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GRANTING PERMANENT RESIDENT ALIENS THE RIGHT TO VOTE IN LOCAL GOVERNMENT: THE NEW KOMEITŌ CONTINUES TO PROMOTE ALIEN SUFFRAGE IN JAPAN

Miles E. Hawks[†]

Abstract: Throughout the world, the dominant suffrage model has been voting rights based on citizenship. However, the trend of globalization, the increase of cross-border migration, and the advent of supranational institutions such as the European Union have prompted many countries to reconsider the relationship between nationality and voting rights. This has resulted in a growing trend, beginning in Europe and spreading most recently to South Korea, of adopting a notion of suffrage based on residency and community rather than citizenship. Japan is currently considering legislation, known as the “Local Suffrage Bill,” which would allow permanent resident aliens (“PRAs”) to vote in local elections. The Constitution of Japan grants the right to vote solely to Japanese nationals. However, Japan has an ever-increasing PRA population and a growing interest in alien suffrage. While there is opposition to the movement, the Japanese Supreme Court has held that granting suffrage to PRAs on a subnational level is constitutional. In 2004, the New Komeitō, a member of Japan’s ruling coalition, resubmitted its 2000 Local Suffrage Bill to the Diet. Passage of the bill would allow Japan’s PRAs to more fully participate in Japanese society and would have an impact beyond simply following the global trend in alien suffrage. With Japan facing a looming social security crisis that necessitates a sustainable influx of foreign laborers, an alien suffrage bill could encourage long-term migration and help ensure Japan’s continued economic success.

I. INTRODUCTION

In 1990, Kim Chong Gyu,¹ a permanent resident alien² (“PRA”) living in Osaka, Japan, attempted to register to vote in a local election in the Kita Ward of the city.³ The Ward officials refused to accept his registration,⁴

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¹ All Korean and Japanese names are given surname first. For example, 金正圭 is written Kim Chong Gyu and not Chong Gyu Kim.

² Although many oppose the use of the term “alien” for foreign nationals, *see, e.g.*, STEPHEN LEGOMSKY, *IMMIGRATION AND REFUGEE LAW AND POLICY* 1 (4th ed., Foundations Press 2005) (discussing aversion to the use of the term “alien” to refer to immigrants), the term is used throughout this Comment because scholarly discourse regarding suffrage for non-citizens ordinarily uses the term “alien suffrage.”

³ William Wetherall, *Kim et al v. Osaka, 1995: Constitution Does Not Prohibit Local Suffrage for Aliens, but...*, YOSHA RESEARCH (June 1, 2007), http://members.jcom.home.ne.jp/yosha/nationality/Kim_et_al_v_Osaka_1995.html (last visited Oct. 14, 2007).

⁴ *Id.*

noting that the Public Offices Election Law⁵ allows only Japanese citizens to vote.⁶ Mr. Kim, a so-called “Korean in Japan,”⁷ was born and raised in Japan. As he wrote, “[i]f the term ‘holder of South Korean citizenship’ is taken away, there are no differences in my living conditions from a ‘holder of Japanese citizenship’ and it would be alright to say we are of the same nature.”⁸ Although Mr. Kim was an equal member of Japanese society in lifestyle, education, and ambition, he was unable to equally participate in the political processes directly affecting his life.

Because the Ward officials refused his registration, in November of 1990 Mr. Kim and ten other PRAs sued local election officials in the Osaka District Court.⁹ Following the Osaka District Court’s dismissal of the suit in June of 1993,¹⁰ in 1995, the Japanese Supreme Court granted an appeal to Mr. Kim and a majority of his co-plaintiffs.¹¹ The Supreme Court ultimately affirmed the lower court’s ruling, agreeing with the Kita Ward officials’ interpretation of the Public Offices Election Law.¹² Also, the Supreme Court held that the Constitution of Japan¹³ only guarantees Japanese citizens the right to vote, excluding PRAs from its purview.¹⁴ The Supreme Court’s opinion, however, contained two statements of consequence: 1) the Constitution does not prohibit establishing suffrage for PRAs in local elections; and 2) any such steps should be taken by the national legislature.¹⁵ This dicta arguably makes *Kim v. Osaka*, the most important case to the alien

⁵ 公職選挙法昭和25年法律第100号 [Public Offices Election Law], Law No. 100 of 1950, as amended [hereinafter 公職選挙法 [POEL]].

⁶ *Id.* 第9条2 [art. 9, no. 2] (“A Japanese national having reached the age of twenty years and having maintained a residence in a ward of a city, town, or village for more than three months without interruption has the right to vote in the election of the members and chair of local public bodies.”).

⁷ Koreans, many of whom are descendents of former colonial citizens of Japan, make up Japan’s largest minority population and are commonly referred to as 在日韓国人 [South Koreans in Japan], 在日朝鮮人 [North Koreans in Japan], or the recent 在日コリアン [Koreans in Japan].

⁸ Appellate brief, *Kim et al. v. Osaka Kita Ward Election Committee*, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995) (quoted in 鄭大均, 在日韓国人の終焉 [The End of Koreans in Japan], 5 (2001), <http://keytokyo.org/community/learning/mm/mm05-01.pdf> (last visited Oct. 3, 2007)). Kim and his co-plaintiffs originally filed suit against the Chairperson of the Election Board of the Kita Ward of the City of Osaka and four other election boards. *Kim*, 1523判例時報 [HANREI JIHŌ] at 49.

⁹ *Kim et al. v. Osaka Kita Ward Election Committee*, 平成2(行ウ)69ないし79 (大阪地方裁 [Osaka High Ct.], 1993). The lawsuit was brought against the Chairperson of the Election Board of the Kita Ward of the City of Osaka and four other election boards. *Id.*

¹⁰ *Kim*, 1523判例時報 [HANREI JIHŌ] at 49.

¹¹ *Id.* Two of Kim’s co-plaintiffs, as well as one of the election board defendants, were not included in the appeal. *Id.*

¹² *Id.*

¹³ 日本国憲法 [KENPŌ].

¹⁴ *Kim*, 1523判例時報 [HANREI JIHŌ] at 49; 日本国憲法第15条1 [KENPŌ], art. 15, ¶ 1 (stating “[t]he people have the inalienable right to choose their public officials and to dismiss them.”).

¹⁵ *Kim*, 1523判例時報 [HANREI JIHŌ] at 49.

suffrage movement in Japan to date. *Kim* is the first and only case in which the Supreme Court intimated that granting voting rights, which have been traditionally regarded as the premier badge of citizenship, to aliens is constitutionally feasible.¹⁶ Since this decision, several local governments throughout Japan made special provisions to allow PRAs living within their boundaries some form of political participation.¹⁷ More importantly, the Diet, Japan's parliament, is currently considering the passage of a voting rights law known as the "Local Suffrage Bill."¹⁸

This Comment examines the constitutionality of the Local Suffrage Bill and advocates for its adoption, a move which would lead to an increase in PRAs' participation in Japanese society and to the development of Japan's future social security policy. Part II provides an overview of the global growth in alien suffrage and a history of the alien suffrage movement in Japan. It then examines Japan's imminent social security problem and the relationship of this crisis to migration. Part III examines the constitutionality of the Local Suffrage Bill. This section explores the rights of foreigners under the Japanese Constitution and provides a comparison of rulings by Germany's Federal Constitutional Court and the Japanese Supreme Court regarding alien suffrage legislation. Through an examination of particular provisions of the Local Suffrage Bill,¹⁹ Part III concludes that the Bill is indeed constitutional. Finally, Part III closes with a discussion of the policy implications and expected spillover effects of the legislation on immigration to Japan, positing that adoption of the Bill would facilitate Japan's future economic and social welfare policies. Part IV closes this Comment with a recommendation that Japan pass the Local Suffrage Bill because, in comparison to the potential social and economic gains passage would entail, the obstacles are relatively few.

¹⁶ It should be noted that a district court had voiced a similar belief in 1994. *See Lee v. Japan*, 881判例タイムズ [HANREI TAIMUZU] 76 (福井地裁 [Fukui D. Ct.], Oct. 5, 1994).

¹⁷ *See* Atsuko Abe, *Japanese Local Governments Facing the Reality of Immigration*, JAPAN FOCUS, 2007, <http://japanfocus.org/products/details/2522> (last visited Oct. 26, 2007). A recent survey conducted by Abe of several hundred municipalities throughout Japan revealed that forty-three had set up an advisory organization that communicated the opinions of foreign residents to the municipal administration, fifty had voluntary organizations of foreign residents who had contact with the municipal administration, and an additional fourteen were planning on establishing such advisory organizations.

¹⁸ 永住外国人に対する地方公共団体の議会の議員及び長の選挙権の付与に関する法律案 [Bill Regarding Granting the Right to Vote for Council Members and Chairs of Local Public Body Assemblies to Permanent Resident Aliens], House of Representatives No. 14, 163rd Session (2004) [hereinafter 地方参政権法案 [Local Suffrage Bill]]. A translation of the relevant provisions follows this Comment.

¹⁹ This Comment will cross-reference the translation of the 地方参政権法案 [Local Suffrage Bill] provided by the author.

II. A PERFECT STORM: THE GLOBAL GROWTH OF ALIEN SUFFRAGE AND JAPAN'S LOOMING SOCIAL SECURITY CRISIS SUGGEST JAPAN IS READY FOR ALIEN SUFFRAGE

A. *Alien Suffrage Is Gaining Ground Throughout the World*

Under the principle of popular sovereignty, leaders must exercise their authority in conformity with the will of the people.²⁰ This principle has been the norm in democratic nations for centuries.²¹ Historically, the definition of “the people” has varied depending on diverse factors such as sex, wealth, and land ownership.²² Nonetheless, “the people” has almost universally been understood by governments and their citizens, as well as by scholars, to refer to the citizens who possess legal citizenship in a nation.²³ Although suffrage based on citizenship has been predominant throughout the world, its application has not been universal.²⁴ On the contrary, the idea of granting voting rights to non-citizens has existed since as early as the eighteenth century.²⁵ Early examples include the canton of Neuchatel in Switzerland, which has granted local voting rights to five-year residents, regardless of nationality, since 1849.²⁶ Additionally, the United States allowed aliens to vote in various states until as late as 1926.²⁷

The spread of alien suffrage has gained momentum over the past forty years.²⁸ Including South Korea's amendment of its Public Official Election Act²⁹ in 2004,³⁰ alien suffrage in some form exists in more than thirty countries and on every continent except Antarctica.³¹ Among countries that allow alien suffrage, the extent of suffrage can be divided into five

²⁰ WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1766 (G. & C. MERRIAM COMPANY 1967).

²¹ See David C. Earnest, *Voting Rights for Resident Aliens: A Comparison of 25 Democracies*, Nov. 7, 2003, http://www.odu.edu/~dearnest/pdfs/earnest_isane_2003.pdf (last visited Oct. 26, 2007).

²² See, e.g., Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1401 (1993).

²³ Earnest, *supra* note 21, at 1.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ Immigrant Voting Rights in Switzerland, <http://www.immigrantvoting.org/World/Switzerland.html> (last visited Nov. 10, 2007).

²⁷ Virginia Harper-Ho, *Noncitizen Voting Rights: The History, the Law and Current Prospects for Change*, 18 LAW & INEQ. 271, 282 (2000).

²⁸ Earnest, *supra* note 21 at 1.

²⁹ 공직선거법 [Public Official Election Act], Statute of S. Korea, Law No. 4739 of 1994 (amended by Law No. 7681 of 1995, last revised by Law No. 8496 of 2007).

³⁰ As amended on August 5, 2004, Article 15, no. 2 of the Public Official Election Act allows PRAs, over the age of nineteen who have maintained their PRA status for more than three years and who are registered in the foreigner registry of the proper local government to vote in local elections.

