

# Immigrant Voting Rights and the Quest for Universal Suffrage

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## INTRODUCTION

The acquisition of political rights—including voting rights—has been a vital tool for disempowered groups in American history to achieve economic, social, and civil rights. Because legislative bodies confer rights and make public policy, it is critical for all members of a polity to possess the capacity to select representatives. Otherwise, those without the vote are at risk of discrimination and bias because policy makers can more easily ignore their interests. The experiences of marginalized groups in the United States demonstrate that discriminatory public policies and private practices in employment, housing, education, health care, welfare, and criminal justice are inevitable by-products of political exclusion.

Previously excluded groups gained access to the franchise principally through political struggle, sometimes with the support of factions within political parties or via third parties, through social movements and independent organizations, or by using the courts. Ultimately, these groups needed the support of other sectors in society to win political rights. Agitation expressed by the property-less encouraged propertied men to extend the franchise to the former by 1856; the Abolitionist Movement and Reconstruction culminated in the ratification of the Fifteenth Amendment in 1870, which enfranchised black men; the Women's Suffrage Movement led men to enact the Nineteenth Amendment in 1920, which gave women the right to vote; the creative protests and urban rebellions by African Americans during the 1950s and 1960s drove a primarily white Congress to pass the Civil Rights

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Act of 1964 (CRA), which prohibits discrimination on the basis of race, color, religion, sex or national origin, and the Voting Rights Act of 1965 (VRA), which bans discriminatory voting laws and practices; and protests by younger adults during the 1960s led older adults to lower the voting age from twenty-one to eighteen in 1971 with the passage of the Twenty-sixth Amendment.<sup>1</sup>

The VRA is the quintessential product in this lineage and represents one of the crowning achievements of the Civil Rights Movement: eliminating poll taxes, literacy tests, and other barriers to the vote that effectively disenfranchised African Americans and other poor people.<sup>2</sup> The VRA established new mechanisms to ensure that these eligible voters are able to cast ballots, further entrenching the principle of “one person, one vote” in federal law and our national lexicon.<sup>3</sup> In addition, the Civil Rights Movement fueled a “rights revolution” that has continued to secure other gains into the present.<sup>4</sup> For example, millions of people with disabilities successfully advocated for the passage of the 1990 Americans with Disabilities Act (ADA), which includes voting protections for people with disabilities;<sup>5</sup> and

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<sup>1</sup> See Steven Mintz, *Winning the Vote: A History of Voting Rights*, GILDER LEHRMAN INST. OF AM. HIST., <https://www.gilderlehrman.org/history-resources/essays/winning-vote-history-voting-rights> [<https://perma.cc/J587-AW9G>] (last visited Oct. 19, 2024); *A Brief History of Voting in America*, UNIV. OF N. TEX., <https://guides.library.unt.edu/voting/history-of-voting-America> [<https://perma.cc/5GS9-7DU9>] (last updated Sept. 25, 2024, 2:02 PM); *Voting Rights: A Short History*, CARNEGIE (Nov. 18, 2019), <https://www.carnegie.org/our-work/article/voting-rights-timeline/> [<https://perma.cc/RFA8-48XY>].

<sup>2</sup> See *Voting Rights Act (1965)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/voting-rights-act> [<https://perma.cc/2Y78-AHSZ>] (last updated Feb. 8, 2022).

<sup>3</sup> The Supreme Court advanced the idea of “one person, one vote” in *Baker v. Carr*, 369 U.S. 186 (1962), and *Reynolds v. Sims*, 377 U.S. 533 (1964). For further context on the VRA, see generally ARI BERMAN, *GIVE US THE BALLOT: THE MODERN STRUGGLE FOR VOTING RIGHTS IN AMERICA* (2015); Chandler Davidson, *The Voting Rights Act: A Brief History, in* *CONTROVERSIES IN MINORITY VOTING 7* (Bernard Grofman & Chandler Davidson eds., 1992); Adam B. Cox & Thomas J. Miles, *Judging the Voting Rights Act*, 108 COLUM. L. REV. 1 (2008).

<sup>4</sup> See generally Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 J. AM. HIST. 1233 (2005); PREMILLA NADASEN, *RETHINKING THE WELFARE RIGHTS MOVEMENT* (2012); VICTORIA W. WOLCOTT, *LIVING IN THE FUTURE: UTOPIANISM AND THE LONG CIVIL RIGHTS MOVEMENT* (2022); JULIUS B. FLEMING JR., *BLACK PATIENCE: PERFORMANCE, CIVIL RIGHTS, AND THE UNFINISHED PROJECT OF EMANCIPATION* (2022).

<sup>5</sup> Perri Meldon, *Disability History: The Disability Rights Movement*, NAT'L PARK SERV., <https://www.nps.gov/articles/disabilityhistoryrights movement.htm> [<https://perma.cc/BRX6-PJFJ>] (last updated Mar. 22, 2024). “Title II of the ADA requires state and local governments (‘public entities’) to ensure that people with disabilities have a full and equal opportunity to vote, including provisions that apply to all aspects of voting, including voter registration, polling place site selection, election websites, and the casting of ballots, whether on Election Day or during an early voting process, and whether in-person or absentee. The ADA applies to all elections administered by state and local governments, including federal, state, and local elections.” *The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities*, ADA.GOV (Apr. 18, 2024), <https://www.ada.gov/resources/protecting-voter-rights/> [<https://perma.cc/D9KW-4E92>]. Moreover, “[t]he Voting Rights Act of 1965 also contains provisions relevant to the voting rights of people with disabilities, by requiring election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter’s choice, as well as prohibiting conditioning the right to vote on a citizen being able to read or write, attaining a particular level of education, or passing an interpretation ‘test.’” *Id.*

since 1997, twenty-six states and the District of Columbia have won voting rights for people with felony convictions.<sup>6</sup>

Yet, the VRA did not produce suffrage for all. The quest for full inclusion remains unfulfilled. Today, approximately 22 million adults are excluded from the franchise—namely, immigrants who are not U.S. citizens.<sup>7</sup> As of 2022, approximately 46.2 million immigrants live in the United States (i.e., “foreign-born” persons).<sup>8</sup> Of these individuals, 24.5 million have become U.S. citizens, leaving almost 22 million noncitizens, of which about 11 million are undocumented.<sup>9</sup>

These noncitizens are subject to all the laws, work in every sector of the economy, own businesses, send their children to schools, revitalize neighborhoods in hundreds of cities in the country, contribute billions of dollars in taxes each year, serve in the military, and even die defending this country.<sup>10</sup> Yet they cannot vote on issues crucial to the quality of their daily lives. Excluding such a significant portion of the population from political participation closes off a proven pathway to promote civic education and citizenship. Even worse, it undermines the legitimacy of our laws and policies.<sup>11</sup> The political exclusion of these noncitizen residents poses a significant challenge to the democratic ideal of inclusion, and it poses key questions and has important implications for any reassessment of the VRA and our democratic practices.

In this essay, I argue that the rise and fall—and reemergence—of immigrant voting rights in the United States represents a microcosm of the broader “voting wars” and debates about immigration embroiling the nation.<sup>12</sup> Like the VRA, the case of immigrant voting rights provides

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<sup>6</sup> Nicole D. Porter & Morgan McLeod, *Expanding the Vote: State Felony Disenfranchisement Reform, 1997-2023*, THE SENTENCING PROJECT (Oct. 18, 2023), <https://www.sentencingproject.org/reports/expanding-the-vote-state-felony-disenfranchisement-reform-1997-2023/> [<https://perma.cc/S8X6-3HY4>].

<sup>7</sup> Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the U.S.*, MIGRATION POL’Y INST. (Mar. 13, 2024), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states-2024> [<https://perma.cc/BE92-FBYG>]. In this paper, I use the terms “immigrant” and “noncitizen” interchangeably, and where possible, I distinguish between foreign-born immigrants who are “documented” versus “undocumented,” as well as immigrants who have been naturalized and have become U.S. citizens, conceptually and empirically where data permits.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* Figures are of “foreign-born” persons listed in data from the U.S. Census Bureau as well as estimates produced by researchers. Figures include people of all ages and ability. See also SHABNAM SHENASI AZARI, VIRGINIA JENKINS, JOYCE HAHN & LAUREN MEDINA, *THE FOREIGN-BORN POPULATION IN THE UNITED STATES: 2022* (2024), <https://www2.census.gov/library/publications/2024/demo/acsbr-019.pdf> [<https://perma.cc/NW7E-H44T>].

<sup>10</sup> Ron Hayduk, *Political Rights in the Age of Migration: Lessons from the United States*, 16 INT. MIGRATION & INTEGRATION 99, 100 (2015).

<sup>11</sup> *Id.* at 115.

<sup>12</sup> See generally Richard L. Hasen, *The 2016 U.S. Voting Wars: From Bad to Worse*, 26 WM. & MARY BILL RTS. J. 629 (2018) (describing the “voting wars” as encompassing restrictive voting laws and unsubstantiated claims of fraud and election-rigging); *Voting Laws Roundup: December 2022*, BRENNAN CTR. FOR JUST. (Dec. 19, 2022), <https://www.brennancenter.org/>

valuable insights into the contested nature of democracy in America, and it holds important lessons for election reformers and advocates of equality and justice.

At the federal level, noncitizens are counted for districting purposes and affect the apportionment of seats in the House of Representatives.<sup>13</sup> Because Electoral College votes for president are allocated based on representation in Congress,<sup>14</sup> and government budget allocations are calculated using the total number of *residents*<sup>15</sup>—not merely citizens—noncitizens can significantly impact the political landscape.<sup>16</sup>

At state and local levels, where noncitizens make up a larger proportion of the potential electorate in many places, immigrant political exclusion can have a much bigger impact. Immigrants comprise over 10 percent of the voting-age population in Texas, Florida, and New York, and over 20 percent in California, but only about 49 percent of the overall immigrant population in the country are naturalized citizens with the right to vote.<sup>17</sup> At the local level, immigrants who are noncitizens, whether documented or undocumented, are more highly concentrated. For example, adult noncitizens in Los Angeles make up more than 33 percent of the voting-age population; in New York City, they comprise 22 percent of the voting-age population.<sup>18</sup> In some cities and towns, noncitizens make up one quarter to one half of the population; political exclusion therefore precludes a staggering proportion of the population from selecting representatives who make policies that affect their daily lives.<sup>19</sup> And immigrants are here to stay. In fact, their numbers are likely to increase, according to population projections.<sup>20</sup>

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our-work/research-reports/voting-laws-roundup-december-2022 [https://perma.cc/8RD3-A4VX] (listing new restrictive voting laws, election interference laws, and expansive voting laws in the wake of the 2022 elections).

<sup>13</sup> Hayduk, *supra* note 10, at 111; *see also Frequently Asked Questions (FAQs)*, U.S. CENSUS BUREAU (Nov. 22, 2021), <https://www.census.gov/topics/public-sector/congressional-apportionment/about/faqs.html> [https://perma.cc/G6A4-W483].

<sup>14</sup> *Distribution of Electoral Votes*, NAT'L ARCHIVES (June 26, 2023), <https://www.archives.gov/electoral-college/allocation> [https://perma.cc/AD4J-8Y5J].

