

The Fight to Read, Write, and Vote: The New York State  
Literacy Test, 1922-1965

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Undergraduate Senior Thesis

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December 2021

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## Acknowledgements

There are a great number of people that I would like to thank for helping me with my independent senior thesis. I am grateful to Professor Alma Steingart for her invaluable guidance and feedback throughout the year. Professor Steingart taught me how to contextualize the history of the right to vote and sparked my new passion for archival research. Professor Rebecca Kobrin gave me the tools to navigate an independent thesis and helped me to understand the history of Immigrant New York. Thank you to the Riverside Language Program, where I learned first-hand the ways in which immigration and education policy affect the daily lives of immigrants in New York City.

My work with local and federal offices and on electoral campaigns throughout the country has made voting rights a central focus of my academic pursuits. I would like to thank Assemblymember Linda Rosenthal and Erica Overton who instilled in me the belief that government can be an agent of positive change, when I was just a high school intern in Linda's district office.

I am immensely grateful for my friends who have stuck by my side throughout the journey that is college. Thank you also for encouraging me to undertake this project.

This thesis would not have been possible without the love and support of my family. Mom, Zoë, Ella, Peter, you guys have made me the person that I am today. You have taught me how to approach every situation with humanity, humility, and compassion. Thank you from the bottom of my heart.

This project has inspired me to continue to work tirelessly to ensure that this generation and future generations have confidence that every vote counts equally, and that no one is betrayed by the ballot. I look forward to the next chapter.

## Abstract

The history of the New York State Literacy (NYSL) Test in the twentieth century exemplifies how state legislators and educators sought to disenfranchise certain groups of citizens who threatened the political power of the ruling white elite. New York's literacy law went even further than other states by granting to its state education department sole authority to design and administer the test. In the 1920s and 1930s, the NYSL Test succeeded in its primary purpose to systematically disenfranchise "undesirable" Eastern and Southern European immigrants. In the 1940s and 1950s, the targets of the NYSL Test shifted to New York City's rapidly growing Puerto Rican population. This thesis contends that the well-known history of discrimination in the South must be recontextualized in light of this systematic discrimination in New York, which masked voter disenfranchisement under guise of both literacy and education. I argue examination of the NYSL Test provides valuable insight into 21st century struggles for and against the expansion of voting rights and warns that voting restrictions need not be overtly discriminatory to disenfranchise voters.

*Citizenship is man's basic right, for it is nothing less than the right to have rights.*

- Chief Justice Earl Warren<sup>1</sup>

## **Introduction**

In the United States, there is no set definition of the right to vote. In fact, there is no constitutional guarantee of the right to vote for American citizens. In the early twentieth century, New York was the center of a rapid influx of immigrants, many of whom were the target of a concerted effort of exclusion from the electoral process. Literacy tests in New York, promoted as a means to improve the quality of the electorate through education, were, in actuality, vehicles to disenfranchise “undesirable” minority groups seen as threats to the electoral system. Examining the history of New York State Literacy (NYSL) test, through its passage, implementation, and eventual abolition, reveals the persistent tension between citizenship and suffrage. This thesis argues the history of New York’s literacy law is a crucial addition to the historiography of disenfranchisement in the United States, which typically focuses on the South.

New York has a dark history of disenfranchisement. In fact, when the New York State literacy law was passed in 1921, New York was the only state in the Union that devised a unique, standardized literacy test which shrouded discrimination and disenfranchisement under the guise of science and education. I use the NYSL Test as a case study to interrogate the history behind the prevailing assumption that citizenship guarantees a right to vote. Fifteenth the history of the NYSL Test reveals that the right to vote has only ever been a guarantee for white, male, native-born citizens and a false promise for underrepresented groups, including women, people of color, and foreign-born citizens.

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<sup>1</sup> *Perez v. Brownell*, 265 U.S. 44, 64-65 (1958), U.S. Supreme Court chief justice Earl Warren, dissenting.

New York's passage of a literacy amendment to its State Constitution redefined citizens' right to vote. The implementation of the NYSL Test, and its abolition some forty years later, reignited nineteenth century debates about citizenship, voting rights, and literacy, demonstrating that these issues remained contentious and unresolved throughout the twentieth century. Passage of the literacy proposal came in the wake of white, native-born lawmakers' great anxiety about the new, expansive American electorate and a concerted effort by New York legislators to disenfranchise "undeserving" immigrants. This rapid change posed significant problems to the political elite. As historian Alexander Keyssar argues, policymakers worried they would lose control of the state "under conditions of full democratization."<sup>2</sup>

During the second half of the nineteenth century, the nation witnessed a dramatic expansion of voting rights in the form of nearly universal male suffrage. The expansion of citizenship and voting rights under the U.S. Constitution's Fourteenth, Fifteenth, and Nineteenth Amendments, which passed in 1868, 1869 and 1919, respectively, led to intense debates on the relationship between citizenship and suffrage. Following the abolition of enslavement, the Fourteenth and Fifteenth Amendments to the U.S. Constitution ostensibly granted Black Americans citizenship, codified equal protection under the law, and guaranteed the "right of citizens of the United States to vote."<sup>3</sup> In 1920, the Nineteenth Amendment expanded voting rights to women, enfranchising the remaining half of American citizens.

At the same time as this expansion of the right to vote, there were significant transformations of both the Southern and Northern electorates. In the South, there was a significant reshaping of the electorate as Black Southerners made up substantial pluralities in

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<sup>2</sup> Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, (New York: Basic Books, 2000), 169.

<sup>3</sup> U.S. Const. amend. XIV; U.S. Const. amend. XV.

jurisdictions and states throughout the region. Around the same time, the North witnessed a reshaping of its electorate in the form of massive waves of immigration: between 1880-1924, 23.5 million immigrants came to the United States.<sup>4</sup> The vast majority entered through Ellis Island in New York and settled in the Northeast. Millions of newly arrived immigrants would become naturalized citizens during this period.

In the North, the massive movement to restrict immigration began in the 1880s, with the Chinese Exclusion Act of 1882, suspending Chinese immigration and declaring Chinese immigrants ineligible for naturalization, thus barring them from voting. Both the assassination of President William McKinley by an immigrant in 1901 and World War I (1914-1918) exacerbated fears of the “other” and led to intense anti-immigrant hysteria. Lawmakers feared that the massive rise in immigration would result in the unruly influences of socialism and anarchism and change the very fabric of American society.<sup>5</sup> In response, Congress passed a barrage of restrictive laws, in 1907, 1917, and 1924, which had the effects of tightly narrowing pathways to citizenship by instituting a national origins quota and a literacy test. In *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Mae Ngai argues “Immigration restriction produced the illegal alien as a *new legal and political subject*, whose inclusion within the nation was simultaneously a social reality and a legal impossibility—a subject barred from citizenship and without rights.”<sup>6</sup> In New York, the introduction of federal immigration

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<sup>4</sup> Alan M. Kraut, “Silent Travelers: Germs, Genes, and American Efficiency, 1890-1924,” *Social Science History*, Vol. 12, No. 4 (Winter, 1988), 378.

<sup>5</sup> Alexander Keyssar, *The Right to Vote*, 146

<sup>6</sup> Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Princeton, N.J.: Princeton University Press, 2004, 4. Emphasis in original. United States Code: Immigration and Nationality, 8 U.S.C. §§ 1104-1401 (Suppl. 2 1964). The term “alien” is both a legal term that refers to “any person who is not a citizen or a national of the United States” and pejorative slang that connotes “otherness” and “un-American” behavior. Throughout the essay, I will only refer to immigrants as “aliens” if the legal term is included in quotes or legal statutes.

restrictions emboldened government officials to further restrict the rights of millions of “undesirable” immigrants through a literacy test for new voters.

Literacy tests were among the most pernicious and contentious devices deployed during the nineteenth and twentieth centuries to exclude citizens from the electoral process. Between 1855 and 1965, 24 states passed literacy requirements for voting.<sup>7</sup> While the intended use of literacy tests to disenfranchise and dilute “undeserving” voters was similar in the North and South, the applications of the literacy test were quite different between the regions. Keyssar writes that Jim Crow literacy tests in the South were far more “draconian, sweeping, and violent” and always administered “with overtly discriminatory intent.”<sup>8</sup> For instance, voters in Alabama were required to “understand and explain” an article of the U.S. Constitution and voters in Georgia were instructed to complete a 30-question test in under ten minutes, answering impossibly difficult questions such as “Who is the Solicitor General of your State Judicial Court?”<sup>9</sup> Black Americans lacked the resources or means to pass these tests: Southern states restricted access to education and segregated Black Americans into inadequate schooling systems, resulting in disproportionately lower literacy rates.<sup>10</sup> There were no schools to train Black Americans for these literacy tests, and virtually no Black Americans passed them.

While literacy tests in the North came in the form of more simple, standardized examinations that required applicants to read and write short passages from government documents, they were extremely effective at barring immigrants from voting. In fact, the first

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<sup>7</sup> Keyssar, *The Right to Vote*, Table A.13. The vast majority of literacy requirements for voting were introduced in the late-nineteenth and early-twentieth centuries.

<sup>8</sup> *Ibid.*, 170.

<sup>9</sup> “It’s Easy to Register! Georgia Voter Registration Training, The 30 Questions,” *The Civil Rights Movement Archive*, November 18, 2021, <https://www.crmvet.org/info/lithome.htm>.

<sup>10</sup> George D. Strayer, “Report of National Education Association Legislative Commission,” *National Education Association of the United States*, 1922, 51. For instance, in Louisiana the illiteracy rate of Black Americans in rural communities was 45.4, compared to 16.3 percent of white Americans. In urban communities, 22.1 percent of Black Americans were illiterate, compared to only two percent of white Americans.

literacy tests were conceived in the North and their success in limiting the electorate inspired Southern lawmakers to implement tests of their own. While there were systems in place to improve immigrant literacy through public evening schools and Americanization courses, Northern legislatures refused to apportion the proper funds and resources to address immigrant illiteracy.<sup>11</sup>

This thesis charts the history of the NYSL Test, a test which provided states with a roadmap for disenfranchising “undeserving” voters while purporting to tackle the problem of illiteracy. In Chapter 1, I examine post-war fears of uncontrollable foreign influences on the fabric of American society and the consequent growth of the literacy test movement to restrict immigration. Fifteenth once federal restriction measures were implemented to keep out “undesirable” foreigners, the focus of the movement shifted to disenfranchising foreign-born citizens in New York. In Chapter 2, I examine the implementation of the NYSL Test in three stages: its design, implementation, and impact. Through analysis of reports of education officials, I trace the unusual circumstances by which the New York State Department of Education was granted sole authority over the literacy test. This unique arrangement enabled New York to develop the first standardized reading comprehension test for voters—a literal manual on how to be an American and conform to societal norms and laws. Through examination of archival materials and newspapers from the New York State Archives, I argue the literacy test was also successful in serving its original intent of disenfranchising immigrants, who predictably failed the test in disproportionate numbers.<sup>12</sup> Finally, in Chapter 3, I examine the effort to abolish the

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<sup>11</sup> Keyssar, *The Right to Vote*, 170. Keyssar summarizes this distinction: “In New York and Massachusetts, an illiterate immigrant could gain the franchise by learning to read; for a black man in Alabama, education was beside the point, whatever the law said.”

<sup>12</sup> My key archival research came from two records held at the New York State Archives (hereinafter NYSA): Department of Education, Division of Adult Education and Library Extension, *Board of Regents Annual Literacy Test Files*, Series A0055, and Department of Education, Division of Adult Education and Library Extension, *Press*

NYSL Test during the Civil Rights Movement. I demonstrate that the targets of the literacy test shifted from “undesirable” European immigrants, such as Jews and Italians, to Spanish-speaking Puerto Ricans, who were U.S. citizens but effectively barred from voting because of the English literacy test. Through an examination of legal and other strategies, I reveal how the Puerto Rican community and leading New York politicians successfully pressured Congress to include an amendment specifically for Puerto Ricans in the landmark Voting Rights Act of 1965 and ultimately to abolish literacy tests nationwide in 1970, finally severing the link between literacy and suffrage.

Throughout its history, the NYSL Test was a tool used to distance suffrage from citizenship for groups of citizens who the government deemed “undesirable.” While the test was abolished in 1965, its legacy carries on today. As this thesis demonstrates, the NYSL Test should serve as a reminder that laws which seek to improve the quality of the electorate disproportionately restrict groups of voters who threaten white, native-born control of the electoral process.

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*Clippings and Background Files Concerning the Board of Regents Literacy Test, 1916-1933, Series A0063.* These records are only available in microfilm format. Upon my request in Fall 2021, the records were sent to Columbia University, where I scanned and organized relevant materials.

## I. The “Good Citizen”: Literacy, Immigration, and the Right to Vote in New York

*I held that education was not a necessary attribute to good citizenship...Suppose it was necessary to have a high school diploma to be Governor; where would I be?*

- Governor Alfred E. Smith<sup>13</sup>

### The Rise of Immigration and the Fear of “Undesirable” Immigrants

Between 1900 and 1915, the United States experienced swift demographic changes as more than 15 million immigrants entered the country: equal to the total number of new immigrants in the previous 40 years combined.<sup>14</sup> In 1907, the peak year for immigration in the entire century, 1,285,000 immigrants arrived—more than two-thirds of whom came through Ellis Island in New York.<sup>15</sup> With the sudden increase in population, government officials began to call for immigration reform and a crackdown on the supposed “ills of foreign influence in America.”<sup>16</sup> Frank P. Sargent, the Census Commissioner and former U.S. Commissioner General of Immigration in the early 1900s stated, “Immigration is a menace to the peace, good order and stability of American institutions, which will grow and increase with the generations and finally burst forth in anarchy and disorder.”<sup>17</sup>

Measures to restrict immigration through literacy tests gained traction with the unprecedented wave of “undesirable” Europeans, mainly Southern and Eastern Europeans, arriving in the country: Between 1880 and 1910, 12.5 million immigrated to the U.S. from

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<sup>13</sup> “Smith Endorses Negro Migration,” *New York Times*, November 20, 1923.

<sup>14</sup> Robert F. Zeidel, *Immigrants, Progressives, and Exclusion Politics: The Dillingham Commission, 1900-1927*, (DeKalb: Northern Illinois University Press, 2004), 20.

<sup>15</sup> Alan M. Kraut, *Silent Travelers*, 379.

<sup>16</sup> Albert J. McCulloch, *Suffrage and Its Problems* (Baltimore: Warwick and York, 1929), 144.

<sup>17</sup> *Ibid.*

Southern and Eastern Europe.<sup>18</sup> At this time, immigrants made up about one-third of the total U.S. population.<sup>19</sup> In the early 1900s, Dr. Joseph Senner, President Grover Cleveland's appointed Commissioner of Immigration at Ellis Island, developed a three-pronged approach for implementing successful immigrant restrictions: Literacy tests to keep out "undesirable aliens," distribution of new immigrants over the entire country to lighten the burden on the cities, and the disfranchisement of all "ignorant and unassimilated foreigners" by strict voting laws.<sup>20</sup>

Twentieth-century sentiments on immigration are illustrated by the writings of sociologist Henry Pratt Fairchild. Fairchild wrote extensively on race and immigration during the first half of the twentieth century. He noted a significant, negative shift in attitudes toward immigrants by the turn of the twentieth century, where previously there was tolerance of newcomers and in some regions, immigrants were "eagerly desired."<sup>21</sup> Fairchild credited these early sentiments to the young, homogenous nature of the nation, as natural resources seemed "unlimited" in the vast, undiscovered frontier and immigrants were "closely allied in race and customs to those already here."<sup>22</sup> Up to the end of the nineteenth century, most of the immigration waves originated from western Europe, whose members represented "the same racial stock and similar cultural characteristics of Americans."<sup>23</sup> However, immigration to the U.S. rapidly shifted to people from "undesirable" nations—mainly from Eastern and Southern Europe—which resulted in a forceful public movement to restrict immigration.<sup>24</sup> For instance, before 1870 there were practically no

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<sup>18</sup> Ron Hayduk, *Democracy for All: Restoring Immigrant Voting Rights in the United States*, New York, Routledge, 2006, 26.

<sup>19</sup> Ibid.

<sup>20</sup> McCulloch, *Suffrage and Its Problems*, 149.

<sup>21</sup> Henry Pratt Fairchild, "The Literacy Test and Its Making," *The Quarterly Journal of Economics*, May, 1917, Vol. 31, No. 3 (May, 1917), 447.

<sup>22</sup> Ibid, 449.

<sup>23</sup> Fairchild, "Public Opinion on Immigration," *The Annals of the American Academy of Political and Social Science*, Vol. 262, No. 1 (March, 1949), 185.

<sup>24</sup> Ibid, 189.

Italian immigrants in the country, whereas between 1906-1911, nearly 1.2 million Italians arrived in the U.S.<sup>25</sup> Between 1900 and 1910, there was a net loss of more than 275,000 arrivals from Northwestern Europe, and an increase of 3.2 million from Southern and Eastern Europe.<sup>26</sup>

Fairchild reflected on this shift in attitudes by identifying the four main cultural differences of “undesirable” European migrants: 1) despite belonging to the “broad Caucasian branch of the human family,” their physical characteristics set them apart from the general American population; 2) they were much less economically and industrially advanced than their western counterparts; 3) their family structures, religion, dress, decoration, and language differed greatly; 4) their standard of living was lower than the average American worker, resulting in “menacing competition” with the American labor force.<sup>27</sup> Given the rapid cultural changes, the demand for immigration restriction was at an all-time high at the end of the nineteenth century. However, the anti-immigrant movement knew that large-scale restrictions against “undesirable” immigrants—for instance, a ban on all immigration from Italy—would be difficult to pass and instead opted for selective measures.<sup>28</sup>

Fairchild explained that literacy tests were seen as the ideal tools to reshape immigration policy: “This was obviously a selective measure, yet it would affect a sufficiently large proportion of the immigration current to produce a significant restrictive effect.”<sup>29</sup> The general expectation was that literacy tests would exclude roughly 75 percent of immigrants from Eastern and Southern Europe, but only two percent of immigrants from Northern Europe.<sup>30</sup> While literacy tests would apply equally to all immigrants—selecting only those who could read in their

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<sup>25</sup> Strayer, “Report of National Education Association Legislative Commission,” 35.

<sup>26</sup> Ibid.

<sup>27</sup> Fairchild, “Public Opinion on Immigration,” 189.

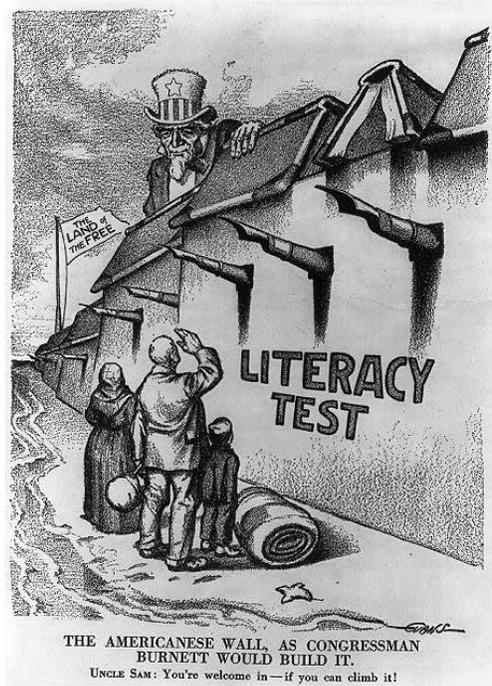
<sup>28</sup> Ibid, 190.

<sup>29</sup> Ibid.

<sup>30</sup> McCulloch, *Suffrage and Its Problems*, 149.

native language, regardless of national origin—they would have a disproportionate impact on “undesirable” immigrants.

## The Era of Immigration Restriction and the Federal Literacy Test Movement



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Despite growing pressure for literacy tests to restrict immigration at the turn of the twentieth century, it would take over 20 years for the idea to become law. Literacy tests were controversial at a time when open immigration policies were lauded: Congress passed literacy test bills in 1895, 1897, 1903, 1912, and 1915, only to be defeated by the vetoes of Presidents Grover Cleveland, Howard Taft, and Woodrow Wilson.<sup>32</sup> Coordinated advocacy for federal literacy tests began in 1894 with the formation of the Immigration Restriction League in

<sup>31</sup> “The Americanese Wall - as Congressman Burnett Would Build It,” image, Library of Congress, Washington, D.C. (1916).

<sup>32</sup> Ngai, *Impossible Subjects*, 19.

Boston.<sup>33</sup> The group was “instrumental” in the passage of the first literacy test bill in 1895, which was introduced by Republican Senator Henry Cabot Lodge, a prominent member of the League.<sup>34</sup> President Cleveland vetoed another literacy bill in 1897, framing the measure as a “radical departure from our national policy relating to immigration.”<sup>35</sup> In 1907, with President Roosevelt’s support, Congress passed into law a restrictive immigration act that doubled the immigration tax from \$2 to \$4 per immigrant and broadened the excluded classes of immigrants, denying entry to “imbeciles,” “immoral groups,” unaccompanied children, and more.<sup>36</sup> Roosevelt also authorized the creation of the Immigration Commission, known as the Dillingham Commission, which spent four years studying immigration and was the largest investigative project even undertaken by the federal government to this day.<sup>37</sup> The costly Dillingham Commission demonstrated that solving the “immigration problem” was a top priority for the federal government at the turn of the twentieth century.<sup>38</sup> The commission unanimously recommended restricting immigration and that a literacy test would be “the best form of restriction.”<sup>39</sup>

In 1910, Congress took a significant step toward linking literacy to citizenship by amending federal naturalization laws to require all applicants to be able to read English and sign their own names.<sup>40</sup> In January 1913, President Taft vetoed another literacy test bill. Taft expressed disappointment in the bill, which he would have signed if not for the addition of the

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<sup>33</sup> Katherine Benton-Cohen, *Inventing the Immigration Problem: The Dillingham Commission and Its Legacy*, (Cambridge, Mass: Harvard University Press, 2018), 50.

<sup>34</sup> Benton-Cohen, *Inventing the Immigration Problem*, 50.

<sup>35</sup> Fairchild, “The Literacy Test and Its Making,” 454.

<sup>36</sup> Ngai, *Impossible Subjects*, 18.

<sup>37</sup> Benton-Cohen, 2.

<sup>38</sup> *Ibid*, 2.

<sup>39</sup> *Ibid*, 74.

<sup>40</sup> John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, (Rutgers University Press (2002), 311.

literacy test: “But I cannot make up my mind to sign a bill which in its chief provision [a literacy test] violates a principle that ought, in my opinion, to be upheld in dealing with immigration.”<sup>41</sup>

In 1915, President Wilson responded to the passage of another literacy test bill by directly addressed Congress and denouncing literacy restrictions as anti-immigrant and antithetical to notion that America is a land of opportunity:

“The literacy test and the tests and restrictions which accompany it constitute an even more radical change in the policy of the nation. Hitherto we have generously kept our doors open to all who were not unfitted by reason of disease or incapacity for self-support or such personal records and antecedents as were likely to *make them a menace to our peace and order*...In this bill it is proposed to turn away from tests of character and of quality and impose tests which *exclude* and *restrict*; for the new tests here embodied are not tests of quality or of character or of personal fitness, but tests of *opportunity*. Those who come seeking opportunity are not to be admitted unless they have already had...the opportunity of education. The object of such provisions is *restriction*, not *selection*.”<sup>42</sup>

Wilson’s words directly contrasted with those of Immigration Commissioner Sargent, as he rejected the notion that immigration was “a menace to our peace and order” and believed that America was great for its open immigration policy.

The rise of nativism and the impending U.S. intervention into World War I led to a zeitgeist supporting “one hundred percent Americanism.”<sup>43</sup> It is no coincidence that in 1917, during WWI, a literacy test bill was finally passed into law following the congressional overrides of President Wilson’s veto.<sup>44</sup> In *Strangers in the Land: Patterns of American Nativism*, John

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<sup>41</sup> Henry Pratt Fairchild, “The Literacy Test and Its Making,” 457. Taft vetoed the measure because he “did not believe it was a good selective test” and cited the Secretary of Commerce and Labor, Charles Nagel, who wrote that despite twenty years of debate on the subject and reports from the Dillingham Commission, “the question has been superficially considered.”

<sup>42</sup> Woodrow Wilson, “Veto of Immigration Legislation,” January 28, 1915. Emphasis added to contrast with Commissioner Sargent’s statements.

<sup>43</sup> Margaret C. Wood, “One Hundred Percent Americanism: Material Culture and Nationalism, Then and Now,” *International Journal of Historical Archaeology*, Vol. 18, No. 2 (2014), 277.

<sup>44</sup> Claudia Goldin, “The Political Economy of Immigration Restriction in the United States, 1890 to 1921,” National Bureau of Economic Research, (January 1994), p. 226. The overrides required a two-thirds majority in both chambers—the House voted 287 to 106 and the Senate voted 62 to 19.

Higham writes that the Literacy Test Act of 1917 was one of the first major immigration restriction acts of Congress and marked “a turning point in American immigration legislation.”<sup>45</sup> Under the new law, immigrants who could not read 30-40 words in their own language were prohibited from migrating to the U.S.<sup>46</sup> According to the U.S. Commissioner General of Immigration, 33.4 percent of Eastern European and 44.9 percent of Southern European immigrants over the age of 14 arriving from 1899 to 1910 were illiterate.<sup>47</sup> The government was aware that “undesirable” immigrants would be disproportionately affected by the literacy tests. In addition, the Act instituted an outright ban on all “Orientals” from the Asiatic Barred Zone.<sup>48</sup> It also greatly expanded immigration officials’ discretion in excluding “undesirables”: the excluded classes of persons now consisted of “constitutional psychopathic inferiority,” “chronic alcoholism,” and “vagrancy,” which were subjective determinations.<sup>49</sup> Immigrants were also required to “make a statement under oath regarding their purposes and intentions in coming.”<sup>50</sup> An inability to understand immigration officials’ questions could result in a denial of entry.

However, the implementation of the literacy test was overshadowed by WWI, which practically stopped the flow of immigration, resulting in the lowest influx of new immigrants in decades.

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<sup>45</sup> Higham, *Strangers in the Land*, 203.

<sup>46</sup> Ibid. The test was similar to those of the previously failed bills, refusing admission to “all aliens over sixteen years of age, physically capable of reading, who cannot read the English language, or some other language or dialect, including Hebrew or Yiddish.” Exceptions to the test included those 55 years or older, the daughter, wife, mother, or grandmother of an “admissible alien” or U.S. citizen, and immigrants fleeing religious persecution.

<sup>47</sup> Goldin, “The Political Economy of Immigration Restriction,” 238.

<sup>48</sup> Ngai, *Impossible Subjects*, 18.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

*Number of Alien Immigrants Admitted Yearly*

1913_____	1,197,892
1914_____	1,218,480
1915_____	326,700
1916_____	298,826
1917_____	295,403
1918_____	110,618
1919_____	141,132
1920_____	430,001
1921_____	805,228
1922_____	355,825 <sup>1</sup>

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Immigration to the U.S. fell by nearly 400 percent at the beginning of the war in 1914.

