



CITY OF CAMBRIDGE

BOARD OF ELECTION COMMISSIONERS

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To: Richard C. Rossi, City Manager
From: Tanya L. Ford, Executive Director, Election Commission
Date: April 27, 2015
Re: Awaiting Report Item Number 14-139, Feasibility Study And Subsequent Action Plan For Instituting Suffrage For Immigrants In Cambridge

This is in response to Awaiting Report Item Number 14-139 which requested a report on a feasibility study and subsequent action plan for instituting suffrage for immigrants in Cambridge.

Background

Over the years there has been an effort to allow immigrants to vote in the United States without becoming citizens. As a result of these efforts, there are several municipalities in the United States that currently allow non-citizens to vote in local elections. Moreover, legislation to allow non-citizens to vote has been introduced in a number of states and localities.

In Massachusetts, Cambridge, Brookline, Amherst and Newton have, in the past, submitted proposed home rule petitions to the Legislature seeking to allow non-citizens to vote in local elections. Because the regulation of elections is a power reserved for the state by the Massachusetts Constitution, Amendments Article II, § 7, such proposals require home rule approval by the state legislature. To date, the legislature has not acted favorably on any of these proposals. A number of other cities and towns are in the initial stages of considering whether to forward such a proposal to the Legislature.

In 2004 the City of Cambridge petitioned the Commonwealth of Massachusetts General Court to enact a home rule petition entitled "An Act Enabling Certain Non-Citizen Residents of Cambridge to Vote in School Committee and City Council Elections" (See attached). Shortly thereafter, State Representative Alice Wolf introduced legislation which would grant each municipality in Massachusetts the ability to allow immigrants to vote in local elections without needing approval from the legislature (See attached). This bill would grant each municipality in Massachusetts the ability to determine voter qualifications. Municipalities could then pass laws allowing non-citizens to vote in municipal elections without state approval. This bill was sent to

the Joint Committee on Election Laws and was tabled and has remained tabled. Even with local approval, state action is needed to implement these local laws. Absent state legislation, the City could not unilaterally confer the right to vote in municipal elections upon non-citizens.

Practical Questions

At the time the City of Cambridge submitted its proposed home rule legislation, legislators expressed concerns ranging from maintaining “uniform laws regarding voting eligibility” to the need for inclusion of specific parameters in the legislation. Looking at models in other municipalities, we would need to consider prior to any proposed legislation on this issue:

- Defining the population - Will it include both legal and illegal residents?
- What term will be used to refer to non-citizen voters? “Voters” is defined in state and federal law as citizens only.
- Eligibility requirements to register to vote – How will non-citizen voters register? How will the City check eligibility? Will the City be required to communicate with the United States Citizenship and Immigration Services? How will records be maintained?
- Non-citizen status requirements (length of residency, citizenship status) -- some non-citizen voting proposals require three years as a legal resident which is two years before naturalization. Others suggest a period of only one year or less, allowing a non-citizen just entering the U.S to vote.
- Will non-citizen voters be allowed to run and serve in public office?
- Administrative issues – Separate voting list, registration form, software programs

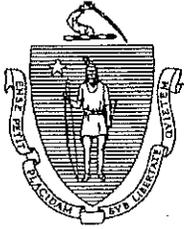
The process of considering the feasibility of any such proposed legislation would also require review to make sure it is in compliance with the Voting Rights Act. The City would need to check the requirements of the federal Act carefully before registering individuals to vote because there could be serious penalties for registering or voting in an election where a voter does not meet citizenship requirements.

There are municipalities across the United States which currently allow non-citizen voting in local elections. One U.S. municipality which allows for non-citizen voting is Takoma, MD. Non-citizen voting was introduced in Takoma, MD in 1992. However, its legality has not been challenged in the courts. Since inception, non-citizen voting participation in some municipalities has turned out to be small and in some cases non-existent even with attempts by local officials to increase participation. At one time New York City also allowed non-citizens to vote in local school-board elections and a small percent of those non-citizens voted.

Legal Feasibility

The Massachusetts Constitution and Massachusetts General Laws ch. 51, section 1 confer the right to vote upon “[e]very *citizen* eighteen years of age or older...” (emphasis added). Further, the Massachusetts Constitution, Amendments Article II, Section 7 reserves the regulation of elections for the state. As a result, permitting some form of immigrant suffrage in Cambridge would require either a home rule petition or legislation permitting all cities and towns in Massachusetts to institute immigrant suffrage without a home rule petition. Because no such effort has yet resulted in any such legislation in Massachusetts, immigrant suffrage has not been subject to legal challenge in Massachusetts courts.

REFILE OF PREVIOUS MATTER: BILL #: OF YEAR:



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT TO ENABLE CERTAIN NON-CITIZEN RESIDENTS OF CAMBRIDGE
TO VOTE IN SCHOOL COMMITTEE AND CITY COUNCIL ELECTIONS.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
and by the
authority of the same, as follows:*

SECTION 1.

Notwithstanding the provisions of section one of chapter fifty-one of the general laws, or any other general or special law, rule or regulation to the contrary, non-citizens eighteen years or older who reside in the city of Cambridge may, upon application, have their names entered on a list of voters, established by the Elections Commission, for the city of Cambridge and may thereafter vote in any election for school committee members, school committee questions, and City Council. Such non-citizen members shall remain eligible to vote in school committee and City Council elections for so long as they remain domiciled in Cambridge.

SECTION 2.

The Election Commission is authorized to formulate regulations, guidelines and registration form to implement the purpose of this act. The voter registration forms shall include a declaration to be signed under pains and penalties of perjury by the non-citizen voter that: 1) s/he is residing in Cambridge; 2) s/he intends in good faith to become a U.S. citizen and intends to begin that process, if eligible.

SECTION 3.

Nothing in this act shall be construed to confer upon non-citizens the right to vote for any, state or federal office or any state or federal ballot questions.



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND FIVE

AN ACT

ENABLING CITIES AND TOWNS TO EXTEND VOTING RIGHTS IN MUNICIPAL ELECTIONS TO CERTAIN NON-CITIZENS OF THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 51 of the General Laws is hereby amended by inserting after section 1F the following section:—

Section 1G. (a) Sections 1G, inclusive, shall take effect in any city or town upon the approval by the legislative body and acceptance by the voters of a ballot question as set forth in this section.

(b)(1) Notwithstanding the provisions of section one of chapter fifty-one of the general laws or any other general or special law to the contrary, non-citizens, 18 years of age or older, residing in a city or town that accepts section 1G, inclusive, may upon application have their names entered on a list of voters established by the municipal election officials, and may thereafter vote in any municipal election for school committee, school committee questions, city council and board of selectmen for so long as they remain domiciled in the municipality.

(2) The election officers of a municipality that accepts the provisions of section 1G, inclusive, are authorized to formulate regulations, guidelines, and registration forms to implement the purpose of this act. The voter registration forms shall include a declaration to be signed under pains and penalties of perjury by the non-citizen voter that: 1) s/he is residing in the municipality; 2) s/he intends in good faith to become a U.S. citizen and intends to begin that process, if eligible.

(3) Nothing in this act shall be construed to confer upon non-citizens the right to vote for any state or federal office or any state or federal ballot questions.

(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. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question:

- "Shall (city or town) accept section 1G, inclusive, of chapter 51 of the General Laws, as approved by its legislative body, a summary of which appears below"
- (Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel.)
 - (2) If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town after 90 days, but not otherwise.

(3) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

