

Equality, Enfranchisement, and Citizenship: How Expansion of the Electorate in Public School Board Elections Will Affect Illinois Attorneys

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INTRODUCTION

In December 2021, New York City became the largest city in the United States to allow noncitizens to vote in municipal elections.² The City Council's approval of such legislation is set to confer over 800,000 noncitizen New York City residents voting rights as early as January 9, 2023, pending potential legal challenges.³ Under this legislation, lawful permanent residents, which includes green card holders or those with work authorization who have resided in the city for a minimum of thirty days, may vote in municipal elections.⁴

Councilmen and women on both sides of the noncitizen voting debate have opined that the legislation will “shift the power dynamics in New York City in a major way,” some calling the legislation divisive, others crediting it as a step forward in immigration rights.⁵ And although Mayor Bill de Blasio expressed concern over allowing noncitizens to vote in such elections, de Blasio pledged not to veto the bill before leaving his office in early 2022.⁶ Incoming mayor-elect Eric Adams similarly expressed his concern over the City Council's authority to pass such legislation, Adams has stated his support for noncitizen voting and promised to review the legislation.⁷

Although the concept of allowing noncitizens to vote in local elections appears to be a novel one, New York's legislation is not the first of its kind. New York City joins a small number of municipalities

² Jeffrey C. Mays & Annie Correal, *New York City Gives 800,000 Noncitizens Right to Vote in Local Elections*, N.Y. TIMES (Dec. 9, 2021), <https://www.nytimes.com/2021/12/09/nyregion/noncitizens-voting-rights-nyc.html>

³ *Id.*

⁴ *Id.*

⁵ *Id.* (quoting Brooklyn councilwoman Laurie Cumbo) (internal quotations omitted).

⁶ *Id.*

⁷ *Id.*

across the country that allow noncitizens to vote in municipal elections. This includes eleven municipalities in Maryland and several municipalities in Vermont, as well as the city of San Francisco, California, which allows noncitizens to vote in school board elections so long as the noncitizen is the parent or guardian of a child in the city's school system.⁸ Additionally, municipalities in California, Illinois, Maine and Massachusetts have considered conferring voting rights to noncitizens.⁹

Similar legislation has now made its way into the Illinois Senate. Currently, in Chicago, noncitizens have the right to vote in local school council elections.¹⁰ Such elections include positions such as school principals and roles in advisory bodies.¹¹ However, debate regarding whether this right should be expanded beyond school council elections was recently reignited in Chicago in 2021, when Illinois Governor J.B. Pritzker signed a bill into law establishing the Chicago Board of Education seats as elected, not appointed, positions.¹² In response to this law, a proposal is currently pending in the Illinois Senate which would allow noncitizens to vote in future Chicago Board of Education elections (hereinafter the "Illinois Proposal").¹³

Although only a small number of municipalities currently allow noncitizens to vote in local elections, such proposals are being debated among Illinois municipalities and as such, local government practitioners should be aware of such proposals and the accompanying arguments made by proponents and opponents of noncitizen voting rights.

⁸ *Id.* (naming cities and states that have passed or considered legislation allowing noncitizens to vote in local elections); see also Arelis R. Hernández, *Hyattsville will allow non-U.S. citizens to vote in city elections*, WASH. POST (Dec. 7, 2016), https://www.washingtonpost.com/local/md-politics/hyattsville-will-allow-non-us-citizens-to-vote-in-city-elections/2016/12/07/63bc87ae-bc8c-11e6-ac85-094a21c44abc_story.html?itid=lk_interstitial_manual_11.

⁹ Mays, *supra* note 1.

¹⁰ Kimia Pakdaman, *Noncitizen Voting Rights in the United States*, SPR. 2019 BERKELEY PUB. POL'Y J. 34, 36 (2019) (stating that noncitizens have had the right to vote in Illinois school council elections since 1988).

¹¹ Derek Cantù, *Legislative Proposal Would Allow Noncitizens to Vote in School Board Elections*, NPR ILLINOIS (June 23, 2021), <https://www.nprillinois.org/statehouse/2021-06-23/legislative-proposal-would-allow-noncitizens-to-vote-in-school-board-elections>.

