

Noncitizen Voting

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Executive Summary

This paper addresses the practical challenges associated with the New York City Council's December 2021 decision to extend local voting rights to approximately 800,000 lawful noncitizen residents, which became law on January 9, 2021. While reasonable arguments exist both for reserving the vote to citizens and for extending the franchise, it is necessary to acknowledge the risks inherent in allowing noncitizens to vote in municipal races, including greater strains on the city's perennially inept election administration system and jeopardies to the immigration status of noncitizen voters.

Notwithstanding New York City's legalization, it remains a federal crime for noncitizens to cast ballots for federal offices, even if done unknowingly. Those who mistakenly vote in federal elections may lose their ability to naturalize or even their continued residency in the United States. New York State law likewise limits state races to U.S. citizens. And although most of the city's municipal elections take place on off-cycle (or odd-numbered) years, local special elections and city charter amendment referenda can occur on even-numbered years, while still-prohibited elections for judges and district attorneys routinely happen on odd-numbered years. This creates a non-trivial risk of legal jeopardy for newly enfranchised noncitizen voters.

The Board of Elections of New York City, an organization perpetually mired in corruption and incompetence, must therefore create, for each election district, a separate ballot containing only municipal offices, train poll workers to administer that ballot to noncitizens, and program scanner machines to accept both ballot types. Yet past assessments by the city's Department of Investigations revealed systemic failures in poll worker training and election day practices. Without meaningful reforms, there is little reason to believe that the Board of Elections has the institutional capacity to administer a dual-voter system without a substantial likelihood of election day blunders.

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Multiple pieces of evidence also suggest that, despite the considerable expenses and risks involved in allowing noncitizens to vote, the result will be only a modest increase in actual voter participation. Naturalized citizens tend to vote at lower rates than natural-born citizens, and in the very few municipalities where noncitizens may vote, their turnout has been muted. In practice, noncitizen voting may turn out to be a largely symbolic gesture.

At the same time, the added complexity of noncitizen voting will likely discourage New York City from moving its local elections “on-cycle,” to coincide with state and federal elections, even though unifying elections would increase voter turnout and lower costs for the city. Similarly, some noncitizens will likely vote at the wrong polling site, which will mean more fully disqualified affidavit ballots, further diminishing actual democratic participation.

Intro. 1867 has already been challenged in court on the grounds that it violates the state constitution and election statute. The New York State Constitution entitles “every citizen” the right to vote. Generally, legal interpretation excludes that which is not expressly included. Assuming that “citizen” means “U.S. citizen,” only a nonexclusive reading would enable the city to expand voting rights. The state election statute likewise expressly limits voting to U.S. citizens, but it does not expressly preempt municipalities from overriding the statute and allowing noncitizens to vote. Nonetheless, the New York City Charter and the Municipal Home Rule Law likely require a citywide referendum for such a change to the electoral system.

The city should consider whether the funding necessary to enable noncitizen voting could be put to better use. For example, expanding city-backed English and civics classes would not only help aspiring American citizens to pass the naturalization interview and exams, but it would also build skills that can help them command higher wages in the marketplace. Providing naturalization fee vouchers would likewise help overcome a barrier that impedes some from accessing the full benefits of citizenship. Instead, the city’s decision to decouple U.S. citizenship and local voting rights serves as a disincentive to naturalization: there is one less benefit to be gained from becoming a citizen. These alternative measures, by contrast, would provide a greater benefit to immigrants while paving the way for them to join fully in the American political family.

Introduction

After more than a decade of failed attempts, on December 9, 2021, lawmakers in New York City passed Intro. 1867,¹ which extended voting rights to 800,000 hitherto ineligible noncitizens.² These include lawful permanent residents (LPRs), more frequently known as green card holders, and those who have work authorization, such as those on work visas and those covered under the Deferred Action for Childhood Arrivals (DACA) policy.³ Beginning in December 2022, these lawful residents who live in NYC for at least 30 days will be permitted to register as “municipal voters,” allowing them to cast ballots for the local offices of mayor, comptroller, public advocate, city council member, and borough president.

During the legislative debate, several councilmembers expressed doubts about the desirability and the legality of this expansion of the vote.⁴ Even progressive Mayor Bill de Blasio did not believe the measure was legal, saying that he had “mixed feelings” because of his preference for naturalization and the potential chilling effect that enfranchisement may have on creating new U.S. citizens.⁵ Mere days before Intro. 1867 was set to automatically become law without a veto, Mayor Eric Adams, a years-long supporter of the proposal, experienced a change of heart on the law’s 30-day durational residency requirement.⁶ Despite his misgivings, he declined to veto the measure, thereby allowing Intro. 1867 to become law on January 9, 2022.⁷ The next day, city and state Republicans and a Democratic councilmember filed a lawsuit in state court, requesting an injunction on the grounds that the law violates the state constitution and the state election statute, and that it would require a citywide ballot referendum before becoming legally operative.⁸

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While greater democratic participation may sound on its face like an unequivocal good, the sudden enfranchisement of nearly a million people will pose a host of challenges. New York City's election administration system is ill-equipped to oversee an expansion of this scale. Its Board of Elections (BOE) operates through political cronyism, lacks professional administration expertise, and consistently blunders on election days. Yet this same institution will need to oversee voter registration efforts and administer a separate ballot exclusively for noncitizen voters. This would be an expensive undertaking for any city, but the BOE's inefficiency makes New York uniquely ill-equipped to rise to the challenge in a cost-effective manner. In fact, 10 days after Intro. 1867's passage, the city BOE requested that the state-level elections board review the act's legality and administrability, suggesting that New York City currently lacks the institutional capacity necessary to implement noncitizen voting.⁹

Additionally, the short 30-day residency requirement cannot reasonably be expected to produce informed decisions on election day, especially as many newly-arrived noncitizens are unfamiliar with English and the American system of government.

At the same time, evidence suggests that the real-world participation among these voters will likely be muted. Turnout for New York's municipal general elections hovers in the mid-20% range; November 2021's election witnessed a seven-decade low of 23%.¹⁰ Naturalized citizens tend to vote at lower rates than their native-born counterparts, and municipalities that allow noncitizen voting experience low rates of participation.

New York's example will likely set a precedent for other cities to follow, potentially sparking a push to expand noncitizen voting at the state and federal levels. Indeed, mere days after Intro. 1867 became law, the city council of San Jose, California voted to study the feasibility of an amendment to its city charter that would grant noncitizens—including undocumented aliens—the right to vote.¹¹ And an op-ed in the *New York Times* last summer called for the complete elimination of the citizenship requirement for voting, even in state and federal races.¹²

All New Yorkers, regardless of how they feel on the merits of expanding the vote, have a vested interest in ensuring trustworthy and efficient elections. But the prospect of failure should especially concern those who championed Intro. 1867. If the nation's largest city botches this effort, it will signal to the rest of the country—and the world—that noncitizen voting is not worth the risk.

