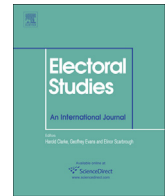




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Do non-citizens vote in U.S. elections?



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ABSTRACT

In spite of substantial public controversy, very little reliable data exists concerning the frequency with which non-citizen immigrants participate in United States elections. Although such participation is a violation of election laws in most parts of the United States, enforcement depends principally on disclosure of citizenship status at the time of voter registration. This study examines participation rates by non-citizens using a nationally representative sample that includes non-citizen immigrants. We find that some non-citizens participate in U.S. elections, and that this participation has been large enough to change meaningful election outcomes including Electoral College votes, and Congressional elections. Non-citizen votes likely gave Senate Democrats the pivotal 60th vote needed to overcome filibusters in order to pass health care reform and other Obama administration priorities in the 111th Congress.

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1. Introduction

This analysis provides some of the first available nationwide estimates of the portion of non-citizen immigrants who vote in U.S. elections. These estimates speak to an ongoing debate concerning non-citizen voting rights within the United States (DeSipio 2011; Earnest, 2008; FAIR, 2004; Fund and von Spakovsky, 2012; Hayduk, 2006; Immigration Policy Center, 2012; Munro, 2008; Song, 2009; Von Spakovsky, 2012) and they also speak to broader global questions concerning the normative political place of non-citizens in democratic politics.

Most state and local governments in the United States bar non-citizens from participating in elections (the exception: a few localities in Maryland), but the question of whether non-citizen immigrants can, and should, participate receives varied answers globally (Earnest, 2008) with

many countries offering at least some opportunity for some resident non-citizens to participate in local elections, and some countries offering full participation in national elections.

The United States also has a long history of noncitizen voting at the local, state and national levels. Aylsworth (1931) notes that “during the nineteenth century, the laws and constitutions of at least twenty-two states and territories granted aliens the right to vote.” From the founding of the Republic to the early 20th century, various territories and states enfranchised noncitizen residents for several reasons. During westward expansion, several territories offered the franchise to entice European migrants to settle so that territories would meet the population criterion for admission to the Union. Similarly, during Reconstruction several southern states offered the franchise to migrants who would replace slave labor. Later, some states enfranchised so-called “declarant aliens” (resident aliens who declared their intent to naturalize) to educate them about the interests and issues of their communities. Yet the practice of enfranchising noncitizens served less salutary goals as well. By enfranchising only propertied white European men, the practice of noncitizen

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voting reinforced extant prohibitions on voting by women, African Americans, Asian Americans, the poor and others. By the 1920s, however, following the large migrations of the early 20th century, all states had revoked the voting rights of noncitizens (Earnest, 2008, 25–26). Non-citizens voted legally in every presidential election through 1924. By 1928 the last state constitution that protected non-citizen voting (Arkansas') had been amended.

The decision to (dis) enfranchise non-citizens falls within the states' authority to define qualifications for voting. The nineteenth-century practices in various states produced a case-law legacy that most legal scholars conclude permits states to enfranchise noncitizens if legislators so choose. Similarly, on several occasions the Supreme Court has upheld the constitutionality of noncitizen voting because states have the authority to set voter qualifications (Earnest, 2008, 25–26). The question of non-citizen voting is, in the end, a political rather than a legal one.

Within the context of the current nearly universal ban on non-citizen voting in the United States, this study examines the voting behavior of non-citizens. To what extent do non-citizens ignore legal barriers and seize ballot access in U.S. elections? We find that non-citizen participation in U.S. elections is low, but non-zero, with an unusual set of covariates with participation, and the potential to change important election outcomes.

2. Data

The data used for this paper is from the 2008 and 2010 Cooperative Congressional Election Studies, based on the files released by Stephen Ansolabehere (2010, 2011). The 2008 and 2010 Cooperative Congressional Election Studies (CCES) were conducted by YouGov/Polimetrix of Palo Alto, CA as an internet-based survey using a sample selected to mirror the demographic characteristics of the U.S. population. In both years survey data was collected in two waves: pre-election in October, and then post-election in November. The questionnaire asked more than 100 questions regarding electoral participation, issue preferences, and candidate choices.

Four design characteristics make this survey uniquely valuable for our purposes. 1. It has an enormous sample size, which makes feasible sub-population analyses ($n = 32,800$ in 2008 and $n = 55,400$ in 2010). 2. It included a question about citizenship status. 3. Many non-citizens were asked if they voted, unlike other large surveys which filter out non-citizens before asking about voting. 4. Participation and registration were verified for at least some residents in nearly every state for the 2008 survey (Virginia state law barred voting verification).

Inclusion of a validated voting measure is particularly valuable in this context because of important and contradictory social and legal incentives for reporting non-citizen electoral participation. Although variation in the social desirability of voting may skew estimates (Ansolabehere and Hersh, 2012) as for other populations, legal concerns may lead some non-citizens to deny that they are registered and/or have voted when in fact they have done both. Validation of registration and voting was performed by the CCES research team in collaboration with the firm Catalyst.

Of 339 non-citizens identified in the 2008 survey, Catalyst matched 140 to a commercial (e.g. credit card) and/or voter database. The vote validation procedures are described in detail by Ansolabehere and Hersh (2012). The verification effort means that for a bit more than 40 percent of the 2008 sample, we are able to verify whether non-citizens voted when they said they did, or didn't vote when they said they didn't. For the remaining non-citizens, we have only the respondent's word to go on concerning electoral participation, although we do attempt to make inferences about their true participation rate based upon the verified portion of the sample.

About one percent of the respondents in each survey identified themselves as non-citizen immigrants (339 in 2008, 489 in 2010)². In both years the sample likely includes individuals drawn from more than one category of non-citizen (ranging from permanent resident aliens to those on short-term student visas). In the context of the 2010 CCES, it is possible to identify the exact citizenship status of some respondents because many provided an open-ended response about their citizenship status when asked why they did not vote. For instance, "I'm a permanent resident," "I have a green card," "waiting on US Citizenship to come through!" and most commonly simply, "not a citizen." No individual specifically identified themselves as an illegal or undocumented resident, although one did indicate that he or she hadn't voted because the individual "didn't have green card [sic] yet." It is possible that some respondents were without any documentation whatsoever (popularly called "illegal aliens"), though this cannot be confirmed or rejected with the information available as no respondent specifically self-identified themselves as illegal or undocumented (but many did not specifically identify themselves as having permanent resident status).

A critical question for this project is whether respondents' self-identification as non-citizens was accurate. If most or all of the "non-citizens" who indicated that they voted were in fact citizens who accidentally misstated their citizenship status, then the data would have nothing to contribute concerning the frequency of non-citizen voting. Appendix 1 includes demographic, attitudinal, and geographical analyses designed to assess whether those who stated that they were non-citizens were in fact non-citizens. It builds a strong construct or concurrent validity case for the validity of the measure. We demonstrate that self-reported non-citizens who voted had similar racial, geographic, and attitudinal characteristics with non-citizens who did not vote, and that as a whole the non-citizens in our sample had racial, attitudinal, and geographic characteristics consistent with their reported non-citizen status. Given this evidence, we think that the vast majority of those who said they were non-citizens were in fact non-citizens.

² Since the total legal permanent resident population in 2008 of 12.6 million (Rytina, 2012) was approximately four percent of the overall U.S. population, and the total non-citizen adult population in 2011 was 19.4 million (CPS, 2011), the non-citizen population was under-sampled. Nonetheless, the sample that was collected provides the first nationwide sample from which analysts can draw inferences concerning electoral participation by non-citizens in United States elections.

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