<sup>15</sup> Sean Moulton, *Dollars and Demographics: How Census Data Shapes Federal Funding Distribution*, PROJECT ON GOV'T OVERSIGHT (Sept. 11, 2023), <https://www.pogo.org/reports/dollars-and-demographics-how-census-data-shapes-federal-funding-distribution> [https://perma.cc/B7KL-5BU6].

<sup>16</sup> A recent 2024 House bill would exclude noncitizens from congressional apportionment counts. H.R. 7109, 118th Cong. (2024); H.R. REP. NO. 118-476, at 1 (2024). This follows other efforts to similarly exclude noncitizens from census counts, which would increase voting power in districts with fewer noncitizens. *See generally* Justin Levitt, *Citizenship and the Census*, 119 COLUM. L. REV. 1355 (2019) (examining the decision to include a citizenship question in the 2020 census count).

<sup>17</sup> Mohamad Moslimani & Jeffrey S. Passel, *What the Data Says About Immigrants in the U.S.*, PEW RES. CTR. (Sept. 27, 2024), <https://www.pewresearch.org/short-reads/2024/09/27/key-findings-about-us-immigrants/> [https://perma.cc/Y293-QSXQ]; Hayduk, *supra* note 10, at 111.

<sup>18</sup> Hayduk, *supra* note 10, at 111.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; *see also 2023 National Population Projections Tables: Main Series*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2023/demo/popproj/2023-summary-tables.html>

Much like the marginalization faced by other excluded groups, immigrant political exclusion exacerbates their marginalization. Although highly heterogeneous as a group, immigrants rank at the bottom of the social and economic order.<sup>21</sup> While immigrants work more hours than do most U.S. citizens, pay billions of dollars in taxes, and contribute in countless ways economically, socially, and culturally, an alarming number of immigrants and their families score low on indicators of well-being, including income, education, housing, and health.<sup>22</sup> One in four low-income children is the child of an immigrant, and one in four low-wage workers is foreign-born.<sup>23</sup> Undocumented immigrant families are more likely to lack health insurance, have poor health, and be “food-insecure” than native-born families.<sup>24</sup> Latinos, the largest pan-ethnic group of immigrants, experience challenging conditions and have poor outcomes compared with other pan-ethnic groups, and Mexicans, the largest group of Latinos in the United States, face the biggest obstacles.<sup>25</sup> Such deleterious circumstances are the inevitable by-product of immigrant political exclusion, reflecting dynamics embodied in the age-old maxim of politics: if you don’t have the vote, you can be easily ignored. This unfortunate reality sheds light on why elected officials might enact public policies that disregard the interests of nonvoters.<sup>26</sup>

Even as the number of elected representatives from diverse immigrant backgrounds has increased, their number lags far behind that of other

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[<https://perma.cc/SU7W-5J83>] (last updated Oct. 31, 2023); CONG. BUDGET OFF., THE DEMOGRAPHIC OUTLOOK: 2024-2054, at 1 (2024), <https://www.cbo.gov/system/files/2024-01/59697-Demographic-Outlook.pdf> [<https://perma.cc/GN2X-PTZG>]. The Congressional Budget Office (“CBO”) projects the U.S. population will increase from 342 million people in 2024 to 383 million people in 2054 and that immigration will account for about 70 percent of the overall increase in the size of the population during the next decade, with the greater number of births than deaths accounting for the remaining 30 percent. After 2034, the CBO projects net immigration will drive population growth, accounting for all population growth beginning in 2040. *Id.*

<sup>21</sup> Hayduk, *supra* note 10, at 111; *see also* NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE ET AL., THE INTEGRATION OF IMMIGRANTS INTO AMERICAN SOCIETY 247-302 (Mary Waters and Marisa Gerstein Pineau, eds. 2015); DAVID CARD & STEVEN RAPHAEL, IMMIGRATION, POVERTY, AND SOCIOECONOMIC INEQUALITY 239 (2013).

<sup>22</sup> CARD & RAPHAEL, *supra* note 21, at 239-40; Batalova, *supra* note 7.

<sup>23</sup> Hayduk, *supra* note 10, at 111; RANDY CAPPS, MICHAEL FIX, JASON OST, JANE REARDON-ANDERSON & JEFFREY S. PASSEL, URBAN INSTITUTE, THE HEALTH AND WELL-BEING OF YOUNG CHILDREN OF IMMIGRANTS 1 (2004).

<sup>24</sup> CAPPS ET AL., *supra* note 23, at 17, 20, 21, 26.

<sup>25</sup> *Id.*; *see also* Ana Gonzalez-Barrera & Mark Hugo Lopez, *A Demographic Portrait of Mexican-Origin Hispanics in the United States*, PEW HISP. CTR. (May 1, 2013), <https://www.pewresearch.org/race-and-ethnicity/2013/05/01/a-demographic-portrait-of-mexican-origin-hispanics-in-the-united-states/> [<https://perma.cc/C8LR-Q648>]; *see generally* ROGELIO SÁENZ & MARIA CRISTINA MORALES, LATINOS IN THE UNITED STATES: DIVERSITY AND CHANGE (2015); ILAN STAVANS, LATINOS IN THE UNITED STATES: WHAT EVERYONE NEEDS TO KNOW (2017).

<sup>26</sup> *See generally* FRANCES FOX PIVEN & RICHARD CLOWARD, WHY AMERICANS STILL DON’T VOTE AND WHY POLITICIANS WANT IT THAT WAY (2000); Stephen Earl Bennett & David Resnick, *The Implications of Nonvoting for Democracy in the United States*, 34 AM. J. POL. SCI. 771 (1990); Jacob S. Hacker, Suzanne Mettler & Dianne Pinderhughes, *Inequality and Public Policy*, in INEQUALITY AND AMERICAN DEMOCRACY: WHAT WE KNOW AND WHAT WE NEED TO LEARN 156 (Lawrence R. Jacobs & Theda Skocpol eds., 2005).

groups.<sup>27</sup> While gerrymandering, racial bloc voting in at-large elections, and single-member districts contribute to this “representation gap,” social science shows the lack of voting rights for immigrants is also a factor, as their patterns of low voter registration and participation are highly correlated with underrepresentation in government and biased public policy outcomes.<sup>28</sup> The cumulative lack of political power—from fewer votes to fewer representatives—translates into discriminatory government policy and attendant marginalization.

What do these conditions mean for such basic democratic principles as “government rests on the consent of the governed,” “no taxation without representation,” and “one person, one vote”? The level of political exclusion of immigrants approximates the level of disenfranchisement associated with past practices that excluded early groups blocked from voting, including the poor, African Americans, women, and young people.<sup>29</sup> As such, immigrant political exclusion challenges the ideals of a modern democracy, cutting to the heart of American political practice.

In response to resultant political exclusion, and in light of stalled federal immigration reform (save for increased enforcement measures), immigrant advocates have focused reform efforts at the state and local levels where expansion of rights and services are more easily attained.<sup>30</sup> Immigrant activists have launched dozens of initiatives to enact policies that provide a range of rights and services to immigrants, such as access to driver’s licenses, health care, legal services, translation assistance, labor rights, living wages, and voting rights.<sup>31</sup>

Contemporary immigrant advocates regard acquisition of noncitizen voting rights as a tool for noncitizens to defend themselves from attacks,

<sup>27</sup> Janakee Chavda, *Immigrants and Children of Immigrants Make Up at Least 15% of the 118th Congress*, PEW RES. CTR. (Feb. 28, 2023), <https://www.pewresearch.org/short-reads/2023/02/28/immigrants-and-children-of-immigrants-make-up-at-least-15-of-the-118th-congress/> [<https://perma.cc/E67E-WQLZ>]; Gregory B. Lewis, Cathy Yang Liu & Jason T. Edwards, *The Representation of Immigrants in Federal, State, and Local Government Work Forces*, 4 PMAP PUBL’NS 1, 2 (2014).

<sup>28</sup> JANELLE WONG, *DEMOCRACY’S PROMISE: IMMIGRANTS AND AMERICAN CIVIC INSTITUTIONS* 2 (2008); see generally KARTHICK S. RAMAKRISHNAN, *DEMOCRACY IN IMMIGRANT AMERICA: CHANGING DEMOGRAPHICS AND POLITICAL PARTICIPATION* (2006); *UNSETTLED AMERICANS: METROPOLITAN CONTEXT AND CIVIC LEADERSHIP FOR IMMIGRANT INTEGRATION* (John Mollenkopf & Manuel Pastor eds., 2016); MING HSU CHEN, *PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA* (2020).

<sup>29</sup> Hayduk, *supra* note 10, at 111.

<sup>30</sup> See PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, *THE NEW IMMIGRATION FEDERALISM* 120 (2015); see also Monica W. Varsanyi, Paul G. Lewis, Doris Marie Provine & Scott Decker, *A Multilayered Jurisdictional Patchwork: Immigration Federalism in the United States*, 34 L. & POL’Y 138, 141 (2012).

<sup>31</sup> See ALAN COLBERN & S. KARTHICK RAMAKRISHNAN, *CITIZENSHIP REIMAGINED: A NEW FRAMEWORK FOR STATE RIGHTS IN THE UNITED STATES* 1-4, 250-51, 305-17 (2020); ELS DE GRAAUW, *MAKING IMMIGRANT RIGHTS REAL: NONPROFITS AND THE POLITICS OF INTEGRATION IN SAN FRANCISCO* 82-165 (2016) (three chapters covering language access initiatives, initiatives aimed at raising the minimum wage, and license initiatives).

as well as a means to exercise collective power that can advance their equitable inclusion.<sup>32</sup> Just as the Civil Rights Movement sought to extend the franchise to African Americans, renewed efforts to extend the franchise to noncitizens seek to advance their equitable representation and human rights more broadly.<sup>33</sup>

### I. SHOULD NONCITIZENS HAVE THE VOTE TOO?

The idea of allowing noncitizens to vote may sound odd or outlandish, whether in local, state, or national elections. For most Americans, voting is seen as intimately tied to citizenship. But it was not always so, nor need it be. In considering noncitizen voting rights, there are three main things scholars and advocates argue:

1. It is legal. The U.S. Constitution does not preclude noncitizen voting, and courts—including the Supreme Court—have recognized voting by noncitizens.<sup>34</sup> In fact, Congress and forty states enacted laws allowing noncitizens to vote at some point in time between 1776 to 1926.<sup>35</sup>
2. It is rational. There are strong moral and practical reasons to restore immigrant voting—including notions of equal rights and treatment—as well as mutual benefits that accrue to all community members.
3. It is feasible. Today, immigrants who are not U.S. citizens legally vote in more than a dozen localities, and another dozen jurisdictions have sought to restore immigrant voting rights.<sup>36</sup> Globally, forty-five countries on nearly every continent have extended voting rights to noncitizens in local, regional, and even national elections during the past fifty years.<sup>37</sup>

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<sup>32</sup> For example, one immigrant parent explained that winning the vote in San Francisco “made me feel like I had the power in my hands.” RON HAYDUK, MEGAN DIAS & OLIVIA MARTI, *IMMIGRANT VOTING AND THE MOVEMENT FOR IMMIGRANT INCLUSION IN SAN FRANCISCO* 16 (2023), <https://caasf.org/wp-content/uploads/2023/09/23-CAA-ImmigrationVotingReport-F2.pdf> [<https://perma.cc/DX9Z-X8KK>].

