

One Nation

Policy Paper Series

An Historical Examination of the
English Literacy Requirement
in the Naturalization of Aliens

by
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Background

In 1996, over 80 percent of Americans supported making English the official language of the United States.¹ It would not be surprising in the least if all of these Americans, and many more, would want to require that all persons seeking American citizenship by naturalization be able to speak English.

This paper reviews the history of the English literacy requirement as a component in the naturalization of aliens within the United States. Surprisingly, such a requirement² has existed in statutory form for less than 100 years, having first been enacted in 1906.

Currently, federal law (8 U.S.C. Section 1423) provides that:

(a) No person except as otherwise provided in this subchapter shall hereafter be naturalized as a citizen of the United States upon his own application who cannot demonstrate —

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That the

requirements of this paragraph relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable condition shall be imposed upon the applicant....

Early Naturalization Statutes

Among the enumerated powers which are conferred upon Congress by the United States Constitution is the power “[t]o establish a uniform Rule of Naturalization....”³ The First Congress convened on March 4, 1789, and the first naturalization statute was enacted only one year thereafter, in March 1790.⁴

The nation’s first naturalization statute required that the alien be a free white person, reside within the limits and under the jurisdiction of the United States for two years, and within the state (where application for naturalization was made) for one year, prove to the satisfaction of the court where application was made that the alien is of good character, and take an oath to support the Constitution.⁵

From that beginning, the standards as to who could be naturalized became more complex. Under a 1795 statute, an alien could not become naturalized until three years passed after he had sworn before a court of his intention to become a naturalized citizen, renouncing all foreign allegiances; the U.S. residency requirement was raised to five years; and the alien was required to renounce any title of nobility.⁶

The next naturalization statute required an oath five years prior to application for naturalization, and proof the alien had

resided within the U.S. for 14 years, and within the state where the application was made for five years.⁷ This statute also prohibited naturalization of aliens whose native country was at war with the United States, and imposed the first explicit naturalization fee — \$2.00 when the antecedent oath (sworn years before naturalization) was taken.⁸ From this point, the burdens placed on naturalization tended to wax and wane.

The standards for U.S. citizenship by birth were redefined in the Fourteenth Amendment to the U.S. Constitution. In 1870, the naturalization laws were amended to provide for the naturalization of “aliens of African nativity and to persons of African descent,” consistent with the change implemented by the Fourteenth Amendment.⁹

As noted above, no express English literacy requirement was imposed by statute, although the multiple court proceedings involved may have imposed some knowledge of English in practice. The assertion that, for more than a century, aliens could become Americans without any facility in English, thus appears overstated.¹⁰ For example, one commentator cites a congressman (during debate on the 1906 naturalization bill) as recounting the practice of a U.S. district court judge in Pittsburgh to interrogate applicants on their knowledge of English as a condition to his grant of naturalization.¹¹

Incorporation of the English Literacy Requirement into the Naturalization Statute

With the influx of immigrants following the Civil War, concerns first arose regarding such immigrants’ assimilation within the United States, with particular regard to their learning the English language before becoming citizens. President Ulysses S. Grant expressed his concerns that:

Foreigners coming to this country to become citizens, who are educated in their own language, should acquire the requisite knowledge of ours during the necessary residence to obtain naturalization. If they did not take interest enough in **our language** to acquire sufficient knowledge of it to enable them to study the institutions and laws of the country intelligently, I would not confer upon them the right to make such laws nor to select those who do.¹²

However, the timing of this statement was after the election of Grant's successor. The principles which he espoused would not be codified for nearly another 40 years. However, the concerns which President Grant raised were not dispelled with time. A 20th Century historian observed that:

the process of making citizens out of foreigners was frequently turned into a farce. People unable to read or write, ignorant of the principles of free government, and in many instances still loyal in spirit to the land of their birth, were massed by hundreds on the eve of an election and run through the mill of citizenship with little or no regard for legal requirements. It was simply a matter of political influence, and the politician who could round up the largest number of men willing to become citizens stood the best show of winning at the polls.¹³

