



## MEMORANDUM

To: Americans for Citizen Voting

From: Center for Election Confidence

Date: February 28, 2024

Re: **Oklahoma Constitutional Amendment to Protect Citizen Voting Rights**

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### INTRODUCTION

The right to participate in elections should be reserved for citizens, who have a fundamental right to self-governance. Citizens enjoy both the benefits and burdens of American, and state, society. For example, citizens can “serve on juries, run for public office, or access certain government jobs,” while noncitizens may not.<sup>1</sup> Further, as recognized by Democratic Presidential Candidate and former New York City Mayor Michael Bloomberg when he opposed noncitizen voting, “an awful lot of people over the years have fought and died for the right to vote. I don’t think that we should walk away from that concept.”<sup>2</sup>

With citizenship comes a duty of loyalty to the country that is missed when noncitizens are permitted to vote. When becoming citizens, individuals must “entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty” and must pledge

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<sup>1</sup> Jeff Duncan, *The Left’s Next Target: Noncitizen Voting*, National Review, February 26, 2019, <https://www.nationalreview.com/2019/02/noncitizen-voting-the-lefts-next-target/>.

<sup>2</sup> New York Post Editorial Board, *Citizenship Matters: Why It’s Wrong to Let Non-Citizens Vote*, January 23, 2020, <https://nypost.com/2020/01/23/citizenship-matters-why-its-wrong-to-let-non-citizens-vote/>.

to “support and defend the Constitution and laws of the United States.”<sup>3</sup> Noncitizens may have interests in public policy as “residents” but not undivided loyalty to American institutions and government. Therefore, noncitizens should not be allowed to usurp democratic voting power from American citizens. To protect the self-governance of American citizens, noncitizens should be prohibited from voting in American elections at all levels.

There is a well-funded political movement underway to expand noncitizen voting throughout the United States. State constitutions should be fortified to protect the voting rights and self-governance rights of American citizens.

Federal law prohibits foreign nationals from influencing American elections at the federal, state, and local levels, and federal law limits voting in federal elections to United States citizens.<sup>4</sup> However, state constitutions govern who may vote in state and local elections and many state constitutions permit noncitizens to vote in state and/or local elections. Indeed, noncitizens increasingly are being allowed to vote, to decide the outcomes of American elections, and to control the public policies that govern American citizens. Some state constitutions list citizenship as a permissive qualification, while others list citizenship as a mandatory qualification prior to voting. Oklahoma falls within the former category.

Among the problems with constitutions with permissive qualifications is the possibility that cities, counties, or other municipalities permit noncitizen voting even if not allowed for state

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<sup>3</sup> U.S. Citizenship and Immigration Services, *Naturalization Oath of Allegiance to the United States of America*, <https://www.uscis.gov/citizenship/learn-about-citizenship/the-naturalization-interview-and-test/naturalization-oath-of-allegiance-to-the-united-states-of-america>. Accessed December 8, 2023.

<sup>4</sup> 18 U.S.C. § 611. “(a) It shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner, unless (1) the election is held partly for some other purpose; (2) aliens are authorized to vote for such other purpose under a State constitution or statute or a local ordinance; and (3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.”

elections. Several major cities, including Chicago; San Francisco; Takoma Park, Maryland; and Washington D.C. have taken advantage of permissive constitutional or legal provisions, adopting policies permitting noncitizens to vote.<sup>5</sup>

Policies permitting noncitizens to vote tend to be very open-ended, with Takoma Park, Maryland, for example, only requiring proof of identification and Takoma Park residency.<sup>6</sup> Similarly, in 2022, the District of Columbia passed an ordinance eliminating U.S. citizenship as a requirement to participate in local elections, which it defines as an election for “Mayor, Chairman or member of the Council; Attorney General; Member of the State Board of Education; or Advisory Neighborhood Commissioner; or An initiative, referendum, recall, or charter amendment measure on a District Ballot.”<sup>7</sup> After various challenges narrowed San Francisco’s noncitizen voting laws, in 2022, noncitizens were permitted to vote in school board races as long as they both resided in the city and had a child under 19.<sup>8</sup>