Supporters believed the literacy test would reduce the number of new Southern and Eastern European arrivals by more than 40 percent, but in reality, only 1,450 of the 805,000 new arrivals between 1920 and 1921 were excluded on the basis of literacy.<sup>52</sup>

Although the Act of 1917 was deemed to be of only moderate success in restricting immigration, it set in motion an anti-foreign, restrictive immigration agenda. In 1921, Congress authorized the Emergency Immigration Act that generated the country's first quota system for immigration: the Act restricted the number of immigrants admitted annually from any country to three percent of the 1910 Census figures.<sup>53</sup> The Act led to a stark drop in newly admitted immigrants, from 805,228 in 1921 to 355,825 in 1922.<sup>54</sup> George D. Strayer, the chairman of the National Education Association Legislative Commission in 1922, reflected that although the 1921 Act had greatly reduced the number of new immigrants, "[t]he door had been closed too

<sup>51</sup> Strayer, "Report of National Education Association Legislative Commission," 35. Strayer claimed that the war's "practical stoppage" of immigration resulted in literacy test law having a "negligible impact."

<sup>52</sup> Goldin, "The Political Economy of Immigration Restriction," 238. McCulloch, *Suffrage and Its Problems*, 145. In 1929, Albert J. McCulloch, a professor of history and political science, wrote that "[t]he wisdom of the Immigration Law of 1917 has been questioned: It may not have been the best means of restricting the flood of immigrants but at least it was a restriction."

<sup>53</sup> Higham, *Strangers in the Land*, 311. Higham claims that this legislation proved to be "the most important turning-point in American immigration history."

<sup>54</sup> Strayer, 35.

late” and the nation would need to find a way to restrict “the great mass of unassimilated Southern and Eastern aliens [already] within our borders.”<sup>55</sup>

Three years later, Congress permanently implemented the quota system and effectively ended the era of open immigration from Europe. The Johnson-Reed Act of 1924 established the principle of national origins quotas, restricting annual immigration based on a formula of two percent of the population of each nation of origin according to the 1890 Census.<sup>56</sup> Mae Ngai writes that the 1924 Act was the first immigration measure in the nation’s history to establish “a global racial hierarchy that favored some immigrants over others.”<sup>57</sup> The 1890 Census was selected instead of the most recent census because federal legislators desired a return to the racial composition of America prior to the waves of new immigrants at the turn of the century.<sup>58</sup> Ngai adds that the Act’s most discriminatory provision was the exclusion of immigrants from China, Japanese, Indians, and other Asians on the grounds that they were “racially ineligible for citizenship.”<sup>59</sup>

After the passage of restrictive immigrant policies, attention turned to the millions of “undesirable” European immigrants already in the United States. They were building new lives in America and were reshaping neighborhoods and communities across the country. Many would become naturalized citizens soon and be entitled to the privileges of citizenship, which included the right to vote. Emboldened by the success of federal immigration restriction, New York’s

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<sup>55</sup> Strayer, “Report of National Education Association Legislative Commission,” 36.

<sup>56</sup> Ngai, *Impossible Subjects*, 7.

<sup>57</sup> *Ibid.*, 3.

<sup>58</sup> *Ibid.*, 7. Although the Act greatly reduced overall immigration, the quota greatly reduced the number of new migrants from the “undesirable” countries that dominated the post-1890 flood including Italy, Poland, and Russia, while favoring immigrants from countries such as Great Britain and Germany.

<sup>59</sup> *Ibid.*

ruling elite would go on to launch a prominent campaign to restrict the voting rights of its foreign-born citizens.

### **New York's Literacy Test Debate**

New York was at the center of the debate on how to restrict the rights of foreign-born citizens. By the early-twentieth century, New York was the most populous state in the nation and home to the largest share of immigrants; in 1910, more than three-fourths of New York City's population were either immigrants or first generation Americans.<sup>60</sup> The New York State Legislature became concerned with the foreseeable demographic shift in the voting bloc and followed in the footsteps of the dozens of state legislatures around the country calling for "a more intelligent ballot."<sup>61</sup>

Connecticut passed the nation's first literacy test in 1855 and Massachusetts subsequently adopted a reading and writing requirement for voters in 1857.<sup>62</sup> These states were the first to enact universal white male suffrage and as a response to this rapid expansion of voting rights, the two state legislatures implemented literacy tests explicitly to bar illiterate immigrants from voting.<sup>63</sup> Specifically, the anti-immigrant Know-Nothing Party proclaimed the Massachusetts law would keep the "ignorant, imbruted Irish" from the polls.<sup>64</sup> It was not until 1890 that educational qualifications for voting became law in many other states. Several state legislatures passed literacy tests in response to the rapidly growing political power of immigrants in Northern

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<sup>60</sup> Albert J. McCulloch, *Suffrage and Its Problems*, 142.

<sup>61</sup> F. G. Crawford, "The New York State Literacy Test," *The American Political Science Review* Vol. 17, No. 2 (May, 1923), 260.

<sup>62</sup> Keyssar, *The Right to Vote*, 86.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

cities and newly enfranchised African-Americans in the South.<sup>65</sup> By 1920, 19 states had adopted constitutional provisions related to literacy tests for voting qualifications.<sup>66</sup>

A reading and writing qualification for voting was first proposed at the New York constitutional convention of 1846, but was met with immense scorn, due to general support of pro-immigration policies.<sup>67</sup> The literacy test became a partisan fight, as it was proposed by Republicans at the constitutional conventions of 1867-1868 and 1894, but was “vigorously opposed” by Democrats.<sup>68</sup> During the 1868 convention, a Democratic representative declared, “If a man is ignorant, he needs the ballot for his protection all the more.”<sup>69</sup> Republicans became fervent opponents of immigrant voting rights due to immigrants’ tendency to vote Democratic: Irish Catholic immigrants overwhelmingly voted for Democrats due to political machines in New York City, as did many Italian and Jewish immigrants.<sup>70</sup> Moreover, there was a racist aspect to the growing opposition to immigrants in New York. According to Ron Hayduk, during the nineteenth and early-twentieth centuries, Italians and Jews were not universally viewed as “white,” and sometimes even referred to as “colored.” They were “the object of much scorn and discrimination.”<sup>71</sup>

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<sup>65</sup> Keyssar, *The Right to Vote*, 86.

<sup>66</sup> Ibid, Table A.13. J. Cayce Morrison, “New York State Regents Literacy Test,” *The Journal of Educational Research*, Vol. 12, No. 2 (1925), 145. By 1920, the following states had a literacy or educational test in their constitution or by law: Alabama, Arizona, California, Connecticut, Delaware, Georgia, Idaho, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Virginia, Wyoming, and Washington. In 1921, New York and Louisiana adopted literacy requirements for suffrage. In 1924, Oregon was the final state to pass a literacy test law.

<sup>67</sup> N.Y. Const. Conv. (1846), *Proceedings and Debates*, 820. Keyssar, 143. Young-In Oh, *Struggles over Immigrants’ Language: Literacy Tests in the United States, 1917–1966*, (El Paso, TX: LFB Scholarly Publishing, 2012), 137.

<sup>68</sup> N.Y. Const. Conv. (1867–1868), *Proceedings and Debates*, 491. N.Y. Const. Conv. (1894), *Record Vol. II*, 713.

<sup>69</sup> Ibid, 144.

<sup>70</sup> Ibid, 65.

<sup>71</sup> Hayduk, *Democracy for All*, 33. Hayduk noted that in 1891 the New York Times referred to several Italians who were lynched in New Orleans as “colored.”

The literacy test issue became the central dispute at the 1915 constitutional convention, with Republicans stating the belief that English was a requirement to participate in American democracy and Democrats decrying literacy tests as arbitrary, restrictive measures that were not determinant of “good citizenship.”<sup>72</sup> The convention voted 77 to 67 to reject the literacy test, with all Democrats voting against the measure.<sup>73</sup> Louis Marshall, the son of two Jewish immigrants and the only person to participate in three New York state conventions in their lifetime, opposed the test and claimed if the test had passed, there would be immense opposition from the one million Jews who lived in New York. He stated that Jews would consider passage of a literacy test “as a deliberate insult.”<sup>74</sup> Frank Mann, the Democratic delegate from Brooklyn, argued that immigrants who read newspapers in foreign languages were well-informed voters: “They are not a menace to America...By getting the information contained in those newspapers, they prevent the jingoes from deceiving them and rushing this country into war.”<sup>75</sup> Al Smith, a Democratic delegate from New York City and the future Governor of New York, argued that literacy was an improper standard to measure citizenship and that corruption was not limited to illiterate voters: “If the ability to write one’s name is a test of good citizenship, there are hundreds of men in Mr. Osborne's home for wayward men on the Hudson able to qualify, for not only have they proved their ability to write their own names but the names of others.”<sup>76</sup>

However, the rise of anti-immigrant and anti-socialist hysteria during WWI weakened resistance to literacy tests in New York.<sup>77</sup> In 1917, New York City held a highly consequential mayoral election, in which the Socialist Party played a significant role. New York City’s

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<sup>72</sup> “Kill the Literacy Test for Future Voters,” *New York Times*, August 27, 1915.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> “Literacy Tests at the New York Convention,” *New York Tribune*, Aug. 26, 1915.

<sup>77</sup> Alexander Keyssar, *The Right to Vote*, 146.

immigrant Jews had already helped elect one congressman and ten state assemblymen on the Socialist ticket.<sup>78</sup> In 1917, over 40 percent of New York City's population was foreign-born—dominated by Eastern European Jews—and thousands of immigrants worried for their families in Europe and opposed U.S. intervention in WWI.<sup>79</sup> Morris Hillquit, the socialist candidate for New York City mayor, was a co-founder and leader of the Socialist Party of America and adamantly opposed U.S. involvement in the war.<sup>80</sup> While Hillquit failed to win the election, he earned 145,332 votes, more than one-fifth of the total vote and almost five-fold more than the previous socialist candidate for mayor.<sup>81</sup>

Fearful of the influences of the growing socialist immigrant voting bloc in New York, Republicans in the state legislature undertook a new approach and attempted to amend the State Constitution through legislatively referred constitutional amendments. Changes to voter qualifications in New York require constitutional amendments passed in successive legislative sessions, which are then presented as referendums to voters on statewide general election ballots.<sup>82</sup> Due in part to the hysteria and fear of the growing immigrant socialist voting base in New York City, the first successful passage of a literacy test bill came in 1918, when the State Senate passed Republican Majority Leader Elon Brown's English literacy test.<sup>83</sup> The test was proposed again in 1919, despite unanimous Democratic opposition: *The New York Tribune* reported, "The Democrats announce that they will fight the adoption of the proposed amendment."<sup>84</sup> The bill, which first passed the Senate, also gained a majority in the Assembly by

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<sup>78</sup> Rebecca A. Kobrin, "Global Perspectives on Jewish Immigrant New York and the 1917 Mayoral Election," unpublished oral presentation notes, 2017, 3.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> "Legislatively Referred Constitutional Amendment,"

[https://ballotpedia.org/Legislatively\\_referred\\_constitutional\\_amendment](https://ballotpedia.org/Legislatively_referred_constitutional_amendment).

<sup>83</sup> "Favor Dairymen's League," *The New York Times*, April 11, 1918.

<sup>84</sup> "Partisan Fight on the Literacy Test Is Seen in Legislature," *New York Tribune*, February 17, 1919.

a vote of 86 to 41.<sup>85</sup> However, an amendment in the bill required the test be passed in the next legislative session.<sup>86</sup>

Anti-socialist hysteria met a breaking point during the 1920 legislative session: The Republican-controlled Assembly voted 116 to 28 to expel five duly elected socialists.<sup>87</sup> The vote was called due to a March report by the Assembly's judiciary committee which denounced the Socialist Party of America as a "disloyal organization composed exclusively of perpetual traitors and intent on overthrowing the government by force and violence."<sup>88</sup> After the vote, Republican Speaker Thaddeus C. Sweet refused to seat the five Socialists: he declared that the "socialist ballots" would not be recognized until the Socialist party had become "thoroughly American."<sup>89</sup> Keyssar notes it was "particularly revealing" that the same legislature that drafted New York's literacy test would crack down on the political beliefs of its citizens.<sup>90</sup> Following Democratic Governor Al Smith's loss to Republican Nathan Miller in the gubernatorial election of 1920, the Republican-led legislature of 1921 was poised to finally pass the literacy test and present the proposal to voters.

The timing of these expulsions is crucial as the subsequent literacy bill would become inextricably linked to Republicans' anti-socialist crusade. On January 12, 1921, Assembly Member Louis Martin, a Republican representing the Upstate town of Oneida, introduced a literacy bill, "proposing an amendment to section one of article two of the Constitution, in relation to qualification of voters."<sup>91</sup> Moreover, Martin was the Chairman of the Assembly

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<sup>85</sup> "Fearon Literacy Bill Passed by Assembly," *New York Tribune*, April 15, 1919

<sup>86</sup> *Ibid.*

<sup>87</sup> "Favor Expelling Five Socialists," *New York Times*, March 30, 1920.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> Keyssar, *The Right to Vote*, 163.

<sup>91</sup> *Journal of the Assembly of the State of New York* (Albany, 1921:1), 39.

Judiciary Committee from 1920-1921 and had presided over the trial of the five Socialist assemblymen.<sup>92</sup> After several months of debate, the literacy bill was reintroduced on April 6 in the State Senate by Senator George Fearon, an Upstate Republican who represented Onondaga. The concurrent bills, Martin's A. 49 and Fearon's S. 7, proposed a constitutional amendment for a literacy test: "After January 1, 1922 no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English; and suitable laws shall be passed by the Legislature to enforce this provision."<sup>93</sup>

Despite almost uniform opposition from Democrats and Socialists, Republicans passed the literacy bills the following week, demonstrating the partisan history behind New York's literacy test law: the Senate vote was 33-16<sup>94</sup> and the Assembly vote was 86-47.<sup>95</sup> The successful votes were due to the fact that the 1921 legislature was "distinctly Republican" and was dominated by Republican Governor Nathan Miller.<sup>96</sup> Reflecting on the bill's passage, Assembly Majority Leader Simon Adler of Rochester defended the literacy test proposal and claimed that "a common language makes for a common understanding, common citizenship and for solidarity in government" and that "everyone must understand our language to understand our governmental institutions."<sup>97</sup>

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<sup>92</sup> Keyssar, *The Right to Vote*, 163.

<sup>93</sup> New York Legislative Record and Index (Albany: Legislative Index Publ. Co, 1921). Senate Introductory Number Record, p. 3. Assembly Introductory Number Record, 122. "The Literacy Test," *New York Times*, May 11, 1921.

<sup>94</sup> *Journal of the Senate of the State of New York* (Albany, 1921:2), 1279.

<sup>95</sup> "Rush On At Albany," *New York Times*, April 15, 1921. The bill was opposed by 21 Republicans.

<sup>96</sup> Arthur W. Bromage, "Literacy and the Electorate," *The American Political Science Review*, Vol. 24, No. 4 (1930), 956. The 1921 legislature was referred to as "Miller's Mill." The Republican majorities in the state legislature were significant: In the Assembly, there were 109 Republicans and 36 Democrats and in the Senate, there were 30 Republicans and 21 Democrats.

<sup>97</sup> *New York Times*, April 15, 1921.

Despite relative ease in passing the literacy bill in the Republican-dominated legislature, Democratic lawmakers attacked the legislation as anti-immigrant. Assemblyman Benjamin Antin, a Russian immigrant who represented the Bronx, spearheaded the opposition and asserted that the literacy test was “an unjust attempt to deprive citizens of their right to vote” and was not a fair test of voters’ intelligence nor a measure of “good citizenship.”<sup>98</sup> He claimed that the literacy test would “drive thousands of citizens away from the polls.”<sup>99</sup> Keyssar finds that the amendment had the potential of disenfranchising hundreds of thousands of Yiddish-speaking Jews, Italians, as well as 189,000 recently enfranchised, illiterate women.<sup>100</sup> The potential impact of this amendment cannot be overstated: by 1920, Jewish and Italian immigrants made up over two-fifths of the total population of New York City.<sup>101</sup> The bill was swiftly signed into law by Governor Miller, and the proposal was added to the 1921 general election ballot.<sup>102</sup>

The political environment of 1921 created the perfect storm to pass a literacy test in a state that had previously rejected these proposals. Nathan Miller won his election against Al Smith by less than 74,066 votes—a 2.5 percent margin of victory.<sup>103</sup> Miller won every county outside of New York City, while Smith won all five boroughs, which accounted for about half of the state’s population.<sup>104</sup> The third-place finisher was Joseph D. Cannon, the Socialist candidate, who earned 159,804 votes, approximately double that of Miller’s margin of victory. The increasing success of the Socialist Party in New York State, building off of Morris Hillquit’s impressive 1917 mayoral run, made passage of the literacy test a priority for Miller and

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<sup>98</sup> “Rush On At Albany,” *New York Times*, April 15, 1921.

<sup>99</sup> *Ibid.*

<sup>100</sup> Keyssar, *The Right to Vote*, 146.

<sup>101</sup> Nancy Foner, “How Exceptional is New York? Migration and Multiculturalism in the Empire City,” *Ethnic and Racial Studies*, Vol. 30, No. 6, (2007), 1001.

<sup>102</sup> *New York Times*, April 15, 1921.

<sup>103</sup> “NY Governor Race - Nov 02, 1920,” OurCampaigns, <https://www.ourcampaigns.com/RaceDetail.html?RaceID=95274>.

<sup>104</sup> *Ibid.*

Republicans in 1921. To demonstrate how important the state of politics in 1921 played in the literacy test's passage, we must examine the 1922 gubernatorial election: Smith, who was fervently against immigrant restrictions and literacy tests, ran against Miller again and won back the governorship by more than 385,945 votes—a 15.3 percent margin of victory.<sup>105</sup>

On November 20, 1923, newly reelected Governor Smith visited the Metropolitan Baptist Church in Harlem to discuss his endorsement of the Great Migration of African Americans from the South to the North.<sup>106</sup> During this “heart-to-heart” talk, *The New York Times* reported that the governor stated he opposed literacy tests throughout his political career. During his address, Governor Smith said:

“I held that education was not a necessary attribute to good citizenship. Some very good citizens cannot read or write. There are well educated men in Sing Sing who not only wrote their own names, but another man's name. Suppose it was necessary to have a high school diploma to be Governor; where would I be? I never had the chance. Anyone willing to work, who is fairly intelligent, is an asset to the country. I wish your movement all possible success. Call on me and I will help, either in word or deed.”<sup>107</sup>

Smith's words stood in stark contrast with those of the 1921 Republican-led legislature and represented the ethos of the Democratic Party at the time: literacy tests were discriminatory and restrictive and the willingness to work and participate in the American economy, and not educational status, was the determining factor of “good citizenship.” The mention of Sing Sing is particularly striking: Sing Sing is a maximum-security prison in Upstate New York that housed the state's execution chamber, which executed hundreds of people by electric chair.<sup>108</sup> The invocation of Sing Sing, the home to the worst criminals in the state, bolstered the view that the

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<sup>105</sup> “NY Governor Race - Nov 07, 1922,” OurCampaigns, <https://www.ourcampaigns.com/RaceDetail.html?RaceID=95273>.

<sup>106</sup> “Smith Endorses Negro Migration...Attacks Literacy Test,” *New York Times*, November 20, 1923.

<sup>107</sup> Ibid. Emphasis added.

<sup>108</sup> Dan Bernstein, “Hub System: Profile of Inmate Population Under Custody on January 1, 2007,” New York State Department of Correctional Services, 2007.

literacy test was irrational and far removed from any standard of “good citizenship”: who would claim that a literate murderer on death row in Sing Sing was a “good citizen” who deserved the right to vote over an illiterate, but hardworking and law-abiding Jewish tailor on the Lower East Side of New York City? Moreover, Governor Smith was the figurehead of the national Democratic Party and would go on to run for president in future years. Did Smith’s lack of a high school diploma negate his achievements as governor of the largest state in the nation or make him less of an American? If just a small percentage of votes had gone his way in the 1920 election, Smith would most certainly have vetoed any literacy bill that came across his desk.

Immigrant advocacy groups expressed swift opposition to the literacy test. On May 25, 1921, Simon Wolf submitted a report to the Union of American Hebrew Congregations in Buffalo and urged that the literacy test proposal be rescinded.<sup>109</sup> Wolf, who was serving as the Chairman of the Board of Delegates on Civil Rights of the Union, believed that the English literacy test was an arbitrary measure meant to prevent Jews and other immigrants from voting. He reiterated the notion that hard work and stellar contributions to American society—not English literacy—conferred “good citizenship”: “The immigrant capable of working brings a valuable asset to the wealth of the nation without endangering its future.”<sup>110</sup>

While immigrant activists such as Wolf demanded the potential amendment be rejected, elite newspapers such as *The New York Times* actively promoted voting “Yes” on the amendment.<sup>111</sup> The *Times*’ editorial board argued that the test would not be discriminatory, but instead it would actually promote literacy and lead to a more educated electorate.<sup>112</sup> They reiterated Republicans’ claims that knowledge of English, the language of the Constitution, was

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<sup>109</sup> Simon Wolf, “Ask for Repeal of Literacy Test,” *New York Times*, May 25, 1921

<sup>110</sup> *Ibid.*

<sup>111</sup> “The Literacy Test,” *New York Times*, May 11, 1921.

<sup>112</sup> *Ibid.*

a “just and elementary requirement of citizenship” and that it was necessary for New York, a state with so many foreign languages, to have a “common language.”<sup>113</sup> The *Times* acknowledged some of the key arguments against the test, such as the issue of mal-intentioned citizens still being able to vote because they were literate and argued that Americanization through English literacy of the electorate would dilute the power of bad actors: “the cleverest agitator is disarmed if he does not find colonies of the ignorant and oppressed who are ready to respond to his inflammatory doctrine.”<sup>114</sup>

The *Times* also argued that the law would not discriminate against particular groups, as it would be applied equally to all citizens in New York and that the “easy remedy” to prevent disqualification was to learn English: “The common welfare should prevail over any temporary curtailment of the privileges of particular classes; and these have in their own hands the easy remedy of their disqualification...Nobody will be excluded who will take the pains to acquire English.”<sup>115</sup> The language used by the *New York Times* and other proponents of the literacy test is particularly important. While advocates of more expansive democracy, such as Assemblyman Antin, used terms such as “the right to vote,” the *Times* resorted to characterizations of suffrage as “the privileges of particular classes.” Under this view, conditioning suffrage was “democratic” and the “temporary curtailment” of suffrage was a necessary sacrifice in order to attain an educated, English-speaking electorate. Leading up to the general election vote on the amendment, a weakened Democratic Party meant that the anti-literacy test coalition had significantly less manpower to influence voters, compared to the Republican Party, which was

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<sup>113</sup> “The Literacy Test,” *New York Times*, May 11, 1921.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

supported by the biggest newspapers, educators, federal immigration officials, and powerful, organized reform groups.

On October 23, 1921, just two weeks before the election, immigrant and Jewish rights activist Max Kohler criticized the *Times*' support of the literacy amendment and attempted to correct the historical narrative of the proposal.<sup>116</sup> Kohler argued that proponents of the literacy test were hiding their discriminatory intentions behind a false promise to improve immigrant literacy. He explained that New York lacked the resources and programs to educate every illiterate citizen and there was no corresponding effort to increase funding for education programs in the proposed amendment; this proved that the drafters of the bill did not intend to tackle the illiteracy problem sincerely.<sup>117</sup> He also mentioned that English illiteracy among foreign-born women was extremely high and found it hypocritical for the nation to have just extended the right to vote to women under the Nineteenth Amendment, only for New York to swiftly curtail their suffrage.<sup>118</sup>

Furthermore, Kohler argued that the literacy test plan was so haphazard and ill-conceived that it would result in the disenfranchisement of native-born citizens, too. The lack of educational resources to remedy the "temporary curtailment" of voting would only be exacerbated in rural areas where educational opportunities were significantly worse than in New York City.<sup>119</sup> He also paralleled this impulsive disenfranchisement movement to the nefarious suppression of Black voters in the South. It was hypocritical that the New Yorkers and Northerners would "emphatically decry the action of the South" in preventing Black Americans from voting, while

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<sup>116</sup> Max Kohler, "Case Against the Proposed Amendment," *New York Times*, October 23, 1921.

<sup>117</sup> *Ibid.* Evening schools, the primary way immigrants received education, were inadequately funded and only serviced a small amount of the immigrant population.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

disenfranchising hundreds of thousands of future foreign-born citizens in their own home.<sup>120</sup> He concluded that the New York literacy proposal should not be characterized as a way to Americanize and educate immigrants, but as a tool of “Know-Nothingism propaganda.”<sup>121</sup>

In addition to Republican politicians and the *New York Times*, good-government reform groups created during the Progressive Era were a crucial arm of the literacy test campaign. Keyssar argues that while early-twentieth century Progressive Era reformers were guided by missions to end the corruption of political machines in the cities, such as Tammany Hall, and to “clean up politics,” many of these reformers were antagonistic toward working-class, foreign-born voters and “unabashedly welcomed the prospect of weeding such voters out of the electorate.”<sup>122</sup> Fear of the illegal immigrant voter was rampant among New York City progressive reformers. Keyssar writes that many of these native-born, upper-class progressive reformers opposed immigrants’ participation in elections because recently arrived immigrants were deemed to be “insufficiently tutored in American values and the workings of American democracy.”<sup>123</sup> Additionally, there was a great paranoia of the corruption of the naturalization process: electoral outcomes were “twisted by ‘naturalization mills’ that, with the aid of ‘professional perjurers and political manipulators,’ transformed thousands of immigrants into citizens in the weeks before elections.”<sup>124</sup>

The literacy test was viewed as the ideal way to achieve the cleansing of New York City politics and to weed out “undesirable” immigrants while promoting “good citizenship” through an English literacy requirement. Two New York City-based groups that led the charge for the

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<sup>120</sup> Kohler, “Case Against the Proposed Amendment,” *New York Times*, October 23, 1921.

<sup>121</sup> *Ibid.*

<sup>122</sup> Keyssar, *The Right to Vote*, 159.

<sup>123</sup> *Ibid.*, 83.

<sup>124</sup> *Ibid.*, 123.

literacy test were Citizens Union and the Honest Ballot Association.<sup>125</sup> Citizens Union, founded in 1897, was a nonpartisan civic group dedicated to checking Tammany Hall and to “ensure fair elections, clean campaigns, and open, effective government that is accountable to the citizens of New York.”<sup>126</sup> The Honest Ballot Association was founded in 1909 by former President Theodore Roosevelt amidst the backlash to widespread election frauds in New York City, with a mission of “planning, conduction, supervising, and certifying the election.”<sup>127</sup> In a joint statement, the two groups proclaimed, “If immigrants were to be allowed to vote, it would be better to educate them.”<sup>128</sup>

Another arm of the broad coalition of the literacy test movement in New York were nativist organizations. These anti-immigrant groups aided the broader advocacy movement by exploiting racial tension and unabashedly saying the quiet part out loud. One such group was the Allied Patriotic Societies. The APS was an anti-immigrant organization whose mission in the 1920s was to “prohibit the speaking of foreign languages on public streets and squares in the City of New York.”<sup>129</sup> Nativist groups such as the APS viewed the foreign-born as second class citizens and portrayed newcomers as being genetically and morally inferior, whose cultural habits and foreign languages made them “unable or unwilling to ‘assimilate’ into the ‘mainstream’ of American culture.”<sup>130</sup> The APS saw the literacy test as an effective means of ensuring immigrants were barred from the political process.<sup>131</sup> Thus, the joint efforts of anti-immigrant groups—who excited racist, nativist sentiments—and nonpartisan, reform

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<sup>125</sup> Keyssar, *The Right to Vote*, 146.

