



# State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

## Explainer: The Proposed Constitutional Amendment on Noncitizen Voting on Wisconsin's November General Election Ballot

Bree Grossi Wilde, Executive Director

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As part of the November 5<sup>th</sup> election, Wisconsin voters will be asked for the fifth time this year whether to amend the Wisconsin Constitution. In April, voters [approved two](#) provisions banning private funding for election administration and limiting who can administer elections. In August, voters [rejected two](#) provisions that would have granted the legislature power to determine how to spend certain federal funds. Wisconsin voters will now decide whether to amend the constitutional provision defining suffrage or voting rights. Specifically, the [ballot question](#) asks: "Shall section 1 of article III of the constitution, which deals with suffrage, be amended to provide that only a United States citizen age 18 or older who resides in an election district may vote in an election for national, state, or local office or at a statewide or local referendum?"

A Wisconsin voter who is not familiar with the state's constitution could reasonably infer from this ballot question that the *current* version of the Wisconsin Constitution contains no mention of citizenship or that it affirmatively authorizes voting by noncitizens or those under age 18. But that's not the case. [Article III, section 1](#) currently provides: "Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district." The proposed amendment, therefore, would change "Every United States citizen age 18 or older" to "Only a United States citizen age 18 or older" and would expressly list the types of elections covered. This Explainer addresses whether or how these seemingly small changes could impact who votes in Wisconsin and offers broader context for this amendment effort.

### Citizenship Requirement

#### *Limits of Proposed Amendment's Impact*

Consider first what the proposed amendment *doesn't* do. Federal law already makes it illegal for noncitizens to vote in all federal elections, including elections for the U.S. House, U.S. Senate, and president. In 1996, codifying long-standing practice, Congress [prohibited noncitizen voting in such elections](#) as part of the Illegal Immigration Reform and Immigrant Responsibility Act. This law provides criminal penalties of a fine and imprisonment of up to a year for any noncitizen who votes in a federal election, [even if the person voted by mistake](#). Federal law also provides that a noncitizen who votes illegally in federal, state, or local elections could [face deportation](#).

Noncitizens also are not allowed to vote in state elections—for example, for state legislators or for governor—in Wisconsin or in [any other state](#). In addition to the current language of article III, section 1, [Wisconsin statutes](#) require voters to be United States citizens. This law is reflected in [Wisconsin’s voter registration form](#), which begins by listing voting qualifications and requires registrants to check “Are a citizen of the United States” before completing the rest of the form. Registrants are then required to sign and certify that they are a “qualified elector” and acknowledge that if they have provided any false information, they “may be subject to fine or imprisonment under State and Federal laws.”

What about elections at the local level—for example, for city council or school board, or a local referendum on school funding? [Legislative sponsors](#) of this proposed constitutional amendment maintain that it would prevent noncitizen voting in local elections in Wisconsin, citing examples of noncitizens legally voting in local elections in other states. Currently, just [17 municipalities in the United States](#), out of over [35,000 towns and cities](#), permit noncitizens to vote in local elections. Of these municipalities, 11 are in Maryland; the others are in Vermont, California, and Washington, D.C. [These municipalities](#) have made a judgment that individuals who are established within the community and are subject to its laws should have a say in local affairs even if they are not citizens. But no Wisconsin municipality currently or in the recent past has allowed noncitizens to vote, and there is no indication that such a change is on the horizon.

Moreover, it is not apparent that existing Wisconsin law would allow a Wisconsin municipality to extend voting rights to noncitizens even if a municipality wished to do so. In addition to the current language of article III, section 1, Wisconsin’s election statutes—including the provisions defining voter qualifications—expressly [apply to all elections](#) in the state. Courts in other states have reached divergent conclusions about whether provisions akin to Wisconsin’s current constitutional text allow municipalities to authorize local noncitizen voting. Earlier this year, a [New York appellate court](#) invalidated a New York City measure that would have allowed noncitizen voting in municipal elections, concluding that it violated the [“Every citizen” language in New York’s constitution](#). In contrast, in 2023, a [California appellate court](#) upheld a San Francisco ballot proposition allowing noncitizen parents to vote in San Francisco school board races, concluding that the [California constitution’s reference to United States citizens](#) voting did not preclude municipalities from expanding local voting rights to noncitizens. And, also in 2023, the [Vermont Supreme Court](#) rejected a challenge to the City of Montpelier’s amendment to its charter allowing noncitizens to vote in local elections, concluding that the [“Every person . . . who is a citizen of the United States” constitutional provision](#) did not apply to local elections.

In sum, this proposed constitutional amendment will not have any immediate practical impact on voter eligibility in Wisconsin. And even if a Wisconsin municipality sought in the future to open local elections to noncitizen participation, it is not clear that existing law would allow them to do so.

