



LATINO POLICY & ISSUES BRIEF

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POLITICAL APARTHEID IN CALIFORNIA: CONSEQUENCES OF EXCLUDING A GROWING NONCITIZEN POPULATION

By Joaquin Avila, Esq.

Latino political empowerment has often been measured in terms of the increasing number of Latino elected officials or the elimination of discriminatory election structures.¹ Today another critical gauge of Latino political empowerment merits a renewed focus: the issue of noncitizens and voting. In California, over 4.6 million noncitizen adults—or nearly 19% of the adult population—contribute to the state economy and government revenues but lack political representation. Latino noncitizens account for 3 million of this noncitizen population and constitute 28% of Latinos in California.² How we respond to these demographic changes will shape the future viability of our state.

THE DEMOGRAPHIC IMPERATIVE

The 2000 U.S. Census data reveal that California has at least 85 cities where noncitizens comprise over 25% of the city's total adult population, and, remarkably, 12 municipalities where noncitizens comprise the majority (50–63%) of adults. Another 18 municipalities have noncitizen adult populations between 40 and 49% (see table 1.) Strikingly, in Los Angeles, the largest city in California, the noncitizen adult population share is approximately one-third of the population (32%).³ In other words, California state and local revenues, not to mention participation in community affairs, depend on a growing noncitizen population.

THE POLITICS OF EXCLUSION

These statistics are alarming. In effect, a substantial number of persons, who contribute to our economy and our government's revenues, are being denied political representation. However, instead of focusing on the development of legislative strategies to politically integrate this noncitizen population, certain citizen

groups are focusing on excluding them through the initiative process. The result is the passage of such initiatives as State Proposition 187, which sought to deny certain benefits to the immigrant community.⁴ In sharp contrast, the recent passage of Senate Bill 60 relaxed the requirements for securing a driver's license, thereby permitting persons who do not have a social security number, but who do have other forms of identification such as a federal individual taxpayer identification number, to apply for a driver's license.⁵ The statute also repealed a previous motor vehicle code that required the Department of Motor Vehicles to ascertain whether the driver's license applicant was authorized under federal law to be present in the United States. Ironically, California law did not require social security numbers of applicants for driver's licenses until 1991 and did not require proof of legal residency until 1993.⁶ In many respects, Senate Bill 60 returns California to its longstanding policy of furthering public safety by permitting individuals who drive cars to secure driver's licenses. But, regrettably, Senate Bill 60 is generating another backlash against the immigrant community. At the time of publication, groups have launched a referendum initiative and a legislative bill seeking to repeal Senate Bill 60 and a lawsuit seeking to enjoin its implementation.⁷

THE NEED FOR POLITICAL INTEGRATION

This trend is unfortunate. Efforts should be redirected toward the political integration of the immigrant community. A variety of reasons support the extension of the franchise to noncitizens. The reasons range from giving a voice to all individuals in governmental affairs in order to solidify democratic values and the body politic, to the principle that noncitizens have the same obligations as citizens and should therefore enjoy some of the same privileges.⁸ However, the main reason to support noncitizen voting is self-preservation. A society's interests are not furthered when a substantial number of its inhabitants are excluded from the body politic and have no meaningful way to petition for a redress

