



Reconceiving Citizenship: Noncitizen Voting in New York City Municipal Elections as a Case Study in Immigrant Integration and Local Governance

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Executive Summary

This paper uses New York City's consideration of an amendment to its charter that would extend voting rights to noncitizens in municipal elections as a case study in immigrant integration and local governance. It argues that New York City's biggest challenge in moving this issue forward is dealing successfully with two related questions: 1) why the New York City Council should be able to decide who "the People" are without approval from the state government in Albany and 2) whether it should attempt to enact the measure without a referendum.

The analysis first examines the role of local government in regulating the lives of immigrants, contrasting enforcement-oriented strategies with those that are more integration-oriented. It then spotlights federal law obstacles to noncitizen suffrage, concluding that while neither federal criminal nor immigration law prevents state or local governments from extending the franchise to noncitizens in state or local matters, federal law imposes impediments that may deter some noncitizens from registering or that could carry serious immigration consequences for those who vote in violation of federal law. The article then focuses on state law obstacles, including New York's constitution, its state election law and its home rule provisions. It contrasts other recent experiences with noncitizen suffrage around the country, looking at both municipal and school board elections. Finally, it provides some thoughts on best practices in moving forward the issue of noncitizen suffrage in New York City and other locales. New York law is ambiguous enough that good arguments can be made for why neither Albany's approval nor a city-wide referendum is required.

¹ I would like to thank Professor Lenni Benson of New York Law School for her invitation to participate in a panel discussion on noncitizen voting before the New York City Bar on June 24, 2014. I also thank Steven Sacco, Esq., of the New York City Bar for arranging my visit and coordinating the panel discussion, and Professor Ron Hayduk of Queens College for his thoughtful scholarship and tireless advocacy on this issue.

However, given New York City's historic relationship with Albany and the state legislature's power to preempt local law on election matters, if the city council attempts to expand the franchise to noncitizen voters without a referendum or comparable measure, it could trigger preemptive action in Albany or lengthy, divisive, and costly battles in the courts.

Introduction

New York City is a global city of 8.4 million inhabitants that over 3 million immigrants from 148 different countries call home (DiNapoli 2010). While many are legal residents and naturalized US citizens, many others are here on work or student visas, or enjoy some other form of temporary status or authorization; approximately 500,000 are unauthorized.² By 2010, 43 percent of New York City's workforce were immigrants occupying a range of positions across the economic spectrum (DiNapoli 2010). New York State's constitution specifically states that "Every local government ... shall have a legislative body elective *by the people* thereof."³ New York City's definition of who its people are is likely to be very different than in other parts of the state. Who gets to decide who that includes?

Whether the New York City Council could or should extend the franchise in local elections to noncitizen legal residents was before the council for nearly two-and-a-half years before it made progress in the spring of 2013. Introduced by the council on November 17, 2010, the bill, Intro 410, initially enjoyed 31 co-sponsors (out of 51 city councilmembers).⁴ The measure would have created a new category of "municipal voter," defined essentially as a noncitizen "lawfully present" in the United States who has resided in New York City for at least six months.⁵ Municipal voters would be eligible to participate in any municipal election for mayor, city councilmember, borough president, comptroller, and/or public advocate, and in all municipal ballot measures, including primary, special and general elections.⁶

On May 9, 2013, the city council's Committee on Government Operations held hearings

2 Statement of Daniel Dromm, Member, New York City Council (hereinafter "Statement of Daniel Dromm"), Hearing Testimony, pp. 5-6.

3 N.Y. Const. art 9, §1(a), cl. 1.

4 Int. 0410-2010, A local law to amend the New York city charter in relation to allowing immigrants lawfully present in New York city to vote in municipal elections (Nov. 17, 2010) at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=803591&GUID=3652CB45-9436-4D4F-ADE3-E17CE8A8AF28&Options=ID%7cText%7c&Search=245> (hereinafter Intro 410). The New York City Council is the legislative body of New York City. New York City Charter § 21 (July 2004) (hereinafter, "NYC Charter"). It consists of 51 councilmembers from 51 districts throughout the five boroughs. NYC Charter § 22. The New York City Council makes and passes laws governing the city. NYC Charter § 21. If a bill is voted out of committee and is passed by a majority of councilmembers (at least 26), it is sent to the mayor. NYC Charter §§ 34, 37. If the mayor signs the bill, it becomes a local law and is entered into the city charter. NYC Charter § 37(b). If the mayor vetoes the bill it is returned to the city council with his or her objections by the next scheduled Stated Meeting. *Id.* The council then has thirty days to override the mayoral veto by a vote of at least two-thirds (34) of all city councilmembers, at which point it becomes law. *Id.* If the mayor does not sign or veto the bill within thirty days after receiving it from the council, it automatically becomes law. *Id.*

5 Intro 410, at § 1 (to be codified at NYC Charter § 46-A, § 1057-b(1)).

6 *Id.* (to be codified at NYC Charter § 46-A, § 1057-b(3)).

on the proposal, before which New York City officials, advocacy groups, and members of the public testified.⁷ Although most witnesses spoke in support of the measure, several individuals from the city government, including then-Mayor Bloomberg's office, the Board of Elections, and the Campaign Finance Board, raised concerns about the measure's constitutionality and feasibility.⁸ Bloomberg's office and the Board of Elections came out against the proposal.⁹ Although at one point the bill enjoyed a veto-proof majority, before it could come for a vote, several councilmembers withdrew their support.¹⁰ Without a super-majority of two-thirds of the Council, or 34 councilmembers, and in light of Mayor Bloomberg's stated opposition, the bill was laid over in committee, dying at the end of the legislative session on December 31, 2013.¹¹

During the summer of 2014, and with a new mayor in place, the city council moved forward with plans to reintroduce noncitizen suffrage.¹² On June 26, the city council, with Mayor De Blasio's blessing, voted 43-3 to make municipal ID cards available to all New York City residents, including an estimated 500,000 unauthorized persons (Goldman 2014). The latter measure was designed not only to provide the unauthorized with a form of identification that would allow them to access city services, rent apartments and open bank accounts, but to assist other vulnerable populations as well, including the homeless, the elderly, and transgendered persons, who would be able to self-identify their gender (*ibid.*). Early the week before, State Senator Gustavo Rivera from the Bronx introduced the *New York is Home Act* into the New York State legislature (Eidelson 2014).¹³ The bill would grant state citizenship, including the right to vote in local and state elections, to noncitizens who have lived in New York and paid taxes for at least three years.¹⁴ Conceptions of citizenship, membership and belonging appeared to be changing in New York City, if not the entire state.¹⁵

7 Hearing Testimony on Intro 410, Before the Committee on Government Operations, New York City Council (May 9, 2013), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=803591&GUID=3652CB45-9436-4D4F-ADE3-E17CE8A8AF28&Options=ID%7cText%7c&Search=245>. See also Hearing Transcript on Intro 410, Before the Committee on Government Operations, New York City Council (May 9, 2013) (hereinafter "Hearing Transcript").

8 Written Statement of William Heinzen, Deputy Counselor to the Mayor, Hearing Testimony, p. 1 (hereinafter "Written Statement of William Heinzen"), p. 1; Written Statement of Eric Friedman, Director of External Affairs, New York City Campaign Finance Board, Hearing Testimony, (hereinafter "Written Statement of Eric Friedman, Campaign Finance Board"), p. 31; Written Statement of Steven Richman, General Counsel, New York City Board of Elections, Hearing Testimony, (hereinafter "Written Statement of Steven Richman"), p. 38; Testimony of Eric Friedman, Director of External Affairs, New York City Campaign Finance Board, Hearing Transcript, (hereinafter "Testimony of Eric Friedman, Campaign Finance Board"), p. 66.

9 Written Statement of William Heinzen, p. 1; Written Statement of Steven Richman, p. 38.

10 Statement of Sebastian Maguire, Legal Counsel to Councilmember Daniel Dromm, Noncitizen Voting in New York City, New York City Bar (June 24, 2014)(hereinafter "Statement of Sebastian Maguire") (notes on file with author).

11 See History, Int. 0410-2010, N.Y. City Council at <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=803591&GUID=3652CB45-9436-4D4F-ADE3-E17CE8A8AF28&Options=ID%7cText%7c&Search=245>.

12 Statement of Sebastian Maguire.

13 New York is Home Act, S. 7879, N.Y. Assembly, June 16, 2014 at http://assembly.state.ny.us/leg/?default_fld=&bn=S07879&term=2013&Summary=Y&Actions=Y&Text=Y.

14 *Id.*

15 The New York is Home Act currently has four co-sponsors in the Senate, Adriano Espaillat (Dem.-31st), Liz Krueger (Dem.-28th), Bill Perkins (Dem.-30th), and Jose Serrano (Dem.-29th), all of whom are Democrats

On June 24, 2014, on primary day in New York City, the New York City Bar hosted a panel discussion, open to the public, on Intro 410.¹⁶ Academics, government officials, and advocates examined the legal and policy dimensions of noncitizen suffrage in municipal elections. Sebastian Maguire, Councilman Daniel Dromm's legal counsel, indicated during the discussion that the city council hoped to reintroduce the legislation that session, once it had garnered sufficient support from the council.¹⁷ Ron Hayduk, an expert in noncitizen suffrage and a professor of political science at the City University of New York, Queens, examined why this measure should be seen as a *restoration* of noncitizen voting rights in light of the long history of noncitizen voting in this country from 1776 to 1926 and in New York City school board elections from 1969 to 2003.¹⁸ The author of this paper offered an objective assessment of New York constitutional, state and municipal law and spoke on the implications of federal criminal law, immigration law and integration policy for noncitizen suffrage. In a discussion session led by Dick Dadey, Executive Director of Citizens Union, Jerry Vatomala, a lawyer with the Asian American Legal Defense and Education Fund, made the legal arguments for why the city council had the power to enact Intro 410.¹⁹ Sebastian Maguire provided an update on the current status of the proposal.²⁰ Eric Friedman from the New York City Campaign Finance Board discussed some of the administrative challenges that the Board of Elections would likely face in implementing noncitizen suffrage if it came to pass.²¹ While generally supportive, some members of the audience raised questions and concerns regarding the measure's scope.

