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Why Johnny's Parents Can't Read ... Or Vote, Or Work, Or Participate: The National Literacy Crisis and a Proposal to Integrate Illiterate Adults into Mainstream American Society

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"They are half-citizens . . . .
Their rights exist in print but not in fact."¹
— Jonathan Kozol

What does it mean to be illiterate in American society today? Illiterates cannot register to vote in an election. They cannot help their children with homework. Illiterates cannot read instructions on a bottle of prescription medicine. They cannot understand the written details on a health insurance form. Illiterates cannot read the lease that they must sign to live in an apartment. They cannot manage checking accounts. They cannot read the notices that they receive from welfare offices or from the IRS. Illiterates cannot complete basic job application forms. They cannot travel freely. Illiterates do not know what rights they have, what deadlines and requirements they face, what options they might choose to exercise. In almost all facets of life, illiterates live a circumscribed existence.²

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2. These examples are taken in part from Kozol, Illiterate America at 23-29 (cited in
The preceding profile paints a harrowing picture of life in America for illiterate adults. Confronted with a society that presupposes its citizens are literate, illiterate adults struggle to perform daily tasks that literate citizens take for granted. Lacking the reading and writing skills necessary both to become informed and to access the basic rights essential to citizenship, illiterate adults lead lives isolated and segregated from mainstream American society. Autonomy and personal independence often remain unattainable goals for illiterate adults because day-to-day survival requires help from relatives, friends, strangers on the street, store clerks, and fellow employees. Indeed, illiterate adults seem to lack the status of citizens in several meaningful senses of the word.

The status of illiterate adults in American society also raises a host of critical questions. What is the scope of the literacy crisis? What do we mean by the term “illiterate”? What is the relationship between illiteracy and other social, economic, and political factors? Why don’t illiterate adults learn how to read and write? Why should Americans care about illiteracy at all?

Research provides no clear answers to these important questions. However, the results of the most recent national literacy survey do suggest that 90 million American adults cannot fully participate in society because of their limited literacy skills. The exclusion of illiterate adults from mainstream American life extracts significant costs on both the individuals affected and society as a whole. In addition, the isolation and segregation of such a large segment of the population raises fundamental questions concerning America’s commitment to equality and to a principle of fairness.

This Comment proceeds from the basic premise that an extensive national literacy crisis presently exists in the United States, and that the severity of this crisis warrants immediate national action. Section I of this Comment will assess the scope and the reach of the literacy crisis. It will examine the magnitude of the literacy crisis; detail the costs and consequences associated with the crisis; and introduce the problems associated with the intergenerational illiteracy cycle. Section I concludes with a discussion of the empirical and normative consequences associated with choosing either a functional or a progressive definition of “literacy.”

Section II of the Comment makes the case for national legislative action to remedy the literacy crisis. Section II will examine the rationales for supporting national legislative action to help illiterate adults; propose a statute designed to integrate illiterate adults into mainstream society through the use of reasonable accommodations; and offer a commentary on the proposed statute that serves as a guide to interpreting the statute. Finally, Section III of the Comment addresses several possible criticisms of the proposed statute.

3. For example, the United States Department of Education estimates that 2.2 million people—44,000 per week—are added to the adult illiterate population each year. See Mark Curnutte, Helping Himself to a Better Life, Cincinnati Enquirer A1, A6 (Jan 21, 1996), available in 1996 WL 2227470.
I. The Literacy Crisis

A. Assessing the Literacy Crisis

1. Scope of the Literacy Crisis

The most comprehensive national literacy survey ever completed in the United States is the National Adult Literacy Survey ("NALS"). This survey, conducted by Educational Testing Service for the United States Department of Education over the first eight months of 1992, provides "the most detailed portrait that has ever been available on the condition of literacy in this nation."\(^4\)

As the Executive Summary of the survey explains:

Many past studies of adult literacy have tried to count the number of "illiterates"\(^5\) in this nation, thereby treating literacy as a condition that individuals either do or do not have. We believe that such efforts are inherently arbitrary and misleading. They are also damaging, in that they fail to acknowledge both the complexity of the literacy problem and the range of solutions needed to address it.

