



HISPANIC BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

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Re: Support for Bill 21-0128, “The Local Resident Voting Rights Amendment Act of 2015”

Dear Councilmembers:

On behalf of the Hispanic Bar Association of the District of Columbia (“HBA-DC”), we applaud Councilmembers Evans, Grosso, Nadeau, Allen, and Silverman, who introduced Bill 21-028, “The Local Resident Voting Rights Amendment Act of 2015” (the “Bill”). We urge the entire Council of the District of Columbia to pass Bill 21-1028. With Bill 21-028, the Council demonstrates leadership as it writes a new chapter in the long, continuing struggle for meaningful participatory democracy in the District of Columbia. By giving a voice to lawful permanent residents (“LPR”) in matters of purely

local concern, the Council reconnects with our nation’s long history of non-citizen voting while simultaneously sending a message of inclusion in an era that is characterized by efforts across the country to limit rather than expand the right to vote. Since local resident voting is a reality in several municipalities in the United States, we believe that any objections to this noble goal are surmountable and encourage your passage of the Bill.

Bill 21-028 was introduced on January 20, 2015 and received a public hearing on July 8, 2015. In order to provide local voting rights to permanent District residents who are not yet citizens, the Bill would amend the District of Columbia Election Code of 1955¹ by adding the new definitions for “local elections” and “permanent resident.” Local elections exclude federal elections but include ballot initiatives. Permanent residents are persons lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.²

At the hearing on the Bill, testimony from the Board of Elections raised concerns about the implementation of the law. The Board representative testified that implementation would face “a variety of administrative and logistical hurdles.”³ Principally, these hurdles appear to be:

- (1) Separate voter rolls would have to be maintained for purely municipal elections and all others;
- (2) Non-citizen voters would have to complete separate voter registration applications;
- (3) Special notice would be required for non-citizen voters about possible immigration consequences;
- (4) Non-citizen voters would have to be converted to citizen voters upon naturalization;
- (5) A new paper ballot style would be required for non-citizen voters;
- (6) A separate election schedule would have to be maintained to avoid “overlap” with citizen voters; and
- (7) Segregating non-citizen voters from citizen voters would cause “embarrassment” and affect their “privacy.”⁴

We believe that the enumerated concerns are largely insubstantial and that implementation of the law will not unduly burden the Board of Elections. Before addressing these concerns and suggesting solutions, we touch briefly upon the long history of non-citizen voting in the U.S. Finally, we end with an appreciation of the impact of non-citizen voting to a significant portion of the District’s population.

I. America has a long history of non-citizen voting that continues today in local settings.

For approximately 150 years, from the country’s founding to about the 1920s, non-citizens were allowed to vote in local, state, and federal elections.⁵ During this period, non-citizens voted in at least

¹ D.C. Official Code § 1-1001.01 *et seq.* (2012 Repl.).

² See Immigration and Nationality Act, 66 Stat. 166 (1952); 8 U.S.C.A. § 1101(a)(20) (2014).

³ *Local Resident Voting Rights Amendment Act of 2015: Hearing before the Committee on the Judiciary* (Jul. 8, 2015) (testimony of Clifford D. Tatum, Executive Director of the District of Columbia Board of Elections) (“Tatum Testimony”).

⁴ *Id.*

⁵ See Ron Hayduk, *Democracy for All?: The Case for Restoring Immigrant Voting in the United States* (2011), available at <http://immigrant-movement.us/wordpress/democracy-for-all-the-case-for-restoring-immigrant-voting-in-the-united-states/>.

22 states and territories.⁶ Following the War of 1812, antipathy towards foreigners resulted in the passage of laws in certain states, beginning with Louisiana, which restricted the franchise to citizens. Around the time of World War I, the country was again in the grip of anti-immigrant fervor, resulting in another wave of laws eliminating the right of non-citizens to vote.⁷ Though the Supreme Court had long acknowledged the distinction between citizenship-based voting rights at the state and federal levels, the anti-voting movement generally foreclosed non-citizen voting at both the state and federal levels.⁸

Still, since 1970, immigrant (non-citizen) voting rights have been restored at the local level.⁹ Chicago permits non-citizen voting in school board elections.¹⁰ Non-citizens currently vote in six municipalities in Maryland, including Takoma Park.¹¹ Cambridge, Amherst, Newton, and Brookline in Massachusetts have extended local voting rights to non-citizens, though these extensions require state approval.¹² Other jurisdictions, apart from Washington, D.C., are currently considering non-citizen voting proposals, including Boston, New York City, and Denver.¹³

Closest to the District, as the Board of Elections testified, Takoma Park, Maryland permits non-citizen voting in local elections.¹⁴ In Takoma Park, non-citizens must provide proof of residency and identification in addition to completing their separate voter form.¹⁵ In the District of Columbia, efforts to grant local voting rights to non-citizens go back at least a decade with the introduction of the Equitable Rights Amendment Act of 2004.¹⁶ Clearly then, granting voting rights to residents in strictly local elections regardless of citizenship status is neither a novel nor an infeasible idea in the United States generally or in the D.C. area specifically. Accordingly, any criticism of Bill 21-028 should be met with solutions and not permitted to linger as a permanent barrier.

