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STATE PROHIBITIONS ON EMPLOYMENT OPPORTUNITIES FOR RESIDENT ALIENS: LEGISLATIVE RECOMMENDATIONS

I. Introduction

Aliens\(^1\) come to the United States from all over the world\(^2\) possessing myriad talents, skills and educational backgrounds. Prior to obtaining permanent resident alien status, however, these immigrants must undergo the screening processes of the Immigration and Naturalization Service\(^3\) and meet rigid standards as to health, education, character, adaptability and employability.\(^4\) Once admitted, resident

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1. 8 U.S.C. § 1101a (3) (1976), defines “alien” as “any person not a citizen or national of the United States.” 8 U.S.C. § 1101a (20) (1976), defines “lawfully admitted for permanent residence” as “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having been changed.” For the purposes of this Note, which does not address illegal or nonresident aliens, the terms “alien,” “permanent resident alien” and “resident alien” shall be used interchangeably.

2. In 1981 approximately 697,000 immigrants and refugees entered the United States. In the past five years nearly 3 million immigrants and refugees arrived in the United States. Select Commission on Immigration and Refugee Policy, United States Immigration Policy and the National Interest, 97th Cong., 1st Sess. 93 (Comm. Print 1981) [hereinafter cited as SELECT COMMISSION REPORT]. More than half of those individuals emigrated form Mexico, Korea, China, Taiwan, Vietnam, India, Cuba, the Dominican Republic, the Philippines and the United Kingdom. Id. at 415.

3. The Immigration and Naturalization Service (INS), created and established by Congress in 1940, is a part of the Department of Justice. 8 U.S.C. § 1551 (1976).

4. Hines v. Davidowitz, 312 U.S. 52, 69 (1941). The immigration system evolved significantly in the last thirty years. Today there are four categories of prospective immigrants—those who virtually are unrestricted as to the numbers which may enter, those who are given preference for entry, those who are subject to quotas, and those who are ineligible to enter. 8 U.S.C. § 1182 (1976 & Supp. IV 1980), enumerates 33 categories where prospective immigrants shall be excluded from admission to the United States. Section 1182 provides, in pertinent part, “[a]liens who are paupers, professional beggars, or vagrants” will not be permitted to enter the United States. Id. § 1182(8). “Aliens seeking to enter the United States for the purpose of performing skilled or unskilled labor [are prohibited], unless the Secretary of Labor has determined . . . that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or arts), and available at the time of application for a visa and admission to the United States at the place where the alien is to perform such skilled or unskilled labor and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.” Id. § 1182 (14). In addition “[a]liens who . . . are likely at any time to become public charges” will be excluded. Id. § 1182 (16).
aliens enjoy several important privileges: they may remain in the United States indefinitely; they may establish permanent residence in this country; and they may work here. Nevertheless, significant job opportunities are foreclosed to aliens by states which require United States citizenship as a prerequisite to eligibility for public employment and professional or occupational licenses. These states argue that employees must be knowledgeable with and sympathetic to American laws, customs and ideals. Another proffered rationale is a desire to preserve jobs for citizens.

At a time of increasing emphasis on federalism and states' rights the state public employment sector is an important and attractive source of jobs for both citizens and aliens. State legislators face mounting pressure to restrict the availability of state licenses and employment opportunities to United States citizens because of recession, inflation, severe unemployment and the influx of refugees.

8. See, e.g., In re Griffiths, 413 U.S. 717, 733 (1973) (Burger, J., dissenting).
11. In the Select Commission Report, supra note 2, the committee discussed the necessary goal of balancing open doors with protectionism. Select Commission Report, supra note 2, at 9 and 103. In his foreward to the Select Commission Report, Rev. Theodore M. Hesburgh asserted that immigrants create as well as take jobs and readily pay more into public coffers than they take out. Id. at 9. It also has been argued that employment competition between aliens and citizens is limited. One author averred that skilled aliens fill the "lower ranks of high level occupations where qualified Americans are reluctant to stay." Reubens, Aliens, Jobs and Immigration Policy, 3 Immigration L. Rev. 649, 653 (1979-80). As an illustration of his theory, Reubens pointed to the large percentage of alien physicians on public hospital staffs. Id.
12. Since 1979 increased refugee flows included over 160,000 Indochinese and over 30,000 Soviet Jews annually. Additionally, in 1980 more than 130,000 Cuban and Haitian "boat people" entered the United States. Select Commission Report, supra note 2, at 415.
The constitutionality of citizenship requirements frequently has been challenged on equal protection grounds but the results have not been clear or consistent. In a recent Supreme Court decision, *Cabell v. Chavez-Salido,* the Court, by upholding the constitutionality of a California statute which restricted a deputy probation officer position to United States citizens, virtually granted the states free rein to promulgate statutory citizenship requirements. If state legislatures enact restrictive legislation, however, the harm will be two-fold. First, the state's citizens will be denied the skills and talents offered by aliens. Second, aliens who pay taxes, serve in the armed forces and contribute to the community will be unfairly denied public employment.

This Note discusses the constitutional protections afforded resident aliens seeking public employment and occupational or professional licenses as articulated by the United States Supreme Court. The interpretation of these Supreme Court decisions by lower federal and state courts are analyzed and representative state statutory schemes are examined. In conclusion, this Note offers recommendations for an equitable resolution of the conflict between legitimate state goals and the resident alien's right to employment opportunity. Concrete guidelines based upon coherent policies are needed in order to prevent discrimination against resident aliens.

II. Supreme Court Cases

Resident aliens, like citizens, are entitled to equal protection under the law and, therefore, state legislation which discriminates against aliens is subject to challenge under the equal protection clause of the United States Constitution. Traditional equal protection analysis consists of two standards of review: rational basis and strict judicial scrutiny. The rational basis test, wherein the challenged statute

14. 50 U.S.L.W. 4095 (Jan. 12, 1982). Two resident aliens challenged a California statute which required citizenship for employment as a deputy probation officer.
15. Id. at 4099. The Court held that California had a rational basis for the statute.
16. Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (aliens are "persons" within the ambit of the fourteenth amendment).
17. The fourteenth amendment provides "That no state shall deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. See *Takahashi v. Fish & Game Comm'n,* 334 U.S. 410 (1948) (invalidating a statute denying commercial fishing licenses to aliens ineligible to become naturalized); Yick Wo v. Hopkins, 118 U.S. 356 (1886) (struck down a statute which discriminatorily precluded Chinese persons from operating laundries).
18. Commentators have proposed an intermediate standard of review. See Gunther, *In Search of Evolving Doctrine on a Changing Court: A Model for Newer...
must be shown to bear a rational relationship to a legitimate state interest, is applied to most classifications. A statute affecting a "fundamental right" or employing a "suspect classification," however, is subject to strict judicial scrutiny. This standard requires that the state have a "compelling" or "overriding" interest and that the means used are necessary to accomplish the legislative objective. Fundamental rights include freedom of religion, freedom of association, suffrage, travel, and procreation. Suspect classifications are race, national origin, and alienage.

