

Assessment of Non-Citizen Voting Laws in Wisconsin

Becky Arps

*Director of Research
for Americans for
Citizen Voting*

***Any home rule
city could allow
non-citizens to vote
in local elections
under Wisconsin's
current statutory
and constitutional
framework.***

University of Kentucky Law Professor Joshua Douglas, the nation's leading expert on local voting laws, has determined that there are "no clear impediments" to non-citizens being given the vote in Wisconsin. Wisconsin's many home-rule municipalities could do so at any time.

The Wisconsin Constitution states in Article III, Section 1, that "Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district."

Wisconsin State Statute 6.02 says that "Every U.S. citizen age 18 or older who has resided in an election district or ward for 28 consecutive days before any election where the citizen offers to vote is an eligible elector."

Both the Wisconsin Constitution and State Statute declare that "Every United States Citizen" who is 18 or older and who resides in an election district (clarified in the statute for 28 consecutive days before an election) can vote. The phrase "Every United States citizen" makes clear that the right of United States citizens to vote is protected by both the constitution and state statute. The only limits to voting provided by both of these documents are age, required to be 18 or older, and residency, residing in an election district in this state.

There is nothing in either the state constitution or the state statute that limits the right to vote to only U.S. citizens.

Compare Wisconsin to States Where Non-Citizens are Voting

Article II, section 2, subdivision (a) of the California Constitution states, "A United States citizen 18 years of age and resident in this State may vote."

Non-citizens are voting in California right now. Legally. The city of San Francisco Board of Supervisors enacted an ordinance in 2021 making Proposition N, which allowed non-citizen parents of students to vote, permanent. In 2022 that ordinance was challenged in court. In 2023 the City and County of San Francisco argued that the constitution sets only a floor for voter qualifications and does not prohibit expanding the electorate to non-citizens. They go on to note that identifying who does vote does not preclude the expansion of the franchise to non-citizens, that it does not state "only". The California court agreed.

In 2024 there is an amendment to the Missouri state constitution amending the state constitution to say "Only citizens of the United States" instead of "All citizens of the United States" can vote. This amendment was challenged in court. The judge rejected the challenge saying:

SJR 78 proposes to amend Article VIII, Section 2 to take what could be read as a constitutional floor (a rule that says at least all US citizens who meet the other requirements have the constitutional right to vote in applicable elections, without this language speaking on anybody besides US Citizens) and amend it to a constitutional ceiling (only US citizens who meet the other applicable requirements may vote in Missouri elections).

California's constitutional language – "A United States Citizen" – and Missouri's provision – "All citizens" – are similar to Wisconsin's constitutional language: "Every U.S. citizen." This language, unfortunately, provides only a floor protecting the right to vote for US citizens, not a ceiling limiting voting rights to only citizens.

Wisconsin is a home rule state. In Article XI Section 3 the constitution allows "Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village."

In conclusion, any home rule Wisconsin city could allow non-citizens to vote in local elections under the current statutory and constitutional framework.

References:

Constitutional Amendment –
Question 1:
[https://ballotpedia.org/Wisconsin_Citizenship_Voting_Requirement_Amendment_\(2024\)](https://ballotpedia.org/Wisconsin_Citizenship_Voting_Requirement_Amendment_(2024))

The Right to Vote Under
Local Law, Joshua A Douglas:
<https://onlycitizens.vote/wp-content/uploads/2024/05/The-Right-to-Vote-Under-Local-Law-Joshua-A-Douglas.pdf>

Wisconsin Constitution:
https://docs.legis.wisconsin.gov/constitution/wi_unannotated

Wisconsin State Statute:
<https://docs.legis.wisconsin.gov/statutes/statutes/6/i/02>

Lacy vs City and County of
San Francisco:
<https://law.justia.com/cases/california/court-of-appeal/2023/a165899.html>

Missouri case:
https://www.courts.mo.gov/fv/c/Judgment_FINAL.pdf?courtCode=19&di=3257565