<sup>126</sup> Oh, *Struggles over Immigrants’ Language*, 139.

<sup>127</sup> Ibid.

<sup>128</sup> *New York Herald*, January 19, 1923, Box 1, Folder 6, A0063, New York State Archives.

<sup>129</sup> “Asked Ban in Public on Foreign Tongues, The Allied Patriotic Societies,” *New York Times*, December 20, 1922.

<sup>130</sup> Ron Hayduk, *Democracy for All*, 26.

<sup>131</sup> *New York Times*, December 20, 1922.

organizations—who reasoned with elite white middle and upper class voters about the need for a literacy test to educate the foreign-born and to tackle corruption—formed a formidable alliance and campaign to pass the literacy test amendment in 1921.

### **The State of Illiteracy**

Proponents of the literacy test cited statistics from the United States Census Bureau to demonstrate the grave threat of immigrant illiteracy in the country and specifically in New York, the immigrant hub. However, these reports indicate there was no standardized definition of “literacy” at the time, which led to further paranoia over the lack of government action on illiteracy. Chairman Strayer released a report in 1922 advocating for a federal role in education and the creation of a department of education.<sup>132</sup> Strayer’s report lobbied in favor of the Towner-Sterling Bill, which would apportion funding to the states to remove literacy, Americanize the foreign-born, and equalize educational opportunities across rural and urban districts.<sup>133</sup> In 1920, the Census listed 4,931,905 people as “illiterate”: Of those 4.9 million, 3,084,733 were native-born and 1,847,172 foreign-born.<sup>134</sup>

Strayer believed that immigrants presented a danger to the nation, as the percentage of illiteracy among immigrants was high and increasing.<sup>135</sup> However, Strayer’s report also demonstrates that there was a legitimate issue of illiteracy that stretched beyond immigrants.<sup>136</sup> In 1924, the Illiteracy Commission of the National Educational Association reported that there were “ten million illiterates and an additional ten million semi-illiterates.”<sup>137</sup> Strayer reported

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<sup>132</sup> Strayer, “Report of National Education Association Legislative Commission,” 21.

<sup>133</sup> *Ibid.*, 11.

<sup>134</sup> Bromage, “Literacy and the Electorate,” 962.

<sup>135</sup> Strayer, 36. The number of illiterate foreign-born in the U.S. increased from 1,287,135 in 1900 to 1,763,740 in 1920.

<sup>136</sup> *Ibid.*, 29.

<sup>137</sup> Bromage, 962.

that in 1920 that there were 1,500,000 people over ten years old in the nation “who are unable to speak English” with many more who are sufficiently able to speak English to pass the Census enumerator, “yet not have that degree of literacy which means ability to comprehend the fundamental principles of our Government.”<sup>138</sup>

Since education responsibilities rested with the states, the federal government failed to standardize a definition of “literacy.” Strayer claimed that the federal Census understated the nation’s illiteracy problems, given that the agency defined “illiteracy” as such:

1. No test to determine illiteracy is made by the census enumerator, but the statement of each person enumerated, or a statement made on his behalf by some member of his family or another person, is accepted by the enumerator.<sup>1</sup>
2. A statement by a foreigner that he is able to read and write in a foreign language is sufficient to cause him to be returned by the enumerator as a literate.<sup>1</sup>
3. The Census Bureau classifies as illiterate any person ten years of age or over who is unable to write in any language, . . . regardless of ability to read.<sup>2</sup>
4. In general the illiterate population as shown by the Census reports should be understood as representing only those persons *who have had no schooling whatever.*<sup>2</sup>
5. . . . the “literate” population in this report should be understood as including all persons who have had even *the slightest amount of schooling.*<sup>3</sup>

Given the lack of a standard test for literacy administered by the census enumerators, literacy was subjective, and relied on the attestations of the individuals surveyed. According to Strayer, many illiterates falsified their statements to the Census “due to the fear of the stigma of illiteracy.”<sup>139</sup> One glaring difference between the 1920 Census’ definition of “illiteracy” and the federal Literacy Test’s definition was that the latter defined “illiteracy” as an inability to write in any language, or if an individual lacked any form of schooling while the former rejected application for entry on the inability to read in any language. This shows the failure of the federal government at the time to rigidly define “literacy” and “illiteracy,” which deferred all educational responsibility onto the states.

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<sup>138</sup> Strayer, “Report of National Education Association Legislative Commission,” 36.

<sup>139</sup> Ibid, 30.

Strayer believed the illiteracy problem was more accurately depicted by Army surveys that found 25 percent of men were illiterate, compared to the Census which reported an illiteracy rate of about six percent.<sup>140</sup> The Army's literacy test defined "literacy" as the ability to "read and understand newspapers and write letters home."<sup>141</sup> However, the American illiteracy issue—whether six percent or 25 percent—was alarming to education officials, when considered among the other "enlightened countries of the world."<sup>142</sup> In countries such as Germany, Switzerland, the Netherlands, and Finland, the illiteracy rates were below one percent, and in English-speaking countries such as England and Scotland, the rate was still below that in the United States.<sup>143</sup>

New York was heavily scrutinized in the report because it was the epicenter of the illiteracy problem: with 425,022 illiterate people in 1920, New York had higher illiteracy than any state in the nation.<sup>144</sup> Although illiteracy decreased in the country between 1910-1920, the number of illiterate people in New York increased from 406,020 to 425,022.<sup>145</sup> Additionally, the Board of Regents reported in 1919 that 597,000 foreign-born residents in New York could not speak English.<sup>146</sup> While the 1910 census reports showed that illiteracy in New York was slightly lower than the national average (5.5 percent compared to six percent), the sheer number of illiterates was a cause for alarm among government officials.<sup>147</sup>

Furthermore, the greatest fear came from the fact that the immigrants appeared to be the root cause of illiteracy in New York: the illiteracy rate among immigrant New Yorkers was

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<sup>140</sup> Strayer, "Report of National Education Association Legislative Commission," 33.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid, 30.

<sup>143</sup> Ibid. This data was compiled from communications with foreign legations during April, 1922. Foreign illiteracy rates: Switzerland: 0.5%; Netherlands: 0.6%; Finland: 0.9%; Germany: 1%; Scotland: 3.5%; England 5.8%.

<sup>144</sup> Ibid. The other states with the highest number of illiterates were Pennsylvania (312,699), Georgia (328,838), Alabama (278,082), Mississippi (229,734). New York still had nearly 100,000 more illiterates than the closest state.

<sup>145</sup> Ibid.

<sup>146</sup> Journals of the Meetings of the Board of Regents of the University of the State of New York, *The Department of Education*, January 30, 1919.

<sup>147</sup> Kohler, "Case Against the Proposed Amendment," *New York Times*, October 23, 1921.

much higher than the rate among native-born New Yorkers (12.2 percent compared to 1.3 percent).<sup>148</sup> This greatly bolstered the literacy test campaign's claim that illiteracy was a serious problem that needed to be addressed. However, an understated complication to the immigrant illiteracy problem was that the illiteracy rate in rural New York was much higher than the rate in the cities: the illiteracy rate in the cities was six percent compared to 10.1 percent in rural areas.<sup>149</sup> This rural, urban divide was evident across the nation:

*Percentage of Illiterates in Rural and Urban Communities—1920 Census*

State	Native white Percentage illiterate			Negro Percentage illiterate		
	Rural	Urban	Ratio, Rural to Urban	Rural	Urban	Ratio, Rural to Urban
Rhode Island.....	2.4	.6	4 to 1	11.8	10.2	1.1 to 1
New Jersey.....	1.2	.3	4 to 1	9.1	5.4	1.7 to 1
Wisconsin.....	.9	.3	3 to 1	4.1	4.1	1 to 1
Missouri.....	2.9	.7	4.1 to 1	20.6	9.6	2.1 to 1
Florida.....	4.1	.7	5.8 to 1	27.4	12.3	2.2 to 1
Kentucky.....	8.6	1.9	4.5 to 1	23.0	18.9	1.2 to 1
Louisiana.....	16.3	2.0	8.1 to 1	45.4	22.1	2.1 to 1
Colorado.....	2.1	.6	3.3 to 1	10.0	5.5	1.8 to 1
California.....	.7	.2	3 to 1	8.6	4.2	2.0 to 1

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The table above indicates that illiteracy among the white native-born population in 1920 was from 2 to 8 times greater in rural areas as compared to urban communities.<sup>151</sup> While New York had the largest illiterate immigrant population in the nation, it also had a significant number of illiterate native-born Americans, mainly living in rural areas: over 80 percent of the nation's illiterate native population lived in rural communities. Strayer emphasized the fact that rural communities, not just immigrants in urban centers, contributed significantly to the nation's illiteracy problem: "The inequalities in our educational system represented by our ineffective rural schools may be held principally responsible for the existence of our present illiteracy

<sup>148</sup> Kohler, "Case Against the Proposed Amendment," *New York Times*, October 23, 1921.

<sup>149</sup> *Ibid.*

<sup>150</sup> Strayer, "Report of National Education Association Legislative Commission," 51.

<sup>151</sup> *Ibid.*

problem.”<sup>152</sup> Proponents of the literacy test would ignore the potential mass disenfranchisement of poorly educated rural voters in pursuit of the disenfranchisement of the undesirable foreign-born electorate. However, rural voters’ antagonism to the literacy test proposal would materialize in November.

### The Referendum Vote

On November 8, 1921, voters in New York state were presented with seven constitutional amendments, including the literacy test, denoted as Amendment No. 3.<sup>153</sup> Five of the amendments, including the literacy test, passed.<sup>154</sup> The literacy test returned the second-largest majority of all seven amendments, with 869,355 “Yes” votes and 632,144 “No” votes.<sup>155</sup> Despite a large majority of New Yorkers voting in favor of the literacy test, the margins of victory varied between New York City and Upstate, demonstrating a regional divide on amendment: there were 160,766 more “Yes” votes than “No” votes for the amendment in New York City, while the vote Upstate was about evenly divided.<sup>156</sup>

	No. 1. (Soldiers' Preference in Civil Service).		No. 2. (Increased Salaries for Legislators).		No. 3. (Literacy Test for Voters).	
	Yes.	No.	Yes.	No.	Yes.	No.
E. D. Berough.						
117—Manhattan	15,061	21,231	14,671	17,415	20,607	10,535
10—Bronx	2,395	4,400	2,782	3,586	2,644	3,291
10—Brooklyn	2,562	5,054	2,675	4,014	4,004	2,435
17—Queens	2,352	4,098	1,976	4,459	2,953	2,296
<b>172</b>	<b>22,370</b>	<b>34,783</b>	<b>22,104</b>	<b>29,474</b>	<b>30,208</b>	<b>18,557</b>

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<sup>152</sup> Strayer, “Report of National Education Association Legislative Commission,” 51.

<sup>153</sup> “Literacy Test May Carry,” *New York Times*, November 9, 1921. The other amendments included soldiers’ preference in civil service, increases in legislators’ salaries from \$1,500 to \$3,000 per year, creation of a state children’s court, new municipal governments for Westchester and Nassau counties, and two amendments that dealt with abandoned lands along the Erie Canal.

<sup>154</sup> *Ibid.*

<sup>155</sup> “Literacy Test Approved,” *New York Times*, November 10, 1921. The literacy test came second to an uncontroversial amendment establishing state children’s courts.

<sup>156</sup> *Ibid.* Margin of “Yes” votes in rural districts. Binghamton: +672; Buffalo: +806; Rochester: -9,992; Troy: evenly divided. Franklin, Genesee, Ontario, Orleans, Putnam, Suffolk, Warren, Westchester, Yates gave majorities, and some of the most remote districts voted against the amendment.

<sup>157</sup> *New York Times*, November 9, 1921.

Within New York City, the only borough to vote against the literacy test amendment (2,641 for and 3,291 against) was the Bronx, which was home to a large number of immigrants and represented by Assemblyman Antin.<sup>158</sup> In the heavily Democratic borough of Manhattan, the vote margin was 2:1 in favor of the amendment, largely as a result of the advocacy efforts of reform groups and the *New York Times*.<sup>159</sup>

Additionally, the divide throughout Upstate New York was notable, considering the dominance of Republican politics and pro-immigrant restriction support. In the districts represented by Senator Fearon and Assemblyman Martin, the two authors of the literacy test amendment, the vote was virtually split. While there were significantly fewer immigrants in Upstate New York, the divide on the literacy test was caused by two factors: 1) more remote districts had less access to primary and secondary education and therefore fewer citizens would be able to pass literacy tests and 2) rural communities strongly opposed additional voter qualifications such as personal registration, which was restricted to cities.<sup>160</sup> Despite these concerns, voters did pass the amendment with an overwhelming mandate, setting the stage for the use of an English literacy test for voting in the country's most populous state.

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<sup>158</sup> *New York Times*, November 9, 1921.

<sup>159</sup> "Literacy Test May Carry," *New York Times*, November 9, 1921.

<sup>160</sup> Joseph P. Harris, *The Registration of Voters in the United States*, (Washington, D.C.: The Brookings Institute, 1929). "Literacy Test Administration," *State Bulletin of New York State Association*, Sup. to Vol. II, No. 5 (March, 1922), 2.

## II. Testing the Test: The Implementation of New York’s Literacy Test Law

*Educators are interested in any movement to raise the standards of citizenship.*

- Lewis A. Wilson, New York State Department of Education, Director of the Division of Vocational and Extension Education<sup>161</sup>

*The true test of citizenship is character, whether a man is a peaceful, law-abiding citizen, whether he obeys our laws, whether he is industrious and thrifty, whether he is a good provider for his wife and children, whether he takes an intelligent interest in community affairs, and not whether he can answer a few simple questions in English.*

- New York State Assemblymember Benjamin Antin<sup>162</sup>

### A. The Design

#### The Whitley Bill of 1922

The overwhelming success of the literacy test referendum vote catalyzed a movement to define citizenship and suffrage through literacy and education. On January 1, 1922, the literacy test amendment was officially ratified to the State Constitution and literacy was now a condition of voting in New York.<sup>163</sup> The gravity of the proposed law change was significant: it was estimated that there were upwards of 200,000 new voters annually.<sup>164</sup> However, the amendment did not implement any specific literacy test, but required “the Legislature to prescribe the method by which ‘literacy’ shall be determined.”<sup>165</sup> On January 17, State Senator James L. Whitley, a

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<sup>161</sup> University of the State of New York, “University of the State of New York Bulletin,” Vol. 744 (Albany, N.Y.: 1922), 3.

<sup>162</sup> Benjamin Antin, “The Test for New Voters,” *New York Times*, Oct 23, 1924, Roll #2, Box 8, Folder 7, A0063, NYSA.

<sup>163</sup> “The Literacy Test,” *New York Times*, January 25, 1921.

<sup>164</sup> “Fix the Literacy Test Rules,” *New York Times*, September 21, 1923.

<sup>165</sup> *New York Times*, January 25, 1921. Kohler, *New York Times*, October 23, 1921.

Republican representing Monroe, introduced a bill to establish a functional literacy test under the provisions of the amendment.<sup>166</sup> The bill provided for two methods to prove literacy: literacy tests administered by the local elections boards and certificates of literacy.<sup>167</sup>

The original version of the NYSL Test was similar to several of the tests in other states that required voters to read and write passages from government documents. According to the bill, the Secretary of State's office would prepare 100 different extracts of 50 words from the State Constitution and from these 50-word extracts, the prospective voter would read aloud the entire section and write out 10 words of the words—chosen by the election inspector.<sup>168</sup> The legislation mandated proctors administer and supervise the examination and each tester was required to write their full name and voting address on the certificate at the beginning of the examination. Whitley was aware that there would be a large number of non-native English speakers who took the literacy test: the bill required proctors to read the instructions “slowly and distinctly” since “[m]any candidates, because of their foreign birth, may be slow in understanding all the directions.”<sup>169</sup> Upon completion of the tests, certificates of literacy would be delivered in person or mailed to applicants within three days. If applicants failed to pass the test, they could take it again.

In 1922, the legal definition of a “new voter” in New York was updated to include a literacy requirement. The election law required a voter, regardless of gender, to be 21 years old by Election Day, an inhabitant of the state for one year prior to the election, a resident of the county for at least four months before the election, and a resident of the election district for the

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<sup>166</sup> “Bill Is Introduced to Make Literacy Test for Voters Effective.” *New York Times*, January 17, 1922.

<sup>167</sup> Crawford, “The New York State Literacy Test,” 261.

<sup>168</sup> “University of the State of New York Bulletin,” 5.

<sup>169</sup> *Ibid*, 10.

past thirty days before the election.<sup>170</sup> Foreign-born citizens also had to be naturalized for at least ninety days prior to the election or if a citizen through marriage, to be an inhabitant of the country for five years.<sup>171</sup> The literacy amendment revised the definition of a “new voter” to stipulate that all men and women who became qualified to vote *after* January 1, 1922 were required to be literate in English.<sup>172</sup> Any new resident of New York who had previously voted in one or more states but moved to New York State after Jan 1, 1922 was also required to prove their literacy.<sup>173</sup> However, any citizen who was qualified before January 1, 1922, regardless of whether they had voted previously, was grandfathered in and exempt from the literacy requirement.

In a memorandum to local school superintendents, Alfred Rejall, the Supervisor of Immigrant Education at the State Department of Education, insisted that no previously qualified citizen would be disenfranchised by the new election laws: “Illiterate persons who have voted in New York State are not affected as the law is not retroactive. All persons who have once voted in the State are eligible to vote without the test.”<sup>174</sup> For educators who prioritized eradicating illiteracy, this policy was inadequate, as potentially hundreds of thousands of illiterate voters would be exempt from the literacy requirement, solely because of their prior voter eligibility.<sup>175</sup>

Immediately following the bill’s introduction, reports emerged that civic organizations and educators throughout the state were “not in accord with the Whitley plan of making election

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<sup>170</sup> “Fix Literacy Test Rules,” *New York Times*, September 21, 1923.

<sup>171</sup> *Ibid.*

<sup>172</sup> “Simple Test for the ‘New’ Voter,” *Newburgh News*, October 8, 1924, Roll #2, Box 5, Folder 4, A0063, NYSA. Emphasis added to show that this was a grandfather clause that would allow some illiterate voters to continue voting. There was much discussion of the fact that many of the retroactively-qualified voters were women who “have not yet taken advantage of the federal suffrage amendment and who will vote for the first time this year.”

<sup>173</sup> *Ibid.*

<sup>174</sup> “Alfred Rejall Lectures on Examination Which New Voters Must Pass,” *Syracuse Herald*, August 14, 1922, Roll #2, Box 1, Folder 3, A0063, NYSA.

<sup>175</sup> *Newburgh News*, October 8, 1924.

officials the arbiters in these educational tests.”<sup>176</sup> Instead, they argued that the New York State Department of Education should certify the qualifications of voters under the literacy law. Education officials viewed the passage of the literacy test amendment as a mandate for reforming the New York election system through Americanization and English-language education. Lewis A. Wilson, the Director of the Division of Vocational and Extension Education at the Department of Education, stated, “Educators are interested in any movement to raise the standards of citizenship.”<sup>177</sup> He argued literacy tests designed by education officials would force the state to reckon with “its illiteracy problem among the 400,000 foreign-born residents who are deficient in English reading and writing.”<sup>178</sup> In Strayer’s 1922 report, he applauded New York’s new law and argued that “the primary purpose of education is to develop good citizens,” and that “a Government of the people can be no stronger than the composite citizenry of which it is composed.”<sup>179</sup> He stated that the need for education and Americanization was not limited to the foreign-born, as illiterate native-born Americans were still entitled to the ballot, and suggested the federal government include literacy and education in its definition of “good citizenry.”<sup>180</sup>

On January 19, the Women’s City Club in New York City held a conference for educators and heads of civic organizations to meet with city and state education officials and draft recommendations to the Whitley committee.<sup>181</sup> Reporting on the proposals from the

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<sup>176</sup> “Bill Is Also Introduced to Make Literacy Test for Voters Effective,” *New York Times*, January 17, 1922.

<sup>177</sup> “University of the State of New York Bulletin,” 3.

<sup>178</sup> *Ibid.*

<sup>179</sup> Strayer, “Report of National Education Association Legislative Commission,” 21.

<sup>180</sup> *Ibid.* Patricia Serviss, “Activists, Immigrants, Citizens: Grounding Rhetorical Conceptions of Literacy,” *Writing Program – Dissertations* (Ph.D., -- New York, Syracuse University, 2010), 136. Serviss echoes this sentiment: “Many studies of literacy history approach literacy as intimately connected to citizenship; to be literate is to demonstrate one’s potential as a citizen.”

<sup>181</sup> “Literacy Test Administration,” *State Bulletin of New York State Association*, 2. Organizations in attendance included Honest Ballot Association, Citizens Union, Council on Immigrant Education, Women’s City Club, Catholic Charities, New York State League of Women Voters, Columbia University Bill Drafting Bureau, and others.

conference, the *New York Times* agreed with attendees that it would be more practical for the literacy test to be run by education officials.<sup>182</sup> The *Times* also argued that the NYS Department of Education’s Board of Regents was already a “unique and well organized examination system that should not only be helpful at home but be a model for other States.”<sup>183</sup> One of the major successes of the January 19 conference was the addition of a literacy certificate program—run by the Board of Regents—to the Whitley bill. This program was ultimately incorporated into Section 166 of the revised election law of 1922.<sup>184</sup> However, this amendment created serious logistical issues: both the Department of Education and the Board of Elections had the authority to design and implement literacy tests.

### **Restructuring the Literacy Test: The Regents Program**

New York’s creation of a literacy certificate through its educational arm of government was the first of its kind in the nation. The goal of the Board of Regents’ literacy program was to assess the ability “to read and write intelligently.”<sup>185</sup> The Regents oversaw all educational activities within New York and set the test requirement at the fourth year of English literacy, with the intention that the grade minimum would increase gradually over time.<sup>186</sup> Applicants could opt out of the literacy test by presenting proof that they completed the fifth grade in the New York public or private schools and receive a certificate of literacy.<sup>187</sup>

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<sup>182</sup> “The Literacy Test,” *New York Times*, January 25, 1922. The *Times* argued, “It would seem more appropriate to use educational machinery for the determining of literacy and more economical to extend this educational examination machinery to include the issuance of “literacy” certificates, admitting to the practice of citizenship, than to erect a new piece of political machinery for this purpose.”

<sup>183</sup> *Ibid.*

<sup>184</sup> Morrison, “New York State Regents Literacy Test,” 146. The amendment empowered the Board of Regents to “adopt and enforce rules governing the issuance, and further authentication, of such certificates of literacy and the preparation or examination of applicants therefor.”

<sup>185</sup> Crawford, “New York State Literacy Test,” *The American Political Science Review*, Vol. 19, No. 4 (1925), 262.

<sup>186</sup> *Ibid.*

<sup>187</sup> “University of the State of New York Bulletin,” 5. “A new voter may present to the board inspectors a certificate of literacy signed by the principal or other head of a public or private school in the city or town in which the voter

Following the enactment of the literacy conference's amendment, State Commissioner of Education Dr. Frank Graves appointed a commission to study the creation of a literacy certification process and to formulate a plan for designing and administering the test.<sup>188</sup> Rejall was appointed the chairman of the Graves Commission.<sup>189</sup> Rejall believed that "[t]he extent of illiteracy in the nation is a blot, a disgrace, a menace to our country"<sup>190</sup> and claimed literacy tests "would protect the ballot from the dangers that are inherent in an illiterate electorate."<sup>191</sup>

The commission's tasks included creating a literacy test that successfully assessed the ability to "read aloud intelligibly" and "write legibly."<sup>192</sup> The commission argued "literacy" required a voter to be able to "read current political discussions in order to vote intelligently" and to "express his thoughts through the medium of written English."<sup>193</sup> However, it found that the original literacy test could not properly assess its definition of "literacy." From a word study of the State Constitution, the commission found that not only were half the words above the fourth-grade reading level—the minimum level under the law—but more than a quarter of the words were not contained in Dr. Edward Thorndike's "The Teachers' Word Book" of 10,000 most common words.<sup>194</sup> The commission reported that the Constitution contained "archaic or strictly legal terms almost never used outside of legal writing."<sup>195</sup>

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applies to be registered...to the effect that such principal or head has examined the voter, or his educational credentials, and certifies that the voter is able to read and write English."

<sup>188</sup> Morrison, "New York State Regents Literacy Test," 147.

<sup>189</sup> Ibid. The men appointed to the committee included professors at Columbia University and Cornell University, as well as members of the NYS Department of Education.

<sup>190</sup> Alfred E. Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, (New York: Noble and Noble Publishers, 1926), 4.

<sup>191</sup> Rejall, "A New Literacy Test for Voters," *School and Society*, Vol. 19, No. 479 (March, 1924), 237.

<sup>192</sup> Morrison, 147.

<sup>193</sup> Ibid, 149.

<sup>194</sup> Morrison, "New York State Regents Literacy Test," 148. Edward L. Thorndike, *The Teachers' Word Book*, (New York: Teachers College, Columbia University, 1921).

<sup>195</sup> Ibid, 147.

These findings posed several challenges, as the elections board's literacy test required selections of 50-word extracts from the Constitution, which the average reader would likely not comprehend—the test of reading aloud “intelligibly” would be impossible.<sup>196</sup> Moreover, the elections board's test was rather subjective: writing “legibly” was at the discretion of the inspector.<sup>197</sup> Hypothetically, one inspector could choose the ten easiest words, while another inspector could choose ten most difficult words. Dr. J. Cayce Morrison, the head researcher for the Depart of Education and a member of the commission, believed this test “would merely become a dead letter or a tool to permit election officials to control large elements of the new voters.”<sup>198</sup> As noted in Chapter 1, corruption by election officials was a significant concern among progressives and reformers.<sup>199</sup>

Another task of the Graves Commission was to determine the intent of the law. Morrison claimed that it was evident in text of the law, as well as in the debates that had preceded its enactment, that it was enacted to “deprive new voters, who had not gained the ability to read and write the English language, of the privilege of the ballot and [to] raise the general educational average of the new electorate.”<sup>200</sup> Unlike the visible intentions of the literacy laws in the South that used literacy tests to barred Black voters explicitly and did include any education purposes behind the restrictive measures, the public understanding of the New York literacy law was that it would serve a dual purpose: barring illiterate voters *and* raising the literacy rates of the electorate through education.

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<sup>196</sup> Morrison, “New York State Regents Literacy Test,” 148.

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid.*

<sup>199</sup> Keyssar, *The Right to Vote*, 159.

<sup>200</sup> Morrison, 149.

