncitizens who vote in local elections in some states).⁴⁹ Additionally, he asserts that it is tenuous to suggest that the Constitution prohibited a historically common and accepted state practice indirectly and by way of implication (as opposed to using specific restrictionary language), especially in the voting area where the judiciary has traditionally deferred to the states, interfering only to expand democratic inclusion.⁵⁰

C. THE COURTS HAVE UPHELD THE VALIDITY OF NONCITIZEN VOTING

Perhaps the most compelling evidence illustrating that the Suffrage Amendments do not disenfranchise noncitizens is that States continued to enfranchise noncitizens for fifty-eight years after the first Suffrage Amendment was passed, and courts continued to explicitly or implicitly uphold the constitutionality of noncitizen voting. Indeed, no court in the United States has *ever* found the practice of noncitizen voting unconstitutional.⁵¹

48. *Id.* at 1426–27.

49. *Id.* at 1429.

50. Raskin, *supra* note 7, at 1428–30.

51. *Id.* at 1417.

For the one hundred and fifty years during which alien suffrage was common in the United States, courts endorsed the practice by emphasizing the fact that suffrage and citizenship were independent legal categories. Even after the Fourteenth Amendment was passed in 1868, which defines who is a citizen of the United States, the Supreme Court continued to use noncitizen voting as an illustration of the separate spheres underlying citizenship and suffrage.⁵² In *Minor*, for example, the Court cited to declarant alien provisions⁵³ in holding that if in fact not all citizens were voters, neither were all voters citizens.⁵⁴ In 1904, in *Pope v. Williams*, the Supreme Court upheld a Maryland statute requiring new residents to make a declaration of intent to become Maryland citizens one year prior to voting,⁵⁵ reasoning that the right to vote in a state is within the jurisdiction of the State itself.⁵⁶ The Court, referring explicitly to *Minor*, noted that “[t]he State might provide that persons of foreign birth could vote without being naturalized, and . . . such persons were allowed to vote in several of the States upon having declared their intentions to become citizens of the United States.”⁵⁷ The Fourteenth Amendment, therefore, specified who is a citizen, but according to the courts, it did not make “voter” and “citizen” synonymous terms.

Most recently in 1973, over forty years since the last election was held in the United States in which noncitizens participated, the Supreme Court declared that citizenship was merely a “permissible criterion” for limiting voting rights, and thus not a compulsory one.⁵⁸

IV. STATES ARE CHOOSING TO DISENFRANCHISE NONCITIZENS FOR THE SAME REASONS THEY CHOSE TO DISENFRANCHISE WOMEN

Parts II and III revealed that the long history of noncitizen voting in the United States did not end because of constitutional illegality; rather, it ended because of xenophobic nationalism. As recently as 1973, the

52. The major provision of the Fourteenth Amendment grants citizenship to “[a]ll persons born or naturalized in the United States,” thereby granting citizenship to former slaves. U.S. CONST. amend. XIV, § 1.

53. See *supra* Part II.C (discussing the rise of declarant alien provisions).

54. See *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 177 (1874).

55. Note that by declaring that a non-U.S. citizen could declare his or her intention to become a Maryland citizen, the Court implies that a person could be a state citizen without being a U.S. citizen.

56. See *Pope v. Williams*, 193 U.S. 621, 634 (1904).

57. *Pope*, 193 U.S. at 632–33.

58. See *Sugarman v. Dougall*, 413 U.S. 634, 649 (1973) (striking down on equal protection grounds a complete ban on aliens working in the New York Civil Service).

Supreme Court has reiterated the fact that States can choose to enfranchise noncitizens. Currently, every State in the United States has chosen the words “U.S. citizen” to define its state legislative electorate. Thus, since no State allows noncitizens to vote at the state legislative level, pursuant to Article I, Section 2 of the Constitution, noncitizens are also not enfranchised at the national level. There have been, however, recent efforts to reintroduce noncitizen voting at the local level. In the fall of 2003, New York City’s Charter Revision Commission, a group appointed by Mayor Michael Bloomberg to study nonpartisan elections in New York City, recommended that New York state grant LPRs the right to vote in state municipal elections.⁵⁹ On May 5, 2003, the Cambridge City Council passed a resolution to petition Massachusetts to enfranchise LPRs in school committee and city council elections.⁶⁰ These efforts follow Maryland’s success in the early 1990s to enfranchise LPRs in municipal elections in five of its municipalities. Maryland enacted noncitizen voting provisions, not by amending the definition of its state legislative electorate, but by adding a clause to the Election Code that would allow municipalities to define their own electorate.⁶¹

The fact that aliens have historically voted and can legally vote in the United States indicates that states have *chosen* to maintain noncitizens as a disenfranchised group. Thus, Part IV argues that States are choosing to keep noncitizens disenfranchised for political and ideological reasons based on erroneous assumptions. The initial impetus for the arguments in Part IV derives from the history of the women’s suffrage movement. Until 1920, many States chose to deny the vote to women, and a woman’s right to vote was not protected by the Constitution. Americans now view this as a shameful part of U.S. history. Women waged a grueling war against antiwomen stereotypes for almost a century before they secured the right to vote. Their fight resulted in state constitutional amendments enfranchising women and culminated in the Nineteenth Amendment, which enfranchised more people than any other law reform in American history.⁶²

Part IV explores some of the most common sexist arguments that were used by antisuffragists to keep women from being enfranchised. This part compares this sexism with the xenophobia underlying the arguments

59. See Mae M. Cheng, *Panel: Let Noncitizens Vote*, NEWSDAY, Aug. 23, 2003, available at <http://users.skynet.be/suffrage-universel/us/usvoalny.htm> (last visited Nov. 11, 2003).

60. See *Voting Rights*, 4WORD: NEWS AND VIEWS IN AREA 4 (Area Four Neighborhood Coalition, Cambridge, Mass.), June/July 2003, at 3, at <http://web.mit.edu/dryfoo/area4/4word/2003-06-i16.pdf> (last visited Nov. 11, 2003).

61. See MD. ANN. CODE art. 33, § 2-202(a) (2003).

62. See KEYSSAR, *supra* note 1, at 172–73.

opposing noncitizen voting and illustrates that disenfranchisement of noncitizens is a politically unsound and morally reprehensible way for States to justify enfranchising only “citizens.” In a telling irony, it is important to note that during the one hundred and fifty years when noncitizens were enfranchised, the motivation for *not* using the term “citizen” to define the electorate was to be able to include noncitizens and exclude women. The arguments used to oppose women’s suffrage show that the voting right can be manipulated and withheld to promote the position of favored groups. When women were fighting sexist antisuffragist arguments, noncitizens were a part of the “favored group.” Having fallen from this favored status, noncitizens are now the brunt of identical political manipulation.