¹² 105 ILCS 5/34-3 (eff. June 1, 2022).

¹³ S.B. 1565, 102nd Gen. Assemb. (Ill. 2021).

I. THE HISTORY AND CURRENT LEGAL LANDSCAPE OF NONCITIZEN VOTING IN LOCAL ELECTIONS

A. History of Noncitizen Enfranchisement

Historians note that the debate over allowing noncitizens to vote has existed since the country's founding and, in fact, was allowed by some states until well into the twentieth century.¹⁴ Indeed, voting rights were historically not linked to citizenship, as voting rights were determined by state and local governments and the federal government determined citizenship.¹⁵ Historical tradition reveals an expectation that voting rights were to be given to those who planned to reside in the country for a significant period of time, while not extended to those here temporarily.¹⁶ Often, politicians would favor or oppose expanding voting rights depending on whether they would be favored politically by such an expansion.¹⁷ Emeritus history professor Eric Foner of Columbia University argues that debate on voting rights "becomes connected to various prejudices and beliefs about who ought to be an American, who should have the right to vote, [and who has the right] to be represented."¹⁸ And this debate has once again become ignited after the 2020 election year.

In response to such laws enacted in select municipalities across the country, some states have taken action to ensure that only U.S. citizens can vote in state and local elections. Specifically, Colorado, Florida, and Alabama passed what has been described as "largely-symbolic" ballot measures in 2020 explicitly codifying that only U.S. citizens over the age of 18 can vote in state and municipal elections.¹⁹ Before 2020, the only state constitutions that specified that noncitizens cannot vote in state

¹⁴ Jeffrey C. Mays & Annie Correal, *New York Moves to Allow 800,000 Noncitizens to Vote in Local Elections*, N.Y. TIMES (Nov. 23, 2021), <https://www.nytimes.com/2021/11/23/nyregion/noncitizen-voting-rights-nyc.html>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Patty Nieberg, *Three States Pass Amendments That 'Only Citizens' Can Vote*, ASSOCIATED PRESS (Nov. 7, 2020), <https://apnews.com/article/alabama-local-elections-constitutions-florida-voting-rights-a28936630a24030df958092834f6b2c1>.

and municipal elections were Arizona and North Dakota.²⁰ While critics of such ballot measures describe these amendments as unnecessary and xenophobic, proponents argue that such amendments were needed because the then-current constitutional language was not strong enough to protect against noncitizen voting if similar laws were proposed in the future.²¹

B. State Constitutional Framework of Noncitizen Enfranchisement

With respect to noncitizen enfranchisement in general, legal scholars have long argued that the U.S. Constitution does not forbid noncitizen enfranchisement and may tacitly permit it.²² However, the more salient issue is the Constitution of the State of Illinois which governs voting requirements within the state. It provides that “[e]very United States citizen who has attained the age of 18 or any other voting age required by the United States for voting in State elections . . . shall have the right to vote at such election.”²³ It further notes that “[a]ll elections shall be free and equal.”²⁴ However, the mechanics of election procedures are left to the discretion of the state legislature: “[t]he General Assembly by law shall define permanent residence for voting purposes, insure voting and the integrity of the election process, and facilitate registration”²⁵

In contrast, the Constitution of the State of New York provides that “[e]very citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.”²⁶

²⁰ *Id.*

²¹ *See id.* (“The language that we have now is objectively, provably not sufficient because of all the successful efforts to give legal voting rights to non-citizens, at least in local and school board elections all across the country.”) (quoting former Missouri state Senator John Loudon).

²² *See, e.g.,* Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1431 (1993); *see also* Tara Kini, *Sharing the Vote*, 93 CAL. L. REV. 271, 278 (2005).