Due to its findings, the Graves Commission was able to persuade the Secretary of State to allow the creation of an additional literacy test, which excluded “archaic or usual words” from the test.<sup>201</sup> This new test was to conform to Dr. Thorndike’s list and would consist of one reading selection followed by ten questions based on the selection, with single-word or short answers.<sup>202</sup> Every member of the commission prepared eight to ten selections. Altogether, the commission created 1,326 selections on 93 different subjects and ultimately chose 30 of the selections, which were mimeographed.<sup>203</sup>

In order to test the efficacy of its selections, the committee gave the 30 test versions to more than 200 fourth-grade students in public schools in Troy, Albany, Schenectady, and New York City.<sup>204</sup> Every selection required a minimum passing rate of 75 percent of the fourth graders, or else they would be scrapped.<sup>205</sup> In order to ensure the tests were standardized, the committee selected a wide range of schools, including those situated in high immigrant populations and schools in wealthier residential districts.<sup>206</sup> This literacy test system was novel: no other state structured their literacy tests from the results of meticulous scientific experimentation. In the summer of 1921, the Department of Education and the Board of Regents approved the literacy test system devised by the Graves Commission and prepared the tests for the October 1922 voter registration window.<sup>207</sup>

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<sup>201</sup> Morrison, “New York State Regents Literacy Test,” 150.

<sup>202</sup> Rejall, “A New Literacy Test for Voters,” 235.

<sup>203</sup> Morrison, 150.

<sup>204</sup> *Ibid.*

<sup>205</sup> “30 out of 333 Failed Literacy Test,” *White Plains Reporter*, October 25, 1924, Roll #2, Box 8, Folder 9, A0063, NYSA.

<sup>206</sup> Morrison, 151.

<sup>207</sup> *Ibid.*, 154.

# An Examination of The Regents Literacy Test

The following is a sample selection of the Regents literacy test<sup>208</sup>:

Test 2

NEW YORK STATE REGENTS LITERACY TEST

Write your name here.....

First name                  Middle name                  Last name

Write your voting address here.....

Write the date here.....

Month                  Day                  Year

**INSTRUCTIONS FOR THE TEST**

This is a test to see whether you can read and write English. On the other side of this sheet there is a selection for you to read. First, read the selection. Next, read the first question. Then, go back and read the selection until you find the answer to this first question. Usually, the answer will be only one or two words. When you have found the correct answer, write it on the dotted line after the first question. You need not answer in a complete sentence. Write the answer as plainly as you can, for this is a test of both reading and writing. Answer all the other questions in the same way. When you have answered every question, read the selection and answers to your questions over again, and make sure you have made no mistakes.

- 1 Is there anybody who does not know what we are to do?
- 2 When you turn the sheet, what are you to do first?
- 3 Where will you find the answers to the questions?
- 4 Where are you to write the answer to each question?
- 5 Do you need to answer in a complete sentence?
- 6 How many words will there usually be in the answer?

*If you have any other questions, ask them now.*  
Do not write in the space below.  
Turn your paper over—begin reading.

(TO BE FILLED IN BY THE EXAMINER)

Number of answers correct.....

Candidate's rating.....

P (passed)                  F (failed)

Place where examination was held.....

County (City, village, town)

Certificate of literacy was..... to successful candidate.  
(mailed or delivered in person)

Signature of examiner.....

Title of examiner.....

Notify unsuccessful candidates that they may take examination given by local election officials.<sup>209</sup>

Examiner will preserve both successful and unsuccessful papers for at least three months after election day—they should then be destroyed.

<sup>209</sup>This sentence is omitted from editions published since the revision of the law in 1923.

Test 2

NEW YORK STATE REGENTS LITERACY TEST

*Read this and then write the answers. Read it as many times as you need to.*

A milk wagon was passing along a street, loaded with boxes of empty milk bottles. One box fell off and the bottles were smashed all over the street. The angry driver stopped, picked up the box, and drove off. But two boy scouts who were passing stopped. They patiently picked up the broken glass. They wrapped it in a newspaper, and carried it to an ash can not far off. Why did they take so much trouble? Because they realized that the street was a place that belonged to them. They knew that, if the glass stayed there, somebody's automobile tires would suffer.

- 1 What sort of wagon was passing along the street?.....
- 2 With what was the wagon loaded?.....
- 3 How many boxes fell off the wagon?.....
- 4 Who was angry?.....
- 5 Who were passing when the accident occurred?.....
- 6 What was wrapped in a newspaper?.....
- 7 What part of the automobile would be damaged?.....

The scoring key for the six tests was printed on the two sides of a sheet 5 $\frac{7}{8}$  × 9 inches. The heading and key for Test 2 follow.

THE UNIVERSITY OF THE STATE OF NEW YORK  
THE STATE DEPARTMENT OF EDUCATION  
NEW YORK STATE REGENT'S LITERACY TEST  
KEY FOR SCORING PAPERS

Test 2

- Incorrect*
1. Milk wagon.
  2. Boxes of *empty milk bottles, empty milk bottles*—milk bottles
  3. *One box.*
  4. Driver . . . . .man
  5. Two Boy Scouts, Some Boy Scouts. . . . .two boys
  6. Broken glass, broken bottles. . . . .bottles
  7. Tires.
- Required number of correct answers for passing credit—6,

To fully understand the impact of the Regents literacy test, it is necessary to perform a close examination of the instructions and source materials of the test. Like the Constitution-based test, the Regents system also permitted some degree of discretion in the scoring of the tests: “the scoring key is by no means exhaustive.”<sup>209</sup> The required number of correct answers for passing credit was “not uniform for all tests,” leading to the possibility that jurisdictions could administer

<sup>208</sup> Morrison, “New York State Regents Literacy Test,” 152.  
<sup>209</sup> “University of the State of New York Bulletin,” 10.

tests with different levels of difficulty.<sup>210</sup> In the selection above, the passing score was 6 out of 7 total questions.<sup>211</sup>

The main instruction of the Regents test directed proctors to penalize for any “interpretation, paraphrasing, or summarizing,” and only rewarded answers that directly copied the text of the paragraph.<sup>212</sup> Patricia Serviss, a professor who studies rhetoric and literacy, argues the main function of the Regents test was not to test rhetorical “literacy”—the ability to read and write—but instead to test immigrants’ ability “to adhere to procedural rules authorized by governing systems.”<sup>213</sup> With Serviss’ assessment in mind, Dr. Morrison’s observation that the Regents exam tested the ability to “read intelligently” should be read not as the “ability to read with comprehension” but instead as the ability to conform to a set of cultural norms—a process that disenfranchised nonconforming citizens.

The Regents literacy tests were also a tool for educators to introduce the Americanization pedagogy to the recently naturalized population. In 1926, Rejall published an instructional book entitled *Thirty and One Reading Tests for Voters and Citizenship*, which gave examples of previously used literacy tests.<sup>214</sup> In each of the 31 tests, there is a lesson that was carefully selected to promote an agenda of Americanization and adherence to American laws and norms. The tests can be categorized into several themes of Americanization: patriotism and citizenship, education and English-language literacy, public health and shared responsibility, and public safety and adherence to the law.

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<sup>210</sup> “University of the State of New York Bulletin,” 11.

<sup>211</sup> Morrison, “New York State Regents Literacy Test,” 153.

<sup>212</sup> Serviss, “Activists, Immigrants, Citizens,” 136. Serviss argues “The answer keys required that test-takers directly copy their answers from the test to demonstrate institutional Literacy that was as much about following directions and obeying conventions as it was about language systems, discursive competence, or comprehension.”

<sup>213</sup> Ibid. Emphasis added.

<sup>214</sup> Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, 5. He argued that the book would serve as “a great value to everyone who wishes to test himself in his ability to read and write the English language,” and for teachers to use in day and evening schools.

In the first test, applicants read about the history of the Statue of Liberty: “Thousands of foreigners are thrilled when they first see the Statue of Liberty upon their arrival in America. All Americans speak its name in reverence.”<sup>215</sup> One of the test question asks, “Who are thrilled when they first see the Statue of Liberty,” with the correct answer reading “thousands of foreigners”; the following question asks, “Who speak of its name in reverence?” and the correct answer listed is “All Americans.”<sup>216</sup> These answers demonstrate the requirement to copy the text, word for word. By requiring applicants to directly copy the statements in the passage, this passage promoted a particular belief: all Americans, including foreigners, must respect the Statue of Liberty. Another test speaks of the history of the American flag and uses hyperbole to frame opinions as facts: “The American Flag means liberty and justice for everybody. It is honored by all true citizens on the land and on the sea...All Americans love the Stars and Stripes. Let us all respect the flag and be true to it.”<sup>217</sup>

Another test in the book refers to the requirement of English literacy for foreign-born residents to naturalize and vote. The passage tells the story of Mr. Martino, an immigrant who arrived from Italy last year. Martino came to America to “improve himself” and went to night school to learn about citizenship.<sup>218</sup> After receiving his first naturalization papers at the local courthouse, Mr. Martino knew he was going to need to learn English to become an American citizen because “he knows that his new country wants intelligent citizens.”<sup>219</sup> While this was a clear political statement, it implied that the national agenda was to have “intelligent citizens.”

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<sup>215</sup> Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, 8.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid, 10.

<sup>218</sup> Ibid, 16.

<sup>219</sup> Ibid.

The literacy tests argue that the benefits of English literacy extended far beyond suffrage. In the tenth test in the book, a man, John, returns home from work and tells his wife that the boss raised his salary.<sup>220</sup> The reason behind the raise was because “[t]he boss said he was worth more since he had been going to night school, where he learned to read English.”<sup>221</sup> The moral of this story was that since John learned English, he was able to achieve a better life. Thus, the Board of Regents promoted English literacy as a means of social mobility.

Several of the passages focus on public health and public safety, extending the Department of Education’s influence into the public and private lives of individuals. In one test, applicants are told to trust the police with enforcement of the laws: “In the cities of the United States policemen enforce the laws...Besides enforcing the laws, policemen protect life and property...We should not be afraid of policemen, because they are our friends.”<sup>222</sup> The final question on the test reads, “Why should we not be afraid of policemen?”<sup>223</sup> The answer states, “They are our friends.”<sup>224</sup> Interestingly, the incorrect answer listed on the answer key reads, “They don’t hurt us.”<sup>225</sup> The Department of Education, given its authority by the legislature, dictated the terms for becoming a proper citizen and voter. In this instance, the correct behavior was to affirm that the police protect people and to not be afraid of police officers, even if they exert force against certain individuals.

Other tests discuss the importance of public health in order to protect oneself and others in the community. In one test, the passage states, “Our streets should be kept clean at all times.

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<sup>220</sup> Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, 17.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid, 29.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid, 46.

<sup>225</sup> Ibid.

The good appearance and health of a community depend upon clean streets.”<sup>226</sup> Furthermore, it “is the duty of both children and adults to keep the streets clean” by throwing away trash properly.<sup>227</sup> The final sentence states, “We should take pride in a clean street; it is a pleasure to live in a clean neighborhood.”<sup>228</sup> In every one of the tests, the passages contain directives for how citizens must live their lives, demonstrating Serviss’ argument that the purpose of the NYSL Test was to regurgitate American ideals put forth by the Department of Education.

## **B. The Implementation**

### **Which Literacy Test Will You Take?**

By the fall of 1922, new voters in New York had the unique opportunity to choose between Constitution-based literacy tests run by the Board of Elections or the reading comprehension tests designed by the Department of Education. In a memorandum to school superintendents, Rejall explained that the Regents test and the literacy certification program were enacted “to make the work of the election inspectors easier.”<sup>229</sup> New voters now had the option to take the test before registration week and relieve election inspectors.<sup>230</sup> Rejall provided a comparison between the elections board’s test and the Regents test: “The former requires that the prospective voter shall read and write intelligibly while the latter demands that he do so intelligently.”<sup>231</sup> Voters had to weigh the pros and cons of the literacy test options. They could take the elections board’s test, which was a shorter, traditional literacy exam test and they would

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<sup>226</sup> Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, 32.

<sup>227</sup> *Ibid.*

<sup>228</sup> *Ibid.*

<sup>229</sup> “Alfred Rejall Lectures on Examination Which New Voters Must Pass,” *Syracuse Herald*, August 14, 1922, Roll #2, Box 1, Folder 6, A0063, NYSA.

<sup>230</sup> “Cites Advantage of Schools in New York State Literacy Tests,” *Watertown Standard*, October 3, 1922, Roll #2, Box 4, Folder 1, A0063, NYSA.

<sup>231</sup> *Syracuse Herald*, August 14, 1922.

be able to take the test and vote in the same trip. However, excerpts from the Constitution contained arcane, legal terminology which could be difficult to understand and pronounce. Conversely, voters who opted for the Regents test would take an exam based on the literacy level of fourth-graders, but they would have to complete a longer reading comprehension exam—which was foreign to people who had not gone through the formal schooling system—and then separately go register to vote at a local board of election during registration week.

During the 1922 registration period, Rejall did not push new voters to take one test over the other, but instead focused on getting the word out about the new literacy requirements. To build confidence in the new system, he emphasized the fact that voters chose the literacy test amendment by 265,000 votes—a significant majority.<sup>232</sup> He urged educators to be patient as the new law “probably [will] not keep out many new voters at first, but may be strengthened later on.”<sup>233</sup> He also argued the literacy requirement would make Americanization and evening schools very popular. The Department of Education scheduled times to take the Regents literacy tests at hundreds of public schools around the state during the week of October 2, a week or so before voter registration periods.<sup>234</sup> In New York City, registration ran from October 9-14 and in all other municipalities over 5,000 residents, registration occurred between October 13-14 and October 20-21.<sup>235</sup> In all towns under 5,000 residents, where personal registration was not required, new voters would either present certificates of literacy or take the board of elections’ literacy test on Election Day at their polling place.<sup>236</sup>

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<sup>232</sup> “Alfred Rejall Lectures on Examination Which New Voters Must Pass,” *Syracuse Herald*, August 14, 1922.

<sup>233</sup> *Ibid.*

<sup>234</sup> “Voters Must Read and Write,” *Mamaroneck Paragraph*, September 28, 1922, Roll #2, Box 3, Folder 1, A0063, NYSA.

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*

In late September 1921, Commissioner Graves sent a letter to every school superintendent in the state, urging their cooperation in ensuring a successful literacy test rollout. He emphasized the unique opportunity educators possessed to shape New York's electorate: "I believe that an unusual opportunity has been given the school authorities of the State to assist in elevating the standards of voting and make for better citizenship."<sup>237</sup> He implored the superintendents to designate two or more days and evenings during the week of October 2 for literacy test examination and certification, especially in communities with large immigrant populations.<sup>238</sup> Like Rejall, Graves promoted the benefit of evening schools, where over 80,000 foreign-born men and women attended in the previous year: "Thousands of new voters learned to read and write English in your evening schools and will appreciate the opportunity of securing a certificate of literacy from the school authorities as evidence of their literacy."<sup>239</sup>

Graves emphasized the need to publicize information about the new election law throughout immigrant communities to ensure qualified citizens did not become disenfranchised: "The law is new and is not generally understood, particularly by our foreign-born people."<sup>240</sup> He suggested widespread publicity through print advertisements in foreign language newspapers, as well as outreach in evening schools, churches and civic organizations. In New York City, the city education department took Graves' advice and issued a circular to the principals of every public school, urging them to explain the new law to the parents, relatives, and friends of their students.<sup>241</sup> In its outreach, the State Board of Education declared that the test was "very simple"

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<sup>237</sup> "The Literacy Test for New Voters," *Cooperstown Farmer*, September 22, 1922. Roll #2, Box 1, Folder 3, A0063, NYSA.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Cooperstown Farmer*, September 22, 1922.

<sup>240</sup> *Ibid.*

<sup>241</sup> "Set Literacy Test for Voters Oct. 4-5," *New York Times*, October 1, 1922. Roll #2, Box 1, Folder 4, A0063, NYSA.

and that “no new voter should be deterred from casting his ballot.”<sup>242</sup> Educators also insisted new voters retrieve certificates of literacy in order to avoid delays at registration and the “embarrassment” of taking a “rudimentary” English test.<sup>243</sup>

Despite the Department of Education’s plan for a successful rollout of the two literacy tests, there was significant confusion among voters, election inspectors, and teachers. The literacy test programs were also severely understaffed and under-resourced. On October 5, *The New York Sun* reported that there was “a general lack of information regarding the literacy tests to be held for first voter in twenty-four schools in Manhattan” and cited school administrators who said they had not received instructions from the Board of Education.<sup>244</sup> Due to the lack of guidance, few prospective voters arrived on the first night of examinations in New York City. Moreover, principals had to work overtime and administer the test themselves since the State BOE did not make prior arrangements to have teachers proctor the exams.

Another issue that arose was the mailing of certificates of literacy. Principal Henry Holloway of P.S. 32 on West 35th Street understood that voters would be mailed certificates if there was not sufficient time to grade the exams on the spot.<sup>245</sup> He said that there were no appropriations made for postage. Additionally, Holloway mentioned that he had not received any orders from the Department of Education to reassign the teachers from the night classes to the literacy exams: “Until I receive these orders we must do this work as best as we can.”<sup>246</sup> Overworked and under-resourced, principals were left with few means to grade and mail

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<sup>242</sup> “New Citizens Must Be Able to Read and Write to Vote,” *White Plains Reporter*, September 27, 1922, Roll #2, Box 1, Folder 3, A0063, NYSA.

<sup>243</sup> *Ibid.*

<sup>244</sup> “Few First Voters Take Literacy Tests,” *New York Sun*, October 5, 1922, Roll #2, Box 1, Folder 4, A0063, NYSA.

<sup>245</sup> *Ibid.*

<sup>246</sup> *Ibid.*

certificates in a timely manner, potentially disenfranchising voters who would need certificates in order to register the following week.

Because of these glaring issues, many voters opted to either wait for the BOE test on Election Day or simply skip voting altogether. Many of the applicants that did take the Regents test were met with confusing and difficult exams. On October 6, four evening schools in Brooklyn reported that out of a total of 107 applicants, 24 failed the literacy tests, while only 28 passed.<sup>247</sup> Morris E. Siegel, the director of evening schools in Brooklyn, estimated that 400 applicants took the literacy test on the two nights it was given and that of those 400 applicants, only one-half passed.<sup>248</sup> He mentioned that the 50 percent failing rate was surprisingly low. Siegel qualified his findings by claiming that the high failure rate must have been due to poor administration of the tests and not due to high illiteracy among citizens; he believed only a very small percentage of new voters were actually illiterate, since “a totally illiterate person cannot now get out citizenship papers...and as the first voter must be a citizen, it follows that the majority are literate, at least to some extent.”<sup>249</sup>

Around the rest of the state, very few people showed up to take the Regents literacy tests, instead opting to wait for the registration period to take the board of elections’ test. In Rochester, only 100 people took the literacy test on the first night of examinations, while more than 4,000 new voters in the city were affected by the new election law.<sup>250</sup> This led James F. Barker, the assistant superintendent of schools in Rochester, to surmise that “the majority of the 4,000 new

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<sup>247</sup> “Literacy Reports Show Even Break,” *Brooklyn Standard Union*, October 6, 1922, Roll #2, Box 1, Folder 4. The results of the remaining 55 exams were not made available at the time of this report.

<sup>248</sup> *Ibid.*

<sup>249</sup> *Ibid.*

<sup>250</sup> “New Voters Take Literacy Tests Held in Schools,” *Rochester Times*, October 3, 1922, Roll #2, Box 1, Folder 4, A0063, NYSA.

voters will take the test at the polls.”<sup>251</sup> In the city of Troy, the superintendent of schools, Hugh H. Lansing, closed the literacy tests after only 11 certificates were issued in the two afternoons and evenings of testing.<sup>252</sup> Lansing estimated most new voters would wait to take the election officials’ examinations on registration day.

### **A Crisis of Authority: The Courts and 1923 Amendments**

By the end of 1922, frustrated voters, elections officials, and school superintendents demanded that lawmakers fix the poorly implemented literacy system. When the legislature convened in January 1923, educators and civic organizations convinced the lawmakers to abolish the BOE test and made the Regents literacy test the sole form of examination for new voters.<sup>253</sup> On May 28, 1923, the legislature did just that by passing Republican Assemblymember Joseph Steinberg’s bill, which amended Chapter 809 of the election law.<sup>254</sup> The amendment required new voters present a certificate of completion of eighth grade or present a certificate from the Regents Literacy Test.<sup>255</sup> Upon first glance, the legislature made the Department of Education the sole arbiters of voter registration through the Regents Literacy Test.

However, the New York City Board of Elections pushed back on the Steinberg law and argued that two of the new amendments, Chapter 810 and 803—which were signed into law by

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<sup>251</sup> “New Voters Take Literacy Tests Held in Schools,” *Rochester Times*, October 3, 1922.

<sup>252</sup> “Literacy Tests for New Voters Are Concluded,” *Troy Record*, October 5, 1922, Roll #2, Box 1, Folder 4, A0063, NYSA.

<sup>253</sup> Morrison, “New York State Regents Literacy Test,” 154.

<sup>254</sup> Crawford, “New York State Literacy Test,” *The American Political Science Review*, 788.

<sup>255</sup> Ibid. Richard B. Bernstein, *From Forge to Fast Food: A History of Child Labor in New York State. Volume II: Civil War to the Present*, (New York: The University of the State of New York, 1995), 21. While the gradual increase in the minimum education level to the eighth grade was expected, it emerged from a broader lobbying effort on behalf of education activists who campaigned to ban child labor during the Progressive Era. In 1903, New York passed the Finch-Hill Factory Act which provided that no child under fourteen (equivalent to the eighth grade) could be “employed, permitted, or suffered to work” in a factory. The law also amended the state’s compulsory education law and required children to stay in school up to the age of fourteen and required working children in the cities to attend night school to ensure they would receive at least an eighth-grade education. There was an expectation that an eighth-grade literacy level was a reasonable requirement for new voters.

the governor alongside Chapter 809—indicated that both literacy tests were still valid and thus jurisdiction remained with local and state boards of elections.<sup>256</sup> Chapter 810 left the Constitution-based literacy test in the election law: “The Board of Elections of the City of New York and elsewhere of each county shall provide the necessary said slips of extracts from the State Constitution to be used for literacy tests.”<sup>257</sup> The New York City BOE interpreted language in Chapter 803 to refer to elections officials’ jurisdiction over the literacy test: “after administering such test or receiving such proof.”<sup>258</sup>

On September 27, just weeks before local registration in New York City, the State Attorney General stepped in and sided with the Board of Election and stated, “The election law had not been properly amended and held that the alternate test still stood.”<sup>259</sup> On October 8, a test case was filed with the Appellate Division of the Supreme Court of New York City. The court rejected the Attorney General’s opinion, ruled that the Regents test was the only legal literacy test, and held that schools maintained “full and sole power to administer the test.”<sup>260</sup>

The New York Court of Appeals, the highest court in the state, upheld the lower court’s decision and ruled that Chapters 810 and 803 were “meaningless” as the purpose of Chapter 809 “was to do away with the slips and to substitute therefor the proof by certificate.”<sup>261</sup> However, the court’s decision went further to define literacy by holding that “literacy” referred to “a higher degree of education than mere ability to read and write English.”<sup>262</sup> Thus, the court had finally defined “literacy,” which was only loosely described in the State Constitution. The court also

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<sup>256</sup> Crawford, “New York State Literacy Test,” 788.

<sup>257</sup> *Ibid.*, 789.

<sup>258</sup> *Ibid.*

<sup>259</sup> “Triumph of the Literacy Law in New York,” *Educational Review*, Vol. 31, No. 40 (Jan., 1924).

<sup>260</sup> *Ibid.*

<sup>261</sup> Crawford, 789.

<sup>262</sup> *Ibid.*, 790.

held that elections boards did not have the authority to determine voter qualifications and that the state legislature could delegate that power to the Department of Education for the purpose of testing the literacy of new voters.<sup>263</sup> Dr. Morrison reflected on education officials' historic victory: "The highest courts of the Empire State upheld the fundamental principle...that a test of reading ability should measure the candidate's ability to read with comprehension of the meaning of what he read."<sup>264</sup> Therefore, New York became the only state in the nation in which the power of determining voter qualifications was vested in educational institutions.

### **The Uneven Application of the NYSL Test in New York City and Rural New York**

An important caveat of the NYSL Test system was that in large towns and cities, literacy tests were administered during various weeks leading up to voter registration week, whereas in rural towns—where personal registration was not required—literacy tests were administered on Election Day.<sup>265</sup> In a 1929 Brookings Institute study found that rural towns did not have personal registration due to a historical disdain for the "Democratic city encroachment on rural rights."<sup>266</sup> As evidenced by the results of the 1920 gubernatorial election, there was substantial conflict and political strife between New York City and Upstate.<sup>267</sup> Higham argues many progressives, especially those from rural areas, deeply distrusted the city.<sup>268</sup> Voter registration laws emerged

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<sup>263</sup> Crawford, "New York State Literacy Test," 790.

<sup>264</sup> Morrison, "New York State Regents Literacy Test," 70. Morrison added, "Thus the work of the makers of standard silent-reading tests has reached over into the field of civic life far enough to induce a leading state to change its literacy requirement from ability to "read intelligibly" to ability to "read intelligently." Since our states presume to require educational qualifications for new voters, New York has demonstrated how such a test may be scientifically constructed and intelligently administered."

<sup>265</sup> Crawford, "The New York State Literacy Test," 262.

<sup>266</sup> Harris, *The Registration of Voters in the United States*, 78.

<sup>267</sup> Ibid. In the election, Nathan Miller, a Republican, won every county outside of New York City.

<sup>268</sup> Higham, *Strangers in the Land*, 116.

from the fear of corruption in the cities: between the 1870s and WWI, the majority of states adopted voter registration laws, mainly in the large cities, where the vast majority of the millions of newly-arrived immigrants settled.<sup>269</sup> The purpose of the new laws was the belief that voter registration would help eliminate fraud in the cities, where election officials did not know all the eligible voters personally. With registration requirements, they could develop voter lists in advance of elections to check citizenship papers and verify qualifications.

However, this fear was completely absent in rural, Upstate New York. Keyssar notes that reform groups such as the Honest Ballot Association only supported voter registration policies in the cities and “ignored the possibility of rural corruption.”<sup>270</sup> The original NYSL law granted exceptions to new voters in rural areas: “In such places where the voter does not personally register, and where there may be *some doubt* in the minds of the inspectors as to the person’s ability to read and write English, the test may be given prior to that person’s voting on Election Day by the board of inspectors.”<sup>271</sup> Despite the fact that illiteracy rates in rural New York were much greater than in the cities, the government focused its literacy test administration on the cities, where the vast majority of immigrant voters lived. Thus, there was an unequal standard for new voters in the cities and in rural areas.<sup>272</sup> Given the government’s ignorance to the higher illiteracy rates in rural areas, it is clear that the law purposefully targeted immigrant voters in the cities.

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<sup>269</sup> Keyssar, *The Right to Vote*, 152.

<sup>270</sup> *Ibid.*, 161.

<sup>271</sup> “Voters Must Read and Write,” *Mamaroneck Paragraph*, September 28, 1922. Emphasis added.

<sup>272</sup> *Ibid.* In New York City, the burden was on the new voter to prove their literacy, either with a diploma or by taking a test, while in a rural town, a new voter was only subjected to a test if there was “some doubt” as to their literacy.

