

Santa Ana is home to the largest share of noncitizen residents in Orange County. However, these residents remain unable to make their voices heard at the ballot box despite comprising core parts of the local community. To foster an improved sense of belonging, bolster democratic inclusion, and encourage civic engagement, we recommend that policymakers expand local voting by extending voting rights in local elections to the many noncitizen residents of Santa Ana.

Precedents for Expanded Local Voting Rights

Noncitizen voting is not a concept new to the United States. Voting rights prior to the twentieth century were often tied not to formal citizenship status, but to other characteristics such as race and property ownership. At the turn of the century, however, anti-immigrant xenophobia led to the widespread abolishment of noncitizen voting in the United States. Currently, 45 countries allow for noncitizens to cast ballots, and many jurisdictions in the United States have moved towards enfranchising noncitizens in local elections.^{1 2}

Why Expand Local Voting Rights?

People should have a say in matters that affect them. More specifically, people should have the right to vote if subjected to or bound by the state's decisions.³ Although there remains robust debate around the philosophical principles behind noncitizen voting, there is broad consensus that enfranchising noncitizens is one avenue by which communities might work towards advancing democratic inclusion.⁴

Contrary to popular assumptions about noncitizen political participation, available evidence shows that noncitizens participate politically at rates comparable to citizens in the United States. For example, Masuoka et al.'s (2019) analysis suggests that noncitizen Asians in the U.S. are often "interested and involved in politics," yet are left waiting for naturalization before they can participate formally in the electoral process.⁵

In addition, expanding local voting can bolster community benefits. The enfranchisement and mobilization of Dominican noncitizen parents in 1986 in New York City, for example, contributed to more equitable funding across school sites and the development of multicultural curricula by improving public support for such improvements.^{6 7} Such mobilization also had spillover effects, such as community advocacy that led to city-financed rehabilitation of thousands of low-income housing units.⁸

The Lacy Case: San Francisco Proposition N

San Francisco voters passed Prop. N in 2016, allowing noncitizen parents and guardians to vote in school board elections. Four elections were held under Prop. N. The City Controller estimated that Prop. N would cost the S.F. Department of Elections between \$110,000 and \$160,000 per election to print and distribute materials, train poll workers, register newly eligible voters, and otherwise implement the measure.⁹ In 2022, Prop. N was challenged and ruled unconstitutional by the Superior Court in *James V. Lacy v. City and County of San Francisco*.

In *Lacy*, the plaintiff argued that Prop. N violated the state constitution, as the constitution states that "[a] United States citizen 18 years of age and resident in [California] may vote." San Francisco argued that because the referenced language includes the word "may," it allows for noncitizens to vote. Additionally, San Francisco argued that since the state constitution allows charter cities to provide "for the manner in which, the times at which, and the terms for which, the members of boards of education shall be elected or appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards," the City could enfranchise noncitizen residents.

Although the Superior Court found San Francisco Prop. N unconstitutional, San Francisco appealed that decision to the California Court of Appeal. In August of 2022, the court granted San Francisco's request to stay a lower court order prohibiting the City's noncitizen voting program from moving forward. The court thus allowed

¹ Ron Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the U.S.* Routledge (2006).

² Dan Ferris, Ron Hayduk, Alyscia Richards, Emma Strauss Schubert, & Mary Acri, "Noncitizen Voting Rights in the Global Era: a Literature Review and Analysis," *Journal of International Migration & Integration* 21 (2019).

³ David Owen, "Transnational citizenship & the democratic state," *Critical Review of International Social & Political Philosophy*, 14(5), 641–663. 2011.

⁴ See Ferris et al. (2019).

⁵ Natalie Masuoka, Kumar Ramanathan, & Jane Junn, "New Asian American Voters: Political Incorporation and Participation in 2016," *Political Research Quarterly*, 2019.

⁶ Rob Richie, "Improving New York City's Community School Board Elections," Testimony to the Community School Board Elections Committee, 1997.

⁷ Ron Hayduk & Kathleen Coll. "Urban Citizenship: Campaigns to Restore Immigrant Voting Rights in US," *New Political Science*, 2018.