During the city council's debate on the act, a number of councilmembers, including supporters, expressed hopes that subsequent legislation would address their concerns before the law allows noncitizens to register to vote in December 2022. This paper serves to identify the practical problems inherent in Intro. 1867 and raise some potential modifications to address those issues.

An Overview of Intro. 1867

Intro. 1867 amends the New York City Charter by changing several provisions related to voter registration and election day administration. In its most significant provisions, the law:¹³

- Defines “municipal voter” as a class of people who are not U.S. citizens on the date of the election for which they wish to vote, yet are either lawful permanent residents or authorized to work in the United States. Municipal voters must be residents of New York City for at least 30 consecutive days and have previously registered to vote.
- Defines “municipal office” as the offices of mayor, public advocate, comptroller, borough president, and city council member.
- Defines “municipal election” as “any general, primary, or run-off election for a municipal office, any special election for a municipal office . . . and any municipal referendum.”
- Grants such municipal voters “the same rights and privileges as U.S. citizen voters with regard to municipal elections.” For registration purposes, the Board of Elections must not record U.S. citizenship data for municipal voters as hitherto required by Section 5-500 of the state’s election statute.
- Requires the Board of Elections to produce separate ballots marked as “Municipal Ballots” when municipal elections occur on the same date as elections in which noncitizen voters are ineligible to vote (i.e. all other federal and state offices). These local-only ballots “shall be distributed only to municipal voters appearing to vote.
- Directs the Board of Elections to “prescribe a standard municipal voter absentee ballot application form,” allowing noncitizens to cast absentee ballots. For municipal elections that occur on the same day as others in which noncitizens cannot vote, a separate local-only absentee ballot must be created and delivered to municipal voters.
- Directs the Board of Elections to design and distribute a unique voter registration application for municipal voters, including a notice that they are not qualified to vote in state or federal elections. In addition, the registration must contain a warning, partially in capitalized letters, that any information provided to register to vote may be obtained by federal Immigration and Customs Enforcement, agencies, organizations, and individuals.
 - This warning also expressly states, “[I]f you apply for naturalization, you will be asked whether you have ever registered or voted in a federal, state, or local election in the United States. You may wish to consult with an immigration attorney, an organization that protects immigrant rights, or other knowledgeable source before providing any personal information to the Board of Elections and before registering to vote in New York City.”
- Requires a single poll ledger that combines municipal voters with U.S. citizen voters. Additionally, municipal voters may not be forced to form a separate line or vote in a separate location from citizen voters.
- Empowers the New York City Board of Elections to “adopt all necessary rules and carry out all necessary staff training to carry out” municipal voting.
- Establishes an advisory group tasked with providing recommendations regarding problems or improvements to municipal voting. This non-compensated group consists of five members: the public advocate, two community-based organization members appointed by the mayor, and two community-based organization members appointed by the speaker of the city council. This body must produce a report due December 1, 2023, and annually thereafter.

- Requires the Board of Elections to submit a report to the city council and mayor by July 1, 2022 detailing the processes by which it plans to implement noncitizen voting beginning in 2023. If the BOE fails to deliver this by the end of July, that will create a presumption that it is declining to implement the law.
- Establishes December 9, 2022 as the date of enactment, which serves as the first date on which noncitizens can register as municipal voters

A Brief Primer on the Connection Between Citizenship and Voting

Advocates of noncitizen voting are quick to point out that the practice existed in many states from the nation's nascence until the 20th century; Arkansas became the last state to end the practice in 1926.¹⁴ Since that time, however, many people, citizen and noncitizen alike, have come to view the vote as a vital benefit and prerogative of citizenship.¹⁵ Some states, like Maryland, allow municipalities to extend local voting rights to foreign national residents, but aside from these few exceptions, every state and the federal government limit voting to citizens in state and federal elections.¹⁶

For most Americans, voting is the most important way of exercising civic responsibility, and has come to signify full belonging in the American political community at not only the federal, but the state and local levels as well. Indeed, the conceptual connection between voting and citizenship has been invoked by progressives, including Mayor de Blasio and former Governor of California Jerry Brown, who vetoed a 2013 bill that would allow noncitizens to serve on juries, explaining, "jury service, like voting, is quintessentially a prerogative and responsibility of citizenship."¹⁷

The lack of foreign nationals' formal allegiance to the U.S. also weighs in favor of restricting the vote to citizens. Naturalization does not automatically result in a loss of one's former citizenship, but it is still an important symbol of national allegiance that requires taking an oath to "support and defend the Constitution and laws of the United States of America."¹⁸ For these reasons, in 2004, the *New York Times* editorial board opposed noncitizen voting: "This page believes that it is in the nation's best interest to encourage people who live here permanently to become citizens and throw their lot with the interests of the United States. Extending the most important benefits of citizenship to those who still hold their first allegiance to another country seems counterproductive."¹⁹

A 30-Day Noncitizen Residency Requirement: Nominal or Meaningful?

Intro. 1867 has been controversial not only for allowing noncitizens to vote at all, but to do so after residing in the city for only 30 days.²⁰ For example, shortly after taking office as mayor, Eric Adams—despite years of support for proposals to expand the vote—questioned whether a month's time was enough to allow noncitizens to develop sufficient ties to New York. The mayor explained, "If someone is in this city 30 days, they have the right to vote. That's problematic for me. I understand the importance of local elections, but to give that power to someone that's here for 30 days, I think that's a problem."²¹

Despite his misgivings, Adams allowed the bill to become law automatically without attempting to veto it, although it was unclear whether he had the lawful ability to send the bill back to the council.²² But his concerns remain central to the debate. If voting provides an important means of exercising political power, it ought not be done in a haphazard or unreasoned manner. The fundamental problem with a 30-day residency requirement for noncitizens is that it is not coupled with any meaningful way to ensure that these voters have the requisite ability to make reasonably informed decisions for themselves.²³

For centuries, residency requirements have been part of the qualifications necessary to vote in American elections.²⁴ Their main purpose, like that of citizenship in general, is to define the political community. Short-term travelers to a city who are present on election day, for example, do not have the same interests as long-term residents.

For context, Intro. 410, a noncitizen voting proposal introduced in 2010 and considered in 2013, had a more restrictive six-month residency requirement, but still failed to gather enough political support to pass.²⁵ Some Democratic councilmembers opposed the bill because they believed six months was insufficient to establish a deep enough stake in the city's future.²⁶ For the majority of today's city council, however, a mere thirty days will suffice.

