

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS
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May 15, 2024

The Honorable Bryan Steil
Chairman
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515-6157

Dear Representative Steil:

Thank you for your May 6, 2024 letter concerning the implementation of the Local Resident Voting Rights Amendment Act of 2022 (“the Act”). I send this reply in my capacity as Chair of the three-member board of the District of Columbia Board of Elections (“the DCBOE”). DCBOE is an independent agency that is not directed or influenced by any outside source.

As you know, DCBOE *administers* the election laws that are in effect; we do not pass or propose any laws ourselves. With adherence to those current federal and local election laws, the agency is run, on a day-to-day basis, by our highly qualified Executive Director and management team of skilled election professionals. Our approximately 70-member staff comprise, I strongly believe, the finest election agency in the United States. Above the agency sits our three-member bipartisan Board of private citizens, to whom you addressed your letter. We are each nominated by the Mayor of the District of Columbia and confirmed by the Council of the District of Columbia for three-year terms. Our three-member Board fulfills several functions, both of an oversight and adjudicatory nature.

By way of background, on October 18, 2022, the DC Council passed the Act by a 12-0-1 vote. On November 21, 2022, the Act was returned by the Mayor without signature. On January 10, 2023, the Act was transmitted to Congress for the mandatory 30-day review period, during which time Congress did not pass a joint resolution disapproving the Act (this is the process followed for all DC local laws). The full legislative history of the Act can be found here: <https://lims.dccouncil.gov/Legislation/B24-0300>. Thus, the Act became and remains binding law in DC.¹

The Act, as it stands, permits non-citizen residents of DC to participate only in local elections as that term is defined in the Act (several other U.S. cities permit the same). Non-citizen residents may *not* participate in elections for the offices of US President and Vice-President, Delegate to the US House of Representatives, US Senator, US Representative, or for

¹ The Act is currently being challenged in federal court as unconstitutional. We are monitoring this case and DCBOE will cease implementation if the Act is struck down. The legal challenge to the Act was recently dismissed at the U.S. district court level, see [2024-03-20-Opinion-on-order-granting-motion-to-dismiss.pdf \(democracydocket.com\)](#). This challenge is on appeal to the D.C. Circuit Court of Appeals.

officials and members of local political party committees. You correctly cite 18 U.S.C. §611 which prohibits “any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner.” That section continues: “*unless* (1) the election is held partly for some other purpose; (2) aliens are authorized to vote for such other purpose under a State constitution or statute or *a local ordinance*; and (3) voting for such other purpose is conducted independently of voting for a candidate for such Federal offices, in such a manner that an alien has the opportunity to vote for such other purpose, but not an opportunity to vote for a candidate for any one or more of such Federal offices.” (emphasis added).

Through its Voter Education and Outreach Division (“VEOD”), the Board seeks to provide the most accurate and timely election-related information to the public and to ensure that all eligible voters in the District are aware of their rights and responsibilities as they relate to registration and voting. VEOD activities are extended to all of our DC voters, with various VEOD outreach efforts focused on students, the elderly, public transit riders, and other constituencies. Likewise, VEOD has engaged in neutral activities designed to inform non-citizens and the general public about the fact that non-citizens may register and vote in local elections.

Please rest assured that our agency is merely implementing an Act that was passed by our DC Council and then became law after the period for Congressional review. *We do not have a policy or political view as to whether the Act is wise or unwise.* For example, if a law that allowed DC citizens to vote at age 16 were passed, , we would implement it, or if a new law required all voting to be in person, we would implement that as well. We implement election laws, and we look to our legislatures (either Congress or the DC Council) to pass and amend those laws.

With the above in mind, we turn to the specific questions you posed:

- (1) To distinguish between citizen and non-citizen voters, your implementation of the Act requires two voter registration forms, two voter lists, and two different ballots.
 - a. If a bifurcated registration database is used, how will elections workers differentiate between those qualified to vote in federal elections and those who are not?

ANSWER: In DC, each voter receives a ballot tailored to their specific Ward (of which there are eight) and advisory neighborhood commission (of which there are 46), and in a primary, also to party status. Our system already generates dozens of different ballots depending on the voter’s residence and party affiliation. Our system will also easily generate a unique ballot for a non-citizen, excluding the presence of any federal contests. This is much like ensuring that a ballot for someone voting in the Republican primary does not include Democrat contests, and vice-versa. All non-citizen voters will be provided with a ballot that includes *only* the permissible local elections based on their place of residence.

- (2) Non-citizen voting in federal elections is a felony under 18 U.S.C. §611. What steps have you taken to ensure foreign nationals will not commit a crime by casting a vote for a federal office, including President of the United States?