<sup>33</sup> Although different terms are used to describe immigrant voting, including “noncitizen voting,” “resident voting,” “local citizenship,” and “alien suffrage,” they all mean the same thing: enfranchising or restoring voting rights to residents of a jurisdiction who are currently excluded from the electorate because they are not U.S. citizens. HAYDUK ET AL., *supra* note 32, at 3 n.1.

<sup>34</sup> *Minor v. Happersett*, 88 U.S. 162, 177 (1874) (“[C]itizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage. Thus, in Missouri, persons of foreign birth, who have declared their intention to become citizens of the United States, may under certain circumstances vote.”). However, since 1996, noncitizens have been barred from voting in federal elections under the threat of criminal penalties. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

<sup>35</sup> Ron Hayduk, Marcela Garcia-Castañón & Vedika Bhaumik, *Exploring the Complexities of “Alien Suffrage” in American Political History*, 43 J. AM. ETHNIC HIST. 70, 70 (2024).

<sup>36</sup> Ron Hayduk & Kathleen Coll, *Urban Citizenship: Campaigns to Restore Immigrant Voting Rights in the US*, 40 NEW POL. SCI. 336, 339 (2018); HAYDUK ET AL., *supra* note 32, at 9.

<sup>37</sup> The European Union has allowed residents from any member state to vote in local and regional elections since 1992. KEES GROENENDIJK, TRANSATLANTIC COUNCIL ON MIGRATION, *LOCAL VOTING RIGHTS FOR NON-NATIONALS IN EUROPE: WHAT WE KNOW AND WHAT WE NEED TO LEARN* 9 (2008), <https://www.migrationpolicy.org/sites/default/files/publications/>

This article examines each claim, beginning with the legal and historical practice of alien suffrage, followed by its contemporary revival and the subsequent attacks on immigrant voting laws from coast to coast.

A. *The Rise and Fall of Alien Suffrage in American History*

Americans are usually surprised to learn that immigrants who were not U.S. citizens enjoyed voting rights for most of our history and throughout the vast majority of the country. In fact, from 1776 to 1926, forty states permitted noncitizens to vote in local, state, and even federal elections.<sup>38</sup> Noncitizens also could run for office and were elected as aldermen, coroners, and school board members.<sup>39</sup> As such, the notion that noncitizens should have the vote is older, has been practiced longer, and is more consistent with democratic ideals than the idea that they should not. Curiously, this 150-year history has been largely eviscerated from American national memory. Although historians and political scientists have long acknowledged the significance of European immigrants in American political history, the role of alien suffrage, as these laws and practices were called, has not been appreciated.

Alien suffrage emerged in eleven of the thirteen original colonies and became firmly established during the American Revolution.<sup>40</sup> At the time of the nation's founding, only white male property owners could vote, with voting rights tied to race, gender, and property, rather than citizenship.<sup>41</sup> Alien suffrage also followed from the democratic thrust of the American Revolution and as an extension of the revolutionary cry "No taxation without representation!" Emergent republicanism and liberalism in early America made noncitizen voting difficult to challenge. In short order, alien

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Groenendijk-final%5B1%5D.pdf [https://perma.cc/PCJ2-XR5P]. Noncitizen immigrants vote in local, regional, and, in some cases, national elections in Barbados, Belize, Chile, Uruguay, Venezuela, Iceland, Israel, and New Zealand. *See generally* Dan Ferris, Ron Hayduk, Alyscia Richards, Emma Strauss Schubert & Mary Acri, *Noncitizen Voting Rights in the Global Era: A Literature Review and Analysis*, 21 J. INT'L MIGRATION & INTEGRATION 949 (2020); LUCY PEDROZA, *CITIZENSHIP BEYOND NATIONALITY: IMMIGRANTS' RIGHT TO VOTE ACROSS THE WORLD* (2019); Victoria Finn, *Migrant Voting: Here, There, in Both Countries, or Nowhere*, 24 CITIZENSHIP STUD. 730 (2020).

<sup>38</sup> ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* app. A.12 (rev. ed. 2009); Marta Tienda, *Demography and the Social Contract*, 39 DEMOGRAPHY 587, 604 (2002); RON HAYDUK, *DEMOCRACY FOR ALL: RESTORING IMMIGRANT VOTING RIGHTS IN THE UNITED STATES 19-20* (2006); *see generally* Alan H. Kennedy, *Voters in a Foreign Land: Alien Suffrage in the United States, 1704-1926*, 34 J. POL'Y HIST. 245 (2022).

<sup>39</sup> *See generally* KIRK H. PORTER, *A HISTORY OF SUFFRAGE IN THE UNITED STATES* (1918); Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391 (1993); Virginia Harper-Ho, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 L. & INEQ. 271 (2000).

<sup>40</sup> HAYDUK, *supra* note 38, at 19-20.

<sup>41</sup> *See* CHILTON WILLIAMSON, *AMERICAN SUFFRAGE: FROM PROPERTY TO DEMOCRACY, 1760-1860*, at 13-19 (2019).

suffrage became seen as a way to integrate “Americans in waiting.”<sup>42</sup> In other words, noncitizen suffrage was seen not as a substitute for citizenship, but as a *pathway* to foster citizenship and immigrant integration, which it did in practice as well.<sup>43</sup>

As the fledgling nation expanded westward, the practice of noncitizen suffrage spread along with it. The Continental Congress, when it created the Northwest Territory in 1787, provided that “a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district . . . qualif[ies] a man as an elector of a representative.”<sup>44</sup>

In subsequent enabling acts, Congress granted voting rights to noncitizen immigrants in the new territories of Washington, Kansas, Nebraska, Nevada, Dakota, Wyoming, and Oklahoma.<sup>45</sup> Congress also explicitly authorized aliens to vote for representatives to statewide constitutional conventions in Ohio, Indiana, Michigan, and Illinois.<sup>46</sup> After achieving statehood, most of these states continued to permit noncitizen voting. Michigan’s state constitution of 1850, for example, allowed noncitizens who declared their intention to become citizens and who resided in the state for two years and six months to vote in all elections.<sup>47</sup> In 1885, the Michigan Supreme Court reaffirmed this practice when it was challenged, stating that “if the intention to become a citizen is declared in due form of law, and the other conditions of age, residence within the State of Michigan and voting precinct for the proper length of time, are found to exist, the constitution (article 7, § 1) confers the right of suffrage.”<sup>48</sup>

Other courts also affirmed the practice of noncitizen suffrage. For example, in *Stewart v. Foster*, the Pennsylvania Supreme Court concluded that the state legislature had intended to enfranchise noncitizens in the Pittsburgh local elections.<sup>49</sup> Specifically, the court examined a provision in the borough charter of Pittsburgh allowing noncitizens to vote in a municipal election if they lived and paid taxes in Pittsburgh for the required one-year period. The court ultimately upheld the voting rights of a noncitizen freeholder who was denied the right to cast his vote by election judges despite meeting the requisite qualifications.

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<sup>42</sup> See generally HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* (2006).

<sup>43</sup> Raskin, *supra* note 39, at 1407. Raskin goes on to explain that “noncitizen voting became pre-citizen voting.” *Id.*; see also MOTOMURA, *supra* note 42, at 8-9.

<sup>44</sup> NORTHWEST ORDINANCE, § 9 (July 13, 1787); see also PORTER, *supra* note 39, at 132-33.

<sup>45</sup> Raskin, *supra* note 39, at 1407-08.

<sup>46</sup> *Id.* at 1402; see *Spragins v. Houghton*, 3 Ill. (2 Scam.) 377, 395 (1840) (noting that the constitutions of these states were “adopted by a portion of votes given by persons who were not citizens of the United States”).

<sup>47</sup> Raskin, *supra* note 39, at 1408; see also Gerald M. Rosberg, *Aliens and Equal Protection: Why Not the Right to Vote?*, 75 MICH. L. REV. 1092, 1099 n.36 (1977).

<sup>48</sup> *People v. Scott*, 22 N.W. 274, 274 (Mich. 1885).

<sup>49</sup> 2 Binn. 110 (Pa. 1809); Raskin, *supra* note 39, at 1442.

In his concurrence, Justice Brackenridge agreed with the court's judgment and explained:

[B]eing an inhabitant, and . . . paying tax[es], are circumstances which give an interest in the borough. The being an inhabitant, gives an interest in the police or regulations of the borough generally; the paying tax gives an interest in the appropriation of the money levied. A right, therefore, to a voice mediately or immediately in these matters, is founded in natural justice. To reject this voice, or even to restrain it unnecessarily, would be wrong. It would be as unjust as it would be impolitic. It is the wise policy of every community to collect support from all on whom it may be reasonable to impose it; and it is but reasonable that all on whom it is imposed should have a voice to some extent in the mode and object of the application.<sup>50</sup>

Justice Brackenridge thus argued that, according to democratic, economic, and natural law principles, it would have been “wrong,” for the state to exclude aliens from these elections.<sup>51</sup>

Yet, immigrant voting, as it was practiced in early American history, was not all positive. Because noncitizen voting was limited to white male property owners, it was used to promote colonization and reinforce the ideology of white supremacy. When Congress created new territories from land it acquired through the displacement and genocide of Native Americans, it promised white European immigrants voting rights and land to encourage settlement in the Midwest and Western parts of the United States.<sup>52</sup> When these territories became states, noncitizen voting was kept intact to further the country's settler colonial project. Meanwhile, indigenous people, who were displaced and disenfranchised, were not granted citizenship until 1924,<sup>53</sup> and many would not be able to vote for several more decades.<sup>54</sup> Alien suffrage was also used by dominant political factions to block or delay the enfranchisement of African Americans and women for partisan advantage.<sup>55</sup> In these ways, alien suffrage was employed to serve exclusionary and inequalitarian goals and outcomes.

Nor was noncitizen suffrage without its critics; the practice was contested during periods of acute nativism and nationalism, and as part of the effort to preserve the institution of slavery. For instance, the Alien and

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<sup>50</sup> *Id.* at 122.

<sup>51</sup> *Id.*

<sup>52</sup> See Hayduk et al., *supra* note 35, at 71, 73-78.

<sup>53</sup> Indian Citizenship Act of 1924, Pub. L. No. 68-175, 43 Stat. 253 (1924); see generally ROXANNE DUNBAR-ORTIZ, NOT “A NATION OF IMMIGRANTS”: SETTLER COLONIALISM, WHITE SUPREMACY, AND A HISTORY OF ERASURE AND EXCLUSION (2021).

<sup>54</sup> Debra Utacia Krol, *Native People Won the Right to Vote in 1948, But the Road to the Ballot Box is Still Bumpy*, PULITZER CTR. (Nov. 4, 2022), <https://pulitzercenter.org/stories/native-people-won-right-vote-1948-road-ballot-box-still-bumpy> [<https://perma.cc/MD7J-DK9H>].

<sup>55</sup> See Hayduk et al., *supra* note 35, at 84-104.