II. Implementation of local resident voting faces few substantial hurdles, which can be overcome by fresh, alternative proposals.

The vast majority of the Board of Election's concerns with implementing a local resident voting law are not substantial. Rather, the concerns raise minimal administrative burdens. For instance, the concern about printing different voter registration forms is not meaningfully different from having to

⁶ See Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391 (1993), available at http://scholarship.law.upenn.edu/penn_law_review/vol141/iss4/3/.

⁷ *Id.*

⁸ *Id.*

⁹ See Hayduk, *supra*.

¹⁰ *Id.*

¹¹ *Id.*; see also Tatum Testimony, *supra*.

¹² See Hayduk, *supra*.

¹³ *Id.*

¹⁴ Non-citizen voting is permitted for municipalities under the Maryland Constitution. See MD. CONST. ART. I § 2. Maryland electoral law sets forth a citizenship requirement; however, any municipality, except Baltimore, can maintain supplemental voter registration. This supplemental list extends the right to vote to those who do not meet state citizenship requirements, as is the case with Takoma Park. See Takoma Park Municipal Code Art. VI, Sec. 601(a), available at <http://www.codepublishing.com/MD/TakomaPark/mobile/index.pl?pg=TakomaParkCH/TakomaParkCH06.html>. Five other municipalities allow non-citizen voting: Barnesville, Martin's Additions, Somerset, Garrett Park and Chevy Chase.

¹⁵ See Takoma Park Voter Registration, <http://elections.takomaparkmd.gov/p/register-to-vote.html> (last visited Sept. 20, 2015).

¹⁶ See B15-977 Equitable Voting Rights Amendment Act of 2004 Intro. 07-13-04, by Councilmembers Graham, Brazil and Fenty, referred to the Committee on Government Operations, available at: <http://ronhayduk.com/immigrant-voting/around-the-us/legislation/washington-legislation/>.

print additional voter registration forms in the event of a surge in citizen, as opposed to non-citizen, voter registration. The Board would be obligated to print the additional forms in the former case. The only difference in the non-citizen voter context would entail a different design for the form, which should not be a significant burden. The same rationale would apply to the printing of different ballots – the only incidental burden would be a different design. In either case, the maintenance of forms and ballots are both within the current statutory mandate of the Board of Elections.¹⁷

In the same vein, the concern about the need for a process to convert non-citizen voters upon naturalization to citizen voters should not present an insurmountable obstacle. Existing law already obligates the Board to maintain a “unique identifier assigned to every registered voter in the District.”¹⁸ It is not a stretch to imagine that adding a special letter, number, or other symbol to the unique identifier to denote a non-citizen voter would allow for conversion by simply eliminating the additional figure. This idea would be consistent with a proposal in New York City that envisions identifying non-citizen voters with the letter “M” for municipal voter.¹⁹

Concerning the maintenance of separate voter rolls, while HBA-DC can appreciate that the Board of Elections would believe that such maintenance may pose a significant administrative challenge, it is not clear that the maintaining separate rolls presents an undue burden. According to the Powell Report, a non-citizen voting proposal pending before the New York City Council envisions the merger of both voter lists for elections, as residents entitled to vote only for municipal offices would be distinguished by the letter “M,” as described above.²⁰ According to the City Clerk’s office at Takoma Park, the city maintains a separate voter roll simply because Maryland state law does not allow non-citizens to register to vote for statewide elections.²¹ The Council’s change of the District’s Code of Elections modifying the definition of qualified elector to permit voting in all but federal elections, coupled with the use of modern technology and a unique identification number, should obviate the need for separate voter rolls. Indeed, through the use of modern technology, proper training for poll workers, and separate ballots, there should not even be a need to hold municipal elections on a different date than federal elections in the District.

Lastly, HBA-DC is mindful that many details of implementation, including the crafting of appropriate notices to non-citizen voters about immigration law consequences, could be addressed by appropriate rulemaking, for which the Board has ample authority.²² However, we are aware of the perception, articulated by the Board in testimony at the hearing on Bill 21-028, that segregating ballots would somehow cause “embarrassment” to non-citizen voters due to being “singled out.” This perception is merely an assertion without any factual support and should not give the Council pause in moving the Bill forward. Far from perceiving this government action as “stigmatizing,” the government can just as easily be perceived as being inclusive of non-citizen voters within the limits of their special

¹⁷ The duties of the Board include taking “whatever action is necessary and appropriate” to register voters and to conduct elections. See D.C. Official Code § 1-1001.05(a) (2012 Repl.).