TABLE 1: CALIFORNIA MUNICIPALITIES WITH LARGE NONCITIZEN ADULT POPULATIONS

| CITY | NONCITIZENS 18 YEARS AND OLDER | CITY | NONCITIZENS 18 YEARS AND OLDER |
|---|--------------------------------|--|--------------------------------|
| 1. San Joaquin city, Fresno County | 63.46% | 44. Farmersville city, Tulare County | 32.83% |
| 2. Maywood city, Los Angeles County | 59.45% | 45. Indio city, Riverside County | 32.68% |
| 3. Cudahy city, Los Angeles County | 58.94% | 46. Los Angeles city, Los Angeles County | 32.47% |
| 4. Bell Gardens city, Los Angeles County | 56.50% | 47. Tulelake city, Siskiyou County | 32.37% |
| 5. Huron city, Fresno County | 55.94% | 48. Anaheim city, Orange County | 31.55% |
| 6. Huntington Park city, Los Angeles County | 55.88% | 49. Madera city, Madera County | 31.48% |
| 7. Bell city, Los Angeles County | 53.92% | 50. Delano city, Kern County | 31.33% |
| 8. Arvin city, Kern County | 53.78% | 51. Oxnard city, Ventura County | 30.85% |
| 9. Mendota city, Fresno County | 53.49% | 52. Lawndale city, Los Angeles County | 30.78% |
| 10. King City city, Monterey County | 52.34% | 53. Westmorland city, Imperial County | 30.63% |
| 11. Santa Ana city, Orange County | 51.88% | 54. National City city, San Diego County | 30.26% |
| 12. Orange Cove city, Fresno County | 51.62% | 55. Artesia city, Los Angeles County | 30.06% |
| 13. Greenfield city, Monterey County | 49.82% | 56. Garden Grove city, Orange County | 30.02% |
| 14. Williams city, Colusa County | 49.37% | 57. Glendale city, Los Angeles County | 29.95% |
| 15. Coachella city, Riverside County | 47.53% | 58. Holville city, Imperial County | 29.81% |
| 16. Livingston city, Merced County | 47.38% | 59. San Gabriel city, Los Angeles County | 29.80% |
| 17. Parlier city, Fresno County | 47.18% | 60. Sanger city, Fresno County | 29.67% |
| 18. South El Monte city, Los Angeles County | 46.98% | 61. Live Oak city, Sutter County | 29.49% |
| 19. Lynwood city, Los Angeles County | 45.57% | 62. Sunnyvale city, Santa Clara County | 29.38% |
| 20. South Gate city, Los Angeles County | 45.52% | 63. Azusa city, Los Angeles County | 29.31% |
| 21. Soledad city, Monterey County | 45.35% | 64. Montclair city, San Bernardino County | 29.18% |
| 22. El Monte city, Los Angeles County | 44.65% | 65. Colma town, San Mateo County | 29.05% |
| 23. Woodlake city, Tulare County | 43.16% | 66. Reedley city, Fresno County | 28.96% |
| 24. Watsonville city, Santa Cruz County | 43.06% | 67. Santa Maria city, Santa Barbara County | 28.81% |
| 25. Hawaiian Gardens city, Los Angeles County | 42.97% | 68. Dinuba city, Tulare County | 28.77% |
| 26. East Palo Alto city, San Mateo County | 42.77% | 69. Norwalk city, Los Angeles County | 28.39% |
| 27. Paramount city, Los Angeles County | 41.52% | 70. Shafter city, Kern County | 28.18% |
| 28. San Fernando city, Los Angeles County | 41.08% | 71. Cupertino city, Santa Clara County | 28.04% |
| 29. Gonzales city, Monterey County | 40.78% | 72. Ontario city, San Bernardino County | 27.99% |
| 30. Firebaugh city, Fresno County | 40.30% | 73. Alhambra city, Los Angeles County | 27.62% |
| 31. Calexico city, Imperial County | 39.68% | 74. Milpitas city, Santa Clara County | 27.43% |
| 32. Guadalupe city, Santa Barbara County | 39.35% | 75. Hawthorne city, Los Angeles County | 27.35% |
| 33. Lindsay city, Tulare County | 38.68% | 76. Santa Paula city, Ventura County | 27.23% |
| 34. Baldwin Park city, Los Angeles County | 37.92% | 77. Mountain View city, Santa Clara County | 27.14% |
| 35. La Puente city, Los Angeles County | 37.82% | 78. Inglewood city, Los Angeles County | 26.89% |
| 36. McFarland city, Kern County | 36.53% | 79. Cathedral City city, Riverside County | 26.70% |
| 37. Stanton city, Orange County | 35.44% | 80. Monterey Park city, Los Angeles County | 26.34% |
| 38. Commerce city, Los Angeles County | 34.36% | 81. Seaside city, Monterey County | 26.31% |
| 39. Rosemead city, Los Angeles County | 33.95% | 82. Tustin city, Orange County | 25.80% |
| 40. Pomona city, Los Angeles County | 33.27% | 83. El Centro city, Imperial County | 25.75% |
| 41. Salinas city, Monterey County | 33.23% | 84. Pico Rivera city, Los Angeles County | 25.35% |
| 42. San Pablo city, Contra Costa County | 33.18% | 85. Montebello city, Los Angeles County | 25.11% |
| 43. Compton city, Los Angeles County | 32.98% | | |