In Graham v. Richardson, the Supreme Court held that a statutory classification based upon alienage was subject to strict judicial scrutiny because aliens are an inherently suspect class. Similarly, in In re Griffiths, the Court reaffirmed the strict scrutiny approach.

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19. See McGowan v. Maryland, 366 U.S. 420, 426 (1961); Dandridge v. Williams, 397 U.S. 471, 485 (1970) ("if the classification has some 'reasonable basis' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality'").

32. 413 U.S. 717 (1973). In Griffiths, the Court invalidated a Connecticut statute which required United States citizenship for eligibility to admission to the bar. Id. at 729.
to prohibitions against aliens because they constitute a "'discrete and insular minority' . . . for whom such heightened judicial solicitude is appropriate." 33 Sugarman v. Dougall, 34 decided the same day as In re Griffiths, struck down a New York prohibition against aliens in the competitive civil service, 35 because the state lacked substantial justifications for the statute. 36 In dissent from Sugarman v. Dougall and In re Griffiths, Justice Rehnquist asserted that the proper inquiry was a rational basis test. 37 Presaging the next development of the Court's analysis, Justice Rehnquist implied that the application of close scrutiny was a matter of judicial fiat since it lacked precedent and persuasive explanation. 38

Although the Sugarman Court held that the New York statute could not withstand close scrutiny, it noted that state action intended to "preserve the basic conception of a political community" 39 would not be the subject of strict scrutiny. 40 The ramifications of this caveat surfaced in Foley v. Connelie, 41 where a New York statute requiring

34. 413 U.S. 634 (1973).
35. The statute imposed citizenship as a condition for eligibility for the competitive class of the civil service. N.Y. CIV. SERV. LAW § 53 (McKinney 1972-73).
36. Sugarman, 413 U.S. at 642. The Court rejected the state's contention that a state may regulate its resources for the benefit of the citizens of the state. This doctrine called the "special public interest doctrine" provided the basis for early decisions permitting state discrimination against aliens. The doctrine was rooted in the concept of privileges versus rights and the state's ability to control the public domain. See Crane v. New York, 239 U.S. 195 (1915) (sustaining a New York statute restricting employment in public works to United States citizens); Heim v. McCall, 239 U.S. 175 (1915) (upholding a statute limiting employment on public works to citizens); and Ohio ex. rel. Clarke v. Deckebach, 274 U.S. 392 (1927) (sustaining an ordinance prohibiting aliens from obtaining licenses to operate pool halls). But see Truax v. Raich, 239 U.S. 33, 39-40 (1915) (invalidating a statute requiring employers of more than five employees to employ 80% United States citizens because the discrimination did not pertain to the regulation or distribution of the public domain or the common property or resources of the state). In rejecting the public interest doctrine, the Sugarman Court held that fiscal integrity did not constitute a substantial state interest. Sugarman, 413 U.S. at 643-45.
37. Sugarman, 413 U.S. at 653. Under the rational basis test the state must show that it has a legitimate interest and that the means used bear a rational relationship to the interest sought to be protected.
38. Id. at 657.
39. Id. at 647-48 (quoting Dunn v. Blumstein, 405 U.S. 330, 344 (1972)). The Court reasoned that a state is responsible for the operation of its government. Jobs within the political community are those "state elective and important nonelective executive, legislative, and judicial positions, or officers who participate directly in the formulation, execution, or review of broad public policy . . . that go to the heart of representative government." Id. at 647.
40. Sugarman, 413 U.S. at 648.
state troopers to be United States citizens was upheld. The majority reasoned that New York had justified its classification by showing a rational relationship between the government interest sought to be protected and the limiting classification. As a result of the Sugarman and Foley decisions, a two-tiered standard of review for alienage cases emerged, distinct from other classifications which remained subject to a singular method of analysis. Restrictions on aliens that affected economic interests were still subject to strict scrutiny, but those restrictions which served political functions were not required to "clear the high hurdle of strict scrutiny."

43. The decision was § 6-3 with Justices Brennan, Marshall and Stevens dissenting. These three, joined by Justice Blackmun, also dissented in Ambach v. Norwich, 441 U.S. 68, 82 (1979), and Cabell v Chavez-Salido, 50 U.S.L.W. 4095, 4099 (Jan. 12, 1982).
44. Foley, 435 U.S. at 300. The state's interest was to have its laws enforced by United States citizens.
46. See notes 20-27 supra and accompanying text.
47. See Examining Bd. v. Flores de Otero, 426 U.S. 572 (1976) (invalidating a Puerto Rico statute permitting only United States citizens to practice privately as civil engineers, applying a strict scrutiny test); Nyquist v. Mauclet, 432 U.S. 1 (1977) (using a strict scrutiny test to strike down a New York statute barring resident aliens from state financial aid for higher education); In re Griffiths, 413 U.S. 717 (1973) (strict scrutiny applied to statute limiting membership in the Connecticut Bar to citizens); Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948) (strict scrutiny of a statute prohibiting persons "ineligible for citizenship" from obtaining commercial fishing licenses); Truax v. Raich, 239 U.S. 33 (1915) (Arizona Constitution prohibited employers of more than five employees from hiring more than 20% aliens); and Yick Wo v. Hopkins, 118 U.S. 356 (1886) (city ordinance discriminatorily enforced to preclude Chinese persons from operating laundries). These exclusions struck at the noncitizen's ability to exist in the community. Foley v. Connelie, 435 U.S. 291, 295 (1978). When a state denies to an alien a means of livelihood it denies him the right to enter and abide within the state, for in ordinary circumstances one cannot live where one cannot work. Truax v. Raich, 239 U.S. 33, 42 (1915).
48. Foley, 435 U.S. at 295. The Court has concluded that strict scrutiny is out of place when the restriction serves a political function; rather, the state need only show that there is a rational basis for the discriminatory practice. Cabell, 50 U.S.L.W. at 4097. See Hull, Resident Aliens and the Equal Protection Clause: The Burger Court's Retreat from Graham v. Richardson, 47 Brooklyn L. Rev. 1 (1980); O'Fallon, To Preserve the Conception of a Political Community, 57 U. Det. J. Urb. L. 777 (1980).
The Supreme Court's decision in *Ambach v. Norwick* confirmed the two-tier approach. The Court sustained a New York statute prohibiting the hiring of aliens as public school teachers. Reasoning that education was a political function, the Court inquired whether the statute bore a rational relationship to the state's interest. It concluded that because the people of New York had determined that those teaching their youth should be citizens, a statute which achieved this goal was valid. By allowing a state to construe broadly the political community exception, however, the Court demonstrated the circular nature of its reasoning and rendered the rational basis test virtually useless.