In the United States, reformers on the Left justify noncitizen voting as a way for all of a jurisdiction’s “residents” to have a say in government, increase inclusivity, express generosity, and to avoid discrimination, among other arguments.<sup>9</sup> Proponents of noncitizen voting further claim that primarily conservative-led efforts to limit voting to citizens are discriminatory, while

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<sup>5</sup> Fred Lucas, *7 States Push Noncitizen Voting, 4 States Say No*, The Daily Signal, October 6, 2021, <https://www.dailysignal.com/2021/10/06/7-states-push-noncitizen-voting-4-states-say-no/>; Ballotpedia, *Laws Permitting Noncitizens to Vote in the United States*, accessed December 4, 2023, [https://ballotpedia.org/Laws\\_permitting\\_noncitizens\\_to\\_vote\\_in\\_the\\_United\\_States](https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States).

<sup>6</sup> City of Takoma Park, *30 Years of Non-Citizen Voting in Takoma Park*, October 6, 2023, <https://takomaparkmd.gov/newsletter/30-years-of-non-citizen-voting-in-takoma-park/>.

<sup>7</sup> D.C. Act 24-640 (2022). Available at <https://lims.dccouncil.gov/Legislation/B24-0300>.

<sup>8</sup> City and County of San Francisco, Department of Elections, *Non-Citizen Voting in the November 8, 2022 San Francisco School Board Election*, accessed December 8, 2023, [https://sfelections.sfgov.org/sites/default/files/NCV\\_Poster\\_EN.pdf](https://sfelections.sfgov.org/sites/default/files/NCV_Poster_EN.pdf). Officials likely recognize that immigrants could be confused about their ability to participate in the midterm elections, with a boxed warning advising immigrants that “if you apply for naturalization, you will be asked whether you have ever registered or voted in a federal, state, or local election in the United States.”

<sup>9</sup> Ron Hayduk, *Why Non-Citizens Should Be Allowed to Vote*, Jacobin, Nov. 6, 2018, <https://jacobin.com/2018/11/noncitizen-voting-undocumented-immigrants-midterm-elections>, City of Takoma Park, *30 Years of Non-Citizen Voting*, above.

progressive-led efforts to permit such voting “expand democracy.”<sup>10</sup> Despite these arguments, recent studies have called into question participation rates with larger numbers of noncitizens registering to vote than participating in elections.<sup>11</sup> Noncitizen voting has the consequence—intended or unintended—of permitting individuals whose loyalties lay with other countries to participate in municipal elections, confusing immigrants who unwittingly place their future immigration status at risk, and, in some cases, providing statewide ballots to noncitizens who appear to vote in a local election.<sup>12</sup>

#### A. International Comparisons and Typical Justifications for Noncitizen Voting

Most liberal western democracies do not permit noncitizen voting, though a few, primarily European countries, have not only expanded the franchise to noncitizens, but also permit them to run for local office. Most of those jurisdictions are within the European Union and expanded voting rights pursuant to the 1993 Maastricht Treaty. The Treaty both formed the EU and provides: “Every citizen of the [European] Union residing in a Member state of which he

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<sup>10</sup> Russell Berman, *The Voting-Rights Debate Democrats Don’t Want to Have*, The Atlantic, January 18, 2022, <https://www.theatlantic.com/politics/archive/2022/01/noncitizen-voting-new-york-democrats-immigrants/621276/>. The author was defending New York City’s ordinance permitting noncitizens to participate in city elections. Later in 2022, a New York court struck down the law as violating the state constitution’s limitation of the franchise to citizens. Lauren del Valle, *New York Judge Strikes Down NYC Law Granting Voting Rights to Noncitizens*, CNN, June 27, 2022, <https://www.cnn.com/2022/06/27/politics/noncitizen-voting-new-york/index.html>.