This paper provides a case study on noncitizen suffrage in the City of New York which revisits the legal and policy issues raised in the author's presentation while incorporating the perspectives of co-panelists and the work of legal academics on the special role local entities can play in integrating immigrants into the social fabric of a community.²² It seeks to disentangle the threads of law, history, government, and immigration policy which are

from New York City. See Summary, New York is Home Act, http://assembly.state.ny.us/leg/?default_fld=&bn=S07879&term=2013&Summary=Y&Actions=Y&Text=Y.

16 Panel Discussion: Noncitizen Voting in New York City, New York City Bar (June 24, 2014) at https://services.nycbar.org/iMIS/Events/Event_Display.aspx?EventKey=INL062414&WebsiteKey=f71e12f3-524e-4f8c-a5f7-0d16ce7b3314 (hereinafter, "Panel Discussion: Noncitizen Voting in New York City").

17 Statement of Sebastian Maguire.

18 Statement of Ron Hayduk, Professor, Queens College of the City University of New York (CUNY Queens), Noncitizen Voting in New York City, New York City Bar (June 24, 2014)(hereinafter "Statement of Ron Hayduk") (notes and PowerPoint slides on file with author).

19 Statement of Jerry Vatomala, Staff Attorney, Asian American Legal Defense and Education Fund, Noncitizen Voting in New York City, New York City Bar (June 24, 2014)(hereinafter "Statement of Jerry Vatomala") (notes on file with author). See also Hearing Testimony of Jerry Vatomala, Staff Attorney, Asian American Legal Defense and Education Fund, Hearing Transcript (hereinafter "Testimony of Jerry Vatomala"), p. 28-33.

20 Statement of Sebastian Maguire.

21 Statement of Eric Friedman, Director of External Affairs, New York City Campaign Finance Board, Noncitizen Voting in New York City, New York City Bar (June 24, 2014)(hereinafter "Statement of Eric Friedman") (notes on file with author). See also Testimony of Eric Friedman, p. 66.

22 See, e.g., Rodriguez 2008 and Motomura 2014. Cf. Gerken 2010. See also *New York Times* 2014. I use the term "entity" here rather than just "government" to acknowledge that it is often substructures of local government, like school boards, police departments or election boards, what Heather Gerken calls "special purpose institutions," who interact with inhabitants of a community most directly and can have the biggest impact on their lives (4).

intertwined in this case and to offer some thoughts and recommendations on moving the issue of noncitizen voting in New York City forward. It identifies and assesses the legal obstacles to noncitizen suffrage in municipal elections in New York City, including federal criminal and immigration law, and state law obstacles. It concludes that while neither federal criminal law nor immigration law prevent state or local governments from extending the franchise to noncitizens in state or local matters, federal law imposes impediments that may deter some noncitizens from registering or that could carry serious immigration consequences for those who vote in violation of federal law.²³

Part I examines the role of local government in general and in New York City in particular in regulating the lives of immigrants, contrasting enforcement-oriented strategies with those that are integration-oriented, building on the work of Heather Gerken, Hiroshi Motomura, Cristina Rodríguez, and others.²⁴ Part II spotlights federal law obstacles to noncitizen suffrage, looking at both federal criminal law and the immigration grounds of inadmissibility and deportability.²⁵ Part III focuses on state law obstacles to noncitizen suffrage, including New York's constitution, its state election law and its home rule provisions.²⁶ Part IV discusses other recent experiences with noncitizen suffrage, both in municipal elections and other more localized elections, like school board elections.²⁷ It examines both successful and unsuccessful efforts throughout the country and evaluates the costs and benefits of attempting to extend the franchise to noncitizens. Part V provides some thoughts on advancing the issue of noncitizen suffrage in New York City and other locales.

During the hearings on Intro 410 in May 2013, Steven Richman from the Board of Elections indicated that the board opposed Intro 410 in part in the belief that it would violate state election law, which limits the franchise to US citizens.²⁸ The electorate, however, as defined by state law, does not always coincide with “the People” of a particular community. Of New York City's estimated population of 8.4 million inhabitants, approximately 1.3 million are believed to be noncitizens.²⁹ In many of New York City's 51 districts, the percentage of noncitizens is much higher and in several districts immigrants make up close to a majority of residents.³⁰ Moreover, from a legal standpoint, New York City's election law and home rule provisions allow for local enactments to trump state election law under certain circumstances.³¹ As David Andersson from the Voting Rights Coalition asked during those

23 See 18 U.S.C. § 611; 8 U.S.C. §§ 212(a)(10)(D); 237(a)(6).

24 *Id.*

25 See 18 U.S.C. § 611; 8 U.S.C. §§ 212(a)(10)(D); 237(a)(6).

26 N.Y. Const. art. II, § 1; art. IX, §§ 1, 2; New York Election Law §§ 1-102; 5-102; New York Statute of Local Governments, §§ 2, 10, 11, 23.

27 See, e.g., Hayduk 2006. See also Raskin 1993; Harper-Ho 2000; Kini 2005.

28 Written Statement of Steven Richman, General Counsel, New York City Board of Elections (hereinafter “Written Statement of Steven Richman”), Hearing Testimony, pp. 35-38.

29 Statement of Daniel Dromm, Hearing Testimony, pp. 4-6; Written Statement of Cheryl Wertz, N.Y. Coalition to Expand Voting Rights (hereinafter “Written Statement of Cheryl Wertz”), Hearing Testimony, pp. 39-40.

30 Written Statement of Cheryl Wertz.

31 See N.Y. Const. art. IX, § 2; New York Election Law §§ 1-102 (“Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law”); 5-102 (“No person shall be qualified to register for and vote at any election unless

same hearings, “Do we want a city with a small voting population and an ever-growing number of marginalized and disenfranchised people?”³² With a new mayor and city council, noncitizen suffrage in municipal elections in New York City is a proposal whose time may have come.

This paper argues that the city council’s biggest challenge in moving this issue forward is dealing successfully with two related questions: 1) why the city council should be able to decide who “the People” are without approval from Albany and 2) whether it should attempt to enact Intro 410 without a referendum. After reviewing other recent experiences with noncitizen voting, it concludes that while New York law does not prevent the city council from enacting Intro 410 without approval from Albany, a city-wide referendum may be necessary and advisable. At the very least, the city council should engage the people of New York City directly on this matter, such as through mini-town hall meetings or listening sessions in the 51 districts.³³ New York election laws and home rule statutes, when read together, are ambiguous enough that good arguments can be made for why neither Albany’s approval nor a city-wide referendum is required.³⁴ Nonetheless, given New York City’s historic relationship with the state legislature and its power to preempt local law on election matters,³⁵ if the city council attempts to expand the franchise to noncitizen voters without a city-wide referendum or comparable measure, it could trigger preemptive action in Albany, or lengthy, divisive, and costly battles in the courts.³⁶

I. Immigrant Integration and Local Government

Immigrant integration is a distinctly local matter. It is at the local level that people work, seek police protection, send children to school, and advocate for safer, healthier, neighborhoods (Rodríguez 2008, 571; Motomura 2014, 165). Although immigrant integration occurs in the shadow of federal immigration enforcement, it is problematic for the national government, or, for that matter, states, to dictate integration policies from the top down.³⁷ Policies that may make sense in a global city like New York City or Chicago, such as noncitizen participation on local school boards or neighborhood councils, may meet with great resistance in a more insular community, like Lewiston, Maine or parts of upstate New York (Gilbert 2009).

As Cristina Rodríguez writes, management of immigration is a multi-sovereign task, requiring complementary roles for national, state and local actors (Rodríguez 2008, 610). This is even truer today. Given the federal government’s inability to reach a national solution on immigration reform, states and local governments have taken the regulation

he is a citizen of the United States and is or will be, on the day of such election, eighteen years of age or over, and a resident of this state and of the county, city or village for a minimum of thirty days next preceding such election”); New York Statute of Local Governments, §§ 2, 10-11.

32 Written Statement of David Andersson, N.Y. Coalition to Expand Voting Rights (hereinafter “Written Statement of David Andersson”), Hearing Testimony, pp. 49-50.

33 See New York Statute of Local Governments, § 23(2)(e).

34 See Testimony of Jerry Vatomala, 28-33.

35 New York Election Law, § 1-102.

36 For an excellent study of local governance issues in New York City, see Briffault 1992.

37 See Rodríguez 2008 for a discussion on how the “federal exclusivity principle obscures our structural need for federal, state, and local participation in immigration regulation.”(571).

of immigrants into their own hands (Gilbert 2012). Some policies, like Arizona's SB 1070, are enforcement-oriented.³⁸ In contrast, other state and local authorities invoke anti-commandeering rules to justify their refusal to enforce federal immigration law (see, e.g., Lasch 2013). Still others are adopting measures to incorporate immigrants into the life of a community, such as through in-state tuition benefits, driver's licenses, ID cards, and other privileges of membership (Motomura 2014, 59).

