

Kentucky Constitution Amendment 1, November 2024:  
Restrictive Citizenship Voting Requirements

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## **Introduction**

“The sun shines bright on my Old Kentucky Home,” are the opening words to one of the most famous state songs in our country. My dear home state of Kentucky, unfortunately, does not shine that same light on every resident. In the most recent election cycle, Kentuckians voted on two controversial amendments to their constitution, and the first of those amendments will be the focus of this paper. The amendment, called Amendment 1, proposed adapting the voting section of the Constitution to include language that specifically excludes those from voting who are not citizens. Although federal law already prohibits non-citizens from voting, states differ in their approaches to non-citizen voting. Also, though Kentucky’s constitution pre-amendment did not specifically hold language allowing non-citizens to vote, there has never been explicit, exclusive language actually banning it until now. The purpose of this paper is to target and inform the individuals who have created this noncitizen voting language in our constitution, and those who voted for it.

Currently, only fourteen states in the United States have specific exclusive language similar to Kentucky’s: Idaho, Wisconsin, Iowa, Missouri, Alabama, North Carolina, Oklahoma, South Carolina, Florida, Colorado, Arizona, North Dakota, Ohio, and Louisiana. Unsurprisingly, a lot of the states hail from the south and most of them are deeply red states as well. Also unsurprisingly, Kentucky was not the only state that voted to explicitly ban noncitizen voting in

in 2024. It is no coincidence that this wave of anti-immigration sentiment, though omnipresent, has gone full force in 2024 with the reelection of Donald Trump.

Though Kentucky will be the focus of this paper, other states' enactments of similar bans speak to a growing wave of anti-immigrant sentiment. Conversely, localities that allow noncitizens to participate in local elections include San Francisco, Takoma Park, Maryland, and three cities in Vermont. There is hope. But with the growing trend toward explicit exclusive language, it is frightening to think of what may come next for Kentucky. Will Kentucky next require proof of citizenship at the polls? Or more? In this white paper, I will discuss the implications of noncitizen voting bans, the history and deeply entrenched racism and discrimination embedded in this country that continues to marginalize minorities, different ways to reshape the narrative, and finally, recommendations for how to enact the proposed changes.

### **Background**

In November of 2024, Kentuckians voted on Amendment 1: whether to explicitly change the wording in the state constitution to:

Section 145 Persons entitled to vote. Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he or she offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere. **No person who is not a citizen of the United States shall be allowed to vote in this state.** The following persons also shall not have the right to vote:

1. Persons convicted in any court of competent jurisdiction of treason, or felony, or bribery in an election, or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.

2. Persons who, at the time of the election, are in confinement under the judgment of a court for some penal offense.

3. Idiots and insane persons.

Text as Ratified on: November 5, 2024.

Unfortunately, the amendment passed. This bill was introduced first in the senate by Jason Howell and next in the house by Representative Michael Meredith.

### **Non-Citizens are Not the Only Group Constitutionally Excluded from Voting**

Women in the United States did not gain the right to vote until June 4, 1919 – scarcely more than 100 years ago. It took over 100 years of advocating and fighting for this achievement. But, the fight is not fully over, as decades later, voting rights are still racialized and biased toward white women.

The suffrage movement itself was a very white movement, and Black women and minoritized communities remain disadvantaged in voting throughout time and up until now, too. Things like poll closures in black neighborhoods, stricter voter ID requirements, longer lines in black neighborhoods, less flexibility of poll time openings and closings, and targeted disinformation to black women have contributed to this. Brennan Center for Justice. *The Impact of Voter Suppression on Communities of Color*. Brennan Center for Justice, (2020, <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>). Women not having gained the right to vote until the last century, and the myriad ways women of color are still disproportionately affected at the polls, speaks to the tardiness of United States voting reform in general.

### **Non-Citizen Voting Implications**

Donald Trump falsely claimed in 2020 that non-citizens had illegally cast ballots in the

election, resulting in the winning of former President Joe Biden. In Arizona specifically, a state with language similar to Kentucky's on non-citizen voting, Trump claimed that more than 36,000 ballots were sent in by non-citizens. Rudy Giuliani, a legal adviser to Trump, also backed these false narratives. A New York appellate court found this to be "false and misleading." The Arizona Senate established a committee to audit this election, which found no evidence of voter fraud. *In the Matter of Rudolph Giuliani*, 146 N.Y.C 268 (N.Y. App. Div. 2021). A bill entitled H.B. 2492 was introduced in Arizona surrounding this issue, which would require proof of citizenship and explicitly ban non-citizen voting. Senator Martin Quezada voiced that the bill would disproportionately "target people of color." Aside from the sheer discriminatory effect that banning non-citizens has on minority communities, research has shown that Latino and AANHPI voters registered to vote due to being citizens may be afraid to vote after bills like this are enacted due to living in mixed-status households. Citizens who are registered to vote may fear going to the polls due to having undocumented people in their own home.

There are other valid arguments on why noncitizens should be allowed to vote, such as taxation without representation, having a civic stake in the community, historical precedent, pathways to inclusion, youth and family advocacy, and democracy and equity reasons. But none of these focus on why noncitizen voting is being banned in the first place, and the roots in marginalization and exclusion that banning noncitizen voting comes from.