<sup>11</sup> Stephen Dinan, *If You Build It, Will They Vote? Cities With Noncitizen Voting Struggle To Boost Turnout*, Washington Times, January 1, 2024, <https://www.washingtontimes.com/news/2024/jan/1/if-you-build-it-will-they-vote-cities-with-nonciti/>.

<sup>12</sup> See, e.g., Bryan Steil, Press Release, Steil, “Strengthening Elections and Ending Non-Citizen Voting,” Committee on House Administration, Nov. 21, 2023, <https://cha.house.gov/2023/11/steil-strengthening-elections-and-ending-non-citizen-voting> (noting that Russian nationals living in D.C. for at least 30 days could vote for the next mayor of D.C.). See also *Chernosky*, (denying adjustment of immigration status because Canadian citizen voted in a federal election), *Fitzpatrick v. Sessions*, 847 F.3d 913 (7th Cir. 2017) (deportation of an immigrant from Peru for illegally registering to vote and participating in statewide and federal elections despite claims that motor vehicle officials advised her to register to vote when applying for a driver’s license), *Kimani v. Holder*, 695 F.3d 666 (7th Cir. 2012) (deportation appropriate where citizen of Kenya voted in a federal election).

is not a national shall have the right to vote *and stand as a candidate* at municipal elections in the Member State of which he resides, under the same conditions as nationals of that state.”<sup>13</sup>

Among the stated purposes for the Maastricht Treaty and the formation of the European Union was a desire to create a common political society across Europe, which included the formation of transnational parties, a consensus regarding European public opinion, and a deepened “consciousness of increased political linkage to one another; [and] above all, the creation of a Union citizenship.”<sup>14</sup> That is to say, the push for noncitizen voting through the European Union’s foundational treaty was designed to decrease, if not eliminate, national pride and the sense of belonging in a country or state, and increase a desire to spur thoughts of greater, more global, responsibilities.

Organizations supporting noncitizen voting include traditionally left-leaning think tanks like the Brennan Center and ACLU, academics, and Democratic politicians such as Rep. Jamie Raskin. During San Francisco’s fight to permit noncitizen voting, for example, several groups banded together to dilute the votes of citizens. Those groups included the Mission Economic Development Agency (MEDA) and Chinese for Affirmative Action (CAA).<sup>15</sup> MEDA describes itself as an organization “centered on equity” and dedicated to “leading policy and social change

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<sup>13</sup> Kimia Pakdann, *Noncitizen Voting Rights in the United States*, Berkeley Public Policy Journal, March 4, 2019, <https://bppj.berkeley.edu/2019/03/04/spring-2019-journal-noncitizen-voting-rights-in-the-united-states/> (emphasis added). Countries include Sweden, the Netherlands, Luxembourg, Belgium, and Switzerland. Outside of the European Union, New Zealand and a couple African and South American countries have expanded the franchise. Some advocates will cite to the United Kingdom, but the UK only allows Commonwealth citizens—from its former empire—to vote in general elections. In this scenario, the voters may not be citizens of the UK, but the British government honors the rights held by former members of the Commonwealth. Canadian Civil Liberties Association, *Non-Citizen Voting*, <https://ccla.org/get-informed/talk-rights/non-citizen-voting-rights/> (accessed December 12, 2023).

<sup>14</sup> Rainer Arnold, *The Treaty on European Union and German Constitutional Law: The German Constitutional Court’s Decision of October 12, 1993, on the Treaty of Maastricht*, 9 TUL. EUROPEAN & CIVIL LAW FORUM 91-145 (1994), <https://journals.tulane.edu/teclf/article/view/1458/1326>.

