

Walter Olson on "The Right's Bogus Claims about Noncitizen Voting Fraud"

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In a recent article at the UnPopulist website, my Cato Institute colleague Walter Olson (who is an election law expert) explains why right-wing claims that noncitizens are voting illegally in large numbers are a myth:

If you believe Elon Musk, "Democrats" are permitting large numbers of immigrants into the country on purpose in order to win elections. By "ushering in vast numbers of illegals," he wrote on X March 5, "they are importing voters." Even if Democrats do deport many unlawfully present persons, they can't be wholehearted in that effort because "every deportation is a lost vote." Musk's co-thinker on this topic, former president Donald Trump, said in January in Iowa: "That's why they are allowing these people to come in—people that don't speak our language—they are signing them up to vote." And a television ad from Ohio Republican Sen. J. D. Vance claims that current border policies mean "more Democrat voters pouring into this country." "Treason indeed!" exclaims Musk.

All these men know—although they often fail to concede in their commentaries—that it's already entirely illegal for anyone who isn't a citizen to vote in a federal election. (A few municipalities let non-citizens vote in local races like those for city council and school board.) I suppose their unstated premise could be that some future blanket amnesty would combine with a decree of mass naturalization to eventually enable these millions to vote lawfully. That would require an act of Congress that would go vastly beyond Reagan's amnesty or any other step in memory and would assuredly not be thinkable in current politics.

In reality, they are promoting the claim, a longstanding one with Trump, that noncitizens already do vote in massive numbers....

For four years, the Department of Justice reported to Donald Trump, who had inveighed against voter fraud. So far as I have been able to tell from news reports, its biggest resulting prosecution of noncitizen voting came in 2020 in North Carolina, where a federal grand jury, following a DHS investigation, indicted 19 persons of varying nationalities for voting in the state's federal election. That's 19 persons too many to have voted, assuming the charges panned out, but it's unlikely that it changed any outcomes given that more than 3.6 million persons cast their ballot in North Carolina's 2018 election....

One might also pause to note that the Trump administration created a commission on voter fraud, which, like every other player that has investigated the issue, was unable to document large-scale

lawbreaking. (The Heritage Foundation's much-cited database of voting irregularities, when recently checked, included about 85 cases involving noncitizens since 2002.)

State-level prosecutions in this area are equally rare. Are states, too, somehow in on the plot? It seems hard to believe all of them could be. To begin with, many states with large noncitizen populations like Texas and Florida have been run by Republicans for decades, as have their attorney generals' offices.

Walter goes on to point out several additional reasons why claims of widespread illegal voting by noncitizens are implausible.

I would add just a couple points to his analysis. First, recruiting thousands of noncitizens to engage in illegal voting would require a large operation that would be extremely difficult to keep secret and otherwise bring off successfully. Everyone involved would be risking severe criminal liability, which would incentivize any participants who got caught to testify against the others involved, in order to get lighter sentences.

Secrecy would be even more difficult to maintain in light of the fact that the Republican Party (like the Democrats) employs a veritable army of election lawyers and monitors whose tasks include trying to ferret out any skullduggery by the opposition. If the Democrats (or anyone else) were engaged in a vast conspiracy to engage in voter fraud, these GOP operatives should have been able to find evidence of it. They pretty obviously haven't.

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Second, any longterm Democratic plan to turn noncitizens into voters would have to reckon with the fact that even legal immigrants must (in most cases) wait at least five years to become citizens eligible to vote, and even then they must take a civics test that most native-born Americans would fail if they had to take it without studying. Congress could potentially pass a statute easing or eliminating these requirements. But that would be a heavier political lift than conventional legalization of status.

There are genuine problems that ail American democracy. Walter and I go over potential solutions to some of them in the Team Libertarian Report for the National Constitution Center "Guardrails of Democracy" project (we coauthored the report with another Cato colleague, Clark Neily). But widespread illegal voting by noncitizens is not a real problem. It's just another bogus conspiracy theory, in an era that has all too many of them.

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