January 2006

Fighting for an Equal Voice: Past and Present Struggle for Noncitizen Enfranchisement

Bryant Yuan Yang

Follow this and additional works at: https://scholarship.law.berkeley.edu/aalj

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z387P38

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Asian American Law Journal by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Fighting for an Equal Voice: Past and Present Struggle for Noncitizen Enfranchisement

Bryant Yuan Fu Yang†

I. INTRODUCTION

Voting rights and democratic participation should be expanded to noncitizens in order to preserve and strengthen our society. Over eleven percent of all U.S. residents are foreign born.1 Approximately 4.6 million California residents, one-fifth of the state’s adult population, are noncitizens.2 In twelve municipalities in California, noncitizens3 constitute a majority and in eighty-five cities, they make up more than one-quarter of the general population.4 Scholars view the political disparity between a growing disenfranchised people and the general population as volatile and detrimental to societal cohesion.5 In recent years, a growing number of cities have adopted policies to expand voting rights to immigrants, especially for noncitizens who are legal permanent residents (LPRs).6

† J.D. Candidate 2007, University of California, Berkeley School of Law (Boalt Hall); B.A., Ethnic Studies and Legal Studies, University of California Berkeley. I want to thank Professor Junichi Semitsu for his guidance, humor, and poetic passion. I would also like to thank all the interviewees who agreed to help me with this article, especially Matt Gonzales, David Chiu, Victor Hwang, and Sheila Chung for their continuous and unending service to immigrant communities. Lastly, I am grateful for the Asian American Law Journal editors who have made this piece a hundred times more powerful.

1. In this paper, when I use the term “noncitizen,” I am describing all individuals without U.S. citizenship, whether they are legally or illegally residing in the United States. Most discourse on the issue of noncitizen enfranchisement conflates illegal and legal aliens. I have made a concerted effort in this paper to specify which group I am discussing.
5. Id.; Telephone Interview with Joaquin Avila, Professor, Seattle University School of Law (Mar. 10, 2005). Professor Avila labels the current state in California as political apartheid because noncitizens contribute to society and have the same obligations as citizens, but are nonetheless excluded from the political sphere and cannot petition for redress through the electoral process.
6. Mangaliman, supra note 3. Legal permanent residents are foreign nationals who have been granted the privilege of working and living permanently in the United States, in contrast to individuals
Following the lead of other cities such as New York City and Chicago, San Francisco placed Proposition F on its November 2, 2004 ballot, a proposal that would have granted noncitizens voting rights in local school board elections. Proposition F would have given parents with children in the San Francisco Unified School District the opportunity to vote for school board members regardless of their citizenship and immigration status. However, the voters of San Francisco rejected Proposition F by a slim margin of 2.9%. Voice for All Parents, a coalition of community organizations and leaders, led the campaign for the initiative. The organization ran an effective campaign that received broad support from the diverse segments of the San Francisco community, garnering critical support from the Board of Supervisors and the San Francisco School Board. However, they were overwhelmed financially at the very last moment by opponents of Proposition F. The campaign was also complicated by an extremely competitive Board of Supervisors election and the presidential race.

This paper sets out to examine why the San Francisco ballot measure ultimately failed and the lessons that can be learned for future campaigns to expand voting rights to noncitizens in California and across the nation. Part II explores the historical background of noncitizen voting rights and explains how voting rights have not always been tied to citizenship. Part III provides an overview of the arguments for granting noncitizens voting rights, specifically to promote assimilation, to grant equity, to protect their civil rights, and to provide a viable solution to educational inequities within public schools. Part IV discusses how proponents of expanding voting rights can alter the public discourse and directly address arguments opposing noncitizen voting. In Part V, this paper presents the San Francisco proposal and what the proposition would have accomplished.

Part VI highlights the reasons why Proposition F failed and how proponents of voting rights for noncitizens can use the San Francisco proposal as a case study to pass similar proposals elsewhere. Part VI analyzes how both sides of the Proposition F debate used the rhetoric and arguments outlined in Part III and Part IV. This section also presents the campaign tactics of the proponents and opponents of the proposition.

with nonimmigrant status who may only stay on a temporary basis. This category includes sponsored family members, sponsored employees, diversity lottery winners, as well as refugees and asylees who have adjusted their status.

8. Id. at 521.
10. I collected much information on the opponents' campaign tactics and arguments through internet sources such as community bulletins, forums, and online publications. My attempts to contact
paper next explores the electoral obstacles to coalition building, campaign manpower, financial resources, and visibility. Part VII concludes with the lessons from the Proposition F campaign, which provide strategies for future initiatives attempting to expand suffrage to noncitizens.

II. HISTORICAL BACKGROUND OF NONCITIZEN VOTING

Voting rights have not always been tied to citizenship. There exists an extensive history of noncitizen voting in the United States. In fact, at least twenty-two states and territories permitted noncitizens to vote over a 150-year period. States began to limit and exclude noncitizens from voting only after large numbers of "undesired" Eastern and Southern Europeans began to immigrate into the United States. Despite the near elimination of noncitizens' voting rights today, several U.S. cities and counties still grant the right to vote to noncitizens.

In past eras, States' suffrage qualifications centered on property ownership, race, and gender, not on national citizenship. Regardless of citizenship, any white male property owner could vote. Nineteenth century case law reveals the historical disconnect between citizenship and voting. In *Stewart v. Foster*, the Pennsylvania Supreme Court held that natural justice required anyone who lived in an American jurisdiction, paid taxes, and owned property to have the right to vote. The Illinois Supreme Court in *Spragins v. Houghton* upheld the constitutionality of the Illinois state election law, which allowed noncitizens to vote. By virtue of residency, the court held that noncitizens expressed the same interests towards the state and country as citizens. Thus, justice mandated that they be given a voice in the electoral process. In *Minor v. Happersett*, the Supreme Court explained that citizenship had not been a prerequisite for voting and then proceeded to cite Missouri, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, and Texas as states allowing noncitizens to vote at the

---

16. Brozovich, supra note 11, at 407-08.
17. Id. (citing Stewart v. Foster, 2 Binn. 110, 122 (Pa. 1809)).
19. Id. at 408.
time. Prior to the 1880s, most of the immigrants came from the United Kingdom, Ireland, Germany, and Scandinavia. However, by the early 1900s, Europeans from the Mediterranean, Central, Eastern and Southern Europe made up the majority of the immigrant population. American citizens deemed these new immigrants “incapable of ready assimilation,” and such attitudes fueled anti-immigrant sentiments. The United States’ restrictive immigration policies after the 1880s reflected the rise in xenophobic sentiments. Hostile attitudes towards new Jewish, Polish, and Italian immigrants led the last remaining state to bar noncitizen voting in 1926. Professor Joaquin Avila, a nationally recognized minority voting rights expert, believes that there “isn’t any doubt why citizenship requirements were placed in. [American citizens] were worried about... the darker-skinned Europeans.” Thus, the link between citizenship and voting rights was born from racism and xenophobia.

Although states have almost entirely extinguished noncitizen voting, examples of noncitizen voting still exist in modern times. Since 1998, Chicago has allowed all noncitizen parents with a child enrolled in a public school to vote in school board elections. Before the elimination of New York City’s school boards in 2002, the city had permitted noncitizen parents to vote in local school board elections for more than three decades. Some municipalities, including New York City, Washington, D.C., and San Francisco, have considered legislation to enfranchise noncitizens. Noncitizens with LPR status have the right to vote in city elections in six Maryland municipalities, including Takoma Park, Barnesville, Martin’s Additions, Somerset, Chevy Chase, and Garrett Park. In Massachusetts, the towns of Amherst and Cambridge voted to

---

22. Id. at 282-83.
24. Examples of a more exclusionary immigration policy include the Chinese Exclusion Act of 1882 (prohibiting Chinese immigration and naturalization), the Gentlemen’s Agreement of 1908 (limiting the number of Japanese immigrants by agreement between Japan and the United States), and the National Origins Act of 1924 (implementing a strict national-origin quota system on immigration). See RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE (1998).
27. Telephone Interview with Joaquin Avila, supra note 5.
30. Id.
approve LPR immigrant voting and currently await changes in state legislation to permit them to carry out their mandates.\textsuperscript{32}

