

**A Simple Matter of Equal Rights:
Let Naturalized Citizens Run for President**

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1. Introduction

Good morning, Senator Hatch and other distinguished members of this committee. Thank you very much for inviting me to testify today. I am a professor of public administration and economics at the Maxwell School of Citizenship and Public Affairs at Syracuse University. The topic of this hearing, the clause limiting presidential eligibility to natural-born citizens, is of great interest to me both professionally and personally, and I have been studying it for the last six years. My research on civil rights and of the nature of our federal system helped to spur my interest in this clause. In addition, I am the proud father of two adopted children, one of whom, my son, Jonah, will not be eligible to run for President when he grows up because he was born in another country. Two of my nieces, Sarah and Julia Grace, also cannot run for President.

The principle that all citizens should have equal rights is one of the cornerstones of American democracy. The U.S. Constitution made historic contributions, of course, to the establishment of this principle, but Founding

Fathers did not fully implement it, and this nation has struggled ever since to complete the task. The Constitution's most important limitations on this score obviously were that it allowed the states to disenfranchise people on the basis of sex and race. The Fourteenth, Fifteenth, and Nineteenth Amendments to the Constitution, along with extensive civil rights legislation, have been passed to remove these limitations.

This hearing is about the *next* step on the path toward equal rights, which is to ensure that naturalized American citizens have exactly the same rights as natural-born American citizens. The constitutional provision prohibiting naturalized citizens from running for President violates the equal-rights principle and serves no useful purpose. It should be removed from the Constitution.

2. The Founders' Doubts About the Natural-Born Citizen Requirement

At the Constitutional Convention in 1787, the final presidential eligibility clause with the natural-born citizen requirement was accepted unanimously with no record of debate. But earlier versions of the clause did not mention nativity, and the Founders provided 3 types of evidence that they had serious doubts about the natural-born citizen requirement.

The Grandfather Clause

The first source of evidence is the presidential eligibility clause itself, which grants eligibility to any “Citizen of the United States at the time of the Adoption of this Constitution.” This “grandfather” clause gave presidential eligibility to roughly 60,000 naturalized citizens. By including this clause, the Founders rejected the view that naturalized citizens are inherently more likely than natural-born citizens to be subject to foreign influence.

Statements that Second-Class Citizenship for Naturalized Citizens Violates the Equal-Rights Principle

Second, extensive evidence comes from the debates concerning the time-of-citizenship requirements for the Senate and the House of Representatives. The key issue in these debates was whether to set long time-of-citizenship requirements, and thereby to place an extra burden on naturalized citizens.

Numerous delegates spoke out against such requirements and thus against stronger restrictions, such as making naturalized citizens ineligible altogether. James Madison declared that a severe restriction on the rights of naturalized citizens would be “Improper: because it will give a tincture of illiberality to the Constitution.” He was seconded by Benjamin Franklin who “should be very sorry to see any thing like illiberality inserted in the Constitution.” The word illiberal” was their way of saying that such a restriction would violate the equal-rights principle.

Madison also said “He wished to maintain the character of liberality which had been professed in all the Constitutions & publications of

America.” This position was seconded by several other delegates. Madison is referring to the constitutions passed by virtually all states at the time of independence, not one of which restricted the rights of naturalized citizens.

Madison reiterated his view years later when he said “Equal laws, protecting equal rights, are found, as they ought to be presumed, the best guarantee of loyalty and love of country.”

Demonstrated Trust in Naturalized Citizens

Third, in 1798 the U.S. Senate, composed of men who had participated in the founding of the United States, demonstrated its ambivalence toward the natural-born citizen requirement by electing a naturalized citizen, John Laurance of New York, to be President Pro Tempore of the Senate.

This action is significant because Laurance was eligible to be President thanks to the grandfather clause and because at that time the President Pro Tempore was second in the line of succession. Despite fears of foreign intrigue, therefore, a naturalized citizen briefly stood behind only Vice President Thomas Jefferson in the sequence of succession.