Powerful reasons exist for allowing New York City to extend the suffrage to noncitizens in municipal elections without waiting for permission from the state legislature or for a state-wide measure, like the New York is Home Act introduced in June 2014. Just as federal immigration law should not presumably trump state and local integration efforts,^{39,40} state laws should not automatically override or impede local efforts. Yet while US constitutional law protects states against commandeering by the federal government, which prohibits the federal government from ordering the states to either adopt a federal regulatory scheme or enforce federal law,⁴¹ local governments only enjoy such autonomy as a state's constitution or laws provide (Rodríguez 2008, 637; see also Frug and Barron 2006). Just as states can serve as labs, however, so can local governmental entities. While states have a crucial role to play in setting baselines in areas like workers' rights, public safety, voting rights, health, and education, communities are strengthened if they are supported and encouraged to develop their own solutions to local problems (see Gerken 2010, 23-4; *cf.* Gordon 1996; Briffault 1994). Fortunately for the people of New York City, neither federal law nor New York State law prevents New York City from extending the franchise to noncitizens in municipal elections, as the next two sections will demonstrate.

II. Federal Obstacles to Noncitizen Suffrage

This section will address issues of federal law raised by Intro 410 and any successor legislation. The main point is that although federal law does not prevent New York City from extending voting rights to noncitizens in local elections, it does carry certain consequences that could act as a deterrent to voting or, even worse, imperil voters' immigration status. Federal law criminalizes noncitizen voting in federal elections, unless 1) the election is also held for some other state or local purpose, 2) noncitizens have been authorized to vote

38 Motomura draws distinction between direct and indirect involvement by state and local actors with immigration law, and distinguishing measures that are enforcement-oriented from measures to either neutralize or remain neutral in enforcement (2014, 57-9).

39 See *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 (2009); see also *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 334-37 (2008) (Ginsburg, J. dissenting) (criticizing majority for not applying a presumption against preemption); *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (where the text of a preemption clause is open to more than one plausible reading, courts ordinarily "accept the reading that disfavors preemption"); *Medtronic Inc. v. Lohr*, 518 U.S. 470 (1996) (Courts have "long presumed that Congress does not cavalierly preempt state law causes of action"); *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977) ("This assumption provides assurance that "the federal balance" will not be disturbed unintentionally by Congress or unnecessarily by the courts"); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (preemption analysis starts with assumption that "the historic police powers of the states [a]re not to be superseded ... unless that was the clear and manifest purpose of Congress").

40 See also Rodríguez 2008, arguing that if we did away with federal exclusivity in immigration matters, "federal alienage distinctions would lose their presumptive rationality" (629-30).

41 *Printz v. United States*, 521 U.S. 898, 935 (1997)

under the state's constitution, state law or a local ordinance, *and* 3) voting is conducted so as to ensure that a noncitizen can vote for such other purpose, but not in the federal matter.⁴² In short, federal law explicitly recognizes that a state or local government can extend suffrage to noncitizens, at least with regard to a state or local matter, as long as the relevant government body develops procedures to ensure that the noncitizen cannot vote on the federal matter.⁴³ This might be done either by giving noncitizens a different ballot, or by holding local elections at a different time. At the same time, immigration law makes a noncitizen who votes in violation of any federal, state or local law inadmissible or deportable.⁴⁴

How might this happen? Intro 410 defines “municipal voters” broadly in terms of persons “lawfully present” under the immigration laws.⁴⁵ This includes not only green card holders, but also persons here indefinitely on work visas, students, asylum applicants, and recipients of Deferred Action for Childhood Arrivals (DACA).⁴⁶ The authors of Intro 410 recognized that limiting voting rights to lawful permanent residents would exclude many persons who may be as much on a pathway to citizenship as permanent residents, even if the pathway is longer and more contingent.⁴⁷ For example, if S. 744, the immigration reform bill passed by the US Senate in June 2013, had become law, most Registered Provisional Immigrants (“RPIs”) would have had to wait ten years before becoming lawful permanent residents and another three years before applying for US citizenship.⁴⁸ However, many persons who are now lawfully present, particularly persons with deferred action status or temporary visas, could become inadmissible or deportable or even subject to prosecution if they vote after their lawful presence expires, or even if they use the wrong ballot.⁴⁹ So, as witnesses underscored, the Board of Elections will need to come up with measures to minimize these dangers, such as through ballot design, training of poll workers, and educating noncitizen voters about the process of voting and perils of voting in violation of the rules.⁵⁰

42 18 USC § 611(a).

43 *Id.*

44 8 U.S.C. §§ 212(a)(10)(D); 237(a)(6).

45 Int. 410, at § 1057-b(1).

46 See Gilbert 2013 for a discussion on the use of “lawful presence” to grant deferred action to DREAMers and to other categories of individuals granted deferred action, as well as its use as a measure of eligibility for state driver’s licenses under the federal REAL ID Act, Pub. L. 109-13, Div. B. § 202(c)(2)(B), 119 Stat. 302 (2005)). For a thoughtful discussion of the complexities of unlawful presence and the relationship among *Plyler v. Doe*, birthright citizenship, the DREAM Act, and full-scale legalization, see Motomura 2012. See also Motomura 2014, 10-12.

47 Statement of Councilman Daniel Dromm; Hearing Transcript, 4-6. See also Written Statement of Cheryl Wertz, NYC Coalition to Expand Voting Rights; Hearing Testimony, 39-40.

48 See Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. § 2102 (2013) (as passed by Senate, June 27, 2013).

49 For example, some nonimmigrant visas, such as student visas, require that recipients have no intent to abandon their foreign domicile. See, e.g., INA §§ 101(a)(15)(B), (F), (J) and (M). A noncitizen voter who declares an intent to become a US citizen could be violating the terms of his or her visa. See also Written Statement of Neena Dutta, American Immigration Lawyers Association (“AILA”) NY Chapter; Hearing Testimony, 13-15.

50 *Id.* See also Written Statement of Eric Friedman, Campaign Finance Board, 31-34.

III. State Law Obstacles to Noncitizen Suffrage

One major question is whether New York City can adopt Intro 410 without approval from the state legislature. This has been the sticking point in Massachusetts, where various cities, including Cambridge, Brookline, Wayland, and Amherst, have enacted noncitizen voting laws but, despite repeated attempts, the state has thus far failed to enact enabling legislation.^{51,52} The same legal obstacles do not currently exist under New York law. First, New York's constitution poses no obstacle. Although it protects the voting rights of US citizens over 18 who meet New York's residency requirement, it does not limit the franchise to them.⁵³ As Jerry Vatamala, staff attorney for the Asian American Legal Defense and Education Fund, persuasively argued before the city council, New York's constitution establishes a baseline or floor, not a ceiling.⁵⁴ For example, while New York City could extend the franchise in municipal elections to sixteen year olds without violating New York's constitution, it could not set 21 as the minimum age.

New York state election law does, however, limit the franchise "in any election" to US citizens. The language in the statute, unlike the language in New York's constitution, is prohibitory. On the qualification of voters it provides that

No person shall be qualified to register for and vote at any election unless he is a citizen of the United States and is or will be, on the day of such election, eighteen years of age or over, and a resident of this state and of the county, city or village for a minimum of thirty days next preceding such election.⁵⁵

New York's election law also provides, however, that if a conflict exists between state election law and "any other law," the latter prevails unless the election law specifically provides that it should prevail.⁵⁶ Known in preemption parlance as a "savings clause" or "reverse preemption" provision, this language creates a presumption *against* preemption

51 A report prepared by the Department of Urban and Environmental Policy and Planning of Tufts University for the Massachusetts Immigrant and Refugee Advocacy Coalition and the Cambridge Immigrant Voting Rights Campaign concluded that in the current political climate enabling legislation was not feasible (Castagna et al. 2005, 1-3).

52 See also Mass. Bill H. 628, 188th Sess. (2013-14), An Act enabling cities and towns to extend voting rights in municipal elections to certain noncitizens of the Commonwealth (Jan. 22, 2013) at <https://malegislature.gov/Bills/188/House/H628>; Mass. Bill H. 3590, An Act Relative to Voting Rights in the Town of Amherst (June 24, 2013) at <https://malegislature.gov/Bills/188/House/H3590>; Mass. Bill H. 3430, 187th Sess. (2011-12), An Act authorizing certain local voting rights for permanent resident legal aliens residing in the town of Brookline (May 5, 2011) at <https://malegislature.gov/Bills/187/House/H3430>.

53 N.Y. Const. art. II, § 1 provides that "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."

54 Hearing Testimony of Jerry Vatamala, Staff Attorney, Asian American Legal Defense and Education Fund, Hearing Transcript (hereinafter "Testimony of Jerry Vatamala"), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=2517717&GUID=E87330B1-470D-4FDC-8C18-9F9521264FDB>, p. 30.