Examples of noncitizen voting also exist in other nations. Currently, twenty-two democracies grant noncitizens some form of voting rights,\textsuperscript{33} and of these countries, most have more politically inclusive policies toward immigrants than the United States. Sweden allows noncitizens to vote in municipal and regional elections.\textsuperscript{34} The Netherlands allows immigrants to vote in local elections after five years of residency.\textsuperscript{35} Denmark similarly grants noncitizens voting rights after three years of residency.\textsuperscript{36} Ireland requires only a six-month stay before immigrants can cast votes in local elections.\textsuperscript{37} Some Australian states permit noncitizens to vote in local elections under certain circumstances.\textsuperscript{38} The most expansive noncitizen voting occurs in New Zealand, which permits a resident alien who has resided in the country for one year to vote in all elections - local and national.\textsuperscript{39} These countries demonstrate that noncitizen voting can be used to incorporate immigrants into existing social and political systems without disastrous consequences.\textsuperscript{40}

III. THE NEED FOR NONCITIZEN VOTING

\textit{A. Societal Cohesion Requires Political and Civil Inclusion of Immigrants}

Integrating noncitizens into established political and civic institutions will benefit the United States and all societies in general. In an era of

\textit{also TAKOMA PARK, MD., TOWN CHARTER, art. VI, §§ 601, 603; BARNESVILLE, MD., TOWN CHARTER § 74-3; VILLAGE OF MARTIN'S ADDITION, MD., TOWN CHARTER art. III, § 30; SOMERSET, MD., TOWN CHARTER art. V, § 83-21; CHEVY CHASE, MD., TOWN CHARTER art. III, § 301; GARRETT PARK, TOWN CHARTER art. III, § 78-20.}

33. Tara Kini, Note, \textit{Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections}, 93 CAL. L. REV. 271, 303 (2005) (stating that the twenty-two countries that currently have some form of noncitizen voting rights are: Barbados, Belize, Canada, Chile, Denmark, Estonia, Finland, Hungary, Iceland, Ireland, Israel, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, Uruguay, and Venezuela).
35. Demleitner, \textit{supra} note 13, at 59.
36. \textit{Id.}
37. \textit{Id.}
40. Further examination of noncitizen voting in these countries is beyond the scope of this paper. However, I mention these countries in order to provide a comparison between U.S. policy and the policies of other industrialized countries, which is important in light of the fact that American law is being influenced more and more by customary international law (CIL). One way to measure CIL is through examination of the practices of other countries. \textit{See JOHN. F. MURPHY, THE UNITED STATES AND THE RULE OF LAW IN INTERNATIONAL AFFAIRS} 92-94 (2004).
globalized capital and commodities, labor has become more mobile. Many industrialized countries, including the United States, have encouraged immigration in order to fill labor shortages and to keep their domestic markets competitive. The level of immigration into industrialized nations will more than likely stay stable or increase due to the aging populations of these destination countries, which will require workers to physically and financially care for the elderly.

Although large-scale immigration brings benefits, it also fuels social tension. Conflicts inevitably arise out of having a heterogeneous population made of diverse religions, races, and cultures. Economic and social marginalization of immigrant communities can also exacerbate tensions. Without socioeconomic mobility or a path towards integration, immigrants may become disillusioned and disconnected from their countries of residency. This can lead to crime, violence, and delinquency. The recent French riots and France's struggle with immigrant youths provide a prime example. Although the riots originated from the death of two immigrant youths during a chase by law enforcement, they continued because of the perceived discrimination and marginalization of the immigrant community.

Noncitizen voting can be a powerful tool to promote the assimilation of immigrants into American society. It would promote civic participation and encourage immigrants to become more invested in their cities and neighborhoods. More importantly, noncitizen voting will provide an avenue for noncitizens to improve their communities. Local elections tend to deal with day-to-day issues such as property tax, zoning, and school renovation. Through local elections, noncitizens can engage in the political system for the betterment of everyone. Noncitizen voting would incorporate immigrants into the American political and social systems, while simultaneously providing a way to defuse perceptions of marginalization.

42. See, e.g., Alejandro I. Canales, Mexican Labour Migration to the United States in the Age of Globalization, 29 J. ETHNIC & MIGRATION STUD. 741 (2003) (characterizing Latino migration into the United States by entry into agricultural and industrial labor); David C. Yang, Globalization and the Transnational Asian "Knowledge Class," 12 ASIAN L.J. 137 (2005) [hereinafter, Yang, "Knowledge Class"] (describing how Asian immigrants have filled the need of high-tech professional skilled labor).
43. Yang, "Knowledge Class", supra note 42, at 142 (describing how Congress has increased the number of H-1B visas to permit professional temporary workers to enter the country based on demand for skilled workers). One prime example is the shortage in teachers, which many schools are trying to fill through recruitment of foreign workers. Karin Brulliard, New Visa Ceiling Called a Threat to Teacher Recruitment, WASH. POST, Mar. 8, 2004, at A3.
46. Id.
B. Equity Requires Granting Limited Voting Rights to Noncitizens

A moral argument exists for permitting noncitizens to vote in local elections in that noncitizens shoulder civic responsibilities. Legal residents are required to pay taxes, and millions of illegal immigrants also pay taxes. In their lifetimes, "the typical immigrant and his or her children pay an estimated $80,000 more in taxes than they will receive in local, state, and federal benefits." Noncitizens with LPR status must also show that they have paid their taxes for five years prior to becoming naturalized. Noncitizens are also able to serve in the U.S. military. Immigrant activists have argued that strict immigration policies force immigrants into the military because citizenship can be gained through service. Thus, it is morally reprehensible to deny noncitizens voting rights. Noncitizens should have a say in how the government spends their tax money, at least at the local level. Likewise, if our country can ask noncitizens to valiantly fight and die for us, then we must provide them with some basic fundamental rights. It is unfair to impose obligations on noncitizens without conferring equal rights.

C. Noncitizen Voting Is Necessary Because of Barriers to Citizenship

Noncitizens cannot simply apply for and gain citizenship, along with the myriad of rights, including the right to vote that it confers. Instead, they must overcome various obstacles such as meeting English proficiency evaluations, civic knowledge tests, and residency requirements.

Obtaining citizenship is a long and complicated process. One extremely detrimental barrier is the backlog in citizenship applications. Although legal noncitizens can apply for naturalization after five years, it takes an average of ten years to become a citizen, especially in light of the nearly "two-million-person, two-year backlog." An immigrant must also

---

47. Hayduk, supra note 7, at 508.
48. Kris Axtman, IRS Seminars, IDs Help Illegal Immigrants Pay US Taxes, CHRISTIAN SCI. MONITOR, Mar. 21, 2002 (stating that the IRS has signed up 5.3 million illegal immigrants in the ID program since 1996).
50. Kini, supra note 33, at 305.
53. See Peter J. Spiro, Questioning Barriers to Naturalization, 13 GEO. IMMIGR. L.J. 479 (1999).
54. Id.
become a legal permanent resident before applying for citizenship, which can take even longer. Furthermore, the number of naturalization applications being denied has also risen. Sheila Chung of the Bay Area Immigrant Rights Coalition, states, “A lot of money is being directed towards enforcement of immigration law, but very few resources are being allocated towards expediting and improving the citizenship process.”

While noncitizens may wait a decade to become naturalized, policies affecting them and their families continue to be implemented without their input.

D. Voting Rights Will Help Protect Immigrants from Civil Rights and Liberties Abuses

Granting noncitizens the right to vote could protect immigrant communities from unjust policies and enable them to better defend their civil rights. Scholars have theorized that immigrants are subject to unjust policies, political scapegoating, and marginalization in American society because of their inability to participate in the democratic process. History provides numerous examples, such as the anti-Asian legislation passed in the late nineteenth and early twentieth centuries. Today, the government regularly abridges immigrant civil liberties. Voting would give noncitizens a powerful tool to hold local politicians accountable and would allow noncitizens to advocate for their own interests without depending on others.

Unfortunately, an extensive history of immigrant scapegoating exists in the United States. Laws attacking the Asian and Asian American community in the late nineteenth century are prime examples. Chinese immigrants were subjected to a special Chinese Police Tax in 1862, the primary purpose of which was to “protect free white labor against competition with Chinese coolie labor, and to discourage the immigration of the Chinese into the State of California.” In 1875, Congress passed the Page Law, prohibiting women from China, Japan, or any “Oriental country” to immigrate into the United States. The stated premise behind

56. Hayduk, supra note 7, at 504.
57. Id.
58. Telephone Interview with Sheila Chung, Executive Director, Bay Area Immigrant Rights Coalition (May 9, 2005).
59. See Hayduk, supra note 7, at 499-501.
the act was to limit prostitution, but another major purpose was to limit the migration of Asian women in order to prevent families from forming and to keep the Asian immigrant community composed of sojourners. In 1882, the Chinese Exclusion Act barred Chinese immigrants and prevented any person of Chinese descent from naturalizing. Although the Asian and Asian American population was miniscule in the late nineteenth century, it could have used the electoral process to mount opposition against political scapegoating and repressive policies. With the electoral process closed to Asian Americans and Asian immigrants, these groups turned to the courts with limited success.