³¹ Immigrant Voting Project, Global Resident Voting Timeline, <http://www.immigrantvoting.org/material/TIMELINE.html> (last visited Oct. 10, 2007).

categories: 1) sub-national (voting rights granted by localities); 2) local, discriminatory (local voting rights based on nationality); 3) local, nondiscriminatory (local voting rights regardless of nationality); 4) national, discriminatory (national voting rights based on nationality); and 5) national, nondiscriminatory (national voting rights regardless of nationality).³² In discriminatory schemes, localities grant only holders of certain nationalities voting rights. Of these categories, nondiscriminatory local rights are the most common form of alien suffrage.³³

B. The Alien Suffrage Movement in Japan Has Gained Considerable Momentum in the Past Two Decades

During Japan's colonial expansion in the first half of the twentieth century, a large number of Koreans and Taiwanese immigrated to Japan.³⁴ Many of these immigrants were granted Japanese nationality and the right to vote.³⁵ Following World War II, a majority of these individuals returned to their home countries.³⁶ The minority that remained in Japan maintained their Japanese nationality and right to vote until it was summarily removed by the Japanese government in 1952.³⁷ Although this affected a large number of people, attempts to regain voting rights were essentially non-existent for the next thirty years. The following subsections examine the rise of the alien suffrage movement, starting in the courtroom with lawsuits brought by PRAs against local and national governments, and its move to the legislature at the turn of the century.

1. The Alien Suffrage Movement in Japan Finds Its Roots in a Series of Lawsuits in the Late 1980s and Early 1990s

The late 1980s and early 1990s witnessed a rush of lawsuits against several local governments, as well as the national government, brought by PRAs living in Japan.³⁸ In November 1989, Alan Higgs fired the opening volley.³⁹ Mr. Higgs, a PRA from the United Kingdom residing in Ikeda,

³² Earnest, *supra* note 21. Earnest actually includes a sixth category of countries that do not allow suffrage in any form, but that category is not relevant to this Comment.

³³ *Id.*

³⁴ HIROMI MORI, IMMIGRATION POLICY AND FOREIGN WORKERS IN JAPAN 33-34 (Macmillan 1997).

³⁵ TESSA MORRIS-SUZUKI, RE-INVENTING JAPAN: TIME, SPACE, NATION 188-89 (M.E. Sharpe 1998).

³⁶ MORI, *supra* note 34, at 34.

³⁷ SWAN SIK KO, NATIONALITY AND INTERNATIONAL LAW IN ASIAN PERSPECTIVE 298-99 (Martinus Nijhoff Publishers 1990).

³⁸ Wetherall, *supra* note 3.

³⁹ *Id.*

Osaka, was prohibited from registering to vote in national elections.⁴⁰ Kim Chong Gyu and ten other Korean PRAs who were not allowed to register for and vote in local elections in the Kita Ward of the City of Osaka brought the second lawsuit.⁴¹ Lee Chin Choi and three other Korean PRAs filed the next case against the state and four election boards in Fukui, Japan.⁴² All of these litigants essentially brought the same claim, while Mr. Higgs and Mr. Lee also sought damages. The litigants' basic argument was that Article 9 of the Public Offices Election Law,⁴³ which only allows Japanese nationals⁴⁴ to participate in elections, violates Articles 14⁴⁵ and 15⁴⁶ of the Japanese Constitution.⁴⁷ All four⁴⁸ of these lawsuits and subsequent appeals were dismissed by the Supreme Court of Japan holding that "the people" in Article 15 were understood to be Japanese nationals and that it was not unconstitutional to limit voting rights only to Japanese nationals.⁴⁹ These cases, however, can be credited as playing an integral part in the alien suffrage movement in Japan.⁵⁰

Beginning in 1992, Lee Yong Hwa, another Korean PRA, along with his political party, the Zainichi Party,⁵¹ brought attention to the alien suffrage

⁴⁰ Higgs v. Japan, 1452 判例時報 [HANREI JIHŌ] 37 (最高裁 [Sup. Ct.], Feb. 26, 1993).

⁴¹ Kim et al. v. Osaka Kita Ward Election Committee, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995).

⁴² Lee v. Japan, 881 判例タイムズ [HANREI TAIMUZU] 76 (福井地裁 [Fukui D. Ct.], Oct. 5, 1994).

⁴³ 公職選挙法 [POEL], *supra* note 5, art. 9, no. 2.

⁴⁴ Throughout this Comment Japanese are referred to as "Japanese nationals." This reflects the use of 日本国民 [Japanese national] in Japanese as opposed to the word 市民 [citizen]. However, there is no legal distinction between "citizens" and "nationals" in Japan as there is in the United States.

⁴⁵ 日本国憲法14条1 [KENPŌ], art. 14, ¶ 1 (stating "[a]ll of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.").

⁴⁶ 日本国憲法15条1 [KENPŌ], art. 15, ¶ 1 (stating "[t]he people have the inalienable right to choose their public officials and to dismiss them.").

⁴⁷ Kim et al. v. Osaka Kita Ward Election Committee, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995); Higgs v. Japan, 1452 判例時報 [HANREI JIHŌ] 37 (最高裁 [Sup. Ct.], Feb. 26, 1993); Lee v. Japan, 881判例タイムズ [HANREI TAIMUZU] 76, 76 (福井地裁 [Fukui D. Ct.], Oct. 5, 1994).

⁴⁸ Mr. Higgs actually filed two separate lawsuits. In the first, he asserted that barring him from national elections was unconstitutional. Higgs v. Japan, 1452 判例時報 [HANREI JIHŌ] 37 (最高裁 [Sup. Ct.], Feb. 26, 1993). In the second, he asserted that barring him from local elections was unconstitutional. Higgs v. Japan, 848 判例タイムズ [HANREI TAIMUZU] 117 (大阪地裁 [Osaka D. Ct.], Jan. 28, 1994).

⁴⁹ Kim, 1523 判例時報 [HANREI JIHŌ] at 52; Higgs, 1452 判例時報 [HANREI JIHŌ] at 37; Lee, 881判例タイムズ [HANREI TAIMUZU], at 79. In all three cases, the courts also held that the word "residents" in Article 93(2) of the Constitution is understood to mean Japanese nationals. *Id.*

⁵⁰ 岡崎勝彦, 定住外国人に地方参政権を [Let's Give Permanent Resident Aliens the Right to Local Political Participation], 482 法学セミナー 4, 6 (1995).

⁵¹ 在日 literally means "in Japan," but by itself often refers to Koreans in Japan. 在日党 [Zainichi Party] is short for 在日外国人参政権党 [Party for Political Participation by Foreigners in Japan].

movement through a series of political campaigns and lawsuits.⁵² Although the government denied recognition to this political party because none of its members were Japanese, Mr. Lee sought offices in constituencies throughout Japan.⁵³ His goal was to raise awareness about PRAs' inability to participate in the Japanese political process, even though, he argued, they contributed to Japanese society as much as Japanese nationals.⁵⁴ The Zainichi Party lawsuit, filed in 1993, brought similar claims to those in the cases mentioned above. Mr. Lee claimed that, by failing to allow the PRAs to participate in the political process, the Japanese Government violated equal protection⁵⁵ guaranteed by the Constitution of Japan as well as the International Covenant on Civil and Political Rights ("ICCPR").⁵⁶ This lawsuit ended in defeat for the Zainichi Party. The Osaka District Court held that neither the Constitution nor the ICCPR required that PRAs receive the right to run for office.⁵⁷ However, the actions of Mr. Lee and this case were also instrumental in raising awareness about the alien suffrage issue in Japan.

2. *Municipal Governments Brought the Alien Suffrage Movement from the Courtroom to the Japanese Legislature*

In response to this surge in lawsuits, a number of municipal governments passed resolutions to petition the Japanese Diet to extend local suffrage to PRAs.⁵⁸ At the 148th Legislative Session in 1999, three political parties—the Liberal Party,⁵⁹ the New Komeitō, and the Communist Party—each proposed an alien suffrage bill.⁶⁰

Ultimately, the Diet only seriously considered the Liberal and New Komeitō version of the bill with the 150th Legislative Session (Special Session) marking the zenith of the alien suffrage proposal. Although the New Komeitō worked hard to get the bill passed at the 150th Session, it

⁵² *Zainichi Gaikokujin Senkyoken '92 v. Japan*, 892 判例タイムズ [HANREI TAIMUZU] 167 (大阪地裁 [Osaka D. Ct.], Dec. 9, 1994).

⁵³ Wetherall, *supra* note 3.

⁵⁴ *Id.*

⁵⁵ *Zainichi*, 892 判例タイムズ [HANREI TAIMUZU] at 167.

⁵⁶ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.

⁵⁷ *Zainichi*, 892 判例タイムズ [HANREI TAIMUZU] at 167.

⁵⁸ 岡崎, *supra* note 50.

⁵⁹ The 自由党 [Liberal Party] no longer exists, following its merger with the 民主党 [The Democratic Party of Japan] in 2002.

⁶⁰ The Liberal Party and New Komeitō co-sponsored a bill entitled, 永住外国人に対する地方公共団体の議会の議員及び長の選挙権等の付与に関する法律案 [Bill Regarding Granting the Right to Vote for Council Members and Chairs of Local Public Body Assemblies to Permanent Resident Aliens] (2000), and the Communist Party sponsored a bill of the same name.

faced severe opposition by the ruling Liberal Democratic Party (“LDP”).⁶¹ The New Komeitō could not overcome the LDP opposition; the committee handling the bill chose not to vote on the bill, deliberation was postponed,⁶² and, in 2003, the bill was not passed.⁶³

C. *Japan’s Impending Social Security Crisis Is Linked to Its Immigrant Population*

Japan is known internationally for many things ranging from its economy to its relatively healthy population. The latter is a result of a modern public services sector with impressively effective national health care and pension system. Although a healthy population and efficient social services are positively perceived, Japan’s current demographic trends and social welfare programs are primary contributors to a pending social security crisis.⁶⁴ Japanese and international scholars agree that large-scale immigration will be necessary to combat this crisis.⁶⁵ However, disagreement exists as to whether such immigration should be temporary or permanent.⁶⁶

1. *Japan’s Aging and Shrinking Population Coupled with a Demographic Shift in Its Labor Market Are Contributing to a Social Security Crisis*

Currently, Japan has the longest average lifespan in the world, 82.9 years,⁶⁷ and the highest median age in the world, 42.9 years.⁶⁸ While this may seem like a blessing, when combined with a birth rate far below replacement level—1.27 children per woman⁶⁹—it is more like a curse. The

⁶¹ See, e.g., *Foreign Suffrage Faces LDP Roadblock*, THE JAPAN TIMES, Dec. 14, 2000, available at <http://search.japantimes.co.jp/cgi-bin/nn20001214a3.html> (describing the plans of former Education Minister Okuno Seisuke, leader of the Liberal Democratic Party faction opposing the 2000 bill, to thwart the bill’s passage).

⁶² *Id.*

⁶³ See 衆議院, http://www.shugiin.go.jp/index.nsf/html/index_gian.htm 157回 (臨時会). The bill was declared 審議未了, where a bill is dismissed for failure to be adopted or rejected after a certain period of time, during the 157th Legislative Session (Extraordinary Session) in 2003.

⁶⁴ See *infra* Part II.C.1.

⁶⁵ See Gabrielle Vogt, “Guest Workers” for Japan?: *Demographic Change and Labor Migration to Japan*, JAPAN FOCUS, 2007, <http://japanfocus.org/products/details/2520> (last visited Oct. 15, 2007).