The National Adult Literacy Survey (NALS) is based on a different definition of literacy, and therefore follows a different approach to measuring it. The aim of this survey is to profile the English literacy of adults in the United States based on their performance across a wide array of tasks that reflect the types of materials and demands they encounter in their daily lives.\(^5\)

The NALS, then, offers the most complete measurement of functional literacy abilities in the United States today.\(^6\)

The results of the NALS are staggering. Twenty-one to 23 percent, some 40 to 44 million of the 191 million adults in America, demonstrated skills in the lowest level of prose, document, and quantitative proficiencies (Level 1).\(^7\) Adults in this category displayed limited skills, with the most capable being able to perform simple, routine tasks involving brief and uncomplicated texts and docu-

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5. Id.
6. The NALS was based on a nationally representative sample of nearly 13,600 individuals, supplemented with surveys from approximately 1,000 adults from each of 12 states and interviews with some 1,100 inmates from federal and state prisons. In total, over 26,000 American adults were surveyed for the NALS. Each participant was asked to spend one hour responding to a series of diverse literacy tasks as well as to questions about his or her demographic characteristics, educational background, reading practices, and other areas related to literacy. Based on responses to the survey tasks, participants received proficiency scores along three scales which reflect varying degrees of skill in prose, document, and quantitative literacy. Kirsch, et al, Executive Summary at iii (cited in note 4).
7. Id at iv.
ments. Others in the Level 1 category displayed no ability to perform these types of tasks, or to respond to much of the survey at all.

An additional 25 to 28 percent of respondents, representing approximately 50 million adults nationwide, demonstrated skills in the next higher level of proficiency on each of the literacy scales (Level 2). While the skills of adults in this category were more varied than those of adults in Level 1, their repertoire of available skills was still quite limited. Level 2 respondents were generally able to locate information in text, to make low-level inferences using printed materials, and to integrate easily identifiable pieces of information. In addition, they were able to perform quantitative tasks that involve a single operation where the numbers are either stated or can be easily found in text.

Respondents in both Levels 1 and 2, however, were much less likely to respond correctly to more challenging literacy tasks used in the NALS, especially those requiring higher level reading and problem-solving skills. In particular, these adults were likely to experience "considerable difficulty" in performing tasks that required them to integrate or to synthesize information from complex or lengthy texts or to perform quantitative tasks that involved two or more sequential operations and in which the individual had to set up the problem. Thus, according to the NALS results, approximately 90 million American adults (40 million in Level 1 and 50 million in Level 2) lack the literacy skills necessary to perform basic tasks requiring more demanding reading and problem-solving skills.

8. Id. Such tasks included the ability to total an entry on a deposit slip, to locate the time or place of a meeting on a form, and to identify a piece of specific information in a brief newspaper article.
9. Id.
10. Id.
11. Id.
12. Id at iv-v. Such tasks included an ability to calculate the total cost of a purchase, to determine the difference in price between two items, to locate a particular intersection on a street map, and to enter background information on a simple form.
13. Id at v.
14. Id.
15. Id at iv. It is important to note that the NALS results merely reinforce disturbing trends concerning the scope and severity of the national literacy crisis that we have known about since the early 1970s.

One of the earliest national literacy studies utilizing a functional definition of literacy was the Adult Performance Level study ("APL") sponsored by the Division of Adult Education of the United States Office of Education in 1971. The APL tested the ability of adults to perform 65 specific competency objectives specially designed for purposes of the study. Carman St. John Hunter and David Harman, Adult Illiteracy in the United States: A Report to the Ford Foundation 17 (McGraw-Hill 1979). Based on the results of this test and on indicators of adult "success" as measured by income, job status, and education, the study grouped adults into three Adult Performance Levels (APLs): APL 1 ("Functionally Incompetent"); APL 2 ("Marginally Functional"); and APL 3 ("Functionally Proficient"). According to the study's final report, an estimated 57 million American adults were less than functionally proficient (23 million adults, or 19.1% of the sample, in APL 1 and 34 million, or 33.9% of the sample, in APL 2). Anabel Powell Newman and
The disturbing findings highlighted by the NALS have recently been confirmed by the first International Adult Literacy Survey (IALS). According to the results of the IALS, no less than 46 percent of the American sample demonstrated literacy skills in the two lowest levels of prose, document, and quantitative proficiencies. Applying this percentage to the aggregate United States population as defined by the IALS, approximately 74 million American adults fall into the lowest two levels of literacy proficiency as defined by the survey. Clearly, these IALS conclusions only serve to reinforce the extensive and alarming scope of the national literacy crisis.


The APL findings were updated in 1984 by using the sample percentages for APL 1 and APL 2 in conjunction with 1983 census data. This update revealed a new estimate of 100.4 million American adults who were less than functionally proficient. Id at 70. This estimate differs somewhat from Jonathan Kozol's account of the updated APL results which he claims demonstrate that as of 1984, 30 million adults were functionally incompetent (APL 1) and an additional 54 million adults were marginally functional (APL 2). Kozol, *Illiterate America* at 9 (cited in note 1).