3. The Case for Removing the Natural-born Citizen Requirement

With the Founders' doubts in mind, consider the relevance of this issue today.

Arguments for Removing the Natural-Born Citizen Requirement

The natural-born citizen requirement is the only provision in the Constitution that explicitly denies rights to an American citizen based on one of that citizen's indelible characteristics. By embracing one exception to the equal-rights principle, we leave open the door to other exceptions. We can strengthen our democracy by closing this door.

The Fourteenth Amendment, which is one of the crowning achievements in this nation's struggle to promote equal rights, says, in part,

All persons born or naturalized in the United States... are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

This amendment prohibits the states from treating naturalized citizens any differently from natural-born citizens. The federal government should face

the same prohibition. As the U.S. Supreme Court said in another context, **“it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government.”**

Arguments against Removing the Natural-Born Citizen Requirement

Despite all the protections built into our constitutional system, some people insist that the natural-born citizen requirement makes us safer. If naturalized citizens were allowed to run for President, these people argue, foreign powers might scheme to have their citizens elected here.

This Manchurian Candidate imagery has two major flaws. The first was articulated by Benjamin Franklin. He “reminded the Convention that it did not follow from an omission to insert the restriction in the Constitution that the persons in question wd. be actually chosen into the Legislature.”

Moreover, any naturalized citizen running for president would have a hard time convincing a majority of the American people that he or she is the best candidate for President. This point was made by Madison: “For the same reason that [men with foreign predilections] would be attached to their native Country, our own people wd. prefer natives of this Country to them.”

The second flaw was also exposed by Madison. “If bribery was to be practised by foreign powers,” he said, it would be attempted “among natives having full Confidence of the people not among strangers who would be regarded with a jealous eye.”

Restricting the rights of all naturalized citizens out of the fear that one of them might try to undermine our government by running for President is an extreme form of *profiling* with no basis in logic or history. Does it make sense to discriminate against 12.8 million naturalized citizens, including over 250,000 foreign-born adoptees, because one of them with disloyal thoughts might decide to run for President? Of course not: It makes no sense at all. The natural-born citizen requirement adds nothing of substance to the extensive protection provided by our constitutional election procedures and the judgment of the American people.

4. A Simple Matter of Equal Rights

Most people never run for President, but the right to run for President has enormous symbolic importance.

The power of this symbolism was brought home to me just a few days ago. On September 22, the Syracuse *Post-Standard* wrote an editorial in support of the amendments introduced by Senator Hatch and Representative Rohrabacher. This editorial quoted me and mentioned by my son, Jonah. The next day I received a letter from Ms. Cathy Fedrizzi, one of Jonah's second-grade teachers, which said

Dear Dr. Yinger,

As I read this morning's editorial about Jonah, I had a feeling this would be a hard day. I was scheduled to visit Jonah's class to teach about the upcoming election. Part of my lesson involves teaching about who is eligible to become president...

....As we worked our way through the lesson, I noticed Jonah sitting on the edge of the group. That's unusual for Jonah...whenever I've taught guest lessons before, he's been front and center, so I had a feeling he wasn't happy. Before I got to the rules for becoming President, he told me the rule about being born a citizen. I explained that some laws are made a long time ago and seem like a good idea at

the time, but I didn't like the law the way it was either. He didn't seem satisfied with my answer, and neither was I.

I feel sad every time this situation occurs. I hope that some day, before I stop teaching, I can tell eight year old students that anyone sitting on the floor at my feet could one day be president of the United States.

My son should not have to feel this way. No American second grader should have to feel this way. No American citizen should have to feel this way. I urge the members of this committee, and indeed all members of Congress, to support Senator Hatch's Equal Opportunity to Govern Amendment, or one of the comparable amendments introduced in the House. Let us renew our commitment to the equal-rights principle by giving naturalized citizens the right to run for President.