Immigrants continue to be subjected to unjust policies and scapegoating today. Post-9/11, immigrant civil liberties have been curtailed. Racial profiling of Arab and South Asian immigrants occurs routinely. The federal government can intercept and search the voicemails and emails of anyone suspected of being a terrorist. Not even legal permanent residents have protection. Deportation and clandestine detentions have been directed at noncitizens, including permanent residents. The government has detained over 1,200 people, mostly immigrant Muslim men, for homeland security purposes. Almost all have no ties to terrorist groups, but the government has chosen to hold most of them indefinitely or deport them for minor infractions like overstaying a...
visitor’s visa.\textsuperscript{72} Despite the numerous attacks being made on the rights of immigrants, they are unable to challenge these policies or find redress because they are unable to vote.\textsuperscript{73}

History has shown that immigrants have been targeted by people of all social, economic, and political backgrounds. Thus, noncitizens need to be able to exercise their own voice in the electoral process since they cannot depend on others to protect their rights and interests. It is automatically presumed that immigrants’ rights would be defended and fought for by the more established civil rights community. However, at times, even the civil rights community has forsaken the plight of immigrants. During the debate over the Immigration Reform and Control Act (IRCA) of 1986, there was a divide between the more established civil rights organizations, such as the NAACP and the AFL-CIO, and immigrants’ rights organizations, like MALDEF.\textsuperscript{74} Immigrant rights groups protested employer sanctions, fearing blatant discrimination against Latino and Asian workers and other applicants perceived to be “illegal.”\textsuperscript{75} The NAACP, however, strongly supported employer sanctions, because it believed that immigrants competed directly with African Americans.\textsuperscript{76} Similarly, the AFL-CIO believed that illegal immigration lowered overall working conditions for citizens and legal residents.\textsuperscript{77} The conflict within the civil rights community led to an absence of a unified opposition and allowed the IRCA to pass with employer sanctions.\textsuperscript{78} Though immigrants’ rights now enjoy greater inclusion within the civil rights framework,\textsuperscript{79} the controversy over IRCA highlights the problem of assuming that the larger civil rights community will be supportive of their immigrant causes.

Electoral clout through voting will also enable immigrants to hold politicians accountable from all sides of the political spectrum. As with the misguided assumption that all civil rights organizations will support immigrant causes, it cannot be assumed that progressives and the Democratic Party will be the guardians of noncitizens. California politics provide an excellent example of immigrant scapegoating. During the anti-

\textsuperscript{72} David Firestone & Christopher Drew, \textit{Al Qaeda Link Seen in Only a Handful of 1,200 Detainees}, N.Y. TIMES, Nov. 29, 2001, at A1.
\textsuperscript{73} Cole, \textit{supra} note 70, at 957.
\textsuperscript{74} Tamayo, \textit{supra} note 14, at 19.
\textsuperscript{75} \textit{Id.} at 18.
\textsuperscript{76} \textit{Id.}
\textsuperscript{77} \textit{Id.} at 19.
\textsuperscript{78} \textit{Id.}
\textsuperscript{79} \textit{Id.} at 31 (citing that fifty-six percent of African American voters opposed California’s Proposition 187, which would have denied social services, health care, and public education to undocumented immigrants. Prominent African American leaders like Joe Hicks of the Southern Christian Leadership Conference, then Los Angeles police chief Willie Williams, and former L.A. Mayor Tom Bradley all publicly denounced the proposition); see Flyer, \textit{Yes on Prop F} (on file with author) (listing endorsements of labor unions, African American leaders, tenant rights organizations, senior citizen interest groups, etc.).
immigrant upsurge in the mid-1990s, Democratic Party leaders heavily supported employer sanctions and endorsed policies detrimental to immigrant communities like Proposition 187. Senator Barbara Boxer, a well-known liberal, advocated sending the National Guard to the border between California and Mexico. On the conservative side, Pete Wilson, then Republican Governor of California, suggested "amending the Fourteenth Amendment in order to deny citizenship to U.S.-born children of undocumented aliens." California politics in the mid-1990s reveal that both parties have worked together to attack the immigrant community. Therefore, it cannot be assumed that immigrants' interests will be respected and represented by political leaders of any party. Through noncitizen voting, immigrants can better safeguard their community from politicians who may target them.

E. Noncitizen Voting Can Serve the National Interest by Decreasing Educational Obstacles for Immigrant Youth and Children of Immigrants

1. Granting Noncitizen Parents the Right to Vote for School Boards Will Alleviate Educational Inequities

Noncitizen voting is especially crucial when examined within the context of how it affects parents' say in their children's education. Noncitizen voting would better address current educational inequities by considering the needs of their families. Immigrant students comprise a disproportionate number of the students enrolled in our nation's public schools because, generally, they cannot afford to attend private schools. It is estimated that approximately 20% of American youths are children of immigrant parents, and that 9% of all students enrolled in public schools are limited English proficient (LEP). Immigrant students grapple with


82. Tamayo, supra note 14, at 16.

numerous obstacles from lacking language proficiency to coming from a lower socioeconomic background. This can lead to academic inequities such as the 44% drop out rate among Hispanic immigrant students, who are three times as likely as white students to drop out. These problems can be exacerbated by the fact that immigrant parents are unable to fully participate actively in their children's education because of their immigration status.

Studies have shown that, regardless of family income or background, parental involvement leads students to perform better academically. Research has also shown that minority representation on local school boards correlates with higher numbers of minorities in administrative and teaching positions. In turn, higher numbers of minorities in teaching positions have been shown to improve the educational achievements of minority students. One study revealed that the percentage of Hispanic teachers had a positive correlation with Hispanic students' college attendance and a negative impact on their dropout rates. Thus, representation on local school boards may have an impact on student academic achievements. These studies suggest that noncitizen parents will likely be able to improve the academic performance of immigrant students through their participation in the school board election process.

2. National Security Depends on an Educated Workforce

Improving education for immigrant youths and children of immigrants is vital for national security and competitiveness. Much of the U.S. population growth will come from immigrants and the children of immigrants. By 2050, the U.S. Census Bureau estimates that the Latino and Asian population will triple. Immigrant children will be the future workers of America. If we, as a nation, do not invest in the education of...
these children, it will be to the detriment of everyone in society. Business leaders warn that America is losing its competitive edge due to the poor education system, which has resulted in lackluster student performances in math and science. Similarly, the Commission on National Security for the 21st Century has stated that the country is compromising national security unless the nation invests in increasing the number of students pursuing engineering, math, and science.

Noncitizen voting in school board elections can be part of a comprehensive educational reform plan. Increasing parental participation can decrease educational inequities for children of immigrants and immigrant youths, improve their performance, and even encourage them to pursue occupations they thought were out of reach. It is in the nation's interest to have a highly educated workforce, both to compete in a globalized economy and for national security purposes.

IV. RESPONDING TO ARGUMENTS AGAINST NONCITIZEN VOTING RIGHTS

In order for proponents of noncitizen voting to implement policies like the ones in Chicago and Takoma Park, they must understand, anticipate, and counter opposing arguments. Opponents of noncitizen voting regularly put forth four arguments against noncitizen voting: (1) noncitizens have a questionable loyalty to the United States, (2) the extension of voting rights to noncitizens will devalue citizenship, (3) voting rights for noncitizens will promote illegal immigration and criminal activities, and (4) noncitizen voting violates U.S. and state constitutions.

A. Noncitizens Have a Questionable Loyalty to the United States

Critics argue that noncitizens cannot be trusted with voting rights, because noncitizens have no stake in the community and have more loyalty to their home countries than to the United States. According to the critics, immigrants' transient status makes them indifferent to local, state, and national issues. Because they will eventually emigrate back to their home countries, they may also be influenced or bribed by their countries of origin, which could adversely affect the United States' foreign policy. For instance, in response to local politicians, union officials, and community groups in New York City advocating local noncitizen voting, the New York Times editorial board wrote that "[e]xtending the most important benefits of citizenship to those who still hold their first allegiance to


another country seems counterproductive." 93

Although some immigrants eventually return to their home countries, most come to live permanently in the United States. 94 Refugees and asylum seekers, for example, cannot return to their home countries because they face persecution by their former governments. Regardless of whether they intend to stay, however, immigrants have a stake in their local communities. They start businesses, 95 revitalize neighborhoods, attend local schools and religious institutions, and participate in other forms of public life. More importantly, noncitizens’ own advocacy for voting rights demonstrates their desire to affiliate with and assimilate into the greater American society. A random survey by the San Francisco Chronicle, for example, shows that newly naturalized citizens support noncitizen voting in local school board elections. 96

Intuitively, opponents’ assumptions about immigrants loyalty make little sense. Many immigrants come to the United States to become citizens. Refugees and asylum seekers in particular cannot possibly want to support former governments that persecuted them for political, religious, ethnic, or other reasons. Moreover, the threat of deportation serves as a powerful deterrent to voter fraud. 97 Most of all, local city elections do not affect state, national, or foreign policy. They tend to focus on schools, city maintenance, and other parochial issues.