In fairness, Intro. 1867's 30-day residency requirement for noncitizens is likely meant to mirror city and state durational residency requirements for citizens, which will avoid some confusion.²⁷ Former Brooklyn councilmember and bill sponsor Carlos Menchaca adopted this view in response to Mayor Adams's concerns, saying that those who would like to change the 30-day period would have to "go to the state to have that debate," or else risk "a multitier system to access democracy."²⁸ In *Dunn v. Blumstein*,²⁹ moreover, the U.S. Supreme Court struck down durational residency requirements for citizens that extend beyond 30 days on the grounds that it intrudes upon the constitutionally-protected right to travel.³⁰ The Court reasoned that *bona fide* residency requirements are valid and sufficient to protect the vested interests of those who live in the city and state.³¹

But for noncitizens, a durational residency requirement helps to ensure not only that voters have sufficiently long-term interests in a given place, but that they are minimally informed. The problem is not that noncitizens are inherently deficient in intelligence or capabilities; even for the smartest and most capable, it simply takes time to acquire the basic knowledge necessary to cast an informed vote. For those who were not brought up in U.S. and are often unfamiliar with English and the American system of governance,³² a longer residency requirement allows for the development of a basic understanding of life in the United States. Otherwise, newly arrived immigrant voters are potentially vulnerable to unscrupulous manipulation, of the sort that the Tammany Hall political machine relied on to maintain its grip on New York politics for generations.

A case from New York's highest court also provides some support for the lawfulness of different durational requirements. In *Van Berkel v. Power*,³³ the New York State Court of Appeals upheld an additional durational residency requirement imposed on newly naturalized citizens. At the time the case was decided, Section 150 of the state election statute required that a voter be naturalized at least 90 days before election day.³⁴ The lower court invalidated that provision, reasoning that a naturalized citizen is as much a citizen as a native-born one, and that a longer durational requirement for naturalized citizens discriminates and thereby violates the principle of equal protection.³⁵ The high court reversed. In a 6-1 decision, it wrote that some voting restrictions "are permissible as are designed to promote intelligent use of the ballot and are not merely arbitrary or unduly oppressive."³⁶ The Court further explained that the reason behind the additional burden was not discriminatory, but instead "was to give the newly made citizen at least a short time to consider his new responsibility and how to exercise it," and concluded that the "resulting classification between newly naturalized citizens and others cannot be called purely arbitrary."³⁷

Today, it's true enough that an American citizen from a vastly different part of the country could not be expected to have much knowledge about New York City after only 30 days' residency, yet would still be entitled to vote. But in general, U.S. citizens will have at least a rudimentary understanding of the American governmental and political system and basic competency in English, which accelerate the learning curve.

The same underlying principle can be seen in 39 states and Washington D.C., where judges may remove voting rights from those with severe mental disabilities, often when they are placed under conservatorship.³⁸ This deprivation does not reflect the state's intent to discriminate, but its desire to preserve the vote as an expression of the electorate's will. Elections implicitly carry an information signal; winning candidates, and their agendas, should reflect the active and deliberate choice of the electorate. If voters lack the capacity to decide for themselves which candidates to support, that signal breaks down, placing the winning candidates' agendas in doubt.

The Practical Problems of Noncitizen Voting in New York City

Despite a generous budget of more than \$246 million in 2020, \$130 million in 2021 and over 500 full-time staffers,³⁹ the New York City Board of Elections has repeatedly failed to provide voters with a seamless voting experience. High-profile mishaps over the last decade have reduced New Yorkers' trust in the integrity of the voting system. Just before the 2016 presidential primary, the BOE's chief clerk mistakenly and illegally purged more than 100,000 names from voting rolls—8% of its active voters.⁴⁰ In 2018, voting machine glitches, rainy weather, and delayed opening times at polling stations led to hours-long waits for thousands.⁴¹ Most recently, during the June 2021 mayoral primary, the first election using the city's version of ranked-choice voting, the BOE notoriously counted 135,000 test ballots in a preliminary announcement of primary results.⁴²

The board will face significant challenges in the next months as it grapples with the enfranchisement of some 800,000 potential new voters. To put this in perspective, the entire population of Seattle amounts to 750,000, according to Census Bureau estimates.⁴³ Indeed, when the proposal came before the city council in 2013, the BOE warned that noncitizen voting “creates another unfunded mandate which will present enormous problems in implementation.”⁴⁴

These problems will stem from several causes. Newly eligible noncitizen voters will have to register in a timely manner, which will require the BOE to administer a new municipal voter registration system in multiple languages. The risks associated with noncitizens' registering to vote makes informed consent particularly important. Information that noncitizens provide can be accessed by federal law enforcement and may impair their immigration status, prompting Intro. 1867 to require a disclaimer advising potential voters to speak to an immigration attorney before registering.

Poll worker training and compliance will also pose substantial difficulties. A 2013 city investigation found blatant inadequacies in poll worker training and election day practices. Multiple investigators observed trainees cheat on the test required to become a poll worker, including instances where trainers supplied trainees with answers.⁴⁵ During the 2013 general election, the investigation found more than 15 instances in which poll workers instructed voters to “vote down the line” on ballots—in other words, select the candidates of one political party for all offices. Indeed, they found one Manhattan poll site *coordinator* who instructed poll inspectors to tell voters to do the same.⁴⁶ When pressed to explain why voters should vote down the line, the coordinator responded that failing to do so would cause the scanner machines to malfunction.⁴⁷ There were also numerous breaches of voter privacy laws, such as poll workers repeatedly looking at ballots and even commenting on voters' choices.⁴⁸

If election-day training and practices routinely suffer from such dysfunctions, it is at least plausible that noncitizen voting will be mired in mistakes. Because noncitizens will not have the right to vote in state or federal elections, the BOE will need to create special, local-only ballots

for each election district and ensure that every polling site has sufficient quantities. Poll workers will need adequate training to know that noncitizens must receive a local-only ballot, even though noncitizens will appear alongside citizens in the voter rolls. This complexity will be greatest during primary days that also host elections for non-local offices, where at least two types of ballots will need to be printed for each of several parties and scanners appropriately programmed to accept all. In 2013, the BOE General Counsel Steven Richman testified that, “The risk of error increases by adding this additional burden to the already long list of responsibilities.”⁴⁹

And voters less familiar with English will also likely require more translators, potentially in more languages than are currently offered. But in the past, the BOE has opposed the city’s providing more translators and interpreters on election day, going so far as to hire outside counsel and sue the Mayor’s office in February 2019 to prevent the stationing of interpreters outside of poll sites.⁵⁰

The Board of Elections has also struggled to handle ballots with multiple pages, notably in the November 2018 midterm election. Rain caused some ballots to swell, triggering a domino effect of malfunctioning scanning machines and hours-long lines.⁵¹ True to character, the BOE failed to increase the number of scanners in anticipation of a high-turnout election. Executive Director Michael Ryan blamed the two-page, four-sided ballot, a high turnout, and “machines that are nearing the end of their useful life cycle day. . . .”⁵²

Following Intro. 1867’s passage, the BOE tacitly admitted its inability to administer a system of noncitizen voting. In a letter dated January 19, 2022, city BOE president Rodney Pepe-Souvenir requested that the New York State Board of Elections review the legality and administrability of the recently enacted legislation.⁵³ Specifically, it asked for the state board’s “guidance, instruction, and/or opinion” on Intro. 1867, which suggests that city election officials don’t know how they would fully implement noncitizen voting, and that they would likely prefer to see Intro. 1867 declared unlawful to save them the hassle.⁵⁴ Doug Kellner, one of the four New York State BOE commissioners, criticized the letter, questioning why the city board had not included a proposal. “Some of this may be about seeking cover for implementation of non-citizen voting,” he said.⁵⁵

The Structural Inadequacies of New York City’s Board of Elections

Since the 1940s, official investigations into the city Board of Elections have uncovered ineptitude, nepotism, corruption, illegality, and waste, yet the organization continues to operate in substantially the same way. Each scandal or blunder quickly passes from public consciousness as the memory of election day recedes, and political pressures impede reform.

