

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

FILED
San Francisco County Superior Court

JUL 29 2022

CLERK OF THE COURT

BY:  Deputy Clerk

JAMES LACY, et al.,

Case No. CPF-22-517714

Plaintiffs/Petitioners,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

**ORDER GRANTING MOTION
FOR WRIT OF MANDATE**

Defendants/Respondents.

In 2016, San Francisco voters passed a charter amendment that authorized noncitizens to vote in school board elections through 2022.¹ The charter amendment gave the city's board of supervisors authority to extend it indefinitely, and the board did so with ordinance 206-21 in November 2021. Plaintiffs then

¹ These noncitizens are San Francisco residents of voting age who are parents, guardians or caregivers of resident children under 19, and are not in prison or on parole for a felony. (Arntz Dec. 2:19-26.)

filed this writ proceeding asserting that ordinance 206-21 is unconstitutional and unlawful. (Pet. 5:3-12.)²

Touchstone of the writ petition is article II, section 2 of the California Constitution: “A United States citizen 18 years of age and resident in this State may vote.” Transcendent law of California, the constitution thus reserves the vote to a “United States citizen,” contrary to San Francisco ordinance 206-21.

Defendants’ effort to give the California Constitution a different meaning is unavailing. Their lead argument is that, while article II, section 2 says citizens “may vote,” noncitizens “may also” vote. (Opp. 8:12-17.) This proves too much. By the same logic, children under 18 and residents of other states “may also” vote in California elections, which our constitution does not allow.

The constitution uses “may” in “A United States citizen 18 years of age and resident in this State may vote” for good reason. Had it instead used the mandatory word “shall” (Opp. 9:17-21), resident citizens of age would be legally required to vote. Election laws in many nations make voting mandatory,³ but not the United States.

² Plaintiffs/petitioners are James Lacy, Michael Denny, United States Justice Foundation and California Public Policy Foundation. Defendants’ opposition does not dispute that plaintiffs have standing to sue or that this writ proceeding is a proper vehicle for their claims. Defendants/respondents are the City and County of San Francisco and Director of Elections John Arntz, et al.

³ Argentina, Australia, Belgium, Brazil, Egypt and Thailand are among the nations with compulsory voting laws. <https://stacker.com/stories/3485/countries-have-mandatory-voting>.

Defendants also say that, by voters' 1972 amendment to the California Constitution, they ceded to the legislature their "authority to define voter qualifications that had previously resided directly in the Constitution." (Opp. 11:2-3.) The 1972 amendment did no such thing. Rather, voters lowered the voting age from 21 to 18 and directed the legislature to shorten the residency period for voting consistent with a California Supreme Court decision. (RJN Ex. K.) As recognized in the 1972 amendment itself and in the analysis presented to voters, the constitution's requirement that a person be a "United States citizen" to vote remained unchanged – as it does to this day. (Id.)

Even had California voters ceded to the legislature their "authority to define voter qualifications" (they did not), statutes enacted by the legislature also unambiguously reserve the vote to United States citizens. "A person entitled to register to vote shall be a United States citizen" mandates Elections Code §2101(a). "All voters, pursuant to the California Constitution and this code, shall be citizens of the United States" mandates Elections Code §2300(a). "'Elector' means any person who is a United States citizen" provides Elections Code §321(a).

In an alternate argument, defendants cite a different part of the California Constitution – article IX, section 16(a). (Opp. 11:23-14:22.) It allows charter cities like San Francisco to provide "for the manner in which, the times at which, and the terms for which, the members of boards of education shall be elected or

appointed, for their qualifications, compensation and removal, and for the number which shall constitute any one of such boards.” (Id.)

Conspicuous by its absence from article IX, section 16(a) is any mention of voters or their qualifications. Indeed, Education Code §5390 mandates that “qualifications of voters” in “any” school board election “shall be governed by those provisions of the Elections Code applicable to statewide elections” – provisions that, as shown above, limit voting to United States citizens. Thus, defendants can cite no case holding that article IX, section 16(a) authorizes noncitizen voting.