ANSWER: Section 611 (quoted above) allows for the Act and the DCBOE’s implementation thereof. When anyone registers to vote in DC, they must swear or affirm that they meet each of the qualifications necessary to vote in DC and are put on notice that if they sign the statement of qualifications “even though [they] know it is untrue, [they] can be convicted and fined up to \$10,000 and/or jailed for up to five years.” Prior to the passage of the Act, an applicant had to swear or affirm that they are a U.S. citizen, which language served as a prohibition against illegal registrations. Since the passage of the Act, individuals have been allowed to indicate that they are non-citizens and if so, they are provided with the appropriate voter registration application, without the need for an oath of U.S. citizenship. They are then classified accordingly in the voter registration database and, in turn, their ballot will exclude any federal elections. Non-citizens otherwise swear and affirm to residence and other pertinent qualifications.

- (3) Can foreign nationals who are here representing their capitals as embassy personnel, including nationals from China, Russia, and Iran, vote in the governance of our nation’s capital?

ANSWER: No. Such foreign nationals can vote in non-federal local elections in the District of Columbia only if they effectively renounce their right to vote in their country of origin. Under DC Code §1-1001.02(2)(C), a “qualified elector” (whether a citizen or a non-citizen) means a person who “has maintained a residence in the District for at least 30 days preceding the next election *and does not claim voting residence in any state, territory or country.*” (emphasis added). Further, a foreign national applying to vote has to swear under penalty of law through the D.C. registration application that that person is not claiming voting residence in another country.

- a. Can non-citizens, who are employed by a foreign embassy in DC, use their embassy’s address when registering to vote?

ANSWER: No. The DCBOE does not accept commercial or business addresses for voter registration purposes.

- b. Can non-citizens use their foreign passport when registering to vote?

ANSWER: No. As a foreign passport does not contain the residential address information needed to register to vote, it cannot be used to register to vote in DC.

- c. How were the available languages that are used for the Mail in Voter Registration Application determined?

ANSWER: The District of Columbia Language Access Act of 2004 requires District of Columbia government agencies, including the DCBOE, to provide translations of vital documents into any non-English language spoken by a limited or non-English proficient population that constitutes 3% or 500 individuals, whichever is fewer, of the population served or encountered, or likely to be served or encountered by the covered entity. Accordingly, the Board’s Mail-in Voter Registration Application has been translated into the six languages that meet this threshold: Spanish, Chinese, Vietnamese, Korean, French, and Amharic.

d. Are there plans to have the Application available in Hindi, Russian, Persian, or any other languages?

ANSWER: No.

(4) Your current voter registration application in use for American citizens requires an affirmation of U.S. citizenship. What is your process if a non-citizen fills out this form?

ANSWER: See the answer to question 2.

(5) Your current voter registration application in use for American citizens requires that an applicant not be in jail for a felony conviction. The form for noncitizens does not have this requirement. Why not?

ANSWER: This question is not accurate. No application to vote in DC requires that the person not be in jail for a felony conviction. *See* the Restore the Vote Amendment Act of 2020, D.C. Law 23-0277, 68 DCR 004795.²

a. Can foreign nationals be in jail for a felony conviction and still vote?

ANSWER: A DC resident (citizen or non-citizen) who is in jail may continue to vote if they are otherwise eligible to vote in DC.

b. What is your plan to vet foreign nationals who have felony convictions?

ANSWER: A felony conviction does not prohibit any voting in DC, so nobody is vetted in this regard.

(6) The non-citizen voter registration application states, “If you are registering to vote in the District of Columbia for the first time and submit this application by mail or electronically, you may be required to provide identification that shows your name and current address the first time you vote in an election in the District of Columbia.

² The legislative history of the Restore the Vote Amendment Act can be found here: <https://lims.dccouncil.gov/Legislation/B23-0324>.

a. Why is identification not required?

ANSWER: The DCBOE does require identification in accordance with federal law. Under Section 303(b) of the Help America Vote Act (“HAVA”), Congress set a minimum identification requirement for first-time voters in federal elections. The DCBOE’s identification requirements follow the mandate of the law enacted by Congress.

b. What steps are taken when identification is requested and provided?

ANSWER: All first-time voters must present identification in order to vote, which applies to citizens and non-citizens alike.

c. What steps are taken when identification is requested and not provided?

ANSWER: If an applicant does not provide the required identification, their registration is incomplete, and when the voter attempts to vote, they will only be allowed to vote by provisional ballot, which will not be counted unless the voter provides the required identification on or before the 7th day after election day.

(7) To date, how many non-citizens are registered to vote in D.C.?

ANSWER: As of this date, there are 489 non-citizen registered voters in DC.

(8) Does your office plan to use Help America Vote Act (“HAVA”) of 2002 funds to help or encourage non-citizens to vote in D.C. local elections?

ANSWER: No.

(9) What legal analyses or guidance has the Board relied upon in implementing the Act?

ANSWER: The plain language of the Act and other relevant election laws.

We are currently in the voting period for our June 4, 2024 Primary Election, hard at work in an effort to deliver safe, secure, and orderly elections.

Sincerely,



Gary Thompson
Chair, DC Board of Elections