

HARVARD LAW SCHOOL

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HARVARD IMMIGRATION AND
REFUGEE CLINICAL PROGRAM
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Cambridge City Council
Louis DePasquale, Cambridge City Manager
Nancy Glowa, Cambridge City Solicitor
795 Massachusetts Avenue
Cambridge, MA 02139

Dear Cambridge City Council, Mr. DePasquale, and Ms. Glowa:

The Harvard Immigration and Refugee Clinical Program (HIRC) is submitting this letter in support of the proposed Policy Order #3, presented on November 7, 2016, which introduces provisions for immigrant voting in municipal elections for residents of Cambridge. HIRC applauds this effort and writes to encourage Cambridge to enact this important policy to promote immigrants' rights for the reasons set forth below.

First, Cambridge has long been a leader in advancing protections for immigrants, and establishing municipal voting for immigrant residents of Cambridge is a critical next step in ensuring that immigrants' voices are heard and considered in local decision-making. Implementing noncitizen voting rights will help make our community stronger by encouraging civic education and participation and by recognizing the multi-fold contributions of immigrants to our community, from paying taxes to serving in the U.S. military.¹

Second, there is no existing legal precedent, federal or state constitutional language, or act of Congress that prevents Cambridge from permitting immigrant residents to vote in municipal elections. The United States has an extensive history of noncitizen voting in local elections. From 1776 to 1926, forty states and federal territories permitted noncitizens to vote in local, state, and federal elections, and noncitizens were even permitted to hold public office.² Today,

¹ See Ron Hayduk & Michele Wucker, *Immigrant Voting Rights Receive More Attention*, MIGR. POLIC. INST. (Nov. 1, 2004), <http://www.migrationpolicy.org/article/immigrant-voting-rights-receive-more-attention>.

² Ron Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the United States*, IMMIGRANT MOVEMENT INTERNATIONAL (2011), <http://immigrant-movement.us/wordpress/democracy-for-all-the-case-for-restoring-immigrantvoting-in-the-united-states/>.

seven different municipalities in Maryland allow noncitizens to vote, and these voting rights have survived all legal challenges to date.³

Third, the two federal statutes that forbid noncitizen voting apply only to federal elections or when a noncitizen has violated a “provision, statute, ordinance, or regulation.”⁴ Both statutes allow for noncitizens to vote legally, which would include Cambridge residents voting under this ordinance.⁵

Fourth, the City of Cambridge arguably has the power to regulate municipal elections without a Home Rule petition. Municipal elections are not mentioned in the Massachusetts Constitution, and the limits on a municipality’s power to regulate elections only apply to those listed in the Massachusetts Constitution.⁶ Thus, these limits may not apply to local elections.

Fifth, any practical challenges to this proposal can be overcome with sufficient planning. Concerns about defining the eligible noncitizen population are easily resolved by setting forth clear ID or residency requirements, and challenges involved with administering the ordinance can thereby be mitigated.

In sum, there are significant legal and practical reasons for pursuing noncitizen municipal voting rights, and preparation can overcome any potential challenges that may arise. Again, we applaud the Council’s consideration of this ordinance and urge its implementation in the City of Cambridge.

Sincerely,

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³ *Id.*; See Aaron Kraut, *Takoma Park Stands by Non-U.S. Citizen Voting Law*, WASH. POST (2016), https://www.washingtonpost.com/local/takoma-park-stands-by-non-us-citizen-votinglaw/2012/03/13/gIQAVBcgBS_story.html?utm_term=.c3ca51a2718b.

⁴ 8 U.S.C. § 1182; 18 U.S.C. § 611.

⁵ 8 U.S.C. § 1182(i); 18 U.S.C. § 611(a)(2). An additional potential defense for nonimmigrants that vote was highlighted by the Seventh Circuit in *Keathley v. Holder*, 696 F.3d 644, 646–47 (7th Cir. 2012), where the court held that if a noncitizen who discloses herself as such is allowed to vote by a government official, she is permitted to raise this fact as a defense, if such voting is prohibited.

⁶ See generally *Opinion of the Justices to the House of Representatives*, 332 N.E.2d 896, 900 (Mass. 1975).