A. THE ANTIWOMEN AND ANTIFOREIGNER RHETORIC BEHIND DISENFRANCHISEMENT

To be sure, Americans have always found plenty of ideological reasons, from racism to social Darwinism, from religious bigotry to nativism, to justify exclusionary and discriminatory policies. Racism and sexism generally did most of this work of repudiation, and they did it very successfully for a very long time. . . . [O]nly . . . after long and painful struggles the inherent political logic of American representative democracy, based on political equality, did prevail.⁶³

An important source of sustained resistance throughout the women’s suffrage movement was the persistence of deeply ingrained beliefs about women—specifically, five leading sexist beliefs and values embedded in American culture. First, it was believed that women lacked the intelligence to participate in politics.⁶⁴ Another leading argument reasoned that if women could vote, “the family . . . would be utterly destroyed” because of the “oblitera[tion] [of] the line of demarcation . . . between the sexes.”⁶⁵ Additionally, many argued that women should not vote because they would vote in their own interest and thus shape politics according to their “maternal” views.⁶⁶ Antisuffragists also believed that women should not vote because they would commit some sort of vote fraud.⁶⁷ Finally,

63. JUDITH N. SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 37–38 (1991).

64. See KEYSSAR, *supra* note 1, at 191.

65. *Id.* at 192 (second omission in original) (quoting W.H. Smith).

66. See Bradley Austin, *Choices in 1912: Anti-Suffrage Arguments*, at <http://1912.history.ohio-state.edu/suffrage/interest.htm> (last visited Oct. 17, 2003).

67. See generally J.V.L. Pruyn, Resolution at the Officers of the Albany Anti-Suffrage Association (April 27, 1894), in *PAMPHLETS PRINTED AND DISTRIBUTED BY THE WOMEN’S ANTI-*

one of the most dominant arguments against enfranchising women on a state and national level was that women did not have a stake in government issues because they belonged exclusively in the domestic sphere and not in public life.

Similarly, there are five main assumptions underlying the arguments against noncitizen suffrage. These assumptions are nearly identical to the five sexist assumptions that denied women the vote. First, it is believed that aliens lack the requisite knowledge to vote effectively. Next, it is believed that the value of citizenship would be severely diminished by allowing noncitizens to vote. Additionally, many believe that noncitizens should not be allowed to vote because they would vote in their own interests as immigrants.⁶⁸ Opponents of noncitizen voting also claim that noncitizens should not be allowed to vote because they would commit vote fraud.⁶⁹ Finally, a major argument against enfranchising aliens on a state and national level is that noncitizens should not coexist with citizens in a common political community because noncitizens do not have a sufficient stake in state and national politics to deserve the vote.⁷⁰

1. Disenfranchisement Because of a Perceived Lack of Knowledge

A dominant antisuffragist argument for denying women the right to vote was the danger of extending the franchise to women who were “densely ignorant” and who did not have the mental capacity to acquire political intelligence.⁷¹ Just as speculations surrounding one’s knowledge of political affairs did not justify the exclusion of women from the franchise during the women’s suffragist movement, such speculations do not justify the exclusion of noncitizens today.

Moreover, one must question how much more knowledgeable of political affairs citizens are than resident noncitizens. Many resident noncitizens are not newly arrived immigrants, but instead have lived in the United States for a number of years prior to acquiring resident noncitizen status. The great majority of noncitizens are literate in some language, if not English. A substantial number of voter education programs already takes place in foreign languages. Furthermore, “being immigrants makes

SUFFRAGE ASSOCIATION OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF NEW YORK (Fred B. Rothman & Co. 1990) (1905) [hereinafter WOMEN’S ANTI-SUFFRAGE PAMPHLETS].

68. See Harper-Ho, *supra* note 41, at 303.

69. *Id.* at 301.

70. See Raskin, *supra* note 7, at 1445–51.

71. See generally Francis M. Scott, Albany Constitutional Convention Address (June 14, 1894), in WOMEN’S ANTI-SUFFRAGE PAMPHLETS, *supra* note 67.

alien residents likely to have knowledge that most citizens lack concerning conditions in foreign countries, which may be relevant to debates concerning foreign policy or trade.”⁷²

Thus, noncitizens do not necessarily lack knowledge of political issues. A voter classification based on intelligence or knowledge is simultaneously over- and underinclusive: It excludes those noncitizens who are as knowledgeable about political affairs as citizens, and includes those citizens who are as ignorant of political affairs as noncitizens. The Supreme Court has applied this reasoning in striking down residency requirements for voting, specifically noting that even long-term residents may not be politically knowledgeable.⁷³ As Rosberg states, “It is not at all clear that a New Yorker who moves to Texas and votes in a local election soon after arrival will be any more knowledgeable about local issues than a citizen of France who moves to the United States and takes up residence in Texas.”⁷⁴ Therefore, the assumption that noncitizens necessarily lack the requisite knowledge to vote is no different than the assumption that women were not knowledgeable enough to vote and, as a result, is no more legitimate a reason to justify the disenfranchisement of noncitizens.

2. Disenfranchisement for Fear that a Fundamental American Value Will Be Diminished

There is a basic assumption that allowing noncitizens to vote will dilute the notion of citizenship and effectively erase the line between noncitizens and citizens.⁷⁵ Similar fears abounded in the nineteenth century as men claimed that allowing women to vote would obliterate the distinction between the sexes. In 1879, a California delegate opposed to women’s suffrage declared:

“This fungus growth upon the body of modern civilization is no such modest thing as the mere privilege of voting, by any means. . . . The demand is for the abolition of all distinctions between men and women, proceeding upon the hypothesis that men and women are all the

72. Elise Brozovich, *Prospects for Democratic Change: Non-Citizen Suffrage in America*, 23 *HAMLIN J. PUB. L. & POL’Y* 403, 435 (2002) (quoting GERALD L. NEWMAN, *STRANGERS TO THE CONSTITUTION* 162 (Princeton University Press, 1996)).

73. See *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719 (1973).

74. Rosberg, *supra* note 10, at 1118.

75. See Brozovich, *supra* note 72, at 450 (“The former commissioner of the Immigration and Naturalization Service asserted that the Takoma Park non-citizen voting initiative ‘undermines the value of U.S. citizenship’ . . .”).

same. . . . [T]his lunacy . . . attacks the integrity of the family; it attacks the eternal degrees of God Almighty”⁷⁶

Just as extending the franchise to women did not fracture the family or produce “horrible strife and derangement of domestic relations,”⁷⁷ extending the franchise to noncitizens will not undermine the values of U.S. citizenship.⁷⁸

The antisuffragists’ assumption that allowing women to vote would destroy the family was based on the erroneous belief that the political right to vote was an inherent right belonging only to males. Antisuffragists erroneously assumed that women were not citizens in their own right and did not have any political relationship with the State.⁷⁹ Similarly, the assumption that allowing noncitizens to vote would eviscerate the concept of citizenship is based on the mistaken belief that political rights, and thus voting rights, inherently and rightfully belong to citizens. As was discussed in Part III, however, the Supreme Court insists that citizenship and suffrage are not synonymous terms and that citizenship does not confer the right to vote.⁸⁰

Extending the franchise to noncitizens will not make citizens and noncitizens politically or legally indistinguishable because voting is not the only political or legal distinction between the two groups.⁸¹ Noncitizens, per the Constitution, are not eligible to hold certain government offices. Noncitizens do not have same rights of admission into the United States. For example, noncitizens cannot leave the United States for a continuous period longer than six months because they might be considered as having “abandoned their residency” in the United States and could lose their permanent resident status.⁸² Noncitizens traveling abroad do not carry U.S.