⁶⁶ *Id.*

⁶⁷ United Nations Secretariat, Department of Economic and Social Affairs, Population Division, *Working Paper: World Population Prospects: The 2006 Revisions, Highlights*, U.N. Doc. No. ESA/P/WP.202 (2007), available at http://www.un.org/esa/population/publications/wpp2006/WPP2006_Highlights_rev.pdf.

⁶⁸ *Id.*

⁶⁹ *Id.*

situation shows little sign of improvement. Forecasts for the year 2050 place the average lifespan at 87.1 years and the median age at 54.9 years. However, the birth rate is expected to climb only to 1.6 children per woman.⁷⁰ Although population analysts in the United Nations (“UN”) predict that the population is set to decline by twenty-five million people, the majority of the population is expected to be pensioners, with the over-fifty population set to make up more than fifty percent of the population as early as 2025.⁷¹ These demographic trends show that, barring a sustainable influx of labor, there will be far too few workers to support the retirees, let alone replenish the pension coffers for later generations.

A smaller population is not the national pension fund’s only enemy. Following World War II, Japan experienced a period of rapid economic growth,⁷² the product of Japan’s special relationship with the United States and its internal domestic policies.⁷³ One such policy was lifetime employment. At that time, most individuals took a job right out of school and, in return for company loyalty, were essentially guaranteed lifetime employment and seniority-based pay increases.⁷⁴ After the burst of its real estate and asset bubble in the early 1990s, however, Japan’s economic recession made this employment system largely impracticable.⁷⁵ The result has been a rise in dualism within Japan’s labor market: one class of workers still benefits from the lifetime employment system, while the other class consists of part-timers and *freeters*.⁷⁶ In fact, as of 2006, there has been a marked increase over the past ten years in the percentage of non-regular workers, rising from nineteen percent to thirty percent.⁷⁷ These workers earn an average of sixty percent less than regular workers.⁷⁸ A depleted

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See, e.g., ANGUS MADDISON, THE WORLD ECONOMY 142 (OECD Online Bookshop 2006) (describing Japan’s rapid postwar growth).

⁷³ MICHAEL J. GREEN & PATRICK M. CRONIN, THE U.S.-JAPAN ALLIANCE: PAST, PRESENT AND FUTURE 251-52 (Council on Foreign Relations 1999); MADDISON, *supra* note 72, at 140.

⁷⁴ DAVID KUCERA, GENDER, GROWTH, AND TRADE: THE MIRACLE ECONOMIES OF THE POSTWAR YEARS 84 (Routledge 2001).

⁷⁵ ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, TRADE AND STRUCTURAL ADJUSTMENT: EMBRACING GLOBALISATION 262 (OECD Publishing, 2005).

⁷⁶ *Id.* A part-timer, or パート, normally refers to a person who works a part-time job to supplement a primary breadwinner’s income. *Freeter*, a recent addition to the Japanese lexicon derived from a combination of the English “free” and the German “Arbeiter,” refers to the generation of young workers who go through life with a series of part-time jobs rather than finding lifetime employment.

⁷⁷ Organization for Economic Co-Operation and Development, *Economic Survey of Japan, 2006*, OECD POLICY BRIEF, July 2006, available at <http://www.oecd.org/dataoecd/50/23/37148463.pdf>.

⁷⁸ *Id.*

pension fund is inevitable as social security contributions are a ratable percentage of a worker's salary.⁷⁹

2. *Japan Is Taking Measures to Combat the Social Security Crisis, but These Measures Are Likely to Be Insufficient*

The Japanese government is well aware that a social security crisis is imminent and largely the product of its population trends.⁸⁰ In response, the government is pursuing a series of population-boosting measures. On the one hand, Japan is trying to boost birth rates through a series of legislative measures designed to create a legally-induced baby boom. These measures include amendments to laws regarding parental leave⁸¹ and subsidies to child-rearing households.⁸² In addition, a new law requiring municipalities and certain companies to initiate action programs to improve the birth rate⁸³ and to establish a larger number of daycare centers has been enacted.⁸⁴

Each of these measures is aimed at making it easier for people—even those with demanding careers—to have children.⁸⁵ These measures, however, entail some problems. As an initial matter, scholars and experts believe that these measures will be insufficient to solve Japan's demographic problems, either because of problems imbedded in Japanese society or in the actual laws themselves.⁸⁶ Moreover, it will take years to determine the effectiveness of these measures.

In addition to the aforementioned measures, Japan is also trying to import a working-age population that can contribute immediately to its social security system by allowing more immigrants into the country.⁸⁷

⁷⁹ 厚生年金保険法平成19年法律第111号 [Employee Pension Insurance Law], Law No. 111 of 2007.

⁸⁰ National Institute of Population and Social Security Research, *Population Projections for Japan: 2001-2050* (Jan. 2002), <http://www.ipss.go.jp/pp-newest/e/ppfj02/ppfj02.pdf> (last visited Mar. 4, 2008).

⁸¹ 育児休業、介護休業等育児又は家族介護を行う労働者の福祉に関する法律平成18年法律第50号 [Law Regarding Childcare Leave, Nursing Leave or the Welfare of Workers Rearing Children or Nursing Their Family], Law No. 50 of 2006.

⁸² 児童手当法平成19年法律第109号 [Dependent Children Allowance Law], Law No. 109 of 2007.

⁸³ 次世代育成支援対策推進法平成15年法律第120号) [Law for Measures to Support the Development of the Next Generation], Law No. 120 of 2003 [hereinafter Next Generation Law].

⁸⁴ See, e.g., *Ministry to Boost Child-Care Support for Working Moms*, THE JAPAN TIMES, Aug. 25, 2001, available at <http://search.japantimes.co.jp/cgi-bin/nn20010825a8.html> (describing one of the measures the Japanese government is taking to promote childbirth).

⁸⁵ See JOYCE GELB, *GENDER POLICIES IN JAPAN AND THE UNITED STATES* 146 (Palgrave Macmillan, 2003).

⁸⁶ See, e.g., Hanai Kiroku, *Lifting Women's Job Status*, THE JAPAN TIMES, July 26, 2004, available at <http://search.japantimes.co.jp/cgi-bin/eo20040726kh.html> (explicitly criticizing the Next Generation Law, and discussing societal factors that render such measures insufficient).

⁸⁷ Vogt, *supra* note 65.

However, merely increasing the number of immigrants is not likely to sufficiently replenish the pension accounts.⁸⁸ Part III will demonstrate how local suffrage may provide a better solution to the problems noted above.⁸⁹

III. THE LOCAL SUFFRAGE BILL IS CONSTITUTIONAL AND WILL AID JAPAN IN MAINTAINING ITS POSITION IN THE GLOBAL ECONOMY

A. *Granting Local Suffrage to PRAs Is Constitutional*

Some constitutional scholars assert that alien suffrage legislation is constitutional.⁹⁰ This view is strengthened by the Japanese Supreme Court decisions holding that the Constitution neither compels nor prohibits alien suffrage.⁹¹ These opinions are even more compelling when compared to similar German decisions.⁹² Issued at the end of 1990, these decisions arose from challenges to legislation passed in the German state of Schleswig-Holstein⁹³ and the city-state of Hamburg.⁹⁴ The former conferred on nationals of Denmark, Ireland, the Netherlands, Norway, Sweden, and Switzerland the right to vote and run for office in municipal and county elections.⁹⁵ The latter provided the right to vote in municipal elections to aliens of all nationalities having resided in Germany for more than eight years and having a residence permit.⁹⁶ In these decisions,⁹⁷ which also focused on differing interpretations of “the people,” the German Federal Constitutional Court (“FCC”) ultimately concluded that the notion of alien suffrage was incompatible with the German *Grundgesetz*, or Basic Law (“Basic Law”).⁹⁸ This analysis and comparison demonstrate that passage of

⁸⁸ *Infra* Part III.B.1.

⁸⁹ *Id.*

⁹⁰ *Infra* Part III.A.1.

⁹¹ See *Kim et al. v. Osaka Kita Ward Election Committee*, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995); *Higgs v. Japan*, 1452判例時報 [HANREI JIHŌ] 37 (最高裁 [Sup. Ct.], Feb. 26, 1993).

⁹² Bundesverfassungsgericht [BVerfGE] [Federal Constitutional Court] Oct. 31, 1990, 17 Europäische Grundrechte-Zeitschrift [EuGRZ] 438; BVerfGE [Federal Constitutional Court] Oct. 31, 1990, 17 EuGRZ 445.

⁹³ Act to Amend the Commune and County Election Act, Feb. 21, 1989 [hereinafter Schleswig-Holstein Act].

⁹⁴ Act to Introduce Aliens' Right to Vote in Borough Assembly Elections, Feb. 20, 1989 [hereinafter Hamburg Act].

⁹⁵ Schleswig-Holstein Act, *supra* note 93.

⁹⁶ Hamburg Act, *supra* note 94.

⁹⁷ Bundesverfassungsgericht [BVerfGE] [Federal Constitutional Court] Oct. 31, 1990, 17 Europäische Grundrechte-Zeitschrift [EuGRZ] 438; BVerfGE [Federal Constitutional Court] Oct. 31, 1990, 17 EuGRZ 445.

⁹⁸ The German Constitution, or *Grundgesetz*, is commonly referred to in English as the Basic Law.

the Local Suffrage Bill is constitutionally feasible even though this bill, or one like it, is not constitutionally compelled.

1. *The Japanese Constitution Confers Rights on Aliens*

Japan's postwar Constitution is based on four basic principles: 1) popular sovereignty, 2) pacifism, 3) respect for basic human rights, and 4) principles related to government structure.⁹⁹ Scholars hold different views on whether the third principle applies to Japanese nationals or to all people regardless of their nationality.¹⁰⁰ Those who contend that the basic human rights protected by the Constitution only apply to Japanese nationals base their belief on the language in Chapter 3 of the Constitution.¹⁰¹ They argue that a constitution is, by its nature, a contract between the state and its citizens.¹⁰² Alternately, the majority view is that the rights guaranteed in the Constitution are guaranteed, in some degree, to all people regardless of their nationality.¹⁰³ Because human rights are derived from being human, such rights come into existence before the state and, therefore, do not depend on citizenship for their conferment.¹⁰⁴

The majority view is further subdivided into those scholars who adhere to a textual theory and those who follow an essence theory.¹⁰⁵ The textual school of thought holds that where the Constitution uses the phrase "the people,"¹⁰⁶ the enumerated rights are reserved to Japanese nationals, and where it uses the term "all people,"¹⁰⁷ the rights are conferred on all individuals regardless of their nationality.¹⁰⁸ According to the essence theory, on the other hand, certain rights are reserved exclusively for Japanese nationals.¹⁰⁹ The essence theory notes that following the textual theory produces nonsensical conclusions, such as conferring the right to renounce Japanese nationality on all individuals.¹¹⁰ The essence theory ordinarily

⁹⁹ 小林武, 憲法と国際人権を学ぶ [STUDYING THE CONSTITUTION AND INTERNATIONAL HUMAN RIGHTS] 24-25 (2003).

¹⁰⁰ 粕谷友介、向井久了編 憲法 [CONSTITUTION] 73 (2d ed., 2003).

¹⁰¹ 日本国憲法第3章 [KENPŌ], Chapter 3 is titled 国民の権利と義務 [The Rights and Obligations of Nationals]. The basic idea is that since the word "national" is used, it should be understood that the rights can only be held by nationals.

¹⁰² 粕谷, *supra* note 100.

¹⁰³ *Id.*

¹⁰⁴ 小林, *supra* note 99, at 7-8.

¹⁰⁵ 粕谷, *supra* note 100.

¹⁰⁶ 国民は.

¹⁰⁷ 何人も.