The BOE’s outdated and ineffective governance structure, which derives from the state constitution and statutory election law, drives many of these problems. Article 2, Section 8 of the New York State Constitution requires boards of elections to maintain “equal representation of the two political parties” that obtain the highest vote counts in the immediately preceding general election, and obliges both parties to nominate the commissioners that serve on boards of elections. This bipartisan requirement extends to officers charged with distributing ballots to voters and recording and counting votes at elections.⁵⁶

New York’s election statute requires that the city BOE consist of ten commissioners, two from each of the five counties.⁵⁷ Combined with the constitutional bipartisan requirement, this translates to one Republican and one Democratic commissioner from each of the five boroughs, who are nominated by the county party’s executive committee. The city council must approve such nominations, but in practice, it rubber stamps nominees without serious scrutiny.⁵⁸ The

statute extends the requirement for “equal representation of the major political parties” even to lower-level positions like clerks and machine technicians, and it empowers commissioners to appoint and remove all employees of the board at their pleasure.⁵⁹

This structure invites serious problems. Councilmembers owe an allegiance to their political party and have incentives not to place themselves at risk of losing the backing of their county’s political machines. After appointment, the city council or mayor cannot fire commissioners, even for cause; only the governor has the authority to remove commissioners, and no governor has ever exercised this power.⁶⁰ This job security shields commissioners from democratic accountability and renders most elected officials powerless to effect administrative changes. Moreover, the party nomination process generates an inherent conflict of interest: each commissioner must serve the public as a whole but also feels beholden to represent party- and county-specific interests.

When a staffer leaves, longstanding board tradition demands that a replacement come from the same county and political party, which maintains like composition but fails to improve expertise.⁶¹ This often needlessly duplicates roles at the BOE, increasing costs without significant gains to productivity. On the night of a 2015 election, a BOE deputy chief found a group of workers responsible for voting machines smoking marijuana in Brooklyn; other staffers read or watched Netflix during their work shifts.⁶²

Neither commissioners, nor rank-and-file staff need to take a civil service exam or have any election administration expertise or qualifications related to their responsibilities.⁶³ In many instances, nepotism and cronyism determine the hiring process. The board employs a computer programmer who is the son of a former Democratic Brooklyn borough president and grandson of a Democratic city councilmember, as well as the Republican head of election day operations, whose friends include the leader of the Manhattan Republican Party.⁶⁴ The 2013 Department of Investigation report noted that at least 69 BOE employees, including two commissioners, had a relative working there.⁶⁵

Despite these systemic flaws, the board will of course request greater funding to implement noncitizen voting, as it did during a May 2013 hearing on Intro. 410, where then-BOE General Counsel Steven Richman asked for more time and money to retrain employees and poll workers, design and print ballots, and expand poll sites.⁶⁶ He also drew attention to the cost uncertainty created by the legislation, testifying that, “The Board does not have the ability to determine how many ‘municipal voters’ would be added to the voter rolls, and therefore, cannot calculate the additional operating costs that would be created by the enactment of this proposal.”⁶⁷

But Richman himself provides an example of why such money should not be handed over in the absence of an overhaul: the two-decade BOE veteran retired in early 2021 amid an investigation into alleged misconduct.⁶⁸ Until the organization undergoes thorough reforms, there is little chance of any new funding being used efficiently and effectively.

Because both parties benefit from these arrangements, neither has an incentive to initiate reforms. And because commissioners control the disciplinary process, there is little enforcement meted out to those they and their parties helped hire. As a result, this translates to what the *New York Times* has characterized as “a relic from the era of powerful political clubhouses and Tammany Hall” where “ineptitude is common and accountability is rare.”⁶⁹

The Risks of Voting to Noncitizens

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) makes it a federal crime for noncitizens to “vote in any election held solely or in part for the purpose of electing” federal officers, but an exception exists if the election is also held for a state or local

purpose, noncitizen voting is authorized by state or local law, and voting is conducted such that the noncitizen does not vote for federal matter.⁷⁰ Now codified at 18 U.S.C. § 611, violations are punishable by up to one year's imprisonment, a fine, or both. No specific intent is required, which means that a person need not knowingly or intentionally violate the law in order to be convicted. Federal law thus recognizes that states and localities may permit noncitizens to vote, but it provides little leeway for those who unwittingly vote in federal races.⁷¹

Most of New York City's local elections are held on odd-numbered years, whereas those for federal and state offices occur on even-numbered years. These "off-cycle" elections reduce the chances that noncitizens will vote in prohibited state and federal races. But this firewall is not absolute: local races sometimes occur, at least in certain districts, in even-numbered years.⁷² And elections for judges and district attorneys—in which noncitizens will be ineligible to vote—routinely occur on odd-numbered years.

Specifically, Intro. 1867 defines "municipal elections," or those in which noncitizens will be eligible to vote, as including, "any special election for a municipal office . . . and any municipal referendum."⁷³ The express inclusion of special elections and municipal referendums, which are necessary to amend the city charter, increase the odds that noncitizens will vote for municipal races in years that also include federal and state elections.⁷⁴

Therefore, some noncitizens will likely incur legal jeopardy by voting in a prohibited election. These instances are not mere hypotheticals; they have already served as the basis of real immigration cases. In *Matter of Fitzpatrick*,⁷⁵ a Peruvian citizen obtained lawful permanent resident status in 2004 and then applied for an Illinois driver's license, which included a voter registration form in which she checked a box claiming she was a citizen. She voted in the 2006 general election and subsequently applied for naturalization in 2007, which required her to disclose that she had voted. In January 2008, the Department of Homeland Security charged her with removability under the Immigration and Nationality Act for having voted illegally.⁷⁶ After the immigration judge found her removable, she appealed, claiming that DHS "has not shown that she intended to vote" illegally.⁷⁷ The Board of Immigration Appeals, the Department of Justice's highest interpretative body for the application of immigration laws, affirmed the lower judge's decision and found her removable on the grounds that she understood she cast a ballot for federal offices while not a citizen of the United States.