76. KEYSSAR, *supra* note 1, at 192 (first omission in original) (quoting Mr. Caples, a delegate to the California convention of 1879).

77. *Id.* (quoting an unidentified antisuffragist).

78. *But see* Brozovich, *supra* note 72, at 450 (quoting a former commissioner of the Immigration and Naturalization Service (“INS”) who stated that noncitizen voting initiatives “undermine[] the value of U.S. citizenship” and five years is not an unreasonable amount of time to wait to be able to participate in “our democracy”).

79. JoEllen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 UCLA WOMEN’S L.J. 103, 127 (1994).

80. *See supra* Part III.

81. Rosberg, *supra* note 10, at 1133.

82. *See* 8 U.S.C. § 1101(a)(13)(C) (2000). The INA states that an LPR is not regarded as seeking an admission into the United States unless one of six factors apply. One of those factors is whether the LPR has been absent from the United States continuously for more than 180 days. This means as a practical matter that most LPRs who leave the United States for less than six months and then reenter should not have any problems. The INS will not even consider them to be seeking an

passports and are not entitled to the protection of U.S. diplomatic services. Noncitizens are required to register with the government and are subject to elaborate reporting requirements.⁸³ According to Rosberg, “considering the primacy of the right to vote[,] one could reasonably argue that it is distinctions like these that should bear the burden of differentiating citizens from aliens, and not the distinction between voting and not voting.”⁸⁴

3. Disenfranchisement to Protect Against Potential Conflicts of Interest

Another argument against women’s suffrage was based on the fear that because women were different from men, they would act on their “natural” maternal instinct and vote in ways that would prohibit alcohol consumption, interfere in business practices, and regulate working conditions and hours.⁸⁵ Antisuffragists argued that it would be dangerous “if the most impulsive and excitable half of humanity had an equal voice in making the laws.”⁸⁶

Similarly, opponents of noncitizen voting argue that noncitizens would vote in their own interest as immigrants for policies that would, for example, grant state public assistance to undocumented people.⁸⁷ This fear is based on a false assumption that citizens and noncitizens do not have similar political interests. A classification based on differences of opinion, however, would be over- and underinclusive: Among citizens, there will always be voters who favor pro-immigrant policies; and among noncitizens, there will always be noncitizens who favor anti-immigrant policies. Furthermore, a perceived difference of political opinion is not a justifiable reason for excluding people from the franchise. Morally, America now repudiates the fact that women were excluded from the franchise based on their perceived differences in political opinion. Legally, the Supreme Court held in *Carrington v. Rash* that “[f]encing out’ from

admission. By contrast, if an LPR has been outside the United States for more than six months, he or she will have to be formally readmitted, and all the grounds of inadmissibility will apply.

83. See 8 U.S.C. §§ 1301–1306 (2000). See also Bureau of Citizenship and Immigration Services, *How Do I Report a Change of Address to the BCIS?*, at <http://www.bcis.gov/graphics/howdoi/address.htm> (last visited Oct. 17, 2003).

84. Rosberg, *supra* note 10, at 1134.

85. See Austin, *supra* note 66.

86. See FRANCIS PARKMAN, *SOME OF THE REASONS AGAINST WOMAN SUFFRAGE* 5, reprinted in *WOMEN’S ANTI-SUFFRAGE PAMPHLETS*, *supra* note 67.

87. See RONALD HAYDUK, *DRUM MAJOR INSTITUTE, NON-CITIZEN VOTING: PIPE DREAM OR POSSIBILITY?* 7 (2002), at http://www.drummajorinstitute.org/plugin/template/dmi/*/161 (last visited Oct. 17, 2003).

the franchise a sector of the population because of the way they may vote is constitutionally impermissible.”⁸⁸

4. Disenfranchisement to Prevent Vote Fraud

There was a prevailing fear among antisuffragists that if women were allowed to vote, “[t]he temptation to corruption in buying the votes of large numbers of uneducated women, with no fixed political principles and [who are] entirely irresponsible, would be enormous.”⁸⁹ A similar fear exists among those who oppose noncitizen voting. It is believed that “[u]nethical immigrants or dishonest politicians might use corrupt voting practices to compromise the integrity of the ballot.”⁹⁰

As was the case for women, it is impossible to prove that noncitizens’ votes are more likely to be bought or sold than those of citizens. Moreover, strong antifraud measures are already in place throughout the country to detect and deter fraud. Since the controversy in Florida in the 2000 presidential election, there has been heightened awareness to the possibility of vote fraud. Existing criminal penalties would serve as a deterrent from vote fraud for citizens and noncitizens. Additionally, noncitizens have a heightened incentive not to commit vote fraud because such behavior could make them deportable under the Immigration and Nationality Act.⁹¹ Therefore, vote fraud arguments contain implied deprecatory judgments about the ability of noncitizens to vote responsibly, and such arguments are nearly identical to those that kept women from the polls.

5. Disenfranchisement for a Presumed Lack of Political Stake

Women’s suffrage was opposed on the ground that women belonged in the domestic sphere and not in the public world of politics. It was inconceivable that a woman would have any interest or stake in state or national government issues, and thus that men and women should coexist as members of the political community. Similarly, opponents of noncitizen voting contend that noncitizens do not belong in the world of politics because they are social and political outsiders.

From the experience of women’s suffrage, it is clear that arguments for disenfranchisement based on the rejected group’s insufficient connection to the dominant society are blatantly discriminatory and

88. *Carrington v. Rash*, 380 U.S. 89, 94 (1965).

89. *See Pruyne*, *supra* note 67, at 2, in *WOMEN’S ANTI-SUFFRAGE PAMPHLETS*, *supra* note 67.

90. *See HAYDUK*, *supra* note 87, at 7.