¹⁰⁸ 粕谷, *supra* note 100.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*; 日本国憲法第22条第2項 [KENPŌ], art. 22, ¶ 2.

requires a case-by-case analysis of a particular right to determine whether it applies to all individuals.¹¹¹ However, the general rule is that rights existing prior to the creation of the state, such as liberty, extend to all individuals, whereas rights that came into existence after the state, such as suffrage, are limited to Japanese nationals.¹¹² Interestingly, although suffrage is, traditionally, the right considered most national in character, the notion of alien suffrage, at least on a local level, is gaining strength.¹¹³

2. *The Japanese Supreme Court Recognizes the Constitutional Feasibility of Local Alien Suffrage*

In addition to the views of constitutional scholars, regarding the possibility of local alien suffrage, there are also several arguments for and against the idea that are not based on Japan's Constitution. These arguments are examined in the first of the following subsections, comparing the arguments as they were employed in Germany and in Japan. Following this examination, the second subsection explores the dismissal of such arguments by the Japanese Supreme Court and the FCC in favor of textual arguments similar to those in the preceding section.

a. *Theoretical Arguments For and Against Local Alien Suffrage*

While scholarly views on the applicability of Japanese constitutional rights to foreigners are important, the Japanese Supreme Court is the ultimate arbiter on the constitutionality of the Local Alien Suffrage Bill. For this reason, it is critical to explore the Supreme Court's views on the constitutionality of alien suffrage, as found in *Higgs v. Japan* and *Kim et al. v. Osaka*. In analyzing the Supreme Court's views, comparison to a pair of 1990 German FCC decisions¹¹⁴ is also instructive.

Comparing Japanese decisions with the FCC decisions is worthwhile for several reasons. First, many similarities between Germany and Japan exist, including relatively new postwar constitutions¹¹⁵ following defeat in World War II, and similar ideas of national and cultural homogeneity.¹¹⁶

¹¹¹ 粕谷, *supra* note 100, at 74.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Bundesverfassungsgericht [BVerfGE] [Federal Constitutional Court] Oct. 31, 1990, 17 Europäische Grundrechte-Zeitschrift [EuGRZ] 438; BVerfGE [Federal Constitutional Court] Oct. 31, 1990, 17 EuGRZ 445.

¹¹⁵ Germany's current constitution, as amended, the *Grundgesetz* or Basic Law, was promulgated in 1949. Japan's current constitution, as amended, the 日本国憲法, was promulgated in 1948.

¹¹⁶ See, e.g., Shannon Roesler, *Who Are "We the People"?: The Legal Response to Twentieth-Century Migration in Germany and the United States*, 1 CHI-KENT J. INT'L & COMP. L 92 (stating that "the

Furthermore, Japan's Civil Code¹¹⁷ was based on Germany's then-developing *Bürgerliches Gesetzbuch*,¹¹⁸ and much of Japanese legal thought was heavily influenced by German legal principles.¹¹⁹ Second, many of the arguments against alien suffrage espoused in Germany mirror those made in Japan. Finally, both the Japanese Supreme Court and the FCC decisions striking down local alien suffrage were based on textual interpretations of their respective constitutions, centered on different uses of the term "the people."¹²⁰

The concept of alien suffrage is repugnant to the traditional understanding of citizenship-based suffrage. For a long time, the idea that "all state authority emanates from the people"¹²¹ has meant that state power comes from the citizens of a country. Accordingly, as with most radical ideas, alien suffrage has been met with vociferous opposition. This is certainly true in Germany and Japan.

Constitutional law scholars in Germany, Japan, and elsewhere have advanced four primary arguments against alien suffrage: 1) affectedness arguments, 2) loyalty arguments, 3) cultural arguments, and 4) escapability arguments. Affectedness arguments claim that aliens are not bound by the same civic duties as citizens and, therefore, should not have the same civic rights.¹²² Loyalty arguments claim that aliens either do not have the same sense of loyalty to the country as citizens, or that their loyalty remains with their country of citizenship.¹²³ Cultural arguments posit that only citizens of a nation with a shared culture can make decisions for the country.¹²⁴ Finally, escapability arguments hold that aliens, unlike citizens, can simply leave a country if they disagree with its policies and, therefore, will not vote

German perception of nationhood is based on ethnic and cultural factors"); Mie Murazumi, *Japan's Laws on Dual Nationality in the Context of a Globalized World*, 9 PAC. RIM L. & POL'Y J. 415, 427 (stating that "prolonged isolation from other countries has produced a high degree of cultural homogeneity" in Japan).

¹¹⁷ 民法明治29年法律第89号 [MINPŌ], Law No. 89 of 1898.

¹¹⁸ The German Civil Code.

¹¹⁹ See, e.g., BERND MARTIN, JAPAN AND GERMANY IN THE MODERN WORLD 46 (Berghan Books 2006) (noting the German influence on 民法); MERYLL DEAN, JAPANESE LEGAL SYSTEM 137-38 (2d ed., Cavendish Publishing 2002) (noting the German influence on Japanese legal scholarship).

¹²⁰ Gerald L. Neuman, "We Are the People": Alien Suffrage in German and American Perspective, 13 MICH. J. INT'L L. 259, 284-87 (1992).

¹²¹ Grundgesetz für die Bundesrepublik Deutschland [Federal Constitution], art. 20.

¹²² Neuman, *supra* note 120, at 277. This argument does not seem to exist in Japanese scholarship.

¹²³ *Id.* at 280; 百地章「永住外国人の参政権問題Q&A—地方参政権付与は憲法違反—」 [The PRA Suffrage Problem Q & A – The Granting of Local Alien Suffrage Is Unconstitutional –], <http://homepage2.nifty.com/tanimurasakaei/zainitisa.htm> (last visited Nov. 11, 2007).

¹²⁴ See, e.g., 安保克也, 日本国憲法と外国人の地方参政権 : 反対の立場から [The Japanese Constitution and Local Alien Suffrage—From the Point of View of Those Not in Favor of Suffrage], 8 憲法論叢 97, 104 (Mar. 2002) (citing cultural argument). This argument does not seem to exist in German scholarship.

responsibly.¹²⁵ Opponents of alien suffrage who espouse these views most often recommend naturalization as the appropriate method for obtaining the right to vote.¹²⁶

Such affectedness, loyalty, and cultural arguments are, however, problematic. The primary concern of those advocating affectedness arguments in Germany is that aliens are not subject to the same civic duties as German citizens, particularly with regard to military service.¹²⁷ Similar concerns are usually not voiced in Japan as no mandatory military service is required by the Japanese government.¹²⁸ Additionally, aliens in Japan are subject to the same civic duties as nationals, including taxation. Finally, there is evidence that many aliens actively seek participation in civic groups throughout Japan.¹²⁹ Practical realities also thwart the loyalty arguments. In addition to refugees and stateless persons, many aliens are third- or fourth-generation immigrants born and raised in their adopted homeland, and have nothing in common with their countries of nationality other than a passport.¹³⁰ Again, dual nationals still have the right to vote despite their arguable loyalty to another country. The cultural argument's greatest shortcoming is its assumption that culture is static. It fails to take into account the fact that, particularly in an ever-changing, globalizing world, culture is constantly changing. Finally, recommending and achieving naturalization in Germany and Japan are two different objectives. This is partly due to bureaucratic obstacles¹³¹ and partly related to the fact that both countries frown on dual nationality.¹³² Furthermore, the renunciation of the citizenship of one's home country is a prerequisite to naturalizing in Japan.¹³³ However, the action of renouncing one's citizenship has far greater implications than merely filling out the relevant paperwork, including

¹²⁵ Neuman, *supra* note 120, at 277; 百地, *supra* note 123.

¹²⁶ Neuman, *supra* note 120, at 280; *see also supra* note 61.

¹²⁷ Neuman, *supra* note 120, at 278.

¹²⁸ Under Article 9 of the Japanese Constitution, Japan cannot maintain a standing military. Instead it maintains an all-volunteer Self-Defense Force. 日本国憲法第9条 [KENPŌ], art. 9.

¹²⁹ *See e.g.*, Abe, *supra* note 17 (345 municipalities claimed to maintain a list of civic organizations in which aliens participated and another 121 municipalities claims to be aware of such participation).

¹³⁰ More than half of Japan's permanent resident aliens are so-called "special permanent residents," comprised of former Korean and Taiwanese immigrants and their descendents who would be citizens except for having lost their Japanese nationality as a result of the 1952 San Francisco Peace Treaty. 法務省 [MINISTRY OF JUSTICE] 平成18年末現在における外国人登録者統計について [STATISTICS OF REGISTERED ALIENS IN JAPAN AS OF 2006] (2007), <http://www.moj.go.jp/PRESS/070516-1.pdf> (last visited Nov. 10, 2007).

¹³¹ Roesler, *supra* note 116.

¹³² Neuman, *supra* note 120, at 331. For a detailed discussion of Japan's aversion to dual nationality, *see* Murazumi, *supra* note 116.

¹³³ 国籍法第5条第1項第5号昭和25年法律第147号 [Nationality Law], Law No. 147 of 1950, art. 5, no. 1(5).

potential loss of land and other rights in one's home country and the psychological impact of giving up a part of one's identity.¹³⁴

The escapability argument is the most effective argument, but it is not without its flaws. In claiming that aliens will not vote responsibly because they know they can leave at any time, the theory assumes that inability to leave a country is a necessary factor in responsible voting. Furthermore, German and Japanese citizens are free to leave the country as both countries' constitutions guarantee that right.¹³⁵ While both countries actively dissuade dual nationality, there are many dual nationals in Germany and Japan¹³⁶ who are allowed to vote even though, under the escapability argument, their status makes them equally capable of voting irresponsibly. Another problem arises from the refugee or stateless status of some aliens residing in these countries. These people have been placed in such circumstances because they have previously sought asylum in Germany or Japan, or because incongruent nationality laws prevent them from obtaining appropriate citizenships.¹³⁷ These aliens could not leave the country and return to their home country, and would, therefore, not vote based on such an assumption.

b. Textual Arguments For and Against Local Alien Suffrage

As interesting as the theoretical arguments are, more intriguing is the fact that neither Germany's FCC nor the Japanese Supreme Court considered these arguments in evaluating the constitutionality of alien suffrage.¹³⁸ Instead, both courts focused almost entirely on textual interpretations.¹³⁹ Both countries' constitutions contain multiple variations of the term "the people." Whereas Germany's Basic Law uses *das Volk* and

¹³⁴ Harald Waldrauch, European Centre for Social Welfare Policy and Research, *Electoral Rights for Foreign Nationals: A Comparative Overview, Paper prepared for the ESF/LESC-SCSS Exploratory Workshop: Citizens, non-citizens and voting rights in Europe* (2005), <http://homepage.univie.ac.at/dilek.cinar/Waldrauch%202005%20electoral%20rights.pdf> (last visited Mar. 4, 2008).

¹³⁵ Grundgesetz für die Bundesrepublik Deutschland [Federal Constitution], art. 16 (The ability to renounce one's German citizenship voluntarily is implied by the language forbidding involuntary deprivation of citizenship); 日本国憲法第22条2項 [KENPŌ], art. 22, ¶ 2.

¹³⁶ See, e.g., Roesler, *supra* note 116 (stating "one-third of all German naturalizations result in dual citizenship"); Murazumi, *supra* note 116, at 415-16 (noting the existence of dual nationals in Japan).

¹³⁷ For example, the children of Turkish immigrants to Germany are often stateless because Germany does not grant citizenship based on place of birth and Turkey does not confer citizenship on persons born outside of Turkey. Roesler, *supra* note 116.

