

Witness Written Question/Follow-up

Sen. Welch's Question:

Do you agree with Justice Douglas's opinion in *Schneider v. Rusk* that "the rights of citizenship of the native born and of the naturalized person are of the same dignity, and are coextensive"? Please explain.

My Answer:

Yes, I agree with Justice Douglas. Once citizenship is lawfully conferred, the rights of the naturalized citizen and the native-born are—and should be—of the same dignity and coextensive, with the single exception the Constitution itself draws: eligibility for the Presidency. A citizen is a citizen, and I would not support creating a second class of Americans who hold their status on more fragile terms than everyone else.

I want to be precise about the limit of that agreement, because I do think the system is failing in places. The equal-dignity principle protects citizenship that was validly obtained. It does not, and should not, protect citizenship procured through fraud, concealment of material facts, or willful misrepresentation—and that includes misrepresentation about the things naturalization actually requires: genuine attachment to the Constitution, true allegiance, and an honest oath.

Some of those requirements concern a person's state of mind and beliefs at the time of naturalization—and a person's true state of mind is among the hardest things for the government to verify at the moment of the grant. It may not have been accurately known, and in some cases may not even have been knowable, at the time. Thus, I would not draw a rigid line that closes the door on later conduct entirely. Where a person's conduct after naturalization gives reliable evidence that the allegiance or attachment they swore to was misrepresented—that the oath was not truthful when it was taken—that bears directly on whether the citizenship was ever validly obtained in the first place.

The distinction I would hold to is this: later conduct should matter as evidence of what was true at the time of the oath, not as a penalty for beliefs a citizen lawfully came to afterward. A genuine change of heart is the right of every citizen, native-born or naturalized. But conduct that exposes an original misrepresentation—including about one's beliefs and allegiance—goes to the validity of the grant itself, and that is fully consistent with the equal dignity of every citizen who took the oath honestly.

So, my concern about people gaming the system is not a concern about the equal dignity of legitimate naturalized citizens. It is a concern about the integrity of the process that confers citizenship—rigorous vetting at the front end, an honest oath as a condition of the grant, and the willingness to look at later evidence when it reveals that the oath was false from the start.