**B. The Extension of Voting Rights to Noncitizens Will Devalue Citizenship**

Opponents also suggest that noncitizen voting rights will devalue citizenship by eliminating the distinction between citizens and noncitizens. According to this argument, voting rights will remove an incentive to get citizenship and increase the number of noncitizen residents. In a San Francisco Chronicle editorial on Proposition F, Debra J. Saunders wrote:

> If San Francisco passes a law that allows immigrants to vote for school board members, it will be only a matter of time before the city expands the franchise to all municipal elections…. Then state elections would follow and, with the courts’ help perhaps, federal elections would be open to all. Watch the distinction between legal and illegal immigrant melt, see the line between citizen and noncitizen disappear. 98

94. It is difficult to estimate how many immigrants, legal or illegal, choose to stay or return to their country of origin after they enter the United States. The U.S. government does not track the number of people leaving the country, whether they are immigrants or U.S. citizens.
Furthermore, critics fear that immigrants will not only devalue citizenship, but also implement policies adverse to citizens. Extending the right to vote to noncitizens will not decrease the demarcation between noncitizens and citizens. In his dissent to *Sugarman v. Dougall*, Justice Rehnquist outlined eleven major differences that the Constitution makes between citizens and noncitizens, such as how citizenship serves as a prerequisite to run for Congress, how a naturalization process exists for noncitizens, and how certain amendments apply only to citizens.99 These constitutional distinctions can be added to a host of other rights given to citizens. The most prominent of these rights involves protection against deportation.100 Noncitizens, including legal permanent residents, can be deported, whereas citizens cannot be exiled.101 Citizens can freely enter and leave the United States, while noncitizens run the risk of being denied reentry.102 Citizens also possess unalienable civil liberties, whereas noncitizens can be subjected to detention and secret trials, as evidenced by the detention and treatment of 1,200 people by the Department of Justice post-9/11.103

Additionally, no factual evidence supports the belief that noncitizens will politically overwhelm citizens if they receive voting rights. In fact, noncitizen voting would correct the disproportionate political influence that citizens currently enjoy.104 Noncitizens lack the right to vote, but nonetheless get counted in the district populations that determine Congressional and state apportionment.105 For example, a 1998 report by the *Los Angeles Times* showed that the First District of Los Angeles had an “inflation of white electoral influence” because two-thirds of the adults residing in the area were noncitizens.106 Despite being less than ten percent of the population, whites made up almost half of the district’s likely voters.107 Noncitizens will also unlikely be able to push forward any policies adverse to citizens. The national, ethnic, and socioeconomic differences of noncitizens will likely prevent any major voting bloc from forming.108 Current political structures and the greater citizen voting population will prevent any feared disproportionate influence or harmful

99. Brozovich, supra note 11, at 446-47.
100. Kini, supra note 33, at 317.
101. Id.
102. Id.
103. Brozovich, supra note 11, at 449-50.
104. Harper-Ho, supra note 21, at 304.
105. Id.
107. Id.
C. Voting Rights for Noncitizens Will Promote Illegal Immigration

Many believe that noncitizen voting will increase illegal immigration and criminal acts because voting will give illegal immigrants an incentive to enter the country and reward them for breaking immigration laws. These scenarios of increased illegal immigration and voter fraud are highly unlikely. People immigrate for various reasons, including trying to flee persecution, to reunite with family, to find work, and to obtain an education. The ability to vote is unlikely to deter or promote immigration.

D. Noncitizen Voting Violates U.S. and State Constitutions

Critics of noncitizen voting consistently frame noncitizen voting as unconstitutional. This misconception views citizenship as innately tied to voting rights, and ignorance of the history of noncitizen voting has led many to believe that our Constitution explicitly requires that voters be citizens. The most common arguments assume that noncitizen voting violates Article I, the Naturalization Clause, the Equal Protection Clause, and the Guaranty Clause. However, close examination of the Constitution and early case law reveals no direct conflict with federal law. Proponents of noncitizen voting will only encounter constitutional barriers if a state’s constitution requires citizenship to vote.

Although the Constitution requires citizenship for some forms of political participation, it does not expressly prohibit noncitizen voting. In Article I, Section 2, the Constitution states, “Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.” Thus, the article provides that the House of Representatives shall be elected by the people of the state, with the state having the sole power to determine the qualifications of the electorate. The Constitution places some limitations on states’ definitions of the electorate, specifically in “the Fifteenth Amendment (prohibiting race restrictions on voting), the Nineteenth Amendment (prohibiting gender restrictions on voting), the Twenty-Fourth Amendment (prohibiting the poll

109. See Takaki, supra note 64.
110. Id. (discussing the various factors that have contributed to immigration). No major study on immigration has cited the right to vote as a major factor in why immigrants migrate. The closest category may be "political persecution," but even under that category, migration results mainly from the push factor of persecution rather than the pull factor of voting rights.
111. The Constitution states that the president must be a native-born citizen, that Senators must be citizens for at least nine years, and that Representatives must be citizens for at least seven years. U.S. Const. art. I, § 2, cl. 2; art. I, § 3, cl. 3; art. II, § 1, cl. 4.
113. Id.
tax), and the Twenty-Sixth Amendment (granting 18 year-olds the right to vote)." Otherwise, states can set their own voting guidelines.

Noncitizen voting also does not conflict with Article I, Section 8 of the Constitution, which grants Congress the power to establish the naturalization process. The Naturalization Clause prohibits states from passing laws that affect a noncitizen's immigration status. For instance, California cannot circumvent federal law and lower the residency requirement from five years to three; likewise, Texas cannot impose stricter standards by refusing asylum applications filed on racial grounds. Noncitizen voting, however, will not conflict with the Naturalization Clause if limited to municipal and local elections like those for school board, mayor, and city council. Noncitizen voters will be unable to influence immigration policies or affect an individual's immigration status, which are solely determined by the federal government. Noncitizens will also continue to have the responsibility of following immigration law or face dire consequences like deportation.

The Fourteenth Amendment also does not forbid noncitizen voting. Some have argued that the Amendment denies noncitizens the right to vote, because it defines "all persons born or naturalized in the United States...[as] citizens of the United States and of the State wherein they reside." Section 1 of the Fourteenth Amendment then describes protections afforded to citizens such as life, liberty, property, due process before the law, and equal protection. Critics argue that the Equal Protection Clause guarantees "one person, one vote" and that noncitizen voting will dilute and devalue citizen votes. Although Section 1 of the Fourteenth Amendment defines citizenship, the Amendment does not mention the rights of noncitizens nor whether they should be restricted. In addition, the Equal Protection Clause protects the principle of "one person, one

114. Brozovich, supra note 11, at 412.
115. Id.
117. More and more states having been passing laws that directly affect immigrants, especially illegal immigrants. Some of these laws deny services to illegal immigrants, permit local law enforcement to arrest people for being in the country illegally, and impose stiffer fines on employers who hire illegal immigrants. Nicholas Riccardi, States Take on Border Issues, L.A. TIMES, Jan. 16, 2006, at A1. Nevertheless, many of the laws have been overturned or vetoed for encroaching on federal law. In addition, none of the laws directly affect the naturalization process or immigration policy in themselves.
118. See Harper-Ho, supra note 21, at 289.
120. U.S. CONST. amend. XIV, § 1.
121. Id.
122. See Reynolds v. Simms, 377 U.S. 533 (1964), (ruling on the "one man, one vote" formula for redistricting); Wesberry v. Sanders, 376 U.S. 1 (1964), (applying the "one man, one vote" formula to congressional districts).
123. See U.S. CONST. amend. XIV, § 1.
vote," not "one citizen, one vote."

Because districts with large noncitizen populations overvalue citizens' votes, noncitizen voting would be more consistent with the "one person, one vote" principle.