91. *See* 8 U.S.C. § 1227(a)(6)(A) (2000).

tautological. It is not empirically or theoretically provable that members of certain groups lack sufficient common interests to share a political community. Just as the Nineteenth Amendment recognized that the differences between men and women were less significant than imagined, States must stop treating noncitizens as outsiders by denying them the vote. As Raskin points out, the class of resident noncitizens consists of extremely diverse groups in terms of country of origin, reason for emigrating, age, race, and income, and are thus likely to have more in common with particular groups of citizens than they are with each other.⁹²

As Raskin argues, “Moral, social and political community among various groups has never been created in America by isolating people from one another.”⁹³ Rather, it is by “*including* them together in the deliberative political project—which Frank Michelman describes as an ‘argumentative interchange among persons who recognize each other as equal in authority and entitlement to respect’—that a sense of community may be built.”⁹⁴ This seems to be a lesson America must learn from the women’s struggle for political inclusion.

Moreover, noncitizens in fact share *all* the social and political responsibilities that citizens have. Immigrants are subject to all laws, pay taxes at all levels, work in and own businesses, send their children to schools, serve in the military and can be drafted, and participate in all aspects of daily social life. Thus, noncitizens have the same stake and interests in political decisions as that of any citizen.

V. PARTIAL ENFRANCHISEMENT IS AN INSUFFICIENT AND INSULTING SOLUTION

Part IV revealed that mistaken assumptions about the political and social implications of allowing noncitizens to vote have caused millions of legal noncitizens to remain disenfranchised in every state. There have been, however, recent efforts to reintroduce noncitizen voting at the local level. Only New York City, Chicago, and a number of small localities in the State of Maryland have reenfranchised noncitizens. In New York City and Chicago, noncitizen voting is limited to school board elections. In Maryland, the franchise has been extended to noncitizens in all local elections. Efforts to enfranchise noncitizens at the local level have failed in

92. See Raskin, *supra* note 7, at 1447 (proposing that resident noncitizen Irish may have more in common with Irish-American citizens than with resident noncitizen Mexicans).

93. *Id.* at 1446.

94. *Id.*

Washington D.C., Los Angeles, San Francisco, and Amherst. There have been no efforts to enfranchise noncitizens for state legislative elections.

During the women's suffrage movement, nearly every State considered adopting partial enfranchisement laws for women in local issues, and over twenty states in fact adopted such laws by 1890.⁹⁵ Female and male suffragists, fighting for the women's franchise, demanded more than just partial suffrage; they pushed for state and national enfranchisement, and eventually for a constitutional amendment protecting their right to vote. Success did not come to the women's suffrage movement by limiting their goal to partial enfranchisement at the local level. Any efforts in the fight to reenfranchise noncitizens, however, have been limited to the local level.

Part V analyzes partial enfranchisement as a solution to women and noncitizen disenfranchisement. The first section in Part V illustrates that partial enfranchisement of women was considered an insufficient goal and played only an overlapping role in the multiple strategies for complete enfranchisement. Next, Part V argues that although partial enfranchisement is better than total disenfranchisement, scholars and activists, who are explicitly limiting their support to partial enfranchisement for noncitizens at the local level, are settling for an insufficient goal and are asserting arguments that will ultimately harm the effort for complete noncitizen reenfranchisement.

A. PARTIAL ENFRANCHISEMENT OF WOMEN

Throughout the nineteenth century, some states allowed women to vote in limited local matters, as gestures to placate prosuffrage forces, and under the logic that local matters were distinct from so-called politics.⁹⁶ Women were allowed to vote in certain elections but not in others because of the complex architecture of voting laws. In most states, the suffrage requirements for unconstitutional elections did not have to be identical to those for offices named in the state constitutions; they could be altered by legislation rather than by the complex process of constitutional amendment.⁹⁷ As a result of legislatures recognizing women's responsibility in child-rearing, the most common form of partial

95. KEYSSAR, *supra* note 1, at 186.

96. *See id.* *See also* Karen M. Morin, *Political Culture and Suffrage in an Anglo-American Women's West*, 19 *WOMEN'S RTS. L. REP.* 17, 21 (1997).

97. KEYSSAR, *supra* note 1, at 186.

enfranchisement involved schools.⁹⁸ Based on the rationale that women had a special interest “on such matters because of the impact of alcohol on the family and the links between drunkenness and domestic violence,”⁹⁹ women were also allowed to vote on liquor licenses and other matters related to the sale of alcohol.

Recognizing that partial enfranchisement in areas deemed appropriate for women was insufficient, suffragists pursued state and national enfranchisement. The suffrage movement had several different strategies. The first, embraced by the National Woman Suffrage Association, was to pressure the federal government into enfranchising women throughout the nation. The second strategy, favored by the American Woman Suffrage Association (“AWSA”), was to convince state legislatures and constitutional conventions to amend state constitutions to include women. The pursuit of partial suffrage rights merely overlapped with the AWSA’s larger ambition of state amendments.

By adopting the Nineteenth Amendment, America recognized that women in fact had a stake in the politics of the nation, beyond the sexist, “traditional womanly concerns” of child-rearing and the family. Suffragists succeeded not only through the use of equal rights arguments, which implied that men and women were the same, but also through an essentialist theme that feminine qualities would benefit the polity.¹⁰⁰ Today, Americans find the notion that women should only vote on “women’s” issues to be insulting, and the nation looks back with shame at this era of history.

B. PARTIAL ENFRANCHISEMENT OF NONCITIZENS

In a striking parallel to what women faced in the nineteenth century, some cities have granted noncitizens the right to vote at the local level for limited issues that are deemed appropriate for involvement by foreigners. Although this may seem like a political victory for noncitizens, a closer look at the rhetoric surrounding partial enfranchisement reveals that this is an insulting and insufficient “solution.” Further, partial enfranchisement ultimately reinforces the xenophobic assumptions explained in Part IV that are keeping noncitizens from the polls.

The rhetoric used by scholars and activists to support noncitizen voting in local issues is as inaccurate and politically motivated as that

98. *Id.*

99. *Id.* at 187.

100. *Id.* at 197.

which suggested that women vote on local issues relating solely to child-rearing and family. Generally, scholars and advocates of partial enfranchisement assert that noncitizens should vote in local elections because at the local level, each noncitizen's interest in issues like schools, public services, and transportation are similar enough to each citizen's interest to justify noncitizen voting.¹⁰¹ Even the leading scholar, Raskin, concludes, "While my Canadian or Brazilian neighbors and I may have different interests or approaches on international issues like acid rain or regional trade, we presumably have identical interests in efficient garbage collection, good public schools, speedy road repair, and so on."¹⁰²

This rhetoric is dangerous for the future of noncitizen voting for three reasons. First, it perpetuates the erroneous assumptions mentioned in Part IV that are used to justify the exclusion of noncitizens from the vote. Specifically, it fails to take into account the tremendous stake that noncitizens have in state and national affairs, reinforcing the concept of noncitizen as political outsider with no stake in anything but "appropriate" nonpolitical issues. Second, it avoids facing the pragmatic reality that in order for even local voting to occur, many States must amend their constitutions. Additionally, it endorses a definition of citizenship as being a monolithic construct that equates citizenship status with citizenship rights. This definition is not only historically inaccurate in the area of voting rights, but it also undermines the importance of democracy.