¹⁸ D.C. Official Code § 1-1001.05(a)(1) (2012 Repl.).

¹⁹ See Noncitizen Voting in New York City, A Report from the Public Service Management Program at the Colin Powell School of Civic and Global Leadership (“Powell Report”), June 2014.

²⁰ See Powell Report, *supra*, at 4.

²¹ See “Who is eligible to register to vote,” Takoma Park Elections, City Clerk’s Office, Board of Elections *available at* <http://elections.takomaparkmd.gov/p/register-to-vote.html>.

²² See D.C. Official Code § 1-1021.02 (2012 Repl.).

circumstances – a job the government routinely performs (e.g., driver licenses indicating that a person is under age 21).

For the above reasons, HBA-DC believes that the administrative concerns about implementation are more cautionary than realistic. Rather than over-emphasize logistical challenges, the Council should appreciate how its leadership in expanding representative democracy in the District can meaningfully improve the lives of a significant portion of the city’s population.

III. The expansion of local voting rights improves representative democracy in the District and sends a message to the nation of political inclusion.

The Local Resident Voting Rights Amendment Act of 2015 creates a social good in the District of Columbia by bringing meaningful representative democracy into the lives of lawful permanent residents. The number of persons obtaining lawful permanent resident status in the District of Columbia in recent years has remained steady: 2,897 (2010), 2,724 (2011), 2,811 (2012) and 2,981 (2013).²³ Because of the lengthy naturalization process, which on average lasts seven years, the number of LPRs awaiting naturalization today may be approximately 11,413,²⁴ which includes immigrants from Latin America, Asia, Africa, and elsewhere. By allowing LPRs to vote in purely local elections, B21-028 creates the opportunity for civic engagement through voting that is otherwise denied to them due to the delays in the naturalization process.

Additionally, allowing LPRs to vote in local elections provides a longer time frame to encourage voting behavior.²⁵ This period of “practice” can hasten the incorporation of LPRs into the District’s democratic process and eventually produce increased participation in federal elections when the LPRs naturalize. Moreover, LPR voters can approach their elected representatives with more confidence that they can meaningfully advocate for local concerns such as trash collection, police patrols, and school issues.

HBA-DC is mindful that the District of Columbia has been engaged in a decades-long struggle for voting rights in Congress – a goal HBA-DC steadfastly supports. The expansion of municipal voting rights to non-citizen residents of the District should be seen as a chapter in that long story of advocating for increasingly meaningful participatory democracy. Passage of the Bill would be a valuable counter-example to states that have implemented constricting limitations on the right to vote after the Supreme Court’s decision weakening the Voting Rights Act of 1965.²⁶ Councilmembers should not wonder whether voting rights should be granted to lawful permanent residents depending on the popularity of the reform. Given that non-citizen residents of the District pay taxes just like citizens do, the expansion of the franchise is the right thing to do.

²³ U.S. Department of Homeland Security, Office of Immigration Statistics, U.S. Legal Permanent Residents: 2013 Yearbook of Immigration Statistics, Table 4 –Persons Obtaining Lawful Permanent Resident Status By State Or Territory of Residence: Fiscal Years 2004 to 2013, *available at* http://www.dhs.gov/sites/default/files/publications/ois_yb_2013_0.pdf (last visited Sept. 20, 2015).

²⁴ U.S. Department of Homeland Security, Office of Immigration Statistics, Policy Directorate, U.S. Naturalizations 2013, *available at* http://www.dhs.gov/sites/default/files/publications/ois_natz_fr_2013.pdf (stating that persons naturalized in 2013 on average spent seven years in LPR status before becoming a citizen).

²⁵ See Ronald Hayduk, *Democracy for All?: Restoring Immigrant Voting Rights in the United States* 75-76 (Routledge, Taylor & Francis Group, LLC 2006) (stating that local voting for LPRs hastens integration and political incorporation).

²⁶ See *Shelby County v. Holder*, 570 U.S. ____; 133 S.Ct. 2612 (2013).

The HBA-DC exists in part to promote equal justice and opportunity for all Hispanics. Established in 1977, our membership includes several hundred lawyers practicing in Washington D.C., Maryland, and Virginia as well as Hispanic students attending local law schools and other non-lawyer associate members. Consistent with the mission of our organization we offer you our position on this legislation. We are available to you to provide additional information as you consider this legislation and we thank you for your attention to our concerns.

Sincerely,



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