

Hearing on “Protecting American Citizenship III:
Denaturalization and its Constitutional Limits”

U.S. Senate Judiciary Committee
Subcommittee on the Constitution
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Responses to Questions for the Record
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Senator Peter Welch

1. 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.

Yes. The quote appears in the following context in Justice Douglas’ majority opinion (377 U.S. 163, 165-66):

We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the “natural born” citizen is eligible to be President. Art. II, § 1.

*While the rights of citizenship of the native born derive from § 1 of the Fourteenth Amendment and the rights of the naturalized citizen derive from satisfying, free of fraud, the requirements set by Congress, the latter, apart from the exception noted, “becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.” *Osborn v. Bank of United States*, 9 Wheat. 738, 827.*

As Justice Douglas wrote, “the rights of the naturalized citizen derive from satisfying, free of fraud, the requirements set by Congress”. (emphasis added) The Supreme Court explained in its 1981 decision in *Fedorenko v. United States*, 449 U.S. 490 (1981), that this means that “naturalization that is unlawfully procured can be set aside”:

*On the one hand, our decisions have recognized that the right to acquire American citizenship is a precious one, and that, once citizenship has been acquired, its loss can have severe and unsettling consequences. . . . For these reasons, we have held that the Government “carries a heavy burden of proof in a proceeding to divest a naturalized citizen of his citizenship.” [Quoting the Court’s decision in *Costello v. United States*, 365 U.S. 265, 269 (1961)] . . .*

At the same time, our cases have also recognized that there must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship. Failure to comply with any of these conditions renders the certificate of citizenship “illegally procured,” and naturalization that is unlawfully procured can be set aside.

2. You testified to Senator Cruz that you agreed the civics test which was administered to naturalize prospective citizens during the Biden Administration failed to screen applicants “to any appropriate degree.”

a. As Senator Cruz discussed with you, the previous exam required applicants to answer 6 out of 10 questions correctly, was a “failing grade” in his words. Do you believe that prospective applicants should have to answer a higher percentage of questions correctly on the citizenship exam to become naturalized? Please explain.

Yes. As hearing witness Ken Cuccinelli was quoted in a United States Citizenship and Immigration Services (USCIS) press release (<https://www.uscis.gov/archive/uscis-announces-plan-to-improve-the-naturalization-test>) issued on July 19, 2019 when he served as USCIS Acting Director, “[g]ranting U.S. citizenship is the highest honor our nation bestows” and the naturalization test’s goal should be to “help potential new citizens fully understand the meaning of U.S. citizenship and the values that unite all Americans.” As USCIS Director Joseph Edlow stated in the *Notice of Implementation of 2025 Naturalization Civics Test*, 90 Fed. Reg. 45047 (Sept. 18, 2025) that:

- *The ability to become a naturalized citizen is the most meaningful immigration benefit the United States can bestow on an alien. In order to become a United States citizen, an alien must be willing and able to accept all of the responsibilities of being a United States citizen*
- *Demonstration of English and civics knowledge is essential to showing an alien’s commitment to fulfill the rights and responsibilities of U.S. citizenship and to actively assimilate into American society. Understanding the rights and responsibilities of citizenship, engaging with the government, and fully contributing to the democratic process all rely on a basic understanding of U.S. government and civics.*

Naturalization applicants who correctly answer a higher percentage of test questions better demonstrate this basic understanding of U.S. government and civics, and are thus in a better position to fulfill the rights and responsibilities of U.S. citizenship and to assimilate into American society.

b. On October 20, 2025, U.S. Citizenship and Immigration Services (USCIS) began requiring that prospective applicants correctly answer 12 out of a possible 20 questions on the citizenship exam. Do you consider the rate that USCIS proposed under the Trump Administration a “failing grade?” Please explain.

While I would prefer the passing grade to be higher, the 2025 Naturalization Civics Test, by requiring 12 rather than six correct answers, “more comprehensively assess[es] an alien’s knowledge of U.S. history and government by ensuring that each test covers a broader set of topics”, as Director Edlow explained. 90 Fed. Reg. 45050.