Because of these risks, pro-immigration groups sympathetic to expanding the franchise to noncitizens have nonetheless voiced worries. In its September 2021 written testimony to the city council, the New York Chapter of the American Immigration Lawyers Association expressed "serious concerns that the actual practice of noncitizens voting locally could lead to their denial of the ability to naturalize and potentially make them vulnerable to removal from the United States."⁷⁸

One reason for this concern is that all noncitizens who vote—not just those who unwittingly violate the law by voting in a federal election—face some risk to their immigration status. The application for naturalization, Form N-400, requires the applicant to answer, under oath and penalty of perjury, whether he or she has ever registered to vote or has ever voted in any election. The question expressly includes language for local elections, and any response in the affirmative requires the applicant to include a typed or printed explanation. This signals a red flag for immigration officials because Section 237(a)(6)(A) of the Immigration and Nationality Act⁷⁹ states that an alien who "voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable."⁸⁰ Even if noncitizens vote legally, they will thus likely be subject to greater immigration scrutiny.

At a minimum, then, noncitizen voting will require applicants for naturalization to undergo additional hassles in explaining why they registered and voted in local New York-specific races. But because of the high stakes at play, many registrants will likely seek assistance from an immigration attorney—as the city’s noncitizen voter registration form will suggest they do—thereby further increasing costs, either to them personally or to city agencies that provide no-cost legal advice.

Given the long history of Board of Elections failures and mishaps, it is difficult to imagine that no noncitizens will be given the wrong ballot on election day or fill out an incorrect absentee ballot. Leaving municipal voters in the hands of an unaccountable and incompetent organization makes them particularly vulnerable, especially those with limited English proficiency and those whose educational background does not equip them to understand the consequences. Of course, there may be good arguments in favor of changing federal laws that allow for removability or that impair naturalization on the grounds of voting. But these are federal issues; they demand that Congress act. The city council’s decision to enfranchise noncitizens before federal law sanctions them to do so may well harm many whom the council seeks to help.

Noncitizen Voting and “Wrong Church” Disqualified Affidavit Ballots

Yet another practical issue involves getting noncitizen voters to the correct polling place. In 2005, the Court of Appeals of New York held, in *Panio v. Sutherland*,⁸¹ that an affidavit ballot cast at the incorrect polling site must be fully disqualified.⁸² A voter may, for instance, be assigned to a polling site that is not the closest one to his home; if he mistakenly goes to the nearest polling site and cannot find his name in the poll ledger, he may cast an affidavit ballot. This ballot is placed inside an envelope that has a form printed on it. The voter must fill out the form completely, and by signing, declares, under oath, that he meets voter registration requirements. Yet if submitted at an incorrect polling site, the affidavit ballot will be disqualified, with no part of the vote counted, even if a poll worker instructs the voter to fill one out.⁸³

This so-called “wrong church” issue led to more than 13,800 ballots being tossed statewide in the 2020 election.⁸⁴ Nearly 70% of those ballots came from districts in New York City that contain multiple polling sites, even though city voters comprise only 42% of total state voters.⁸⁵ The Bronx, in particular, experienced a high rate of rejection, with about one affidavit ballot out of 187 voters rejected for improper polling site location.⁸⁶ While these votes represent a small percentage of the total cast, they nonetheless can decide races: the 2019 Queens District Attorney primary race was decided by a mere 60 votes.⁸⁷ Of the approximately 2,500 affidavit ballots cast in the county in that election, only about 500 were properly filled out and thus counted.⁸⁸

It is important to note that before administering voters with an affidavit ballot, the election statute demands that poll workers first attempt to redirect the voter to the correct polling site.⁸⁹ It specifically requires the worker to “consult a map, street finder or other description of all of the polling places and election district is located, and if necessary, contact the board of elections to obtain the relevant information and advise the voter of the correct polling place and election district.”⁹⁰ In practice, poll workers may conduct a cursory check and simply hand the voter an affidavit ballot. This is unsurprising, given poor poll worker training, combined with election day pressures like understaffing and long lines of voters.

Post noncitizen enfranchisement, there are good reasons to believe that this issue will worsen. Many of these new voters will be unfamiliar with the voting process and are likely to show up to the wrong polling place. If poll workers continue their practice of handing out affidavit ballots without conducting a thorough search for the voter’s correct polling site, more affidavit ballots will be disqualified, which cuts against the spirit of the proposal to expand voting participation. Moreover, poll workers who administer a correct local-only affidavit ballot to noncitizens must also ensure that they hand over an appropriate envelope to sign, as the current affidavit envelope requires the voter to swear or affirm that he is a citizen of the United States.⁹¹

Do Likely Turnout Rates Justify the Expense?

There is ample evidence suggesting that only a small fraction of the total eligible noncitizen population will actually cast a ballot on election day, despite the great expenses and efforts necessary to enable this practice. For instance, Intro. 1867’s disclaimer for voter registration, which advises registrants that their information will be accessible to federal immigration enforcement agencies and could impair their naturalization, will likely have a chilling effect on turnout.⁹² Risk-averse voters who know about these consequences may not bother to pursue registration at all, and those who read it will likely have second thoughts about continuing.

In the few other municipalities that have extended voting rights to noncitizens, participation has been underwhelming. In Takoma Park, Maryland, for example, where noncitizen voting has been allowed for decades, voter turnout among noncitizens has proven to be much lower than among citizens. In 1997, noncitizen turnout peaked at 25%, before falling to between 3% and 9% in elections held from 1999–2007.⁹³ In 2009, out of a total of 436 registered noncitizens, only 32 cast a ballot, a rate of 7.3%.⁹⁴ By 2017, the number of registered noncitizen “Takoma Park-only” voters dropped to 347, a decline of some 20% from the 2009 election.⁹⁵ Only 72 actually voted in the 2017 city election.⁹⁶ Over the same period, the Census Bureau estimates that from 2010 to 2019, the city’s population grew by about 1,000 residents, or 5.9%, and the foreign born percentage grew by approximately the same rate.⁹⁷

About half of eligible lawful permanent residents have declined to pursue naturalization, suggesting that many feel the benefits of citizenship—including voting—do not outweigh the costs associated with naturalization. According to Department of Homeland Security statistics, of the 34.9 million immigrants who became LPRs between 1980 and 2019, 45% naturalized and 5% derived citizenship from a parent.⁹⁸ Out of a total LPR population of 13.590 million in 2019, 9.13 million were eligible for naturalization, including 1.68 million in New York State.⁹⁹

Many who do naturalize also tend to vote less often. One study concluded that “turnout among naturalized citizens is much lower overall than that of native-born citizens—consistently around 9 to 12 percentage points less” during the four election periods it analyzed.¹⁰⁰ In New York City, a 2012 report by the Campaign Finance Board assessing the 2008 and 2009 elections found in general that “the percent of citizens who are naturalized has a negative effect on voter turnout.”¹⁰¹

The city must incur the expenses associated with noncitizen enfranchisement regardless of how many people register and turn out to vote on election day. In light of the above, the added costs of creating, printing, and administering multiple different ballots will likely amount to many millions of dollars but relatively few incremental votes. This measure will thus appear especially expensive when assessed on a cost-per-vote basis.

