

MEMORANDUM

ATTORNEY-CLIENT COMMUNICATION

TO: CITY OF WHITTIER
FROM: HOLLY C. WELLS
RE: NON-CITIZEN VOTING
CLIENT: CITY OF WHITTIER
FILE NO.: 507456.93
DATE: APRIL 22, 2025

QUESTION

Whittier asked which, if any, laws prohibit it from allowing non-citizen residents to vote in its local elections.

SHORT ANSWER

AS 15.05.010 prohibits Whittier from allowing non-citizens to vote in local elections, and it is likely that Art. V, § 1 of the Alaska Constitution also prohibits the same.

LEGAL FRAMEWORK

I. FEDERAL LAW

Federal law does not prohibit Whittier from allowing non-citizens to vote in its local elections. In fact, federal law explicitly allows non-citizens to vote in state and/or local elections if state law or local ordinance allows the same, and the election is conducted independently of federal elections to ensure that non-citizens are prevented from voting in federal elections.¹

II. STATE LAW

Art. V, § 1 of the Alaska Constitution states that

[e]very citizen of the United States who is at least eighteen years of age, who meets registration residency requirements which may be prescribed by law, and who is qualified to vote under this article, may vote in any state or local election. A voter shall have been, immediately preceding the election, a thirty day resident of the election district in which he seeks to vote, except

¹ See 18 USC § 611(a).

that for purposes of voting for President and Vice President of the United States other residency requirements may be prescribed by law. Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions.

This section has been interpreted to mean that only US citizens can vote in elections in Alaska.² In *Park*, the Alaska Supreme Court evaluated “whether an alien who is a permanent resident of Alaska may be precluded from voting in *state elections*” (emphasis added).³ The non-citizen in that case applied for registration as a voter in the then-upcoming state primary and general elections.⁴ The State denied Park’s application on the basis that he was not a US citizen.⁵ On appeal, the non-citizen argued that the State’s denial of his application violated the Equal Protection Clauses of the US and Alaska Constitutions.⁶ Ultimately, the Alaska Supreme Court disagreed and held that “[t]he plain meaning of [Art. V, § 1] limits the voting privilege to citizens of the United States.”⁷ The Court also wrote that “under the express language of Article 5, Section 1, aliens are excluded from voting in the State of Alaska.”⁸ The court also held that Art. V, § 1 did not violate the Equal Protection Clause of the US Constitution.⁹

To continue, AS 15.05.010 states in relevant part that “[a] person may vote at *any election* who is (1) a citizen of the United States” (emphasis added). The plain language of the statute indicates that non-citizens cannot vote in any Alaska election – state or local – which is consistent with *Park*.

III. WHITTIER MUNICIPAL CODE

WMC 20.06.010 specifically incorporates federal and state election law, insofar as it affects City elections. Accordingly, at present, Whittier’s Municipal Code limits voting to US citizens.

IV. PROPOSED LEGISLATION

House Joint Resolution No. 19 was introduced by Rep. Costello on April 11, 2025. HJR 19 proposes that a constitutional amendment be placed on the ballot to amend Art. V, § 1 of the Alaska Constitution to state that “only a citizen of the United States” can vote in Alaska, rather than the current language that “every citizen of the United States” can vote. If the proposed amendment is eventually successful, voting in Alaska will be limited to citizens of the United States, to the extent that it is not already.

² See *Park v. State*, 528 P.2d 785 (Alaska 1974).

³ *Id* at 785.

⁴ *Id* at 786.

⁵ *Id*.

⁶ *Id*.

⁷ *Id*.

⁸ *Id* at 787.

⁹ *Id*.

HJR 19 has yet to receive a hearing, and it is unlikely to advance at this late stage of the current legislative session. This is because little time remains in the session and the legislature appears focused entirely on passing a budget at present.

ANALYSIS

Absent a legislative change to AS 15.05.010 to exempt local elections, the City will be prohibited from allowing non-citizens to vote in its local elections. As previously stated, the Alaska Supreme Court's current interpretation of Alaska Const. Art. V, § 1 is that only citizens can vote in Alaska. But the Court was not asked whether non-citizens could vote in local elections as opposed to state elections. Accordingly, it is possible that the Court might opine differently with respect to the local elections question, especially given that Art. V, § 1 allows for additional qualifications to be proscribed for local bond issues. However, when considering the plain meaning of the word "additional," it seems more likely that the Alaska Supreme Court would opine that qualifications beyond those found in the Constitution are allowable for local bond proposals, rather than qualifications beneath those stated in Art. V.

CONCLUSION

While we recommend that the City continue to mirror state law to ensure compliance in its administration of its local elections, the City Council may want to contact its local legislators to seek an amendment to the Alaska Constitution that exempts local elections from the citizenship requirement. Alternatively, instead of allowing "only citizens" or "all citizens" to vote, a constitutional amendment could be proposed that allows "all citizens of the United States or its territories" to vote, or adds that specific sentence and an additional sentence prohibiting illegal aliens from voting in any state or local election.

Additionally, the proposed legislation could be accompanied by a resolution acknowledging that the City is dedicated to complying with federal and state law regarding its local elections, but that it encourages the Alaska Legislature to reconsider allowing citizens of US territories to vote in local elections. A recommendation like the one proposed here would capture the opinions of the City Council, which members have expressed in the last few meetings. Again, the City must comply with the Alaska Constitution as currently interpreted by the Alaska Supreme Court, as well as AS 15.05.010. That does not, however, interfere with the City Council's ability to support a constitutional and/or legislative change that Council Members believe serves the interests of City residents.

A resolution is attached to this memorandum for the City Council's consideration that incorporates the contents of this memorandum.

HCW/ajl