

# States Determine Qualifications For Voting And Procedures For Registration, And Only Citizens May Vote

## 1. Summary

The federal government is usurping the powers of the States, *expressly retained* by Art. I, §2, cl. 1, US Constitution, to determine qualifications for voting. And by perverting Art. I, §4, cl. 1, it is also usurping the States' *reserved power* to determine procedures for registration of voters.

Consistent with Principles of Republican Government, *every State in this Union has restricted voting to Citizens.*[1] But on October 26, 2010 in *Gonzales v. Arizona*, a three judge panel on the US Circuit Court of Appeals (9<sup>th</sup> Cir.) construed the **National Voter Registration Act of 1993 (NVRA)** and asserted that Arizona has no right to require applicants for voter registration to provide proof of citizenship. I wrote about it at the time [HERE](#). On rehearing, the en banc Court of Appeals agreed with the panel; and on June 17, 2013, in [Arizona v. The Inter Tribal Council of Arizona, Inc.](#), the Supreme Court affirmed.

A few months thereafter, California passed [a law which permits illegal aliens to get drivers' licenses](#); and during 2015, consistent with the unconstitutional NVRA, passed "Motor Voter" providing that [when one gets a drivers' license, one is automatically registered to vote.](#)[2]

The federal government is unlawfully mandating that illegal aliens be allowed to vote in our elections.

## 2. The Concept of "Citizenship"

[Emer de Vattel's The Law of Nations](#) was a Godsend to our Framing Generation because it provided the new concepts our Framers needed to transform us *from* subjects of a Monarchy to Citizens of a Republic.[3] Book I, Ch. XIX, defines “citizens”, “inhabitants” and “naturalization”:

- “Citizens” are the members of the civil society who are bound to it by certain duties, subject to its authority, participate in its advantages and in the rights of citizens [§212].
- “Inhabitants” are foreigners who are permitted to settle in the country and are subject to its laws, but do not participate in all the rights of citizens [§213].
- “Naturalization” is the process whereby the country grants to a foreigner the quality of citizen, by admitting him into the body of the political society [§214].

So “citizens” have civic advantages and political rights which are not extended to “inhabitants” – and certainly not to aliens who have unlawfully entered a country.[4]

Accordingly, our Constitution permits only Citizens to serve in Congress (Art. I, §2, cl. 2 & §3, cl. 3); the President must be a “natural born Citizen” (Art. II, §1, cl. 5); Article IV, §2, cl. 1 & §1 of the 14<sup>th</sup> Amendment refer to the “privileges and immunities of citizens”; and the 15<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup>, and 26<sup>th</sup> Amendments[5] refer to voting by “Citizens”.

### **3. The Federalist Papers show that voting is a privilege of *Citizens* alone**

The slaves in America were “inhabitants”, not “citizens”. They weren’t allowed to vote. [Federalist No. 54](#) (5<sup>th</sup> para from bottom) tells us:

“...The qualifications on which the right of suffrage depend are

not...the same... [in the several States]. In some of the States the difference is very material. In every State, a certain proportion of inhabitants are deprived of this right by the constitution of the State, who will be included in the census by which the federal Constitution apportions the representatives... the Southern States might... [insist]...that **the slaves, as inhabitants**, should have been admitted into the census according to their full number, in like manner with other inhabitants, who, by the policy of other States, **are not admitted to all the rights of citizens...**" [boldface added] [6]

In [Federalist No. 60](#) (1<sup>st</sup>, 2<sup>nd</sup> and last paras), Hamilton speaks of the "fundamental privilege" of citizens to vote, and that citizens who are conscious and tenacious of their rights would flock to the places of election to overthrow tyrants. In [Federalist No. 61](#) (2<sup>nd</sup> para), Hamilton speaks of "the suffrages of the citizens", and of voting as an "invaluable privilege".

Over and over, The Federalist Papers show that voting is restricted to citizens:

"In republics, persons elevated from the mass of the community, **by the suffragees of their fellow-citizens**, to stations of great pre-eminence and power..." ([No. 22](#), 6<sup>th</sup> para from bottom) [boldface added]

"If we consider the situation of the men on whom **the free suffrages of their fellow-citizens** may confer the representative trust, we shall find it involving every security which can be devised or desired for their fidelity to their constituents ([No. 57](#), 7<sup>th</sup> para) \*\*\* "... that **each representative of the United States will be elected by five or six thousand citizens...**" (No. 57, 7<sup>th</sup> para from bottom) [boldface added]