Some Republican critics of the recent enfranchisement have contended that the measure is a thinly veiled attempt to increase the number of likely Democratic voters, especially in specific districts with high populations of noncitizen residents.¹⁰² But Democrats who bank on the vast majority of these voters may be setting unreasonable expectations, not only because few noncitizens will vote, but also because those who do vote likely will not have uniformly progressive attitudes. Research from the New American Economy shows that foreign-born citizens are more likely to be socially conservative than the native-born average.¹⁰³ In fact, naturalized citizens are twice as likely to report holding conservative views, even though they identify as Democrats.¹⁰⁴ Fifty percent of immigrants do not identify with either political party, and many of their home countries have religious influences that tend to make their nationals lean more conservative.¹⁰⁵

Likely Effects on Off-Cycle Election Reform

The added complexity of noncitizen voting will disincentivize the commonsense shift to on-cycle local elections, or those held on years that also feature state and federal races. New York City's local elections occur in odd-numbered "off-cycle" years.

Off-cycle voting has several disadvantages. According to a Manhattan Institute issue brief on the subject, "municipalities pay the entire administrative costs of standalone elections but have to cover only a fraction of the costs of on-cycle elections."¹⁰⁶ The additional cost of off-cycle elections amounts to tens of millions of dollars: the BOE requested \$42.5 million to administer the 2017 local election.¹⁰⁷ That figure is likely set to rise, given the need to create and administer separate, local-only ballots for noncitizens in each election district and program ballot scanners to accept each type of ballot.

Off-cycle elections have also repeatedly been shown to depress voter turnout, given the importance of national elections in today's politics. On average, turnout roughly doubles for on-cycle elections compared to those off-cycle.¹⁰⁸ In New York, the effect is even more pronounced. In the 2020 presidential general election, New York City saw 3.045 million ballots cast out of a total of 4.918 million registered voters, representing a 61.9% turnout.¹⁰⁹ In the 2021 local general election, only 1.15 million New Yorkers cast a vote, or 23%.¹¹⁰

Given the added administrative complexity of noncitizen voting, the Board of Elections will lobby to retain New York City's off-cycle elections, despite all of their drawbacks. This would likely halt legislators from any attempts to decide local races along with federal and state ones, even though considerable benefits would accompany such reform.

Other cities that implemented noncitizen voting have retained local off-cycle elections specifically because of their greater ease of administration. In 2013, Drew Spencer, Legal Fellow for election reform think tank FairVote, testified before the city council that, "Takoma Park elected officials seem wary of the possibility of consolidating local elections with congressional elections precisely because doing so might make voting rights for noncitizen residents too challenging to administer."¹¹¹

If the purpose of extending the vote to noncitizens is to increase turnout and democratic participation, the same rationale suggests supporting efforts to move elections on-cycle. By effectively preventing or stalling a unified election cycle, noncitizen voting undercuts its animating principle.

Legal Challenges to Intro. 1867

For years, many people from across the political spectrum predicted that if New York City passed a measure allowing for noncitizen voting, it would very likely face a legal challenge shortly after passage.¹¹² That has rung true. The day after Intro. 1867 automatically became law without the mayor's signature, a Republican-led coalition filed a complaint in Staten Island.¹¹³ The suit sought an injunction on the grounds that the law is unconstitutional, in violation of the state election statute, and invalid for want of a citywide ballot referendum required by the New York City Charter and Municipal Home Rule Law.¹¹⁴

Legality under the New York State Constitution

The first issue relates to the legality of Intro. 1867 under the state constitution. Despite its status as a multicultural hub since its earliest history, the Empire State in 1804 barred noncitizens from voting in state elections—one of the first to do so—and has retained that restriction ever since.¹¹⁵

Article 2, Section 1 of New York State’s Constitution reads as follows: “Every *citizen* shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that *such citizen* is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.”¹¹⁶

The constitutional issue hinges on two related questions. First, does the word “citizen” mean “U.S. citizen,” or something else? Second, even assuming it means “U.S. citizen,” is this phrase exclusive—meaning that *only* U.S. citizens can vote—or nonexclusive, meaning it assures citizens the right to vote but does not preclude legislation extending that right to others.

The first question does not appear to have an entirely unambiguous answer. Under the textualist approach of constitutional interpretation, words are given their plain, ordinary meaning when they are clear and unambiguous, unless the statute stipulates a different meaning, such as when a term is expressly defined.¹¹⁷ Textualism generally emphasizes the context in which legislative language appears and applies the common meaning of terms at the time of enactment.¹¹⁸

The word “citizen” appears 12 times in the state constitution and is not specifically defined. In two of these instances, the phrase “of the United States” follows,¹¹⁹ and in another, a citizen is distinguished from “an alien lawfully admitted for permanent residence in the United States.”¹²⁰ Such qualifiers may, on the one hand, suggest that other instances of the word “citizen” obtain a similar meaning, or on the other, that these subsequent phrases distinguish the word “citizen,” standing alone, as meaning something different than “citizen of the United States.” This could include a person who lives in a particular city or state, which falls under the broader definition of “citizen.”¹²¹

Today, citizenship is widely understood to be a national concept, but this was not the case in the 19th century. The Second Constitution of New York State, which was drafted in 1821 and approved and adopted the next year, contains many of the same references to “citizen” that survive in today’s text, including those relating to the qualifications of voters and officeholders.¹²² In the 1820s, however, state citizenship was the primary means of civil identification, not national citizenship, and this prioritization shifted only in the decades following the Civil War.¹²³ Only after ratification of the Fourteenth Amendment did the concept of citizenship take on a predominantly national character, yet the amendment reaffirmed the notion of a distinct state citizenship.¹²⁴ It is, therefore, at least plausible that the word “citizen” in the state constitution means “citizen of New York State.”

While New York State citizenship has not yet been formally defined in law, either in the constitution or in legislation,¹²⁵ this line of reasoning provides proponents of Intro. 1867 with room to argue that the state and localities can define broader privileges to state and local inhabitants, which may include non-U.S. citizens.

The second question, on exclusivity, finds support from an old case from the New York Court of Appeals, the highest in the state, which suggests an exclusive understanding. In *Hopper v. Britt*,¹²⁶ the court explained, “The qualifications of voters are prescribed by section 1 of article 2 of the Constitution and those qualifications are exclusive.”¹²⁷

Moreover, courts routinely turn to canons of construction to aid them in construing constitutional and statutory text. Under the important semantic canon *expressio unius est exclusio alterius*, things not expressly included are implicitly excluded.¹²⁸ Read in this light, all the factors listed as voter registration requirements in the state constitution would serve as a series of conjunctive conditions. This yields an understanding that in order to register to vote, one must be: (1) a citizen; (2) at least 18 years old; (3) a resident of the state and locality; *and* (4) for at least 30 days.