Changes to the election law in 1923 appeared to close this loophole, as all new voters were required to obtain a certificate of literacy from the Board of Regents.<sup>273</sup> The law made no distinction between jurisdictions with registration and without registration. However, the litigation over the literacy test put rural voters in a predicament in October 1923. With the court banning the board of elections' literacy test, the only way for rural voters to qualify under the election law was to present a diploma or receive a certificate of literacy from the Board of Regents.<sup>274</sup> The Board of Inspectors, run by the Board of Elections, required proof of certification by October 20, but the date for literacy tests in non-personal registration districts was set for October 24.<sup>275</sup> This could have resulted in disenfranchisement of rural voters who expected to take the literacy test on Election Day. Alexander S. Carlson, the commission of elections in Onondaga County, implored the Board of Regents to act swiftly to procure an amendment so that school superintendents in rural areas could give the exams before October 20 and prevent rural voters from being barred in November: "I believe that a considerable number of voters are in danger of being disenfranchised by this condition."<sup>276</sup>

Another issue for rural voters was that there were few places to take the literacy tests. In Staten Island, New York, the most rural of the five boroughs, there were only three places to take the tests in the entire borough, which were very far apart.<sup>277</sup> The *Staten Islander*, a local newspaper which advocated for more accessible testing options, noting that "[t]he officials have

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<sup>273</sup> Crawford, "New York State Literacy Test," 788. The clause in question, Subsection 1 of Section 166, read: "Upon registering a voter after receiving proof of literacy each inspector shall make a note upon his register in the registration remarks column, 'proof of literacy presented.'"

<sup>274</sup> Ibid.

<sup>275</sup> "The Literacy Test Is a Problem in Rural Places," *Syracuse Post Standard*, October 17, 1923, Roll #2, Box 1, Folder 10, A0063, NYSA.

<sup>276</sup> Ibid. The original authors of the literacy test bills came from rural areas—Senator Fearon represented Onondaga—and did not expect that the administration of the tests would ultimately disadvantage rural native voters, as their attention was on disenfranchising foreign-born citizens in New York City.

<sup>277</sup> Ibid.

not considered the ‘magnificent distances’ of the Borough of Richmond...[this] is exceedingly inconvenient for many people.”<sup>278</sup> This issue was exponentially worse in the most rural areas of Upstate New York, where public transportation was nonexistent. In 1924, a state law was passed that limited the issuance of automobile licenses to those who were able to read and write English only exacerbated the issue.<sup>279</sup> The automobile law, in conjunction with the literacy law, represented literacy advocates’ agenda to get illiterate men and women learning English. Troy school superintendent Hugh Lansing believed that the new automobile law would greatly increase the number of adults in night school.<sup>280</sup>

The lack of testing options in rural jurisdictions was compounded by the fact that while most public school teachers were paid for the extra hours to administer and grade literacy tests in the state’s largest cities, teachers often had to volunteer their time in most rural towns. One report from White Plains mentioned that some volunteer teachers devoted up to fifty hours to the literacy tests due to their conviction that it was their responsibility to ensure the system was working efficiently.<sup>281</sup> Strayer’s 1922 report foreshadowed the grave lack of resources for the administration of the literacy test in rural areas.<sup>282</sup> The inaction on the illiteracy problem in rural areas and the severe underfunding of educational resources demonstrate lawmakers were fixated on using the literacy test to disenfranchise immigrants and not to end illiteracy across the state.

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<sup>278</sup> “Literacy Test All Next Week Here,” *Staten Islander*, October 4, 1924, Roll #2, Box 4, Folder 5, A0063, NYSA.

<sup>279</sup> “Literacy Tests to Begin This Evening,” *Troy Record*, October 9, 1924. Roll #2, Box 6, Folder 2, A0063, NYSA. “75 Persons Refused Drivers Licenses on Lack of Education” *Schenectady Gazette*, October 4, 1924, Roll #2, Box 4, Folder 5, A0063, NYSA. In Schenectady, 75 people were refused licenses by the local board of education due to their illiteracy. The 10 percent of Schenectady’s population that lives outside the city represented 46 percent of these 75 illiterate applicants, while the 90 percent that resided in the city represented only 54 percent of the applicants, demonstrating that the law’s disproportionate impact on rural New Yorkers.

<sup>280</sup> *Troy Record*, October 9, 1924

<sup>281</sup> “30 out of 333 Failed Here in Literacy Test,” *White Plains Reporter*, October 25, 1924.

<sup>282</sup> Strayer, “Report of National Education Association Legislative Commission,” 51.

## Administrative Failures During The 1924 Presidential Election

In 1924, the first presidential election year under the new election law, the Department of Education and Board of Elections appeared unprepared to deal with the significant increase in voter registration and the increase in the issuances of literacy certificates. Election officials expected that more than double the number of applicants from 1923 would apply for certificates in 1924, given that it was a presidential election year.<sup>283</sup> In anticipation of this surge in applicants, the Department of Education made adjustments to make the literacy test “more easily administered” and to “reduce to a minimum any inconvenience on the part of the new voter”: education authorities opened more schools, extended the examination period, and permitted applicants who present diplomas to receive their certificates at any time during the school year.<sup>284</sup> The Board of Regents stated that they were prepared for the election: 2,351 examiners were tasked with carrying out the literacy test and more than 1,946 different places were open for testing.<sup>285</sup> They reported their confidence in the literacy test system, stating, “Cooperation between school authorities and election officials has been excellent.”<sup>286</sup>

In early September, reports estimated that there would be between 200,000 and 300,000 new voters in the upcoming election and indicated concern that the literacy test program could not handle the large number of expected applicants.<sup>287</sup> On September 7, 1924, the *Middletown Herald* claimed new voters would find “they must leap several hurdles before they can cast their ballot this fall, owing to changes in the election law.”<sup>288</sup> Despite going into effect in 1922, the

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<sup>283</sup> “Make It Easier to Pass Literacy Test in New York,” *Niagara Falls Gazette*, January 8, 1924, Roll #2, Box 11, Folder 11, A0063, NYSA.

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

<sup>286</sup> *Ibid.*

<sup>287</sup> “Trouble for New Voters,” *Middletown Herald*, September 7, 1924, Roll #2, Box 2, Folder 2, A0063, NYSA.

<sup>288</sup> *Ibid.* The *Middletown Herald* covered the northwest suburbs of New York City.

literacy test requirement was fairly unknown to most voters in 1924, given the fact that a large number of voters did not vote in the prior midterm elections. For a large number of new voters, the new literacy test requirement was burdensome.<sup>289</sup> Despite the Department of Education's directives to make the test more accessible, voters would have to find a free day to either acquire their diploma or go to one of the testing sites to take the literacy test, on top of registering to vote during registration week.<sup>290</sup> For many working class laborers, the prospect of taking time off work for the literacy test was time they could not afford.<sup>291</sup>

In the month leading up to the election, several issues from the previous election cycle reappeared. On October 1, scores of applicants were unable to take literacy tests because exam papers were not available at several schools in Brooklyn.<sup>292</sup> The schools told voters to return the following day. One man was so "indignant" that he refused to return and take the test: "To hell with all the political parties and their candidates. Nix on the test for me; therefore nix on my voting for any particular party."<sup>293</sup> This continued to be an issue in the following week when more than 50 applicants at P.S. 129 on Quincy Street were turned away when the supply of certificates ran out.<sup>294</sup> The *Brooklyn Standard Union* argued that this was a "total failure by educational authorities" and feared "many will be deprived of the chance to register through negligence of authorities."<sup>295</sup>

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<sup>289</sup> "Trouble for New Voters," *Middletown Herald*, September 7, 1924.

<sup>290</sup> Crawford, "Operation of the Literacy Test for Voters in New York," *The American Political Science Review*, Vol. 25, No. 2 (May, 1931), 343.

<sup>291</sup> *Middletown Herald*, September 7, 1924.

<sup>292</sup> "Literacy Test Fails Due to Postal Delays," *Brooklyn Standard Union*, October 1, 1924, Roll #2, Box 3, Folder 9, A0063, NYSA. Over 70 people were turned away from P.S. 147, on Bushwick Ave and Seigel Street and a few blocks away, at P.S. 141 on Leonard and McKibbin streets, 20 applicants were turned away.

<sup>293</sup> *Ibid.*

<sup>294</sup> "Prospective Voters Lose Literacy Test," *Brooklyn Standard Union*, October 8, 1924, Roll #2, Box 5, Folder 4, A0063, NYSA.

<sup>295</sup> *Ibid.*

One of the most irate members of the community was Robert O. Shephard, the Republican candidate for the 5th Assembly district and an adamant supporter of the literacy tests: “It is all well and good to require the new voters to take these tests, but they should be guarded against being inconvenienced.”<sup>296</sup> Shephard believed that some of those who were turned away would be unable to find time again to take the exam before the literacy test period ended and would be unable to “exercise their franchises in November.”<sup>297</sup> This struck at a core of the issue of the literacy test program: the notion of improving English literacy was considered commendable by many, but a shoddy implementation would defeat the point of the test and lead to the unnecessary disenfranchisement of eligible citizens.

Another glaring issue that arose was the lack of knowledge about the new law from both voters and literacy test officials. On October 6, Alice Aimer, a college senior, was refused the right to register to vote because she presented her elementary school diploma to election inspectors instead of a certificate from the literacy test examiners.<sup>298</sup> Alice was also the daughter of Mrs. James B. Aimer, the leader of their local chapter of the League of Women Voters. Mrs. Aimer confronted the inspector: “If you have read the election law, you will see that this [the diploma] is all that is required.”<sup>299</sup> The inspector then read aloud the election law and realized they were wrong.<sup>300</sup> While Alice was eventually able to register, it is unlikely that she would have been successful in appealing without the persistence of her mother, a local civic leader.

Moreover, women were especially susceptible to disenfranchisement by ignorant and ill-intentioned election inspectors. On October 8, *The Newburgh News* uncovered a purported plot

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<sup>296</sup> “Prospective Voters Lose Literacy Test,” *Brooklyn Standard Union*, October 8, 1924.

<sup>297</sup> *Ibid.*

<sup>298</sup> “Election Inspector Learns Law from Woman Voter,” *Brooklyn Eagle*, October 7, 1924, Roll #2, Box 5, Folder 1, A0063, NYSA.

<sup>299</sup> *Ibid.*

<sup>300</sup> *Ibid.*

to bar new voters in New York City.<sup>301</sup> George Morris, chairman of the Republican State Committee, and Samuel Koenig, president of the New York County Committee, received evidence of what appeared to be an organized effort on the part of election officials to keep eligible citizens from registering to vote: there were reports from “scores” of election districts that citizens who had never voted before but were grandfathered in by the election law were being turned away from the polls because they had not taken the literacy test.<sup>302</sup> Morris stated that new female voters, in particular, were being refused the right to register, despite coming out “for the express purpose of voting the Republican ticket.”<sup>303</sup> Koenig reported that “many women are being browbeaten and frightened away from the polls by misinformed election officials.”<sup>304</sup> Underlying this incident was a partisan implication that Democrats, who overwhelmingly ran New York City’s government, were acting in bad faith against first time Republican voters.

In Buffalo, Dr. George Smith, the Deputy Superintendent of Education, reported that only 200 new voters took the literacy test on the first night of examinations, out of an estimated 6,000 new voters in the city.<sup>305</sup> According to Dr. Smith, “Lack of information regarding the new literacy law is going to deprive many new voters of their votes this year.”<sup>306</sup> Back in 1922, Commissioner Graves emphasized the government’s responsibility to advertise the new election laws widely to ensure eligible voters were not barred from the ballot. However, this publicity campaign failed to materialize in 1924.

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<sup>301</sup> “Literacy Law is Abused at Polls,” *Newburgh News*, October 8, 1924, Roll #2, Box 5, Folder 4, A0063, NYSA.

<sup>302</sup> *Ibid.* Citizens who were naturalized or 21 years old prior to Jan 1, 1922 were exempt from the literacy requirement.

<sup>303</sup> *Ibid.*

<sup>304</sup> *Ibid.*

<sup>305</sup> “New Voters Lax in Taking Literacy Test,” *Buffalo Commercial*, October 11, 1924, Roll #2, Box 6, Folder 5, A0063, NYSA.

<sup>306</sup> *Ibid.*

An additional issue that surfaced in weeks leading up to the November elections was the fact that the 15-minute testing period proved to be too short for many applicants, especially less-educated, manual laborers who were not accustomed to timed examinations. On October 8, only 46 out of 100 applicants passed the literacy test at a high school in Yonkers.<sup>307</sup> In opening the examination session, Yonkers Superintendent of Schools Will R. Williams stated that the test was “simple enough for a pupil in grammar school to answer” and that “a person who cannot pass this examination is not able to appreciate, for instance, a newspaper item.”<sup>308</sup> The “person” Williams referred to was the illiterate “foreigner” who had “difficulty in making simple conversation” and thus could not pass the literacy test.<sup>309</sup> Most of the applicants who failed were laborers from the local carpet and sugar factories. Several of the laborers approached Williams, asking if they could take the exam home to finish because the 15-minute period was not long enough for them to complete the literacy test.<sup>310</sup>

Additionally, the law unnecessarily disenfranchised new residents of New York who were literate and had voted in other states previously. In an op-ed published in the *New York Tribune*, H. D. Hausheer, a lawyer, decried the law as insulting to educated voters.<sup>311</sup> Hausheer was a well-educated professional who considered himself a “good citizen.”<sup>312</sup> He had previously voted in Ohio and had moved to New York in February 1922, just after the law went into effect. Hausheer had lost his high school diploma years prior and because of this, he would have to take

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<sup>307</sup> “46 out of 100 Pass First Literacy Examination Here,” *Yonkers Statesman*, October 9, 1924, Roll #2, Box 6, Folder 2, A0063, NYSA.

<sup>308</sup> *Ibid.*

<sup>309</sup> *Ibid.*

<sup>310</sup> *Ibid.*

<sup>311</sup> “What Readers Say: The Literacy Test,” *New York Tribune*, October 12, 1924, Roll #2, Box 6, Folder 9, A0063, NYSA.

<sup>312</sup> *Ibid.*

the literacy test in order to vote in November: “I tried to swallow my pride somewhat and proceeded to the school where presumably I was to display my intelligence, if any.”<sup>313</sup>

Upon arriving at the crowded classroom, he noted that no one seemed to be in charge and waited for an hour and a half until he gave up and left: “I now gave up in disgust, so Coolidge and Roosevelt will lose a perfectly good vote because the lawmakers of the Empire State have deemed it wise to enact a law that is positively insulting to decent citizens and accomplishes no good whatsoever.”<sup>314</sup> He claimed that the literacy test was not preventing illiterate and “ignorant” citizens from voting, as it was intended to, but instead it was disenfranchising upstanding citizens. He also added that politicians would always find ways to influence voters and change the law to meet their political aims: politicians controlled how the “ignorant” class voted and would “easily devise ways and means of preparing these people so that they may be able to pass these very simple tests.”<sup>315</sup> He concluded his piece with an elitist, racist remark that denounced New York’s literacy law: “Those of us who have had the privilege of voting in other parts of the country without our intelligence being questioned are going to pass up this right in New York to avoid the humiliation of a kindergarten examination in the school room where foreign languages prevail and the atmosphere is mostly of garlic and onion.”<sup>316</sup>

The greatest public critique of the literacy test program came from State Senator Benjamin Antin, the Chairman of the Senate Committee on Public Education and the prominent adversary of the literacy test in 1921 when he was Assemblymember. Antin wrote an op-ed less than two weeks before election day in which he admonished a recent *New York Times* editorial

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<sup>313</sup> “What Readers Say: The Literacy Test,” *New York Tribune*, October 12.

<sup>314</sup> Ibid.

<sup>315</sup> “What Readers Say: The Literacy Test,” *New York Tribune*, October 12, 1924.

<sup>316</sup> Ibid. The remarks were laced in racist tropes, such as the classroom smelling of “garlic” and “onion” to degrade the cuisine and customs of foreigners.

that supported the new law.<sup>317</sup> The *Times* reported that at the end of New York City's testing period, 10,000 applicants out of 53,000 had failed to pass the literacy test.<sup>318</sup> Of the 53,000 applicants, 8,000 obtained certificates from providing diplomas, while the remaining 45,000 took the test: only 35,000 passed the test. This meant that in New York City, the rate of failure was nearly 30 percent. Furthermore, the *Times* mentioned that these 10,000 applicants would have been able to vote without the literacy law and argued that the tests were "simple" and "reasonable."<sup>319</sup> The *Times* quoted an election official who said, "Not one of the 10,000 has any appeal. They must study up and try again at the next election."<sup>320</sup>

Antin explained that his critique was not of the Department of Education, who was "merely enforcing the law," but of the notion that the literacy test was a necessary means to improve the standards of citizenship.<sup>321</sup> During the previous week, Antin visited schools in the Bronx where the literacy tests were administered to new voters. He agreed that the test was "simple and reasonable," but held firm to his belief that the literacy test was a "useless test of citizenship" and "a poor way of...inducing our foreigners to become Americanized."<sup>322</sup> A small Albany newspaper summed up this disagreement: "Men and women have discovered through failure to pass the literacy test that it is not enough to be a citizen, one must be a literate citizen to enjoy the privilege of casting one's vote."<sup>323</sup> While denouncing the literacy test as a failure and

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<sup>317</sup> Antin, "The Test for New Voters," *New York Times*, October 23, 1924.

<sup>318</sup> "The Literacy Test Applied," *New York Times*, October 20, 1924.

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.* The election official explained that under the previous system, if a new voter could not read the ballot, an election official would read it for them.

<sup>321</sup> Antin, *New York Times*, October 23, 1924.

<sup>322</sup> *Ibid.*

<sup>323</sup> "38 Failed in Literacy Test of 245 Examined in Albany," *Albany Knickerbocker Press*, October 30, 1923, Roll #2, Box 11, Folder 7, A0063, NYSA.

another “fad” in immigrant education, Antin claimed that the law did accomplish its intended purpose to disenfranchise thousands of foreign-born citizens.<sup>324</sup>

Antin qualified his position by arguing the act of holding voting rights hostage for thousands of citizens was not the proper way to Americanize foreigners and immigrant literacy. He argued English should not be forced upon naturalized immigrants and that English literacy did not confer intelligence, nor informed citizenship. If reformers and Republicans truly cared about improving the standards of citizenship among immigrants, they would invest in all the factors that determine “the character and tendencies of the citizen,” such as standards of living and job opportunities.<sup>325</sup>

Furthermore, Antin rejected the *Times*’ argument that immigrants who were illiterate in English could not be informed citizens and voters, which he considered “a slur upon the millions of foreign-born who can read and write their own language.”<sup>326</sup> He cited the fact that foreign-language news outlets were extremely active in American affairs and government: a Columbia University study at the time concluded that the foreign language press “excels the English newspapers in the matter of printing accurate information about governmental activities and the duties of citizenship.”<sup>327</sup> Antin concluded that the “true test of citizenship is character... and not whether [citizens] can answer a few simple questions in English.”<sup>328</sup> Like Governor Smith, Antin believed that conditioning citizens’ right to vote based on English literacy was discriminatory and did not confer “good citizenship.”

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<sup>324</sup> Antin, “The Test for New Voters,” *New York Times*, October 23, 1924. Antin replied to the *Times* directly: “According to your own admission, it has disfranchised thousands of foreign-born citizens under the guise of a useless educational test.”

<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*

<sup>327</sup> *Ibid.*

<sup>328</sup> *Ibid.*

## C. The Results

### The Literacy Test is Declared Victorious

Following the results of the highly anticipated presidential election—a landslide victory for incumbent Republican President Calvin Coolidge, who won every county in New York State—newspapers reported that 23 percent of applicants failed the literacy test in New York City.<sup>329</sup> Roughly 80 percent of applicants in New York City were foreign-born citizens.<sup>330</sup> Moreover, all 10,274 failures were foreign-born citizens.<sup>331</sup> Conversely, outside New York City, over 14,614 applicants passed the literacy test out of a total of 16,203 applications: the failing rate was 9.8 percent, less than half that of New York City.<sup>332</sup> The *Olean Herald*, an Upstate newspaper, concluded that while naturalized citizens had passed citizenship tests which required some ability to read and write English, their high rate of failure from the NYSL Test indicated that the requirements for citizenship were “too low.”<sup>333</sup> They noted that no other state would have been able to disqualify these 10,000 citizens under their respective literacy laws and thus, New York’s law was considered a “great success” that should be emulated across the nation.<sup>334</sup> Through its higher-standard of literacy, New York State rewrote the rules of citizenship.

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<sup>329</sup> William O’Shea, “Literacy Test of Voters is Pronounced a Success,” *New York Times*, January 4, 1965. 10,274 people failed the test out of 44,941 in New York City, resulting in a failure rate of 23 percent (8,345 people received certificates without taking the test by presenting diplomas).

<sup>330</sup> *Ibid.*

<sup>331</sup> “Literacy Test,” *Olean Herald*, January 29, 1925. The *New York Times* also confirmed that all the failures came from foreign born applicants.

<sup>332</sup> *Ibid.* Rejall, *Administration of the Literacy Law for New Vote*, (New York: State Department of Education, 1930). I aggregated this percentage from the *New York Times* report of New York City failure rates and from the total passage rates in New York State collected by a 1930 Department of Education report. There were 61,144 total tests taken in 1924: 24,888 applicants passed; 12,256 applicants failed. Subtracting the 44,941 tests in New York City from the total tests results in 16,203 tests taken Upstate. Then, subtracting the 10,274 successful applicants in New York City from the 24,888 successful applicants across the state results in 14,614 successful applicants outside of New York City. 14,614/16,203 equals a passing rate of 90.2 percent and a failure rate of 9.8 percent.

<sup>333</sup> *Olean Herald*, January 29, 1925. Citizens in New York were held to a higher standard of citizenship than every other state: “There is a great discrepancy between the [federal] court standards for citizenship and those for voting as established by this State.”

<sup>334</sup> *Ibid.*

Education officials lauded the literacy test law and recommended it be replicated around the nation. William O’Shea, the New York City Superintendent of Schools, wrote an op-ed on January 4, 1925 in which he claimed the results of the NYSL Test were “so satisfactory” that other states would replicate New York’s system.<sup>335</sup> On February 10, 1925, the Providence League of Women Voters hosted a talk with Rejall and Dr. Walter E. Ranger, the State Commissioner of Education, to recommend the implementation of New York’s literacy test in Rhode Island.<sup>336</sup> Dr. Ranger concluded the discussion with the fervent belief that “suffrage is not an inalienable right, but should be conferred so as to promote good government.”<sup>337</sup> Due to the growing national recognition of the NYSL Test, Rejall proposed a federal literacy test law for both voting and naturalization, which would be based on the NYSL Test.<sup>338</sup> To Rejall’s wishes, the NYSL Test did have a lasting impact on education and citizenship in the country: the NYSL Test became the pilot of New York’s standardized Regents tests for high schoolers and the model of the U.S. Citizenship test used today to determine naturalization.<sup>339</sup>

Despite its success, O’Shea admitted that there were difficulties in the administration of the literacy tests. Mainly, many applicants “misunderstood the purpose of the test.”<sup>340</sup> In one case, a very “well dressed” and “apparently well educated” girl failed the test after answering the questions without reading the corresponding passage.<sup>341</sup> In some cases, people expected the exam to be a test of comprehension and not the ability to “simply” read and write English: some people spent hours studying history and civics in anticipation of a more rigorous exam.<sup>342</sup>

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<sup>335</sup> O’Shea, “Literacy Test of Voters is Pronounced a Success,” *New York Times*, January 4, 1925.

<sup>336</sup> “Test of Literacy for Voters Urged,” *Providence Journal*, February 10, 1925.

<sup>337</sup> *Ibid.*

<sup>338</sup> Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, 5.

<sup>339</sup> Serviss, “Activists, Immigrants, Citizens,” 141.

<sup>340</sup> O’Shea, *New York Times*, January 4, 1925.

<sup>341</sup> *Ibid.*

<sup>342</sup> O’Shea, “Literacy Test of Voters is Pronounced a Success,” *New York Times*, January 4, 1925. Another odd case involved a man who answered all the questions by writing Congressman LaGuardia’s name ten times: he was

Another issue that O'Shea cited was the refusal of "highbrows," who either recently moved to New York or lost their diplomas, to read and write "a simple story about a cow or the invention of the steamboat," which they deemed an insult their impressive educational background—similar to the experience of H. D. Hausheer.<sup>343</sup> One highly-educated woman tore the test up and decried that it was an insult to her intelligence. Although there were some instances of attempted bribery of proctors, O'Shea recounted that there were fewer instances than anticipated.

In New York City, the results of the NYSL Test directly correlated to immigrant education and class. The lowest percentage of failures was in a school on the Upper West Side of Manhattan near Columbia University, where there were only 13 failures out of 1,364 tests.<sup>344</sup> In Greenwich Village, where there was a large number of high-class Italians, Spaniards, and Greeks, only 11 failed out of 633 applicants. Conversely, the highest percentage of failures came from a school district that was almost exclusively Italian: 314 out of 592 applicants failed. Another Italian and Jewish district saw a nearly 50 percent failure rate. The highest failure rates were always found in "Ghetto districts" where single nationalities, especially Italian and Jewish, were "compactly segregated."<sup>345</sup> O'Shea claimed that the 23 percent rate of failure was commendable news that indicated the literacy test was effective at barring prospective voters who could not even "read and write English as well as a child in the fourth grade."<sup>346</sup> Rejall argued that the literacy tests "proved their worth in protecting the ballot from the dangers

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"confident that this would convince the examiner that he possessed all the information necessary to cast an intelligent ballot."

<sup>343</sup> O'Shea, "Literacy Test of Voters is Pronounced a Success," *New York Times*, January 4, 1965.

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.*

<sup>346</sup> *Ibid.*

inherent in an illiterate electorate.”<sup>347</sup> O’Shea posited that the literacy tests were successful in disenfranchising “undesirable” foreigners.<sup>348</sup>

### **An Autopsy of the NYSL Test**

In 1930, Rejall released a report on administration of the Regents Literacy Test from 1923 to 1929.<sup>349</sup> Despite the use of literacy tests in the country since 1855, the NYSL Test program was the first to keep official records and have “objective material as to its effectiveness.”<sup>350</sup> Between 1923 and 1929, 55,000 people failed the English literacy test, amounting to roughly 15 percent of applicants.<sup>351</sup> However, an unknown number of potential voters—perhaps tens of thousands—did not even attempt to take the test out of fear that they had little to no chance of passing.<sup>352</sup> Thus, the true extent of the law’s disenfranchisement is unknown. In 1931, F. G. Crawford, a professor of political science at Syracuse University, published a review of the Department of Education’s report that provides further insight into the results of the test.<sup>353</sup>

<b>A. Total Number Applying for Certificates of Literacy</b>						
<b>1923</b>	<b>1924</b>	<b>1925</b>	<b>1926</b>	<b>1927</b>	<b>1928</b>	<b>1929</b>
<b>33,795</b>	<b>76,280</b>	<b>39,457</b>	<b>43,855</b>	<b>55,276</b>	<b>163,299</b>	<b>51,081</b>

Crawford noted there was a “steady increase of interest in voting in the state of New York” based on the rise in applications for literacy certificates.<sup>354</sup> The major increase in 1928

<sup>347</sup> Rejall, *Thirty and One Reading Tests for Voters and Citizenship*, 5.