The spirit of reform embodied by the Theodore Roosevelt administration extended to the process of naturalization, and resulted in the establishment of the English literacy requirement. In March 1905, Roosevelt established a commission (consisting of representatives of the Departments of Commerce and Labor, State, and Justice) "to make a careful examination of the our naturalization laws, and to suggest appropriate measures to avoid the notorious abuses resulting

from the improvident or unlawful granting of citizenship.”¹⁴ This Commission called for the English literacy requirement, objecting to the naturalization of aliens who could not speak English:

He can not understand the questions which the court may put to him when he applies for naturalization nor read the Constitution which he swears to support. When, afterwards, he votes, he can not read his ballot. The Commission is aware that some aliens who can not learn our language make good citizens. There are, however, exceptions, and the proposition is incontrovertible that no man is a desirable citizen of the United States who does not know the English language.¹⁵

In 1906, the House Committee on Immigration and Naturalization unanimously reported a bill requiring naturalization applicants to speak, read, and understand the English language.¹⁶ However, this requirement was modified on the floor of the House to exclude requirements that applicants read and understand English.¹⁷

As enacted, the statute stated:

That no alien shall hereafter be naturalized or admitted as a citizen of the United States who can not **speak the English language**: *Provided*, That this requirement shall not apply to aliens who are physically unable to comply therewith, if they are otherwise qualified to become citizens of the United States.¹⁸

This requirement was retained in the Nationality Act of 1940.¹⁹

Subsequent Amendments to the English Literacy Requirement

With the Internal Security Act of 1950, Congress amended the language provision to require an “understanding” of the English language, defined to include “an ability to read, write, and speak words in ordinary usage in the English language.”²⁰ The requirement would be met “if the applicant can read or write simple words and phrases.” Additionally, “no extraordinary or unreasonable conditions shall be imposed upon the applicant.”²¹

This act was passed over the veto of President Truman, who objected that there had been minimal debate on the bill.²² The expansion of the English literacy requirement was attributed to a sentiment that inability to understand English indicated possible disloyalty and a greater predilection to engage in subversive activities.²³ Senator Pat McCarran (R-NV), sponsor of the bill (and chairman of the Senate Judiciary Committee), related that congressional investigations of foreign-language newspapers had determined that “a number” of such publications “are not only following the line of the Communist party, but are actually controlled by the Communist party or its fronts.”²⁴

This law was shortly superseded by the Immigration and Nationality Act of 1952,²⁵ which, with amendments, is the current law. However, the English literacy requirements of the Internal Security Act of 1950 were retained in Section 312 of the Immigration and Nationality Act of 1952 — codified into the current 8 U.S.C. Section 1423, quoted *supra*.

Enforcement of the Literacy Requirement

The literacy requirement is enforced in an interview conducted in English at the local U.S. Immigration and Naturalization Service (“INS”) office. The applicant for naturalization is requested to read and write a simple sentence. For example, the applicant may be asked to write “The horse jumped over the fence.”²⁶ Until recent years, the INS examiner had substantial discretion in how he or she administered the examination, which led to inconsistencies in test administration.²⁷

In 1991, the INS allowed the English and civics testing portion of the naturalization process to be privatized to more expeditiously process applications and make the testing more accessible. Although this alternative achieved faster results, indictments of individuals charged with falsifying naturalization examinations brought an end to private testing services.²⁸

On the eve of being summoned before Congress, the Clinton administration announced the end of private testing.²⁹ However, notwithstanding the INS’ termination of the ability for outside providers to administer the examination in the summer of 1998, it promised to come up with a new plan that would permit outside providers to participate.³⁰

Naturalization fraud remains a serious problem however. The General Accounting Office (“GAO”) recently cited where INS officials and INS reports have raised concerns that the INS’ emphasis on meeting production goals (*e.g.*, processing naturalization applications) comes at the expense of ensuring the quality of the benefit application process.