Finally, Article IV, which guarantees a republican form of government to the states, does not prohibit noncitizen voting. States' determination of their own electoral requirements does not conflict with republican ideals. The United States has had a long history of noncitizen voting since the Constitution's formation. Coupling this history with the deference given to states in determining voter qualifications, the courts would not interpret Article IV as a ban on noncitizen voting. Furthermore, the Supreme Court has held that the issue falls outside of the Court's jurisdiction.

Although never directly deciding the issue, the Supreme Court has also held in dicta that noncitizen voting is constitutionally permissible. In Minor v. Happersett, where the Court upheld a Missouri law denying women's suffrage, it explained, "[C]itizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage." The Supreme Court reaffirmed this principle in Pope v. Williams, where it upheld a Maryland statute that required residency of a year prior to allowing new residents to vote. The Court held that a state would not be overstepping its constitutional mandate by allowing unnaturalized immigrants to vote. In its most recent case addressing this issue, Sugarman v. Dougall, the Supreme Court reaffirmed the constitutional permissibility of noncitizen voting. The Court struck a New York law excluding noncitizens from state competitive civil service positions and stated that "citizenship is a permissible criterion for limiting rights." By using the term "permissible," the Court implied that states have the power to determine whether citizenship should be a prerequisite for voting.

The major legal challenges to noncitizen voting do not come from federal law and regulations, but rather from state statutes. As previously discussed, states have the authority to set voting requirements. Some states, like New York, do not have an express citizenship requirement in their state constitutions for voting. However, many state constitutions do explicitly require citizenship to vote. In Massachusetts, for example, the

125. Rohrlich, supra note 106.
127. See Luther v. Borden, 48 U.S. 1, 42 (1849) (establishing that it rests with Congress to decide the type of government established in a State).
128. 88 U.S. 162, 177 (1874).
129. 193 U.S. 621, 632-33 (1904).
130. Id.
132. Id.
133. Raskin, supra note 11, at 1419.
General Laws require citizenship to vote in local elections. For this reason, even though Amherst and Cambridge have passed local laws to let noncitizens vote, they must wait for state legislative changes before the voting rights can be conferred.\(^{135}\) Similarly, several California state laws act as barriers against noncitizen voting rights. The California Constitution in Article II states, “A United States citizen 18 years of age and resident in this state may vote.”\(^{136}\) In addition, sections 2000 and 2101 of the California Election Code require citizenship in order to register to vote.\(^{137}\) Election Code section 2000 uses the qualifications in section II of Article II of the California Constitution, while section 2101 actually states, “[a] person entitled to register to vote shall be a United States citizen.”\(^{138}\) The California Education Code also indirectly requires voters to be citizens, because it uses provisions set out by the California Election Code.\(^{139}\)

Despite state constitutional hurdles, noncitizen voting can withstand these attacks through the use of the Home Rule Doctrine. “Under the doctrine of home rule, the city charter trumps, or ‘supersedes,’ a conflicting state law when it pertains to a municipal affair.”\(^{140}\) Nevertheless, “the state retains supremacy” over non-municipal, statewide matters.\(^{141}\) In determining whether home rule applies, the courts use a four-part analysis: (1) whether the local and state laws conflict; (2) “whether the given activity ‘implicate[s]’ a municipal affair;” (3) whether “the conflicting state law address[es] a matter of statewide concern;” and (4) whether the conflicting state law is “reasonably related” and “narrowly tailored” to statewide concerns.\(^{142}\) The doctrine originated with Missouri in 1875 and California in 1879 during the Progressive Era.\(^{143}\) After the two states adopted the doctrine through constitutional amendments, other states followed.\(^{144}\) Today, some form of home rule exists in forty-one states.\(^{145}\)

\(^{135}\) Id. at 312-13.
\(^{136}\) CAL. CONST. art. II, § 2.
\(^{137}\) CAL. ELEC. CODE § 2000 (West 2004) (stating, “Every person who qualifies under Section 2 of Article II of the California Constitution and who complies with this code governing the registration of electors may vote at any election held within the territory within which he or she resides and the election is held.”); CAL. ELEC. CODE § 2101 (West 2004) (stating, “A person entitled to register to vote shall be a United States citizen, a resident of California, and not in prison or on parole for the conviction of a felony, and at least 18 years of age at the time of the election.”).
\(^{138}\) § 2000; § 2101.
\(^{139}\) See Kini, supra note 33, at 282. CAL. EDUC. CODE § 5390 (West 2004) states:

In any school district or community college district election, the qualifications of voters, the procedure to be followed by voters and precinct board members in the polling places on election day, and the equipment and supplies to be furnished each polling place shall be governed by those provisions of the Elections Code applicable to statewide elections.

\(^{140}\) Kini, supra note 33, at 286-87.
\(^{141}\) Id. at 287.
\(^{142}\) Id. at 287-88.
\(^{144}\) Id.
\(^{145}\) Id. at 10-11.
Across the nation, advocates of noncitizen voting have used the home rule doctrine. Despite a citizenship requirement in their state constitution, six municipalities in Maryland used the doctrine to grant local-level suffrage to noncitizens. Similar measures based on the home rule doctrine are underway in Massachusetts, and advocates in San Francisco also intended to use the doctrine to defend Proposition F’s constitutionality. As this discussion illustrates, noncitizen voting can overcome state constitutional and legislative restrictions.

V. CAN THERE BE A COMPROMISE?

In addition to understanding current discourse around noncitizen voting, proponents must compromise in order to effectively serve the immigrant community. The success of noncitizen voting initiatives depends heavily on the ability of proponents to alter the mainstream American electorate’s perception that the idea is radical. The idea of noncitizen suffrage can gain momentum if it is introduced incrementally and framed in less controversial language. Possible methods of compromise include allowing noncitizens the right to vote only in school board elections, allowing only legal noncitizens to vote in school board elections, and allowing only noncitizens with children in public schools to vote in school board elections.

Proponents and opponents, however, will have an extremely difficult time reaching a compromise on noncitizen voting. Many opponents of noncitizen voting hold that there can be no compromise on the issue of immigrant voting. Some believe that the smallest of compromises could lead to a slippery slope, inevitably destroying the distinction between

146. MD. CONST. art. 1, § 1 states:
Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this state.

147. MD. CODE ANN., ELEC. LAW § 3-102 (West 2006) states:
(a) Except as provided in subsection (b) of this section, an individual may become registered to vote if the individual:
(1) is a citizen of the United States;
(2) is at least 18 years old or will be 18 years old on or before the day of the next succeeding general or special election;
(3) is a resident of the State as of the day the individual seeks to register; and
(4) registers pursuant to this title.

148. See Raskin, supra note 15 (citing how anti-immigrant groups sought to curb the home rule doctrine after noncitizen voting was permitted in Maryland municipalities).

149. Kini, supra note 33, at 283.
150. Telephone Interview with David Chiu, Campaign Spokesperson, Voice for All Parents (Mar. 17, 2005).
151. Kini, supra note 33, at 272.
152. Id.
noncitizens and citizens. When asked whether opponents of Proposition F would support an initiative that only allowed legal immigrants to vote, Debra Saunders, columnist for The San Francisco Chronicle, completely rejected the idea. In her opinion, even a highly specific proposal that permits only legal noncitizens to vote in local school board elections seems threatening. She, like many other critics of immigrant voting, fears that allowing noncitizens to vote in school board elections will open up municipal, state, and eventually federal elections.

Strong convictions also exist on the other side of the debate. Many proponents have been reluctant to make distinctions between documented and undocumented noncitizens. They believe that it would be wrong to divide the immigrant community by giving rights to some while denying rights to others. Matt Gonzalez, a former member of the San Francisco Board of Supervisors, spearheaded Proposition F onto the ballot and proudly defends the decision to not "cut out anyone in the immigrant community for the other." To proponents of noncitizen voting, like Gonzalez, compromise would mean acquiescing to a partial denial of basic civil rights for the immigrant community.