<sup>15</sup> Rachel M. Cohen, *Letting Noncitizens Vote in the Trump Era*, *The Nation*, November 1, 2018, <https://www.thenation.com/article/archive/noncitizen-voting-trump/>.

toward a more equitable society” with a focus on Latinos and the Mission District in San Francisco.<sup>16</sup> When looking at potential funding sources, the MEDA CEO sits on various private and quasi-government boards, including UnidosUS, JP Morgan Chase & Co, and PNC Bank.<sup>17</sup>

CAA, similarly, is a smaller entity within a larger network. CAA describes itself as protecting the “civil and political rights of Chinese Americans and to advance multiracial democracy.”<sup>18</sup> While the organization does not list the bios of its staff or board, it admits that it is only a small part of the Asian Americans for Civil Rights and Equality (AACRE) network.<sup>19</sup> The AACRE website lists nearly a dozen affiliated groups with the same, or similar, goals.<sup>20</sup> In San Francisco, therefore, efforts to expand voting to noncitizens was a well-astroturfed effort. While the funding is as-of-yet unclear, the coordinated efforts are present.

## B. Registration of Noncitizen Voters

There are two related problems worth noting. Automatic voter registration policies in 24 states, like Alaska, California, Oregon, Maryland, and Pennsylvania, open the door to adding countless numbers of noncitizens to voter registration rolls with little scrutiny.<sup>21</sup> When

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<sup>16</sup> Mission Economic Development Agency, *About*, <https://medasf.org/about/>, accessed December 13, 2023.

<sup>17</sup> Mission Economic Development Agency, *Staff Directory*, <https://medasf.org/about/staff-directory/>, accessed December 13, 2023.

<sup>18</sup> Chinese for Affirmative Action, *Mission, Vision, and History*, <https://caasf.org/mission-vision-history/>, accessed December 13, 2023.

<sup>19</sup> Chinese for Affirmative Action, *People*, <https://caasf.org/people/>, accessed December 13, 2023.

<sup>20</sup> Asian Americans for Civil Rights and Equality, <https://aacre.org/>.

<sup>21</sup> National Conference of State Legislatures, *Automatic Voter Registration*, Sept. 26, 2023, <https://www.ncsl.org/elections-and-campaigns/automatic-voter-registration>. While ostensibly praising the “Oregon model” for AVR, NCSL highlights the dangers of opt-out instead of opt-in registration regimes. An opt-out regime automatically registers someone seeking a driver’s license, health benefits, or other government services unless that person affirmatively opts out by returning a mailer or notification they later receive. A noncitizen, unfamiliar with the American political system, may either not think to return the mailer or think that he or she is otherwise legally entitled to vote in all elections. *See Chernosky v. Sessions*, 897 F.3d 923 (8th Cir. 2018) (individual in the United States on student visa applied for driver’s license, declined to identify as a citizen, but was still registered to vote by the Minnesota department of motor vehicles).

noncitizens apply for a driver's license, for example, they often are automatically registered to vote in state and local elections of a state. And relatedly, when registration databases are not properly maintained, noncitizens have been documented voting in statewide elections.<sup>22</sup>

## I. BACKGROUND ON STATE CONSTITUTIONS & NONCITIZEN VOTING

State constitutions fall into two categories with respect to the protection of American citizens in state and local elections:

- (1) Some state constitutions include citizens as a group entitled to vote, but leave open the possibility (or legal argument) that state legislatures might add other groups—such as noncitizens—to those entitled to vote; and
- (2) Some state constitutions expressly require voters to be citizens. These state constitutions are models for the protection of American citizens.