The political community exception recently was applied in *Cabell v. Chavez-Salido*, where the Supreme Court upheld a California citizenship eligibility requirement for a group of peace officer positions. The Court reasoned that because a probation officer "may" personify the state's sovereign power to the parolee and "may" symbolize the community's control over the parolee, a citizenship requirement "may" be an appropriate limitation. This holding, in effect, grants the states unfettered discretion when imposing restrictions on resident aliens' eligibility for occupational licenses and job categories. Two pivotal aspects of the Court's analysis must be examined closely in order to evaluate properly state statutory arrangements. The first is how the Court has arrived at a definition of the political community. The second is whether the statute should be analyzed alone or as part of a larger statutory scheme.

A. Defining the Political Community

The political community exception first appeared in *Truax v. Raich*. A statutory restriction on the percentage of noncitizen laborers a private firm could employ was struck down on the grounds that

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51. *Id.* at 80.
52. *Id.* at 81.
53. 50 U.S.L.W. 4095 (Jan. 12, 1982).
54. Section 1031 of the California Government Code requires that "public officers or employees declared by law to be peace officers" be citizens of the United States. CAL. GOV'T CODE § 1031(a) (West 1980). The State Penal Code enumerates the specific positions which are deemed to be peace officers. Prior to 1980 over 70 positions were included as peace officers. CAL. PENAL CODE § 830 (West 1970 & Supp. 1982).
55. *Cabell*, 50 U.S.L.W. at 4099.
56. 239 U.S. 33 (1915).
57. *Id.* at 35.
a state could not lawfully abridge an individual's right to work "in the common occupations of the community." The Supreme Court distinguished the facts of the case, however, from the situation in which a discriminatory practice could be mandated by the "public interest." This notion re-emerged in *Sugarman v. Dougall*, when the Court implied that a state could discriminate only where citizenship bore a rational relationship to positions which were at the "heart of representative government." This narrow exception was described and expanded in *Foley v. Connelie*, where the Court inquired whether the position involved "discretionary decision making, or execution of policy which substantially affects members of the political community." The Court distinguished the duties of a state trooper from "routine public employment or other 'common occupations of the community' [which] exercise no broad powers over people generally" because police officers exercise plenary discretionary authority.

The scope of the political community exception was expanded in *Ambach v. Norwick* when the Supreme Court noted the degree of "responsibility and discretion" public school teachers exercised as well as the significance of the governmental function they performed. The majority concluded that some state functions such as education were so "bound up in the operation of the state as a governmental entity" that the exclusion of aliens was permissible. The dissent, however, stated that a teacher, like an attorney, was not "so close to the core of the political process as to make him a formulator" of policy.

This disagreement over the scope of the political community was highlighted in *Cabell v. Chavez-Salido*, where the majority an-

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58. *Id.* at 41.
59. *Id.* at 39-40.
60. *Sugarman*, 413 U.S. at 647.
62. *Id.* at 298-99.
63. 441 U.S. 68 (1979).
64. *Id.* at 75.
65. *Id.* at 76. This analysis recalls Justice Rehnquist's dissent in *Sugarman* and *Griffiths* in which he noted that even low level civil servants were policy makers, because those who apply law to facts are as much governors as those who write the laws. *Sugarman*, 413 U.S. at 661 (Rehnquist, J., dissenting). Rehnquist stated that policymaking is no longer the exclusive domain of legislators, judges and top administrators. He suggested that an alien would not function well with the public nor with his fellow workers. *Id.* at 662 (Rehnquist, J., dissenting).
67. In dissent, Justice Blackmun asserted that *Foley* represented a narrowly isolated situation and that the case instead fell in line with *Sugarman*, *Examining Board v. Flores de Otero* and *Griffiths*. *Id.* at 84 (Blackmun, J., dissenting).
68. *Id.* at 89 n.9.
nounced that the Supreme Court will look only to the "importance of the [state] function."\textsuperscript{69} While earlier decisions had relied on factors such as the degree of discretion involved in the job and the effect of the position in question on the community, such considerations now would be subordinated to the nebulous criterion of assessing the importance of the function, the definition of which is necessarily the primary responsibility of the state legislatures.\textsuperscript{70} Thus, it appears that the political community is that which the political community says it is.\textsuperscript{71}

In reaction to this view of the "community's process of self-definition,"\textsuperscript{72} Justice Blackmun in his dissent, criticized the reinstatement "of state parochialism in public employment."\textsuperscript{73} Justice Blackmun demanded a return to a rigorous test because the states should not be permitted to reserve for citizens every "vital public and political role."\textsuperscript{74} Furthermore, if a position involved execution rather than formulation or review of executive policy, Justice Blackmun argued that the \textit{Sugarman} requirements would be satisfied only if a basic governmental function was fulfilled and "a most fundamental obligation of the government to its constituency"\textsuperscript{75} was involved.