One important thing to note here is that noncitizen voting rarely happens in the first place. There are severe repercussions for noncitizen voting, including deportation, fines, and imprisonment. Research has shown that noncitizens voted only 77 times in the last election cycle – a far cry from the claims of Trump, Giuliani and the like. The fearmongering by Republicansthat noncitizens are voting and overtaking elections is completely without merit, but it also contributing to the rise in banning noncitizen voting explicitly.

## **Kentucky's Culturally Diverse History**

The land we now call Kentucky was once called Kentahten, and came from either likely Cherokee or Mohawk origin. Present-day Kentucky was traversed by several Native American tribes, including Shawnee, Cherokee, Chickasaw, Yuchi, and Mosopelea. Though its meaning is debated, “Kentahten” is most commonly accepted as meaning “land of tomorrow.” Kentucky lawmakers should recognize Kentucky’s roots as hunting land, full of abundant wildlife, rivers, mountains and prairies, and give homage to those who have toiled and worked the land of past, present and future. This includes noncitizens. Viewing the land as a witness changes the narrative to one of inclusion rather than one of exclusion.

Amendment 1 is similar to a physical barrier, a border wall, keeping marginalized and minoritized communities separate from citizens, specifically White, privileged folks. It is exactly what Trump envisioned in enacting the “Build the Wall” campaign, this wall is just a paper form. Amendment 1 is a slap in the face to communities that have tended and toiled the land, cared for it, and raised their children on it. Amendment 1 is a tool of erasure. In amending Kentucky’s constitution, before, there was at least some “wiggle room” for future advocating of noncitizen voting – but the constitution’s language as it reads now removes any hope of inclusion for noncitizens to vote in the future.

Furthermore, it takes head on an issue that is not even ripe for legislation. Noncitizens already do not vote in elections. Changing constitutions to reflect a policy that is not needed is harmful and sets a bad precedent. If state constitutions can be amended willy-nilly to further exclude, how far can legislators take their restrictive program? It is also important to note that the Founding Fathers, though very problematic and discriminatory themselves, did not explicitly ban noncitizen voting. Kentucky’s constitution has actually, believe it or not, gotten more inclusive as time has passed with respect to other groups aside from noncitizens. In the 1920’s,

the 19th amendment gave women the federal right to vote, which overrode the male only language. In the 1960's, the Federal Voting Rights Act outlawed literacy tests and other education-based discriminatory practices and gave all black people the right to vote. In 2019, our current governor, Andy Beshear, issued an executive order restoring voting rights to almost 200,000 Kentuckians with nonviolent felony convictions. These positive changes give hope – but how can there be hope now when noncitizens voting bans are explicitly carved out in writing?

### **Recommended Rewrite of Amendment 1**

Because the current Amendment 1 is a tool for excluding already marginalized communities, my recommendation for rewriting the Amendment to be as inclusive as possible is the following:

Said title is amended by revising Section 145:

Every individual who is a citizen of the United States, at least eighteen years of age, and who has resided in the Commonwealth of Kentucky for one month, shall be eligible to vote in that precinct and not elsewhere.

The following individuals shall not be eligible to vote:

1. Individuals convicted in a court of competent jurisdiction of treason, a felony, bribery in an election, or any other serious offense that the General Assembly may define as disqualifying for voting rights.
2. Individuals who are currently incarcerated under the judgment of a court for a criminal offense.

Said title is further amended by adding a new code section to read as follows:

3. However, individuals disqualified under these sections may have their voting rights restored through an executive pardon or restorative justice work.
4. Individuals who have been legally determined to lack the capacity to vote due to significant cognitive or mental impairments, as recognized by a court of law, mental health professionals and doctors of medicine.

Said title is further amended by adding a new code section to read as follows:

5. Noncitizens who contributed to their community, and who meet the age and residency requirements established by law, shall have the right to vote in all local, regional and national elections. No law shall deny the right to vote based on citizenship status. Citizenship and anti-immigration sentiment will not be a barrier to the right to participate in democracy. Discrimination based on citizenship is punishable by law and will not be tolerated, as it undermines the goal of justice, equality and freedom for everyone.

In rewriting the Amendment this way, specific citizen voting rights language is actually added, instead of banned, and offensive language like “idiots and insane persons” is removed. This lends itself to a more inclusive writing allowing people to exercise their civil right to vote, regardless of their citizenship status.

### **Conclusion**

Kentucky’s Amendment 1 is a classic example of one step forward and two steps back. Though Kentucky has made strides recently toward making voting provisions more inclusive, this ban on noncitizen voting does the opposite. In order to create a Commonwealth we are truly proud of, and to lift up every Kentuckian, regardless of citizenship status, we need to remove the explicit noncitizen language once again and add language to enshrine rights for noncitizens. This

will ensure room to continue to carve out rights for noncitizens in the future and ensure that other states do not have precedent to follow suit in banning noncitizen voting. It will also help empower those to vote who will vote against the very politicians who are in office putting these bans into writing.