⁸ Jonathan Soffer, *Ed Koch and the Rebuilding of New York City*. New York: Columbia University Press (2012).

⁹ City and County of San Francisco Office of the Controller. Letter to the Department of Elections, Aug. 15, 2016.

San Francisco's noncitizen voting program to remain operational during the 2022 election.

In August 2023, the Court of Appeal ruled in favor of San Francisco, rejecting the challenge to Prop. N. since "neither the plain language of the Constitution nor its history prohibits legislation expanding the electorate to noncitizens.[... and] the relevant constitutional provisions authorizing home rule permit charter cities to implement such an expansion in local school board elections."¹⁰ The Court was also "not persuaded [by the plaintiff] that the Constitution grants charter cities less authority in determining the nature of the electorate with respect to school board members than as to municipal officers." In other words, the existing authority of charter cities already allows them to determine the nature of the electorate with regards to municipal officers.

Lacy filed a motion in an attempt to secure a re-hearing from the court, but this request was denied.

Opportunities to Expand Voting Rights in Santa Ana

The City of Santa Ana is home to many noncitizen and foreign-born residents.

	Non-Citizen	Foreign-Born	Total
City of Santa Ana	74,125 (23.62%)	130,716 (41.65%)	313,818

Source: United States Census Bureau American Community Survey 5-Year Estimate (2021)

Nearly one out of every four residents living in the City of Santa Ana are noncitizens. When accounting only for residents of voting age, about 30 percent of adults in Santa Ana are noncitizen residents. Out of the City of Santa Ana's 31,611 Asian adult residents, 5,646 (17.86%) are noncitizens. 64,022 (37.02%) of the City's 172,962 Hispanic adult residents are noncitizens.¹¹

Yet, this large share of the community is not able to make their voices heard at the ballot box despite their lives being immediately impacted by municipal government and despite contributing to both the local community and economy. The American Immigration Council estimates that immigrant residents, including noncitizen residents, in Orange County contributed \$10.5 billion in taxes in 2018.¹² Santa Ana is home to the largest share of noncitizen residents out of all Orange County cities, and

the city's noncitizen residents comprise nearly 20 percent of the county's noncitizen resident population.¹³

In 2021, the Santa Ana City Council voted to allow noncitizen residents to serve on local commissions.¹⁴ Allowing noncitizen residents to vote in local elections is a natural next step in furthering Santa Ana's commitment to removing barriers to participation in local government.

Towards Expanded Voting Rights for Santa Ana Residents: Notes on Implementation

- Potential sources of funding to develop municipal elections capacity in Santa Ana include the Measure X fund, which continues to overperform, provides for relatively flexible use, and is derived from a sales tax paid by every individual regardless of citizenship status.
- Placing a ballot measure to expand local voting rights in Santa Ana on the presidential election ballot in 2024 would allow for broader voter engagement with the measure and strengthen the reform, in line with the appellate court's ruling that San Francisco's Prop. N is constitutional in part due to its passage by the will of the voters.
- To preserve the security and safety of residents, in addition to existing data protection and community safety measures in place in the City of Santa Ana, steps should be taken to develop additional materials including self-attestation forms for residents to attest they qualify for local voting, notices regarding municipal data security measures, and letters that indicate residents voted in local elections legally under local law to affirm such behavior falls under the guidelines of the USCIS manual for evaluating applications.¹⁵ Voter education will be crucial to ensuring local residents are informed of their rights.

Contact

Mai Nguyen Do
Research & Policy Manager
Harbor Institute for Immigrant & Economic Justice
mai@harborinstituteoc.org

¹⁰ *James V. Lacy v. City and County of San Francisco*, 165899, Cal. App. 2023.

¹¹ U.S. Census Bureau American Community Survey 5-Year Estimate, 2021.

¹² American Immigration Council, "Map the Impact," 2023.

¹³ U.S. Census Bureau American Community Survey 5-Year Estimate, 2021.

¹⁴ City of Santa Ana, "Minutes of the Regular Meeting of the City Council" (city council meeting minutes, Santa Ana, March 16, 2021).

¹⁵ U.S. Citizenship & Immigration Services, "Conditional Bars for Acts in Statutory Period," Policy Manual, Aug. 25, 2023.