\textbf{B. The Scope of the Analysis}

An important aspect of the judicial analysis of the political community is the challenged statute itself.\textsuperscript{76} Evaluating the specificity of a statute's classification helps to determine whether a claim that the

\begin{footnotesize}
\begin{enumerate}
\item 69. \textit{Cabell}, 50 U.S.L.W. at 4097 n.7.
\item 70. \textit{id}. at 4098. The Court stated that neither \textit{Foley nor Ambach} represented the outer limits of a permissible citizenship requirement. As a contrasting example, the Court cited the juror who acts under specific instructions and affects a small number of people. \textit{See} Perkins v. Smith, 370 F. Supp. 134 (D. Md. 1974), \textit{aff'd summarily}, 426 U.S. 913 (1976).
\item 71. \textit{Cabell}, 50 U.S.L.W. at 4098. It is important to note that because aliens are barred from the voting process, they have no voice in the political community.
\item 72. \textit{id}. at 4097.
\item 73. \textit{id}. at 4099 (Blackmun, J., dissenting).
\item 74. \textit{id}. (quoting \textit{Nyquist} v. Mauclet, 432 U.S. 1, 11 (1977), citing \textit{In re Griffiths}, 413 U.S. 717, 729 (1973)). Justice Blackmun sought to avoid the danger of the \textit{Sugarman} exception swallowing the \textit{Sugarman} rule. \textit{id}. at 4101 (Blackmun, J., dissenting). While not accepting the resolution of either \textit{Foley} or \textit{Ambach}, Justice Blackmun stated that these prior decisions required a state to show that it historically has reserved the particular position for its citizens as a matter of "constitutional prerogative." \textit{id}. at 4099.
\item 75. \textit{id}. These criteria could be satisfied by such factors as the exercise of "plenary coercive authority" and "control over a substantial portion of the citizen population." \textit{id}. \textit{id}.
\item 76. \textit{Nyquist}, 432 U.S. at 7 (quoting Examining Bd. v. Flores de Otero, 426 U.S. at 605).
\end{enumerate}
\end{footnotesize}
classification serves an important political function is legitimate.\textsuperscript{77} A classification which is over inclusive or underinclusive tends to undermine such a claim. An overinclusive statute is one which encompasses classifications which bear no relation to the statute’s underlying purpose.\textsuperscript{78} An underinclusive statute is one which fails to include classifications necessary to accomplish the statute’s underlying goal.\textsuperscript{79} The Supreme Court noted in \textit{Cabell v. Chavez-Salido}, that the specificity of a classification indicates the legitimacy of the claim that the statute is designed to serve a governmental function.\textsuperscript{80}

Nevertheless, the scope of the Supreme Court’s inquiry in this area has become increasingly narrow. In \textit{Sugarman v. Dougall}, one section of the New York Civil Service Law was judged in the context of the state’s overall statutory framework.\textsuperscript{81} After an examination which included New York’s constitutional provisions as well as sections of the Civil Service Law and the Public Officers Law,\textsuperscript{82} the Court found that the statute lacked the necessary precision\textsuperscript{83} because of the disparate treatment of aliens.

\textsuperscript{77} \textit{Cabell}, 50 U.S.L.W. at 4097.
\textsuperscript{79} The statute should be drawn with precision to avoid affecting some, but not all, persons who logically should be covered by its rationale. \textit{Faruki v. Rogers}, 349 F. Supp. 723, 727 (D.C. Cir. 1972).
\textsuperscript{80} \textit{Cabell}, 50 U.S.L.W. at 4097.
\textsuperscript{81} \textit{Sugarman}, 413 U.S. at 639. The Court distinguished New York’s legislative haphazard scheme from one which bars some or all resident aliens from carefully defined and limited classifications of public employment on a uniform and consistent basis. \textit{Id}.
\textsuperscript{82} \textit{Id}. at 640. The Court noted that aliens are ineligible to serve as Governor and Lieutenant Governor, N.Y. Const., art. IV, § 2; State Attorney and Comptroller, N.Y. Const., art. V, § 1; and members of the Legislature, N.Y. Const., art. III, § 7. Also, the Public Officers Law requires that all “civil officers” be citizens. N.Y. Pub. Off. Law § 3 (McKinney Supp. 1981-82). The Civil Service Law established four categories of classified service—exempt, labor, noncompetitive and competitive. Of the four classes only the latter required citizenship. N.Y. Civ. Serv. Law §§ 40-44 & § 53 (McKinney 1973).
\textsuperscript{83} \textit{Sugarman}, 413 U.S. at 643. Determining that the statute was overbroad, the Court held that it swept indiscriminately. The Court illustrated the statute’s breadth by pointing to its application to competitive class members such as sanitation men, typists, office workers and policy draftsmen. Registering surprise at the inconsistency of the statute, the Court stated: “[i]ndeed, even § 53 permits an alien to hold classified civil service positions under certain circumstances.” \textit{Id}. Moreover, the statute’s breadth increased when viewed in light of the state’s constitutional and statutory schemes, because of its disparate treatment of aliens. \textit{Id}.
EMPLOYMENT OPPORTUNITIES

The decay of a multifaceted review began in Foley, where the Supreme Court considered only the single statutory prohibition. The Court considered only the single statutory prohibition. There was no inquiry whether law enforcement agents other than state troopers must be citizens, nor did the Court examine any other New York statute. The statute confined its limitation to a single position, and the Court was able to avoid any discussion of the overall statutory scheme.

While the challenged statute in Ambach also imposed restrictions on a single position, the Supreme Court was compelled to address the statute's breadth because the district court had determined that the statute was too broad. The rationale of the district court's determination had been that the statute excluded all resident aliens from teaching jobs regardless of the subject to be taught, the alien's nationality, his relationship to this country, or his willingness to substitute an oath of allegiance to the United States. The Supreme Court concluded that the “restriction is carefully framed.” Noting that only public school teachers were subject to this restriction, the Court distinguished In re Griffiths where all prospective alien attorneys had been prevented from pursuing their chosen profession. The Court, however, did not find it inconsistent that neither private school teachers nor educators at state institutions of higher learning were required to be citizens.