VI. THE SAN FRANCISCO PROPOSAL: PROPOSITION F

The issue of compromise, along with constitutional and public policy arguments about noncitizen voting, all played out in San Francisco’s Proposition F campaign. Matt Gonzales first introduced the initiative to the San Francisco Board of Supervisors on May 18, 2004. After a 9-2 supermajority vote of the Board of Supervisors, the initiative qualified for the November 2nd ballot. This initiative sought to amend the language in the city charter to allow a resident of San Francisco, who is at least eighteen years of age, and has a child in the school district or serves as a legal guardian or care-giver for a child in the school district, to vote in local school board elections regardless of citizenship status and legal documentation. The city originally defined a voter as “an elector who is registered in accordance with the provisions of state law,” which means that in order to vote in San Francisco, one must have been a U.S. citizen, of

153. Saunders, supra note 98.
154. E-mail from Debra Saunders, Columnist, S.F. CHRON. (Apr. 5, 2005) (on file with author).
155. Id.
156. Telephone Interview with Matt Gonzalez, former Supervisor, City and County of San Francisco (Apr. 17, 2005).
158. Flyer, Yes on Prop F, supra note 79.
159. Kini, supra note 33, at 274.
160. S. F., CAL., CITY CHARTER art. XVII.
at least eighteen years of age, and a resident of the city. 161 With a four-year sunset rule, Proposition F would have taken effect with the November 2006 school board election and would have expired after the November 2008 election, unless the Board of Supervisors adopted an ordinance to continue it. 162

Prior to Proposition F, San Francisco considered noncitizen voting on more than one occasion. In February 1996, Board of Supervisor member Mabel Teng submitted a proposal to allow noncitizen parents to vote in school board elections and to allow noncitizen community college students to vote for City College Trustees. 163 Although the measure would have only affected legal residents, 164 Teng’s proposal died after encountering intense opposition. 165 Subsequently, a San Francisco Bay Area group, Immigrant Rights Movement, submitted a ballot initiative to allow all noncitizens, documented and undocumented, to vote in all municipal elections. 166 The City Attorney’s office challenged the initiative in court even before it qualified for the ballot. 167 Upon hearing the challenge, San Francisco Superior Court Judge William Cahill found that the ballot measure violated Article II of the Californian Constitution, which required citizenship for voting. 168

Some opponents of Proposition F characterized the measure as identical to the 1996 measure proposed by Mabel Teng. However, stark contrasts can be drawn between Proposition F and the 1996 initiative. The 1996 initiative would have given noncitizens the right to vote in all local citywide elections. 169 Proposition F’s narrower scope would have granted voting rights to parents and guardians of students in San Francisco Unified School District regardless of citizenship. 170 While the 1996 initiative was spearheaded by a group of citizens, Proposition F was placed on the ballot by the elected officials of the Board of Supervisors, to which the courts

164. Id.
165. Kini, supra note 33, at 275.
166. Id.
169. Kini, supra note 33, at 275.
170. S.F. Voter Information Pamphlet, supra note 162, at 107.
generally give deference. The City Attorney adamantly opposed the 1996 initiative and challenged it on its constitutionality. In contrast, City Attorney Dennis Herrera did not make any attempts to block Proposition F. There were legal arguments in favor of Proposition F that were not raised in 1996, such as the Home Rule Doctrine. Article XI, Section 5, of the California Constitution is a home rule provision that permits California city charters to supercede state laws pertaining to municipal affairs.

In addition, Proposition F would not have placed major strain, financially or logistically, on the city and the electoral process. The San Francisco Department of Elections estimated that it would cost approximately $700,000 to print and distribute voting materials, train poll workers, and separately register people who would be eligible to vote in school board elections. However, compared to the current city budget of $5 billion, that cost is only 0.00014% of the budget. More importantly, the measure would grant voting rights to parents of the approximately 17,000 public school students who come from immigrant families.

VII. A CASE STUDY: THE PROPOSITION F CAMPAIGN

A. Campaign Rhetoric and Arguments for and Against Proposition F

Both sides of the campaign brought forth many of the arguments previously discussed. Opponents of Proposition F portrayed the initiative as

171. Id.
172. Yip, supra note 167.
173. Telephone Interview with David Chiu, supra note 150.
174. Id.; see also Kini, supra note 33, at 286.
175. CAL. CONST. art. XI, § 5 states:

It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.

It shall be competent in all city charters to provide, in addition to those provisions allowable by this Constitution, and by the laws of the State for: (1) the constitution, regulation, and government of the city police force (2) subgovernment in all or part of a city (3) conduct of city elections and (4) plenary authority is hereby granted, subject only to the restrictions of this paper, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed and for their removal, and for their compensation, and for the number of deputies, clerks, and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks, and other employees.

176. S.F. Voter Information Pamphlet, supra note 162, at 107.
radical, unconstitutional, and a detriment to democracy. Proponents stressed the historical and legal background of immigrant voting, the importance of giving immigrant parents the right to participate more fully in their children’s education, and how the proposition would promote civic participation.

The official voter information pamphlet for Proposition F highlights the opponents’ arguments against the proposition. Stonestown and Park Merced Resident’s Association put forth the official opposing argument. In their allotted space, the opponents continuously tried to portray the proposition as a creation of the Green Party, saying that the proposition “is just the latest dumb idea from the Green Party.” Again, the association attempted to tie the proposition with the liberal Green Party when they characterized the 1996 proposal as a product of “Green Party oriented political activists.” They also brought up the 1996 proposal to question the constitutional legality of Proposition F, highlighting the San Francisco Superior Court decision that held allowing noncitizens to vote violated Article II of the California Constitution.

The association therefore tried to cast doubt on the proposal’s constitutionality by comparing it to the 1996 proposal. Furthermore, opponents painted the measure as an attack on democracy by questioning immigrants’ loyalty and intelligence. The association portrayed immigrants as “temporary visitors” who did not have any “interests in local educational questions.” The message characterized noncitizens as disloyal foreigners with no intention of staying and contributing to the United States. The association also depicted immigrants as having the intelligence of children, when it wrote, “perhaps a better case could be made to let ten year old children to vote.”

One form of campaign rhetoric that has not traditionally been a part of the immigrant voting rights debate is terrorism. However, in a post-9/11 era, rhetoric including “terrorists,” “Osama Bin Laden,” and “Saddam Hussein” has seeped into public debates, including the campaign over Proposition F. In an article published in the San Francisco Chronicle on July 10, 2004, former City Attorney Louis Renne remarked, “I think citizenship is fundamental to voting. If noncitizens can vote, can Osama bin Laden vote in a school election?” The statement invoked fear of another

179. S.F. Voter Information Pamphlet, supra note 162, at 109.
180. Id.
181. Id.
182. Id.
183. Id.
184. Id.
185. Id.
186. Id.
9/11 attack by associating immigrants, both documented and undocumented, with terrorists. Proponents countered the claim by highlighting that Osama Bin Laden would not be allowed to vote because he is a felon and fugitive who has no children in the San Francisco Unified School District. However, the remark had a profound and lasting impact on the Proposition F campaign.

Voice for All Parents, the main coalition advocating the passage of Proposition F, focused its arguments on the historical and legal precedents of immigrant voting, current educational inequities, the positive effects of immigrant parental participation, and the benefits of civic participation. In their main campaign literature, Voice for All Parents emphasized that noncitizen voting has been a part of American history for over 150 years. The literature also addressed the constitutional issue of the proposal — citing other cities that currently have similar measures in place and explaining that the Supreme Court has never held that citizenship is a prerequisite for voting. The historical and legal background portrayed Proposition F as a "modest idea."

Another one of the proponent's major themes was the educational inequities within San Francisco Unified School District. Citing research that showed that parental involvement increased students' scholastic achievement and statistics that 30% of San Francisco public schools are composed of students from immigrant families, the coalition sought to present the proposal as a viable solution to increasing the quality of education in San Francisco public schools. The name Voice for All Parents suggests that the coalition intended to concentrate on the issues of education inequalities and parental participation in their children's education, rather than on the broader issue of noncitizen voting rights. Finally, Voice for All Parents emphasized how granting voting rights to noncitizens could lead to a more stable, vibrant democracy, by encouraging civic participation among immigrants. The coalition argued that in other jurisdictions that passed similar measures, immigrant parents were further inspired to pursue citizenship and to participate in democratic processes.

B. Effective Campaign Tactics

Proposition F ultimately failed by a slim margin of 2.9%. However,

\[\text{frontlines.com/modules.php?op=modload&name=News&file=article&sid=773 \text{ (last visited Mar. 24, 2006).}}\]

188. Id.
189. Telephone Interview with David Chiu, supra note 150.
190. Flyer, Yes on Prop F, supra note 79.
191. Id.
193. Flyer, Yes on Prop F, supra note 79.
194. Id.
195. S.F. 2004 Election Results, supra note 9.
many were expecting the measure to be defeated by 70 to 80%. David Chiu, campaign spokesperson for Voice for All Parents, believes the closeness of the vote is a testament to the overall effectiveness of the “Yes on Prop F” campaign. Similarly, Gonzalez thinks the campaign was a huge success because, though they technically lost, they did not lose any ground. Voice for All Parents attributes the success of the campaign to obtaining key endorsements, building a diverse coalition around the issue of immigrant voting, obtaining enormous publicity, and accomplishing goals within a limited budget.

