

# San Francisco Chronicle

## Oakland voters OK noncitizen voting in school board races, but the measure might never go into effect

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Oakland voters say noncitizen parents or guardians of school-age children should be allowed to vote in school board elections. The issue now heads to the City Council — and after that, to the courts, which already are wrestling with a similar law in San Francisco.

Measure S, approved by 62% of the voters last Tuesday, would not immediately allow voting by non-U.S. citizens but would authorize such action by the City Council, which voted in June to place the measure on the ballot. Council members said noncitizens, including legal residents and undocumented immigrants, make up 14% of Oakland's population and currently lack "representation in key decisions that impact their education and their lives." About 13,000 are parents or guardians of children younger than 18.

The question now is whether the forthcoming ordinance conflicts with a long-standing provision of the California Constitution that declares, "A United States citizen 18 years of age and resident in this State may vote."

A 2016 San Francisco ballot measure, the first in the state, allowed noncitizen parents to vote in school board elections, starting in 2018. This July, San Francisco Superior Court Judge Richard Ulmer ordered a halt to noncitizen voting in the city, saying the constitutional provision allowed only U.S. citizens to vote and could not be overridden by a local government. But the state's First District Court of Appeal put Ulmer's ruling on hold while the case was on appeal and allowed noncitizens to vote for school board candidates last week.

The conservative groups that challenged San Francisco's measure, the **United States Justice Foundation** and the California Public Policy Foundation, also filed

suit to remove Measure S from the Oakland ballot. Alameda County Superior Court Judge Michael Markman denied their request in August, saying it was premature because the measure would merely allow the City Council to pass a voting-rights ordinance. Markman said at a hearing that he thought Ulmer was probably right in deciding the state Constitution allowed only citizens to vote, but also observed that the issue would most likely be decided by higher courts.

Attorney James V. Lacy, leader of the two groups, says he plans to file another suit, probably in December, to challenge the expected Oakland ordinance. Lacy has contended the local measures would allow citizens' votes to be "diluted" by noncitizens. He also argued — and Ulmer agreed — that the state Constitution allows only U.S. citizens to vote.

In his ruling in July, Ulmer said the Constitution's declaration that citizens "may vote" was intended to prohibit others from voting. If "may" was changed to "shall," he said, all citizens would be required to vote, which is the law in some nations but not in the United States. And if the provision saying citizens "may vote" does not exclude noncitizens, as the city contends, Ulmer said it would also allow children or non-Californians to vote in local elections.

Eligibility to vote, the judge said, is a matter of "statewide concern" and is not subject to varying rules by local governments, even self-governing charter cities, which include both San Francisco and Oakland.

Appeals courts, and possibly the state Supreme Court, will have the last word on noncitizen voting. But the San Francisco case is back before Ulmer, and City Attorney David Chiu's office is urging him to reconsider the state constitutional language.

The Constitution "does not say only citizens may vote," and leaves the door open for greater eligibility in local elections, Deputy City Attorney James Emery wrote in a filing with Ulmer last week. "Charter cities may serve as laboratories of democracy demonstrating the benefits of noncitizen voting in local contests."

Emery cited a 1992 state Supreme Court ruling allowing Los Angeles to provide city funds to candidates for local offices, despite a state ballot measure that prohibited public funding of political campaigns. The filing also offered

appreciative statements from some noncitizen parents who had voted in San Francisco school board elections.

“For the first time in my life,” said Hwaji Shin, a lawful permanent resident and mother of a child in elementary school, “ I felt like I was a full member of the school community whose voice matters.”

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