The first category lists citizenship as a qualification but leaves open a legal argument that the enumerated list is permissive rather than exclusive. That is, while the constitution may say that citizens have a right to vote, the legislature is not limited to citizens, and may extend the franchise to other groups like noncitizens too. Many states falling into the second category add citizenship as a qualification within their state elections code, but the lack of clear constitutional provisions means that the standard could change. Oklahoma, Idaho, and Vermont fall into the

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<sup>22</sup> E.g., Joe Schoffstall, *Pennsylvania State Department Sued for Hiding Noncitizen Voting Records*, The Washington Free Beacon, February 27, 2018, <https://freebeacon.com/issues/pennsylvania-state-dept-sued-hiding-noncitizen-voting-records/> (more than 100,000 noncitizens registered to vote in Pennsylvania at the time); Marc Levy, *Official: Pennsylvania System Glitch Allowed Non-Citizens to Register to Vote in Philadelphia*, NBC Philadelphia, September 20, 2017, <https://www.nbcphiladelphia.com/news/local/non-citizens-mistakenly-allowed-to-vote-due-to-pa-licensing-glitch/28498/> (at least 168 noncitizens registered to vote with an undisclosed number participating, and some doing so in multiple elections); Shawn Fleetwood, *Court: Pennsylvania Must Release Records on Non-Citizens Voting in Elections*, The Federalist, April 8, 2022, <https://thefederalist.com/2022/04/08/court-pennsylvania-must-release-records-on-non-citizens-voting-in-elections/> (Pennsylvania must turn over voting records of noncitizens, but only wants to disclose a list of 1,160 noncitizens purported to request removal from registration lists).

second, permissive qualification, category. The Oklahoma Constitution lists citizenship as one of the permissive qualifications necessary to vote.<sup>23</sup> The Idaho Constitution, lists citizenship only as a permissive qualification, stating that “every male or female citizen of the United States ... is a qualified elector.”<sup>24</sup> Similarly, the Vermont Constitution lists citizenship as a permissive qualification, stating: “Every person of the full age of eighteen years who is a citizen of the United States ... shall be entitled to all the privileges of a voter of this state.”<sup>25</sup> Despite this provision, the Vermont Supreme Court recently ruled that the Constitution does not bar noncitizen voting because “Chapter II, § 42... does not apply to local elections.”<sup>26</sup> The decision resulted from a challenge to two separate laws passed by the Vermont Legislature in 2021 that allowed the two largest cities in the state, Montpelier and Winooski, to permit noncitizen voting.<sup>27</sup>

The second category expressly requires citizenship as a condition to participate in elections (and/or expressly prohibits noncitizen voting). Arizona and Pennsylvania fall into this category requiring citizenship as a condition to vote. The Arizona Constitution prohibits anyone who is not a citizen of the United States of the age of eighteen years or over from voting.<sup>28</sup> Similarly, the Pennsylvania Constitution requires that any prospective voter “shall have been a citizen of the United States for at least one month.”<sup>29</sup> These are models for other states to follow.

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<sup>23</sup> Okla. Const. Art. III, Sec. 1.

<sup>24</sup> Id. Const. Art. VI, Sec. 2.

<sup>25</sup> Vt. Const. Ch. II, § 42.

<sup>26</sup> *Ferry v. Montpelier*, 2023 Vt. 4, No. 22-AP-125, slip op. at 1 (Vt. Jan. 20, 2023); see also Associated Press, *Vermont Supreme Court Rules in Favor of Noncitizen Voting*, U.S. News, Jan. 23, 2023, <https://www.usnews.com/news/best-states/vermont/articles/2023-01-23/vermont-supreme-court-rules-in-favor-of-noncitizen-voting>.

<sup>27</sup> *Id.*

<sup>28</sup> Ariz. Const. Art. VII, Sec. 2.

<sup>29</sup> Pa. Const. Art. VII, Sec. 1.



## II. VOTING & ELECTOR QUALIFICATIONS UNDER OKLAHOMA LAW

There is a need to amend the Oklahoma Constitution to clarify that a voter in Oklahoma state elections must be a United States citizen, because Article 3, section 1 of the Oklahoma Constitution does not clearly prohibit noncitizens from voting. Specifically, Article 3 provides that one who is a United States citizen *is* qualified to vote but does not state that noncitizens are prohibited from voting. Although the Oklahoma Election Code currently is silent on noncitizens from voting, it could be easily amended by a future legislature to permit noncitizen voting.