## **National Scene**

The limited impact of this proposed constitutional amendment raises questions about why the state legislature has chosen to pursue it. Shifting to the national scene, Wisconsin lawmakers are not alone in proposing a change from “every citizen” (or the similar “all citizens” in other state constitutions’ [suffrage provisions](#)) to the “only citizens” language in the proposed amendment. Seven states recently have adopted such [changes](#). Eight additional states, including Wisconsin, will vote on the “only citizen” provision this November. None of these fifteen states have or had municipalities that allow noncitizens to vote. Like in Wisconsin, if passed, these amendments would not change existing voting qualifications. A national advocacy group, [Americans for Citizen Voting](#), has [enlisted the conservative American Legislative Exchange Council \(ALEC\)](#) to push these measures across the country.

Critics of these amendment proposals [express concern](#) that they serve mainly to fuel a dangerous misimpression that noncitizens are currently voting in the United States. Recent empirical studies from [Brennan Center](#) and [Cato Institute](#) indicate that the occurrence of noncitizens illegally voting in the United States is negligible, accounting for less than 0.0001% of possible votes. The [Heritage Foundation’s database](#) reports just 23 instances of noncitizen voting nationwide between 2003 and 2022. Individual state audits or investigations similarly support a finding that illegal voting by noncitizens is “[exceedingly rare](#).” A 2022 audit of the voter rolls in [Georgia](#) found that just 1,634 noncitizens attempted to register to vote over the 25-year period from 1997–2022, and none succeeded in doing so. [North Carolina](#) recently discovered nine possible noncitizens registered to vote—out of more than 7.7 million total voters in that state. In addition, this amendment does not attempt to address unlawful voting.

## **Historical Perspective**

Although noncitizen voting has long been disallowed in Wisconsin and elsewhere, the deeper historical story is interesting and perhaps surprising. The [original suffrage provision](#) of the Wisconsin Constitution, adopted at the time of the state’s founding in 1848, expressly allowed some noncitizens to vote. Specifically, it included as qualified voters “[w]hite persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States on the subject of naturalization.” Noncitizen voting in Wisconsin continued until 1912, when [an amendment](#) to the Wisconsin Constitution’s voter qualifications provision took effect. Wisconsin was not alone in allowing noncitizen voting; at least [30 other states](#) also authorized it up until the early twentieth century, with [Arkansas](#) being the last state to ban the practice in 1926.



## Youth Voting

Most discussion and analysis of the proposed constitutional amendment has focused on the citizenship requirement for voting. But it bears noting that the amendment also addresses voting age: “Only a United States citizen age 18 or older” would be eligible to vote. The [26<sup>th</sup> Amendment](#) to the United States Constitution, ratified in 1971, lowered the voting age from 21 years to 18 years of age, and Wisconsin law does not currently authorize anyone under 18 to vote.

Outside Wisconsin, however, some states and localities do permit younger people to vote in certain elections. [Twenty states](#) and Washington, D.C., allow individuals who are 17 years old, but will be 18 by the date of the general election, to vote in primary elections, for both state and federal offices. In [four additional states](#), certain political parties have permitted 17-year-olds to vote in presidential primaries and caucuses. In addition, approximately [seven municipalities](#), in three states—California, Maryland, and Vermont—have lowered the voting age to 16 for local elections. In 2013, [Takoma Park, Maryland](#) became the first locality to make this change. [Proponents of youth voting](#) argue that young people contribute to their communities and have a stake in electoral outcomes, and that lowering the voting age would encourage life-long voting habits and incentivize civic education.

As noted above, Wisconsin does not allow 17-year-olds to vote in primary elections, and no Wisconsin municipalities have extended voting to 16- or 17-year-olds. If enacted, the proposed amendment thus would not change existing practice, but it would appear to foreclose any future effort to lower the voting age through state legislation or local enactments.

## Conclusion

In short, the question for Wisconsin voters this fall is whether they believe the constitution’s existing language on voting qualifications is satisfactory. A “No” vote on the amendment will preserve the current language, which reads: “Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified voter of that district.” A “Yes” vote will alter the provision by swapping the word “Every” for the arguably more restrictive word “Only”: “Only a United States citizen age 18 or older who is a resident of an election district in this state is a qualified voter of that district who may vote in an election for national, state, or local office or at a statewide or local referendum.”

The practical impact of this proposed amendment on noncitizen voting in Wisconsin appears limited. Existing law already prohibits noncitizen voting in federal and state elections. As for local elections, no Wisconsin municipality allows or appears poised to allow noncitizens to vote, and existing law may already bar it. The proponents [underscore](#), however, that the amendment would more clearly close the door to any future local measure allowing noncitizen voting. In contrast critics see the proposed amendment [as a solution in search of a problem](#), with the potential to stoke division among Wisconsinites.