

**From:** Lim, Victor (BOS)  
**Sent:** Monday, August 08, 2016 4:17 PM  
**To:** Somera, Alisa (BOS); Yu, Angelina (BOS)  
**Subject:** FW: Letter to San Francisco Board of Supervisors re noncitizen voting  
**Attachments:** 2016 07 18 AAAJ-ALC letter to SF Board of Supervisors re noncitizen voting.pdf

Alisa,

Per our conversation, please kindly add this letter into the Non-Citizen Voting file. Thank you.

Sincerely,

Victor Wai Ho Lim, Legislative Aide  
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San Francisco Board of Supervisors  
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**From:** Jonathan Stein [mailto:jonathans@advancingjustice-alc.org]  
**Sent:** Monday, July 18, 2016 8:12 PM  
**To:** Lim, Victor (BOS) <victor.lim@sfgov.org>  
**Cc:** Angela Chan <angelac@advancingjustice-alc.org>  
**Subject:** Letter to San Francisco Board of Supervisors re noncitizen voting

Hi Victor.

As discussed, I have attached the letter from AAAJ-Asian Law Caucus on the noncitizen voting measure. Please let us know what you think and how we can distribute this to the Board of Supervisors. I would also like to send it to Matt Haney, who is both a friend of mine and, as the president of the board of education and a supporter of the measure, someone who should be aware of these issues. I will email it to him whenever you deliver it to the Board of Supervisors. (I am of course happy to deliver it myself; I'll await your thoughts.)

Thanks,

Jonathan

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Jonathan Stein

**Staff Attorney and Program Manager, Voting Rights Program  
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July 18, 2016

Members of the San Francisco Board of Supervisors  
City Hall  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, Ca 94102-4689

cc Hon. Matt Haney, President, San Francisco Board of Education

**Re: Proposed Charter Amendment Permitting Noncitizen Parent Voting in SFUSD Elections**

Dear Honorable Members of the San Francisco Board of Supervisors:

On behalf of Asian Americans Advancing Justice – Asian Law Caucus, I write in regard to the proposed noncitizen voting charter amendment, recently introduced by Supervisor Eric Mar. The measure would empower noncitizen parents, both documented and undocumented, with children under 19 to vote in San Francisco Unified School District (SFUSD) elections.

Asian Americans Advancing Justice – Asian Law Caucus is the nation’s oldest Asian American civil rights organization, working for the advancement of low income Asian American communities in a diversity of areas, including workers’ rights, housing and tenants’ rights, immigrants’ rights, and voting rights.

The core purpose of our voting rights program is to ensure that Asian American communities are able to be full participants in California’s democracy. As such, we are supportive of the intentions behind the proposed noncitizen voting charter amendment. If it is placed on the November ballot and approved by San Francisco voters, the Board of Supervisors will be tasked with passing a critically important implementing ordinance. This letter serves to raise questions that will have to be addressed in that implementing ordinance; the answers to these questions are crucial to determining whether noncitizen San Franciscan parents will be able to exercise their newly granted right to vote without fear of negative immigration consequences. We remain neutral on the measure before you because of the gravity and significance of these as-of-yet unanswered questions.

This letter does not comment on whether allowing noncitizens to vote in SFUSD elections conflicts with the State Constitution and the California Elections Code, which is a separate legal analysis.

**How will noncitizens be kept from voting in federal, state, county, and city elections and thereby committing a crime that could jeopardize their immigration statuses?**

Under the proposed charter amendment, noncitizen parents will be empowered to vote in SFUSD elections only. Voting in other elections would remain a crime under state law (Cal. Elec. Code § 18560(a)) and, in some circumstances, federal law (18 U.S.C. § 611). Because neither state nor federal law specifies a *mens rea* (intent) requirement, knowledge that one is ineligible to vote in an election is not required for a crime to be committed and a claim that one voted in the wrong election mistakenly would not be a defense. This means if a noncitizen San Franciscan parent, exercising his or her right to vote in SFUSD elections following the passage of the proposed charter amendment, accidentally oversteps and votes in a federal, state,



county, or city election, he or she could be criminal prosecuted. Even in the absence of criminal prosecution, he or she could be hit with significant immigration consequences: legal permanent residents and undocumented individuals who vote inadvertently are eligible for deportation. Additionally, undocumented individuals in this situation are no longer eligible for adjustments of their immigration status through common means, including marriage to a United States citizen. Advancing Justice – ALC is actually now representing a legal permanent resident who is in deportation proceedings on the grounds that he registered to vote and voted under a mistaken belief that he was eligible to do so. Our client is being threatened with deportation even though he voluntarily canceled his voter registration after he became aware he was ineligible to vote.