84. Foley, 435 U.S. at 293.
85. Id. at 299 n.8. The Court based its decision, in part, on a survey of the other forty-nine states, most of which required police to be United States citizens. Writing for the dissent, Justice Marshall challenged the validity of many of the statutes since they had been enacted prior to Sugarman. Id. at 312 n.5 (Marshall, J., dissenting) (citing Sugarman v. Dougall, 413 U.S. at 643). Interestingly, the Court did not find it unconstitutionally discriminatory that some aliens may be barred from ever becoming state troopers because they might not become eligible for citizenship before they become too old to qualify for the job. Id. at 293 n.1. In fact, the Sugarman notion that a state may not use a restriction which "sweeps indiscriminately," was relegated to a footnote. Id. at 296-97 n.5 (citing Sugarman v. Dougall, 413 U.S. at 643).
87. Ambach, 441 U.S. at 71-72.
88. Id. at 80. The dissent found, however, that the statute was “neither narrowly confined nor precise in its application.” Id. at 87. (Blackmun, J., dissenting).
89. Id. at 76 n.6. The Court emphasized the distinction between a private occupation and a government function. Id.
90. Id. at 70 nn.1 & 3. Furthermore, the fact that the statute authorized the Commissioner of Education to waive the citizenship requirement did not trouble the Court. Id. The Court dismissed the contention that the state rationally cannot exclude aliens from the classroom while permitting them to vote for and participate in local school boards. Id. at 81 n.15.
The abandonment of a broad analysis was achieved in *Cabell v. Chavez-Salido*, where the challenged statute was alleged to be both overinclusive\(^1\) and underinclusive.\(^2\) The district court stated that the statute was overinclusive because it encompassed numerous job classifications which could not, under any standard, belong to the political community.\(^3\) The Supreme Court, overruling the district court, criticized the lower court's assumption that if the statute was overinclusive at all it should not stand. The proper standard was thus: "whether the restriction reaches so far and is so broad and haphazard as to belie the state's claim that it is only attempting to ensure that an important function of government be in the hands of those having the 'fundamental legal bond of citizenship.'"\(^4\) Moreover, "the classification used need not be precise; there need only be a substantial fit."\(^5\) The statute in question was found to be "sufficiently tailored."\(^6\) Although the majority admitted that some of the positions listed in the statute were only 'tenuously' related to traditional law enforcement functions, these questionable classifications were deemed to be comparatively few in number.\(^7\) Furthermore, the Court limited its holding to probation officers without considering the other peace officers included in the statute.

As a result of the *Cabell* decision, state legislatures will be encouraged to promulgate statutes which include positions outside the political community but which serve, in some way, an important government function. *Cabell* itself illustrates the potential injurious effect of this lenient approach because the original purpose of grouping the peace officer positions together bore no relation to the goal of preserving an important governmental function for citizens; rather, the original purpose was to ensure that particular persons received insurance benefits.\(^8\)

\(^1\) *Cabell*, 50 U.S.L.W. at 4097.
\(^2\) *Id.* at 4098 n.12. In support of this claim it was alleged that other positions such as school teachers do not mandate citizenship.
\(^3\) *Chavez-Salido v. Cabell*, 490 F. Supp. 984, 986 (C.D. Cal. 1980). The district court stated: "[t]here appears to be no justification whatever for excluding aliens, even those who have applied for citizenship, from holding public employment as cemetery sextons, furniture and bedding inspectors . . . ." *Id.* The district court also included an extensive list of additions and deletions to the category of peace officer. *Id.* at 986 n.6.
\(^4\) *Cabell*, 50 U.S.L.W. at 4097.
\(^5\) *Id.*
\(^6\) *Id.* at 4098.
\(^7\) *Id.* The court attempted to justify three of these—Dental Board Inspectors, Parks and Recreation employees and voluntary fire wardens—stating that they are designated peace officers only when they perform a law enforcement duty. *Id.* n.10.
\(^8\) *Id.* at 4100 n.5. See *Hetherington v. State Personnel Bd.*, 82 Cal. App. 3d 582, 600, 147 Cal. Rptr. 300, 311 (1978). "Because peace officers appear to have enjoyed
III. Interpretations of Supreme Court Analysis by State and Federal Courts

The Supreme Court, in *Cabell v. Chavez-Salido*, granted resident aliens the bare minimum of rights to employment guaranteed by the Constitution. In effect, the Court announced that only a haphazard statutory prohibition would be invalidated. While states may not abridge the rights emanating from the haphazard standard, they may accord greater rights to resident aliens. Although the precedential value of state and lower federal court decisions is questionable, an examination of how the state and federal courts have interpreted the Supreme Court's decisions reveals alternate criteria for evaluating restrictions on resident alien employment opportunities.

Federal and state courts have taken a lenient approach in applying the standards set forth by the Supreme Court. The courts have emphasized the definition of the political community. When determining the political nature of a particular position, courts have focused on whether the “formulation, execution, or review [of] broad public policy” was part of that position's duties. Courts also have considered whether a position requires security.

The Florida Supreme Court's liberal position in this area is demonstrated by its narrow definition of the political community and is...
representative of a number of courts. In *Graham v. Ramani*, the Florida Supreme Court invalidated a statute requiring notaries public to be citizens, reasoning that a notary performs ministerial rather than policy making functions, and the position is, therefore, outside the political community. Two other state courts reached the same conclusion, relying on the holding in *In re Griffiths* that although attorneys have great responsibility, they are not court officers and do not formulate policy. Despite the fact that it was argued that notaries public perform an important government function, the courts examined specific duties to determine that the position did not fall within the ambit of the political community.

When state courts analyzed the precision of the means used to exclude aliens from public employment or from receiving state issued
licenses, they considered whether alternate means of protecting the state's interest in securing competent employees were available. These courts have suggested that alternatives such as oaths, exams, civil liability, posting bond, and review by superiors would protect adequately state interests. By conducting this line of analysis, courts have sought to avoid a complete ban on the employment of aliens.

In *Graham v. Richardson*, the Supreme Court used a federal preemption analysis as a second basis on which to invalidate a discriminatory statute. Employing such an analysis, a court seeks to determine whether a state has usurped an exclusive federal authority.