55 New York Election Law, § 5-102.

56 New York Election Law § 1-102 ("Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply *notwithstanding any other provision of law*") (emphasis added).

unless the New York State legislature makes its intent to preempt local law unmistakably clear (Gilbert 2012, 160-61, 170).⁵⁷

The state legislature easily could have included preemptive language such as “notwithstanding any state or local enactment to the contrary ...” in § 5-102, the provision quoted above. Such language arguably would have prevented local governments from extending the franchise to noncitizens (or to sixteen year olds).⁵⁸ It has not done so.⁵⁹ Intro 410 could raise policy concerns in Albany and result in state legislative action to limit local government’s power to expand the franchise. But even if Albany has the authority to do so, in light of the savings clause in § 1-102 of New York’s election law, it would have to do so explicitly.⁶⁰

The more difficult question is whether the New York City Council can or should adopt Intro 410 on its own, or whether a referendum is necessary or advisable. In 2013, Mayor Bloomberg’s office also opposed Intro 410 on the basis that, even if not contrary to New York’s constitution or its election law, under New York’s home rule statute and the city charter, any expansion of the franchise had to be via referendum.⁶¹ Section 23(2)(e) of New York’s Municipal Home Rule Law, along with § 38 of New York City’s charter, provides that a local law *shall* be subject to mandatory referendum if it “[a]bolishes an elective office, or changes the method of ... electing ... an elective officer, or changes the term of

57 See also Opinion Letter from Aziz Huq & Wendy Weiser, Associate Counsel, Brennan Center for Justice, NYU School of Law, Feb. 2, 2005 (concluding that the New York City Council has the authority to adopt noncitizen voting in municipal elections without authorization from Albany)(on file with author).

58 There is also an argument that this is not an area where the state can limit local government’s power. However, a careful reading of New York election law together with New York’s home rule statute indicates that while extension of the franchise in municipal elections is not an area where local governments have been excluded from legislating, it is also not an area where this local power is guaranteed. New York’s home rule statute reserves to the state legislature the power to enact laws in certain specified areas, *notwithstanding the fact* that they impair, diminish or repeal the powers of local government. N.Y. Statute of Local Government, § 11. This includes *inter alia* “[a]ny law relating to a matter *other than* the property, affairs or government of a local government.” *Id.* at §11(4) (emphasis added). Since noncitizen voting on matters of municipal concern relates to local government affairs, this would be an area where there is a presumption *against* preemption of local law. That does not mean, however, that the presumption is irrebuttable if it otherwise falls within the state’s power. See N.Y. Statute of Local Government § 20(1) (indicating that a matter can still relate to the property, affairs or government of local government, even where it falls within the state’s power to legislate). 59 N.Y. Statute of Local Government, § 11, in reserving to the state the power to enact laws in specified areas, “*notwithstanding the fact that they impair, diminish or repeal the powers of local government*” demonstrates that the state could easily have included similar language in its qualifications for voters. See text, New York Election Law, § 5-102.

60 This interpretation is consistent with Art. IX of New York’s constitution, which includes a local government Bill of Rights granting broad powers to local authorities and creating a variety of structural impediments to state legislators’ ability to limit local power. See, e.g., N.Y. Const. art. IX, §§ 1(d)(prohibiting annexation of territory without referenda in both the annexing and annexed territories); 2(b)(1)(preventing state legislature from repealing, diminishing, impairing or suspending any power granted to local government without enactment of a statute by the legislature with approval of the governor in that year and the consecutive calendar year); 2(b)(2)(preventing state from enacting any law in relation to the property, affairs or government of any local government “except by general law, or by special law only on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership”). See also New York Statute of Local Governments, §§ 2, 10, 11, 23.

61 Written Statement of William Heinzen, Deputy Counselor to the Mayor, Hearing Testimony, p. 3.

an elective office, or reduces the salary of an elective officer during his term of office.”⁶²

There is a powerful argument that expanding the franchise for municipal elections to include noncitizen residents is a change in method: it would change the very definition of who makes up the electorate; it may also require a change in procedures for voting, to make sure noncitizens cast the proper ballot.⁶³ Where the state legislature sets forth categories of local laws subject to mandatory referendum, as it did with § 23(2)(e), New York courts have said that they will interpret those categories when called upon to do so.⁶⁴

The present analysis identified only a few New York cases interpreting this provision, most of which involved “changes [to] the term of elective office” clause, but the cases interpreted the referendum requirement fairly narrowly.⁶⁵ Thus, it is conceivable that New York’s courts would find that this expansion of the franchise is not a change in *method*. For example, the Seventeenth Amendment to the US Constitution providing for popular election of US senators (from the prior system of appointment by state legislatures) would be a change in method,⁶⁶ while expanding the franchise to include blacks,⁶⁷ women⁶⁸ and 18 year olds⁶⁹ might not be. In any event, language in New York’s home rule statute and its election laws is ambiguous enough that if Intro 410 were passed without referendum, the matter would likely trigger a court battle.

In 2013, Intro 410 enjoyed the support of a majority of the New York City Council, and at least at one point enough to override a mayoral veto.⁷⁰ A referendum increases the chances of defeat. A similar initiative to extend the franchise in local elections to lawful residents was narrowly defeated in Portland, Maine in 2010 (*Associated Press* 2010; Hoey 2010).⁷¹ A proposal to allow noncitizen voting in school board elections in San Francisco’s was defeated by a 2.9 percent margin in 2004 (see Mello 2004 and Kini 2005) and again, in 2010, by a much wider margin (Mejia 2010). At the same time, a referendum in New York City, if it were successful, would dramatically strengthen the legitimacy of Intro 410, making it much harder to attack in the courts or subvert in the state legislature.

62 New York Statute of Local Government, § 23(b)(e); New York City Charter, § 38.

63 See Testimony of Eric Friedman, Campaign Finance Board, p. 68-70.

64 *Haskill v. Pattison*, 2001 WL 1155004 at *5 (N.Y. Sup. 2001)(unpublished)(“Legislature has evidenced an intent to specifically regulate the categories of local laws requiring mandatory referendum, and when called upon to do so, courts have provided definition to those categories”) citing *Roth v. Cuevas*, 158 Misc.2d 238, 603 N.Y.S.2d 962, affd. 197 A.D.2d 369, 603 N.Y.S.2d 736, affd. 82 N.Y.2d 791, 624 N.E.2d 689, 604 N.Y.S.2d 551 (1993), *Benzow v. Cooley*, 22 Misc.2d 208, 199 N.Y.S.2d 22, affd. 12 A.D.2d 162, 209 N.Y.S.2d 364, affd. 9 N.Y.2d 888, 216 N.Y.S.2d 701, 175 N.E.2d 830 (1961); *Holbrook v. Rockland County*, 260 A.D.2d 437, 687 N.Y.S.2d 722 (2d Dept. 1999).

65 See *Holbrook v. Rockland County* (“two hats” law barring an official from holding a second elective office was not a change to the term of an elective office); *Lawrence v. Green*, 178 Misc.2d 716, 718, 679 N.Y.S.2d 904, 906 (1998) (increasing the term of a legislative appointment was not a change to the term of an elective office).

66 U.S. Const. amend. XVII, cl. 1.

67 U.S. Const. amend. XV, § 1.

68 U.S. Const. amend. XIX.

69 U.S. Const. amend. XXIV, § 1.

70 Statement of Daniel Dromm, Hearing Transcript, p. 7.

71 Phone Interview with Zachary Heiden, Legal Director, American Civil Liberties Union, Portland, Maine, June 23, 2014.

IV. Lessons to be Learned from Other Experiences

In assessing the feasibility of noncitizen suffrage in New York City, and whether it should be adopted by the New York City Council or via referendum, what lessons can be learned from other experiences with noncitizen voting? This section first briefly reviews the historical and legal underpinnings of noncitizen suffrage, which have been thoroughly analyzed by legal scholars and political scientists. It then looks at several successful and less successful modern attempts at noncitizen suffrage. The next and final section briefly explores the utility of distinguishing *de jure* obstacles to noncitizen suffrage, where the law is an actual impediment, from *de facto* obstacles, where policy and opinion-makers either see the law as an obstacle or where rigid conceptions of citizenship stand in the way of extending suffrage to immigrants who have not gone through the naturalization process. The analysis then addresses the best way for New York City to move forward on this issue. The attempted secession of Staten Island from New York City in the 1990s illustrates the importance of engaging the people of New York City directly in this process, either through a city-wide referendum, or, at a minimum, mini-town hall meetings in each of the city districts.

Theoretical and Historical Underpinnings of Noncitizen Suffrage in the United States

In his path-breaking 1993 article, “Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Noncitizen Suffrage,” Jamin Raskin examined the historical and legal underpinnings of noncitizen voting in the United States. For over the first 100 years of US history, noncitizen white male property owners were granted the franchise in many states and US territories while women, the poor, and blacks remained disenfranchised (Raskin 1993, 1401).⁷² While the franchise gradually expanded through political struggle and constitutional amendment to incorporate blacks, women, the poor, and even eighteen year olds (1392-93), states began gradually to eliminate noncitizens from the electorate, so that, by 1926, all states and the federal government had repealed their noncitizen voting laws (Raskin 1993, 1397; see also Hayduk 2006, 26-27).

This trend away from noncitizen voting was as much tied to historical events, from the War of 1812 to World War I, and growing fears of foreign influence, as it was to the changing demographics of immigration beginning in the mid-1800s (Raskin 1993, 1398-99, 1403-04; Hayduk 2006, 18, 23, 29). By the post-Civil War period, the right to vote gradually became linked to questions of membership and belonging, with national citizenship serving as a measure of full belonging,⁷³ but it still took the Fifteenth Amendment to extend the right to vote to blacks,⁷⁴ the Nineteenth Amendment to extend it to women,⁷⁵ and the Twenty-Third Amendment to eliminate poll taxes and discrimination on the basis of wealth

72 See also Neuman 1992 on the role of popular sovereignty in defining who “the People” are and evaluating how a revival of alien suffrage would fare under current understandings of democracy.

73 See 39th Congress 1st Session Cong. Globe 497-499 (1866)(demonstrating how debate over the Fourteenth Amendment and extending citizenship to the former slaves was intertwined with concerns about extending membership rights to immigrants from non-European countries).