1. Perpetuation of Erroneous Assumptions Used to Justify Exclusion from the Franchise

It is true that differences in the stake that potential voters have in the outcome of elections can be taken into account by a State in deciding who will and will not be allowed to vote.¹⁰³ For example, in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, the Supreme Court upheld a California voter qualification statute that permitted only landowners in a water storage district to vote in district general elections.¹⁰⁴ The Court reasoned that the nonlandowning residents' equal protection right was not violated because the landowners were disproportionately more affected by

101. See, e.g., Harper-Ho, *supra* note 41, at 296-97; Raskin, *supra* note 7, at 1468.

102. Raskin, *supra* note 7, at 1452. Although I deeply respect Raskin's discussion on the topic of noncitizen voting and am grateful for the insight into the historical and legal permissibility of it, I disagree with his explicit refusal to address the possibility of noncitizen voting on a national level as inherently troubling.

103. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 728 (1973).

104. *Id.*

the water storage district's activities than nonlandowners.¹⁰⁵ As explained above, however, noncitizen LPRs have all the same political and social obligations that citizens have. Noncitizens who pay taxes, serve in the armed forces, are subject to the draft, and live under American law are not disproportionately less affected than citizens by state or national political decisions. Moreover, there are certain issues on state and federal ballots that affect noncitizens disproportionately more than citizens. One example is the issue of bilingual education.

The English for the Children Initiative, spearheaded by successful software developer Ron Unz, appeared on the California state ballot in 1998. The Initiative, known as Proposition 227, sought to eliminate thirty years of bilingual education for Limited English Proficient ("LEP") children in the State.¹⁰⁶ The Proposition replaced bilingual education, which uses a student's native language as a transition mechanism into English. It called, instead, for a "sink or swim" English immersion program, so called because of the idea that the non-English speaking child will either succeed or fail when confronted with the challenge of English-only instruction.¹⁰⁷

Through citizen-only voting, Proposition 227 passed in California. Undoubtedly, children of noncitizen residents have a disproportionately higher rate of being LEP than children of citizens and thus are more affected by decisions regarding bilingual education than citizens. Yet noncitizens, who enroll their students in U.S. school districts and pay the taxes that fund educational programs, did not have a voice in this drastic educational change. The Initiative, which has been called "unlawful, politically and pedagogically unsound, and culturally biased,"¹⁰⁸ also passed in Arizona and in Massachusetts. Thus, in three states, citizen voters determined the educational fate of the children of noncitizen taxpayers.

Allowing noncitizens to vote at the local level is, therefore, insufficient. Noncitizens have a stake in state and national politics, which stems from the multiple political obligations they share with citizens. Furthermore, issues like bilingual education disproportionately affect noncitizens.

105. *Id.*

106. William Ryan, Note, *The Unz Initiatives and the Abolition of Bilingual Education*, 43 B.C. L. REV. 487, 499 (2002).

107. *Id.* at 499.

108. *Id.* at 488.

Partial enfranchisement for noncitizens perpetuates erroneous assumptions about noncitizens' ability and capacity to vote, as it did for women. By insinuating that a noncitizen's political stake in this country is limited to issues as trivial as trash collecting, advocates who focus entirely on partial enfranchisement are ignoring the effects that state and national policies have on a large segment of the governed class. Similarly, advocates of partial enfranchisement for women ignored for centuries that all political issues affected them as part of the governed class.

2. Avoiding the Pragmatic Reality That Change Must Come at the State Constitutional Level

In addition to the political and ideological opposition discussed throughout this Note, an important hurdle in regaining enfranchisement for noncitizens even at the local level is the requirement by some States that municipalities must abide by the *State's* voting requirements, which are set forth in the state's constitution or by the state's statute.¹⁰⁹ In other words, a municipality that wants to include noncitizens in local elections will not be allowed to do so if it must follow state constitutional guidelines restricting the vote to "citizens."

One example of such a state is California. As the following discussion by Elise Brozovich illustrates, states like California that have strictly defined the core electorate as "citizens of the United States" are most likely to find local noncitizen voting proposals unconstitutional:

In February, 1996, legislation was proposed in San Francisco to allow resident non-citizens to vote in city community college and school board elections. Estimations suggested that, "half the students in the community colleges and up to half of the parents of students enrolled in the school district are non-citizen legal residents." . . . The former member of the San Francisco Board of Supervisors, Mabel Tang, cited multiple reasons for the proposal's necessity: Resident non-citizens are apportioned the same burdens and benefits in the community, so it would be logical to extend a political voice to these individuals.¹¹⁰

The proposal would have empowered thirty thousand noncitizens.¹¹¹ California Supreme Court Judge William Cahill, however, declared this proposal unconstitutional.¹¹² The judge asserted that an amendment to the California Constitution would be required to permit noncitizens to vote at

109. Harper-Ho, *supra* note 41, at 313.

110. Brozovich, *supra* note 72, at 440.

111. *Id.*

112. *Id.* at 441.

any level in the state since California's constitution defines its electorate as U.S. citizens.¹¹³ Fifty-eight state constitutions define the electorate as "citizens."¹¹⁴ Consequently, even local enfranchisement efforts will likely fail unless the States change their constitutional definition of electorate either by amendment or statute.

Maryland's constitution defines its core electorate as "U.S. citizen," but allows municipalities to set their own voting qualifications.¹¹⁵ Five municipalities in Maryland enfranchise noncitizens in *all* local elections.¹¹⁶ Maryland does not limit the noncitizen franchise to specific issues like education and thus invites noncitizens into all aspects of the local political community. As a result, Maryland might be the best model for advocates of partial enfranchisement. Such a model, however, could not result in complete enfranchisement and may merely serve to perpetuate certain stereotypes about the ability, stake, and legality of complete reenfranchisement.

3. Fostering an Erroneous Notion of Citizenship

Given the fact that noncitizens have *all* the political obligations of citizens at *all* levels of government, and that noncitizens have a stake in the local, state, and national political community, why do scholars and activists not apply their arguments for partial enfranchisement with equal force to reenfranchisement in state and national elections? The answer might be found in Raskin's writing:

It is admittedly hard to think of any principled way to justify the inclusion of aliens in local elections but their exclusion from state elections. The problem is that the U.S. Constitution categorically makes all persons enfranchised in state legislative elections into federal electors, and alien participation in national elections presents a far more troubling proposition.¹¹⁷

113. *Id.*

114. See Raskin, *supra* note 7, at 1461 n.369.

115. See Harper-Ho, *supra* note 41, at 313. Maryland cities and towns enjoy considerably more discretion in conducting their local elections than the State and counties. Although the federal and state constitutions and other applicable law must be followed, the State Election Code, Article 33 in the Annotated Code of Maryland does not generally apply to municipalities (except Baltimore City) unless otherwise specifically provided for in the Code. See MD. ANN. CODE art. 33, § 2-202 (2003). Each municipality promulgates its own election procedures through its charter, ordinances, and regulations.