114. *Id.*
118. See Note, *State Burdens on Resident Aliens: A New Preemption Analysis*, 89 YALE L.J. 940, 948-52 (1980). The author argues that a state is preempted from enacting legislation unless the state regulation is authorized expressly by Congress or if it is analogous to a federal regulation wherein implicit authorization from Congress can be inferred. *Id.* Note, *Equal Treatment of Aliens: Preemption or Equal Protection?* 31 STAN. L. REV. 1069, 1078-79 (1979). The author contends that a state may exclude resident aliens from its political offices and functions because, although the federal government invites aliens to enter the United States, admission does not confer citizenship or membership in the political community. See also Note, *Preemption-State Statute Prohibiting Nonresidents or Aliens From Fishing in Its Waters is Preempted by Federal Law*, Douglas v. Seacoast Products, Inc., 97 S. Ct. 1740
Although the Supreme Court has not pursued this line of reasoning in state discrimination cases,119 many lower courts have.120 According to the federal preemption analysis, Congress established the Immigration and Naturalization Service121 pursuant to its constitutional authority to regulate immigration and naturalization.122 The intent of federal immigration legislation is to regulate alien employment by controlling the terms and conditions of the immigration process.123 Congress has not excluded specifically resident aliens from employment. Therefore, state legislation which does exclude resident aliens obstructs the operation of federal law and is invalid.

IV. State Statutory Schemes

In many states, employment legislation includes a citizenship requirement. State statutory schemes vary widely, however, as to the particular professions or occupations involved. For instance, twelve states expressly require citizenship for public school teaching certification.124 Nineteen states and the District of Columbia permit nonciti-
zens to be certified school teachers. 125 The remaining nineteen states delegate the establishment of qualifications and the regulation of licenses to the board of education. 126


According to the Select Commission on Immigration and Refugee Policy, seventy percent of the resident aliens in the United States reside in six states — New York, California, Texas, Florida, New Jersey and Illinois. The regulation of resident alien employment is relevant particularly to legislators in these states. A survey of the statutory schemes illustrates current policies and trends and reveals an increasing sensitivity on the part of state legislators to the issue of alien employment. Significantly, no state has imposed a restriction on aliens becoming teachers since the decision in Ambach. In addition, although the states uniformly preclude noncitizens from such elective offices as governor, lieutenant governor and senator, they differ with respect to official positions such as notary public.

The logical result of an inability to impose a blanket prohibition on the hiring of aliens is to bar aliens from specific positions. For example, while there is no citizenship requirement for eligibility to the New York Civil Service, all civil 'officers' must be United States citizens.

Note 127.
SELECT COMMISSION REPORT, supra note 2, at 97.

Note 128.
CAL. CONST. art. V, § 2; Fla. Const. art. IV, § 5; Ill. Const. art. V, § 3; N.J. Const. art. V, § 1 2; N.Y. Const. art. IV, § 6; Tex. Const. art. IV, § 4.

Note 129.
CAL. CONST. art. V, § 9; Fla. Const. art. IV, § 5; Ill. Const. art. V, § 3; N.Y. Const. art. IV, § 6; Tex. Const. art. IV, § 16.

Note 130.
CAL. CONST. art. IV, § 4; Fla. Const. art. III, § 15; Ill. Const. art. IV, § 2; N.J. Const. art. IV, § 1; N.Y. Const. art. III, § 7; Tex. Const. art. III, § 7.

Note 131.

Note 132.
More than twenty professions are regulated by the New York Board of Regents. Nearly half of these professions expressly require United States citizenship for eligibility to receive a license. Despite the intent to impose or refrain from imposing a citizenship requirement, there is significant disparity in the professions selected to include only citizens. While medical professionals such as dentists, veterinarians and dental hygienists must be citizens, optometrists, podiatrists and nurses need not be citizens to qualify for a license. Similarly, aliens are not eligible to be professional engineers, land surveyors or landscape architects, but they may qualify for an architect's or certified public accountant's license. It is unclear whether citizenship bears a rational relationship to competence in these professions. Furthermore, some New York statutes subject issuance of the license to inconsistent exceptions, such as pro-

133. N.Y. EDUC. LAW § 6506 (McKinney 1981).
134. See N.Y. EDUC. LAW §§ 6506-7904 (McKinney 1981 & Supp. 1981-82). For example, § 6506 empowers the Board of Regents to indorse a license issued by another state or country if the applicant for a New York license is a United States citizen or has filed a declaration of intent to become naturalized unless the commissioner's regulations waive the citizenship requirement. N.Y. EDUC. LAW § 6506 (McKinney 1981). New York statutes which require citizenship generally include the filing of a declaration of intent to become a citizen as an alternative means of meeting the necessary qualifications. In effect, a requirement that the alien file the declaration provides a period of time in which an alien who is not yet eligible for naturalization will not be precluded from his profession. It is nevertheless a citizenship requirement because it coerces aliens to give up their nationality in order to gain access to a livelihood. The obvious purpose of this type of requirement is to promote naturalization; however, this is not a proper state objective. Naturalization is wholly within the federal domain. See notes 117-18 supra and accompanying text.
136. Id. § 6704 (6).
137. Id. § 6609 (6). Additionally, citizenship is required for pharmacists, id. § 6805, and chiropractors, § 6554.
138. Id. § 7104 (6). Similarly, opticians need not be citizens. Id. § 7124 (6).
139. Id. § 7004 (6).
140. Id. § 6904 (6).
141. Id. § 7206.
142. Id. § 7206a. Provision is made for foreign consultants who are present in the state for a single project.
143. Id. § 7324 (6).
144. Id. § 7304.
145. Id. § 7603. Other professions which do not require citizenship are certified social workers, id. § 7704; physical therapists, id. § 6734; speech pathologists, id. § 8206 and occupational therapists, id. § 7904.
viding for a limited permit to practice or empowering the commissioner to waive the citizenship requirement.146 The New York legislature has been sensitive to judicial findings on the issue of citizenship. In response to In re Griffiths, for example, the legislature deleted the citizenship requirement for admission to practice law.147 There is no indication, however, that the New York legislature intends to open public employment to resident aliens.