Further, if the constitution's wording is nonexclusive, the word "citizen" would effectively be redefined, at least in some local contexts, as "person." The same interpretation could be used to bypass other apparent requirements. The 18-year-old age qualification would mean that *at least* people aged 18—but perhaps those younger as well—could gain the franchise in local elections.

Proposed state legislation to lower the voting age in state elections suggests that, historically, lawmakers have not interpreted the constitution in this way. Section 5 of Senate Bill S2273A, which would lower the voting age to 16 years for state and local elections, predicates the act's taking effect upon a concurrent resolution of the Senate and Assembly proposing amendments to the state constitution.¹²⁹ Senate Bill 478, accordingly, proposes an amendment that changes a single word, "eighteen" to "sixteen" in Article 2, Section 1 of the constitution.¹³⁰ But if the voting age qualification is nonexclusive, this amendment would be unnecessary, as the constitution would not prohibit 16-year-olds from voting; legislation would be sufficient to grant them voting rights. Therefore, the same exclusive reading should be afforded to the citizenship requirement.

Other provisions of the state constitution and election law also suggest an exclusive interpretation. In particular, Article 9, Section 1 of the constitution, which governs home rule for municipalities, states that local legislative bodies and elected officers are to be elected "by the people" comprising the local government. On its face, that phrase is ambiguous enough to suggest including noncitizens, but Article 9, Section 3 appears to clarify the issue by defining "people" as those "entitled to vote as provided in section one of article two" of the constitution—namely, citizens.¹³¹

Because of the constitution's more natural reading as excluding noncitizen voters, both the Bloomberg and de Blasio administrations raised doubts about the legality of proceeding without an amendment to the state constitution. In 2013, William Heinzen, then deputy counselor to Mayor Bloomberg, provided written testimony to the city council considering a similar proposal. In it, he raised "serious concerns" about the legality of noncitizen voting on the grounds that "it is barred by New York's Constitution." The measure's "most likely result," Heinzen concluded, "would be expensive litigation without actually allowing noncitizens to vote."¹³²

And despite the de Blasio administration's progressive orientation, it also questioned whether Intro. 1867 would survive a constitutional challenge. In her September 20, 2021 testimony before the city council, Laura Wood, Chief Democracy Officer for DemocracyNYC, New York's voter engagement initiative, said, "Intro. 1867 as written raises substantial legal questions" and concluded that "these questions mean that the City is not taking a position on the bill at this time."¹³³

Therefore, a legal challenge has a fair chance of striking down Intro. 1867 on constitutional grounds, unless the state constitution were amended, which requires passage in two consecutive legislatures and majority approval in a statewide ballot referendum.¹³⁴ Therefore, an amendment would involve at least a few years to achieve, if voters decide to approve the referendum at all. In 2021, three voting-related constitutional amendments were rejected by state voters.¹³⁵ The controversial proposition to allow localities to enfranchise noncitizens, even if it only affected New York City (at least initially), may well suffer the same fate.

Legality under the New York Election Law

Section 5-102 of the state election statute provides that, “No person shall be qualified to register for and vote at any election unless he is a citizen of the United States. . . .”¹³⁶ On its face, this excludes all noncitizens from voting in any election conducted in New York State.

Section 1-102 of the statute, however, appears to provide some room for the legality of local noncitizen voting. It provides that when a specific provision “in any other law which is inconsistent” with the state law, “such provision shall apply” unless otherwise stated.¹³⁷ This “reverse preemption” language creates a rebuttable presumption against state preemption—effectively a way to give localities greater leeway over their affairs.¹³⁸ Courts reviewing the challenge to Intro. 1867 will have to assess whether the specific legislation overrides the general state election law. But if the state legislature wishes to prevent the city from allowing noncitizen voting in municipal elections, it need only amend the election statute with a simple preemption clause to Section 5-102.¹³⁹ In fact, the city council’s attempt to pass a law of dubious legality may prompt state lawmakers to curtail or modify noncitizens’ ability to vote.¹⁴⁰

Some champions of Intro. 1867 contend that the measure would merely restore noncitizen voting, not authorize it for the first time, because New York City allowed the practice for school board elections from 1969 until the Department of Education took direct control over schools in 2003.¹⁴¹ This historical precedent, they claim, paves the way for legality of noncitizen voting for all local elections.

But this contention misses a few key elements. First, school boards were likely not considered a unit of local government, which the state constitution defines in Article 9 as “a county, city, town or village.”¹⁴² Second, an ambiguity in the state Education Law provided that voting rights for school board members were granted to citizens “of the state,” which did not necessarily mean that they had to be U.S. citizens.¹⁴³ And as a practical matter, only noncitizen parents with children in public school were allowed to vote in school board elections.¹⁴⁴ That population was far smaller than the 800,000 newly-eligible voters today; their interests were specific and their ability to influence citywide offices minimal.

Does the New York City Charter Require a Citywide Referendum?

Even if the state constitution and election statute are found not to prohibit noncitizen voting in the city, other obstacles remain. Chapter 2, Section 38 of the New York City Charter and provisions of the Municipal Home Rule Law provide that a referendum is required for changes to the election process. The charter states that a local law “shall be submitted for the approval of the electors” if it “changes the method of nominating, electing or removing an elective officer.”¹⁴⁵ This mirrors the language found in Section 23(2)(e) of the Municipal Home Rule Law, which would automatically trigger a mandatory referendum.¹⁴⁶

There is a strong case that expanding the electorate to include noncitizens would constitute a change “in the method” of electing local officials, which would in turn require a citywide referendum. When Intro. 1867’s predecessor was being debated in the city council in 2013, the Bloomberg administration took this position.¹⁴⁷ Mayor de Blasio’s legal team, however, did not express the same concern in the September 2021 testimony held for Intro. 1867.

Some sympathetic to the premise of noncitizen voting have nonetheless advocated in favor of holding a referendum, both to comply with these laws and to strengthen the democratic legitimacy of noncitizen voting.¹⁴⁸ From a political standpoint, securing a majority in a referendum would likely dissuade state legislators from attempting to preempt the measure. Of course, other supporters likely fear that a citywide referendum would not command a majority of New Yorkers. A 2010 referendum on a similar proposal in Portland, Maine, for example, went down

in defeat.¹⁴⁹ On the other hand, if the city council is out of step with the electorate on a matter that touches on the heart of civic life, there is little reason why the city council's preferences should override those of most New Yorkers.

Policy Alternatives and Options

In light of the numerous issues associated with noncitizen voting, one obvious response entails maintaining the status quo and not extending the franchise. But given Intro. 1867's enactment, it is also important to identify ways to ameliorate some issues raised above before it becomes operative in December, absent a successful court challenge.