116. The five municipalities are Takoma Park, Somerset, Chevy Chase, Martin's Additions, and Barnesville. HAYDUK, *supra* note 87, at 13.

117. Raskin, *supra* note 7, at 1468.

As Part III proves, if enfranchisement at the local and state level is a *more troubling* proposition, it is not because of legal obstacles. Yet supporters of partial enfranchisement are explicitly advocating *only* for local enfranchisement of noncitizens under the theory that it is a *less troubling* proposition¹¹⁸ because noncitizens have the same local interests as citizens in issues such as “keeping their properties neat and clean, removing snow from the sidewalk . . . [and] recycling.”¹¹⁹ In so doing, these scholars and supporters are endorsing a notion of citizenship that is devastating to the future of complete noncitizen reenfranchisement: Achieving national citizenship *status* is a prerequisite for the enjoyment of national citizenship *rights*. The notion that noncitizens cannot achieve sufficient citizen-like status at the national level to justify complete enfranchisement is grossly inaccurate and devastating to democratic ideals.

First, this argument is historically inaccurate, especially in the area of voting rights. History reveals that citizenship status and citizenship rights do not go hand-in-hand. “After the passage of the Fourteenth Amendment, African-Americans possessed formal citizenship but remained subordinated in virtually every sphere” of citizenship rights.¹²⁰ Similarly, “for many years women were recognized as possessing the nominal status of citizenship, and yet they were denied the franchise and other fundamental incidents of membership.”¹²¹ As the legal history of noncitizen voting in the United States reveals, “U.S. citizen” and “voter” have never been considered legally synonymous terms. For one hundred and fifty years, noncitizens did not have citizenship status but did enjoy the right of the franchise. Thus, noncitizen voters do not have to reach the legal status of “citizen” to be able to vote.

Additionally, by advocating that noncitizens are enough like citizens at the local level to justify enfranchisement but too different at the state and national level, scholars are endorsing a notion of citizenship that undermines the meaning of democracy. Scholars like Raskin, and works influenced by him, such as Virginia Harper-Ho’s, outline the history of noncitizen voting as a legal and historical possibility made impossible in current times by the implication that noncitizens today do not have enough in common with the national citizenry to vote at the state and national

118. *See id.*

119. Harper-Ho, *supra* note 41, at 297 (quoting *Hearings on H.R. 665 Before the Md. Gen. Assembly Comm. on Constitution and Admin. Law*, 1992 Leg., 406th Sess. (Md. 1992) (testimony of Sharon Hadary Coyle, Chair of the Village of Marin’s Additions Council)).

120. Linda Bosniak, *Constitutional Citizenship Through the Prism of Alienage*, 63 OHIO ST. L.J. 1285, 1305 (2002).

121. *Id.*

level. Through this message, advocates of partial enfranchisement are giving noncitizen voting at the state and national level the same “aura of inevitability” that once attached to property, race, and gender qualifications.¹²² As the abolition of property, race, and gender restrictions to the franchise illustrate, true democracy should accommodate diverse views, not foster a common view.

VI. THE ROAD TO COMPLETE REENFRANCHISEMENT OF NONCITIZENS

As explained in Part V, enfranchising noncitizens at the local level is not enough. Local enfranchisement of noncitizens should only be an overlapping strategy to a more ambitious and pragmatic effort. Part VI argues that supporters of noncitizen voting should wage a reenfranchisement campaign, countering the political and ideological assumptions mentioned in Part III. Section A argues that this campaign should be partially based on equitable claims, but primarily based on the increased well-being of the nation that would inevitably come from extending the franchise.¹²³ Section B demonstrates that an essential element of the campaign must be awareness and education about the legality of noncitizen voting. The ultimate goal of this campaign should be complete reenfranchisement at the state legislative level.

A. APPEALING TO THE ECONOMIC AND DEMOCRATIC WELL-BEING OF THE NATION

A successful campaign for noncitizen voting rights must combat the political and ideological assumptions that plague the discourse against noncitizen suffrage. It is unlikely, however, that a campaign waged entirely on issues of fairness will be successful. A successful reenfranchisement campaign will have to focus on emphasizing the benefits to the nation that would result from extending the franchise. This section discusses how noncitizens might appeal to the nation at large and the national desire for social and political well-being. Once again, it is helpful to consider how women obtained the right to vote in the midst of similar challenges.

122. See Raskin, *supra* note 7, at 1394.

123. See generally Rosberg, *supra* note 10 (proposing an equal protection argument on behalf of disenfranchised noncitizens). *But see generally* Brozovich, *supra* note 72, at 413–19 (arguing that Rosberg’s equal protection argument is likely moot); Raskin, *supra* note 7, at 1431 (countering Rosberg’s argument that noncitizen voting is constitutionally mandated).

Women devoted “considerable energy” to rebutting sexist views and advocating a universal rights view based on equality between the sexes, democratic ideals of self-government, and republicanism.¹²⁴ Prosuffrage allies invoked the principle of “no taxation without representation,” while others claimed that the franchise would provide economic benefits and protection in the workplace for the growing number of female wage earners.¹²⁵ As Alexander Keyssar explained, “More intellectually minded advocates offered broad historical portraits, pointing to the progressive enlargement of the franchise as a sign of the steady and beneficent erosion of oppression”¹²⁶ Although it is true that the war for women’s suffrage was not waged entirely on a platform of justice, equal rights, and democracy, such arguments did play an important part in the fight for enfranchisement.

Women departed from arguments of equality and democracy in two important ways, and success was in large part due to these arguments. First, women stressed an essentialist theme that actually conformed to traditional notions of gender roles. This theme stressed that women’s feminine qualities would be a welcome addition to the polity because of their unique and different perspectives.¹²⁷ “According to this line of [thought] . . . women ought to be enfranchised not because they were [equal] to men but precisely because they were different—and the qualities that made them different would be a boon to American political life.”¹²⁸ Additionally, suffragists went beyond fairness arguments into an overtly racist position,¹²⁹ venturing into the politicized realm of white supremacy arguments: “[F]emale suffrage would benefit society because white native-born women outnumbered . . . blacks, the Chinese, aliens,¹³⁰ or transients. The political dominance of [white] ‘Americans,’ therefore, would be insured by the enfranchisement of women.”¹³¹

Both the essentialist and conservative arguments perpetuated dominant sexist, racist, and classist ideologies. Women, however, succeeded in using these arguments to their favor, as deplorable as they are to modern ears, because they appealed to America at large and its desire to

124. See KEYSSAR, *supra* note 1, at 188, 192–93.

125. *Id.* at 189.

126. *Id.* at 189–90.

127. See *id.* at 197–98.

128. *Id.* at 189.

129. *Id.* at 190 (referring to this position as “conservative and ominous”).