<sup>348</sup> Keyssar, *The Right to Vote*, 146.

<sup>349</sup> Rejall, *Administration of the Literacy Law for New Vote*, (New York: State Department of Education, 1930).

<sup>350</sup> Crawford, “Operation of the Literacy Test for Voters in New York,” 345.

<sup>351</sup> Keyssar, 146. 55,000 persons out of 472,000 failed the literacy test during this period.

<sup>352</sup> Ibid. Keyssar argues “Thousands of people failed the test each time that it was given, and thousands more were believed to have foregone the opportunity to vote because they chose not to be tested.”

<sup>353</sup> Crawford, 342.

<sup>354</sup> Ibid, 345.

was due to the high-turnout presidential election of 1928 between Republican Herbert Hoover and Democrat Al Smith: a record 163,299 new voters were brought into the electorate.

**C. Results of Literacy Test**

	<b>1923</b>	<b>1924</b>	<b>1925</b>	<b>1926</b>	<b>1927</b>	<b>1928</b>	<b>1929</b>	<b>Totals</b>
<b>Taking test . . . .</b>	<b>25,199</b>	<b>61,144</b>	<b>30,859</b>	<b>34,963</b>	<b>43,673</b>	<b>129,864</b>	<b>46,483</b>	<b>472,126</b>
<b>Passed . . . . .</b>	<b>19,806</b>	<b>24,888</b>	<b>25,358</b>	<b>28,108</b>	<b>37,002</b>	<b>116,760</b>	<b>41,380</b>	<b>317,302</b>
<b>Failed . . . . .</b>	<b>5,393</b>	<b>12,256</b>	<b>5,501</b>	<b>6,855</b>	<b>6,671</b>	<b>13,104</b>	<b>5,044</b>	<b>54,824</b>
<b>Per cent failed .</b>	<b>21.4</b>	<b>16.1</b>	<b>17.8</b>	<b>19.6</b>	<b>20.66</b>	<b>10.09</b>	<b>10.84</b>	<b>14.9</b>

In the first year of the literacy test, over 21.4 percent of prospective voters failed the literacy test. However, the percentage of failures declined in two presidential election cycles, in 1924 down to 16.1 percent and in 1928 down to a record low of 10.1 percent. Crawford wrote that the predominant reasons for these improved passing rates were “the increased efficiency” of evening schools and special schools for foreign-born women, as well as the new state requirement that applicants for naturalization be able to read and write in English.<sup>355</sup>

**B. Presentation of School Certificates**

	<b>1923</b>	<b>1924</b>	<b>1925</b>	<b>1926</b>	<b>1927</b>	<b>1928</b>	<b>1929</b>
<b>Day Schools . . . . .</b>	<b>7,829</b>	<b>13,848</b>	<b>7,668</b>	<b>7,718</b>	<b>10,162</b>	<b>29,833</b>	<b>4,184</b>
<b>Evening Schools . .</b>	<b>767</b>	<b>1,288</b>	<b>930</b>	<b>1,174</b>	<b>1,441</b>	<b>3,601</b>	<b>473</b>

Crawford also noted that the alternative way of proving literacy, acquiring certificates of literacy, was “underutilized” by new voters.<sup>356</sup> He explained that many people were unable to secure these certificates, due to a myriad of reasons: schools were closed in the evenings when people had free time after work, school records were lost sometimes, and people who attended school in other districts in the state could not travel to get their certificates. Most prospective

<sup>355</sup> Crawford, “Operation of the Literacy Test for Voters in New York,” 345.

<sup>356</sup> *Ibid.*, 343.

voters opted to take the literacy test, rather than attempting to locate their certificates. This is evident in the fact that the number of people who took the literacy test was consistently greater than the number of people who presented school certificates to election inspectors.

**D. Comparison of Men and Women Applying for Certificates of Literacy**

	<b>1923<sup>1</sup></b>	<b>1924</b>	<b>1925</b>	<b>1926</b>	<b>1927</b>	<b>1928</b>	<b>1929</b>
<b>Men</b> .....		<b>60,022</b>	<b>30,477</b>	<b>34,305</b>	<b>41,820</b>	<b>104,980</b>	<b>37,108</b>
<b>Percentage</b> .....		<b>78.6</b>	<b>77.2</b>	<b>78.2</b>	<b>75.67</b>	<b>64.28</b>	<b>72.65</b>
<b>Women</b> .....		<b>16,258</b>	<b>8,930</b>	<b>9,550</b>	<b>13,438</b>	<b>58,319</b>	<b>13,972</b>
<b>Percentage</b> .....		<b>21.4</b>	<b>22.8</b>	<b>21.8</b>	<b>24.33</b>	<b>35.72</b>	<b>27.35</b>

<sup>1</sup> No statistics available for 1923.

Another noteworthy comparison is the difference between the number of men and women applying for literacy certificates. After only being recently enfranchised in 1920, women still made up a small portion of the total number of active voters, despite representing half of the total voting-eligible population. Crawford reasoned that among the nonvoting bloc, there were many naturalized, foreign-born women who did not bother to take the literacy test.<sup>357</sup> In 1922, L.A. Wilson warned that the literacy test would disenfranchise thousands of illiterate women who just recently gained the right to vote, making it “increasingly important that special attention be given to this phase of our immigrant education problem.”<sup>358</sup> This is because foreign-born women were isolated from education opportunities and had little contact with native English speakers.<sup>359</sup> The low number of women voting through 1929 suggests that there was not enough of an effort made by the government to mobilize immigrant women to learn English and register to vote.

<sup>357</sup> Crawford, “Operation of the Literacy Test for Voters in New York,” 344.

<sup>358</sup> “University of the State of New York Bulletin,” 3.

<sup>359</sup> “Suggestions to Aid Foreign-Born Women,” *New York Times*, June 29, 1924, Roll #2, Box 1, Folder 12, A0063, NYSA.

According to Crawford, the results demonstrated the success of the NYSL Test and its educational focus: “The success of the law in New York is unquestioned...[B]ecause its administration was placed in the hands of the educational authorities, it has become of great value.”<sup>360</sup> Furthermore, he argued that the NYSL Test promoted the benefits of educating and Americanizing immigrants through the democratic process: “The Americanization movement in New York state has furnished aliens the opportunity to learn English when applying for citizenship and an equal chance to comply with the state educational qualification for voting.”<sup>361</sup>

Other academic scholars and literacy advocates around the nation took note of New York’s success. In 1930, Arthur Bromage, a professor at the University of Michigan, argued that the NYSL was a great achievement: “It not only provided a new impetus for evening school work among adults, but it also directly linked the state education department with the maintenance of an electorate literate in the English language.”<sup>362</sup> He also claimed that original literacy tests of Massachusetts and other states “pale by comparison.”<sup>363</sup>

Bromage argued that the expansion of voting rights only diluted the quality of the electorate and that restrictive acts like the NYSL Test were necessary to protect the ballot from “undesirable” citizens. He discussed the major expansions of voting rights over the past several decades—the extension of suffrage to Black Americans and women, as well as the elimination of most property requirements—and questioned, “Has the broadening of the suffrage brought into being a more intelligent and politically-minded electorate? Has the voting class gained in quality

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<sup>360</sup> Crawford, 345. Crawford wrote that although there have been some bribery attempts, threats to education officers, and a few instances of substitutes taking tests on behalf of others, “the administration of the law has entailed little difficulty.”

<sup>361</sup> Crawford, “The New York State Literacy Test,” 263.

<sup>362</sup> Bromage, “Literacy and the Electorate,” 961.

<sup>363</sup> *Ibid.* Bromage made a distinction between the early literacy tests in Connecticut and Massachusetts, which tested reading and writing “intelligibly” and the NYSL Test, which tested the ability to read and write in English “intelligently.”

as well as quantity?”<sup>364</sup> Bromage believed that allowing illiterates to vote was “an uncertain means of making the United States safe for democracy.”<sup>365</sup> He applauded the practice of administering state literacy tests to disenfranchise illiterates, proclaiming that education was a requirement of suffrage: “With our present systems of compulsory and adult education...it is no injustice to ask the voter to learn the English language. Nor is it a denial of the right to vote.”<sup>366</sup> Furthermore, Bromage qualified position by stating that the literacy test “is not a sovereign cure for all our electoral ills” but at the minimum, a “practical” tool to combating illiteracy and unruly universal suffrage.<sup>367</sup>

The NYSL Test worked just as its founders had intended and it became a model for the nation. Despite its success, states did not follow New York’s lead as Rejall and others had hoped and the movement to expand the education-based literacy test across the country failed to materialize: In 1924, Oregon became the final state to institute any literacy test requirement for voting.<sup>368</sup> Even in New York, the literacy test failed to expand; in 1934, the Honest Ballot Association lobbied for an amendment that would have required literacy of all (not only new) voters, but it was quickly stopped by the state’s supreme court.<sup>369</sup> While no new state instituted a literacy test for voting, there were few movements to expand suffrage: no state repealed its literacy test laws in the decades following World War I.<sup>370</sup> From the 1930s to the 1940s, New York’s literacy test was an undisputed component of its election law. However, drastic demographic changes in New York City during the 1940s and 1950s would shift the target of the

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<sup>364</sup> Bromage, “Literacy and the Electorate,” 948.

<sup>365</sup> Ibid.

<sup>366</sup> Ibid, 961.

<sup>367</sup> Ibid.

<sup>368</sup> Keyssar, *The Right to Vote*, 228.

<sup>369</sup> Ibid.

<sup>370</sup> Ibid.

NYSL Test from immigrants to Spanish-speaking citizens. This would lead to a fierce battle over voting rights in New York that would capture the attention of the nation once again.

### III. “Aquí Se Habla Inglés”: Puerto Ricans’ Fight to Abolish New York’s English Literacy Test

*We are very happy in the fact that the great State of New York now turns to us for some guidance in democracy, which we believe the State of New York has needed for some time.*

- U.S. Senator Spessard Holland (D-FL)<sup>371</sup>

*It is incredible to think that the United States Government has seen fit to say to these people, you can learn your history in Spanish, you can learn civil government in Spanish, you can be educated as an American in a Spanish tongue, but you may not use it in New York City.*

- Attorney Paul O’Dwyer<sup>372</sup>

#### **The Literacy Movement Fades, But the Test Remains**

Over the decades following the enactment of the constitutional amendment, the NYSL Test faded from the news and went unchallenged in both the courts and in the state legislature. Following the adoption of the literacy test, English illiteracy in New York reduced significantly: In the ten years after the adoption of the law the illiteracy rate across the state lowered from 5.1 percent to 3.7 percent, while the decade preceding the law’s implementation only saw a reduction of illiteracy from 5.5 percent to 5.1 percent.<sup>373</sup> Furthermore, the percentage of failures of the literacy test continued to decrease over time, from over 20 percent in 1922, to 6.1 percent in 1936, 8 percent in 1937, 6.3 percent in 1938.<sup>374</sup> These figures demonstrate that NYSL Tests helped reduce illiteracy in New York while southern states’ English literacy tests hardly reduced

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<sup>371</sup> Quote from U.S. Senator Spessard Holland of Florida during the debates on the Voting Rights Act. “Proceedings and Debates of the U.S. Congress,” *Congressional Record*, May 19, 1965, 10688.

<sup>372</sup> Richard M. Pious, “Puerto Ricans and the New York State Literacy Test,” (M.A. -- New York, Columbia University, 1966), 59.

<sup>373</sup> *Regulations and Directions Governing the Issuance of Certificates of Literacy and Conduct of New York State Regents Literacy Test* (New York State University, 1940), 3.

<sup>374</sup> *Ibid.*

illiteracy at all.<sup>375</sup> Despite several changes to the State Constitution, the literacy test amendment remained a key provision in Article II, the election law: The State Constitution was rewritten in 1938 and Article II was amended three times (1943, 1945, and 1951) without any changes to the literacy requirement.<sup>376</sup> However, the success of the NYSL Test coincided with the passage of the Johnson-Reed Act of 1924, which severely restricted immigration to the United States and specifically to New York, where immigrants were the predominant drivers of state illiteracy.<sup>377</sup> The abrupt halt of immigration was a significant factor in the decline of illiteracy in New York—the state with the largest share of new immigrants at the time. The confounding variable of immigration restriction makes it difficult to accurately assess the NYSL Test’s impact on the decline of illiteracy.

### **The Unique Case of Puerto Ricans**

Despite the continuation of the NYSL Test, the rapid growth of the Puerto Rican population in New York City in the 1940s and 1950s reignited the argument that the English literacy test was a discriminatory tool to prevent minority groups from participating in the political process. Between 1946 and 1960, approximately 600,000 Puerto Ricans migrated to the United States and more than three-quarters of the group chose New York City as their new home.<sup>378</sup> By 1965, Puerto Ricans were 730,000 strong in New York City, making up almost one-tenth of the city’s population.<sup>379</sup>

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<sup>375</sup> Keyssar, *The Right to Vote*, 111.

<sup>376</sup> “Aqui Se Habla Inglés,” *New York Times*, August 1, 1963.

<sup>377</sup> Ngai, *Impossible Subjects*, 7.

<sup>378</sup> Arnold H. Leibowitz, “English Literacy: Legal Sanction for Discrimination,” *Revista Jurídica de la Universidad de Puerto Rico*, Vol 39, No. 3 (1970), 370.

<sup>379</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 27.

The case of Puerto Ricans was unique because inhabitants of the island became U.S. citizens not through immigration and naturalization, but through annexation.<sup>380</sup> As a Spanish-speaking people, they became a linguistic minority upon arriving in the U.S. mainland. In 1898, the territory of Puerto Rico was annexed to the United States as a result of the Spanish-American War.<sup>381</sup> Under the Treaty, Congress was authorized to determine the “civil rights and political status of the native inhabitants [of Puerto Rico].”<sup>382</sup> However, Congress failed to act swiftly on the matter of Puerto Rican citizenship. After years of protest, Congress and the Wilson administration finally passed the Jones Act in 1917, which granted automatic citizenship to Puerto Rican natives.<sup>383</sup> Puerto Ricans could now enjoy the privileges and liberties guaranteed in the U.S. Constitution, including the right to move freely to the U.S. mainland.”<sup>384</sup> Richard M. Pious argues the Jones Act created the opportunity for Puerto Ricans’ “mass participation in political life.”<sup>385</sup>

As citizens, Puerto Ricans were exempt from the 1924 quota system and their movement to the mainland was unrestricted. In 1920, there were only 11,811 Puerto Ricans in the United States.<sup>386</sup> By 1960, there were 892,513 Puerto Ricans in the United States—642,622 of whom resided in New York State.<sup>387</sup> In New York City, the rapid increase of the Puerto Rican

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<sup>380</sup> Oh, *Struggles over Immigrants' Language*, 162.

<sup>381</sup> Selma C. Berrol, Randall M. Miller, and William Pencak, *Immigration To New York*, (London and Toronto: Associated University Presses, 1991), 181.

<sup>382</sup> Treaty of Paris, 1898. 30 Stat. 1754. *People ex rel. Juarbe v. Board of Inspectors*, 67 N.Y.S. 236 (Sup. Ct. 1900). Congress’ neglect to act on the matter of Puerto Rican citizenship led to court challenges. A year after the Treaty of Paris, a lawsuit was filed by a Puerto Rican national seeking the right to vote in New York. Mr. Juarbe had served with the U.S. Army in Puerto Rico and “adopted” the nationality of the U.S. upon moving to New York City in 1899. Given the fact that Congress had failed to act upon its powers—which included the ability to establish collective naturalization for Puerto Rican natives—the Court ruled that Juarbe could not claim U.S. citizenship and therefore was denied the right to vote in New York.

<sup>383</sup> Berrol, *Immigration To New York*, 181.

<sup>384</sup> *Ibid.*

<sup>385</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 4.

<sup>386</sup> *Ibid.*, 15. “A Summary of Facts and Figures” distributed on Pious’ request by the Office of the Commonwealth of Puerto Rico, Migration Division (1963).

<sup>387</sup> Leibowitz, “English Literacy: Legal Sanction for Discrimination,” 370.

population after World War II was especially notable: Between 1950 and 1960, the Puerto Rican population in Manhattan rose near doubled from 138,507 to 225,639 and in the Bronx, the population tripled from 61,924 to 186,885.<sup>388</sup> During their massive migration waves, Puerto Ricans came to New York City to “liberate themselves from the poverty of the Caribbean.”<sup>389</sup> Puerto Ricans were the most economically depressed group in New York City through the early 1960s.<sup>390</sup> In addition, in 1960, less than 40 percent of Puerto Ricans in New York City were literate in English.<sup>391</sup>

**352 LITERACY: PUERTO RICO AND THE UNITED STATES;  
ABILITY TO SPEAK ENGLISH: PUERTO RICO; 1910-60**

Year	Percentage Literate <sup>a</sup>		Percentage Able to Speak English
	United States	Puerto Rico	Puerto Rico
1910	92.3	33.5	3.6
1920	94.0	45.0	9.9
1930	95.7	58.6	19.4
1940	97.1	68.5	27.8
1950	96.8	75.3	26.1
1960	97.6	83.0	37.7

**SOURCE: UNITED STATES-PUERTO RICO COMMISSION  
ON THE STATUS OF PUERTO RICO, STATUS OF PUERTO  
RICO 152 (1966).**

<sup>a</sup> Literacy is defined as the ability to read and write a simple message in any language. Percentages are based on the population ten years of age and older. Percentages for the United States for 1950 and 1960 are for the population fourteen years of age and older.

The report above sheds light on the challenges of incorporating Puerto Ricans into mainland life during the mid-twentieth century. An important aspect of the report is its definition of “literacy”: “Literacy is defined as the ability to read and write *a simple message* in any language.”<sup>392</sup> However, “a simple message” is not defined in the report. This harkens back to

<sup>388</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 15.

<sup>389</sup> Leibowitz, “English Literacy: Legal Sanction for Discrimination,” 320.

<sup>390</sup> Pious, 10.

<sup>391</sup> Leibowitz, 370.

<sup>392</sup> “Literacy: Puerto Rico and the United States; Ability to Speak English: Puerto Rico; 1910-1960,” United States-Puerto Rico Commission on the Status of Puerto Rico (1966). Emphasis added.

the federal government's failure to create a standard definition of "literacy" in the 1920s.<sup>393</sup> While the definition of "literacy" changed over time, the inconsistency and broadness of these definitions indicates the government's shortcomings in creating a standard, scientific methodology for determining literacy. During the early-twentieth century, illiteracy was a serious problem in Puerto Rico. However, the literacy rate in Puerto Rico increased dramatically every decade: in 50 years, the literacy rate increased from 33.5 percent in 1910 to 83 percent in 1960. Despite the increase in Spanish literacy, only 37.7 percent of Puerto Ricans were literate in English. With approximately 25,000 Puerto Ricans migrating to the country each year in the 1960s, government officials were concerned with the large numbers of illiterate Puerto Ricans in the United States.<sup>394</sup>

Despite many attempts, the U.S. government failed to impose English on the Puerto Rican education system. In response to the efforts to Americanize the island, the Partido Popular Democrático rose to power in 1944 and doubled down on Spanish-language instruction in Puerto Rican schools.<sup>395</sup> Arnold H. Leibowitz, the General Counsel of the United States Commission on the Status of Puerto Rico in the 1960s, wrote that the rise of Puerto Rican nationalism led Congress to grant Puerto Rico "a great deal of autonomy" over its educational system, resulting in minimal focus on improving English-language learning.<sup>396</sup>

The Puerto Rican movement to embrace Spanish ran counter to the naturalization movement at the time, which demanded English literacy. The Nationality Act of 1940 included a clause that required naturalized citizens demonstrate "an understanding of the English language,

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<sup>393</sup> Strayer, "Report of National Education Association Legislative Commission," 33.

<sup>394</sup> Leibowitz, "English Literacy: Legal Sanction for Discrimination," 370.

<sup>395</sup> Aida Negrón de Montilla, *Americanization in Puerto Rico and the Public School System 1900-1930*, San Juan: Universidad de Puerto Rico, 1975), 3. Leibowitz, "English Literacy: Legal Sanction for Discrimination," 331.

<sup>396</sup> Leibowitz, 334, 370.

including an ability to read, write and speak words in ordinary usage in the English language.”<sup>397</sup> The Immigrant Naturalization Act of 1952 made English literacy a condition of naturalization.<sup>398</sup> Therefore, citizenship was now linked to English literacy. However, because Spanish-speaking Puerto Ricans were automatically granted citizenship through annexation and were exempt from the English literacy requirements for citizenship, attention shifted to the NYSL Test, which became a powerful tool to impose English on Spanish-speaking citizens and strip them of their right to vote.

### **Nuyoricans and the Demand for Political Power**

Given the rapid increase in Nuyoricans, a portmanteau of “New York” and “Puerto Ricans,” there was growing demand in the 1940s and 1950s for political representation in the city.<sup>399</sup> The first significant mobilization of Puerto Rican voters came in the mid-1930s where Puerto Ricans backed Vito Marcantonio, an Italian Congressman from East Harlem.<sup>400</sup> Marcantonio was recognized as “de facto Congressman for Puerto Rico” and championed Puerto Rican independence on the national stage.<sup>401</sup> In 1937, Oscar García Rivera was elected to the State Assembly, becoming the first Puerto Rican elected to office in the country.<sup>402</sup> However,

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<sup>397</sup> Nationality Act of 1940, section 304. 8 U.S.C. § 1423 (1964)

<sup>398</sup> Ariel Loring, “The Meaning of Citizenship: Tests, Policy, and English Proficiency,” *The CATESOL Journal*, Vol. 24, No. 1 (2012), 200.

<sup>399</sup> Andrés Torres, *Between Melting Pot and Mosaic: African Americans and Puerto Ricans in the New York Political Economy*, (Philadelphia: Temple University Press, 1995), 65. The Puerto Rican population in New York City increased by 50 percent from 1930 to 1940 and quadrupled from 1940 to 1950.

<sup>400</sup> Gerald Meyer, *Vito Marcantonio: Radical Politician 1902-1954*, (Albany: State University of New York Press, 1989), 171.

<sup>401</sup> *Ibid.*

<sup>402</sup> Juan Cartagena, “Puerto Ricans and the 50th Anniversary of the Voting Rights Act,” *Centro Voices E-Magazine*, City University of New York, July 28, 2015, <https://centropr.hunter.cuny.edu/centrovoices/current-affairs/puerto-ricans-and-50th-anniversary-voting-rights-act>.

there were no Puerto Rican New York City Councilmembers, state Senators, nor congressional representatives until 1965.<sup>403</sup>

Puerto Rican community leaders noticed the lack of proportional representation in New York City. They demanded more accessibility and changes to city administration and services, such as more signs in Spanish in hospitals, polling booths, and police stations.<sup>404</sup> Local civic groups and Puerto Rican governmental agencies, such as the New York City branch of the Migration Division of the Department of Labor of Puerto Rico, began an annual voter registration drive in 1954.<sup>405</sup> Nick Lugo, the director of campaigns for the Legion of Voters, recognized the importance of increasing Puerto Rican participation and stated, “The voting franchise is the greatest treasure of a democracy.”<sup>406</sup>

Despite these community-driven efforts to increase Puerto Rican participation, there was little change, due largely in part to the continuation of the English literacy test for new voters. Young-In Oh notes that state and city lawmakers were aware of the rapid increase in the Nuyorican population and backed the NYSL Test in order to stunt the growth of the Spanish-speaking electorate: “Facing the fearfully increasing number of Puerto Rican migrants, New York State tried to uphold the English literacy election law, hoping that the law would block undesirable citizens’ political participation. The target of the English literacy test law had been changed.”<sup>407</sup> Aware that voter registration drives and political mobilization could only go so far in face of mass disenfranchisement, Puerto Rican activists shifted their strategy to demand for the abolition of the English literacy test.

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<sup>403</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 21, 24.

<sup>404</sup> Ibid.

<sup>405</sup> “Campaigns Opened to Register Thousands of Voteless in City,” *New York Times*, July 16, 1964.

<sup>406</sup> *El Diario*, September 24, 1965.

<sup>407</sup> Oh, *Struggles over Immigrants’ Language*, 165.

## **A Grocer's Plan to Take Down The English Literacy Test**

Without an overhaul of the election system, the English literacy test would continue to disenfranchise a great number of U.S. citizens in New York. Advocacy to reform the election law began in an unusual way. In 1957, the friendship between Jose Camacho, a 58-year-old grocer from Puerto Rico and resident of the Bronx, and Gene Crescenzi, an immigrant and a young lawyer recently discharged from the Army, led to a court case which challenged the literacy test for the first time in decades.<sup>408</sup> In 1966, Pious interviewed Crescenzi. Reflecting on the reasons he decided to challenge the NYSL Test on Camacho's behalf, Crescenzi said he believed "American democracy would be strengthened if the barriers to assimilation and participation were struck down" and that "the literacy test should be challenged as one of the steps toward providing full equality for Puerto Ricans."<sup>409</sup>

Crescenzi decided to test the constitutionality of the English literacy test and filed a petition on October 4, 1958 in the State Supreme Court in Bronx County.<sup>410</sup> The petition stated that Camacho, a U.S. citizen, was educated in Spanish and had previously voted in Puerto Rico—where there was no literacy test—before moving to New York.<sup>411</sup> Camacho argued that because he was unable to demonstrate literacy in English to qualify as a voter, he was denied his right to vote.<sup>412</sup> Furthermore, he argued that his Fourteenth Amendment and Fifteenth Amendment rights to equal protection were violated "because my racial ancestry is Spanish," and that the amendments made no distinction based on race or color.<sup>413</sup> He also argued that the

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<sup>408</sup> Laymond Robinson, "Suit Seeks to End State Voter Test: Puerto Rican Says English Requirement is Invalid," *New York Times*, June 13, 1961.

<sup>409</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 42.

<sup>410</sup> Camacho v. Doe, 221 N.Y.S.2d 262 (1959).

<sup>411</sup> Robinson, *New York Times*, June 13, 1961.

<sup>412</sup> *Ibid.*

<sup>413</sup> Camacho v. Doe, 221 N.Y.S.2d 262 (1959).

NYSL Test added to the citizenship requirements laid out by Congress under the Jones Act and that New York had no authority to supersede Congress' power to determine U.S. citizenship.