74 U.S. Const. amend. XV, § 1.

75 U.S. Const. amend. XIX.

and poverty.⁷⁶ In 1874, the US Supreme Court ruled unanimously in *Minor v. Happersat*⁷⁷ that Missouri had not violated a woman's equal protection rights under the Fourteenth Amendment by denying her suffrage. The court found that suffrage was not one of the privileges of citizenship,⁷⁸ that "all the citizens of the States were not invested with the right of suffrage"⁷⁹ and also, giving the example of noncitizen suffrage, that "citizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage."⁸⁰

Well into the twentieth century, states and the federal government denied the franchise to those deemed incapable of exercising it intelligently. In fact, many of the arguments used today to deny suffrage to noncitizens mirror arguments made against granting it to blacks, women and the poor: they are new to our system of government; they require a period of tutelage; they lack the capacity to exercise the right intelligently (see Rosberg 1977, 1092, 1115; Harper-Ho 2000, 303-304; Hayduk 2006, 78-79). As Raskin underscores, it was generally through political struggle and the amendment process rather than litigation that the right to vote was eventually extended to these marginalized groups (Raskin 1993, 1392-93).

As noted above, Congress eventually made it illegal for a noncitizen to vote in any federal election,⁸¹ but in recognizing the power of states and local communities to extend the franchise to noncitizens in state or local matters, it drew no distinction between those here legally and those not.⁸² We tend to think of citizenship largely in terms of the rights and privileges of national citizenship.⁸³ The Fourteenth Amendment, however, did not abolish state citizenship when it constitutionalized national citizenship. On the contrary, in stating that all persons born or naturalized in the United States were citizens of the United States *and* of the state where they reside, it both guaranteed and reaffirmed state citizenship.⁸⁴ It ensured that former slaves who were now US citizens were also state citizens, overturning *Dred Scott*,⁸⁵ but it also recognized state citizenship as distinct from national citizenship.⁸⁶ Today, although the Supreme Court treats voting as a basic right of citizenship,⁸⁷ it also has recognized that there are different types of citizenship and that states and local governments should be able to extend greater protections to members of their communities, as long as federal baselines are met.⁸⁸

76 U.S. Const. amend. XXIII

77 88 U.S. (21 Wall.) 162 (1874).

78 *Id.* at 171.

79 *Id.* at 176.

80 *Id.* at 177.

81 18 U.S.C. § 611.

82 *Id.*

83 In his dissenting opinion in the Slaughter-House cases, Justice Bradley stated that "citizenship of the United States is the primary citizenship in this country, and [] state citizenship is secondary and derivative, depending upon citizenship of the United States and the citizen's place of residence." Slaughter-House Cases, 83 U.S. 36, 112 (1872)(Bradley, J., dissenting).

84 U.S. Const. amend. XIV, § 1, cl. 1.

85 *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

86 See Slaughter-House Cases, 83 U.S. at 73-74.

87 *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964).

88 *Cf. Saenz v. Roe*, 526 U.S. 489, 502-504 (1999)(recognizing that citizens have two political capacities, one state and one federal).

Recent Experiments with Noncitizen Suffrage in the United States

NonCitizen Voting in Municipal Elections

In the early 1990s, Takoma Park, Maryland, a small, progressive city bordering Washington, DC, served as a laboratory for noncitizen voting as Jamin Raskin, a Takoma Park resident and a law professor at American University's Washington College of Law, researched the historical and legal roots of noncitizen suffrage, published his groundbreaking article, and helped lead a successful campaign for its adoption in municipal elections in Takoma Park (Raskin 1993 1460-66; Kraut 2012). The "Share the Vote" campaign encouraged Takoma Park residents to vote "Yes" on a nonbinding referendum in November 1991, which narrowly passed and was adopted by the city council the following February (ibid.). Noncitizen voting expanded to other progressive towns in Montgomery County, sparked similar efforts around the country.

Not surprisingly, the push for noncitizen voting in Washington, DC met with stiff resistance from the federal government (Hayduk 2006, 171-72). Although efforts to expand the franchise in the District of Columbia began around the time the referendum passed in Takoma Park, it was more than a decade later when a measure was formally introduced in the DC Council (after DC Mayor Anthony Williams announced his support for noncitizen suffrage) to grant lawful permanent residents the right to vote in municipal elections (ibid., 169, 171). Almost immediately, conservative members of the US Congress, which has ultimate authority over the District, took steps to block the measure, derailing the initiative (ibid., 171-72).

Since noncitizen residents of Takoma Park gained the right to vote in municipal elections, attempts to extend the franchise in other localities have not fared as well. Massachusetts is a good example. Several towns in Massachusetts have passed laws or referenda to allow for noncitizen suffrage in municipal elections, including Cambridge, Brookline, Amherst, and Wayland, but the state of Massachusetts has repeatedly failed to adopt enabling legislation, as required by Massachusetts law (see Harper-Ho 2000, 312-13 and Hayduk 2006, 173-80).⁸⁹ Despite these efforts, in a veritable *Groundhog Day*,⁹⁰ each legislative session assembly members from these communities propose general legislation which would allow local governments to extend voting rights in municipal elections to noncitizen legal residents⁹¹ and special legislation that would allow specific towns that already have passed local laws to extend the franchise in local elections to legal residents.⁹² Typically,

89 See also Mass. Gen. Laws, Part I, Title VIII, Ch. 51, §1.

90 This term refers to a phenomenon from the 1993 movie "Groundhog Day" (Columbia Pictures 1993), the story of a weatherman who must keep reliving one particular Groundhog Day until he becomes a better person.

91 See, e.g., H.B. 672, 186th Gen. Ct. (Mass. 2009)("An Act enabling cities and towns to extend voting rights in municipal elections to certain noncitizens of the Commonwealth"); H.B. 202, 187th Gen. Ct. (Mass. 2011)("An Act enabling cities and towns to extend voting rights in municipal elections to certain noncitizens of the Commonwealth"); H.B. 628, 188th Gen. Ct. (Mass. 2013)("Act enabling cities and towns to extend voting rights in municipal elections to certain noncitizens of the Commonwealth").

92 See, e.g., H.B. 4306, 186th Gen. Ct. (Mass. 2009)("An Act relative to voting rights in the Town of Amherst"); H.B. 210, 187th Gen. Ct. (Mass. 2011)("An Act relative to voting rights in the town of Amherst"); H.B. 3430, 187th Gen. Ct. (Mass. 2011)("An Act authorizing certain local voting rights for permanent legal resident aliens residing in the Town of Brookline"); H.B. 3323, 188th Gen. Ct. (Mass. 2013)("An Act

the enabling legislation would amend the election laws to allow noncitizens 18 years or over to vote in any municipal election for any local official or on any local matter as long as they remain domiciled in the municipality.⁹³ Although the proposals generally have not required legal residency, they often have required that the noncitizen declare, under penalty of perjury, an intent to become a US citizen and to begin that process if eligible.⁹⁴ The proposals frequently also require approval by the legislative body of the municipality and by the voters as a ballot question before submission to the state legislature.⁹⁵ Finally, they also clarify that the law would not confer the right to vote in any state or federal election.⁹⁶ Thus far, iterations of this legislation, including the current version, HB 628, have been referred to the state's Elections Law Committee where they generally have died after being sent for a study order.⁹⁷

Despite the failure of these proposals to become law, they are useful models for analysis. They demonstrate that there are different, often competing, often complementary, conceptions of local, state and national citizenship.⁹⁸ By extending suffrage to those termed by Hiroshi Motomura "Americans in waiting"⁹⁹ who have been incorporated into the places where they reside, these measures would provide voting rights to persons who have demonstrated a commitment to their communities and the country, confronting the standard criticism that voting should be reserved to persons who choose to become US citizens. Where, however, state enabling legislation is required, as it is in Massachusetts, it may create a significant obstacle to noncitizen suffrage in places where the values of more cosmopolitan locales are at odds with the insular values of the state as a whole.

Along these lines, Portland, Maine's failed referendum in 2010 warrants attention. Maine in recent years has gone from being one of the whitest states in the country to having

authorizing local voting rights for permanent resident aliens in the town of Wayland"); H.B. 3590, 188th Gen. Ct. (Mass. 2013) ("An Act relative to voting rights in the town of Amherst").

93 See note 92.

94 *Id.*

95 See, e.g., H.B. 628, 186th Gen. Ct. (Mass. 2009), at § 1(c)(1) ("Upon approval by the legislative body, the action of the body shall be submitted for acceptance to the voters of a city or town at its next regular municipal or state election").

96 *Id.*

97 See H.B. 4145, 188th Gen. Ct. (Mass. 2014) ("Ordered, That the committee on Election Laws be authorized to sit during a recess of the General Court to make an investigation and study of . . . House documents numbered . . . 628 . . . relative to election laws); see also *The Legislative Process*, Massachusetts Bar Association at <http://www.massbar.org/legislative-activities/the-legislative-process> (describing how when a bill is reported out of committee, it results in either a favorable report, recommending the bill for passage, an adverse report, which recommends that the bill be killed, or a study order, which technically means studying the bill during recess but most often is used, like a motion to table, as a quiet way to kill the bill).