"There is a peculiarity in the federal Constitution which insures a watchful attention in a majority both of the people

and of their representatives to a constitutional augmentation of the latter. The peculiarity lies in this, **that one branch of the legislature is a representation of citizens**, the other of the States...” ([No. 58](#) at 3.) [boldface added]

“...A small number of persons, **selected by their fellow-citizens** from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations ...” [No. 68](#) (3<sup>rd</sup> para) [boldface added]

#### **4. Webster’s 1828 Dictionary shows our Founding Generation saw voting as restricted to citizens**

[Suffrage](#) is:

“1. A vote; a voice given in deciding a controverted question, or in the choice of a man for an office or trust. Nothing can be more grateful to a good man than to be elevated to office by the unbiased **suffrages of free enlightened citizens.**”

[Citizen](#) is:

“5. In the United States, a person, native[7] or naturalized, who has the privilege of exercising the elective franchise...”

[Franchise](#) is:

“1. ... the right to vote for governor, senators and representatives, is a *franchise* belonging to citizens, and not enjoyed by aliens...”

Inhabitants and aliens may not vote unless they become naturalized citizens **and** meet whatever additional qualifications for voting are set forth in the State Constitution. [Naturalization](#) is:

“The act of investing an alien with the rights and privileges of a native subject or citizen. *naturalization* in Great Britain is only by act of parliament. In the United States, it is by act of Congress,[8] vesting certain tribunals with the

power.”

## **5. State Constitutions set forth the Qualifications for Voting**

When we operated under the Articles of Confederation (our first federal Constitution),[9] the States determined the qualifications for voting in state and local elections and in elections to the Continental Congress. These qualifications were set forth in the State Constitutions, and varied from State to State.

In our federal Constitution of 1787, *the States expressly retained (at Art. I, §2, cl.1) their pre-existing power to determine the qualifications of voters; and ordained that those whom they determined were qualified to vote in elections to their State House of Representatives would thereby be qualified to vote for their federal Representatives to Congress.*

**Our Framers specifically rejected the idea that the new Congress or the State Legislatures would determine who was eligible to vote.** Instead, only *The People* of each State were competent to define the right of suffrage for their State, and their definition was enshrined in their State Constitution.

In [Federalist No. 52](#) (2<sup>nd</sup> para), James Madison tells us:

**“...The definition of the right of suffrage is very justly regarded as a fundamental article of republican government.[10]** It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper ... To have submitted it to the legislative discretion of the States, would have been improper ... To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the

convention ... must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself. It will be safe to the United States, because, **being fixed by the State constitutions, it is not alterable by the State governments...**[boldface added]

Remember! *Since the federal and state governments are merely "creatures" of constitutions, they have no power to determine who may vote. That power belongs to the "creators" of the governments. Only The People are competent to set the qualifications for voting; and our determinations are enshrined in our State Constitutions.*

## **6. The States reserved power to determine procedures for voter registration**

Our Constitution of 1787 created a federal government to which we delegated only "few and defined" powers [see [chart](#)]. Nowhere in the Constitution did we delegate to the federal government power to dictate procedures States must use in registering voters. *Accordingly, it is a "reserved" power.*[11] Until the federal government usurped power over this issue, the States always determined their own procedures for registration. [Justice Thomas wrote in his dissent](#) [at II. A. 2]:

"This understanding of Article I, §2, is consistent with powers enjoyed by the States at the founding. For instance, ownership of real or personal property was a common prerequisite to voting ... To verify that this qualification was satisfied, States might look to proof of tax payments... In other instances, States relied on personal knowledge of fellow citizens to verify voter eligibility. . . States have always had the power to ensure that only those qualified under state law to cast ballots exercised the franchise.

Perhaps in part because many requirements (such as property

ownership or taxpayer status) were independently documented and verifiable, States in 1789 did not generally “register” voters . . . Over time, States replaced their informal systems for determining eligibility, with more formalized pre-voting registration regimes. . . But modern voter registration serves the same basic purpose as the practices used by States in the Colonies and early Federal Republic. The fact that States have liberalized voting qualifications and streamlined the verification process through registration does not alter the basic fact that States possess broad authority to set voter qualifications and to verify that they are met.”