The GAO also cited INS staff in various offices who stated that the pressure to reduce the naturalization application backlog and the increasing workload reduce the time available to

identify possible fraud. For example, one district office adjudication official stated that management demands quick adjudication to meet the office's goals. Officials in two other district offices said that with high production goals and backlogs, the current system does not allow time to look for fraud.³¹

In one sense, the existence of fraud is curious, the English language test is notoriously simple to pass. In a recent study, many newly-naturalized citizens self-reported that they cannot speak English.³² The civics test is even simpler — a recent PricewaterhouseCoopers naturalization study indicates that, out of 182 applicants whose naturalization was rejected for failing the English and/or the civics test, 166 applicants failed the English portion.³³

The INS has been experimenting with use of a standardized test in consultation with Community Based Organizations (“CBOs”) serving immigrant populations. A “C-4” computer program for citizenship testing has been distributed by the INS Central Office. This program generates ten random civics questions and separate English dictation and reading comprehension sentences. However, CBO advocates have complained that INS examiners are using the program without flexibility, irrespective of the applicant's age and English usage experience.³⁴

Disability Waivers From the English Literacy Requirement

The law exempts naturalization applicants from the English proficiency and civics requirements if they possess a “physical or developmental disability” or a “mental impairment.” However, even blind or deaf applicants who seek exemptions must establish how the blindness or deafness prevents them from learning English.³⁵

The INS also must comply with the requirements for reasonable accommodations under the Rehabilitation Act of 1973 for disabled applicants. The INS makes regular accommodations and modifications for applicants who are disabled, including conducting off-site testing, interviews, and where authorized, off-site swearing-in ceremonies.³⁶

In April 1999, the INS issued new guidelines to its field offices for handling medical waivers. In announcing these guidelines, INS Commissioner Meissner anticipated that the new policy guidance would improve the agency's "ability to make fair, compassionate and consistent decisions on the citizenship applications of persons with disabilities."³⁷

Under the new guidelines, physicians, clinical psychologists, and doctors of osteopathy can complete the medical waiver form. The doctor filling out the form must show the applicant has a physical or developmental disability or mental impairment that interferes with the ability to learn or demonstrate knowledge of English and U.S. history and government. The doctor must show a connection between the diagnosed condition and how it affects an applicant's ability to learn or demonstrate the required knowledge.³⁸

INS examiners are no longer permitted to question a doctor's diagnosis and are not allowed to require the doctor to provide an explanation of how the diagnosis was reached. The examiner is required to determine if the waiver has sufficient information and whether the doctor has clearly established the connection between the medical condition and the applicant's ability to learn or demonstrate knowledge of English and civics. The waiver is valid indefinitely, but must be submitted within six months of the doctor's completion of the form.³⁹

Conclusion

The English literacy component of the naturalization process currently complies with the letter of the law, but not the spirit. As cited above, many newly-naturalized citizens have admitted they cannot speak English — yet this disability did not prevent them from passing the literacy test posed to them.

Just as the entire history of naturalization within the United States has been marked by inconsistent enforcement and lax administration, such qualities are evident in the current enforcement of the English literacy requirement.

Given the GAO's recent report on the pressures within the INS not to expose and prosecute fraud in the naturalization process, the English literacy requirement can be expected to remain without vitality or efficacy in facilitating the assimilation of naturalized citizens, notwithstanding the intent and desires of the American people.