²³ ILL. CONST. art. III § 1 (1970) (Voting Qualifications)

²⁴ ILL. CONST. art. III § 3 (1970) (Elections)

²⁵ ILL. CONST. art. III § 4 (1970) (Election Laws)

²⁶ N.Y. CONST. art. II § 1 (1995)

If the Illinois Proposal succeeds, it will likely be subject to constitutional challenges. The plain language of the Illinois Constitution limits voting to “U.S. citizens.”²⁷ Additionally, Illinois’ state election statutes limit voting in state elections to U.S. citizens over the age of 18.²⁸ Even the new New York legislation is predicted to face litigation on the grounds of violating the plain language of the New York constitution and state election statutes, although the New York constitution does not limit voting to “U.S.” citizens.²⁹ While proponents of the New York legislation argue that the language of the New York constitution does not explicitly exclude noncitizens and thus the legislature has the power to grant noncitizens voting rights, opponents argue that the use of the constitution’s requirement that “citizens” must be 18 to vote implies limits.³⁰ It is unclear whether or not the New York law will prevail, but the law has received political support from mayor-elect Eric Adams.

C. Impact of Noncitizen Enfranchisement in School Board Elections on Illinois Practitioners

The impact of the Illinois proposal is salient because of the recent bill signed by Governor J.B. Pritzker that changes the administration of the Chicago Public School system from an appointed board to an elected one.³¹ Over Mayor Lori Lightfoot’s opposition,³² the governing board of the largest school district in the state of Illinois now will be elected, rather than appointed by Chicago’s mayor.³³ If the Illinois Proposal is passed, the electorate for school board elections in Chicago alone will be increased by around 70,000 individuals, and the entire state of Illinois by 258,340 individuals.³⁴

²⁷ ILL. CONST. art. III § 1 (1970) (Voting Qualifications).

²⁸ See 10 ILCS 5/3-1 *et seq* (eff. June 1, 2016).

²⁹ Michael R. Bloomberg, *The Pro-Immigrant Case Against Noncitizen Voting*, BLOOMBERG OPINION (Dec. 15, 2021), <https://www.bloomberg.com/opinion/articles/2021-12-15/the-pro-immigrant-case-against-new-york-city-s-noncitizen-voting>.

³⁰ The Editorial Board, *Almost Anybody Can Now Vote in New York*, WALL ST. J. (Dec. 12, 2021), <https://www.wsj.com/articles/almost-anybody-can-now-vote-in-new-york-noncitizen-illegal-alien-election-interference-11639331608>.

³¹ 105 ILCS 5/34-3 (eff. June 1, 2022).

³² Fran Spielman & Nader Issa, *Lightfoot Makes Final Argument Against Elected Board to Run Chicago Public Schools*, CHI. SUN-TIMES (June 14, 2021), <https://chicago.suntimes.com/city-hall/2021/6/14/22533867/chicago-public-schools-elected-board-bill-general-assembly-illinois-house-vote-lightfoot-opposed>.

³³ 105 ILCS 5/34-3 (eff. June 1, 2022).

³⁴ See discussion *infra* at notes 35-40.

The sheer numerical impact of the proposed Illinois bill is apparent from the statistics provided by the National Center for Education Statistics (“NCES”), a bureau of the U.S. Department of Education. The NCES collects and interprets data on schooling in the United States.³⁵ The NCES estimates that, in Illinois, there was an average total of 1,813,160 parents of all children enrolled in public schools in Illinois for the period of 2015-2019.³⁶ Of these parents, around 479,520 were not born in the United States.³⁷ Of those foreign-born parents, 221,180, or around 46.1%, are naturalized U.S. citizens; the other 53.9%, or around 258,340 people, are not U.S. citizens.³⁸

The impact for Illinois is great: an additional 258,340 accessing suffrage very quickly could be a shock to the local election officials administering school board elections across the state. Further, the impact on the Chicago Public School system electorate, which is the largest school district in the state, is staggering. The NCES estimates that for the period of 2015-2019, Chicago Public Schools enrolled an average of 358,975 students.³⁹ Of these students, the census accounted for 288,765 parents.⁴⁰ Of these parents, 118,760 were foreign born.⁴¹ 45,355 of these parents were naturalized U.S. citizens, or 38.2%, while 73,405, or 61.8%, were not U.S. citizens.⁴²

³⁵ *About Us*, NAT’L CTR. FOR ED. STATS., <https://nces.ed.gov/about/> (last accessed Dec. 31, 2021).