Sedition Acts of 1798 were passed by the Federalists partly in response to fears that French migrants entering America would “infect” people with radical revolutionary ideas, prompting anti-French forces to seek to restrict immigrant voting rights in New York.<sup>56</sup> The War of 1812 reversed the spread of noncitizen suffrage due to the rise of nationalism and the specter of “foreign enemies.”<sup>57</sup> New Hampshire and Indiana repealed noncitizen suffrage in 1814 and 1816, respectively, and Connecticut and Virginia made citizenship, rather than residency, a requirement for voting in 1818, as did New Jersey in 1820, Maine in 1820, Maryland in 1821, Massachusetts in 1822, and Delaware in 1831.<sup>58</sup>

Southern states saw noncitizen immigrants as a threat because the majority of immigrants were overwhelmingly hostile to slavery.<sup>59</sup> To preserve the institution of slavery, southern states restricted the franchise to white citizens, including in Louisiana (1812), Mississippi (1817), Alabama (1819), and Missouri (1821).<sup>60</sup> One of the first planks in the Confederate Constitution was to exclude voting for anyone who was not born in the United States, without offering a path to naturalization.<sup>61</sup> The first Ku Klux Klan, which emerged after the Civil War, used force to keep newly enfranchised African Americans *and* immigrants who migrated to the South from the polls.<sup>62</sup> The second wave Klan, which emerged in the 1910s and sought more mainstream status, deployed violent rhetoric to intimidate immigrants, particularly Catholics.<sup>63</sup> Such cases show how restricting alien suffrage was strategically tied to explicitly racist and nativist ideologies and political projects.

Nevertheless, as the U.S. economy expanded in the new states, noncitizen suffrage spread. Emerging businesses backed noncitizen voting to incentivize migration to new territories and new states, and politicians supported it either to capitalize on the votes of immigrants already present in their jurisdiction or to encourage future immigration.<sup>64</sup> By the 1880s,

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<sup>56</sup> Matthew Rainbow Hale, *Many Who Wandered in Darkness: The Contest over American National Identity, 1795–1798*, 1 *EARLY AM. STUD.* 127, 172 (2003).

<sup>57</sup> *Id.*; Raskin, *supra* note 39, at 1398-99.

<sup>58</sup> Hayduk et al., *supra* note 35, at 75.

<sup>59</sup> Raskin, *supra* note 39, at 1409; *see also* EUGENE C. MURDOCK, *ONE MILLION MEN: THE CIVIL WAR DRAFT IN THE NORTH* 306 (1971) (“Probably a majority of every nationality group—even the Irish—did favor the Union.”); PORTER, *supra* note 39, at 103.

<sup>60</sup> Hayduk et al., *supra* note 35, at 74; *see also* Raskin, *supra* note 39, at 1409; HAYDUK, *supra* note 38, at 19-24.

<sup>61</sup> *See* CONFEDERATE CONST., art. I, § 2, cl. 1 (1861) (“[N]o person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.”).

<sup>62</sup> *See generally* ELAINE FRANTZ PARSONS, *KU-KLUX: THE BIRTH OF THE KLAN DURING RECONSTRUCTION* (2015).

<sup>63</sup> *See* LINDA GORDON, *THE SECOND COMING OF THE KKK: THE KU KLUX KLAN OF THE 1920S AND THE AMERICAN POLITICAL TRADITION* 94-96, 100-07, 163-76 (2017).

<sup>64</sup> Sara Egge, *Woman Suffrage and Ethnicity in Rural Minnesota*, 67 *MINN. HIST.* 116, 121 (2020); *see generally* SARA EGGE, *WOMAN SUFFRAGE AND CITIZENSHIP IN THE MIDWEST, 1870-1920* (2018).

noncitizen suffrage, fueled by a growing economy that needed new labor, reached its zenith and spurred increased immigration and settlement of the Midwest and West.<sup>65</sup>

In the states that allowed noncitizen voting, legislatures generally required immigrants to hold residency for a period of time ranging from six months to two years before granting voting rights.<sup>66</sup> When Wisconsin was admitted to the Union in 1848, for example, it extended voting rights in local, state, and national elections to “declarant aliens” (i.e., foreign-born white persons who declared their intention to become citizens).<sup>67</sup> Wisconsin’s model proved popular. Congress passed a law with similar provisions for the territories of Minnesota, Kansas, Nebraska, Oklahoma, Dakota, Nevada, Wyoming, Oregon, and Washington.<sup>68</sup> After achieving statehood, states kept up the practice of affording “declarant aliens” voting rights after a limited residence period.<sup>69</sup>

State courts routinely upheld these noncitizen voting laws.<sup>70</sup> Those court opinions recognized that the decision about who holds the franchise rests with states and localities,<sup>71</sup> and with very few exceptions, states continue to hold power to determine voter qualifications and election practices.<sup>72</sup>

Indeed, alien suffrage laws have long been recognized by the Supreme Court.<sup>73</sup> In 1874, the Supreme Court stated in *Minor v. Happersett*:

[C]itizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage. Thus, in Missouri, persons of foreign birth, who have declared their intention to become citizens of the United States, may under certain circumstances vote. The same provision is to be found in the constitutions of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Minnesota, and Texas.<sup>74</sup>

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<sup>65</sup> Hayduk et al., *supra* note 35, at 76-77.

<sup>66</sup> Raskin, *supra* note 39, at 1400-08; HAYDUK, *supra* note 38, at 23-33.

<sup>67</sup> Raskin, *supra* note 39, at 1406-07.

<sup>68</sup> *Id.* at 1406-08.

<sup>69</sup> *Id.*

<sup>70</sup> See, e.g., *Stewart v. Foster*, 2 Binn. 110 (Pa. 1809); *Spragins v. Houghton*, 3 Ill. (2 Scam.) 377 (1840).

<sup>71</sup> *Spragins*, 3 Ill. (2 Scam.) at 395 (“Each state has the undoubted right to prescribe the qualifications of its own voters. . . . [T]he act of naturalization does not confer on the individual naturalized, the right to exercise the elective franchise. While other civil rights are conferred by it, that of voting at elections for officers of state is not one, unless the party possesses the other requisite qualifications, defined by state law.”).

<sup>72</sup> KATHLEEN HALE & MITCHELL BROWN, *HOW WE VOTE: INNOVATION IN AMERICAN ELECTIONS* 21-22 (2020); Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 WM. & MARY BILL RTS. J. 453, 491-92 (2008).

<sup>73</sup> Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. 1039, 1063 (2017).

<sup>74</sup> *Minor v. Happersett*, 88 U.S. 162, 177 (1874). It is important to note that *Happersett* upheld a Missouri voting law that limited suffrage to male citizens, thereby blocking and delaying the enfranchisement of women, who were also citizens, for decades. The Court reasoned that because not all voters were citizens, conversely, not all citizens were voters.

Since *Happersett*, the Supreme Court has continued to acknowledge that citizenship is not a necessary requirement for voting. For example, as Tara Kini observes, the “[Supreme] Court in *Pope v. Williams* restated the *Happersett* dicta, noting that “[t]he State might provide that persons of foreign birth could vote without being naturalized.”<sup>75</sup> The decision about who holds the franchise—with the exception of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, which bans noncitizen voting in federal elections<sup>76</sup>—continues to rest with states and localities.

Further, Kini argues that “any federal constitutional challenge to noncitizen voting would likely fail,” based on close examination of the Constitution.<sup>77</sup> Kini contends that, in contrast to the express citizenship requirements for president, senators, and representatives,<sup>78</sup> the Constitution “does not state that one must be a citizen to vote in federal elections,”<sup>79</sup> pointing to Article I, section two which states, “Electors in each State shall have the Qualifications requisite for Elector of the most numerous Branch of the State Legislature.”<sup>80</sup> In other words, if states allowed noncitizens to vote at the state level, the Constitution permitted them to vote in federal elections as well.

As the number of immigrants grew in the United States during the mid-nineteenth century, noncitizen immigrants voted and shaped election outcomes.<sup>81</sup> Research shows that during this period, noncitizen immigrants comprised as much as one tenth to one quarter of the total voting populations of many states and locales, particularly in areas where they were concentrated.<sup>82</sup> Noncitizens were therefore factored into the considerations of political factions on issues such as anti-slavery causes, anti-temperance initiatives, labor rights, and economic regulation, ultimately affecting party dynamics, electoral outcomes, and policy.<sup>83</sup> Noncitizens also participated

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<sup>75</sup> Tara Kini, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 CAL. L. REV. 271, 279 (2005) (quoting *Pope v. Williams*, 193 U.S. 621, 632 (1904)). Moreover, in *Sugarman v. Dougall*, the Court struck down a New York law excluding noncitizens from applying for state competitive civil service positions, noting that “citizenship is a permissible criterion for limiting [voting] rights.” 413 U.S. 634, 649 (1973). Kini contends that the Court implicitly suggested that citizenship, while permissible, is not required for voting rights, concluding that if a state decides to restore immigrant voting rights, Supreme Court precedent does not stand in the way. Kini, *supra*, at 279.

<sup>76</sup> 18 U.S.C. § 611.

<sup>77</sup> Kini, *supra* note 75, at 278-81.

<sup>78</sup> U.S. CONST. art. II, § 1; art. I, §§ 2, 3.

<sup>79</sup> Kini, *supra* note 75, at 278-81.

<sup>80</sup> U.S. CONST. art. I, § 2.

<sup>81</sup> See generally Hayduk et al., *supra* note 35; KEYSSAR, *supra* note 38; STEVEN P. ERIE, RAINBOW’S END: IRISH-AMERICANS AND THE DILEMMAS OF URBAN MACHINE POLITICS, 1840-1985, at 25-66 (1990).

<sup>82</sup> Hayduk et al., *supra* note 35, at 83-84.

<sup>83</sup> For examples in a selection of states, see Hayduk et al., *supra* note 35, at 87-89 (Wisconsin), 89-91 (Minnesota), 91-93 (Kansas), 93-95 (Missouri), 95-97 (Nebraska), 97-99 (North Dakota), 99-101 (South Dakota).

in social movements, including the Anti-Slavery, Labor, Populist, Reform, and Socialist movements.<sup>84</sup> Because of their organizational and electoral clout, they were courted by politicians for their various causes, propelling Democratic, Republican, Labor, Populist, and Socialist candidates and parties to power in areas where immigrants were concentrated.<sup>85</sup> In these ways, noncitizen suffrage played a role in facilitating immigrant political incorporation for millions of Europeans.<sup>86</sup>

During this period of increased immigration and immigrant activism, the United States experienced rapid industrialization and urbanization.<sup>87</sup> Amidst major changes to social and economic life, this period introduced sharp political conflict between workers and emerging conglomerates, Protestants and Catholics, and whites and newly arriving immigrants from Southern and Eastern Europe—who were not universally seen as whites in the taxonomy of the day.<sup>88</sup> This, along with the growing numbers and power of immigrant votes, fueled anti-immigrant passions that contributed to the elimination of noncitizen suffrage around the turn of the twentieth century.<sup>89</sup> By 1900, only eleven states had retained immigrant voting rights.<sup>90</sup> In the years leading up to World War I, the remaining states gradually moved to end the longstanding practice of noncitizen suffrage, usually by constitutional amendment. The practice ended in 1926 with Arkansas.<sup>91</sup>

Racist and nativist groups worked in tandem with political elites to not only eliminate immigrant voting rights but also impose a host of other restrictive electoral policies, including poll taxes, literacy tests, grandfather clauses, residency requirements, and burdensome voter registration procedures—all of which combined to disenfranchise and marginalize millions of poor, low-income, urban, and immigrant groups.<sup>92</sup> Voter participation dropped

<sup>84</sup> *Id.*; see generally GARY GERSTLE & JOHN MOLLENKOPF, *The Political Incorporation of Immigrants, Then and Now, in E PLURIBUS UNUM?: CONTEMPORARY AND HISTORICAL PERSPECTIVES ON IMMIGRANT POLITICAL INCORPORATION* (Gary Gerstle & John Mollenkopf eds., 2001); DAVID MONTGOMERY, *THE FALL OF THE HOUSE OF LABOR: THE WORKPLACE, THE STATE, AND AMERICAN LABOR ACTIVISM, 1865-1925* (1987).