Nobody's updated figure for the 'functional' and 'marginal' together is less than 60 million. The total present adult population (1984) is 174 million. By even the most conservative calculations, then, we are speaking here of well above one third of all American adults.

See id at 10.

16. The IALS, a collaborative effort by seven governments and three intergovernmental organizations conducted during Autumn 1994, represents the most comprehensive attempt ever undertaken to assess and to compare the level and distribution of literacy skills across different nations, cultures, and languages. The survey, employing essentially the same methodology as that used in the NALS, tested the ability of individuals to complete tasks requiring varying degrees of skill in prose, document, and quantitative literacy, and based on the responses, grouped the individuals into five levels of literacy. *Literacy, Economy and Society: Results of the First International Adult Literacy Survey*, 13-17 (Organization For Economic Co-Operation And Development & Statistics Canada 1995).

17. More specifically, 46.6% of American respondents demonstrated skills in the lowest two levels of prose literacy (20.7% in Level 1, 25.9% in Level 2); 49.6% demonstrated skills in the lowest two levels of document literacy (23.7% in Level 1, 25.9% in Level 2); and, 46.3% demonstrated skills in the lowest two levels of quantitative literacy (21.0% in Level 1, 25.3% in Level 2). Id at 27-52.

18. The IALS, in its probability sample, covered 161,121,972 Americans aged 16-65. Excluded from both the samples tested and the populations covered by the survey were full-time members of the military and inmates of institutions such as prisons, hospitals and psychiatric facilities. Id at 15 and n 5.

19. Although the results of the IALS post-date those of the NALS by approximately two years, this Comment relies heavily on the conclusions reported in the NALS. Reliance on the NALS, rather than the IALS, is warranted for a number of reasons. First, the sample tested in the NALS (13,600) is more than four times larger than the American sample surveyed in the IALS (3,053). Kirsch, et al, *Executive Summary* at iii (cited in note 4); *Literacy, Economy and Society* at 15 (cited in note 16). Second, the exclusion of particular groups of individuals from the survey sample in the IALS, specifically prison inmates and full-time members of the military, raises doubts concerning whether the final conclu-
Perhaps the most interesting conclusion reported by both the NALS and the IALS is that a large majority of those adults who performed in the two lowest levels of literacy did not necessarily perceive themselves as being “at risk.” For example, as the NALS results demonstrate, 66 to 75 percent of the adults in Level 1 and 93 to 97 percent of the adults in Level 2 characterized themselves as being able to read or write “well” or “very well.” In addition, only 14 to 25 percent of the adults in Level 1 and 4 to 12 percent in Level 2 admitted that they get “a lot of help” from family members or friends with everyday prose, document, and quantitative literacy tasks. As the Executive Summary of the NALS notes, these facts may raise the inference that even though the skills of the 90 million adults in Levels 1 and 2 are limited, they may be adequate enough to allow them to meet some or most of their personal and occupational literacy needs. While this inference may seem possible, it fails to take into account the likelihood that the level of literacy skills expected by both individuals and the nation as a whole may be higher than the standards embodied by Level 1 and Level 2. Indeed, if one examines the important interconnections between literacy skills and other issues such as quality of life and participation in society, it becomes clear that neither Level 1 nor Level 2 literacy skills are adequate to meet the heightened literacy needs raised by such issues.

2. Costs and Consequences of Functional Illiteracy

As the results of the NALS make clear, there are approximately 90 million American adults whose limited literacy skills make them, at best, marginally functional in society today. This figure takes on added significance if one considers the costs and consequences associated with functional illiteracy. In this case, there are two primary “victims” of functional illiteracy in society—the individual with limited literacy skills and the nation as a whole.
The consequences of being functionally illiterate in today's society are staggering. Illiterate adults are unable to perform many daily tasks that more literate citizens take for granted. As individuals lacking the reading and writing skills necessary to guarantee full civic participation, illiterate adults lead lives isolated and segregated from mainstream America. Self-autonomy and personal independence for illiterate adults can only be achieved if they limit their range of life choices and needs to those which only require minimally adequate literacy skills. Aspects of citizenship and civic participation that demand more advanced skills are closed to marginally functional adults. Choice, freedom and opportunity are all severely limited in the lives of illiterate American adults.

The inability of functionally illiterate adults to be full and active participants within society has serious consequences for the entire nation as well. The failure of illiterate adults to fully participate in society translates into social, political, economic, and cultural losses for all Americans. By permitting illiteracy to disempower and disenfranchise significant proportions of the adult population, the nation squanders valuable human capital and loses the contributions and the participation of bright, diligent, and important citizens.