130. Immigrants at this time were voting, while women were not, which reaffirms the notion that citizen and voter were not considered synonymous terms.

131. KEYSSAR, *supra* note 1, at 191.

preserve stability and traditional social order.¹³² This Note is neither suggesting that noncitizens mimic the classist and racist strategies used during the women's suffrage movement, nor that they conform to the stereotypes and assumptions used by opponents of noncitizen voting. This strategy, however, does reveal that the importance of appealing to the nation's desire for stability cannot be ignored. As evident from the course and eventual success of the women's suffrage movement, an expansion of the franchise for noncitizens will only come by adopting a balanced discourse between political and pragmatic issues. Supporters of noncitizen suffrage should emphasize the important role that integrating noncitizens into the political community will play in preserving America's status as the world's economic power and leading democracy.

1. Noncitizen Voting Will Promote National Economic Prosperity

Advocates of noncitizen voting must appeal to the nation's desire for economic prosperity by highlighting important considerations relating to the surge in immigration that the United States is currently experiencing. Recent estimates suggest that there are between ten to twelve million legal resident noncitizens living in the United States. Contrary to popular anti-immigrant conceptions that depict immigrants as reaping the benefits of this country without contributing to it, immigrants are an "invaluable presence in an economic capacity."¹³³ As a result of their legal capacity to work in the United States and their obligation to pay taxes, resident noncitizens play a significant role in the continued strength and prosperity of this country in two tangible ways: (1) employment and entrepreneurship, and (2) taxation.¹³⁴

Noncitizen residents contribute to the business economy at all levels. They are labor workers, university professors, business owners, and shareholders in American private corporations. The assumption that immigrants only take jobs away from native citizens and lower wages is erroneous. In fact, "immigrants raise the income of native-born workers by at least \$10 billion a year."¹³⁵ As former New York City Mayor Rudolph Giuliani expressed, "Immigrants constantly infuse new life in economy and culture. As any of the elected officials here today can attest, their cities and counties thrive precisely because of their vibrant immigrant communities. So this is not just a phenomenon in New York City but a national phe-

132. *Id.* at 189.

133. Brozovich, *supra* note 72, at 436-37.

134. *See id.* at 436.

135. *Id.* at 437.

nomenon.”¹³⁶ On the issue of taxation, a study conducted by the National Immigration Forum and the Cato Institute reported in 1998 that immigrant households and businesses provided \$162 billion per year in tax revenue to federal, state, and local governments.¹³⁷ A 1997 study conducted by the National Academy of Sciences found that the average first generation immigrant pays \$1800 more in taxes than he or she receives in benefits.¹³⁸

The staggering monetary contribution by noncitizens in tax dollars and their infusion of labor into America’s economy raise important democratic and equitable concerns based on notions of fundamental fairness and “taxation without representation.” Such vast tangible contributions to America’s communities and the nation do, in fact, highlight why it is troubling to keep noncitizens disenfranchised. Despite the strength of such arguments, it is unlikely that fairness arguments will be sufficient. Given the massive economic contributions by noncitizens, supporters of noncitizen voting should stress the potential economic implications of disenfranchising such an increasingly noticeable and economically significant sector of the population. It is necessary that politicians and citizens reevaluate the economic consequences of continuing to make decisions without listening to the voices of millions of resident noncitizens who contribute to and are affected by political decisions.

2. Noncitizen Voting Fosters America’s Democracy

The American people have historically objected to the notion that their interests could be “virtually represented” by others.¹³⁹ American colonists, who were virtually represented by the vote-allocation system of the British parliament, rejected this justification for their disenfranchisement, noting, “our privileges are all *virtual*, our sufferings are *real*.”¹⁴⁰ Women, who

136. *Id.* at 436.

137. *Id.* at 438.

138. See THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION 317–19 (James P. Smith & Barry Edmonston eds., 1997), available at <http://www.nap.edu/books/0309063566/html/index.html> (last visited Nov. 18, 2003).

139. April Chung, Comment, *Noncitizen Voting Rights and Alternatives: A Path Toward Greater Asian Pacific American and Latino Political Participation*, 4 UCLA ASIAN PAC. AM. L.J. 163, 164 (1996) (“In light of the rapid growth of noncitizen populations, noncitizen political participation may further a successful democracy. By definition, a democracy means that those affected by political decisions are directly involved in the process of decision making.”); Ashira Pelman Ostrow, Note, *Dual Resident Voting: Traditional Disenfranchisement and Prospects for Change*, 102 COLUM. L. REV. 1954, 1961 (2002) (“[R]epresentative government is legitimate only when those supposedly represented have had some direct say in the selection of representatives.”) (quoting James A. Gardner, *Liberty, Community and the Constitutional Structure of Political Influence: A Reconsideration of the Right to Vote*, 145 U.P.A. L. REV. 893, 909–10 (1997)).

140. Ostrow, *supra* note 139, at 1961.

were virtually represented by the man head-of-household in their supposed best interest, fought for their own direct participation in the political process. Both of these systems of virtual representation were eventually replaced with direct democratic participation.

Today, millions of noncitizens are virtually represented in this country. For example, noncitizens are counted in the U.S. census for purposes of districting and for determining the population, which is the basis for determining the size of the House of Representatives.¹⁴¹ Noncitizens are an integral part of the American social, economic, and military spheres and are directly affected by local, state, and national decision making. The lack of a direct voice for noncitizens in the political process undermines the meaning of democracy in America and fosters a practice of virtual representation that has twice been recognized as fundamentally undemocratic.

Similar to the practice of virtual representation, not giving noncitizens a direct voice raises problematic issues of accountability and is inconsistent with the notion of democracy. As the number of disenfranchised noncitizens continues to rise in the United States, politicians will be completely unaccountable to an increasingly larger number of people who pay the taxes to support their policies and programs and are subject to their laws and power.¹⁴² Accountability is one of the fundamental aspects of a democratic government. As moral philosopher Michael Walzer has noted:

[M]en and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does . . . [for] the rule of citizens over non-citizens, of members over strangers, is probably the most common form of tyranny in human history.¹⁴³

Thus, reenfranchising noncitizens will be a step in furthering and strengthening America's democratic system.

B. THE NEED FOR AWARENESS AND EDUCATION

At the national level, the judiciary has never expanded the franchise to include excluded groups. Instead, the right to vote has been expanded

141. CAL. COMM. ON ELECTIONS, REDISTRICTING, AND CONSTITUTIONAL AMENDMENTS, REDISTRICTING PROCESS BACKGROUND INFORMATION, 2001-02 Regular Session, at 1, 4 (2001), available at http://www.assembly.ca.gov/acs/committee/c7/publications/2001_backgrnd.pdf (last visited Nov. 11, 2003).

142. Ostrow, *supra* note 139, at 1962.

143. *Id.* at 1961-62.