Alternatives to Noncitizen Enfranchisement

The millions of dollars necessary to create and administer a dual-voter system—that will likely result in low turnout nonetheless—may instead yield greater benefits for noncitizens if diverted to naturalization assistance, community-based organizations, and voter registration and outreach efforts. Beyond preserving the meaning of the vote as a signal of equal inclusion in the American civic polity, this alternative would allow newly naturalized citizens to reap the full panoply of voting rights, including for state and federal offices.

Numerous initiatives already exist that could make immediate use of funding, including public-private collaborations and organizations that represent sizable populations of noncitizens. The City University of New York, for example, runs naturalization assistance clinics through its Citizenship Now! program, and the Mayor's Office of Immigrant Affairs routinely collaborates with community-based organizations that provide outreach.¹⁵⁰ These groups offer an alternative means of exerting political influence during elections and advocating on behalf of noncitizens.

The city could also facilitate citizenship by defraying the \$725 naturalization fee. While a federal fee waiver exists for low-income families, that is likely insufficient to allay financial pressures in a high cost-of-living area like New York.¹⁵¹ As recently as 2018, the New York State Office for New Americans partnered with Robin Hood, the New York Community Trust, and some two dozen community partners to offer fee vouchers to those seeking to naturalize through a program called NaturalizeNY. It appears, however, that this program provided vouchers for three years and was not renewed.¹⁵²

Funds could likewise sponsor more free English and civics classes to help noncitizens pass the naturalization interview and exams. According to a 2014 Brookings Institute Study, the New York metro area has the greatest number of limited English proficiency speakers, comprising about 18% of its population.¹⁵³ Its authors concluded that increasing investment in English instruction would boost the human capital of immigrants, help them command higher wages, and benefit their children.¹⁵⁴

The New York Public Library system provides in-person classes twice weekly at more than 40 libraries in Manhattan, Staten Island, and the Bronx.¹⁵⁵ The Queens Public Library similarly offers a virtual 12-week English class as part of its New Americans Program.¹⁵⁶ Both of these longstanding and broadly trusted institutions would benefit from additional funding in lieu of noncitizen voting.

No-cost legal services provided through the NYCitizenship program could help eligible noncitizens naturalize as well. This initiative, a partnership between the Mayor's Office of Immigrant Affairs, the New York Public Library, and private nonprofit groups like Robin Hood and Citi

Community Development, provides no-cost legal services for immigrants seeking to become citizens.¹⁵⁷ CUNY's Citizenship Now! program also provides no-cost naturalization assistance with no minimum income requirement.¹⁵⁸ It is likely that if noncitizen voter registration begins in December 2022, these services will likely see some increase in demand from those seeking advice on the implications of voting as a noncitizen. This will effectively divert attention and resources away from naturalization assistance.

Some Potential Modifications to Intro. 1867

Because municipal voter registration will not begin until December 2022 and the first election for which they can vote will not occur until 2023, there is still time to modify Intro. 1867 through subsequent local legislation. For example, during the December 9 debate in chamber, several councilmembers raised concerns about the 30-day durational residency requirement, which they considered too short to ensure that voters can make informed decisions on election day and have a sense of investment in the city and country.

The council could thus modify Intro. 1867 to increase the duration requirement. For example, 2013's version of this proposal included a six-month residency requirement, which was then considered still too brief.¹⁵⁹ A longer residency would allow noncitizens to become better attuned to New York's unique way of life and more knowledgeable about the specific circumstances in their communities. It would also give potential voters a chance to develop a basic competency in English and knowledge of American governance.

To address concerns that noncitizens have not manifested an allegiance to the U.S. equivalent to citizenship or don't have a sufficient stake in the country, the right to vote in municipal elections could also be given only to lawful permanent residents who demonstrate their intention to become citizens. This can take two forms. First and less restrictively, a completed Declaration of Intention Form N-300 could be required to register to vote.¹⁶⁰ This would signal that the prospective voter takes a commitment to the country seriously and has the disposition to incorporate into the national body politic, not just the local community. This does, however, entail a \$270 filing fee, which the city could help defray.¹⁶¹

Second and more restrictively, the vote could be granted to those who have filed for naturalization but are currently awaiting processing, which can take anywhere from six months to well over a year. As of January 2022, a green card holder seeking to naturalize in New York can expect to wait 12 to 18 months.¹⁶² Because these residents have already been in the U.S. for five years (three if the spouse of a citizen)¹⁶³ and intend to become citizens, they are likely better disposed to make informed decisions and engage in the political process in a deliberative way.

But most crucially, the city council should strongly consider delaying Intro. 1867's implementation at least until the state legislature enacts substantial reforms to the city Board of Elections. The board's track record demonstrates that it cannot currently be trusted to handle the extraordinary administrative task of establishing a dual-voter system without substantial risks to electoral integrity and to noncitizen voters themselves. Before noncitizen voting proceeds in earnest, it is incumbent upon city councilmembers—who already represent noncitizens—that they ensure the BOE has safeguards in place to protect municipal voters from the pitfalls of voting in non-local races.

Certain structural changes to the board require an amendment to the New York State Constitution, but there are several meaningful avenues for reform that are available through ordinary state legislation.¹⁶⁴ While the details of such measures lie beyond the scope of this paper, they should be aimed at improving the qualifications and competency of both commissioners and employees, streamlining decision-making processes, instituting greater transparency and accountability, and reducing the influence of political parties on the BOE.

Conclusion

Despite its anodyne appearance, Intro. 1867's expansion of local voting rights to noncitizens carries significant risks. Consequently, there are important prudential and legal reasons to oppose this enfranchisement. But in light of Intro. 1867's enactment and subsequent court challenge, time will tell whether the law is found to violate the constitution and election statute, and whether it first requires New York City to hold a ballot referendum. Submitting the issue of noncitizen voting to the electorate might be the most straightforward and appropriate way to settle it; approval would strengthen the idea's democratic legitimacy, and defeat would signal to the city council not to overreach in the future.

As the legal challenge makes its way through the courts, the city council can take measures to prevent risks before municipal voters begin to register in December 2022. It could extend the 30-day residency requirement, but most importantly, it should delay the law's implementation until the city Board of Elections undergoes substantial and long-overdue reforms, which will require state legislation.

The experience of other municipalities with noncitizen voting suggests that only a small minority of noncitizen New Yorkers will turn out on election day, which calls into question the practical desirability of expending considerable resources to enable this practice. The city, as well as other cities looking to New York's example, may benefit their noncitizen population more by instead providing greater naturalization assistance, such as no-cost English classes, legal services, and naturalization fee vouchers, which would not carry the risks associated with voting.

In sum, while there may be reasonable grounds in theory for noncitizen voting, New York's practical realities should give all pause. Both supporters and opponents of the measure should first agree to work together and fix the city's election system, which would help all New Yorkers—citizen and noncitizen alike.

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