¹³⁸ Neuman, *supra* note 120, at 288; Kim et al v. Osaka Kita Ward Election Committee, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995); Higgs v. Japan, 1452判例時報 [HANREI JIHŌ] 37 (最高裁 [Sup. Ct.], Feb. 26, 1993).

¹³⁹ Neuman, *supra* note 120, at 288 (the Federal Constitutional Court acknowledged and dispensed with the non-textual arguments in the petitioner's brief).

das deutsche Volk,¹⁴⁰ the Japanese Constitution uses *kokumin* and *jumin*.¹⁴¹ The German and Japanese decisions centered on these very terms.

While both courts reached the same result—that their respective constitutions did not guarantee alien suffrage—their holdings have different implications. Germany’s FCC held that the language of Article 20(2)(1) of Germany’s Basic Law, a provision stating that “all State authority emanates from the people,” did not mean that the decisions of State authority must come from any persons affected by them, but by a group of human beings bound into a unity.¹⁴² The Basic Law established that this group of human beings included only German nationals and status-Germans.¹⁴³ In addition, the FCC held that the homogeneity principle in Article 28(1) of the Basic Law mandated that “the people” must refer to the same group throughout the document.¹⁴⁴ In dictum, the FCC noted that Article 79(3) of the Basic Law did not necessarily prohibit limited local alien suffrage for fellow European Union¹⁴⁵ (“EU”) citizens.¹⁴⁶ This dictum was very likely the FCC playing to the EU, which was heavily promoting supranational voting rights for European Community (“EC”) citizens at the time.¹⁴⁷

In *Higgs v. Japan*, and *Kim v. Osaka*, the Japanese Supreme Court employed nearly identical reasoning as the FCC in the cases described above. In *Higgs*, the petitioner claimed that Article 9 of the Public Offices Election Law, a law limiting the right to vote to Japanese nationals, violated Articles 14 and 15 of the Constitution. In particular, Article 15 of the Constitution grants the right to choose and dismiss public servants to “the people.”¹⁴⁸ In denying *Higgs*’ claim, the Supreme Court reasoned that because the Preamble to the Constitution opened with “We the Japanese people,”¹⁴⁹ any further references to “the people” referred to “the Japanese people.”¹⁵⁰ When the *Kim* case arose one year later, the petitioner, vying for local suffrage, took a slightly different tack. He argued that Article 93,

¹⁴⁰ These terms mean, respectively, “the people” and “the German people.”

¹⁴¹ These terms mean, respectively, “nationals” and “residents.”

¹⁴² Bundesverfassungsgericht [BVerfGE] [Federal Constitutional Court] Oct. 31, 1990, 17 Europäische Grundrechte-Zeitschrift [EuGRZ] 438, 442.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 443.

¹⁴⁵ At the time, the European Union was known as the European Community.

¹⁴⁶ Bundesverfassungsgericht [BVerfGE] [Federal Constitutional Court] Oct. 31, 1990, 17 Europäische Grundrechte-Zeitschrift [EuGRZ] 438. Article 79 of the Basic Law deals with constitutional amendments and expressly forbids certain amendments including any to the basic principles contained in Articles 1 through 20. Grundgesetz für die Bundesrepublik Deutschland [Federal Constitution], art. 79.

¹⁴⁷ See Neuman, *supra* note 120 at 286.

¹⁴⁸ *Higgs v. Japan*, 1452 判例時報 [HANREI JIHŌ] 37 (最高裁 [Sup. Ct.], Feb. 26, 1993).

¹⁴⁹ 日本国憲法前文 [KENPŌ], pmb1.

¹⁵⁰ *Higgs*, 1452 判例時報 [HANREI JIHŌ] at 37.

paragraph 2 of the Constitution, granting citizens local voting rights, used the term “residents” and not “the people,” and, therefore, was not limited to Japanese nationals as was “the people.”¹⁵¹ Although it is not certain that “residents” means “residents of Japanese nationality,”¹⁵² the court held that it was understood to be limited to Japanese nationals.¹⁵³ The court did, however, note, “as for foreign nationals residing in Japan, it is reasonable to understand that the Constitution does not prohibit taking measures to grant voting rights to those permanent residents and others who have an especially close relationship with local public bodies.”¹⁵⁴ As a caveat, the court stressed that “whether such measures are taken or not is exclusively a matter of state legislative policy.”¹⁵⁵ What is most interesting about this dictum is that in contrast to the dictum of Germany’s FCC, which was arguably purposefully advanced for the benefit of the EC,¹⁵⁶ Japan had no such supranational group to influence the Supreme Court’s opinion and, seemingly, had no ulterior political motive in making the statement.

3. *The Current Incarnation of the Local Alien Suffrage Bill Conforms to the Supreme Court’s Decision in Kim v. Osaka*

In creating alien suffrage legislation, lawmakers must determine carefully which aliens will be granted suffrage.¹⁵⁷ In fact, some opponents of alien suffrage attack this concept on the basis that any attempt to classify certain aliens as eligible to vote and others as ineligible is necessarily arbitrary.¹⁵⁸ The term “alien” ordinarily means anyone not of the nationality of the country in which they reside.¹⁵⁹ Thus, the term can include anyone from a one-day visitor to a foreign national born and raised in another country. Yet, no one would argue that the former should have the right to participate in that country’s electoral process. In regard to alien suffrage in Japan, the Supreme Court has defined the constitutional limits of those aliens eligible to vote as individuals “who have an especially close relationship with local public bodies.”¹⁶⁰

¹⁵¹ Kim et al. v. Osaka Kita Ward Election Committee, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995).

¹⁵² 粕谷, *supra* note 100 at 340.

¹⁵³ Kim, 1523判例時報 [HANREI JIHŌ] at 52.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See Neuman, *supra* note 120, at 286.

¹⁵⁷ Harper-Ho, *supra* note 27, at 305.

¹⁵⁸ Neuman, *supra* note 120, at 281.

¹⁵⁹ 粕谷, *supra* note 100, at 73.

¹⁶⁰ Kim, 1523判例時報 [HANREI JIHŌ] at 50.

In its Local Suffrage Bill submitted in 2004, the New Komeitō interprets the Supreme Court's description in *Kim* to mean PRAs.¹⁶¹ It defines permanent resident aliens in one of two ways: 1) individuals who have permanent residency pursuant to the Immigration Control and Refugee Recognition Act,¹⁶² or 2) special permanent residents pursuant to the Special Law Regarding the Immigration Control of Individuals Who Lost Japanese Nationality Due to a Peace Treaty with Japan.¹⁶³ Contrary to this sweeping definition placed at the beginning of the Bill, the definition of permanent resident alien would be limited initially to citizens of countries that grant similar rights to Japanese nationals.¹⁶⁴ Regardless of this supplemental provision, the definition of permanent resident aliens in Article 2 is consistent with the language of *Kim*, because permanent residency, special or otherwise, is the closest legal status to nationality that one can obtain in Japan short of naturalization.

In addition, the Local Suffrage Bill stays within the limits of what can be accomplished by statute. Conferring suffrage to permanent resident aliens at the national level would require, both from a textual reading and a consideration of Supreme Court opinions, a constitutional amendment. However, local suffrage can be addressed by statute. Thus, although the Bill's stated purpose¹⁶⁵ is to grant PRAs local voting rights, it achieves this purpose by establishing exceptions to the Public Offices Election Law and to the Local Autonomy Act.¹⁶⁶ The term "local suffrage," or, as it is referred to in the Bill, "the right to vote for members and chairs of local public bodies,"

¹⁶¹ 地方参政権法案第1条 [Local Suffrage Bill], *supra* note 18, art. 1.

¹⁶² *Id.* art. 2, no. 1 ("A residing individual possessing permanent resident status as found in the left-hand column of appendix 2 to the Immigration Control and Refugee Recognition Act (Legislative Order No. 319 of 1951)").

¹⁶³ *Id.* art. 2, no. 2 ("A special permanent resident as established by the Special Law Regarding the Immigration Control of Individuals Who Lost Japanese Nationality Due to a Peace Treaty with Japan (Law No. 71 of 1991)"). During its pre-World War II expansion into Asia, Japan colonized the Korean Peninsula and Taiwan and as part of its forced assimilation practices conferred Japanese nationality on these colonials. These colonials maintained their citizenship following World War II, but in 1952 were summarily stripped of their Japanese nationality as part of the San Francisco Peace Treaty. KO, *supra* note 37, at 298-99.

¹⁶⁴ 地方参政権法案第1条 [Local Suffrage Bill], *supra* note 18, Supplemental Provisions, art. 3 ("For the time being, the 'applicable individuals' in Article 2 shall be 'applicable individuals (The granting of the right to vote in the elections of members and chairs of local bodies by this law is limited to individuals who possess the citizenship of a country that has been determined by legislative order to give Japanese citizens the right to vote in similar elections of members and chairs of local bodies).").

¹⁶⁵ *Id.* Supplemental Provisions, Reason ("In consideration of the fact that a large number of permanent resident aliens in our country lead their lives in the same way as Japanese nationals, it is necessary to grant permanent resident aliens the right to vote in elections for members and chairs of local public bodies in order to reflect their opinions on local government. This is the reason for the submission of this bill.").

¹⁶⁶ *Id.* art. 1.

is ambiguous. However, sections of the Bill demonstrate that it applies to municipal¹⁶⁷ and prefectural elections¹⁶⁸ as well as to other elections such as those for municipal union boards.¹⁶⁹ All of these elections fall under the Local Autonomy clause of the Constitution.¹⁷⁰ Therefore, they pertain to “residents,” not “the people,” and, in accordance with the *Kim et al.* decision, the above-mentioned statutes governing these elections are amenable to amendment.¹⁷¹

B. *Adoption of the Bill Could Result in Positive Spillover Effects*

Having determined that Japan can constitutionally grant local alien suffrage through passage of the Local Suffrage Bill, it is then necessary to determine whether Japan *should* grant local alien suffrage. The potential policy implications of the Local Suffrage Bill reaffirm the prudence of its ultimate passage by the Japanese government. For Japan, the primary effects would be the bolstering of Japan’s social security policy as an increase in PRAs would lead to greater contributions to the national pension scheme.¹⁷² In addition, the Bill would allow Japan to be part of a growing trend that acknowledges the realities of a globalized world, and would allow the country to officially recognize the contribution that permanent resident aliens make to Japanese society.

I. *Adoption of the Local Suffrage Bill Would Help Japan Respond to Its Social Security Crisis*

As noted above,¹⁷³ Japan faces a looming social security crisis. This crisis could be, to some extent, addressed by the Local Suffrage Bill. Tackling this crisis requires an influx of human capital that will sustain Japan’s economic growth and increase contributions to a pension fund that is needed to care for Japan’s ever-increasing pensioner population. The Japanese government, in addition to attempting to boost the domestic birthrate,¹⁷⁴ also recognizes the necessity of labor importation from other countries.¹⁷⁵ Various government ministries, however, disagree on the extent

¹⁶⁷ See, e.g., *id.* art. 3, no. 1.

¹⁶⁸ See, e.g., *id.* art. 3, no. 3.

¹⁶⁹ See, e.g., *id.* art. 30.

¹⁷⁰ 日本国憲法第93条2項[KENPŌ], art. 93, ¶ 2.

¹⁷¹ *Kim et al. v. Osaka Kita Ward Election Committee*, 1523判例時報 [HANREI JIHŌ] 49 (最高裁 [Sup. Ct.], Feb. 28, 1995).

¹⁷² *Infra* Part III.B.1.

¹⁷³ *Supra* Part II.C.

¹⁷⁴ *Supra* Part II.C.3.