California, in comparison to other states, takes a liberal approach148 to the employment of aliens and has removed many legislative barriers during the past decade. In Purdy and Fitzpatrick v. State of California,149 the California Supreme Court, in striking down a statute requiring citizenship for employment on public works, acknowledged the contributions aliens make to the state.150 This perspective set the tone for the California legislature which subsequently repealed a complex statute barring aliens from employment in state, county and city government positions.151 The Purdy decision also prompted the California Attorney General to issue an opinion that citizenship bore

146. For instance, N.Y. EDUC. LAW § 6524 mandates that an applicant for a physician’s license be a United States citizen or file a declaration of intent unless the requirement is waived in accordance with the commissioner’s regulations. Section 6525, however, provides for the issuance of a limited permit to an applicant who fulfills all requirements except the citizenship requirement. The holder of such a license is limited to practising under the supervision of a licensed physician and only in public, proprietary or voluntary hospitals. The limited permit is valid for two years and may be renewed biennially at the department’s discretion. See Surmeli v. State of New York, 412 F. Supp. 394. (S.D.N.Y. 1976), where the court held that the requirement that aliens perfect their citizenship within 10 years of receiving the temporary permit was unconstitutional, reasoning that a requirement of citizenship as a condition of continued licensure bore no rational realtionship to continued professional competence. Id. at 397.

147. N.Y. CIV. PRAC. LAW § 9406 (Mckinney 1981).

148. This is so despite the peace officer statute challenged in Cabell v. Chavez-Salido, which during the course of litigation, the legislature amended twice. 1981 Cal. Stat. 3584; 1981 Cal. Stat. 95.


150. Id. at 581-82, 456 P.2d at 656, 79 Cal. Rptr. at 88. See also Raffaelli v. Commissioner of Bar Examiners, 7 Cal. 3d 288, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972) (invalidating statute requiring citizenship for admission to the bar).

151. CAL. LAB. CODE §§ 1940-45 & 1947. The statute, enacted in 1915, prohibited hiring noncitizens for a position in any department in state, county or city government. Through the decades a panoply of exceptions were added to the statute. These exceptions included medical personnel under exchange programs, librarians, child care personnel, school bus drivers and student interns. In 1968 an alien who filed a declaration of intent to become naturalized became eligible for government employment, provided the alien was a state resident. The statute was repealed in 1970. 1970 Cal. Stat. ch. 653. See 1969 Cal. Stat. ch. 473 for the statute’s final form.
EMPLOYMENT OPPORTUNITIES

no rational relationship to professional competence and the legislature amended numerous licensing laws to delete citizenship requirements.

A 1974 Texas Attorney General opinion stated that a policy requiring citizenship for all state employment violated the equal protection clause. It was still permissible, however, to require citizenship or a declaration of intent to become naturalized as a qualification for employment in specific “appropriately defined position[s]” such as a notary public. Although the Texas legislature amended numerous licensing statutes in 1981 to remove citizenship requirements, the state’s system still lacks uniformity. For instance, citizenship is a prerequisite to qualifying as a licensed driving instructor. A progressive statutory variation on a citizenship requirement is imposed on applicants for a certified public accountant’s license. A certificate is granted to any person who is a citizen, or to non-citizens who have lived in Texas ninety days preceding the date of application, or who have maintained a permanent legal residence in Texas for the six

152. 55 Op. Cal. Att’y Gen. 80, 81-82 (1972). The Attorney General, examining the inconsistencies in the professional licensing laws, determined that professions fall within the economic realm and therefore subjected the citizenship requirement to strict scrutiny. He concluded that the state did not carry the burden of proving that the classification constituted a necessary means of accomplishing a legitimate and compelling state interest. He contrasted a profession to membership on the licensing board as a political function for which the classification would be rational and permissible. Id. at 82-83.

153. 1972 Cal. Stat. ch. 1285. As a result of these amendments, applicants need not be citizens to comply with eligibility requirements for the following professional licenses: attorneys, shorthand reporters, land surveyors, real estate brokers, optometrists, pharmacists, psychologists, psychiatric technicians, physical therapists, insurance brokers, mineral, oil and gas brokers, social workers, vessel pilots and private investigators. Id. Prior to this wholesale amendment, citizenship was not required of applicants for a physician’s, nurse’s or dentist’s license. Furthermore, the statutory prohibition on aliens practicing law was declared unconstitutional in Raffaelli v. Commissioner of Bar Examiners, 7 Cal. 3d 288, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972).


155. Id.

156. 1974 Digest Op. Tex. Att’y Gen. 50 (H-481). This decision was based on the determination that a notary public is a public officer. But see Graham v. Ramani, 383 So. 2d 634 (Fla. 1980) (invalidating statute requiring notaries public be citizens).

157. See Tex. Rev. Civ. Stat. Ann. art. 4413 (29cc) (Vernon Supp. 1982) (polygraph examiners); id. art. 4495b (3.04) (physicians); id. art. 4545 (dentists); id. art. 4542a (8) (pharmacists); id. art. 4582 (embalmers).

158. Tex. Rev. Civ. Stat. Ann. art. 4413 (29c) (Vernon 1976). Despite the fact that the statute requires a chauffeur’s license, forty hours of special training, two years driving experience and a competency exam, citizenship is required of a driving teacher.
months immediately preceding the date of application. A series of alternative requirements such as this demonstrates a concern for the preservation of alien employment rights.

In the face of a rapidly growing alien population, the Florida legislature boldly acted to eliminate employment restrictions—effectively repealing all statutory restrictions upon professional and occupational licensing. The novel statute affirmatively states that "[n]o person shall be disqualified from practicing an occupation or profession regulated by the state solely because he is not a United States citizen." The legislature intended the statute "to encourage the use of foreign speaking Florida residents duly qualified to become actively qualified in their professions so that all Florida citizens may receive better services." The statute further provides for foreign language exams and directs each licensing board and commission to establish and implement programs designed to qualify all Cuban nationals who have been residents in Florida since 1977 for examinations.

New Jersey's present statutory scheme may be the most restrictive in the country. Formerly, a New Jersey statute granted discretion to the examiners of numerous professions to issue a temporary provisional license. If citizenship was not perfected at the end of a six year probationary period, the license would be revoked. In 1979, however, the legislature repealed the statute effectively barring noncitizens from these professions. Moreover, New Jersey statutes do not provide that a declaration of intent to become naturalized is acceptable in lieu of citizenship. Instead, resident aliens are obliged to wait until they are eligible to become naturalized before they can pursue their professions.