98 For an excellent analysis of competing and complementary conceptions of citizenship, see Bosniak 2006.

99 This is a concept coined by Hiroshi Motomura from his book, *Americans in Waiting* (2005), which has been widely embraced by scholars, advocates and policymakers to capture the idea that many immigrants, whether they are here legally or not, are on a pathway to citizenship. For some, especially lawful permanent residents, the pathway is fairly straightforward. Motomura argues that lawful permanent residents are indeed "Americans in waiting," and should enjoy the same rights and opportunities as US citizens while on the pathway to citizenship. He goes on to argue in his latest book, *Immigration Outside the Law* (2014) that many undocumented immigrants are also Americans in waiting, that many may eventually become lawful permanent residents, and that state and local governments should be able to adopt measures to integrate them into their communities.

significant immigrant populations in a number of cities, including Lewiston and Portland (Goodnough 2007, A16). Portland now has a distinctly multicultural, cosmopolitan character (Cadge et al. 2009, 17) while Lewiston, a former textile town about fifty minutes west of Portland, is home to a large Somali community that began to migrate there in 2001 (Gilbert 2009, 361-64).

In 2010, the League of Young Voters launched a drive to extend the franchise in municipal elections in Portland to noncitizen legal residents (Hoey 2010).¹⁰⁰ The measure was initially voted down 7-5 by Portland's Charter Commission, which is responsible for proposing amendments to the city charter (ibid.). John Spritz, a member of the commission who voted against the measure, said that several commission members felt that the matter should be handled by referendum: "The tone of the commission was not that this was a bad thing but it felt like something that should come from the people, not the commission" (ibid.).

In response, supporters launched a referendum drive to place the measure on the November ballot. By August, the city clerk's office certified 4,522 signatures, enough to pass the threshold of 4,487 then required to place the measure on the ballot (Hoey 2010). Subsequently, on August 23, the city council held a public hearing, voting unanimously to place the measure on the ballot in a procedural vote triggered by the city clerk's certification (Bell 2010). The referendum was narrowly defeated, however, on November 2, 2010, by 52 to 48 percent (*Associated Press* 2010).

Despite Portland's reputation as an immigrant-friendly city which has worked to incorporate immigrants and refugees from all parts of the world into the social fabric of the community (Cadge et al. 2009),¹⁰¹ some saw the defeat as reflecting some Mainers' concerns with the reliance of refugees and immigrants on public assistance.¹⁰² Until 2011, Maine's welfare system had been more generous than the federal system. When the US Congress restricted immigrants' eligibility for public benefits in 1996,¹⁰³ Maine's legislature responded in 1997 by authorizing the state to provide non-emergency health care to aliens residing in Maine who would be ineligible for federal assistance under the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*.¹⁰⁴ Over the last decade, however, public opinion has shifted. Nearby Lewiston's experience with a large influx of Somali refugees in 2001, depicted as overly-reliant on public assistance, became a rallying cry by many to tighten

100 The ballot measure called for a yes or no vote on an amendment to the Portland City Charter that "Any other provision in this Charter notwithstanding, legal immigrants who are residents of Portland and 18 years old or older on the date of any municipal election shall be allowed to register to vote and vote in municipal elections. In order to register, a legal immigrant shall provide proof of identify, age and residency, pursuant to Title 21-A, and legal status according to standards established by the city clerk. Such persons shall not have the right to run for and hold an elected municipal office" (League of Women Voters of Maine 2010, 4).

101 According to Cadge et al. (2009), the value of diversity is reflected in Portland's strategic planning documents, and that immigrants and refugees "are often referred to in these documents and by organizational and city staff as 'new Mainers,' a testament to the conscious effort to minimize a negative otherness that often comes with an immigrant label" (17).

102 Phone Interview with Zachary Heiden, Legal Director, American Civil Liberties Union, Portland, Maine, June 23, 2014. Cf. Miller 2013 and Moretto 2014.

103 Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), Pub.L. No. 104-193, 110 Stat. 2105 (1996), codified at 8 U.S.C. §§ 1611, 1612, 1621, 1622.

104 Public Law 1997, chapter 530, section A-16 (1997), codified at Me. Rev. Stat. tit. 22, § 3762(3)(B)(2). See also *Bruns v. Mayhew*, 750 F.3d at 64.

Maine's social safety net (Bouchard 2002, 2B; Nadeau 2005, 122). Indeed, in 2011, Maine passed legislation terminating state-funded non-emergency medical care for noncitizens ineligible for federal Medicaid benefits.¹⁰⁵ Since then, the Republican Governor has sought to eliminate other forms of state public assistance to unauthorized immigrants (Miller 2013; Moretto 2014).

What explains this shift? Mainers consider themselves a self-reliant, hardworking people who turn to public benefits as a last resort. While believing in a social safety net, they also have tended to draw a distinction between themselves and those "from away" (Goodnough 2007, A16). The fact that many recent arrivals are Muslims from Africa has triggered racist responses and counter-responses in nearby Lewiston, climaxing with a hate rally in downtown Lewiston in January 2003 led by a white supremacist group from Ohio and a counter-rally by the Many & One Coalition at Bates College in Lewiston.¹⁰⁶ In 2012, Lewiston Mayor Robert MacDonald made news again when he told immigrants in a *BBC* interview, "[Y]ou come and you accept our culture and you leave your culture at the door" (Thistle 2012). Most recently, Maine Governor LePage, who is running for reelection in 2014, has engaged in legal and political battles with Maine Attorney General Janet Mills, the Maine Municipal Association, and many municipalities, including Portland and Bangor, in his efforts to prevent municipal governments from using state funds to provide general assistance to unauthorized immigrants and asylum seekers (Miller 2013; Moretto 2014).

While the City of Portland and many community groups have worked hard to incorporate immigrants into the social fabric of that community and to celebrate Portland's multicultural identity (Cadge et al. 2009), more insular values persist. Indeed, Richard Ranaghan, a member of the Portland Charter Commission who opposed noncitizen suffrage, described the right to vote as "something to be earned and not something to be handed out lightly" (Hoey 2010). The fact that Portland has both the largest immigrant population in the state and the largest population requiring social services may have helped derail Portland's referendum and triggered the legislative backlash the following year.¹⁰⁷ Moreover, even if the referendum had passed, it would have conflicted with Maine's election law which provides that "to vote in any election in a municipality . . . a person must be a citizen of the United States."¹⁰⁸ Thus, while a successful referendum in Portland would have had powerful symbolic value, signaling to newcomers (and to the rest of the state) that immigrants are considered full members of the Portland community, it arguably would have had limited legal effect without reform at the state level. This does not appear likely under the current

105 *Bruns v. Mayhew*, 750 F.3d 61, 64 (1st Cir. 2013) (upholding the constitutionality of Maine's decision to bring its health care policy into line with federal law).

106 Events in Lewiston following the arrival of Somali Muslims are chronicled in my article, "Citizenship, Civic Virtue and Immigrant Integration: The Enduring Power of Community-Based Norms" (Gilbert 2009, 361-67). Interestingly, when asked why the initiative failed in Portland, Zach Heiden of the ACLU cited Mainers' concerns with immigrants' reliance on public benefits, and explained how this dated back to Lewiston officials' response to the arrival of the Somalis in Lewiston (Phone Interview, June 23, 2014).

107 Phone Interview with Zachary Heiden, June 23, 2014.

108 Maine Revised Statutes, Title 21-A, Ch. 3, §111(1). See also Maine Const., art. 2, § 1 (granting voting rights to all U.S. citizens 18 years of age or older with residence in the state). Moreover, Maine does not have the kind of home rule provisions that would allow municipal law to trump state law. See Maine Const., art. 8, §1 (providing that the "inhabitants of any municipality shall have the power to alter and amend their charters on all matters, *not prohibited by Constitution or general law*, which are local and municipal in character").

regime, but could change after the November 2014 elections.¹⁰⁹

Noncitizen Voting on School Boards

This section will close with a brief discussion of successful and unsuccessful efforts to extend voting rights to noncitizens in school board elections. Before discussing more recent experiences in Chicago and San Francisco, it is worth recalling that, although New York State was one of the first to abolish noncitizen suffrage (in 1804), New York City was one of the first places to restore such rights (Hayduk 2006, 18-22, 101-02). In 1968, the state legislature extended the right to vote in New York City community school board elections to every parent of a child attending a public school in New York City who was “a citizen of the state, a resident of the city of New York for at least thirty days, and at least eighteen years of age.”¹¹⁰ New York State’s Education Commissioner interpreted the statute to permit noncitizen parents of public school students to serve on school boards as well.¹¹¹

In 2003, however, Mayor Bloomberg abolished New York City’s 32 community school boards, which had been criticized as ineffective, politicized and corrupt, replacing them with Community Education Councils (CECs) whose members would be selected by the leadership of local parent associations (Gootman 2004, B2).¹¹² The CECs seemed an elaborate effort to create school councils run by parents, but through a system of special purpose elections which virtually guaranteed that only parents with a vote, the “Selectors,” would serve in a leadership capacity.¹¹³ With outgoing Mayor Bloomberg criticized for

109 See Miller 2013 quoting Mary Mayhew, head of Maine’s Department of Health and Human Services as stating, “The LePage administration remains committed to protecting our scarce resource for the people of Maine and this country, particularly the elderly and disabled.” See also Moretto 2014 quoting Mayhew as stating, “If municipalities choose to offer assistance to illegal, undocumented immigrants, they will do so without state funding support.”

110 See N.Y. Educ. Law § 2590-c(4) (McKinney Supp. 2001).

111 *Ambach v. Norwick*, 441 U.S. 68, 81 n.15 (1979). The Court notes that “the State’s legislature has not expressly endorsed this policy.” *Id.*

112 The new Community Educational Councils (CECs) consist of 32 12-person councils serving each K-8 school district, and four city-wide councils, including a high school council and an English language learner council. Each of the K-8 councils consists of nine parents selected by the presidents, treasurers and secretaries of parent associations at schools within the district or their designees (“Selectors”), two other residents or business leaders appointed by the borough president, and one non-voting high school student selected by the school superintendent. Membership on the 12-person English Language Learner Council must consist of nine parents of English language learners, two individuals with a background in ELL appointed by the public advocate, and one non-voting high school student receiving ELL services. See New York City Board of Education, Community Education Councils at <http://www.nycparentleaders.org>.