of grievances through the electoral process. Such a continued exclusion from political participation is detrimental to achieving a more cohesive society. The ultimate product of such exclusion is a political apartheid.

The usual avenues for redressing such injustices are judicial actions, legislative proposals, and the initiative process. The prospects of achieving any reform in these ways appear to be highly unlikely, however. In California, a constitutional amendment to Article II, Section 2 is necessary to eliminate the United States citizenship requirement for

voters.⁹ Given the current anti-immigrant climate, any proposed initiative would be doomed to failure.¹⁰ Efforts to declare this citizenship requirement as unconstitutional have been unsuccessful.¹¹ And any legislative proposals to eliminate the citizenship requirement would be in violation of the state constitution.

RECOMMENDATIONS

Nevertheless, there are several recommendations for pursuing a strategy of noncitizen political empowerment. The world's sixth largest economy¹²

simply cannot afford to have a substantial number of persons within its borders who are not politically integrated into the body politic.

1. Increase Public Debate. The debate regarding noncitizen disenfranchisement needs to be brought to the forefront, especially given that the noncitizen adult population constitutes a substantial percentage of many communities throughout California. To this end, conferences and symposiums should be convened to formulate strategies for empowering this politically excluded community.

2. Research Current Noncitizen Participation in Local Government. Research should be conducted regarding the eligibility of noncitizens to serve on neighborhood councils and other governmental political subdivisions in California. For example, the 2000 Los Angeles City Charter states that community stakeholders should all have an opportunity to fully participate in the election of Neighborhood Councils Boards. A 2002 City Attorney Opinion reiterated the importance of including all residents irrespective of their citizenship status.¹³ The dissemination of these and other examples might eventually create a political climate in which a more comprehensive statewide legislative solution can be effectively pursued.¹⁴ This political climate would be greatly facilitated if the noncitizen population started to flex its economic muscle through the selective use of boycotts, forcing recognition of the significant economic benefits noncitizens contribute and encouraging the political integration of noncitizens through extending the right to vote.

3. Explore Noncitizen Voting for Local Offices. Develop a consensus regarding a constitutional amendment permitting counties, cities, school districts, and other special election districts to determine whether to permit noncitizen voting for local offices. For example, the State of Maryland authorizes municipalities to establish their own voting qualifications, and, as a result, several municipalities permit noncitizens to participate in city elections. Noncitizens can participate in local community board elections in Chicago and New York City. Such an amendment would not affect federal or state offices.¹⁵ And, most significantly, it would not mandate noncitizen voting.

4. Reexamine the Judicial Route. The existence of contrary judicial rulings at the state level should not dissuade legal scholars from investigating alternative legal approaches. For instance, perhaps the right

to petition for a redress of grievances incorporates a right to vote. For assistance, legal scholars can review the historical transition from the separate but equal doctrine formulated by the United States Supreme Court in *Plessy v. Ferguson*¹⁶ to its abandonment in *Brown v. Board of Education*.¹⁷ Such a transition can serve as a model for the development of legal strategies seeking to remove the citizenship requirement as a qualification for voting. The number of noncitizens revealed by the 2000 U.S. Census may provide a catalyst for the judicial implementation of such a model.