This concern may be resolved by providing noncitizens with separate ballots with only SFUSD elections on them and then providing noncitizens seeking to naturalize a letter from the City and County or from SFUSD explaining that their votes in school board elections were authorized under the San Francisco Charter. The City of Takoma Park, Maryland, which permits noncitizens to vote in city elections, holds its city elections on different dates from all other elections, protecting noncitizens from mistakenly voting in a county, state, or federal election. It also provides its residents with letters during their naturalization processes informing immigration authorities that noncitizen voting in city elections is legal.

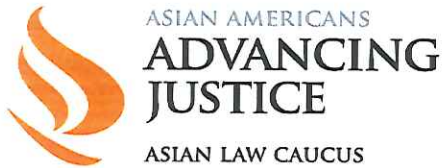
Knowing which voters need SFUSD-only ballots may require maintaining a separate list of noncitizen voters. How such a list could be created, and whether such a list could be kept confidential so undocumented residents of San Francisco on that list are not put in jeopardy, pose serious challenges.

**Can an alternative method of registering noncitizen voters be created, given that current methods of voter registration would likely not be accessible to noncitizens?**

Because the California courts have interpreted Article II, Section 2 of the California Constitution as requiring citizenship to vote in California (*see e.g. Spier v. Baker* (1898) 120 Cal. 370), and because the California Elections Code states in multiple places that individuals must be citizens in order to vote (Cal. Elec. Code §§ 2101, 2300), a voter registration card submitted to a county elections office without an indication that the registrant is a citizen is rejected under current practice. An online voter registration cannot even be submitted on the Secretary of State's website without an indication that the registrant is a citizen.

Thus, in order to expand the franchise to noncitizens and to know which city voters need the envisioned SFUSD-only ballots, the City and County of San Francisco may have to operate a separate voter registration system for noncitizens. This is not without precedent nationally. In Takoma Park and some other Maryland cities where noncitizens, including undocumented residents, are able to vote in city elections, the city clerks of those cities operate independent voter registration systems and maintain their own lists of noncitizen voters.

The California Elections Code purports to lay out the exclusive means by which Californians may register to vote (Cal. Elec. Code § 2100 et. seq.); the City and County of San Francisco operating an independent voter registration system would appear to conflict with this. But the California Constitution also gives charter cities like San Francisco authority over “the manner in which, the times at which, and the terms for which the members of board of education shall be elected or appointed” (Calif. Const., Art. IX, § 16). Whether the



power granted by this section of the City Charter includes the power to devise and operate a new process for registering voters appears to be a novel legal question that the Board of Supervisors may wish to refer to the City Attorney.

It is also possible that the City and County of San Francisco could devise a means of enabling noncitizens to vote without use of voter registration at all, but the legality of such a process and how such a process would work while maintaining election integrity would have to be carefully scrutinized.

**How can noncitizen voter information be kept confidential?**

The California Elections Code mandates that county elections officials make public some personal information provided by registered voters, including their names and residence addresses (Cal. Elec. Code § 2180 et. seq.). It is not clear if the same requirement would apply to voter registration information resulting from an alternative voter registration system and held by an office other than the County Registrar of Voters. If the requirement does apply, or if noncitizen voter registration data is subject to open record laws, this creates a very serious concern that the names and addresses of undocumented San Franciscan parents will be accessed by members of the public, law enforcement, and immigration authorities.

The Board of Supervisors will need to examine legal mechanisms and data management techniques that enable the City and County to shield noncitizen voter information from public disclosure. Lessons may be learned from the implementation of municipal IDs in San Francisco and the implementation of AB 60, which enabled undocumented Californians to obtain driver's licenses from the DMV. Of particular interest may be California Vehicle Code Sections 12801(c)(3) and 12801.9(k), both of which indicate that a license issued pursuant to AB 60 shall be not used to "consider an individual's citizenship or immigration status as a basis for an investigation, arrest, citation, or detention." Something similar could be written into a city ordinance governing the use of noncitizen voter registration data.

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Asian Americans Advancing Justice – Asian Law Caucus supports the full participation of immigrant communities in American society and, as a result, we support the idea of noncitizen parent voting in concept. Until we are confident the questions raised in this letter can be answered satisfactorily, we will continue to take a neutral position on this measure. We hope this letter helps illustrate the gravity of what lies ahead for the Board of Supervisors should the measure pass and we look forward to working with you and other advocates to ensure that this measure enfranchises immigrant communities without putting any San Francisco residents at undue risk. Thank you for your time and attention to these issues.

Sincerely,

Jonathan Stein  
Staff Attorney and Program Manager, Voting Rights  
Asian Americans Advancing Justice – Asian Law Caucus