In concrete terms, the costs and consequences associated with functional illiteracy point to a disturbing and continuing trend: "the undereducated . . . are also primarily the poor and racial and ethnic minorities." Hunter and Harman's work, published in 1979, was one of the first to highlight the significant correlations between illiteracy and other socioeconomic factors. The be discussed more fully later in this Section.

26. For example, as the results of the APL demonstrate: 22% of the sample could not address an envelope well enough to ensure that it would reach the desired destination; 30% could not read a mock airline schedule; and 20% could not write a check that would be processed by a bank. Newman and Beverstock, Adult Literacy at 71 (cited in note 15).

27. A recent study published in the Journal of the American Medical Association highlights these concerns. The study reported that limited literacy skills may pose a significant barrier to patients understanding their diagnoses and treatments. Mark V. Williams, et al, Inadequate Functional Health Literacy Among Patients at Two Public Hospitals, 274 J Amer Med Assoc 1677 (1995). The study tested 2,659 patients at two large, public hospitals and found: 24.3 to 58.2% of patients did not understand directions to take a medication on an empty stomach; 40.7 to 74.5% did not adequately comprehend a standard informed consent form; 20% incorrectly answered questions regarding information on a routine appointment slip; and 47.9% to 80.5% of patients aged 60 years or older had inadequate functional health literacy. Id at 1681. Significantly, the study also found that illiterate adults experience impaired access to health care because they live outside the flow of information that brings people to the health care system. Id.


29. Hunter and Harman, while documenting correlations between low levels of literacy and other social ills, clearly decline to draw a causal relationship between illiteracy and these other socioeconomic factors. Indeed, if any causal relationship exists, the authors argue, it is more likely that the social ills are responsible for illiteracy. As the authors contend:

Research suggests that poverty and the power structures of society are more responsible for low levels of literacy than the reverse. For most persons who lack
authors detail these correlations by comparing grade-completion levels with a variety of socioeconomic factors including poverty, employment, receipt of public assistance, and racial and ethnic background. From their research, Hunter and Harman draw an obvious conclusion: People who lack basic or functional literacy skills also suffer from other major social and economic disadvantages. As the authors state:

In this country persons with limited education are often the same persons who suffer from one or more of the other major social disadvantages—poverty, unemployment, racial or ethnic discrimination, social isolation. Inadequate education will probably be only one manifestation of their deprivation. The greater the number of those disadvantages, the more serious the suffering for members of our society in which one's worth is judged by one's job, possessions, and credentials.

Unfortunately, the conclusions reached by Hunter and Harman in 1979 are only reinforced by the 1993 NALS results.

According to the Executive Summary of the NALS, individuals demonstrating higher levels of literacy were more likely to be employed, to work more weeks in a year, and to earn higher wages than individuals demonstrating lower levels of literacy skills. Adults in the lowest level of literacy skills on the NALS
were also far more likely than those in the two highest levels to report receiving food stamps or to live in poverty.\textsuperscript{30} The NALS results further demonstrate a clear correlation between literacy skills and political participation. For example, adults in the higher levels of the NALS were more likely than those in the lower levels to report voting in a recent state or national election.\textsuperscript{34} Moreover, slightly more than one-half (55 to 58 percent) of the adults in Level 1 who were eligible to vote reported voting in the past five years, compared to almost 80 percent of those who performed in Level 4 and 90 percent of those in Level 5.\textsuperscript{35}

The personal consequences of these correlations for illiterate adults were expressly noted in the Executive Summary of the NALS:

[L]iteracy can be thought of as a currency in this society. Just as adults with little money have difficulty meeting their basic needs, those with limited literacy skills are likely to find it more challenging to pursue their goals—whether these involve job advancement, consumer decisionmaking, citizenship, or other aspects of their lives. Even if adults who performed in the lowest literacy levels are not experiencing difficulties at present, they may be at risk as the nation’s economy and social fabric continue to change.\textsuperscript{36}

Given that the volume and variety of written material in society continues to increase, the personal consequences of being illiterate may only get worse.\textsuperscript{37}