### **7. The federal government has usurped the States’ powers to determine who may vote and determine procedures for voter registration**

The National Voter Registration Act of 1993 (NVRA) purports to require States to “accept and use” a federal voter registration form! The Ninth Circuit asserted that since the federal form doesn’t require applicants to provide documentary proof of citizenship, the States may not require it. This paper exposes some of the false arguments made by the Ninth Circuit’s three judge panel, and sets forth what Hamilton and Madison actually said as to the genuine meanings of Art. I, §2, cl. 1 and §4, cl.1: [Arizona’s Proposition 200: What The Constitution Really Says About Voter Qualifications & Exposing The “Elections Clause” Argument.](#)

But the Supreme Court affirmed the Ninth Circuit. **Justice Scalia, who wrote the majority opinion, swept Art. I, §2, cl. 1 under the rug and ignored Hamilton’s and Madison’s explanations of Art. I, §4, cl. 1.** Scalia asserted:

“The Clause’s [Art. I, §4, cl. 1] substantive scope is broad. “Times, Places, and Manner,” we have written, are “comprehensive words,” which “embrace authority to provide a complete code for congressional elections,” including, as relevant here and as petitioners do not contest, regulations

relating to “registration”...” [12]

Scalia said,

“...the NVRA forbids States to demand that an applicant submit additional information beyond that required by the Federal Form...”

and concluded,

“... the fairest reading of the statute is that a state-imposed requirement of evidence of citizenship not required by the Federal Form is “inconsistent with” the NVRA’s mandate that States “accept and use” the Federal Form...”

So what should we do when federal courts issue unconstitutional opinions?

**8. Our Framers said nullification is *the natural right*, which all admit to be a remedy against insupportable oppression**

The federal government has refused to control our borders and, as a result, we are being invaded. The federal government is demanding that invaders be allowed to vote in our elections.

We have no obligation to obey unconstitutional dictates of the federal government. See [Nullification: The Original Right of Self-Defense](#). What does your State Constitution say about qualifications for voting? Demand that your State government enforce your State Constitution.

And Remember! As Hamilton told us in [Federalist No. 78](#) (6<sup>th</sup> para), federal courts can only *issue* judgments – they must rely on the Executive Branch to enforce them. *So the President’s “check” on usurping federal judges is to refuse to enforce their opinions.* States must ***man up*** and obey the Constitution instead of unconstitutional dictates of the federal Legislative and Judicial Branches. Do you think that President Trump will send out US Marshalls or the National



Guard to FORCE States to allow illegal aliens to vote? The iron is hot – the time to strike is *now*.

**Endnotes:**

<sup>1</sup> Justice Alito's [dissenting opinion](#) in *Arizona v. The Inter Tribal Council of Arizona, Inc.* says (2<sup>nd</sup> para):

**“...Exercising its right to set federal voter qualifications, Arizona, like every other State, permits only U. S. citizens to vote in federal elections,** and Arizona has concluded that this requirement cannot be effectively enforced unless applicants for registration are required to provide proof of citizenship...” [boldface added]

<sup>2</sup> The California legislature thus violated [Article II, Section 2, California Constitution](#) which says, “A United States citizen 18 years of age and resident in this State may vote.”

<sup>3</sup> That Vattel had such influence is proved [HERE](#).

<sup>4</sup> All men everywhere possess the rights God gave them. But in a civil society, the members possess *political or civic rights* which are not extended to inhabitants, lawful visitors, or illegal alien invaders.

<sup>5</sup> With these four Amendments, the States agreed they would not deny suffrage to Citizens *on account of* race, being a female, not paying the tax, or being between 18 to 21 years of age. States retain power to deny suffrage to any Citizen *on account of* other factors (e.g., illiteracy, being on welfare, or [stupidity](#)).

<sup>6</sup> Freed slaves were naturalized by §1 of the 14<sup>th</sup> Amendment.

<sup>7</sup> [Vattel §212](#): “The natives, or natural-born citizens, are those born in the country, of parents who are citizens.” [See

§§ 215-217 for other places babies may be born as natural-born citizens.]

<sup>8</sup> Art. I, §8, cl. 4, US Const.

<sup>9</sup> The Articles of Confederation were ratified [July 9, 1778](#).

<sup>10</sup> A “[republic](#)” is a state in which the *exercise* of the sovereign power is lodged in representatives elected by the people.

<sup>11</sup> “*The powers not delegated to the United States by the Constitution ... are reserved to the States, respectively, or to the people.*” (10<sup>th</sup> Amendment) [italics added]

<sup>12</sup> Counsel for the State of Arizona made a strategic error in failing to challenge the constitutionality of the NVRA as outside the scope of powers granted to Congress *and* as in violation of Art. I, **§2**, cl. 1 and **§4**, cl.1, US Const.