Defendants rely on the word “manner,” arguing that it includes voting rights without saying so. However, constitutional language must be read in harmony with other provisions in the same constitution. (*Fields v. Eu* (1976) 18 Cal.3d 322, 328.) Here, as shown, the California Constitution limits the vote to “United States citizen[s]” in article II, section 2, so “manner” in article IX, section 16(a) cannot be interpreted to allow noncitizen voting.

“Manner” must also be considered in light of the terms grouped with it. (*Almond Alliance of California v. Fish & Game Commission* (2022) 79 Cal.App.5th 337, 364.) These regard the timing and terms of school board elections and the number, qualifications, compensation and removal of board

members, but not the qualifications of voters who, again, are never mentioned in article IX, section 16(a).

In another alternate argument, defendants say “San Francisco’s home rule power overrides any contrary state law.” (Opp. 15:1-2.) “State law” includes constitutional law such as article II, section 2 (“A United States citizen...may vote”), which, as shown, is contrary to San Francisco ordinance 206-21. And defendants conceded at oral argument that “home rule power” cannot override the California Constitution.

Even ignoring the constitution, San Francisco’s home rule power would not override the several state statutes (listed above) that limit voting to United States citizens. *California Federal Savings and Loan Association v. City of Los Angeles* (1991) 54 Cal.3d 1 and its progeny govern this point. (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 556.) Under that authority, a court determines whether (1) a local law regulates “municipal affairs,” (2) “an actual conflict” exists between state statute and local law, (3) the state statute addresses a matter of “statewide concern” and (4) the state statute is “reasonably related” to its statewide concern and “narrowly tailored.” (Id.)

First, “[n]o exact definition” of “municipal affairs” exists (*CalFed*, 54 Cal.3d at 16), so it is assumed without deciding that there is such an affair here.⁴

Second, as shown, actual conflict exists between the California Constitution and state election and education law on one hand and San Francisco ordinance 206-21 on the other. The former require that voters be United States citizens, the latter authorizes noncitizens to vote.

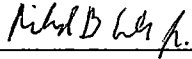
Third, the state statutes address matters of statewide concern: education and voter qualifications. (*Madsen v. Oakland Unified School District* (1975) 45 Cal.App.3d 574, 578; Edu. Code §5390 [applying “statewide” election law to all school board elections].) Defendants say these concerns do not undermine “San Francisco’s home-rule authority to maintain its noncitizen voting program.” (Opp. 19:24.) However, as shown, San Francisco has no authority to violate the California Constitution.

Fourth, the state statutes are reasonably related to the state’s concerns and are narrowly tailored – points defendants’ opposition dismisses with arguments that the concerns are not “legitimate.” (Opp. 19:13-20:13.)

⁴ Defendants argue “the societal benefits of noncitizen voting in School Board elections.” (Opp. 18:7-8.) If California voters agree, they can amend their constitution, as defendants note they have many times. (Id. at 9:23-25.)

In sum, San Francisco ordinance 206-21 is contrary to the California Constitution and state statutes and thus cannot stand.⁵ Plaintiffs' prayer is granted for (1) a declaratory judgment that ordinance 206-21 is void and unenforceable, (2) a peremptory writ of mandate prohibiting counting of votes in San Francisco school board elections cast by persons who are not United States citizens, (3) a permanent injunction prohibiting implementation of ordinance 206-21 in future elections and (4) judgment under Code of Civil Procedure §870 that ordinance 206-21 is invalid and without effect. Plaintiffs may file a regular noticed motion to seek attorney fees and costs.⁶

Dated: July 29, 2022



Richard B. Ulmer Jr.
Judge of the Superior Court

⁵ According to the parties, the issue of noncitizen voting in California elections has never been adjudicated in any appellate court.

⁶ All requests for judicial notice are granted. All evidentiary objections are preserved for appeal.

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FRANCISCO ET AL

JAMES V. LACY ET AL VS. CITY AND COUNTY OF SAN

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on July 29, 2022 I served the foregoing **Order Granting Motion for Writ of Mandate** on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: July 29, 2022

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