“through the efforts of citizens who hear and debate ‘appeals from the voteless’ and then decide to ‘extend rights of political membership to disenfranchised outsiders seeking entry and equality.’”¹⁴⁴ Therefore, public awareness of the legality of noncitizen voting is essential to any reenfranchisement of noncitizens that may come about.

Many, if not most, American citizens believe that noncitizens 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. One reason for such belief is that elected officials who currently oppose noncitizen voting make erroneous statements to the public. For example, former California Secretary of State Bill Jones, who opposed legislation in San Francisco that would have allowed noncitizens to vote in school elections, stated, “The very suggestion that noncitizens may vote in our elections demonstrates a blatant disregard for the most basic tenet of democracy in America, that only citizens may vote in our elections.”¹⁴⁵

As Parts II and III reveal, former Secretary Jones is grossly incorrect about what he calls a “blatant disregard” of democracy. Noncitizen voting is a tremendous part of the history of America as a democracy. Furthermore, Maryland, Illinois, and New York do not limit the franchise to U.S. citizens because the U.S. Constitution permits them to expand the franchise as they see fit. Yet politicians, like former Secretary Jones, misinform and mislead the American public. To sustain disenfranchisement of aliens on this erroneous assumption is fundamentally wrong. Americans must be made aware of the fact that noncitizen voting is constitutionally permitted.

As the historical discussion in Part II suggests, xenophobic reactions in times of war, not legal arguments, have had the most dramatic impact on the disenfranchisement of noncitizens. The War of 1812 brought forth the first wave of restrictionist tendencies, and World War I saw the complete disenfranchisement of noncitizens nationwide. Currently, the United States is engaged in a war against Iraq. American forces are fighting to liberate the Iraqi people from the undemocratic hold of Saddam Hussein and to safeguard the world from his potential terrorist acts. Xenophobia and racial profiling abound, and it could be argued that during these turbulent times of war, it is impossible to realistically conceive of the notion of complete noncitizen voting.

144. Harper-Ho, *supra* note 41, at 294 (quoting Raskin, *supra* note 7, at 1432).

145. Brozovich, *supra* note 72, at 441.

As the history of the women's suffrage movement reveals, however, war may present an invaluable opportunity for noncitizens to raise awareness and voice their desire for reenfranchisement. World War I was the nation's first modern war, and as a result, a new level of mass mobilization was needed. Mobilization efforts included women, which gave them the opportunity to contribute to the War by volunteering with the Red Cross, making clothes, selling bonds and thrift stamps, and distributing food.¹⁴⁶ Women were not afraid to be vocal about their wartime contributions and "even threaten[ed] to diminish their support if suffrage were not forthcoming."¹⁴⁷ Their efforts were successful. In 1918, President Woodrow Wilson announced his support of a federal suffrage amendment as a war measure and declared that since women were partners of the War, they should not be admitted "only to a partnership of sacrifice and suffering . . . and not to a partnership of privilege and [] right."¹⁴⁸

Similarly, noncitizens should emphasize the important role they are playing in the war against Iraq and the war on terror policies of the current Bush administration. This is an important component of the education and awareness needed to pave the way for the reenfranchisement of noncitizens.

In Iraq, one of the first casualties suffered by American forces in the course of the war was a noncitizen.¹⁴⁹ Marine Lance Corporal Jose Gutierrez had only been in the United States for five years. As an LPR noncitizen and a citizen of Guatemala, he could not vote. Lance Corporal Gutierrez was awarded U.S. citizenship posthumously. Thus, although he was a partner in the war against terrorism and tyranny, along with almost 40,000 other noncitizens who are part of the U.S. active armed forces, prior to giving up his life for his adoptive country, he never participated in the democratic process of the country he represented. Yet, granting citizenship, and hence the ability to participate in America's democracy, after death is *not* making noncitizen soldiers partners in America's democracy. As Fernando Suarez del Solar, who rejected the idea of applying for citizenship for his son Jesus (who also died in combat) explained, "I don't want him to get it posthumously because to me that doesn't mean anything. It's just a benevolent act by the U.S.

146. KEYSSAR, *supra* note 1, at 216.

147. *Id.* at 217.

148. *Id.* at 216.

149. Pilar Marrero, *On Latino Minds: Noncitizen Soldiers in the Line of Fire*, La Opinion, available at <http://www.informationclearinghouse.info/article2947.htm> (last visited Oct. 17, 2003).

government. . . . To me, it's like saying, 'Oh yeah, poor thing, give it to him.'"¹⁵⁰

The lucky soldiers who make it back from Iraq alive will now be able to vote as a "reward" given to them by President Bush.¹⁵¹ On July 3, 2002, President Bush signed the Expedited Naturalization Executive Order, which states that any noncitizen soldier who served honorably in active duty from September 11, 2001 until a date designated by future Executive Order would be eligible for expedited citizenship, in lieu of the five-year waiting period designated by statute.¹⁵² This Executive Order, however, is not sufficient. Recognizing soldiers' rights to participate in America's democracy as a reward for service during a limited time period designated by the President's will (contingent on their coming back from combat alive) does not make noncitizens true partners in America's democracy.

The idea behind President Wilson's plea for a partnership of right and not merely of sacrifice is not about "rewards." The Suffrage Amendment he approved as a war measure was not intended to terminate with the end of conflict and women's participation in the war effort. Unlike President Bush, President Wilson recognized that women's commitment in war time was merely a microcosm of their role in the political, social, and economic life of America. True partnership of rights, therefore, must come without conditions.

VII. CONCLUSION

The history and struggles of the women's suffrage movement illustrate that excluded groups have had to openly and vigorously fight for their right to be enfranchised, combating ideological, political, and structural

150. *Id.*

151. *See id.*

152. Exec. Order No. 13269, 67 Fed. Reg. 45,287 (July 3, 2002). The text of the Executive Order reads, in pertinent part:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 329 of the Immigration and Nationality Act (8 U.S.C. § 1440) (the "Act"), and solely in order to provide expedited naturalization for aliens and noncitizen nationals serving in an active-duty status in the Armed Forces of the United States during the period of the war against terrorists of global reach, it is hereby ordered as follows: For the purpose of determining qualification for the exception from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and terminating on the date to be so designated, are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 329 of the Act.

Id.

obstacles. Noncitizens should embark on that battle with complete reenfranchisement at the local, state, and national level as their overarching goal. The motivations and ideologies underlying the most common justifications for excluding noncitizens from the franchise are evocative of the shameful gender stereotypes invoked by antisuffragists almost a century ago. Education and public awareness of the history and legality of noncitizen voting is essential. Erroneous justifications for exclusion must be exposed and rebutted. The benefits of expanding the franchise must be emphasized.

As the long history of noncitizen voting reveals, voters do not have to be citizens of the United States. States may legally define the national electorate to include noncitizens. In the name of democracy, noncitizens should once again be made partners in this nation's political community.