Crucially, Camacho did not seek to overturn the literacy test law, but rather to produce an order requiring the Board of Elections to allow Camacho to prove his literacy in Spanish. This order would only apply to Puerto Ricans and would not affect any other linguistic minorities in New York. Crescenzi acknowledged that they were not challenging the concept of literacy tests for voting, since the courts had previously upheld the English literacy test.<sup>414</sup> He felt that the optics of illiterates voting due to the abolition of the literacy test would be heavily criticized.<sup>415</sup>

The Office of the Corporation Counsel of New York City, representing the Board of Elections, denied the Fourteenth and Fifteenth Amendment claims, as well as the claim that New York had unconstitutionally altered the federal requirements of citizenship. They claimed that it was incorrect to state that "his failure to read and write English is due to his racial ancestry."<sup>416</sup> The Bronx Supreme Court responded and denied Camacho's petition. The court held that the literacy test was constitutional and did not deny Camacho the right to vote: "Under the laws of this State...he must first learn to read and write English. This cannot be deemed an unreasonable requirement."<sup>417</sup> On November 19, 1959, the highest court in the state, the Court of Appeals, upheld the literacy test in a one-sentence opinion.<sup>418</sup>

Amidst this loss, Camacho and Crescenzi quietly laid the groundwork to prove their case to the nation. During the court cases, Camacho filed a complaint before the U.S. Commission on Civil Rights and claimed that the NYS literacy test was discriminatory and constituted a denial

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<sup>414</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 44.

<sup>415</sup> Ibid.

<sup>416</sup> Ibid, 43.

<sup>417</sup> Camacho v. Doe, 221 N.Y.S.2d 262 (1959).

<sup>418</sup> Pious, 45. 7 N.Y. 2nd 762. "Order appealed from herein be and the same is affirmed, without costs."

of the equal protection of the laws guaranteed by the Fourteenth Amendment.<sup>419</sup> The Commission's report noted that there were an estimated 600,000 Puerto Ricans living in New York City in 1959 and that about 190,000 of this group had lived in the state long enough to satisfy the residency requirements for voting.<sup>420</sup> The report argued that while nearly 60 percent of Puerto Ricans in New York City could only read and write in Spanish, many were well-informed of public affairs because of the excellent news coverage of the three available Spanish-language newspapers, which had a combined circulation of more than 82,000.<sup>421</sup> The report also cited a prior Supreme Court ruling that upheld the rights of non-English-speaking Americans: "The protection of the Constitution extends to all to those who speak other languages as well as those born with English on the tongue."<sup>422</sup> The Commission concluded that "Puerto Rican American citizens are being denied the right to vote, and that these denials exist in substantial numbers in the State of New York."<sup>423</sup> While the Commission explained that it could not offer legal remedy to Puerto Ricans and that interpretation was up to the courts, the report was an enormous boost to Camacho's cause.

### **Camacho's Case is Presented to the Nation**

In 1960, Paul O'Dwyer, a prominent New York attorney, reached out to Crescenzi to take over the case and present it to the federal courts. O'Dwyer, an immigrant from Ireland, was also the younger brother of New York City's former Democratic Mayor William O'Dwyer and ran

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<sup>419</sup> United States Commission on Civil Rights, *One Nation under God, Indivisible, with Liberty and Justice for All: An Abridgment of the Report of the United States Commission on Civil Rights*, (Washington, D.C., 1959), 57.

<sup>420</sup> Ibid.

<sup>421</sup> Ibid, 58.

<sup>422</sup> Ibid. Meyer v. Nebraska, 262 U.S. 401 (1923).

<sup>423</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 58.

unsuccessfully for Congress as a Democrat in 1948.<sup>424</sup> Crescenzi said he turned over the case to O'Dwyer, "in the belief that a case handled by a more distinguished lawyer would bring publicity to his cause."<sup>425</sup> Pious argues O'Dwyer "was acting ostensibly as a public spirited lawyer, but partisan considerations were undoubtedly involved."<sup>426</sup> O'Dwyer's political motivation was similar to that of the Democratic Party in the 1920s: Governor Smith and Assemblymember Antin were aware that the literacy test would negatively impact the Democratic Party's powerful immigrant voting base.

On September 8, 1960, O'Dwyer filed a lawsuit in the Federal Court of the Southern District of New York.<sup>427</sup> While retaining many of the arguments from Crescenzi's case, O'Dwyer used a new argument that would bring further national attention to the case; O'Dwyer claimed that the NYSL Test was in violation of the Civil Rights Acts of 1957 and 1960, "by establishing a practice or pattern in the deprivation of the right to vote of United States citizens."<sup>428</sup> The Civil Rights Act of 1957 empowered the Attorney-General and federal prosecutors to bring lawsuits against jurisdictions that interfered with the right to vote, while the 1960 law allowed lawsuits to be brought directly against officers of the State.<sup>429</sup> The suit was political in nature as O'Dwyer, a Democrat, was now able to bring action against Republican Governor Nelson Rockefeller, Republican Attorney-General Louis Lefkowitz, and Republican United States Attorney General William Rogers.<sup>430</sup> The brief called for Attorney General Rogers

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<sup>424</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 47.

<sup>425</sup> *Ibid.*, 48.

<sup>426</sup> *Ibid.*, 47.

<sup>427</sup> *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961).

<sup>428</sup> Pious, 47.

<sup>429</sup> The Civil Rights Act of 1957, 71 Stat. 634. The Civil Rights Act of 1960, 74 Stat. 86.

<sup>430</sup> Robinson, *New York Times*, Jun 13, 1961. The U.S. Attorney General William Rogers was named in the lawsuit because Camacho claimed that the Attorney General had failed to initiate suits against the literacy test in New York State to prevent discrimination.

to file suit to compel the New York City Board of Elections to allow Camacho to take the literacy test in Spanish and be eligible to vote in the next election.<sup>431</sup>

O'Dwyer took the court brief a step further and claimed that the legacy of the NYSL Test was rooted in racism. O'Dwyer proclaimed, "The English language literacy requirements for the exercise of the right to vote is merely a remaining burden wished upon our society by an obsolete Anglo-Saxon racist conspiracy fanned into new life by a Joint Legislative Investigation on Seditious Activities and Report on Revolutionary Radicalism of 1920."<sup>432</sup> He mentioned that the NYSL Test emerged during "a time of hysteria against foreign-born people."<sup>433</sup> In a 1962 op-ed, Moses Marvin, a New York City attorney, reiterated O'Dwyer's argument that the literacy test was not "a vestige of Colonial day" but instead emerged during a period of extreme xenophobia.<sup>434</sup> Marvin mentioned that the government enacted several measures directed at the "imagined alien threat to our free institutions," including quota system and the crackdown on socialist lawmakers, and he urged New York to not "remain shackled to the unwarranted trepidations of forty years ago."<sup>435</sup>

To win the case, O'Dwyer would need to prove that the NYSL Test was a discriminatory literacy test. The constitutional standard on literacy tests was established in 1959 in *Lassiter v. Northampton County Board of Elections*.<sup>436</sup> In *Lassiter*, the U.S. Supreme Court unanimously upheld a North Carolina statute requiring voters to read part of the state constitution in English.<sup>437</sup> The Court reasoned that the language of literacy tests was "neutral" and thus they

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<sup>431</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 65.

<sup>432</sup> Ibid.

<sup>433</sup> Robinson, *New York Times*, Jun 13, 1961.

<sup>434</sup> Moses K. Marvin, "Let Illiterates Vote," *New York Herald Tribune*, February 4, 1962.

<sup>435</sup> Ibid.

<sup>436</sup> *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959).

<sup>437</sup> Ibid.

were not discriminatory.<sup>438</sup> Writing on behalf of the Court, Justice William Douglas held that English literacy tests ensured a more intelligent and enlightened electorate.<sup>439</sup> He also set criteria for literacy tests: “Of course, a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot.”<sup>440</sup> Leibowitz criticized the Court’s opinion and argued that a neutral English literacy test was “a totally unreal situation.”<sup>441</sup> He claimed that every literacy test had racial characteristics that excluded certain ethnic or racial groups: “English literacy tests were formulated with the very purpose of discriminating against a particular group clearly identified by race, religion or country of origin.”<sup>442</sup> The *Lassiter* decision rendered O’Dwyer’s chances unlikely, as he would need to prove that the NYS test violated the Fifteenth Amendment.

During oral arguments in 1961, O’Dwyer did not argue that literacy tests were inherently unconstitutional, but instead that the NYSL Test was a unique case of disenfranchisement: the test was only administered in English, infringed on the rights of Puerto Ricans in New York, a unique group who were U.S. citizens educated in Spanish.<sup>443</sup> This narrow approach—instead of advocating for solidarity with Black Americans in the South—demonstrated the impregnability of literacy test laws at the time. Instead, O’Dwyer claimed that the Court had not ruled explicitly on the question of *English* literacy tests and thus Camacho’s request for a Spanish literacy test was still valid. O’Dwyer noted that although 19 states had literacy tests for voting, virtually all of them “*merely* require that the applicant be able to read the U.S. or State Constitutions,”

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<sup>438</sup> *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959).

<sup>439</sup> *Ibid.* Justice Douglas held that “[t]he ability to read and write... has some relation to standards designed to promote intelligent use of the ballot.” He also cited the fact that 19 states in the nation had literacy tests, implying that they must be reasonable.

<sup>440</sup> *Ibid.*

<sup>441</sup> Leibowitz, “English Literacy: Legal Sanction for Discrimination,” 370.

<sup>442</sup> *Ibid.*

<sup>443</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 54.

compared to the NYS test which required reading comprehension.<sup>444</sup> By this reasoning, New York's reading comprehension test disenfranchised Spanish-speaking citizens because it demanded a higher standard of literacy compared to literacy test standards in every other state.

O'Dwyer introduced several expert witnesses, including Stanley Ross, the editor of New York City's largest Spanish newspaper, *El Diario*. Ross testified that *El Diario* covered "all the nuclei of Spanish-speaking residents in the State" and "devotes more space, proportionately to politics, than any other newspaper in the country."<sup>445</sup> O'Dwyer also called on Stanley Lowell, Chairman of the State Committee on Intergroup Relations, who estimated that 190,000 Puerto Ricans were denied the right to vote due to the NYS literacy test.<sup>446</sup>

Aware that court precedent was against him, O'Dwyer used his concluding remarks to raise awareness to the discrimination occurring in New York. O'Dwyer's first noteworthy statement mentioned the hypocrisy of the NYSL Test and it became a rallying cry for Puerto Rican activists in the near future: "It is incredible to think that the United States Government has seen fit to say to these people, you can learn your history in Spanish, you can learn civil government in Spanish, you can be educated as an American in a Spanish tongue, but you may not use it in New York City."<sup>447</sup> O'Dwyer then questioned, "Would the [NYSL] tests be permitted to stand, given federal policy and adequacy of mass media coverage, if they were enacted in 1961?"<sup>448</sup> This query strikes at the core of the tension surrounding literacy tests and voting rights in New York. Why was law still necessary in 1961? If the literacy test emerged

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<sup>444</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 56. Emphasis added.

<sup>445</sup> *Ibid*, 57. *Cardona v. Power*, 384 U.S. 672 (1966). This point was repeated in *Cardona v. Powers*, an almost identical case in which Martha Cardona, a Puerto Rican and New York City resident since 1948, claimed that "New York City Spanish-language daily newspapers and other periodicals provide proportionately more coverage of government and politics than do most English-language newspapers."

<sup>446</sup> Pious, 57.

<sup>447</sup> *Ibid*, 59.

<sup>448</sup> *Ibid*.

from a moment of postwar, anti-immigrant hysteria, would it not be arbitrary and burdensome forty years later?

Despite the new and provocative arguments, Camacho's case was unsuccessful yet again. District Judge Metzner read the opinion of the court on October 19, 1961, holding that the NYS literacy test did not infringe on Camacho's Fourteenth and Fifteenth Amendment rights and found the NYSL Test was constitutional. He determined Camacho was "not being denied the right to vote because of his race, creed or color, but because of his illiteracy in the English language."<sup>449</sup> The court considered the quantity and quality of Spanish newspapers and media in the state to be "immaterial."<sup>450</sup> In order to justify the literacy test, Metzner mentioned the many other requirements the courts have upheld previously, including residency requirements and poll taxes.<sup>451</sup> Metzner also made an oft-repeated claim among literacy test proponents: "It is not unreasonable to expect a voter not only to be conversant with the issues presented for determination in choosing between candidates for election, but also to understand the language used in connection with voting."<sup>452</sup> To this point, Metzner mentioned that voting instructions and logistics were all printed in English.

Despite this seemingly final loss in the courts, Camacho issued another complaint to the U.S. Commission on Civil Rights in 1961.<sup>453</sup> The Commission reiterated its finding that a large number of Puerto Ricans were being denied the right to vote in New York City. The Commission also noted that of the 382 total complaints, all but three were submitted by Black Americans alleging violations of voting rights in Southern states: the three exceptions were Puerto Ricans in

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<sup>449</sup> Camacho v. Rogers, 199 F. Supp. 155 (S.D.N.Y. 1961).

<sup>450</sup> Ibid.

<sup>451</sup> Ibid.

<sup>452</sup> Ibid.

<sup>453</sup> United States Commission on Civil Rights, *Commission on Civil Rights Report: Vol. I*, (Washington, D.C., 1961), 21.

the Bronx, including Camacho. While the national spotlight was on Black Americans and their fight for voting rights, Puerto Ricans in New York were quietly building a compelling case for the abolition of literacy tests.

### **Principles or Politics: New York Reckons with Its Literacy Nightmare**

Following the unsatisfactory court ruling, Puerto Rican community leaders turned their attention to community mobilization and advocacy efforts in the city and state legislatures. During Camacho's case, Robert F. Wagner, the Democratic Mayor of New York City, came out in support of repealing the English literacy test amendment and pressured Republicans in the state legislature to support his proposal.<sup>454</sup> Wagner instructed the Corporation Counsel's office to withdraw from the Camacho case, stressing that it was the State Attorney General's job to defend the state constitution. AG Lefkowitz was none other than the Republican candidate in the 1961 New York City mayoral race—Wagner's opponent.

The day prior, an editorial in *El Diario* bashed Lefkowitz, claiming that the AG had reneged on his promise to allow a Spanish literacy test option.<sup>455</sup> *El Diario* also criticized the top Republican in the state, Governor Rockefeller, who opposed a Spanish test option.<sup>456</sup> *El Diario* demanded a response from Lefkowitz, asking "What is the position of candidate Lefkowitz on the concrete case after the unfortunate statements of the Governor?"<sup>457</sup> A Lefkowitz spokesperson refused to respond and instead stated that it was the AG's statutory duty to defend the state constitution in the courts.<sup>458</sup> Aware of the political momentum of Puerto Ricans' cause,

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<sup>454</sup> Peter Kihss, "State Dispute on Literacy Test Intrudes in Lefkowitz Campaign," *New York Times*, June 28, 1961.

<sup>455</sup> "Rocky Betrays Us," *El Diario*, June 27, 1961.

<sup>456</sup> Ibid. Rockefeller offered Puerto Ricans an unsatisfactory compromise; he proposed the possibility of requiring answers in English with questions explained in Spanish. This offer was insulting to the editorial board of *El Diario* and Puerto Rican community leaders.

<sup>457</sup> Kihss, *New York Times*, June 28, 1961.

<sup>458</sup> Ibid.

Wagner proclaimed that his father, the late Senator Robert Wagner (a Democrat and immigrant from Prussia), and the late Democratic Governor Al Smith had fiercely fought the law back in 1922 and had admonished the law for targeting Eastern and Southern European immigrants.<sup>459</sup> This strengthened Wagner's claim that the Democratic Party stood on the right side of history.

Less than two weeks before the 1961 general election, Puerto Rican leaders challenged Lefkowitz again. In late October, the Puerto Rican Home Towns Council held a meeting with more than thirty civic organizations and dozens of Hispanic leaders to develop a plan to pressure Lefkowitz close to election day. Speaking on behalf of the representatives, Narciso Puete Jr., a member of the Puerto Rican Bar Association, publicly called on Lefkowitz to oppose the English literacy tests and to stand with Wagner's call for repeal of the English tests.<sup>460</sup> At the same time, O'Dwyer and Crescenzi went to the major news outlets and declared that the literacy law "is no different than the poll tax requirement in the Southern areas."<sup>461</sup>

In 1961, there was a large discrepancy in the number of registered Spanish-speaking voters and the total number of Spanish-speaking citizens: 230,000 Puerto Rican and other Spanish-speaking voters were registered out of a 3.6 million total registered voters in New York City.<sup>462</sup> However, these 230,000 registered voters represented only 12 percent of the city's 900,000 Spanish-speaking citizens, while 47 percent of the general citizen population was registered to vote.<sup>463</sup> The *New York Herald Tribune* estimated that 100,000 to 200,000 of the 400,000 Puerto Rican adults in New York City were barred from voting due to the literacy

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<sup>459</sup> Kihss, *New York Times*, June 28, 1961.

<sup>460</sup> "Puerto Ricans Urge Lefkowitz to Oppose Literacy Test Ruling," *New York Times*, October 23, 1961.

<sup>461</sup> Ibid.

<sup>462</sup> Kihss, *New York Times*, June 28, 1961.

<sup>463</sup> Ibid.

requirements.<sup>464</sup> The gap was stark and the politics of the abolition movement were evident; Democrats were cognizant of the fact that repealing the English literacy test would add a great number of Democratic voters to the rolls and their solidarity with Puerto Ricans would likely be rewarded with further control of the city and increased power in the state government. At the same time, Puerto Ricans leaders knew the quickest way to unlock their political power would be to back Democrats and put pressure on key Republican legislators, such as Rockefeller and Lefkowitz.

On December 6, 1961, following a 15-point victory in the mayoral election, Wagner filed a proposal for an amendment to the State Constitution to permit citizens to take literacy tests in “any language in which a daily or weekly newspaper is published in this state,” which constituted at least 27 languages.<sup>465</sup> The proposal would affect hundreds of thousands of citizens from New York’s other major linguistic groups, including Italian, Polish, German, Chinese, and Yiddish-speaking citizens. This marked a strategic shift from the previous proposals that offered an exception for Spanish-speaking citizens. The new proposal reflected activists’ realization that expanding their coalition to all foreign-language speakers was more compelling.

Senator James L. Watson, an African-American Democrat from Harlem, and Assemblyman Felipe N. Torres, a Puerto Rican Democrat from the Bronx, introduced Wagner’s proposal as a legislatively referred constitutional amendment to the State Constitution at the beginning of the 1962 legislative session.<sup>466</sup> Wagner capitalized on the momentum by promoting the democratic electoral system he imagined if the amendment were to pass. Attached to his

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<sup>464</sup> Laurence Barrett, “Non-English Speaking Voters-- a Wagner Plan to Ensure Victory?” *New York Herald Tribune*, December 11, 1961.

<sup>465</sup> Charles G. Bennett, “Language Choice for Voting Asked,” *New York Times*, December 7, 1961.

<sup>466</sup> “Mayor Backs Ban on Literacy Tests,” *New York Amsterdam News*, January 27, 1962. The amendment would need to pass two successive legislative sessions and then be approved by voters in the November 1963 general election. Thus, January 1964 was the earliest date that the proposed constitutional change could go into effect.

proposal was a memorandum written by City Corporation Counsel Leo Larkin. Larkin reiterated the racist origins of the law, but this time argued for a broader solidarity of all foreign language-speaking U.S. citizens: “Chauvinism whether it be that of a Czar seeking to impress the Russian language upon Poles, Finns, and other people of other ethnic origins, or that of the Anglo-Saxon seeking to impress the English language upon United States citizens of different ethnic origins, is equally repulsive to the democratic principles we advocate.”<sup>467</sup> This appeal struck a new political message: the nation was multicultural and multiethnic and equality meant rejecting the Anglo-Saxon English-language model in favor of a democracy that represented all Americans, regardless of national origin.

Major newspapers, including *The New York Times* and *The New York Herald Tribune* supported the English literacy test and pushed back on the Wagner proposal. The editorial board of the *Tribune* considered it both a dangerous expansion of democracy and a partisan ploy to increase Democratic power.<sup>468</sup> In addition, they called Wagner’s amendment a “transparent play for ethnic support,” and a move that would allow Wagner to “pose as champion of the dispossessed.”<sup>469</sup> They claimed that passage of the amendment would have “obvious political advantages for the Mayor, since those principally affected are the overwhelmingly Democratic Puerto Ricans.”<sup>470</sup>

The *Tribune* also reckoned with the fact that Republicans faced a political dilemma, as the future of the bill rested with the Republican majority in the Legislature and the proposal was

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<sup>467</sup> Bennett, *New York Times*, December 7, 1961.

<sup>468</sup> Sam Roberts, “Recalling a 'Writer's Paper as a Name Fades,” *The New York Times*, March 7, 2013. The *Tribune* was known as the voice for “Rockefeller Republicans,” and was considered a “Republican paper, a Protestant paper and a paper more representative of the suburbs than the ethnic mix of the city.”

<sup>469</sup> “Keep the English Literacy Requirement,” *New York Herald Tribune*, December 18, 1961.

<sup>470</sup> Ibid. The *Tribune* noted that during the heated campaign, Wagner “campaign vigorously in Puerto Rican neighborhoods” and appointed several Puerto Ricans to his administration between August and November.

becoming popular: “Do they approve the amendment, and thus hand the Democrats many votes, or do they kill the measure and give the Democrats an excellent talking point for years to come?”<sup>471</sup> Moreover, they conceded that “the proposition that no citizen should be deprived of his right to vote is difficult to oppose,” and that Wagner’s case was bolstered by the fact that the English-only requirement was not instituted until 1922, when “the xenophobia generated by WWI still had wide appeal.”<sup>472</sup> Interestingly, the *Tribune* compared the NYSL Test to Southern literacy tests: the NYSL Test was “not a snare” like the tests in the South because the proctors in New York used an objective, standardized answer key, unlike in the South where election officials had great discretion over the grading of literacy tests. Furthermore, the *Tribune* pushed back on Larkin’s memo, which stated, “The language of the one dominant ethnic group, i.e., Anglo-Saxon, is neither a valid test nor an honest test of qualifications to participate in government.”<sup>473</sup> The *Tribune* also rejected Larkin’s claim that “[t]here is no ruling nationality [in the U.S.],” and responded, “There is American.”<sup>474</sup> In their eyes, the racist origins of the NYSL Test were irrelevant.

Akin to the arguments used to justify the law in the 1920s, the *Tribune* made clear that the issue before them was not the right of citizenship but “merely” the privilege of suffrage.<sup>475</sup> According to the *Tribune*, the government was obligated to safeguard democracy from unintelligent, “undeserving” citizens. They reiterated the talking points of legislators and newspapers in 1921, including the notion that constitutional restrictions of suffrage all “center on competence to exercise the franchise intelligently” and the belief that “successful democracy

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<sup>471</sup> Barrett, “Keep the English Literacy Requirement,” *New York Herald Tribune*, December 18, 1961.

<sup>472</sup> *Ibid.*

<sup>473</sup> *Ibid.*

<sup>474</sup> *Ibid.*

<sup>475</sup> *Ibid.*

requires an informed electorate.”<sup>476</sup> In a crude conclusion, the *Tribune* remarked, “If they want to vote, fine. But let them learn English first.”<sup>477</sup>

### **Bobby Kennedy and the Voting Rights Spotlight on New York**

Despite the pushback from Republicans and major newspapers, the case for abolition of the NYSL Test grew stronger. The Civil Rights Movement forced popular lawmakers, including President John F. Kennedy’s brother, Robert Kennedy, to take note of the voting rights movement in New York. During JFK’s presidential campaign in 1960, Robert “Bobby” Kennedy served as campaign manager and he was keenly aware of the demands of Hispanic voters: he established “Viva Kennedy” clubs and made several campaign trips to California, Texas, and New York.<sup>478</sup> Bobby became an early supporter of Puerto Ricans’ effort to eliminate the English literacy test requirement.<sup>479</sup> In 1962, he testified before Congress in his new position as the U.S. Attorney General and declared that penalizing citizens literate in Spanish “would be plain discrimination.”<sup>480</sup> At the same time, Democratic Senate Majority Leader Mike Mansfield and Republican Everett Dirksen sponsored a bill S. 2750—with JFK’s approval—which would have effectively eliminated literacy tests, qualifying any voter that provided proof of completing the sixth grade in American schools, including Puerto Rican schools.<sup>481</sup> Although the bill failed to pass due to a filibuster by Southern Senators, the measure was bipartisan, with both Bobby Kennedy and New York Governor Rockefeller voicing support for the bill.<sup>482</sup>

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<sup>476</sup> Barrett, “Keep the English Literacy Requirement,” *New York Herald Tribune*, December 18, 1961.

<sup>477</sup> Ibid.

<sup>478</sup> Karen G. Bates, “Mexican-American Vets Ignited Kennedy Latino Support,” National Public Radio archives from 1970, Nov. 21, 2013, <http://www.npr.org/sections/codeswitch/2013/11/21/246412894/mexican-american-vets-ignited-kennedys-latino-support/>.

<sup>479</sup> Ibid.

<sup>480</sup> Cartagena, “Puerto Ricans and the 50th Anniversary of the Voting Rights Act,” July 28, 2015.

<sup>481</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 75.

<sup>482</sup> Ibid. Rockefeller notably supported the bill without commenting on the aspect of Spanish literacy.

In New York, Democratic lawmakers capitalized on this momentum to introduce the most radical anti-literacy test legislation to date. On January 26, 1963, Assemblymember Thomas Jones of Brooklyn, a freshman Black lawmaker representing Bedford-Stuyvesant in Brooklyn, introduced a bill to eliminate the literacy test amendment in the State Constitution.<sup>483</sup> Jones abolishing the literacy test requirement was his legislative priority and he proclaimed it was an “outdated restriction on voting” and “the last vestige of 18th and nineteenth century measures designed to keep working people and minority groups from using the ballot.”<sup>484</sup> He also claimed there was widespread solidarity against the English literacy tests and stated that the tests barred “thousands of Spanish-speaking people...[and] thousands of white and Negro working people from active participation in government.”<sup>485</sup> It is important to note that two of the most vocal proponents of reforming the literacy test law, Assemblymember Jones and Senator James L. Watson (who proposed abolishing the English-only test in 1962), were Black legislators. This was a shift from O’Dwyer and Wagner’s strategies that focused on Puerto Ricans exclusively and was indicative of a major change in public opinion in New York and across the nation.

At the same time, Puerto Rican community leaders campaigned vigorously for a Spanish literacy test option in the likely event Jones’ bill would fail in the Republican-controlled legislature. Similar bills had all failed to get out of committee in the past three legislative sessions.<sup>486</sup> The leaders of the campaign formed an organizing committee that embarked on a

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<sup>483</sup> “Assemblyman Would Stop Literacy Test.” *New York Amsterdam News*, January 26, 1963. A concurrent resolution was introduced by Senator Ivan Warner of the Bronx. Jones was a local ally of Bobby Kennedy’s and worked closely with Kennedy to improve conditions in New York’s most impoverished communities.