³⁶ *Education Demographics and Geographic Estimates*, NAT’L CTR. FOR ED. STATS., <https://nces.ed.gov/programs/edge/TableViewer/acsProfile/2019> (parameters were set as follows: Dataset: 2015-2019; Geography: Illinois; Population Group: Parents of Relevant Children–Enrolled Public; Find Table: PDP05 Demographic, Total Population row) (last accessed Dec. 31, 2021).

³⁷ *Id.* (parameters were set as follows: Dataset: 2015-2019; Geography: Illinois; Population Group: Parents of Relevant Children–Enrolled Public; Find Table: PDP02.10, U.S. Citizenship Status).

³⁸ *Id.* (parameters were set as follows: Dataset: 2015-2019; Geography: Illinois; Population Group: Parents of Relevant Children–Enrolled Public; Find Table: PDP02.10, U.S. Citizenship Status).

³⁹ *Id.* (parameters were set as follows: Dataset: 2015-2019; Geography: Chicago Public School District 299; Population Group: Relevant Children–Enrolled Public; Find Table: CDP05 Demographic, Total Population row).

⁴⁰ *Id.* (parameters were set as follows: Dataset: 2015-2019; Geography: Chicago public School District 299; Population Group: Parents of Relevant Children–Enrolled Public; Find Table: PDP05 Demographic, Total Population row).

⁴¹ *Id.* (parameters were set as follows: Dataset: 2015-2019; Geography: Chicago Public School District 299; Population Group: Parents of Relevant Children–Enrolled Public; Find Table: PDP02.10 US Citizenship Status).

⁴² *Id.*

The aggregated data furnished by the NCES for the period of 2015-2019 is also instructive as to the current status of the Chicago Public School District because the historical enrollment averages given by the NCES are commensurate with the current estimates of enrollment in the Chicago Public School District. The NCES estimated that for the period of 2015-2019, Chicago Public Schools enrolled an average of 358,975 students.⁴³ According to the City of Chicago, Chicago Public Schools enrolled around 340,658 students for the 2020-2021 school year.⁴⁴ It is unclear from the NCES data whether the entire noncitizen population comprises legal residents or illegal residents of the United States.⁴⁵ What is clear, though, is the incredible impact that the Illinois Proposal could have on local school board elections, both from a procedural nature of administering the elections to the ramifications of re-expanding the electorate to noncitizens.

II. THE ARGUMENTS FOR AND AGAINST NONCITIZEN VOTING IN LOCAL ELECTIONS

A. The Argument for Noncitizen Voting

1. *Importance of School Board Decisions in Daily Lives of Students and Parents Affect Citizens and Noncitizens Equally*

First, there is a strong argument that noncitizens should be allowed to vote in public school board elections because school boards make important decisions that affect both parents and children irrespective of their citizenship status. The school board is one primary intersection point between the state government and a state's inhabitants.⁴⁶ Local school boards are hyper-local divisions of state governments. While state legislatures legislate and investigate on behalf of the entire population of the state, school boards make decisions on issues that affect a relatively small number of people. It is no

⁴³ *Id.* (parameters were set as follows: Dataset: 2015-2019; Geography: Chicago Public School District 299; Population Group: Relevant Children—Enrolled Public; Find Table: CDP05 Demographic, Total Population row).

⁴⁴ Stats and Facts, CHI. PUB. SCHS., <https://www.cps.edu/about/stats-facts/> (last accessed Dec. 31, 2021).

⁴⁵ See NCES information, *supra* at notes 35-42, differentiating only between “naturalized” and “not” U.S. citizens.

⁴⁶ See generally Colby May, Religion's Legal Place in the Schoolhouse, SCH. SUPERINTENDENTS ASSOC., <https://aasa.org/SchoolAdministratorArticle.aspx?id=7730> (last accessed Dec. 31, 2021) (discussing the important role of public schools as the “front line” where federal law and individuals intersect).

surprise that some of the most important decisions of the U.S. Supreme Court, like *Brown v. Board of Education*,⁴⁷ as well as other quotidian matters decided by the Court, like *Frey v. Napoleon Community School District*,⁴⁸ have involved local public school governing bodies.