Voice for All Parents believes one extremely important reason the campaign was effective was because it was able to build a broad, diverse coalition. First, Proposition F was strongly supported by African Americans and the civil rights community. As discussed previously, there have been incidences in the past where immigrant issues have been marginalized by the larger civil rights community. Specifically, there are often xenophobic sentiments that rise within more established communities of color. However, David Chiu says, “I believe they [African Americans] understood the struggle that we were trying to get... which was comparable to the struggle they went through to get their voting rights. All of the civil rights organizations were very supportive of what we were doing.” In addition, many prominent African American leaders such as Reverend Jesse Jackson, Supervisor Sophie Maxwell, and Former San Francisco Board of Education member Steve Phillips endorsed Proposition F. Second, the coalition received support from a wide variety of organizations such as the Harvey Milk LGBT Democratic Club, San Francisco Labor Council, Asian Law Caucus, and Mujeras Unidas Y Activas. These supporting organizations also included ones that focused on Lesbian Gay Bisexual Transgender (LGBT), tenant rights, and senior citizen issues. Third and last, Voice for All Parents learned from the mistakes of the 1996 initiative and also obtained support from the immigrant communities in San Francisco. These organizations included the Bay Area Immigrant Rights Coalition, La Raza Centro Legal, Central American Resource Center, and

196. Telephone Interview with David Chiu, supra note 150.
197. Id.
198. Telephone Interview with Matt Gonzalez, supra note 156.
199. Telephone Interview with David Chiu, supra note 150.
200. Id.
201. See Flyer, Yes on Prop F, supra note 79.
202. See supra notes 74-79.
203. Telephone Interview with David Chiu, supra note 154.
204. Flyer, Yes on Prop F, supra note 79.
205. Id.
206. Id.
207. Id.
the Chinese Progressive Association.\(^{208}\) Having broad, diverse support was important to defend against criticism that the proposal was merely about immigrants or was radical in nature.

Another major accomplishment of the coalition for Proposition F was obtaining key endorsements. Voice for All Parents received a supermajority of votes from the San Francisco Board of Supervisors to place the proposition on the November 2nd ballot.\(^{209}\) Nine out of eleven supervisors voted in favor of Proposition F.\(^{210}\) Furthermore, after heavy lobbying, the coalition also gained the unanimous endorsement of the San Francisco Board of Education.\(^{211}\) They were also able to get prominent Bay Area political leaders to rally behind the proposition, including Assembly members Leeland Yee and Mark Leno and San Francisco Public Defender Jeff Adachi.\(^{212}\)

**C. Why Did Proposition F Ultimately Fail and What Lessons Have We Learned?**

Despite the strengths of the campaign, Proposition F ultimately failed. Advocates for Proposition F believe that part of the answer as to why the initiative failed lies in anti-immigrant perspectives.\(^{213}\) Immigrants are often portrayed and stereotyped in our country as criminals, financial burdens, and competitors for limited resources. Because undocumented immigrants automatically violate U.S. immigration law by unlawfully entering the country or overstaying a visa, oftentimes American citizens incorrectly deem them as "criminals."\(^{214}\) Immigrants are criminalized even though, "the vast majority of them are law-abiding and hardworking."\(^{215}\) Immigrants are also considered financial burdens that enter the United States to take advantage of welfare benefits.\(^{216}\) Many immigrant welfare recipients have been characterized as "lazy and promiscuous."\(^{217}\) Lastly,

\(^{208}\) *Id.*


\(^{210}\) Flyer, Yes on Prop F, *supra* note 79.

\(^{211}\) Over 30 Proposition F supporters lobbied at the San Francisco Board of Education meeting for an hour before the board unanimously passed a resolution to endorse the proposal. There were several board members who were uncomfortable with an endorsement, but they voted in favor of the proposal after receiving pressure from community leaders. See Cinnamon Stillwell, *SF Board of Education Extremists Push Non-Citizen Voting*, CHRONWATCH, Oct. 16, 2004, http://www.chronwatch.com/content/contentDisplay.asp?aid=10219&catcode=33.


\(^{213}\) Telephone Interview with David Chiu, *supra* note 150.

\(^{214}\) Demleitner, *supra* note 13, at 43.

\(^{215}\) *Id.*

\(^{216}\) *Id.* at 46.

\(^{217}\) *Id.*
another prominent anti-immigrant sentiment is that immigrants are competitors for limited resources — especially jobs.\textsuperscript{218} Despite the fact that immigration only hurts new immigrants\textsuperscript{219} and that there is little measurable impact of immigration on the citizen workforce overall,\textsuperscript{220} many believe that immigrants are stealing jobs.\textsuperscript{221} American citizens have often incorrectly attributed our country’s economic problems to the immigrant population.\textsuperscript{222} These anti-immigrant perspectives undoubtedly played some role in the defeat of Proposition F.

Anti-immigrant sentiments alone cannot explain why Proposition F failed. Despite a well-established campaign, the proposition lost after key leaders in the business sector publicly opposed and campaigned against the proposal. The opposition was composed of distinct groups — several neighborhood organizations, Republican Party affiliated groups, several Democratic Party leaders, and business executives.\textsuperscript{223} SF SOS was the most prominent opponent to Proposition F. Senator Dianne Feinstein (Democrat from California),\textsuperscript{224} GAP founder Donald Fisher, financier Warren Hellman, and real estate developer Oz Erickson founded the organization in 2002.\textsuperscript{225} SF SOS is a moderate political advocacy group that is heavily backed by business executives.\textsuperscript{226} It formed a “No on F” committee and used funds from its political action committee to oppose the proposition.\textsuperscript{227} SF SOS argued that Proposition F would allow illegal immigrants to unfairly benefit over legal immigrants.\textsuperscript{228} During a press conference that used a U.S. citizenship swearing ceremony as a backdrop, SF SOS read a press release by Senator Feinstein that stated, “[T]here is a legal procedure for becoming a citizen, and allowing noncitizens to vote undermines the core of our democracy and discourages people from the very important step


\textsuperscript{219} MICHAEL FIX \& JEFFREY PASSEL, IMMIGRATION AND IMMIGRANTS: SETTING THE RECORD STRAIGHT 51 (1994).

\textsuperscript{220} \textit{Id.} at 49.

\textsuperscript{221} See Tamayo, \textit{supra} note 14.

\textsuperscript{222} \textit{Id.}

\textsuperscript{223} See SF SOS, www.sfsos.org (last visited May 1, 2006).

\textsuperscript{224} Heather Knight, \textbf{Ballot Effort Planned on S.F. Desegregation System for Schools No Longer Needed. Feinstein Group Says, S.F. CHRON.}, Apr. 9, 2004, \textit{at} A1; see generally Telephone Interview with Field Representative, Senator Feinstein District Office, San Francisco, California (Apr. 6, 2005) (explaining that Senator Feinstein has a general policy not to side on any local or state issue). However, Feinstein came out strongly against the proposition and lobbied against it through press releases and press conferences, presenting her belief in using citizenship as criteria for voting and her fears that letting noncitizens vote will be unconstitutional.


\textsuperscript{227} Hetter, \textit{supra} note 162, \textit{at} B4.

\textsuperscript{228} \textit{Id.}
of becoming citizens.\textsuperscript{229} Lately, the political advocacy group says it has been focusing on school districts because they believe good schools affect business retention and attraction to San Francisco.\textsuperscript{230}

Proponents of Proposition F believe that SF SOS, specifically GAP founder Don Fisher, played an instrumental role in the defeat of granting noncitizen parents the right to vote in local school board elections.\textsuperscript{231} Fisher donated close to $50,000 at the very last moment, as the election drew near.\textsuperscript{232} The last-minute donation allowed opponents of the measure to circulate and directly mail campaign literature and pamphlets that were saturated with anti-immigrant sentiments.\textsuperscript{233} The literature portrayed the proposition as a policy that would promote illegal immigration.\textsuperscript{234} In contrast, the Proposition F campaign was only able to gather under $30,000 in contributions, mainly due to the lack of financial resources within the immigrant community.\textsuperscript{235} SF SOS was able to outspend proponents of Proposition F by a factor of ten to one.\textsuperscript{236} As a result of this situation, future Proposition F proponents can learn two important lessons. First, it is crucial that substantial funds are raised for the campaign early on to provide adequate financing until the end of the election. Second, reserve campaign funds should be budgeted to either neutralize a similar last-minute campaign tactic, such as the one conducted by SF SOS, or to campaign offensively toward the end.