113 In 2010, the Chancellor for New York City’s Education Department issued regulations providing for nonbinding online advisory votes for CEC members by parents of school age children, followed by election by Selectors. New York City, Process for the Nomination and Selection of Members of the Community Education Councils, Regulation of the Chancellor, D-410, Part IV (B) (March 24, 2010). Those regulations also provided that at least one of the nine parent CEC members had to be the parent of an English Language Learner (ELL) and at least one had to be the parent of a student with an individualized education plan (IEP). *Id.* at Part V(A)(3). In 2012, the Chancellor’s office issued new regulations abolishing the parents’ advisory vote. New York City, Process for the Nomination and Selection of Members of the Community Education Councils, Regulation of the Chancellor, D-410, at 1 (June 26, 2012). Although noncitizens are not precluded from running for positions on parents’ associations and the CECs, their participation appears to be limited by the current selection process.

centralizing control of the schools and privatizing public education with limited parental input (Hendrickson 2013), incoming Mayor De Blasio has promised to dial back or abandon many of the changes wrought by his predecessor.¹¹⁴

We see strikingly similar developments in Chicago. In 1988, noncitizen parents and community residents, including those without legal status, were given the right to vote in Chicago Local School Council (“LSC”) elections.¹¹⁵ Noncitizen voting was part of a broader effort to bring administration of failing schools back to the community by having school boards consist mainly of parents and educators¹¹⁶ with the impetus to allow noncitizens to participate coming largely from Chicago’s growing Latino community (Hayduk 2006, 104-05). Each Chicago public school has a LSC which typically consists of 12 members, including the principal, six parents, two community representatives, two school employees, and a student representative from the high schools (Chicago Public Schools 2014). The LSC makes decisions on hiring the school principal, whether to renew his or her contract, the school budget, and certain curricular matters (ibid.).

In 1995, however, the Illinois General Assembly passed legislation placing control over the Chicago Public Schools in the mayor’s office (Task Force Report 2014). Since that time, notwithstanding the LSCs, Chicago parents and teachers have witnessed increased centralization in decision-making (ibid.). Mayor Rahm Emmanuel, like Mayor Bloomberg, took dramatic steps to restructure the public schools, including closing about 50 underperforming neighborhood public schools, opening charter schools and laying off over a thousand school employees (see Ahmed-Ullah, Chase, and Sectar 2013; Perez 2014).

Recently, Mayor Emmanuel’s school policies have come under attack. A Report from the Illinois General Assembly’s Chicago Educational Facility’s Task Force criticized him for school closures, restructuring the school system without public input, and weakening the local control exercised by the democratically-elected LSCs (Task Force Report 2014, vii). Karen Lewis, President of the Chicago Teachers Union and one of his leading critics, very publicly considered running against him in his bid for reelection (Korecki 2014; Zengerle 2014).

Despite sparring over the future of Chicago’s public schools, the basic structure of LSCs remains intact (Chicago Public Schools 2014). Participation by parents has reflected, if not exactly mirrored, the demographics of the community, with Latino participation higher than anywhere else in the country (Designs for Change 2002). One study indicated that where LSCs worked to foster noncitizen parents’ participation in the schools, these parents were significantly more likely to be engaged in their children’s education and teachers more aware of and responsive to students’ needs (Marschall 2008).

The failure of San Francisco’s referendum in 2004 and again in 2010 to extend voting rights

114 See Layton and Chandler 2013 quoting education historian Diane Ravitch as saying that “If he does what he promised, he will be the most important national leader against the movement to close down and privatize public education.”

115 ILL. STAT. CH. 105, para. 34-2.1(d)(ii) (Smith-Hurd Supp. 1992) (“Eligible voters ... shall consist of the parents and community residents.”). See also *Fumarolo v. Chicago Board of Education*, 142 Ill. 2d 54, 61-62, 93-94 (1991) (1988 Act, in restricting right to vote for LSC parent members to resident parents violated equal protection).

116 *Fumarolo*, 142 Ill. 2d at 61-62, 93-94.

in school board elections to noncitizen parents is consistent with trends in other jurisdictions. The 2004 referendum on Proposition F has been thoughtfully covered by others and is not reviewed in depth here, except to raise some additional questions relevant to noncitizen suffrage in New York City municipal elections (see Kini 2005; Yang 2006; Hayduk 2006, 110-138). Proposition F lost by a narrow 2.9 percent margin.¹¹⁷ Various explanations have been offered for its defeat: 1) it would have extended voting rights to both legal residents and the unauthorized (Yang 2006, 77); 2) Matt Gonzalez, then-President of the Board of Supervisors, ran for mayor on this platform (and lost) in a high-visibility campaign the year before and made it no secret that he believed noncitizen voting should be allowed in municipal elections as well (ibid., 88); 3) coalition building was from the top-down and there was a perceived failure to engage Asian-Americans (ibid.); 4) the proposal appeared on a very crowded ballot in the contentious 2004 Presidential elections (ibid., 85); 5) SF-SOS, a nonprofit group funded by some of San Francisco's largest businesses, effectively used anti-immigrant rhetoric in opposing the initiative, with Democratic Senator Diane Feinstein emphasizing voting as a core privilege of citizenship (Mello 2004, 78); and GAP retail store owner Don Fisher, a member of SF-SOS, donating \$49,000 to SF-SOS at the last minute (ibid.).

The perception that Proposition F's proponents focused on Latinos while ignoring the Asian community is belied by the fact that the campaign was led by David Chiu of Voice for All Parents, who was eventually elected to the Board of Supervisors in 2008 and became the first Asian American to serve as President of the Board. Chiu also spearheaded the referendum in 2010. Nonetheless, there may have been a public perception that this was a Gonzalez-driven effort that would benefit his Latino constituents (Yang 2006, 88). Moreover, some of Gonzalez's strategic objectives may have been at odds with those of Voice for All Parents, which attempted to emphasize the incremental nature of the proposal and focus on the benefits to be gained by engaging all parents in their children's education (ibid., 81).

In 2010, David Chiu introduced a virtually identical proposal onto the November ballot, Proposition D (Mejia 2010). This time, supporters ran a much more low-key campaign. While several government officials supported the proposal privately and before sympathetic audiences, many were loath to support it publicly in light of heightened anti-immigrant sentiment among the electorate that year (ibid.). On November 2, 2010, the same day as the Portland, Maine referendum, Proposition D failed by nearly 10 percent.¹¹⁸

San Francisco's experience is a cautionary tale for proponents of Intro 410. The 2004 high-visibility campaign reportedly pitted grassroots advocacy groups against the business community (Mello 2004), something that could occur in New York City. Major beneficiaries in New York City of increased centralization of the public schools have been local contractors, including, for example, Success Academy, the city's biggest charter operator, with 22 charter schools.¹¹⁹ This aspect of San Francisco's referenda would benefit

117 City and County of San Francisco Consolidated General Election Results (November 2, 2004) at <http://www.sfgov2.org/index.aspx?page=1717> .

118 City and County of San Francisco Consolidated General Elections (November 2, 2010) at <http://www.sfelections.org/results/20101102/> .

119 Layton and Chandler (2013) report that Eva Moskowitz, founder of Success Academy, former member of the New York City Council, and one of Mayor De Blasio's major critics, earns, according to Success

from additional research, as it may shed valuable light on the role of regime politics and the impact of the business community on the electoral process and decision-making at City Hall.¹²⁰ Yet David Chiu's apparent decision to run a low-visibility referendum the second time around, while averting a backlash from the business community, was even less successful. In a last-minute campaign letter requesting donations, Chiu wrote, "Many voters don't even know Prop. D is on the November ballot" (Mejia 2010).

Notwithstanding these recent experiences, school board elections are arguably the ideal setting for extending voting rights to noncitizens. In 1863 the Supreme Court of Vermont may have originated the idea that immigrants should be treated as "Americans in waiting" when it ruled that noncitizens had the right to vote and serve as school board members. It found that Vermont's policy was

to extend to such emigrants all the rights of citizenship, that their feelings and interests may become identified with the government and the country. While *awaiting the time when they are to become entitled to the full rights of citizenship*, it seems to us a wise policy in the Legislature to allow them to participate in the affairs of these minor municipal corporations, as in some degree a preparatory fitting and training for the exercise of the more important and extensive rights and duties of citizens.¹²¹

Times and needs in our public schools have changed dramatically, but the same logic still applies. In many cities across the country, children with noncitizen parents make up a significant percentage of the public school population. English is often a second language. Yet ironically, although these students have unique educational needs that will be directly impacted by school funding priorities and curricular decisions, their parents remain disenfranchised (Yang 2006, 67-68).

There may be nothing that we as human beings have more in common than a wish to see our children succeed. Extending suffrage to noncitizen parents in school board elections may be the best way to introduce them to American democracy. It gives them a voice in their children's education; it deepens their ties to their new home, by communicating that they are valued members of the community; and it provides a training ground for civic engagement, allowing them to experience the benefits of democratic participation up close.¹²² Finally, it encourages them to seek the full responsibilities of US citizenship once they are eligible.

Current battles over public education, however, suggest that denial of voting rights to noncitizen parents may be symptomatic of a broader tendency. Centralized control over public schools restricts all but the most engaged parents' rights (see Hendrickson 2013). We must unpack the causes of the crisis in public education before extension of the franchise to noncitizen parents can once again become a reality.