¹⁷⁵ See Vogt, *supra* note 65 (mentioning several government agencies’ positions on immigration).

of its importance. The Ministry of Justice, which oversees immigration, has been the most recalcitrant.¹⁷⁶ The highest suggested figure would cap Japan's immigrant population at three percent.¹⁷⁷ Furthermore, many government agencies promote the adoption of restrictive immigration policies.¹⁷⁸ These policies seek to limit Japanese immigration to individuals who work in certain industries and on a short-term basis.¹⁷⁹

These limitations hamper immigration's potential social security benefits. First, limiting immigration to certain industries lessens the number of individuals eligible to immigrate to Japan. Also, these policies ignore the reality that while incoming immigrants fill the existing jobs, they also create new ones.¹⁸⁰ Second, as pension contributions increase in proportion to a worker's salary,¹⁸¹ limiting immigrants to short-term stays likely lessens potential contributions. A worker who is limited to working for a set period of time generally has fewer opportunities for advancement and wage increases than one who is not similarly limited. This result is due to time constraints and the fact that employers, particularly domestic employers, will ordinarily not devote resources or seek to promote workers who do not have a long-term future with the company. The limited worker's potential for advancement and salary growth is therefore stunted, ultimately causing a decrease in pension contribution growth. Moreover, pension contributions can be negated entirely by a provision that allows short-term immigrants to be reimbursed for a certain amount of their pension contributions following their return to their home country.¹⁸²

These considerations suggest that in order to use immigration to fight the weakening of the social security system, Japan not only needs to promote immigration, but it needs to promote long-term immigration. The Japanese business community clearly recognizes this reality. The Japan Business

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* Japan's immigrant population currently only makes up 1.63% of the total population. While doubling this may seem like a large step, it would still put Japan far behind most other developed nations in terms of immigrant populations. *Id.* See also 法務省 [MINISTRY OF JUSTICE] 第3次出入国管理基本計画 [THIRD BASIC PLAN FOR IMMIGRATION CONTROL] (2006), available at <http://www.moj.go.jp/NYUKAN/nyukan35.html#03-1>.

¹⁷⁸ See Vogt, *supra* note 65.

¹⁷⁹ An example of one such limited immigration measure is the Japan-Philippine Economic Partnership Agreement ("JPEPA"). For further information about the JPEPA, see Japan-Philippines Economic Partnership Agreement website, <http://pascn.pids.gov.ph/jpepa> (last visited Mar. 4, 2008).

¹⁸⁰ See, e.g., Roger Lowenstein, *The Immigration Equation*, N.Y. TIMES MAGAZINE, July 9, 2006, at 38 (describing how immigrant communities create a variety of jobs).

¹⁸¹ 厚生年金保険法昭和29年法律第115号 [Employee Pension Insurance Law], Law No. 115 of 1954.

¹⁸² *Id.* art. 29.

Federation¹⁸³ or Nippon Keidanren (“Keidanren”), Japan’s largest business organization, views active social and economic participation by non-Japanese as critical to Japan’s maintenance of a sustained annual growth rate by 2025.¹⁸⁴ As Keidanren suggests, continued economic growth demands that Japan become a country that non-Japanese “want to visit, to live in, to work in, and to invest in.”¹⁸⁵ To that end, the government should extend the validity of most visas and explore a system that promotes long-term residency.¹⁸⁶ Legislation, such as the Local Suffrage Bill, is one component in achieving these goals.¹⁸⁷ Although passage of the bill may not directly increase the numbers of workers coming to Japan, those already residing in Japan will have an incentive to remain on a long-term basis because doing so will allow them more political participation. Long-term residency, in turn, will give them greater opportunities to advance in their employment¹⁸⁸ and, therefore, contribute to Japan’s social welfare system.¹⁸⁹

2. *Adoption of the Local Suffrage Bill Would Also Allow Japan to Join a Growing Global Trend*

Over the past forty years, a growing trend in granting suffrage to aliens, in one form or another, has emerged across the world.¹⁹⁰ While the aliens who are granted suffrage differ based on, for example, former colonial ties¹⁹¹ and membership in supranational organizations,¹⁹² granting suffrage in the majority of countries is aimed at the realization of alien contributions to their adopted homelands.¹⁹³ Japan should adopt the Local Suffrage Bill for this same reason in addition to the economic reasons discussed above. As of

¹⁸³ 日本経済団体連合会 [Japan Federation of Economic Organizations] [hereinafter Keidanren].

¹⁸⁴ KEIDANREN, JAPAN 2025: ENVISIONING A VIBRANT, ATTRACTIVE NATION IN THE TWENTY-FIRST CENTURY (2003) [hereinafter JAPAN 2025].

¹⁸⁵ *Id.*

¹⁸⁶ Keidanren Committee on Industrial Affairs and Committee on Employment, *Interim Recommendations on Accepting Non-Japanese Workers—Bring Dynamism of Diversity into Japan by Opening Doors to Transnational Human Resources*, 14-16 (Nov. 14, 2003), <http://www.keidanren.or.jp/english/policy/2003/108.html> (last visited Nov. 10, 2007).

¹⁸⁷ *Id.* at 10.

¹⁸⁸ JAPAN 2025, *supra* note 184.

¹⁸⁹ *Id.*

¹⁹⁰ Earnest, *supra* note 21.

¹⁹¹ Immigrant Voting Project, *supra* note 31. This includes countries such as Barbados and Cape Verde.

¹⁹² *Id.* This includes countries such as Canada, the Czech Republic, Finland, and Iceland.

¹⁹³ See, e.g., David C. Earnest, *Political Incorporation and Historical Institutionalism: A Comparison of the Netherlands, Germany and Belgium*, 15 (2005), http://www.odu.edu/~dearnest/pdfs/earnest_isa_2005_final.pdf (last visited Mar. 7, 2008); *Korea Warms to Foreign Voting*, KOREA HERALD, May 24, 2006.

December 31, 2006, Japan¹⁹⁴ is home to 837,521 PRAs, 443,044 of whom are “special permanent residents.”¹⁹⁵ The proponents of this Bill recognize their contributions to society and believe that Japan should also do so by granting permanent residents the right to vote.¹⁹⁶ By granting alien suffrage, Japan would affirmatively establish its acceptance of the reality that individuals can be full-fledged members of a national community without becoming nationals.

IV. CONCLUSION

It is undeniable that Japan is currently facing the challenges of a social security crisis. Experts in government and the private sector agree that resolution of this problem will require, among other measures, an influx of people from overseas. However, simply bringing in a limited number of people for a limited amount of time will not be enough. Japan must not only take steps to induce people to migrate to Japan, but must encourage them to stay as well. While no one policy will suffice, granting alien suffrage will help by sending a message to PRAs and those seeking PRA status that they will be allowed fuller participation in Japanese society.

Currently, Japan’s Supreme Court believes that Japan is not constitutionally *compelled* to grant local alien suffrage. Nonetheless, the Supreme Court has also made clear that Japan is not constitutionally *prohibited* from doing so. Given that Japan now recognizes local alien suffrage as a legal possibility, Japanese officials should grant local alien suffrage through passage of the Local Suffrage Bill. Failure by Japanese legislators to pass the Bill is the only real obstacle to alien suffrage in Japan. Even if the current Bill is not passed, the issue will continue to be relevant in Japan as Japan’s PRA population and the number of countries granting alien suffrage both increase. Thus, efforts to get the Bill or such a bill passed should continue. Passage of the Bill would allow Japan’s PRA population to actively participate in political process and to make greater contributions to the Japanese economy. This would help Japan meet its social welfare needs while maintaining its important position in the global economy. It is also likely that the international community would welcome such an attempt by Japan to join the global trend recognizing the heightened status of aliens in modern societies.

¹⁹⁴ 法務省 [MINISTRY OF JUSTICE], *supra* note 130.

¹⁹⁵ *Id.*

¹⁹⁶ 地方参政権法案附則理由 [Local Suffrage Bill], *supra* note 18, Supplemental Provisions, Reason.

TRANSLATION

Translator's Note: The following is a translation of the "Bill Regarding the Granting of the Right to Vote for Members and Chairs of Local Public Body Assemblies to Permanent Resident Aliens" as proposed by Inoue Yoshihisa of the New Komeitō in 2004. As of September 10, 2007, this bill is being reviewed by the Special Committee Regarding the Establishment of Governmental Logic and the Amendment of the Public Offices Election Law. Currently, only Japanese nationals can vote in Japan. This bill, however, would allow permanent resident aliens in Japan to vote in sub-national elections at both municipal and prefectural levels. Though a version of the Bill proposed in 2000 died in the House of Representatives because of an inability to reach a decision on its adoption or rejection, this bill deserves greater consideration in light of Japanese demographic shifts and Japan's imminent social security crisis. Increased immigration into Japan is necessary for Japan to maintain its position as a global economic leader as well as to bolster its social welfare system. Passage of this bill is a means to demonstrate the Japanese government's commitment to long-term migration.

163rd Session¹⁹⁷
House of Representatives No. 14

**Bill Regarding the Granting of the Right to Vote for
Members and Chairs of Local Public Body Assemblies to
Permanent Resident Aliens¹⁹⁸**

Table of Contents¹⁹⁹

CHAPTER 1. GENERAL PROVISIONS

(Objective)

Article 1. This law seeks to establish exceptions to the Local Autonomy Act (Law No. 67 of 1947) and the Public Offices Election Law (Law No. 100 of 1950) in order to grant the right to vote for members and chairs of local public body assemblies to permanent resident aliens.

(Definition of Permanent Resident Alien)

Article 2. For the purposes of this law, a permanent resident alien refers to one of the following applicable individuals:

¹⁹⁷ *Translator's Note:* The 163rd Session of the Japanese Diet was a special legislative session held from September 21 to November 11, 2004.

¹⁹⁸ *Translator's Note:* Japanese legislation frequently includes definitions and explanations within parentheses. In order to make this translation more readable, the majority of such parenthetical explanations have been made footnotes. Where such parenthetical explanations are quoted within an article, they have been left within the text. Unlike informational footnotes, footnotes containing parenthetical explanations are not preceded by "*Translator's Note.*"

¹⁹⁹ *Translator's Note:* Translator has removed the table of contents for brevity.

I. A residing individual possessing permanent resident status as found in the upper column of appendix 2 to the Immigration Control and Refugee Recognition Act (Legislative Order No. 319 of 1951),

II. A special permanent resident as established by the Special Law Regarding the Immigration Control of Individuals Who Lost Japanese Nationality Due to a Peace Treaty with Japan (Law No. 71 of 1991).

CHAPTER 2. EXCEPTIONS TO THE LOCAL AUTONOMY LAW AND PUBLIC OFFICES ELECTIONS LAW RELATED TO THE RIGHT TO VOTE FOR MEMBERS AND CHAIRS OF ORDINARY LOCAL PUBLIC BODY ASSEMBLIES

Article 3. A permanent resident alien registered in the permanent resident alien electoral registry pursuant to an application pursuant to the regulations contained in Article 8, and who is over the age of twenty²⁰⁰ and has maintained an address within the limits of a municipality for more than three months consecutively has the right to vote for members and chairs of the ordinary local public bodies within those limits.

(2) The municipality in the preceding paragraph shall include a municipality, the area of which, in whole or in part, has, due to dissolution and consolidation,²⁰¹ ceased to exist and become the current municipality, in whole or in part.²⁰²

(3) Pursuant to the provisions of paragraph 1, an individual who possesses the right to vote for the members and chair of the assembly in the prefecture that includes the municipality where the individual resides, and who transfers his or her address from within the limits of said municipality to within the limits of another municipality in the same prefecture, will continue to possess the right to vote for the members and chair of said prefectural assembly, notwithstanding the address requirement in the same paragraph.

(4) The three-month period in paragraph 1 shall not be interrupted by dissolution and consolidation or change to the border of the municipality.