The ripple effects of the COVID-19 pandemic have illustrated the importance of the local school board. In the early stages of the pandemic, school boards made the difficult decision to close schools.⁴⁹ Then, as the pandemic raged on, school boards oversaw the decision to transition to remote learning.⁵⁰ They also had to decide issues of quarantining procedure, school shut-downs based on children exposed to COVID, and the proper way to navigate mask and vaccine mandates.⁵¹ As the Delta and Omicron variants swept the nation shortly after the breakthrough in vaccine prevalence, school boards now are wrestling with decisions of whether to revert to virtual learning.⁵²

For working parents, these decisions have more than philosophical consequences. First, for parents who are working, citizens or noncitizens, the issue of where a child will spend the workday is of critical importance: without adequate childcare in the form of public schools, parents cannot adequately plan for their professional obligations. Further, noncitizens have an equal interest in the proper upbringing of their children as any citizen does. The ability of a noncitizen to voice his or her opinion on behalf of his or her child with respect to vaccine and mask mandates and COVID quarantine procedures

⁴⁷ *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954) (overturning “separate but equal” doctrine)

⁴⁸ *Frey v. Napoleon Cmty. Schs.*, 137 S. Ct. 743 (2017) (clarifying ADA accommodation doctrine within public school districts in context of school district disallowing a service dog for a student with cerebral palsy).

⁴⁹ Erica L. Green, *Administration Offers Guidance to Schools as They Shut Down On Their Own*, N.Y. TIMES (March 13, 2020), <https://www.nytimes.com/2020/03/13/us/politics/virus-school-closings-education.html> (last updated July 29, 2020).

⁵⁰ See Erin Richards, *Is Online School Illegal? With Schools Closing from Coronavirus, Special Education Concerns Give Districts pause*, USA TODAY (March 19, 2020), <https://www.usatoday.com/story/news/education/2020/03/19/coronavirus-online-school-closing-special-education-teacher-distance-learning/2863503001/>.

⁵¹ See Anya Kamenetz, *When Can Kids Take Off Their Masks in School? Here’s What Some Experts Say*, NPR (Nov. 12, 2021, 6:00 AM), <https://www.npr.org/2021/11/12/1053891686/when-will-schools-end-mask-requirements>.

⁵² See Stephen Groves, *Tears, Politics, and Money: School Boards Become Battle Zones*, ASSOC. PRESS (July 10, 2021), <https://apnews.com/article/health-education-coronavirus-pandemic-school-boards-e41350b7d9e3662d279c2dad287f7009>.

is not lessened by virtue of citizenship status. Therefore, even noncitizens should have the ability to vote in local school board elections, if not for the sake of the parent, then for the sake of the child.

2. *Equality: Noncitizens are Tax-Paying Equal Participants of Society*

Further, even though noncitizens lack certain privileges only afforded to U.S. citizens, noncitizens still participate in local society. They pay property and income taxes, they raise their children with citizens and noncitizens alike, and they engage in the community in just the same ways as citizens do. Under an equality principle, noncitizens should be allowed to vote in local school board elections.

At a gut moral level, Tara Kini explains in her article published in the *California Law Review*, “Sharing the Vote,” that “[i]ngrained in the American mind are a few democratic norms that form part of the moral foundation of the country: no taxation without representation, government rests on the consent of the governed, and good enough to fight is good enough to vote.”⁵³

Under this rubric of a traditional democratic conception of America, it appears that noncitizens easily satisfy the requirements. Kini points out that noncitizens pay many types of taxes, including property, sales, income, and other local and state taxes.⁵⁴ Noncitizens also have fought in “every major American war.”⁵⁵ The mere fact alone that an individual has not completed the steps toward citizenship should not preclude them from participating in the governance of the schools where their children already attend.