<sup>85</sup> For example, in Kansas in the late 1800s, Populists made efforts to attract immigrant voters, and eleven of the thirteen foreign-born members of the state legislature were elected as Populists in 1890. Hayduk et al., *supra* note 35, at 91.

<sup>86</sup> Hayduk et al., *supra* note 35, 104-07.

<sup>87</sup> KEYSSAR, *supra* note 38, at 118.

<sup>88</sup> *Id.* at 84-85, 118, 198; see generally RUTH MILKMAN, *IMMIGRANT LABOR AND THE NEW PRECARIAT* (2020); MONTGOMERY, *supra* note 84; Mike Davis, *Why the US Working Class is Different*, 123 *NEW LEFT REV.* 3 (1980).

<sup>89</sup> Hayduk et al., *supra* note 35, 104-06.

<sup>90</sup> *Id.* at 75-77.

<sup>91</sup> *Id.* After 1900, noncitizen suffrage was eliminated in the following states: Alabama (1901), Colorado (1902), Wisconsin (1908), Oregon (1914), Kansas (1918), Nebraska (1918), South Dakota (1918), Indiana (1921), Texas (1921), Missouri (1921), and Arkansas (1926). KEYSSAR, *supra* note 38, at 138; see also HAYDUK, *supra* note 38, at 19-20.

<sup>92</sup> PIVEN & CLOWARD, *supra* note 26, at 83-93; KEYSSAR, *supra* note 38, at 43-60, 64-93, 111-12.

precipitously, from averaging 70 percent to 80 percent of the voting-age population from 1840 to 1900 down to 49 percent by 1924.<sup>93</sup>

Resembling the political rhetoric employed today that denigrates and criminalizes immigrants by racializing them, particular groups of political elites and civil society organizations alleged that immigrants were committing rampant voter fraud enabled by “party machines” to justify the enactment of a broad array of voting restrictions.<sup>94</sup> Characterizations of immigrants—along with African Americans—as prone to criminality were common and resemble those advanced by the Make America Great Again (MAGA) movement and right-wing groups today. And while we cannot totally dismiss the charges of voter fraud by appealing to the “facts,” because there is little documented evidence of fraud in the first place, scholars who analyze cases of purported fraud nevertheless point out that what often passed as “evidence” of fraud was highly suspect.<sup>95</sup> Scholars argue that charges of fraud—which justified the imposition of restrictive voter registration laws and other disenfranchising practices—reflected nativistic ideologies aimed at excluding new urban immigrants who were tied to competitors’ party machines.<sup>96</sup> The most frequent charges of fraud came during the years with the heaviest immigration and the largest number of states allowing noncitizen voting (1870s through the 1920s).<sup>97</sup> Much writing about immigrants at this time was “openly condescending, moralistic, and prejudiced toward the new arrivals.”<sup>98</sup>

The elimination of immigrant voting rights was accompanied by related xenophobic policies that sharply limited the entry of non-Western Europeans. Beginning with the Chinese Exclusion Act of 1882 through the 1924 National Origins Act (the Johnson-Reed Act), these laws shaped the ethnic and racial makeup of the United States and buttressed forms of white supremacy well into the twentieth century. Taken together, these election and immigration reforms limited democratic and progressive possibilities for American political development for decades.

This complex and fraught history of alien suffrage has implications for the debate about the nature of voting rights and immigrant political incorporation today. When it behooved economic and political elites to encourage

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<sup>93</sup> PIVEN & CLOWARD, *supra* note 26, at 48, 66.

<sup>94</sup> Ron Hayduk & Anthony Pahnke, *Race, the Ballot, and Hegemony: What the Struggle over Immigrant Voting Teaches Us About Rightwing Mobilization in the U.S.*, 46 *NEW POL. SCI.* 279, 287 (2024); Philip E. Converse, *Change in the American Electorate*, in *THE HUMAN MEANING OF SOCIAL CHANGE* 263, 297 (Angus Campbell & Philip E. Converse eds., 1972).

<sup>95</sup> Peter H. Argersinger, *New Perspectives on Election Fraud in the Gilded Age*, 100 *POL. SCI. Q.* 669, 670-71 (1985); Howard W. Allen & Kay Warren Allen, *Vote Fraud and Data Validity*, in *ANALYZING ELECTORAL HISTORY: A GUIDE TO THE STUDY OF AMERICAN VOTING BEHAVIOR* 153, 179-80 (Jerome M. Clubb, William H. Flanigan & Nancy H. Zingale eds., 1981).

<sup>96</sup> Converse, *supra* note 94, at 297; *see generally* Allen & Allen, *supra* note 95, at 157-58, 183; LORRAINE C. MINNITE, *THE MYTH OF VOTER FRAUD* (2010).

<sup>97</sup> Argersinger, *supra* note 95, at 670-71; Allen & Allen, *supra* note 95, at 172-74, 183.

<sup>98</sup> Allen & Allen, *supra* note 95, at 171-72.

European immigration that supplied cheap labor and populated new territories and states, they readily conferred suffrage before citizenship. As such, alien suffrage helped facilitate voter participation, eventual citizenship, and progress for millions of white European immigrants. But when “other” kinds of immigrants arrived (Chinese and Southern and Eastern Europeans), nativist fears of immigrants wielding political power flared and transformed noncitizen immigrants into enemies. Similar racist sentiments underpinned efforts to restrict African Americans from accessing the ballot. In sum, these sweeping policies changed the nature of elections and citizenship, shaping American political development well into the twentieth century.

### B. *Contemporary Campaigns to Restore Immigrant Voting Rights*

Immigrant voting rights are not merely a relic of the distant past. The Civil Rights Movement helped usher in a revival of immigrant voting in the United States in the mid-twentieth century.<sup>99</sup> Immigrant voting rights were first restored in New York City in 1968, as part of the movement for community control led largely by African Americans and Latinos, and later in Maryland during the Sanctuary Movements of the 1980s and 1990s.<sup>100</sup>

As of November 2024, nineteen U.S. jurisdictions allow immigrants to vote in local elections: twelve municipalities in Maryland;<sup>101</sup> three in Vermont (Montpelier, Winooski, and Burlington); two in California (San Francisco and Oakland); one in New York (New York City); and Washington D.C.<sup>102</sup> An additional thirteen jurisdictions have enacted local laws or have considered restoring immigrant voting rights, including five localities in Massachusetts,<sup>103</sup> five in California,<sup>104</sup> one each in Maine and Illinois, and Connecticut.<sup>105</sup>

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<sup>99</sup> The Civil Rights Movement also contributed to the enactment of the 1965 immigration reform Hart-Celler Act, which eliminated the racist 1924 National Origins Act restrictions barring the immigration of non-Western Europeans. Lesley Kennedy, *How the Immigration Act of 1965 Changed the Face of America*, HISTORY (Aug. 12, 2019), <https://www.history.com/news/immigration-act-1965-changes> [https://perma.cc/DVU8-NAWQ]. The Hart-Celler Act opened the doors to immigrants from Latin America, Asia, the Caribbean, the Middle East, and Africa. *Id.*

<sup>100</sup> KEYSSAR, *supra* note 38, at 310; *see generally* Ron Hayduk and Kathleen Coll, *Urban Citizenship: Campaigns to Restore Immigrant Voting Rights in the US*, 40 NEW POL. SCI. 336 (2018).

<sup>101</sup> The Maryland towns are Takoma Park, Garrett Park, Hyattsville, Barnesville, Glen Echo, Martin’s Additions, Chevy Chase Section Three, Mount Rainer, Somerset, Cheverly, Riverdale Park, and Frederick. *Laws Permitting Noncitizens to Vote in the United States*, BALLOTPEDIA, [https://ballotpedia.org/Laws\\_permitting\\_noncitizens\\_to\\_vote\\_in\\_the\\_United\\_States](https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States) [https://perma.cc/RNX8-PHQH] (last visited Nov. 29, 2024).

<sup>102</sup> *Id.* New York City’s law allowing noncitizens to vote was struck down as violating the New York Constitution in 2024, pending an appeal to the New York Court of Appeals. *Id.*

<sup>103</sup> The localities are Amherst, Cambridge, Brookline, and Newton, Massachusetts. Boston has also explored a bill. Ron Hayduk, *Cities With Campaigns For Rights*, IMMIGRANT VOTING RIGHTS, <https://www.immigrantvotingrights.com/citieswithcampaigns> [https://perma.cc/5V23-WZWZ] (last visited Oct. 3, 2024).

<sup>104</sup> The localities are San Jose, Santa Ana, Pasadena, Richmond, and Los Angeles. *Id.*

<sup>105</sup> Portland, Maine, Chicago, Illinois, and the state of Connecticut have considered allowing noncitizens to vote. *Id.*

Some jurisdictions provide voting rights to all residents, including both documented and undocumented immigrants (Maryland, San Francisco, Washington, D.C.), while other jurisdictions enfranchise only lawful permanent residents and those with work permits (New York, Vermont, Massachusetts, Maine). Some jurisdictions empower immigrants to vote only in school board elections (San Francisco and Oakland), while others empower immigrants to vote for all local offices, from city council member to mayor (Vermont, New York, Washington, D.C., Massachusetts). Some laws have been enacted via ballot proposals (San Francisco, Vermont), while others have been enacted by legislative processes (Maryland, New York, Washington, D.C.).<sup>106</sup> Though they vary, these election reform programs were enacted to acknowledge immigrant residents as legitimate stakeholders and to affirm their voices in public affairs.<sup>107</sup> Studies show immigrants participate in significant numbers in some districts, voting on par with their citizen neighbors, and, in some cases, immigrant voting has led to the election of more diverse representatives, better funding for education, and better student outcomes.<sup>108</sup> Similar outcomes have been observed in studies of immigrant voting programs in other parts of the world.<sup>109</sup>

Immigrants and voting rights advocates today are rediscovering the history of alien suffrage and waging campaigns to restore its practice in dozens of jurisdictions in the United States. Recent immigrants write themselves into this history, not as part of a colonial settler project, but rather as legitimate stakeholders in the political process.

Moreover, efforts to align democratic practice with democratic principles are not confined to the United States. Globally, more than forty-five countries allow immigrants to vote at the local, regional, or national level,

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<sup>106</sup> *Id.*; *Laws Permitting Noncitizens to Vote in the United States*, *supra* note 101; see also Matt Vasilogambros, *Noncitizens Are Slowly Gaining Voting Rights*, STATELINE (July 1, 2021), <https://stateline.org/2021/07/01/noncitizens-are-slowly-gaining-voting-rights/> [<https://perma.cc/JLM3-9X4A>].

<sup>107</sup> HAYDUK ET AL., *supra* note 32, at 9-11.