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ENDNOTES

1. Michael Golay, *Where America Stands 1997*, (John Wiley & Sons 1997), p. 140.
2. Title 8, Section 1423 of the U.S. Code covers “Requirements as to understanding the English language, history, principles and form of government of the United States.”
3. U.S. Constitution, Article I, Section 8, Clause 4.
4. The U.S. Constitution was ratified by the ninth state, New Hampshire, on June 21, 1788. “The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.” Article VII.
5. Act of March 26, 1790, 1 Stat. 103.
6. Act of January 29, 1795, 1 Stat. 414. A grandfather clause was incorporated for aliens then present within the United States, whereby they could become citizens after two years’ residence within the United States, without having made the antecedent oath three years before naturalization. *Id.*, at 415.
7. Act of June 18, 1798, 1 Stat. 566.
8. *Id.*, at 567.
9. Act of July 14, 1870, 16 Stat. 254.
10. *E.g.*, Peter J. Spiro, *Questioning Barriers to Naturalization*, 13 GEO. IMMIGR. L.J. 479, 489 (1999).
11. *Id.*, n. 50.
12. President Ulysses Grant, Eighth Annual Message, December 5, 1876. *Messages and Papers of the Presidents*, Vol. 6, p. 4354, emphasis added.
13. William J. Jackman, *et al.*, *History of the American Nation*, (Gaynor Publishing, 1915), Vol. 6, pp. 1815-16.

14. President Theodore Roosevelt, Fifth Annual Message, December 5, 1905. *Messages and Papers of the Presidents*, Vol. 10, p. 7382.
15. Commission on Naturalization, Report to the President, H.R. Doc. 59-46 (1905), p. 11, *quoted in* Spiro, *supra* n. 10, p. 490.
16. H.R. 15442, 59th Cong. (1906), *cited in* Spiro, *id.*
17. *Id.*
18. Act of June 29, 1906, 34 Stat. 596, 599, emphasis added.
19. 54 Stat. 140.
20. 64 Stat. 987, 1013 (1950).
21. Spiro, *supra*, n. 10, p. 491 and n. 57.
22. 6 *Cong. Rec.* 15629 (1950) (statement of President Truman), *cited in* Linda Kelly, *Defying Membership: The Evolving Role of Immigration Jurisprudence*, 67 U. CIN. L. REV. 185, 200 (1993).
23. Kelly, *id.*
24. McCarran, *The Internal Security Act of 1950*, 12 U. PITT. L. REV. 481, 511 (1951), *quoted in* Peter W. Schroth, *Section I: Language and Law*, 46 AM. J. COMP. L. 17 (1998), n. 97.
25. 66 Stat. 163.
26. Nancy-Jo Merritt, *Understanding Immigration Law: How to Enter, Work and Live in the United States* (2nd ed., Career Press 1994), p. 81.
27. Bill Ong Hing, *The Emma Lazarus Effect: A Case Study in Philanthropic Revitalization of the Immigrant Rights Community*, 15 GEO. IMMIGR. L.J. 47, 65 (2000).
28. In January 1998, 20 people were indicted for falsifying the naturalization examinations of more than 13,000 people in 22 states. Working as subcontractors to companies administering the naturalization test, the indicted individuals allegedly either took the test for applicants, supplied answers to test-takers, or certified that an individual passed even if

the test had not been taken. Paying up to \$500 for guaranteed passage, it is believed that more than \$3 million was collected between 1995 and 1997 by the indicted individuals. Katharine Q. Seelye, *20 Charged with Helping 13,000 Cheat on Test for Citizenship*, N.Y. Times, Jan. 28, 1998, at A12, cited in Kelly, *supra* n. 22, n. 144.

29. Kelly, pp. 207-208.

30. Hing, *supra* n. 27, *id.*

31. GAO-02-66, "Immigration Benefit Fraud" (February 15, 2002), p. 29.

32. Peter H. Schuck, *Immigration at the Turn of the New Century* 33 CASE W. RES. J. INT'L L. 1, 9 (2001).

33. Spiro, *supra* n. 10, n. 101.

34. *See* Schuck, *id.*

35. Hing, *supra* n. 27, pp. 65-66.

36. *Id.*, p. 66.

37. *Id.*

38. *Id.*, pp. 66-67.

39. *Id.*, p. 67.