Enshrining a provision in the Oklahoma constitution clearly prohibiting noncitizen voting would make it difficult for a future legislature to enable noncitizens to vote and would prohibit home-rule cities from independently permitting noncitizen voting.

### A. Voter Qualifications Under the Oklahoma Constitution

Both the Oklahoma Constitution and Election Code contain provisions defining who is qualified to register to vote in Oklahoma elections.

Six sections of the Oklahoma Constitution that deal with voting regulation: no law shall be enacted that interferes with the right to vote on account of race, color, or previous condition of servitude (Article 1, section 6); no power shall ever prevent the free exercise of voting by those entitled to such right (Article 2, section 4); all resident citizens, unless otherwise proscribed, who are over 18 years of age are qualified to vote (Article 3, section 1); citizens may place on the ballot independent candidates for office (Article 3, section 3); eligible voters may be required to register with the state—if registration is required, no voter may vote who has not registered (Article 3, section 4); and, voters shall be free from all molestation while at or going to and from the voting place (Article 3, section 5).

Simplified, Article 3, section 1 states that a person is a qualified voter if he or she is:

- (1) 18 years of age or older;
- (2) A resident of the state;
- (3) A citizen; and
- (4) Not otherwise prevented by law from voting.

And once qualified, no law may be passed that prevents you from exercising your right to vote.

By saying citizens *are* qualified voters if not otherwise prevented by the legislature, Article 3, section 1 does not foreclose the possibility that the legislature or a municipality can deem other persons, including noncitizens, to be qualified. This means stating citizens are qualified to vote does not preclude the legislature from stating that noncitizens are also qualified to vote.

Said another way, a constitutional provision stating that ‘cars are motor vehicles’ does not preclude trucks or busses from being motor vehicles. Nor does it prevent the legislature from writing a law that states that ducks<sup>30</sup> are also motor vehicles, since they are motor-powered machines that are capable of driving over ground. The lack of clarity in the Oklahoma Constitution creates potential loopholes that courts, municipalities, and future legislatures – and left-wing advocates – might seek to exploit by adding to the categories of persons who are qualified to vote. For this reason, it is important for constitutional provisions to be clear.

While the obvious method of permitting noncitizens to vote would be a legislative action, the existence of charter cities in Oklahoma adds a concerning potential avenue for allowing noncitizens to vote in local elections. Under the Oklahoma Constitution, cities with over 200,000

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<sup>30</sup> Ducks could mean aquatic avians or amphibious vehicles used by the U.S. Army and Marine Corps during World War II, known then as DUKW and known colloquially as “ducks.” Encyclopaedia Britannica, *DUKW*, <https://www.britannica.com/technology/DUKW>, accessed December 20, 2023.

residents may become charter cities. Cities that adopt home-rule are accorded “full power of local self-government in so far as such powers may be exercised in a manner not inconsistent with the constitution and general laws of the state.”<sup>31</sup> “In order for there to be a conflict between a state enactment and a municipal regulation, both must contain either express or implied conditions which are inconsistent and irreconcilable with one another.”<sup>32</sup> Even where there is a direct conflict with a state law, depending on the situation, home-rule cities law can even supersede state law where the matter is one of local concern.<sup>33</sup>

Although the better reading of the Oklahoma Constitution is that citizenship as a requirement to vote, it is possible that a court could interpret the Constitution as not being sufficiently clearly determinative to prevent Oklahoma’s largest home-rule cities from amending their charters or adopting practices that allow noncitizens to vote. In fact, some legal scholars have posited that noncitizen voting is a likely outcome in home-rule cities in Oklahoma.<sup>34</sup>

The Oklahoma Supreme Court has not been known for the most textualist or originalist decisions in recent years—quite the opposite, in fact, as the Oklahoma Supreme Court recently has done everything in its power to see opaqueness in the Oklahoma Constitution.<sup>35</sup> Because of Oklahoma’s judicial nomination process, it is likely that the courts will continue to find ambiguity in the state constitution.<sup>36</sup> The Oklahoma Supreme Court can therefore not be relied upon at this time to interpret the Oklahoma Constitution as banning noncitizen voting.