<sup>108</sup> See generally Julissa Reynoso, *Dominican Immigrants and Social Capital in New York City: A Case Study*, 1 ENCRUCIADA/CROSSROADS 1 (2003), <https://journals.dartmouth.edu/cgi-bin/WebObjects/Journals.woa/xmlpage/2/article/104> [<https://perma.cc/VR2P-5YPW>]; Marilyn Gittel, *School Reform in New York and Chicago: Revisiting the Ecology of Local Games*, 30 URBAN AFFAIRS Q. 136 (1994); Melissa Marschall, *Parent Involvement and Educational Outcomes for Latino Studies*, 23 REV. POL'Y RSCH. 1053 (2006). The voices of impacted immigrant community members and staff of the community-based organizations that helped win and implement immigrant voting programs are represented in studies of New York City, Maryland, and San Francisco, among other places. See generally HAYDUK ET AL., *supra* note 32.

<sup>109</sup> See generally Kathleen Coll, *Citizenship Acts and Immigrant Voting Rights Movements in the US*, 15 CITIZENSHIP STUD. 993 (2011); Kåre Vernby, *Inclusion and Public Policy: Evidence from Sweden's Introduction of Noncitizen Suffrage*, 57 AM. J. POL. SCI. 15 (2013); Michaela Slotwinski, Alois Stutzer & Pieter Bevelander, *From Participants to Citizens? Democratic Voting Rights and Naturalisation Behaviour*, 49 J. ETHNIC AND MIGRATION STUD. 3184 (2023); Jeremy Ferwerda, Henning Finseraas & Johannes Bergh, *Voting Rights and Immigrant Incorporation: Evidence from Norway*, 50 BRIT. J. POL. SCI. 713 (2020); CRISTINA ESCOBAR, GLOB. CITIZENSHIP OBSERVATORY, MIGRATION AND FRANCHISE EXPANSION IN LATIN AMERICA (2017), [https://cadmus.eui.eu/bitstream/handle/1814/45709/GLOBALCIT\\_Comp\\_2017\\_01.pdf](https://cadmus.eui.eu/bitstream/handle/1814/45709/GLOBALCIT_Comp_2017_01.pdf) [<https://perma.cc/L2BW-UFND>]; Victoria Finn, *Enfranchising Migrants in Chile: A Century of Politics, Elites, and Regime Changes*, 49 J. ETHNIC AND MIGRATION STUD. 2561 (2023).

primarily in the European Union and Latin America, but also in Australia and New Zealand.<sup>110</sup> Most of those countries have enacted these laws during the past fifty years.<sup>111</sup>

### C. *Right-wing Responses*

Like during earlier periods of U.S. history, the recent revival of immigrant voting rights has spurred efforts by nativist and conservative groups to rollback or block the spread of immigrant voting laws. Since 2017, a network of conservative groups and political elites has worked to block the expansion of immigrant suffrage, employing similar strategies and ideology seen throughout previous historical periods.<sup>112</sup> Conservatives and MAGA Republicans have repeatedly made unfounded allegations of rampant voter fraud by noncitizens to promote a host of voter suppression laws (e.g., requiring voter ID, restricting absentee voting, vote by mail, and early voting, and purging voter registration rolls).<sup>113</sup> A number of well-funded groups are involved in these efforts, including the Honest Elections Project, the Heritage Foundation, and the Public Interest Legal Foundation.<sup>114</sup>

In addition, individuals with ties to the Republican Party have helped spearhead dozens of state ballot initiatives aimed at banning any future effort in the state to restore noncitizen voting.<sup>115</sup> For example, Tim Mooney, who is the head of a conservative consulting firm in Arizona, has been working to ban noncitizen voting since 2017 when “he shared results of a national poll showing that the concept resonated with many voters.”<sup>116</sup> In an email to *The Washington Post*, Mooney said that he has been planning a nationwide campaign to change state constitutions or laws to prohibit noncitizen voting in

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<sup>110</sup> Ferris et al., *supra* note 37, at 950, 956; *see also* VOTING RIGHTS FOR ALL, <https://www.votingrightsforall.net/> [<https://perma.cc/78LQ-A9FD>] (last visited Oct. 3, 2024).

<sup>111</sup> Ferris et al., *supra* note 37, at 950.

<sup>112</sup> *See* Hayduk & Pahnke, *supra* note 94, at 292-93; *Only Citizens Vote Coalition Partners Claimed The 2020 Election Was Stolen—And Their Push For The SAVE Act Is Laying The Groundwork For A 2024 Election Challenge*, ACCOUNTABLE US, <https://accountable.us/wp-content/uploads/2024/09/20240604-Only-Citizens-Vote-Coalition-Partners-Claimed-The-2020-Election-Was-Stolen—And-Their-Push-Against-Noncitizen-Voting-Is-Laying-The-Groundwork-For-A-2024-Election-Challenge.docx.pdf> [<https://perma.cc/2HTA-XGS6>].

<sup>113</sup> *See* Hayduk & Pahnke, *supra* note 94, 292-93; *Only Citizens Vote Coalition Partners*, *supra* note 112.

<sup>114</sup> *See* Hayduk & Pahnke, *supra* note 94, 292-93; *Only Citizens Vote Coalition Partners*, *supra* note 112.

<sup>115</sup> Many such groups have also funded and organized ballot initiatives and lawsuits that seek to ban critical race theory, diversity, equity, and inclusion initiatives, same-sex marriage, abortion, and transgender rights. Amy Gardner & Alice Crites, *Secret Donors and Trump Allies: Inside the Operation to Push Noncitizen Voting Laws in Florida and Other States*, WASH. POST (July 22, 2019), [https://www.washingtonpost.com/politics/secret-donors-and-trump-allies-inside-the-operation-to-push-noncitizen-voting-laws-in-florida-and-other-states/2019/07/21/e0604e2e-a359-11e9-b8c8-75dae2607e60\\_story.html](https://www.washingtonpost.com/politics/secret-donors-and-trump-allies-inside-the-operation-to-push-noncitizen-voting-laws-in-florida-and-other-states/2019/07/21/e0604e2e-a359-11e9-b8c8-75dae2607e60_story.html).

<sup>116</sup> *Id.*

the following states: Alabama, Colorado, Georgia, Iowa, Kentucky, Maine, Michigan, Missouri, North Carolina, Nebraska, Nevada, Ohio, and West Virginia.<sup>117</sup> Similarly, Paul Jacob, a Virginia-based strategist who works on passing citizen-only voting amendments, said the citizen-only measures could “put Democrats in a political box.”<sup>118</sup> Mooney and Jacob’s project has so far been succeeding. North Dakota voters overwhelmingly approved a citizens-only voting amendment to the state constitution in 2018,<sup>119</sup> and Florida voters did the same in 2020.<sup>120</sup> In September 2021, Americans for Citizen Voting, a nonprofit organization led by Christopher Arps, successfully persuaded Georgia Secretary of State Brad Raffensperger to sign a petition calling for a citizens-only amendment to be added to the state constitution.<sup>121</sup> More recently, Americans for Citizen Voting launched an effort to amend the Texas Constitution to require citizenship to vote in Texas state elections.<sup>122</sup>

As of November 2024, conservative groups have successfully gotten fifteen states to explicitly ban the practice of allowing noncitizens to legally vote—these states are Colorado, Florida, Alabama, North Dakota, Arizona, Ohio, Louisiana, Iowa, Idaho, Kentucky, Missouri, Oklahoma, North Carolina, South Carolina, and Wisconsin.<sup>123</sup>

Beyond states, opponents of immigrant voting rights are also active at the national level. One of the first acts of the Republican-led House of Representatives in 2023 was to pass a measure blocking enforcement of a Washington, D.C. bill that grants all noncitizens (documented and

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *North Dakota Election Results*, N.Y. TIMES, <https://www.nytimes.com/interactive/2018/11/06/us/elections/results-north-dakota-elections.html> [<https://perma.cc/Q93R-334E>] (last updated May 15, 2019, 2:10 PM).

<sup>120</sup> *Florida Election Results*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/11/03/us/elections/results-florida.html> [<https://perma.cc/3J74-Y4XT>] (last updated Jan. 26, 2021).

<sup>121</sup> Tammy Joyner, *Secretary of State seeks to Bar Non-Citizens from Voting in Georgia*, ATLANTA CIVIC CIRCLE (Sept. 21, 2021), <https://atlantaciviccircle.org/2021/09/21/secretary-of-state-seeks-to-bar-non-citizens-from-voting-in-georgia/> [<https://perma.cc/QZZ4-GFUN>]; Tim Darnell, *Raffensperger Signs Citizen-Only Voting Petition*, MARIETTA DAILY J. (Sep. 16, 2021), [https://www.mdjonline.com/elections/raffensperger-signs-citizen-only-voting-petition-actu-says-it-s-irresponsible/article\\_b76a145a-171f-11ec-bb85-a70b6363fc50.html](https://www.mdjonline.com/elections/raffensperger-signs-citizen-only-voting-petition-actu-says-it-s-irresponsible/article_b76a145a-171f-11ec-bb85-a70b6363fc50.html) [<https://perma.cc/UTF5-8SN7>]; see also AM. FOR CITIZEN VOTING, <https://onlycitizens.vote> [<https://perma.cc/RSP8-P5KK>] (last visited Oct. 3, 2024).

<sup>122</sup> *Group Urges Gov. Abbott to Amend Texas Constitution to Preserve Citizen Voting*, SE. TEX. REC. (Oct. 8, 2023), <https://setexasrecord.com/stories/650071532-group-urges-gov-abbott-to-amend-texas-constitution-to-preserve-citizen-voting> [<https://perma.cc/9L85-BCPT>].

<sup>123</sup> *Laws Permitting Noncitizens to Vote in the United States*, *supra* note 101; see also Joseph Greaney, *Nine States Approved Bills Related to Noncitizen Voting, Voters in Eight States Will Consider Ballot Measures This November*, BALLOTPEdia (July 15, 2024), <https://news.ballotpedia.org/2024/07/15/nine-states-approved-bills-related-to-noncitizen-voting-voters-in-eight-states-will-consider-ballot-measures-this-november/> [<https://perma.cc/S5Y8-S9Y9>]; *Citizen Voters, Inc.*, BALLOTPEdia, [https://ballotpedia.org/Citizen\\_Voters\\_Inc](https://ballotpedia.org/Citizen_Voters_Inc). [<https://perma.cc/2294-WAXQ>] (last visited Oct. 3, 2024).

undocumented) voting rights in Washington, D.C.'s local elections.<sup>124</sup> Representative James Comer (Republican, Kentucky), a sponsor of the measure, said, "Today the House took the first step to prevent . . . D.C. Council's irresponsible and dangerous . . . [law] from going into effect . . . [that would] disenfranchise American citizens in our nation's capital [by letting noncitizens vote]."<sup>125</sup>

Moreover, opponents of immigrant voting laws have taken a page out of history and sought to drive a wedge between African Americans and immigrants. Hans Von Spakovsky, a legal specialist with the Heritage Foundation, described the Washington, D.C. measure as "an insult to the residents of D.C., particularly its Black voters, who struggled in the civil rights movement to achieve the ability to vote. Yet this bill will dilute the value of their votes by allowing foreigners to vote."<sup>126</sup> New York City's immigrant voting rights bill was subject to similar efforts to divide and conquer minority communities.<sup>127</sup>

Pointing to the national implications of Washington, D.C.'s immigrant voting law, former FOX News personality Tucker Carlson, who popularized "replacement theory"<sup>128</sup> and regularly promotes xenophobia, told his audience, "We have tens of millions of illegal aliens . . . living in the United States, and our elections are determined by tens or hundreds of thousands of votes. So, if they can all vote, we're done!"<sup>129</sup> In response to opposition to the law, Eleanor Holmes Norton, Washington D.C.'s nonvoting Democratic Congressional Representative said, "I can only conclude that the Republican

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<sup>124</sup> Mychael Schnell, *House Passes Resolutions to Block DC Noncitizen Voting Bill*, THE HILL (Feb. 9, 2023), <https://thehill.com/homenews/house/3852191-house-passes-resolutions-to-block-dc-noncitizen-voting-bill-criminal-code/> [<https://perma.cc/WY27-D6LT>]. Despite efforts to block it, the Washington, D.C. Local Resident Voting Rights Amendment Act of 2022 overcame bipartisan opposition in the U.S. House of Representatives, passed congressional review in March 2023, and withstood a legal challenge in *Hall v. D.C. Bd. of Elections*, No. CV 23-1261, 2024 WL 1212953 (D.D.C. Mar. 20, 2024).