CONCLUSION

In summary, the exclusion of a growing noncitizen population from the body politic will undermine the participatory electoral process. Rather than maintain a more cohesive society, we will be witnessing the transformation of our cherished democratic institutions into a de facto political apartheid. As a society, we simply cannot afford this outcome.

NOTES

1. For example, see the work of the National Association of Latino Elected and Appointed Officials, which started to compile such figures in 1984, and the legal cases that have successfully challenged such structures as at-large elections and racially gerrymandered districts, which dilute Latino voting strength.
2. U.S. Bureau of the Census, *American Factfinder, Data Sets, Summary File 4, Table GCT-P16, Citizenship Status for the Population 18 Years and Over: 2000*, <http://factfinder.census.gov>.
3. *Ibid.*
4. Most of the provisions of State Proposition 187 were declared unconstitutional by a federal court. *League of United Latin American Citizens, et al., v. Wilson*, Civil Action Nos. 94-7569 MRP, 94-7570 MRP, 94-7571 MRP, 94-7652 MRP, 95-0187 MRP (C.D.Cal.) (Permanent Injunction Order, March 13, 1998), 1998 WL 141325 (C.D.Cal.).
5. California Vehicle Code § 1653.5, 12800, 12801.2, 12801.5, 12801.9, 12814.5, and 13000.

6. S.B. 395, 1991 Cal. Stats. Chapter 772, codified Cal. Motor Vehicle Code § 1653.5. S.B. 976, 1993 Cal. Stats. Chapter 820, codified Cal. Motor Vehicle Code § 12801.5 & 14610.7.

7. See California Secretary of State, *Elections & Voter Information, Initiative Update, Initiatives in Circulation as of November 6, 2003*, <http://www.ss.ca.gov>; California Legislature Assembly Bill No. 1, 2003-04, Third Extraordinary Session, passed the Assembly Committee on Transportation on November 25, 2003, and was referred to the Committee on Appropriations; California Senate Bill No. 1, 2003-04, Third Extraordinary Session; *Latino Americans for Immigration Reform v. Steven Gourley*, No. C045356 (California Court of Appeals, Third Appellate District) (Petition for Writ of Mandate or Other Extraordinary Relief) (Petition filed November 11, 2003).

8. Virginia Harper-Ho, "Noncitizen Voting Rights: The History, the Law and Current Prospects for Change," *Law and Inequality* 18, no. 271 (2000): 294-298.

9. Pursuant to federal constitutional provisions and precedent, states are free to define their voter qualifications, so long as these qualifications do not offend any federal constitutional provision. See Harper-Ho, "Noncitizen Voting Rights," 285-294.

10. Latinos in the 2002 general election constituted anywhere from 10% to 16% of the state's total voter turnout. See Tomás Rivera Policy Institute, *Was the California Latino Vote Key to Governor Davis' Re-Election?* (November 21, 2002 press release). In the recent California recall election held on October 7, 2003, Latino voter turnout was estimated at 11%. See "The Recall Election: Schwarzenegger Reiterates Anti-Tax Theme and Will Ask Bush for Help," *Los Angeles Times*, October 9, 2003.

11. *Padilla v. Allison*, 113 Cal.Rptr. 582, 38 Cal.App.3d 784 (Cal.App. 2nd Dist. 1994).

12. State of California, *Department of Finance, Financial & Economic Data, Miscellaneous Economic Data*, http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Misc.htm.

13. Los Angeles City Attorney, Opinion No. 2002:5, *Election Systems of Certified Neighborhood Councils*, p. 4.

14. See Harper-Ho, "Noncitizen Voting Rights," 305.

15. See Harper-Ho, "Noncitizen Voting Rights," 313.

16. 163 U.S. 537, 16 S.Ct. 1138 (1896).

17. 347 U.S. 483, 74 S.Ct. 686 (1954).

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