B. The Argument Against Noncitizen Voting

1. *Allowing Noncitizens to Vote Undermines the Value of Citizenship*

Opponents of noncitizen voting argue that conferring the right to vote to noncitizens takes away a major incentive of becoming a U.S. citizen, thus undermining the value of citizenship. Upon becoming

⁵³ Kini, *supra* note 21 at 305, *citing* Raskin, *supra* note 21 at 1442-45.

⁵⁴ *Id.*, *citing* STEPHEN MOORE, NAT’L IMMIGRATION FORUM & CATO INSTITUTE, A FISCAL PORTRAIT OF THE NEWEST AMERICANS (1998) (standing for proposition that on average immigrants pay more in taxes than they receive in public benefits).

⁵⁵ *Id.*, *citing* Raskin, *supra* note 21 at 1442 (citations omitted).

a citizen, an immigrant is granted a stake in his or her community as well as tasked with various civic duties such as obeying the law, serving on a jury, paying taxes, and voting. While voting is considered a right and a privilege in the United States, it is also viewed as a duty because by voting, citizens ensure the continuance of a democratic representative system of government.

Although documented immigrants here legally are taxpayers in their communities, this does not mean that such individuals should be given what is arguably the most important right associated with citizenship. Looking at other countries' laws regarding noncitizen voting, it becomes clear that U.S. citizens cannot travel overseas and cast a ballot in another country's election because "to be a citizen isn't only about what you can leverage from government in the form of benefits and payoffs . . . [b]eing a citizen is about responsibility, at least ideally."⁵⁶ Such legislation also allows voters such as both legal and illegal immigrants to, in the words of *The Hill*'s Howard Husock, "jump in line" ahead of immigrants who waited years to become legitimate citizens.⁵⁷ While the process to becoming a citizen is a long one, requirements such as the citizenship test are designed to expose new voters to important American principles and history.⁵⁸ Not only does this test ensure that individuals are proficient in English, "which any immigrant with hopes of achieving economic success will need to master and which binds the nation together culturally," but the test also ensures that individuals are familiar with principles that inform voters' decisions such as the Bill of Rights and the United States Constitution.⁵⁹ Thus, by allowing noncitizens to vote, states and municipalities would disenfranchise and dilute the votes of legitimate voters.

By limiting the right to vote to U.S. citizens, immigrants will continue to link obtaining citizenship with the conferral of greater rights and responsibilities, as well as "a shared sense of purpose

⁵⁶ John Kass, *It's a no-brainer: Only citizens should vote, period*, CHI. TRIB. (Jul. 10, 2015), <https://www.chicagotribune.com/columns/john-kass/ct-kass-immigration-met-0710-20150710-column.html>.

⁵⁷ Howard Husock, *Noncitizen voting doesn't pass this test*, THE HILL (Dec. 1, 2021), <https://thehill.com/opinion/immigration/583470-noncitizen-voting-doesnt-pass-this-test>.

⁵⁸ *Id.*

⁵⁹ *Id.*

and national identity.”⁶⁰ Thus, to incentivize immigrants to become citizens, states and municipalities should clearly limit the right to vote in local elections to eligible U.S. citizens.

2. *Allowing Noncitizens to Vote May Interfere with Immigration Reform*

Even some who strongly support immigrant rights oppose legislation granting noncitizens the right to vote in elections, arguing that the backlogged and broken immigration system should be reformed through bipartisan efforts by Congress and the White House, not “local attempts to supersede the broken federal system.”⁶¹ Some opponents worry that any attempt at the local level to expand voting rights to noncitizens would merely appear as an effort to “pad [Democratic] voter rolls” and make the national conversation regarding immigrant rights more divisive and politically-charged, as this type of legislation is overwhelmingly pushed in blue cities by Democrats.⁶² Even if the argument that politicians support noncitizen voting efforts purely for votes holds no merit, such legislation may make this argument stronger.