<sup>125</sup> Schnell, *supra* note 124.

<sup>126</sup> Stephan Dinan, *House Votes to Overturn D.C.'s Illegal Immigrant Voting Plan*, THE WASH. TIMES (Feb. 9, 2023), <https://www.washingtontimes.com/news/2023/feb/9/house-votes-overturn-dcs-illegal-immigrant-voting-/>. Ultimately, Judge Amy Berman Jackson of the United States District Court for the District of Columbia wrote a memorandum opinion in *Hall v. D.C. Bd. of Elections* rejecting the argument from seven Washington, D.C. voters that permitting noncitizen voting in local, but not federal, elections dilutes the votes of citizens. *Hall v. D.C. Bd. of Elections*, No. CV 23-1261, 2024 WL 1212953, at \*4 (D.D.C. Mar. 20, 2024).

<sup>127</sup> See Tyler O'Neil, *Black Voters Sue NYC Over Noncitizen Voting, Claim It Violates Civil Rights Law*, FOX NEWS (Feb. 3, 2022), <https://www.foxnews.com/politics/black-voters-sue-nyc-noncitizen-voting-claim-violates-civil-rights-law> [<https://perma.cc/65BJ-RPLC>].

<sup>128</sup> See generally GABRIELE COSENTINO, SOCIAL MEDIA AND THE POST-TRUTH WORLD ORDER 59-86 (2020); Mattias Ekman, *The Great Replacement: Strategic Mainstreaming of Far-Right Conspiracy Claims*, 28 CONVERGENCE 1132 (2022).

<sup>129</sup> Interview with Representative Thomas Massie, FOX NEWS (Feb. 14, 2023), <https://www.foxnews.com/video/6320420576112> [<https://perma.cc/73KH-EQQ5>].

leadership believes that D.C. residents, the majority of whom are Black and Brown, are either unworthy or incapable of governing themselves.”<sup>130</sup> These developments parallel efforts to enact a host of related anti-immigrant laws at the state and local levels.<sup>131</sup> More recently, the Republican Party passed a House bill that would require proof of citizenship to vote, which analysts indicate would end up disenfranchising many citizens who do not have—or cannot readily access—needed documents.<sup>132</sup>

The MAGA movement has repeatedly targeted immigrants, reviving a long history of American nativist ideology that ranges from the exclusion of Chinese immigrants in the nineteenth century, to the racist national origin quotas of the 1920s, to the deportation of Mexicans from the 1930s to 1950s, to the mass detention and deportation of migrants today.<sup>133</sup> Although the Republican Party historically supported policies that expanded immigration,<sup>134</sup> largely in support of businesses aligned with the Party, it has embraced a virulent anti-immigrant nativism during the past few decades. The linchpin in this nativist effort is the foregrounding of election and border security.<sup>135</sup>

Despite strong opposition, immigrant voting advocates have fought back, successfully defeating anti-immigrant policies and anti-immigrant lawsuits, including in Vermont, San Francisco, and Washington, D.C., and they continue to wage efforts to expand noncitizen voting rights in several states and cities.<sup>136</sup>

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<sup>130</sup> *Eleanor Holmes Norton Calls Out GOP Racism as U.S. House Blocks 2 Washington, D.C., Bills*, DEMOCRACY NOW (Feb. 10, 2023), [https://www.democracynow.org/2023/2/10/headlines/eleanor\\_holmes\\_norton\\_calls\\_out\\_gop\\_racism\\_as\\_us\\_house\\_blocks\\_2\\_washington\\_dc\\_bills](https://www.democracynow.org/2023/2/10/headlines/eleanor_holmes_norton_calls_out_gop_racism_as_us_house_blocks_2_washington_dc_bills) [<https://perma.cc/7C2K-BBCD>].

<sup>131</sup> See Huyen Pham & Pham Hoang Van, IMMIGRANT CLIMATE INDEX (2021), <https://vpham415.github.io/ICI/> [<https://perma.cc/544R-JE53>] (last visited Oct. 3, 2024).

<sup>132</sup> Chris Brennan, *Noncitizens Can't Vote in Federal Elections. Trump and the GOP Hope You Don't Know That.*, USA TODAY (May 10, 2024), <https://www.usatoday.com/story/opinion/columnist/2024/05/10/trump-republicans-save-act-noncitizens-voting/73626423007/> [<https://perma.cc/5N7R-YZ5L>].

<sup>133</sup> See generally Mae Ngai, *A Nation of Immigrants: A Short History of an Idea*, in NEW NARRATIVES ON THE PEOPLING OF AMERICA: IMMIGRATION, RACE, AND DISPOSSESSION (2024); ROXANNE DUNBAR-ORTIZ, NOT “A NATION OF IMMIGRANTS”: SETTLER COLONIALISM, WHITE SUPREMACY, AND A HISTORY OF ERASURE AND EXCLUSION (2021).

<sup>134</sup> See generally DANIEL J. TICHENOR, *DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA* (2002); MILKMAN, *supra* note 88.

<sup>135</sup> Daniel J. Tichenor, *Populists, Clients, and US Immigration Wars*, 53 POLITY 418, 430 (2021); Kirsten Walters & Theda Skocpol, *Immigration Clashes, Party Polarization, and Republican Radicalization: Tracking Shifts in State and National Party Platforms Since 1980*, 38 STUD. AM. POL. DEV. 1, 3-5 (2023).

<sup>136</sup> See, e.g., Lisa Rathke, *Vermont Supreme Court Rules in Favor of Noncitizen Voting*, ASSOCIATED PRESS (Jan. 23, 2023), <https://apnews.com/article/vermont-state-government-phil-scott-8ef6bd772536c3fc076315a02a69d3a7> [<https://perma.cc/4C74-22ZM>]; see generally HAYDUK ET AL., *supra* note 32.

*D. The Quest for Universal Suffrage*

Historic and contemporary conflicts over immigrant voting laws can be viewed as a microcosm of larger contests over immigration and voting rights currently embroiling the nation. Like debates about other electoral reforms—from voter identification laws and purging of voter rolls to early voting and vote-by-mail programs—discussions about immigrant voting are highly contentious and partisan.<sup>137</sup> The rise, fall, and reemergence of immigrant voting rights represent a particularly revealing case that sheds light on these broader “voting wars.”<sup>138</sup> Political battles over who can and should vote, much like the fight over passage of the VRA, reflect awareness of a key axiom of politics—regulating who has access to the franchise can affect electoral outcomes, the balance of political power, and the direction of public policy.

Importantly, struggles over the ballot reflect fights that go beyond the minutia of election rules and practices. Conflict over immigrant voting rights reflects ongoing, ideologically driven political contests, such as whether the Census Bureau should count non-citizens, whether non-citizens should be eligible for public benefits, and whether to detain and deport the undocumented. At a time when population projections predict the United States will become a “majority minority” country in the next few decades, contemporary public debate about immigrant voting cuts to the heart of questions about who “real” Americans are and what America stands for.<sup>139</sup> Are we a

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<sup>137</sup> Republican officials and right-wing groups have promoted and enacted hundreds of strict voter identification laws, conducted excessive and indiscriminate purging of voter rolls, limited early voting, vote-by-mail, drop boxes, and the number of polling stations, and have employed partisan poll watchers to “challenge” voters’ eligibility at the polls—all of which effectively intimidate and disenfranchise poor people of color. Relatedly, conservatives maintain the canard that enfranchising noncitizens or making voting easier would contribute to voter fraud, which sheds light on one of the right’s ideological and political projects: protecting white minority rule. Groups on the right represent noncitizen migrants and other people of color as criminals—as individuals committing nonexistent vote fraud. The right then arrogates to themselves the prerogative of protecting the ballot. To strengthen their claims, conservative groups frequently allege that noncitizens and urban voters (many of whom are people of color) are voting illegally—or that noncitizens would be able to vote illegally if such reforms were enacted—in order to justify their opposition to such measures, which would expand opportunities for working class people of color to vote. *See generally* FRANCES FOX PIVEN, LORRAINE CAROL MINNITE & MARGARET GROARKE, *KEEPING DOWN THE BLACK VOTE: RACE AND THE DEMOBILIZATION OF AMERICAN VOTERS* (2009); Margaret Groarke, *The Impact of Voter Fraud Claims on Voter Registration Reform Legislation*, 131 *POL. SCI. Q.* 571 (2016); LORRAINE C. MINNITE, *THE MYTH OF VOTER FRAUD* (2011); RON HAYDUK, *GATEKEEPERS TO THE FRANCHISE: SHAPING ELECTION ADMINISTRATION IN NEW YORK* (2005); CAROL ANDERSON, *ONE PERSON, NO VOTE: HOW VOTER SUPPRESSION IS DESTROYING OUR DEMOCRACY* (2018).

<sup>138</sup> For more information on the voting wars, see generally Richard L. Hasen, *The 2016 Voting Wars: From Bad to Worse*, 26 *WM. & MARY BILL OF RTS. J.* 629 (2018); *Voting Laws Roundup: December 2022*, BRENNAN CTR. FOR JUST. (Dec. 19, 2022), <https://www.brennan-center.org/our-work/research-reports/voting-laws-roundup-december-2022> [https://perma.cc/8RD3-A4VX].

<sup>139</sup> William H. Frey, *The US Will Become ‘Minority White’ in 2045, Census Projects*, BROOKINGS (Mar. 14, 2018), <https://www.brookings.edu/articles/the-us-will-become-minority-white-in-2045-census-projects/> [https://perma.cc/THJ6-SK4G]; DANIEL MARTINEZ HOSANG &

cosmopolitan multiracial egalitarian democracy or a white Christian nationalist republic? How should we practice democracy and ensure equality and justice for all? The outcome of these conflicts, much like those that ensued during the Civil Rights Era, will shape the contours of American political development and patterns of immigrant incorporation for years to come.

Like Civil Rights Era organizers, immigrant voting rights advocates argue that restoring noncitizen voting would extend the visibility and voices of immigrants, which, in turn, could make government more representative, responsive, and accountable. Securing immigrant voting rights could help reverse inequities and help advance other issues important to immigrants, from obtaining language assistance in public facilities and making the naturalization process more accessible, to eliminating racial profiling and reducing hate crimes.