<sup>484</sup> *Ibid.*

<sup>485</sup> *Ibid.*

<sup>486</sup> “Vote Drive Begun by Puerto Ricans: They Seek State Law for Literacy Test in Spanish,” *New York Times*, July 7, 1963.

new approach. Representing the small Puerto Rican caucus in the legislature, Assemblymember Carlos Ríos argued that the previous bills were unsuccessful because they were too partisan and politicized and that Democrats had not successfully consolidated the support of the Puerto Rican community.<sup>487</sup> The new goal was to galvanize nonpartisan support by an extensive publicity campaign in New York City's Hispanic communities. The chairman of the organizing committee, Puerto Rican attorney and Republican congressional candidate Oscar González Suárez said that the facilities of *El Diario* and *La Prensa* would be behind the drive to make their constitutional amendment “the Number 1 political demand of the Puerto Rican community.”<sup>488</sup>

During the summer of 1963, *El Diario* and *La Prensa* printed daily articles and editorials endorsing the plan.<sup>489</sup> *El Diario* had a bus that drove through Puerto Rican neighborhoods to publicize the campaign. The committee also planned to organize huge rallies on the eve of the reopening of the legislature. Due to their advocacy, the committee secured bipartisan support from countless New York Congressmen. In support of the campaign, Kennedy wrote a letter to the publisher of *El Diario* and stated, “It is important that an effort be made to change the law in New York.”<sup>490</sup> Suárez claimed that Governor Rockefeller and other top Republicans would be won over by an “insistent popular campaign.”<sup>491</sup>

On July 31, 1963, Wagner and City Council President Paul Screvane voiced their support for abolishing the literacy test entirely at a City Hall ceremony sponsored by *El Diario* and *La Prensa*.<sup>492</sup> Wagner vouched for a Spanish literacy test option if the broader amendment failed,

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<sup>487</sup> “Vote Drive Begun by Puerto Ricans: They Seek State Law for Literacy Test in Spanish,” *New York Times*, July 7, 1963.

<sup>488</sup> *Ibid.*

<sup>489</sup> *Ibid.*

<sup>490</sup> *Ibid.*

<sup>491</sup> *Ibid.*

<sup>492</sup> “Mayor Asks End of Literacy Test,” *New York Times*, July 31, 1963.

stating that “Spanish is the second language of New York City.”<sup>493</sup> Screvane went on the offensive and criticized the Republican-controlled legislature for being “in no hurry to grant full rights to the foreign-language groups of our state,” and fearful of the fact that “political scales might be tipped if all our citizens were given equal representation through the right to vote.”<sup>494</sup> Repeating the rallying cries of Jones and Puerto Rican leaders, Screvane declared, “The literacy test is nothing more than the perpetuation of discrimination and the exercise of the racist policies that have formed and are forming a black chapter in our nation’s history.”<sup>495</sup>

One of the popular opinion pieces to be published during the campaign was authored by Joseph Monserrat, the director of the Department of Labor for the Migration Division of Puerto Rico, who responded to a *New York Times* editorial piece that lambasted efforts to abolish the literacy requirement.<sup>496</sup> The *Times*’ editorial piece, titled “Aquí Se Habla Inglés,” was extremely contentious—the title translates to “English is Spoken Here” and was an insulting and racially-charged play on “Aquí Se Habla Español,” a common phrase displayed in front of Latino businesses and storefronts to signal inclusion.<sup>497</sup> The *Times* argued Wagner’s proposal would “have the effect of perpetuating language ghettos and defeating the idea of a truly integrated community.”<sup>498</sup>

In his response, Montserrat argued the *Times* was wrongfully exalting the literacy law as something “sacrosanct.”<sup>499</sup> He conceded that states had the right to require its voters to be well-informed, but that it was clear that the law had “become a gimmick to disenfranchise.”<sup>500</sup>

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<sup>493</sup> “Mayor Asks End of Literacy Test,” *New York Times*, July 31, 1963.

<sup>494</sup> *Ibid.*

<sup>495</sup> *Ibid.*

<sup>496</sup> Joseph Monserrat, “For Spanish Literacy Test English-Language Requirement is Held Unfair to Puerto Ricans,” *New York Times*, August 6, 1963.

<sup>497</sup> “Aquí Se Habla Inglés,” *New York Times*, August 1, 1963.

<sup>498</sup> *Ibid.*

<sup>499</sup> Monserrat, *New York Times*, August 6, 1963.

<sup>500</sup> *Ibid.*

Montserrat spoke of the “shame” and “embarrassment” that the test brought unto the Puerto Rican community, even for many Puerto Ricans who could pass the test but were afraid to take it “because they have been made to feel that they will fail and that therefore it is better not to waste time.”<sup>501</sup> Many Puerto Ricans felt the test was an “affront [to] their political dignity.”<sup>502</sup> Pushing back on the *Times*’ claim that learning English was not a “burdensome” requirement of voters, Montserrat argued that English “is not learned in a day” and that it was unjust to tell Puerto Ricans to “take your citizenship rights later rather than sooner.”<sup>503</sup> In addition, Montserrat stated that the process of taking the literacy test was a significant burden for Puerto Ricans, who were the poorest ethnic group in New York City: the loss of a day’s pay to go take the test was “a sacrifice they cannot afford.”<sup>504</sup> Montserrat made clear that gaining the right to vote was not a matter of politics for Puerto Ricans, who would have to wait months, likely years, to qualify to vote under the English literacy test.

On July 2, 1964, after decades of protest and agitation by African Americans, the Civil Rights Act was signed into law.<sup>505</sup> The law was a watershed moment for civil rights in the nation, prohibiting discrimination on the basis of race, color, religion, sex or national origin. The bill also strengthened the enforcement of voting rights and the desegregation of schools. One provision of the Act standardized educational requirements for voting: certificates of completion of the sixth grade would be accepted from schools “where instruction is carried on predominantly in the English language.”<sup>506</sup> While this still discriminated against Puerto Ricans

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<sup>501</sup> Monserrat, *New York Times*, August 6, 1963.

<sup>502</sup> Ronald Sullivan, “Puerto Ricans Bid for More Voters: Drop Drive to Abolish Test,” *New York Times* (1923-), Mar 22, 1964. Montserrat and Herman Badillo, the Puerto Rican Commissioner of Relocation, stressed these points.

<sup>503</sup> *Ibid.*

<sup>504</sup> *Ibid.*

<sup>505</sup> “Civil Rights Act,” *New York Times*, July 5, 1964.

<sup>506</sup> The Civil Rights Act of 1964, 78 Stat. 241, Title I, sec. 101, subsec. 3(b).

educated in Spanish, the provision posed a serious challenge to New York's literacy law: New York's law required certificates of completion of the eighth grade, violating the Civil Rights Act. That July, Mayor Wagner demanded Governor Rockefeller call a special legislative session to amend the State Constitution so it conformed with the new federal requirement.<sup>507</sup> However, Rockefeller refused and interpreted the new law as meaning that a sixth grade education was a minimum and only applied to election boards that were discriminatory.<sup>508</sup>

While New York rushed to correct its literacy requirement for voting, several Puerto Rican leaders decided to reverse their political strategy, as Democrats failed to get their bill out of committee yet again. Puerto Rican leaders proposed a new program that would create a "buddy" system: Puerto Ricans who had passed the test would be partnered with new voters and help them study for the test.<sup>509</sup> Bolstering this more pragmatic effort were Puerto Rican voter registration drives during the 1964 presidential election cycle. Montserrat noted the 1964 registration effort was expected to be the largest to date: 39,000 Puerto Ricans were registered in 1955, 89,000 in 1956, 135,000 in 1960, and more than 150,000 in 1963.<sup>510</sup>

With advocacy efforts stalled in New York, the literacy test abolition movement shifted to Washington D.C. Less than two weeks before Election Day in 1964, Bobby Kennedy, a candidate for U.S. Senate in New York, attempted to court the Puerto Rican section of the All Americans Council at the Democratic State Convention by proclaiming that he would repeal the NYS literacy test if elected.<sup>511</sup> Other New York representatives in Congress were pressured to introduce legislation to abolish literacy tests. Legion del Voto, a Puerto Rican civic organization,

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<sup>507</sup> "Wagner Calls for Special Session," *New York Herald Tribune*, March 26, 1965.

<sup>508</sup> *Ibid.*

<sup>509</sup> *Ibid.*

<sup>510</sup> "Campaigns Opened to Register Thousands of Voteless in City," *New York Times*, July 16, 1964.

<sup>511</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 91.

successfully lobbied Congressman Jacob Gilbert to introduce provisions relating to Puerto Ricans in the Civil Rights Act by eliminating the English literacy test.<sup>512</sup> Gilbert represented the 22nd congressional district in the Bronx, which was home to the greatest percentage of Puerto Ricans in the city at 31.2 percent.<sup>513</sup> Congressman William F. Ryan, a Democrat who represented the Upper West Side of Manhattan, would introduce H.R. 2477 on January 12, 1965 to eliminate all literacy tests in state and national elections.<sup>514</sup>

On March 7, 1965, civil rights leaders and protestors were brutally attacked by police on the Pettus Bridge in Selma, Alabama for testing compliance of the Civil Rights Act.<sup>515</sup> On March 15, President Lyndon B. Johnson addressed a joint session of Congress and called for legislation to guarantee the right to vote for all American citizens: “Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right.”<sup>516</sup> This led Gilbert to reintroduce his amendment.

On March 19, hearings on the new voting rights bill began in the House Subcommittee on Constitutional Rights and Gilbert questioned Attorney General Nicholas Katzenbach who stated that the bill would need to conform with the Civil Rights Act, which required certificates be from schools “where English is the predominant language of instruction.”<sup>517</sup> Katzenbach testified that Congress could abolish literacy tests entirely and he state his belief that Congress should abolish New York’s discriminatory law: “I think that the use of the English language test in New York with respect to Puerto Ricans serves to disenfranchise a great number of intelligent and able

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<sup>512</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 82.

<sup>513</sup> Ibid.

<sup>514</sup> Ibid, 86.

<sup>515</sup> Ibid, 78. Civil rights leaders tested compliance by leading a voter registration drive to Selma.

<sup>516</sup> President Lyndon Johnson’s Speech to Congress on Voting Rights, March 15, 1965. RG 46, Records of the United States Senate, National Archives, <https://www.archives.gov/legislative/features/voting-rights-1965/johnson.html>.

<sup>517</sup> Pious, 84.

people. I think that is all wrong and I have never understood why the State of New York had it and why they didn't do something about getting rid of it."<sup>518</sup> Katzenbach had set the stage for Congress to abolish literacy tests. On March 25, Herman Badillo, the vice-president of the Legion of Voters, testified before the committee on the NYSL Test issue.<sup>519</sup> Badillo asserted that the issue had become significantly worse since the U.S. Civil Rights Commission's 1959 report: there were now 730,000 Puerto Ricans in New York City and he estimated there were 480,000 potential voters, with only 150,000 registered to vote.<sup>520</sup> Thus, 330,000 Puerto Ricans were disenfranchised due to the literacy test.

On April 5, Senator Kennedy spoke on the floor of the Senate and offered an amendment to the voting rights bill: "Congress can and should find that the operation of New York's literacy test to deprive literate Puerto Ricans of the right to vote is state action arbitrarily denying the franchise to a class of citizens."<sup>521</sup> Kennedy gained a big victory by convincing New York's senior U.S. Senator Jacob Javits, a Republican, to co-sponsor the bill. Other Senators remarked on the discriminatory nature of Puerto Ricans' status in New York. On May 19, Senator Russell Long, the Democratic Party whip and a Southerner, proclaimed: "I do not believe that a person born in Puerto Rico, having attended the schools there, should, when he moves to New York, be required to be learned in the English language in order to qualify to vote."<sup>522</sup> Another Southern Senator, Spessard Holland, offered insight into the disparate treatment of Puerto Rican citizens in New York and other U.S. citizens of Hispanic descent in Florida:

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<sup>518</sup> House Hearings Before Subcommittee 5 of the House Committee on the Judiciary, House of Representatives, 89th Congress, First Session, Serial No. 2 (1965), 100.

<sup>519</sup> Ibid, 508.

<sup>520</sup> Ibid.

<sup>521</sup> Pious, "Puerto Ricans and the New York State Literacy Test," 92. Amendment 64 to S. 1564.

<sup>522</sup> Ibid, 95.

In the State of Florida, there are tens of thousands of citizens of Latin American lineage, many of them not yet able to speak in the English language but yet amply educated to know what they are doing. For years, we have permitted them to vote, and we are very happy in the fact that the great State of New York now turns to us for some guidance in democracy, which we believe the State of New York has needed for some time.<sup>523</sup>

The “Puerto Rican” amendment was approved that day by a vote of 48 to 19.<sup>524</sup> The amendment, codified as section 4(e) to the Voting Rights Act (VRA), prohibited states from administering literacy tests to U.S. citizens who completed the sixth-grade in American schools where the language of instruction was in Spanish—this applied only to Puerto Ricans.<sup>525</sup> The bill also suspended the use of literacy tests in any state in which less than 50 percent of voting-age citizens were registered as of November 1, 1964, or had voted in the 1964 presidential election.<sup>526</sup>

On May 26, the same day the Senate voted to pass its version of the VRA, the NYS Legislature passed a bill to reduce literacy requirement in English to sixth-grade level, in conformity with the Civil Rights Act.<sup>527</sup> Governor Rockefeller signed the bill in July, capitalizing on the moment to claim that he was a champion of Puerto Rican civil rights. Surrounded by three Puerto Rican Assemblymen, an editor from *El Diario*, and the president of the National Association for Puerto Rican Civil Rights, Rockefeller spoke to the public in Spanish: “The Puerto Rican community of this city has contributed a great deal to the cultural and economic enrichment of the State of New York...I am pleased and proud to sign this law,

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<sup>523</sup> *Congressional Record*, May 19, 1965, 10688.

<sup>524</sup> *Ibid.*

<sup>525</sup> The Voting Rights Act of 1965, 79 Stat. 437, Section 4(e), 42 U.S.C. § 1973b(e): “No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language...”

<sup>526</sup> The Voting Rights Act of 1965, 79 Stat. 437, Section 2, Pub. L. 89-110.

<sup>527</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 99.

which will permit Puerto Ricans to participate actively in our state politics as well.”<sup>528</sup>

Rockefeller’s words were reminiscent of Antin and Smith’s statements in the 1920s which promoted the cultural and economic contributions that immigrants made to America.

Rockefeller’s move also signaled the awareness among Republicans that literacy tests were no longer supported and that it was politically advantageous to begin courting Puerto Rican voters.

At the end of July 1965, Congress passed the Voting Rights Act and President Johnson signed the bill into law on August 7.<sup>529</sup> Professor Pious writes that while most of the focus was on the abolition of literacy tests in Southern States, “hardly anyone was aware of the Puerto Ricans themselves.”<sup>530</sup> However, Puerto Ricans played a major role in the expansion of the right to vote. In 1966, New York challenged the Voting Rights Act, claiming that section 4(e) was unconstitutional, since the power to set nondiscriminatory voter qualification tests was reserved to the states.<sup>531</sup> In *Katzenbach v. Morgan* the Court upheld the VRA and section 4(e), and thus permanently banned the use of the NYSL Test.<sup>532</sup> Justice William J. Brennan wrote for the Court’s opinion, holding that “‘illiterate people’ should not be equated with “[un]intelligent voters.”<sup>533</sup> In 1970, Congress expanded the literacy test ban to all states in the country.<sup>534</sup> In effect, the VRA ended the practice of conditioning citizens’ right to vote based on literacy.

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<sup>528</sup> *El Diario*, July 17, 1965. Translated by Pious at 105.

<sup>529</sup> Pious, “Puerto Ricans and the New York State Literacy Test,” 111.

<sup>530</sup> *Ibid*, 111, 113. In the 1965 elections, the impact of the abolition of the literacy test was noticeable. The increase in Puerto Rican voters helped Herman Badillo narrowly defeat Ivan Warner in the Democratic primary for Bronx Borough President and he was elected in the general election by just 2,000 votes, becoming the highest ranking Puerto Rican official in the state. Pious notes that 4,000 new voters were registered in the Bronx under the new law, which “definitely gave Badillo the narrow victory.” Badillo would go on to become the first Puerto Rican Congressman in 1970 and later the first Puerto Rican mayoral candidate in a major city in the continental United States. In addition, Puerto Rican Assembly candidates in Manhattan and the Bronx, would go on to win by historic margins, due largely in part to the abolition of the literacy test that energized Puerto Rican voters. Pious notes that the margin of these victories were “quite impressive, even by New York standards.”

<sup>531</sup> *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

<sup>532</sup> Keyssar, *The Right to Vote*, 267.

<sup>533</sup> *Katzenbach v. Morgan*, 384 U.S. 641, (1966).

<sup>534</sup> Keyssar, 265.

Finally, English literacy was no longer a source of disenfranchisement in New York and in the nation.

## Conclusion

The New York Literacy Act of 1922 and its standardized, education-based literacy test demonstrate the incredible lengths that those in power have gone to condition certain citizens' right to vote. This history serves as a cautionary reminder that voting restrictions do not need to be overtly discriminatory to effectively disenfranchise: restriction is often shrouded in societal benefits, such as education and election integrity. The case of the NYSL Test and its abolition exemplifies how the history of the right to vote is nonlinear—movements to expand voting rights are often met with movements to restrict and disenfranchise.

The passage of the Puerto Rican amendment to the Voting Rights Act paved the way for bilingual voting rights, marking a decisive rejection of the literacy test movement. In 1965, Congress passed the Immigration and Naturalization Act, which abolished the 1924 national origins quota and established a new policy that reopened the nation to immigration from Latin America, Asia, and Africa.<sup>535</sup> It is not coincidental that this momentous expansion of suffrage occurred just as the nation reopened its borders to immigrants. In 1975, Congress passed the Bilingual Amendments to the VRA, doubling down on its rejection of racist literacy and language requirements for voting. The Voting Rights Act and the Bilingual Amendments fundamentally changed the notions around voting, language, and literacy in America: one does not need to read and write in English to be an American.

However, progress is not linear. In 2013 the U.S. Supreme Court in *Shelby County v. Holder* struck down key provisions of the VRA, resulting in widespread voter restriction laws

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<sup>535</sup> Ngai, *Impossible Subjects*, 3. Emphasis in original.

throughout the United States.<sup>536</sup> On November 4, 2021, the United States Department of Justice filed a lawsuit against the State of Texas over its new election law, alleging it would infringe on “the core right to meaningful assistance in the voting booth” and thus “disenfranchise eligible Texas citizens who seek to exercise their right to vote.”<sup>537</sup> Voting rights advocates, such as Ari Berman, worry the law will disenfranchise citizens with limited English proficiency. Appearing on Democracy Now, Berman warned Americans of the dangerous erosion of voting rights: “We are seeing the greatest rollback of voting rights since the Voting Rights Act was passed in 1965 and the greatest attempt to reduce the influence and power of voters of color since the Voting Rights Act.”<sup>538</sup> States across the country are passing restrictive voting measures similar to Texas’s, stemming from unsubstantiated fears of widespread voter fraud perpetrated by illegal immigrant voters.<sup>539</sup>

These restrictive measures in 2021 coincide with the exponential rise of the nonwhite and foreign-born voting populations, similar to what occurred in New York over the twentieth century. According to the 2020 Census, people of color make up 95 percent of Texas’ population growth and Texas gained nearly eleven Hispanic residents for every new white resident since

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<sup>536</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013). Jesse H. Rhodes, *Ballot Blocked: The Political Erosion of the Voting Rights Act*, (Redwood City: Stanford University Press, 2017), 24. The Court struck down the VRA’s coverage formula in section 4(b), rendering preclearance, one of the most effective parts of the law, inoperable.

<sup>537</sup> *United States of America v. State of Texas*, No. 5:21-cv-1085, Department of Justice Complaint (Nov 2021), 2. Moreover, the law prohibits assistants from answering voters’ questions and responding to requests to clarify ballot translations. The DOJ’s complaint stated that the law violated the VRA by “improperly restricting what assistance in the polling booth voters who have a disability or are unable to read or write can receive. Section 208 of the Voting Rights Act guarantees that “voters who require assistance to vote by reason of blindness, disability, or inability to read or write may receive assistance by a person of the voter’s choice.”

<sup>538</sup> Ari Berman, “Democracy Now,” Twitter Post, November 17, 2021, <https://twitter.com/democracynow/status/1460963716267139073?s=21>.

<sup>539</sup> “Voting Laws Roundup: October 2021,” Brennan Center for Justice, October 4, 2021, <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-october-2021>. Robert C. Smith, “Don’t Let the Illegals Vote!’: The Myths of Illegal Latino Voters and Voter Fraud in Contested Local Immigrant Integration,” *The Russell Sage Foundation Journal of the Social Sciences*, Vol. 3, No. 4 (July, 2017): 148-175. Between January 1 and September 27, 19 states enacted 33 laws that make it harder for Americans to vote. In one case study in Port Chester, New York during the 2016 presidential election, white voters’ and politicians’ fear of “illegal” Latino voters led to the stigmatization of and discrimination against Latino citizen voters.

2010.<sup>540</sup> The Immigrant Act of 1965 reshaped the “undesirable” immigrant narrative again onto new immigrants who were deemed “illegal” and a threat to the American body politic. Fear of the foreign-born citizenry usurping the American electoral system—whether it be a Jewish socialist in 1922, a middle-aged Puerto Rican grocer in 1957, or a Mexican laborer in 2017—is deeply embedded in the history of the United States, during which there has always been “a price to pay” for the right to vote. That price has consistently been higher for nonwhite and foreign-born Americans.

Despite the regressive decision in *Shelby County v Holder*, there may be hope for the future of voting rights—hope in the very same place that perpetuated disenfranchisement more than fifty years ago. In New York City, the debate between citizenship and voting rights has reemerged and assumed a new, more expansive shape. On December 9, 2021, the New York City Council passed a bill to allow green card-holding residents to vote in municipal elections.<sup>541</sup> The bill would allow 800,000 noncitizens to vote, making New York City the largest municipality in the country to grant noncitizens suffrage.<sup>542</sup> At a 2020 rally for noncitizen voting rights, Councilmember Ydanis Rodriguez, an immigrant from the Dominican Republic and author of the bill, said that tax-paying immigrants deserve the right to determine how their money is allocated and that it is “un-American” to leave them out of the political process.<sup>543</sup>

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<sup>540</sup> Carla Astudillo, et. al., “People of Color Make up 95% of Texas’ Population Growth, and Cities and Suburbs Are Booming, 2020 Census Shows,” *The Texas Tribune*, August 12, 2021, <https://www.texastribune.org/2021/08/12/texas-2020-census/>.

<sup>541</sup> Annie Correal and Jeffery C. Mays, “New York City Gives 800,000 Noncitizens Right to Vote in Local Elections,” *New York Times*, December 9, 2021, <https://www.nytimes.com/2021/12/09/nyregion/noncitizens-voting-rights-New-York-City.html>.

<sup>542</sup> Ibid. Keyssar, *The Right to Vote*, Table A13. Up until the end of the nineteenth century, 20 states extended voting rights to immigrants who had declared intention to become citizens. However, now there are just a few jurisdictions that allow non-citizens to vote: Fourteen municipalities across the nation currently allow noncitizens to vote in local elections with eleven in Maryland, two in Vermont, and the other is San Francisco, California.

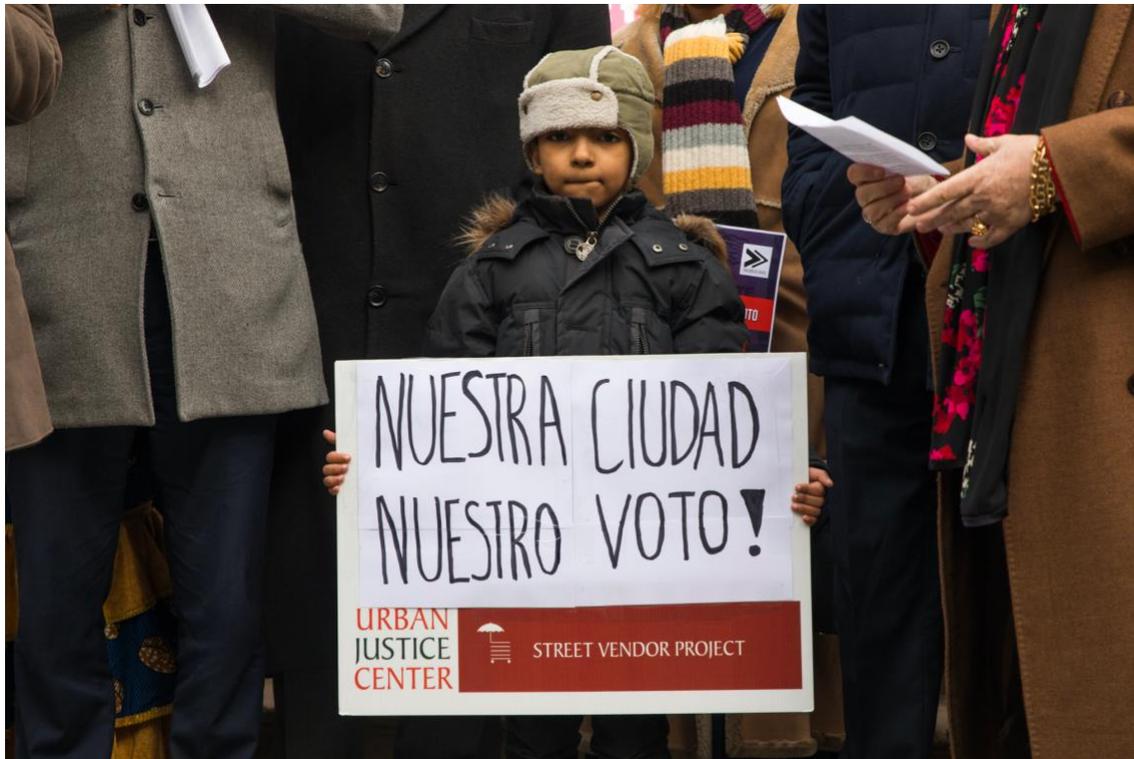
<sup>543</sup> Emma Whitford, “‘No taxation without representation’ — noncitizens rally for New York City voting rights,” *Queens Daily Eagle*, January 23, 2020, <https://queenseagle.com/all/no-taxation-without-representation-noncitizens-rally-for-nyc-voting-rights>.

This proposal represents the next frontier in the debate over citizenship and suffrage. In her first speech before the New York City Council, Council Member Tiffany Cabán, a 34-year old socialist from Queens and the child of Puerto Rican parents, voiced her support of the noncitizen voting bill and succinctly summarized the importance of expansionary voting laws. Cabán declared, “Expanding the right to vote for some does not in any way diminish the right to vote for others.”<sup>544</sup> Disenfranchisement has been a persistent theme throughout American history and the notion of an inherent right to vote has only ever been true for white, male, native-born citizens.

The expansion of voting rights, even to noncitizens, will give millions of immigrants the ability to change the rules of a political system that has historically excluded and restricted them. Confronting the fact that mass disenfranchisement did not occur only in the Southern United States and will strengthen the movement to expand voting rights, a movement which may never see linear progress. In the face of widespread voter suppression and racist election reform laws, not only must we protect the right to vote, but we must also expand it in order to ensure a more just and representative democracy. History shows that democracy is stronger when we all participate.

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<sup>544</sup> Tiffany Cabán, “Debate on Intro 1867,” Twitter Post, December 9, 2021, <https://twitter.com/AnuJoshi22/status/1469051122874818562?s=20>



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<sup>545</sup> This photo was taken of a young child at a 2020 rally, where more than 100 immigrants and their advocates, including Councilmember Rodriguez, gathered in support of noncitizen voting rights. Whitford, *Queens Daily Eagle*, January 23, 2020, <https://queenseagle.com/all/no-taxation-without-representation-noncitizens-rally-for-nyc-voting-rights>.

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