One method of improving this situation has been suggested by the legislature itself. In 1977, the citizenship requirement for an engineer or land surveyor was replaced with a requirement that the applicant

161. Id.
162. Id. § 455.11.
163. Id. § 455.11(2).
164. Id. § 455.11(3).
167. Upon filing a declaration of intent to become naturalized a resident alien applicant for a tree expert's license may qualify. N.J. Stat. Ann. § 45:15C-4 (West 1978). This is the only instance where a declaration of intent is an acceptable alternative.
be able to read and speak the English language. There is a legitimate state interest in ensuring that licensed professionals are proficient in the English language. An English proficiency test could be used in lieu of citizenship for the remaining professions as well.

While not as restrictive as New Jersey, Illinois requires citizenship for applicants to the civil service as well as nearly every professional or occupational license, except physician assistants, engineers and sanitarians. In addition, there are several inconsistencies among the statutes. For example, aliens seeking a medical license are entitled to a probationary license only. Citizenship must be perfected within five years of obtaining the license and failure to obtain citizenship gives the Illinois Department of Registration and Education discretion to revoke the license. By contrast, a podiatrist's license requires a noncitizen to petition for naturalization within thirty days of becoming eligible to do so.

V. Recommendations

Despite the fact that the Supreme Court has taken a conservative approach to the state regulation of employment opportunities for resident aliens, the states are free to accord aliens more than these minimal rights. States must recognize that there are two compatible interests involved. The first is the alien's interest in pursuing a livelihood via a professional license or state employment. The second is the

172. Ill. Ann. Stat. ch. 111, § 4901 (Smith-Hurd 1978). This same timetable applies to applicants for a student barber's license, Ill. Ann. Stat. ch. 111, § 1612 (Smith-Hurd 1978). A 1974 Illinois Attorney General Opinion, 1974 Op. Ill. Att'y Gen. 162, compared various professions to attorneys, and applied the In re Griffiths strict scrutiny standard to declare the citizenship requirements unconstitutional because they violated the equal protection clause. Id. at 166. The Attorney General did approve, however, of the requirements that aliens possess the necessary education, training, experience and moral character for the job. Id. at 164. In addition, he found that the citizenship rules conflicted with the authority of Congress to regulate the immigration and naturalization of aliens. Id. at 166. Illinois is reevaluating all of its professional and occupational regulations. Regulatory Agency Sunset Act of 1979, Public Act 81-999, 1979 Ill. Laws. 3797. The decision to continue regulation will be determined by whether the absence of regulation would harm significantly or endanger the public health, safety or welfare and whether there is a reasonable relationship between the exercise of state police power and the protection of the public. Id.
state's interest in securing qualified and dedicated employees to ensure the smooth functioning of its political community. In most of the Supreme Court cases discussed, the parties stipulated to the alien candidate's educational and intellectual qualifications. Similarly, in the state statutes evaluated, the citizenship requirements are an adjunct to competency related requirements. Thus, the citizenship requirement deprives the state of qualified employees.

To resolve any potential conflict between legitimate state interests and the resident alien's rights, state legislatures must establish priorities. An affirmative declaration such as that made by Florida in the area of professional licensing is one possible method. The policy could be expanded to include licensing, civil service, state and municipal employment. Another means of articulating a state philosophy would be to include alienage in a 'civil rights' statute. For instance, "[n]o person shall be discriminated against on the basis of race, national origin, religion, sex or alienage." Such an alienage provision also could be made subject to the political community's right to self governance.

State legislatures should define clearly the political community. Hawaii has attempted to do so by distinguishing levels of public employment. The Hawaii statute requires that appointive 'officers' employed by the state or municipal government in top level positions be citizens. Other government service appointees may be permanent resident aliens at the time of their appointment but must be naturalized eventually. This approach is straightforward and does not

175. See note 166 supra.
177. Id. The statute states in relevant part:

§78-1 Citizenship and residence of government officials and employees; exceptions. (a) All elective officers in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or in the service of any county or municipal subdivision of the State who are employed as department heads, first assistants, first deputies, second assistants, or second deputies to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment; however, all others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien appointed pursuant to this section shall not be eligible for continued employment unless such
delegate classification decisions to state agencies which operate away from the public eye. A more flexible system could be designed whereby factors such as supervision, discretion and skill would determine whether a particular public position comes within the political community. If a state carefully evaluates its objectives and needs, the resulting arrangement should be uniform and consistent rather than unplanned and illogical.

Reasonable alternatives to a citizenship requirement should be pursued to protect valid state interests. An oath of allegiance to the state is a valid means of procuring employee loyalty. Competency, however, may be determined in several ways. An English language proficiency requirement ensures that employees and professionals can communicate adequately. In addition, interviews can serve as a means of evaluating an applicant's familiarity with American mores and customs. Finally, standard civil service examinations could be designed so as to test both job competence and knowledge of American laws.

VI. Conclusion

Professional licenses, as distinct from public employment opportunities, should not be based upon citizenship because the purpose of licensing is to ensure competence. Alienage has a limited relation to professional competence. In addition, no significant or reasonable state interest is accomplished by a citizenship requirement in licensing laws.

person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

c) All employees in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their application for employment.

178. It is relevant to consider whether the employee is under immediate supervision, under general supervision or under no supervision. In addition, the necessity for the employee to supervise others weighs upon the degree of independent judgment required by the position.

179. Discretion may be broad, limited in accordance with established policies and procedures, or minimal.

180. Skill encompasses education, training and experience.


182. It is arguable that in fields which require close human interaction, such as medicine and psychiatry, persons unfamiliar with American culture and mores may not be qualified adequately. There is nothing wrong with a process which screens persons who are unfamiliar with American values and attitudes from professions which cannot be performed without such knowledge. A broad citizenship requirement for eligibility to receive a professional license, however, is unnecessarily restrictive because it presumes all resident aliens lack a certain minimum acquaintance
Undeniably, a state has valid interests to protect when selecting and hiring public employees. By adhering to the principles recommended in this Note, states can establish uniform and consistent statutory schemes. In this way, any restriction on aliens deemed necessary by the legislature will be legitimate and able to withstand even the strictest judicial scrutiny. The scheme would not be so haphazard as to belie the state’s claim that a truly important political function is served.

Joy B. Peltz

with American culture. “[T]he class of aliens is . . . a heterogeneous multitude of persons with a wide ranging variety of ties to this country.” Matthews v. Diaz, 426 U.S. 67, 78-79 (1976). Thus a per se citizenship requirement would irrationally exclude otherwise qualified persons from professional occupations.