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<sup>31</sup> *Sparger v. Harris*, 131 P.2d 1011, 1013 (Okla. 1942); *see also* Okla. Const. Art. 18, Sec. 3(a).

<sup>32</sup> *Moore v. City of Tulsa*, 561 P.2d 961, 963 (Okla. 1977).

<sup>33</sup> *See Ramsey v. Leeper*, 31 P.2d 852, 856 (Okla. 1933) (“The power of the home rule city to adopt charter provisions which will prevail over the laws enacted by the Legislature depend upon whether such provisions relate to a matter of strict municipal concern.”).

<sup>34</sup> Joshua A. Douglas, *The Right to Vote Under Local Law*, 85 GEO. WASH. L. REV. 1039, 1086 n. 236 (2017).

<sup>35</sup> *See Oklahoma Call for Reproductive Justice v. Drummond*, 2023 OK 111 (2023).

<sup>36</sup> *See* Ray Carter, *In Oklahoma, Democrat Campaign Donors Pick Supreme Court Justices*, OCPA, Nov. 8, 2023, <https://ocpathink.org/post/independent-journalism/in-oklahoma-democrat-campaign-donors-pick-supreme-court-justices>.

## B. Voter Qualifications Under the Oklahoma Election Code

The Oklahoma Election Code does not contain any requirement that voters be citizens. Section 26-4-101 simply states that every person who is a qualified elector as defined by Article 3, section 1 of the Oklahoma Constitution shall be entitled to become a registered voter. The only limitations on that right to vote are if a person is a felon or otherwise incapacitated. Once registered, the secretary of each county holds voters' registration in a central registry in the offices of the county election board.<sup>37</sup> Registrations then can only be canceled by the secretary under a set list of reasons—none of which includes that a voter is not a citizen.<sup>38</sup> However, this past year, the Oklahoma Election code was amended to require the secretary to cancel registrations of voters who were excused from jury duty for not being a citizen.<sup>39</sup> However, even with these changes, the secretary is not permitted to remove every noncitizen for simply being a noncitizen.

It is also worth noting that neither the Oklahoma Election Code nor the Oklahoma Criminal Code criminalize noncitizen voting.

### **III. A CONSTITUTIONAL AMENDMENT WOULD PROTECT U.S. CITIZENS AGAINST THE RISK OF NONCITIZEN VOTING**

While the Election Code could be amended to clearly limit voter registration and voting to citizens, it could be just as easily changed again by a future legislature. A constitutional amendment requiring citizenship to be an qualified voter, however, would create further hurdles that would need to be overcome before noncitizens could vote in an Oklahoma election. The

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<sup>37</sup> Okla. Stat. tit. 26, § 4-114 – 115.

<sup>38</sup> Okla. Stat. tit. 26, § 4-120.

<sup>39</sup> Okla. Stat. tit. 26, § 4-113 (2023).

Oklahoma Constitution states that a constitutional amendment requires ratification by the voters—as does removing an amendment (Article 24, section 1).

If the Oklahoma Constitution disqualified noncitizens from voting, courts could not uphold actions by election boards, home-rule cities, or even the Oklahoma Legislature that conflicted with the constitutional provision.<sup>40</sup> Accordingly, enshrining a provision disqualifying noncitizens from voting in the Oklahoma Constitution would mitigate the concern a future legislature will amend the Election Code to qualify noncitizens to vote.

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<sup>40</sup> *Ranch v. Smith*, 148 P.3d 842, 848 (Okla. 2006).