3. *Data Privacy and Logistical Concerns of Creating a Secondary Voter Database*

Allowing noncitizens to vote in local elections also raises data privacy concerns—in particular, concerns that noncitizen voter information may be shared with the U.S. Immigration and Customs Enforcement (“ICE”).⁶³ Not only would this unintended consequence go against the inclusionary purpose of noncitizen voting, but it would also contradict the city of Chicago’s sanctuary city status.⁶⁴ In response to such concerns, the proposal pending before the Illinois Senate mandates that noncitizen voter registration affidavits include a warning that the voter’s information may be obtained by ICE and other related agencies and that the voter may wish to consult with an immigration attorney before registering to vote in the school board election.⁶⁵ However, some may argue that such a warning is not

⁶⁰ BLOOMBERG, *supra* note 31.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Cantù, *supra* note 8 (raising these concerns).

⁶⁴ *Id.*

⁶⁵ See S.B. 1565, 102nd Gen. Assemb. (Ill. 2021).

enough to protect noncitizens' privacy from immigration agencies. Thus, if such a proposal is passed, heightened privacy and safety precautions must be taken in creating any noncitizen voter database.

Other practical concerns in allowing noncitizens to vote in local elections would also need to be addressed, such as creating an efficient process for registering noncitizens to vote in individual school board elections as well as creating separate ballots for school board elections as compared to the larger ballots containing election information for municipal, state, and federal positions. Municipal boards of elections and school boards may be met with administrative inefficiencies handling registration and ballots.⁶⁶ For example, cities such as San Francisco have struggled with such logistical concerns when holding school board elections at the same time as other elections, producing a low voter turnout in 2019.⁶⁷ Municipalities and school boards may be met with accessibility issues such as providing ballots in languages other than English as well as providing interpreters.

Creating separate ballots specifically for noncitizens to vote in school board elections is even more important to protect noncitizens from unintentionally breaking federal law by casting a ballot for an election in which they are not authorized to vote. Allowing noncitizens to vote may lead to both intentional and unintentional voter fraud and may jeopardize immigrant's citizenship prospects. In 2015, the Board of Immigration Appeals held that a legal permanent resident was deportable as an alien who illegally voted in a federal election.⁶⁸ The Board reasoned that the act of unauthorized voting is an offense of general intent, meaning that no matter the voter's intent in casting an unauthorized ballot, the voter may be at risk of deportation.⁶⁹ Thus, even if the noncitizen voter misunderstood what election in which the voter cast his ballot and did not know he was committing an unlawful act, the voter could face grave consequences. Without an efficient system in place to register noncitizens for their particular

⁶⁶ The Editorial Board, *supra* note 29 (stating that in New York City, "a practical problem is that the city's Board of Elections, which is legendary for ineptitude, would have to manage a second voting list and set of ballots").

⁶⁷ Cantù, *supra* note 8.

⁶⁸ Matter of Fitzpatrick, Int. Dec. No. 3835, 26 I&N Dec. 559 (BIA 2015).

⁶⁹ *Id.*

school board election and create a secondary school board voting system, allowing noncitizen voting in school board elections, and more broadly, municipal elections generally, may lead to severe data privacy and administrative complications.

CONCLUSION

Practicing attorneys in Illinois, no matter the county, will be both personally and professionally affected by the Illinois Proposal. First, for those attorneys who practice in the areas of municipal and school law, this ballot proposal will generate both staunch advocates and staunch opponents to expanding enfranchisement to noncitizens. Second, any attorney who has children in the public school system must consider his or her own satisfaction with the expansion of the electorate to noncitizens in the school board context. From a procedural standpoint, increasing the suffrage of noncitizens could complicate state election frameworks with the introduction of tens of thousands of new voters to the voting rolls. Further, the implications of expanding the electorate for one type of election, the school board, while still disallowing suffrage for noncitizens in other municipal, state, and federal elections remain to be seen. Ultimately, these questions of enfranchisement, equality, and the importance of governance at the local level come to a head with the introduction of an elected Chicago Public School board and the expansion of voting rights in the state of Illinois, all occurring within the context of a global pandemic. Only time will tell what the correct answer is, but practitioners should be aware of the benefits, concerns, and potential impacts of this recent tide-turn in election law in Illinois.



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