²⁰⁰ Excluding individuals who should not have been registered at the time of registry, other than those who should not have been registered only because they did not meet the address requirement (the same shall apply in Article 7, paragraph 2, and Article 8), and those who ceased to be permanent resident aliens by virtue of acquisition of Japanese nationality, deportation, or some other such event following registration.

²⁰¹ *Translator's Note:* In recent years many Japanese municipalities no longer able to maintain a viable economic existence have been absorbed into neighboring municipalities or combined with them to form new municipalities.

²⁰² Including a municipality that has been deemed to cease to exist by the provisions of this paragraph.

CHAPTER 3. EXCEPTIONS TO THE PUBLIC OFFICES ELECTION LAW RELATED TO THE PERMANENT RESIDENT ALIEN ELECTORAL REGISTRY AND THE VOTING IN ELECTIONS OF MEMBERS AND CHAIRS OF ORDINARY LOCAL PUBLIC BODY ASSEMBLIES

Part 1. Permanent Resident Alien Electoral Registry

(Permanent Resident Alien Electoral Registry)

Article 4. The election committee of the municipality will prepare and preserve a permanent resident alien electoral registry.

(2) The permanent resident alien electoral registry will be maintained permanently, and one registry shall be maintained for prefectural assembly elections together with municipal assembly elections.

(3) The election committee shall conduct registration for the permanent resident alien electoral registry every March, June, September, and December,²⁰³ as well as when an election for the members or chair of an ordinary local public body takes place.

(4) The permanent resident alien electoral registry, as provided by legislative order, may be prepared on a magnetic disk.²⁰⁴

(5) If necessary, when an election of members or the chair of an ordinary local public body takes place a certified abstract of the permanent resident alien electoral registry²⁰⁵ can be used.

(6) For purposes of the preparation of the permanent resident alien electoral registry, Article 6 of the Law Regarding the Use of Information and Communications Technology in Administrative Procedures (Law No. 151 of 2002) does not apply.

(Entries on the Permanent Resident Alien Electoral Registry)

Article 5. The name, address, sex, and date of birth of the elector must be entered²⁰⁶ in the permanent resident alien electoral registry.

(2) In the event that a municipality divides its area into several precincts, a permanent resident alien registry must be produced for each precinct.

²⁰³ Referred to as "month of registration" in Article 9, paragraph 1, and Article 10, paragraph 1.

²⁰⁴ Includes items that can accurately record data in a similar fashion. The same applies hereinafter.

²⁰⁵ For municipal election committees that prepare the permanent resident alien electoral registry on a magnetic disk pursuant to the preceding paragraph, a document containing all or part of the data recorded on the said permanent resident electoral registry, or containing the relevant data.

²⁰⁶ For permanent resident alien registries prepared on magnetic disk pursuant to the provisions of paragraph 4 of the preceding article, recorded.

(3) In addition to the preceding two provisions, the form of the permanent resident alien electoral registry and other necessary items will be established by legislative order.

(Enrollment Requirements)

Article 6. Enrollment on the permanent resident alien electoral registry will take place for a permanent resident alien over the age of twenty,²⁰⁷ and who, in the municipality of registration for that individual,²⁰⁸ has maintained an address within the municipality limits for more than three months consecutively.²⁰⁹

(2) The municipality that has ceased to exist in the preceding paragraph shall include a municipality which has ceased to exist, the area of which, in whole or in part, has, due to dissolution and consolidation, ceased to exist and become the current municipality, in whole or in part.²¹⁰

(3) The three-month period in paragraph 1 shall not be interrupted by the dissolution and consolidation or change to the border of the municipality.

(4) The municipal election committee, as established by legislative order, must be, by the authority of its position, prepared to determine who should be registered on said municipality's permanent resident alien electoral registry and to register those individuals on the permanent resident alien electoral registry.

Article 7. The municipal election committee shall conduct registration, based on applications, on the permanent resident alien electoral registry pursuant to the provisions of the following article.

²⁰⁷ Excluding individuals who are deemed not to have the right to vote pursuant to Article 26, Article 11, paragraph 1 and Article 252 of the Public Offices Election Law, Article 28 of the Political Funds Control Law, and Article 17, paragraphs 1-3 of the Law Regarding Exceptions to the Voting Procedures in Elections of Members and Chairs of Local Public Bodies when Electromagnetic Recording Style Voting Machines Are Used (Law No. 147 of 2001). The same applies in Article 8.

²⁰⁸ Referring to the current municipality or a municipality that has ceased to exist (a municipality, the area of which, in whole or in part, has, due to dissolution and consolidation, ceased to exist and become the current municipality, in whole or in part. The same applies in the following paragraph.). The same applies throughout this paragraph.

²⁰⁹ Limited to individuals whose registered place of residence on their alien registration record, prescribed by Article 4, paragraph 1 of the Alien Registration Act (Law No. 125 of 1952), is within the limits of the relevant municipality, and for whom more than three months has passed since the date of registration (for those who changed their residence from another municipality to the municipality of registration, filed an application pursuant to Article 8, paragraph 1 of the same Act, and registered their domicile pursuant to paragraph 6 of the same article, the date of application).

²¹⁰ Including a municipality that has been deemed to ceased to exist by the provisions of this paragraph.

(2) The registration of the individuals registered pursuant to the provisions of the previous paragraph²¹¹ on the permanent resident alien electoral registry shall be conducted by the authority of the office of the municipality's electoral committee.

Article 8. In addition to the individuals who maintain an address within the limits of the municipality, are permanent resident aliens over the age of twenty, and applied for registration on the permanent resident alien electoral registry pursuant to the provisions of this article,²¹² individuals may, as established by legislative order, apply in writing to the relevant municipal election committee for registration on the permanent resident alien electoral registry.

(Registration)

Article 9. The municipal election committee must register those individuals who, from the first day of the month of registration, are eligible for registration on the permanent resident alien electoral registry pursuant to the provisions of Article 6, whether the individual applied or by the committee's authority, on the second day of the month of registration. However, in the event the day of an election for the members or chairs of an ordinary local public body or some other such event occurs between the first and seventh day of the registration month, the municipal election committee may, as established by legislative order, change the registration date.

(2) In the event of an election for the members or chairs of an ordinary local public body, as established by the election committee managing the affairs regarding said election, the election committee must register an individual who is eligible for registration on the permanent resident alien electoral registry pursuant to the provisions of Article 6, whether the individual applied or by the committee's authority.

(Public Inspection)

Article 10. Between the third and seventh day of the registration month for the registration in the provision in paragraph 1 of the preceding article²¹³ and during the period established by the election committee managing the affairs of the relevant election in the provision in paragraph 2 of the same article,

²¹¹ Excluding individuals who should not have been registered at the time of registration or ceased to be permanent resident aliens by virtue of acquisition of Japanese nationality, deportation, or some other such event.

²¹² *Id.*

²¹³ In the event of the provision contained in the second clause of the same paragraph, the period established by legislative order.

the municipal election committee must make a document available for public inspection, which contains the names, addresses, and dates of birth of the individuals registered on the permanent resident alien electoral registry pursuant to the provisions of the same article at the city hall, town or village hall, or location designated by the relevant municipal election committee.

(2) The municipal election committee must give notice of the location of the public inspection no later than three days prior to the beginning of the public inspection.

(Filing a Protest)

Article 11. A voter in an election for the member or chair of a prefectural assembly who has an objection regarding registration on a municipal permanent resident alien electoral registration within the limits of the relevant prefecture, may, during the period of public inspection, file an objection in writing to the relevant municipal election committee.

(2) The municipal election committee, upon receipt of an objection from the preceding paragraph, must determine whether the objection is valid within three days of receiving the objection. In the event the objection is determined to be valid, the committee must either immediately register on or remove from the permanent resident alien electoral registry the person to whom the objection relates, the objector and other relevant persons must be notified, and an announcement must be released. In the event the objection is determined to be invalid, the committee must immediately notify the objector.

(3) The provisions of Article 15, paragraph 1(1)-(4), (6), and paragraph 4, Articles 21, 25, 26, 31, 36, 39, and 44 of the Law of Administrative Tribunals apply correspondingly to the filing of an objection in paragraph 1.

(4) The provisions of Article 214 of the Public Offices Election Law apply correspondingly to the filing of an objection in paragraph 1.

(Judicial Review)

Article 12. An objector or other relevant person who has an objection to the decision in paragraph 2 of the preceding article may resort to judicial review, with the relevant municipal election committee as the respondent, within seven days of receipt of the notice of the decision.

(2) The judicial review in the previous paragraph shall be under the exclusive jurisdiction of the district court for the jurisdiction where the relevant municipal electoral committee is located.

(3) An individual who has an objection to the decision of the court in the previous paragraph may not file an appeal, but may appeal to the Supreme Court.²¹⁴

(4) The provisions of Articles 213, 214, and 219, paragraph 1 of the Public Offices Election Law apply correspondingly to the judicial review in paragraph 1 and the preceding paragraph. In this event, the language in Article 219, paragraph 1 that reads “Several claims contesting the validity of an election, several claims pursuant to the provisions of Articles 207 or 208 contesting the validity of victory in an election, several claims pursuant to the provisions of paragraph 2 of Article 210 contesting the validity of a victory of a candidate for public office, several claims pursuant to the provisions of Article 211 contesting the validity of the victory of a candidate for public office or that candidate’s eligibility to run for office, or claims pursuant to the provisions of Article 207 or 208 contesting the validity of an election and the validity of the victory in that election” shall be read as “several claims contesting the registration or removal of a voter from the permanent resident alien electoral registry related to a public inspection.”

(Revised Registration)

Article 13. In the event the municipal election committee learns, after the registration date contained in the provisions of Article 9, of an individual who should have been registered on the permanent resident alien electoral registry at that time and who continues to be eligible for registration, the committee must immediately register that individual and make an announcement to that effect.

(Display and Corrections)

Article 14. In the event that the municipal electoral committee learns that an individual deemed to have lost the right to vote, deemed not to have the right to vote pursuant to Article 26, Article 11, paragraph 1 and Article 252 of the Public Offices Election Law; Article 28 of the Political Funds Control Law; and Article 17, paragraphs 1-3 of the Law Regarding Exceptions to the Voting Procedures in Elections of Members and Chairs of Local Public Bodies when Electromagnetic Recording Style Voting Machines Are Used, or who no longer maintains an address within the limits of the relevant

²¹⁴ *Translator’s Note:* The Japanese court system allows for an appeal as understood in the U.S. court system (控訴), and a direct appeal to the Supreme Court based on dissatisfaction with a trial court ruling (上告).

municipality,²¹⁵ the committee must immediately display that information on the permanent resident alien electoral registry.

(2) In the event the municipal election committee learns of a change or an error in the listed information²¹⁶ regarding an individual on the permanent resident alien electoral registry, the committee must immediately amend or correct the description.²¹⁷

(Removal of an Enrollment)

Article 15. The municipal election committee must remove individuals registered on the relevant municipal permanent resident alien electoral registry in the event any of the following events occurs. In the event that one of the events in items II-IV occurs, the committee must make an announcement to that effect.

I. The committee learns that the individual passed away, or obtained Japanese citizenship, was deported, or ceased to be a permanent resident alien for some other such reason.

II. The committee learns that the individual transferred his or her address outside of the prefecture that includes the relevant municipality or the individual no longer maintains an address in Japan.

III. Four months has passed from the day that an individual, whose information was displayed pursuant to paragraph 1 of the preceding article, ceased to maintain an address within the limits of the relevant municipality.

IV. The committee learns the individual should not have been registered at the time of registration.

(Notification and Access)

Article 16. The head of the municipality and the municipal election committee must inform each other regarding the existence of an address of a permanent resident alien voter and other voter eligibility data they possess.