To that end, scholars and immigrant advocates argue that achieving true universal suffrage would ultimately benefit all members of society.<sup>140</sup> They maintain that societal bonds would be stronger if all stakeholders can participate because everyone benefits if decisions are made democratically.<sup>141</sup> Whether residents of a place originate from Mexico or Maryland, advocates contend, all community members have shared interests in ensuring access to good schools, safe streets, health care, living wage jobs, and affordable housing.<sup>142</sup>

Critics of noncitizen voting argue that it dilutes the concept of citizenship.<sup>143</sup> Citizens, they argue, are the rightful voters, and the value of citizenship should not be weakened by broadening the scope of who can vote. Opponents say that if immigrants want to vote, they should become citizens. That suggestion, however, fails to consider that most immigrants are legally or procedurally blocked from naturalization. Technically, immigrants who obtain legal permanent residency (i.e., green cards) can apply for citizenship after five years. But the path to legal permanent residency can take seven to ten years or more for many immigrants. In addition, immigrants face daunting obstacles in the process, including steep application fees, lack of access to the English and civics classes needed to prepare for the naturalization examination, and application backlogs.<sup>144</sup> Moreover, unlike European immigrants for whom citizenship was historically widely accessible, millions of immigrants today are not eligible to become U.S. citizens because

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JOSEPH E. LOWNDES, PRODUCERS, PARASITES, PATRIOTS: RACE AND THE NEW RIGHT-WING POLITICS OF PRECARIETY 490, 514, 655 (2019); *see generally* ROGERS M. SMITH, CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY (1997).

<sup>140</sup> HAYDUK ET AL., *supra* note 32, at 14.

<sup>141</sup> *Id.* at 8.

<sup>142</sup> *See id.* at 32 (describing mutual interests of community members).

<sup>143</sup> *See generally* STANLEY RENSHON, NONCITIZEN VOTING AND AMERICAN DEMOCRACY (2009); JOHN KETCHAM, NONCITIZEN VOTING (2022).

<sup>144</sup> On application fees, backlogs, and the effect of backlogs on expense, *see* Denise N. Obinna, *The Challenges of American Legal Permanent Residency for Family and Employment-Based Petitioners*, 3 *MIGRATION & DEV.* 272, 282 (2014).

the pathways to citizenship are restricted to certain categories of individuals, such as family members, asylum seekers, and military personnel.<sup>145</sup> Thus, it is not only the eleven million undocumented immigrants who cannot obtain citizenship. The many millions of documented immigrants who possess any one of the nearly two dozen types of legal visas, such as long-term work visas and student visas, are also not eligible to become U.S. citizens.<sup>146</sup>

Excluding such a significant portion of the population from political participation closes the on-ramp to greater civic education and citizenship, as exclusion did at the beginning of the twentieth century. Rather than frustrating democracy, as opponents of noncitizen voting argue, expanding noncitizen voting rights could lead to more robust democratic politics and effective policymaking. Instead of diluting the concept of citizenship, as critics maintain, immigrant voting can enrich citizenship and democracy by encouraging immigrants to participate in the political life of their communities.

Essentially, the issue is about fairness. Just as Civil Rights Era organizers who agitated for the Civil Rights Act (CRA) and the Voting Rights Act (VRA) argued, it is only fair that people who are part of a political community and contribute to its tax base and economy should have a say in the formulation of laws and policies that will have a direct bearing on their well-being. As we move forward in the twenty-first century, we must continue to make the political process more accessible to everyone. Doing so will help politically integrate individuals and groups who have a vested interest in our collective future. Our history amply shows what happens when groups are excluded.

In addition, immigrant voting rights not only provide newcomers with a crucial tool to defend themselves against nativist attacks, but they could also give working class people and minority groups greater means to forge winning voting blocs that advance their mutual interests. What's more, studies show increased civic engagement is correlated with greater individual and societal outcomes, including a stronger sense of community belonging, better health outcomes, and lower crime rates, among other social indicators.<sup>147</sup> Therefore, immigrant voting rights will empower newcomers to fight for quality schools, affordable housing, living wages, and safer streets for everyone.

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<sup>145</sup> Julia Gelatt, *How the U.S. Legal Immigration System Works*, MIGRATION POL'Y INST. (Apr. 2019), <https://www.migrationpolicy.org/content/explainer-how-us-legal-immigration-system-works> [https://perma.cc/E94J-D4BP].

<sup>146</sup> *Id.*

<sup>147</sup> See Peter Levine, *The Civic Engagement of Young Immigrants: Why Does It Matter?*, 12 APPLIED DEV. SCI. 102, 102-04 (2008); see generally Constance Flanagan & Peter Levine, *Civic Engagement and the Transition to Adulthood*, 20 FUTURE OF CHILD. 159 (2010); KAY LEHMAN SCHLOZMAN, SIDNEY VERBA & HENRY E. BRADY, *THE UNHEAVENLY CHORUS* (2012); RICHARD G. WILKINSON & KATE PICKETT, *THE SPIRIT LEVEL: WHY MORE EQUAL SOCIETIES ALMOST ALWAYS DO BETTER* (2009).

Studies of immigrant voting programs show that both immigrants and native-born community members benefit from greater enfranchisement.<sup>148</sup> For example, studies of New York City's immigrant parent voting program, which existed from 1969 to 2002, show immigrant participation in elections and in schools produced more diverse school boards, better education policy, and improved student outcomes that benefited the broader community, including citizen parents and children.<sup>149</sup> Empirical analysis demonstrates noncitizen voting can increase parental involvement and play a role in producing more effective school governing arrangements that support immigrant success.<sup>150</sup> Importantly, studies show that a higher proportion of racial and ethnic minority representatives on school boards also correlates with improvements to student educational outcomes.<sup>151</sup> As a result of this program, New York City invested more funds in new schools, new textbooks, reduced class sizes, funds for afterschool programs, and language programs, which improved educational opportunities for all children and families, regardless of their racial and ethnic background.<sup>152</sup>

Researchers found similar positive outcomes from Chicago's Local School Council (LSC) elections, in which noncitizens can vote.<sup>153</sup> Researchers analyzed data on Latino representation in LSCs, school-level demographic and performance indicators, and information on effective school organization, parent involvement, and school practices regarding outreach and engagement with parents and communities.<sup>154</sup> The empirical analysis confirmed that such governing arrangements and Latino political participation played a critical role in building stronger, more supportive school-parent relations and in encouraging higher levels of parent involvement in formal school activities.<sup>155</sup> These practices and the relationships they fostered were found to benefit Latino students and their educational performance.<sup>156</sup>

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<sup>148</sup> See *supra* note 108.

<sup>149</sup> See HAYDUK, *supra* note 38, at 101-04.

<sup>150</sup> See *id.* at 104-07; Ron Skinner, *Parent Involvement*, EDUC. WEEK (Sept. 21, 2004), <https://www.edweek.org/leadership/parent-involvement/2004/09> [<https://perma.cc/9LN3-ZWKE>].

<sup>151</sup> Christina A. Samuels, *Why School Board Diversity Matters*, EDUC. WEEK (Nov. 17, 2020), <https://www.edweek.org/leadership/why-school-board-diversity-matters/2020/11> [<https://perma.cc/B748-PY3H>].

<sup>152</sup> Norm Fruchter, *American Public Education: Crisis and Possibility*, NEW LAB. F., Fall 1998, at 9.

<sup>153</sup> See generally SUSAN RYAN, ANTHONY S. BRYK, GUDIELIA LOPEZ, KIMBERLY P. WILLIAMS, KATHLEEN HALL & STUART LUPPESCU, *CHARTING REFORM: LSCs—LOCAL LEADERSHIP AT WORK* (1997).

<sup>154</sup> See *id.* at 5 (providing an overview of the types of data researchers gathered). The rest of the report provides detailed analysis of the LSCs' demographic and performance information.

<sup>155</sup> See *id.* at 11-12, 39-44.

<sup>156</sup> See *id.*

Studies of immigrant voting programs in Europe and Latin America show that such programs have similar positive impacts on the broader community and help promote naturalization and immigrant incorporation.<sup>157</sup> A study by Kåre Vernby of Sweden showed that noncitizen voter participation was correlated with increases in spending on education and social services.<sup>158</sup> Vernby found local government spending on education and family services increased by as much as 6 percent after Sweden enfranchised noncitizens.<sup>159</sup> Investment in adult education and job skills development programs, in which noncitizens enrolled at a much higher rate than the majority population, also increased.<sup>160</sup> A more recent study of Sweden found that voting before citizenship substantially increased the propensity of immigrants from places with poor standards of living to naturalize.<sup>161</sup> Similarly, a study of Norway found that immigrants who received access to voting before citizenship were more likely to participate in subsequent electoral contests and other forms of political engagement, with the strongest effects among immigrants from dictatorships and weak democracies.<sup>162</sup>

In sum, noncitizen voting laws have concrete, real-world social benefits, including increased political participation, equitable allocation of resources, and elected bodies that better serve those whom they represent.

#### CONCLUSION

The CRA and the VRA laid the basis for other groups to claim rights and challenge discrimination. Subsequent legislation and court decisions affirmed new rights, from workplace protections and gender equality to marriage equality and access to health care. Every marginalized group—whether Asian Americans, Latinos, Native Americans, or LGBTQ Americans—can trace the gains they have achieved to the CRA and the VRA. Yet, after the Supreme Court’s 2013 *Shelby v. Holder* decision, where a 5-4 conservative majority gutted core VRA provisions,<sup>163</sup> dozens of states have passed retrograde legislation rolling back hard-fought gains.<sup>164</sup>

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<sup>157</sup> Vernby, *supra* note 109, at 15; Slotwinski et al., *supra* note 109, at 3184; Ferwerda et al., *supra* note 109, at 713; *see generally* Escobar, *supra* note 109; Finn, *supra* note 109.

<sup>158</sup> Vernby, *supra* note 109, at 15.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Slotwinski et al., *supra* note 109, at 3184.

<sup>162</sup> Ferwerda et al., *supra* note 109, at 713, 716.

<sup>163</sup> 570 U.S. 529 (2013).

<sup>164</sup> Jasleen Singh & Sara Carter, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago*, BRENNAN CTR. FOR JUST. (June 23, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights> [<https://perma.cc/Q5A9-ZWUT>].

The quest for universal suffrage and full inclusion continues, no more so than for the millions of immigrants who remain disenfranchised. Imagine if, instead of being consigned to the shadows, the more than 22 million non-citizen immigrants in the United States were heading to the polls? Restoring immigrant voting rights would help align our democratic ideals with our election practice. It can bring us closer to achieving the ideals the VRA sought to achieve almost sixty years ago.

As Maryland Congressman and then law professor Jamie Raskin once said, “immigrants’ rights are the civil rights” of the day, and “[b]y that logic, noncitizen voting is the suffrage movement” of our time.<sup>165</sup>

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<sup>165</sup> Deborah Sontag, *Noncitizens and Right to Vote*, N.Y. TIMES (July 31, 1992), <https://www.nytimes.com/1992/07/31/nyregion/noncitizens-right-vote-advocates-for-immigrants-explore-opening-up-balloting.html>.