Academy's tax filings, about \$475,000 per year, more than twice the salary of the city's school chancellor.

120 For a fascinating study of how what makes governance effective in an urban area is often not the formal machinery of government but rather the informal partnership between City Hall and the business elite, see Stone 1989.

121 *Woodcock v. Bolster*, 35 Vt. 632, 640-41 (1863), quoted with approval in Raskin 1993 (1454-55) (emphasis added).

122 *Woodcock*, at 640-641.

V. The Way Forward

In choosing a course of action, what can New York City learn from these other experiences? One possible way to think about the relationship among federal law, state constitutional law, state election law, home rule statutes, and local law is to distinguish between *de jure* and *de facto* obstacles to noncitizen voting.¹²³ In some jurisdictions, such as Massachusetts, state law is the impediment, while in other places, traditional conceptions of the meaning of citizenship and the right to vote may be as great an obstacle as the law itself. Thus it is important to be able to distinguish between these two situations, while recognizing that societal values about the meaning of citizenship may reinforce *de jure* obstacles.¹²⁴ Where, however, the law only appears to be an obstacle, as in the case of New York election law, broad-based campaigns can be effective in educating both government officials and members of the public with preconceived understandings of the relationship between voting rights and citizenship.¹²⁵

Despite extensive hearings in 2013 on Intro 410, it did not generate much attention in the media or by anti-immigrant groups (see *St. Albans Messenger* 2013; de la Isla 2013). The city council appears to have tabled the measure at the end of the year both because of questions regarding its legality and the lack of support from Mayor Bloomberg's office.¹²⁶ On June 24, 2014, Councilmember Dromm's legal advisor indicated plans to reintroduce the measure.¹²⁷ Yet given the ambiguities in New York's election laws and home rule statutes, it is likely that adoption of this measure by the city council will be subject to legal challenge. While neither federal law nor state election law appear to be actual obstacles, there are strong legal arguments that a mandatory referendum is required.

In light of recent experiences in other jurisdictions, it is not surprising that the New York City Council is reluctant to hold a referendum. Although a successful referendum would address the strongest legal argument against a city council measure, it would not necessarily avert litigation or legislation. Moreover, referendums are, by their very nature, unpredictable, as seen in Portland and San Francisco. Even if the vote is close, the 2010 San Francisco referendum on Proposition D suggests that second attempts are not feasible. A ballot measure in New York City on noncitizen suffrage would probably have to succeed on the first try or not at all.

123 This distinction has frequently been drawn in the context of equal protection analysis as applied to race-based classifications, particularly in the area of desegregation of public schools. See, e.g., *Parents Involved in Community Schools v. Seattle School District*, 551 U.S. 701, 736-737 (2006). Critics have argued that this distinction is overly formalistic, and fails to take into account the ways in which ongoing societal or *de facto* discrimination results from past official or *de jure* discrimination. See *Parents Involved v. Seattle School District* at 820-822 (Breyer, J., dissenting). Another area where the Court made this distinction but adopted a more functional approach involved the claims of indefinite detainees held at Guantanamo Naval Base in Cuba, where it found that *de jure* sovereignty was not the touchstone of habeas jurisdiction, and that where the United States exercised *de facto* sovereignty over the Naval Base, the Court had jurisdiction under the Fifth Amendment to consider their claims. *Boumediene v. Bush*, 553 U.S. 723, 754-755 (2008).

124 See, e.g., Yang 2006 on how opponents of San Francisco's Proposition F portrayed the initiative as radical, unconstitutional, and a detriment to democracy (80).

125 See Yang 2006 on the importance of raising the consciousness of voters (86). See also Kini's discussion of tactics for winning over progressives and liberals (2005, 300).

126 Written Statement of William Heinzen.

127 Statement of Sebastian Maguire.

For this reason, if the city council can either win Mayor De Blasio's backing or ensure a veto-proof majority, it may choose for political reasons to adopt noncitizen suffrage without a referendum. Such a vote would send a powerful symbolic message to noncitizens that the city's leaders embrace them as full members of the local community. If the goal is to win political points or make a statement, perhaps this is enough. If, however, the council's true goal is to incorporate noncitizens into the body politic, it needs to consult the current electorate first. Noncitizen suffrage adopted after a referendum would provide greater democratic legitimacy to a vote by the city council, and it would honor the self-determination of the people of New York City. Possible alternatives to a binding referendum might include a non-binding referendum as in Takoma Park (Raskin 1993, 1465), or town hall meetings in each of the 51 districts attended by councilmembers, borough presidents, panels of experts, and perhaps even the mayor who could listen and respond to community members' questions and concerns. This would give a city council vote greater political legitimacy in the eyes of Albany and the current electorate of New York City.

If a court challenge does occur, a subsequent city-wide referendum could be the remedy. A change to state election law, however, would be harder to undo. In Massachusetts the state legislature has stood as the principal obstacle to noncitizen suffrage. New York City could find itself in a similar position. Albany could respond to a city council measure simply by amending § 5-102 of its election laws to add the words "Notwithstanding any state or local law to the contrary" at the beginning of that provision, effectively preempting New York City and other local governments from granting voting rights to noncitizens in municipal elections.

So what is the way forward? In 2010, the New York State Comptroller reported that in 2008 immigrants made up 36.4 percent of the city's population and 43 percent of the workforce, that immigrants accounted for \$215 billion in economic activity, or 32 percent of the gross city product, and that between 2000 and 2007, the boroughs with the highest concentration of immigrants also had the highest economic growth (DiNapoli 2010). The state comptroller's report powerfully demonstrated that immigrants in all sectors of the economy have been key to New York City's vitality, economic growth and survival, even during hard economic times, and that with their economic success many have become home owners, revitalizing neighborhoods and deepening their ties to the city (*ibid.*).¹²⁸

In 1898, when New York City was consolidated into five boroughs, it was described as "the greatest experiment in municipal government the world has ever known" (Krout 1948, 41). New York City is much more than a city; in many ways, it is like a nation-state, along the ancient Greek model. It is a city of New York State, subject to New York law, but it is also a city of the world, subject to federal and even international law. The interplay of global, national, state, and local politics must be taken into account in defining "the People" of New York City.

The apparently unrelated example of Staten Island's attempted secession from New York City in the 1990s underscores why the city council must seriously weigh the value of a

128 According to DiNapoli, "Neighborhoods such as Chinatown, Flushing, Washington Heights, Coney Island, Elmhurst, and Corona all display a vitality fueled by their immigrant residents, many of whom are creating businesses and jobs as they seek to meet their communities' needs. As their incomes have risen, many immigrants have become home owners, further strengthening their ties to the City" (2010, 1).

referendum in New York City on this issue, or at least some measure to further public education and ensure popular input. When Staten Island attempted secession, one of the biggest criticisms was that, while it would result in a loss of one of New York City's boroughs, the people of New York City (other than Staten Islanders) were given no say. The procedure, which included an initial referendum by the people of Staten Island, the creation of a commission to draft a city charter, another vote on the charter by Staten Islanders, and final approval from the state legislature, gave no voice to people in the other four boroughs. (Briffault 1992, 777-78). It was also at odds with analogous procedures for annexing territory, which required referenda by the people in both the annexing and annexed areas.¹²⁹ The measure was ultimately defeated, but not before it generated deep divisions among New Yorkers, including the people of New York City who saw themselves disenfranchised, and Staten Islanders who saw their effort at self-rule thwarted at the last moment.¹³⁰

Given the particular contributions that immigrants make to the economic health and vitality of New York City, the people of the city are likely to be ready for noncitizen voting long before the people of the state are. New York City voters, however, need to be part of the process. Recent reactions in the media to the *New York is Home Act* underscore that deep public resistance to extending political rights to noncitizens still exists.¹³¹ Pushing a local measure through the city council without public input is likely to trigger a media backlash and could result in lengthy, divisive and unpredictable battles in the courts or, even worse, restrictive state legislation. Alternatively, public hearings or town hall meetings on noncitizen suffrage in the 51 districts of New York City would add democratic legitimacy to the process already underway, and would allow the current electorate to weigh in. They could also serve to educate New Yorkers that there are various forms of citizenship, that citizenship is ultimately about membership in a community, and that enfranchising immigrants where they live, work, run businesses, and send their kids to school, is likely to strengthen their commitment to their communities while encouraging them to become civic-minded US citizens when that pathway finally opens up.

Conclusion

Immigrant integration is ultimately a local matter. An expansion of the franchise in New York City municipal elections to include noncitizens who are lawfully present and who have resided in the city for the requisite time would be a dramatic step forward in incorporating immigrants into local communities and ensuring that their voices are heard. If the New York City Council hopes to make more than a political statement on this and avoid triggering lengthy, divisive, costly, and unpredictable court battles, it must be prepared, sooner or later, to hold a city-wide referendum, which may be necessary as a matter of law. At a minimum, before voting on the measure, it needs to engage current voters through town hall meetings or listening sessions in the 51 districts. A well-orchestrated YES campaign in favor of noncitizen suffrage could lead to the next great experiment in municipal government.

129 N.Y. Const. art. IX, § 1(d).

130 Corporation Counsel Opinions, *Staten Island Secession Bill Requires a Home Rule Message from the City*, 1 CITY L. 15 (1995).

131 Of the hundreds of comments on Eidelson's 2014 article in *Bloomberg Businessweek*, "New York State Mulls Citizenship for Undocumented Workers," the overwhelming majority are negative.

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