Aside from the opposition faced by organizations like SF SOS and some public leaders, Voice for All Parents faced logistical problems in passing Proposition F. The November 2nd ballot was extremely full with a heavily contested presidential race and fifteen statewide propositions.\textsuperscript{237} The election ballot for the City of San Francisco was exceptionally crowded with seven Board of Supervisor, four Community College Board, and four School Board races, and fifteen local measures.\textsuperscript{238} The numerous contested positions and propositions took financial and human resources away from Proposition F's campaign.\textsuperscript{239} Potential supporters of Proposition F may have been diverted to other political races and issues - taking with them their financial contributions and their time and energy for volunteering. The crowded November 2nd ballot also created obstacles for

\textsuperscript{229} Knight, supra note 96, at B4.
\textsuperscript{230} Young, supra note 226.
\textsuperscript{231} Telephone Interview with David Chiu, supra note 150.
\textsuperscript{232} Id.
\textsuperscript{233} E-mail Interview with David Chiu, Campaign Spokesperson, Voice for All Parents (Apr. 6, 2005).
\textsuperscript{234} Id.
\textsuperscript{235} Telephone Interview with Matt Gonzalez, supra note 156.
\textsuperscript{236} Mello, supra note 178.
\textsuperscript{237} S.F. Voter Information Pamphlet, supra note 162.
\textsuperscript{238} Id.
\textsuperscript{239} Telephone Interview with David Chiu, supra note 150.
Voice for All Parents to garner enough media and public attention on the proposition and the coalition’s arguments. Proponents of noncitizen voting rights should have cautiously determined the best time to place such a measure on the ballot.

One of the greatest obstacles that Voice for All Parents faced was raising the level of consciousness about Proposition F among voters. When an individual initially confronts the proposal, there is great hesitancy to support noncitizen voting rights for school board elections. However, as the historical and legal precedents of noncitizen voting are explained to the voter, especially on how other municipalities and jurisdictions have implemented similar propositions, he or she becomes more comfortable with the idea. Furthermore, proponents of Proposition F found that voters were more likely to support the proposal if emphasis was on the fact that Proposition F would give immigrant parents a say in their children’s education and that 30% of San Francisco Unified School District is composed of students from immigrant households. Raising the level of awareness needed to pass initiatives like Proposition F requires a long period of time.

San Francisco’s Proposition F campaign also highlights the importance of determining the boundaries of the discourse around education and parental rights. There is no dispute that Gonzalez had an integral role in placing the proposition on the ballot. He made the issue of letting noncitizen parents vote in school board elections a cornerstone of his educational policy during his San Francisco mayoral campaign. Though losing the mayoral race by a slim margin, he used his capacity and position as president of the Board of Supervisors to place the initiative on the November 2, 2004 ballot. Gonzalez’s determination brought Proposition F to the voters. However, through public remarks, he made it very obvious that his intentions were always about expanding voting rights to noncitizens for all municipal elections. Though this was not problematic for any proponent of immigrant voting, it could have been an obstacle for the passage of Proposition F. Every major opponent of

240. Id.
241. Id.
242. Id.
243. Id.
244. Id.
245. Press Release, Matt Gonzalez for Mayor of San Francisco (Gonzalez Releases Education Platform with Endorsements From School Board Vice President Eric Mar, and Members Sarah Lipson and Mark Sanchez) (Nov. 11, 2003), http://www.mattgonzalez.com/article.php?id=137.
Proposition F targeted his comments. Gonzales was not the only one to make such open remarks about granting unrestricted voting rights to noncitizens. School board member Jill Wynns expressed that Proposition F did not go far enough and that noncitizens should be granted the right to vote in all elections. These comments contradicted efforts by Voice for All Parents, whose campaign tactics revolved around portraying the initiative as a modest idea that was not radical in nature. It also detracted from the emphasis on education and parental participation.

Similar initiatives for noncitizen voting will have to determine what campaign message they would like to emphasize. Advocates must weigh the positive and negative aspects of putting forth the full extent of their intentions with respect to noncitizen voting. Gonzalez felt it was important not to lie to the electorate. When asked whether it would have been more effective to not publicize his intentions of extending noncitizen voting to municipal wide elections, he stated:

Let's be real. Other jurisdictions, in some places have expanded to all elections. In other cases, it's only public schools. I'm not going to lie to people. I say everyone in the municipality deserves to vote if they pay taxes. Let's start with the school board. If it works lets expand it. If not lets scrap it. You don't win by some kind of perceived subterfuge.

The other issue that proponents of noncitizen voting need to consider is how to reply to the question about why immigrants do not become citizens. The main stance that Voice for All Parents took was that, after 9/11, unprecedented hurdles towards citizenship have been created and the critical state of San Francisco schools requires immediate attention. However, during Proposition F's campaign, various advocates for the initiative were giving different answers. Assemblyman Leland Yee said immigrants were not becoming citizens because they could not pass the citizenship test. Other noncitizens for the proposition were quoted as saying they did not feel ready to become citizens. These dissimilar arguments could have potentially hurt the credibility of the campaign. Proponents of noncitizen voting need to formulate a succinct reason, easily expressed and understood, for why immigrants are not becoming citizens.

Lastly, campaigns like Proposition F need to truly engage the
immigrant community. Despite learning from the 1996 Initiative, the Proposition F campaign still received similar criticism from immigrant rights leaders that the campaign had a top-down approach without enough grassroots efforts.\textsuperscript{259} For example, immigrant rights leaders felt that the initiative was being pushed at the wrong time because it was too soon after 9/11 and because immigrant rights were being attacked on so many levels across the nation.\textsuperscript{260} Some feared that the initiative might exacerbate the backlash that was happening in California because legislators had passed a law permitting undocumented immigrants to get driver licenses.\textsuperscript{261} Some immigrant rights leaders felt their thoughts and concerns were not taken seriously.\textsuperscript{262} Victor Hwang, Managing Attorney for the Asian Pacific Islander Legal Outreach (APILO), commented that some members in the immigrant community also felt "[t]he initiative was placed on the ballot by Gonzalez, had the support of some Latino parents groups, but there was no real effort to reach out to the broader Asian and Pacific Islander community."\textsuperscript{263} Although most immigrant rights activists supported the proposition, Hwang felt that they did not get as active and involved in the campaign due to the sentiment that they were excluded from the process.\textsuperscript{264} This lack of commitment and engagement of the immigration rights and Asian and Pacific Islander communities may have detrimentally affected the campaign.

\textbf{VIII. CONCLUSION}

Although it is important to reflect upon and examine the reasons for the failure of the Proposition F campaign, it is equally important to note its accomplishments. The campaign lacked financial and human resources, which could have been due to the crowded November 2nd ballot and to the perception that it was not a grassroots campaign. There were mixed messages regarding the goals of the campaign and the justifications for it. In addition, advocates for the initiative had to battle widespread ignorance of the history of noncitizen voting and general anti-immigrant sentiments. Despite all of these obstacles, proponents of Proposition F were able to run a campaign that lost by a mere 2.9%. They were able to place the initiative on the ballot and convinced the San Francisco City Attorney not to oppose it, which was a victory in itself.\textsuperscript{265} The campaign was also able to get numerous key endorsements and support from diverse, broad groups and

\begin{itemize}
\item \textsuperscript{259} E-mail Interview with Victor M. Hwang, Managing Attorney, Asian Pacific Islander Legal Outreach (Apr. 18, 2005).
\item \textsuperscript{260} \textit{Id.}
\item \textsuperscript{261} Telephone Interview with Sheila Chung, \textit{supra} note 58.
\item \textsuperscript{262} E-mail Interview with Victor M. Hwang, \textit{supra} note 259.
\item \textsuperscript{263} \textit{Id.}
\item \textsuperscript{264} \textit{Id.}
\item \textsuperscript{265} Telephone Interview with Matt Gonzalez, \textit{supra} note 156.
\end{itemize}
leaders. It was an example of the immigrant rights community taking a proactive, pro-immigrant step to expand immigrants’ rights, rather than reacting to and defending against attacks on the immigrant community.266

Taking the strategies of the campaign for Proposition F and building on its weaknesses, advocates for noncitizen voting can pass similar measures in California and across the nation. Advocates plan to reintroduce the measure in the near future in San Francisco. Comparable campaigns are being implemented in other Californian cities and in other states. The issue of noncitizen voting is gathering momentum.

Indeed, "It is inevitable," said Matt Gonzalez.267

266. Id.
267. Id.