(2) The municipal election committee must make a certified abstract of the permanent resident alien electoral registry²¹⁸ available for inspection as well as providing any other pertinent accommodations.

(3) A voter in an election for the members or chair of a prefectural assembly may, in the event of an error of omission or clerical error in a

²¹⁵ Excluding learning of those who transferred their address within the limits of the prefecture that includes the relevant municipality or those who no longer maintain an address in the country.

²¹⁶ For a permanent resident alien electoral registry prepared on a magnetic disk pursuant to the provisions of Article 4, paragraph 4, recorded information.

²¹⁷ For a permanent resident alien electoral registry prepared on a magnetic disk pursuant to the same provisions, record.

²¹⁸ *Supra* note 205.

permanent resident alien electoral registry in a municipality within the limits of the relevant prefecture, request that the relevant municipal election committee perform an investigation regarding the correction of the permanent resident alien electoral registry.

(Reconstruction of a Permanent Resident Alien Electoral Roll)

Article 17. In the event that a natural disaster or some other such accident mandates, a municipal election committee must prepare another permanent resident alien electoral registry.

(2) The preparation of the permanent resident alien electoral registry in the preceding paragraph, the period of public inspection and verification, and other matters necessitated by the preparation will be established by legislative order.

(Notification of Cessation of Maintenance of an Address)

Article 18. When an individual registered on a permanent resident alien electoral registry ceases to maintain an address within the limits of the municipality to which the relevant permanent resident alien electoral registry is attached, as established by legislative order, the individual must notify the relevant municipal election committee in advance.

(Exclusion of the Application of the Administrative Procedures Act)

Article 19. The provisions of Chapters 2 and 3 of the Administrative Procedures Act (Law No. 88 of 1993) do not apply to the provisions in this Part regarding registration in a permanent resident alien electoral registry or other acts constituting the exercise of public power.

(Restriction of Motions for Complaint Under the Law of Administrative Tribunals)

Article 20. No motions for complaint may be filed under the Law of Administrative Tribunals concerning the provisions in this Part regarding registration on a permanent resident alien electoral registry or other acts constituting the exercise of public power.

(Time for Applying for Registration on the Permanent Resident Alien Electoral Registry)

Article 21. The application for registration on the permanent resident alien electoral registry pursuant to the provisions of Article 8, the request for an investigation regarding an amendment to the permanent resident alien electoral registry pursuant to the provisions of Article 16, paragraph 3, and

the notification of a cessation of maintenance of an address pursuant to the provisions of Article 18, must be made within the business hours established by the employees of the relevant municipal election committee.

(Delegation to Legislative Orders)

Article 22. In addition to the provisions in this Part, the inter-municipal notification of the transfer of address to within the limits of another municipality by an individual registered on a permanent resident alien electoral registry and other necessary matters regarding permanent resident alien electoral registries, will be established by legislative order.

Part 2. Voting in Elections of the Members and Chairs of Ordinary Local Public Bodies

(Exceptions Related to Voting in Elections of the Members and Chairs of Ordinary Local Public Bodies)

Article 23. For the applicable provisions of the Public Offices Election Law contained in the left-hand column regarding elections of members and chairs of ordinary local public bodies, the language given in the center column shall be read as listed in the right-hand column.²¹⁹

(Exceptions Regarding Voters in Areas Where the Election is Partially Invalidated)

Article 24. Concerning the applicability of the provisions of Article 205, paragraph 4²²⁰ of the Public Offices Election Law as it pertains to voters in an area where an election is partially invalidated, the portion that reads “Immediately preceding the decision, ruling or judgment²²¹ pursuant to paragraph 2, an individual who was able to vote on the day of an election where the said election was in an area where the election is partially invalidated” shall read “Immediately preceding the decision, ruling or judgment²²² pursuant to paragraph 2, a Japanese national who was able to vote on the day of an election where the said election was in an area where the election is partially invalidated, or, in the event the said election was for

²¹⁹ *Translator's Note:* The Bill contains a chart, redacted in this translation, illustrating numerous changes to specific sections of the Public Offices Election Law, the majority of which are a change from “individuals possessing the right to vote” to “individuals possessing the right to vote (excluding those who have the right to vote pursuant to the provisions of the Permanent Resident Alien Local Suffrage Law),” as well as from “overseas electoral registry” to “permanent resident alien electoral registry.”

²²⁰ Including instances where Article 209, paragraph 2 applies accordingly.

²²¹ In the case of a judgment, immediately preceding the conclusion of the basic trial proceedings.

²²² In the case of a judgment, immediately preceding the conclusion of the basic trial proceedings.

the members or chair of a local public body, immediately preceding the decision, ruling, or judgment pursuant to paragraph 2 a Japanese national who was able to vote on the day of an election where the said election was in an area where the election is partially invalidated, or an alien who was able to vote on the day of an election in an election where said election for the members or chair of a local public body was in an area where the election is partially invalidated.”

Part 3. Punitive Provisions

(Fraudulent Registration)

Article 25. An individual who was registered on the permanent resident alien electoral registry by committing fraud, shall be sentenced to not more than six months imprisonment or fined no more than 300,000 yen.

(Suspension of the Right to Vote and Hold Office for Individuals Convicted of Fraudulent Registration)

Article 26. An individual who was fined for committing the offense in the preceding article will not have the right to vote pursuant to the provisions of this law nor the right to vote or hold office pursuant to the provisions of the Public Offices Election Law for five years from the date of the decision.²²³

(2) An individual who was sentenced to imprisonment for committing the offense in the preceding article will not have the right to vote pursuant to the provisions of this law nor the right to vote or hold office pursuant to the provisions of the Public Offices Election Law from the date of the decision until the individual has served the full sentence, or, excluding an individual who has did not have to serve an imposed sentence due to the statute of limitations, until a pardon is received plus five years, or from the date of the decision until the sentence is complete.

(3) Based on mitigating circumstances, the court may, at the time of sentencing, determine that the provisions of paragraph 1, as they pertain to the individual in paragraph 1, regarding the loss of the right to vote according to the provisions of this law together with the loss of the right to vote and hold office according to the provisions of the Public Offices Election Law for five years or until the completion of a suspended sentence do not apply, or that a shorter period should apply, or that a shorter period than the five years or until the completion of a suspended sentence in the

²²³ For individuals given a suspended sentence, for the period from the date of the decision until the suspended sentence is complete.

provisions of the preceding paragraph, as they pertain to the individual in the same paragraph, regarding the loss of the right to vote according to the provisions of this law together with the loss of the right to vote and hold office according to the provisions of the Public Offices Election Law should apply.

(Administrative Fines for Failure to Report Cessation of Maintenance of Address)

Article 27. Individuals who, without a valid excuse, do not give notice pursuant to the provisions of Article 18 shall be given an administrative fine no more than 50,000 yen.

(2) The trial for the administrative fine in the preceding paragraph will be administered by a summary court.

CHAPTER 4. MISCELLANEOUS PROVISIONS

(Exceptions Regarding the Right to Hold Office)

Article 28. Concerning the applicability of the provisions of the Local Autonomy Act pertaining to the right to hold office, the portion of Article 19, paragraph 1 of the same Act that reads “Individuals possessing the right to vote” shall read “Individuals possessing the right to vote (excluding those who possess the right to vote pursuant to the provisions of the Law Regarding the Granting of the Right to Vote for Members and Chairs of Local Public Body Assemblies to Permanent Resident Aliens (Law No. XXX of 2004)),” and the portion of Article 94 and Article 182, paragraph 1 of the same Act (including instances where Article 252, paragraph 25 of the same Act apply correspondingly) that reads “Individuals possessing the right to vote” shall read “Individuals possessing the right to vote (Excluding those who possess the right to vote pursuant to the provisions of the Law Regarding the Granting of the Right to Vote for Members and Chairs of Local Public Body Assemblies to Permanent Resident Aliens.)”

(Applicability of This Law Regarding Special Wards)

Article 29. The provisions in this law concerning cities apply to special wards.

(Exceptions for Local Public Body Unions)

Article 30. Notwithstanding exceptions established by law, the provisions in this law concerning municipalities shall apply to local public body union elections.

(Exceptions for Property Wards)

Article 31. Concerning the applicability of the provisions of this law to elections for the members or chairs of property ward assemblies, excluding those provided for in municipal legislative orders made pursuant to Article 295 of the Local Autonomy Act, the provisions relating to elections of town and village of assembly members in this Law shall apply.

(Applicability to Designated Cities)²²⁴

Article 32. Concerning the applicability of the provisions of this law to elections for the members and chairs of prefectural assemblies together with the elections for the members of chairs of the assemblies of designated cities, pursuant to the provisions of Article 252(19), paragraph 1 of the Local Autonomy Act, as provided by legislative order the wards in the relevant cities shall be viewed as cities, and the ward election committees shall be viewed as city election committees.

(Division of Official Duties)

Article 33. The official duties to be conducted by the municipalities pursuant to the provisions of this law relating to the permanent resident alien electoral registry shall be statutory trust duties (2) under Article 2, paragraph 9(2) of the Local Autonomy Act.

(Delegation to Legislative Orders)

Article 34. In addition to the matters established in this law, other matters necessary for the implementation of this law will be established by legislative order.

SUPPLEMENTAL PROVISIONS²²⁵

(Enforcement Date)

Article 1. This law shall go into effect on a date established by legislative order not to exceed one year from the date of promulgation. However,

²²⁴ *Translator's Note:* As of April 1, 2007 there are seventeen cities in Japan that qualify as "designated cities" (指定都市). This designation allows these cities, all of which have quite large populations, to pursue special administrative and fiscal policies in order to facilitate the local government.

²²⁵ *Translator's Note:* Articles 5-16 of the Supplementary Provisions are not included in this translation. Although they contain partial amendments to various existing laws—ranging from the Public Funds Control Act to the Fishing Act—which would be necessitated by passage of this Bill, they are not necessary to understanding the larger purpose or effect of the Bill.

Article 9, paragraph 2, Article 23²²⁶ (Excluding the portions related to Article 37, paragraph 2, the chart in Article 48(2), paragraph 2, chart, and the provisions of the following article) shall go into effect on a date established by legislative order not to exceed one year and six months from the date of promulgation.

(Division of Applicability)

Article 2. The provisions of Article 9 paragraph 2 and Article 23 shall apply to elections announced after the date established by legislative order²²⁷ according to the second clause in the preceding article, and elections announced prior to the enforcement date shall be as a renou.

(Exceptions to the Definition of a Permanent Resident Alien)

Article 3. For the time being, the “said individuals” in Article 2 shall be “said individuals (The granting of the right to vote in the elections of members and chairs of local bodies by this law is limited to individuals who possess the citizenship of a country that has been determined by legislative order to give Japanese citizens the right to vote in similar elections of members and chairs of local bodies.)”

(Deliberation)

Article 4. The country shall reflect on the execution of this law and if deemed necessary deliberate on the provisions of this law and, based on the results of those deliberations, shall take necessary measures concerning the granting of a direct right of claim to permanent resident aliens.

Reason

In consideration of the fact that a large number of permanent resident aliens in our country lead their lives in the same way as Japanese nationals, it is necessary to grant permanent resident aliens the right to vote in elections for members and chairs of local public bodies in order to reflect their opinions on local government. This is the reason for the submission of this bill.

²²⁶ Excluding the portions related to Article 37, paragraph 2, the chart in Article 48(2), paragraph 2, chart (limited to the portion related to Article 37, paragraphs 2 and 6.), Article 61, paragraph 2, and Article 75, paragraph 3 of the Public Offices Election Law. The same applies in the following article.

²²⁷ Hereinafter “enforcement date.”