From a societal perspective, perhaps the most easily identifiable, and most commonly reported, cost of illiteracy to the nation involves the impact illiteracy has on the competitiveness of the American workforce and economy. According to 1988 U.S. Commerce Department estimates, the U.S. economy suffers an annual productivity loss of $140 to $300 billion traceable directly to adult worker illiteracy.\textsuperscript{38} Moreover, as of 1989, 30 percent of unskilled, 29 percent of semiskilled and 11 percent of all managerial, professional and technical

\begin{itemize}
  \item[33.] Indeed, nearly one-half (41% to 44%) of adults in the lowest level of literacy skills reported living in poverty, compared to only four to eight percent of those individuals in the two highest proficiency levels. Kirsch, et al, \textit{Executive Summary} at vii (cited in note 4). The correlation between poverty and literacy skills was also documented in the EPI study. The study found that illiterate adults are 17 times more likely to be on food stamps and six times more likely to be living in poverty than the nation’s best readers. \textit{From Welfare to Work} at 4 (cited in note 32).
  \item[34.] Kirsch, et al, \textit{Executive Summary} at vii (cited in note 4).
  \item[35.] Id. Significantly, the results of the IALS confirm many of the correlations highlighted by Hunter and Harman, the NALS and the EPI study. For example, the IALS findings report positive statistical relationships between employment and literacy, income and literacy, and participation in community or volunteer activities and literacy — those with limited literacy skills are more likely to be unemployed, have little or no income, and not participate in community or volunteer activities. \textit{Literacy, Economy and Society} at 58-62, 103, 190 (cited in note 16).
  \item[36.] Kirsch, et al, \textit{Executive Summary} at ix (cited in note 4).
  \item[37.] Id.
\end{itemize}
employees were functionally illiterate. More recent studies have estimated that functional illiteracy costs the nation $224 billion a year in welfare, crime, job incompetence, lost taxes and remedial education. These studies also report that three-fourths of the nation's largest 500 firms spend approximately $300 million a year on remedial training for almost eight million workers. Such figures raise real doubts as to whether the nation is successfully providing the sufficient education and training necessary to guarantee a highly skilled and literate workforce for the future.

Collectively, these statistics point to the clear conclusion that there is a strong association between literacy and the basic social, political, and economic realities of citizens' lives. As such, adults with limited literacy skills suffer severe costs and consequences as a result of their status. Similarly, illiteracy results in significant costs and consequences for the nation as a whole. As a result of the disempowerment of illiterates, the nation loses valuable human capital and the potential contributions and participation of worthy and important citizens.

3. Intergenerational Illiteracy Cycle

As the preceding discussion details, there are severe personal and national costs and consequences associated with adult illiteracy in the United States. The seriousness of these costs and consequences highlights the broad scope of the literacy crisis and underscores the fact that illiteracy impacts all citizens, literate or not. In this respect, one final aspect of the literacy crisis—the intergenerational illiteracy cycle—serves to reinforce these conclusions and to offer perhaps the most compelling reason of all for national action to address the literacy crisis.

In its simplest form, the intergenerational illiteracy cycle describes the direct correlation between the literacy levels of adults and the literacy levels of their children. In the case of illiterate adults, this correlation suggests that children of adults with limited literacy skills will likely possess limited literacy skills themselves. The reason for such a causal connection is clear: If children are raised in an environment in which the importance of developing literacy skills is not stressed, then those children are likely neither to develop nor to value literacy.

39. Id at 1.
41. Id.
42. This trend threatens to get worse with the recent efforts to reform welfare and move millions of welfare recipients to work. Researchers have determined that two-thirds of AFDC recipients enrolled in the federal Job Opportunities and Basic Skills Training Program (JOBS) require substantial "skill upgrades" before they are eligible for any job. From Welfare to Work at 1 (cited in note 32).
43. See Hearings on Contract With America—Welfare Reform, before the Subcommittee on Human Resources of the House Committee on Ways and Means, 104th Cong, 1st Sess 979 (1995) (statement of Sharon Darling, National Center for Family Literacy). The connection between the literacy skills of adults and their children is statistically documented by the IALS. See Literacy, Economy and Society at 77-79, 149-151 (cited in note 16).
skills. As a consequence, the cycle of illiteracy is passed from one generation to another.

The primary concern raised by the intergenerational illiteracy cycle is the idea that the children of illiterate adults are at an exceedingly high risk of becoming illiterate adults themselves, through no fault of their own. In this vein, the intergenerational illiteracy cycle severely harms the future educational prospects of children raised by illiterate parents. Children raised in an environment where literacy is devalued may never have the opportunity to fully develop their literacy skills. Indeed, because children raised by illiterate adults may not receive critical early literacy training at home, they risk entering the formal education process with significantly less skill development than other children. In turn, this literacy gap only widens as the education process continues. Consequently, many children who fall behind at an early age are never able to recover. This is especially the case for children who come from homes where literacy and education are not considered central.

The existence of the intergenerational illiteracy cycle suggests that efforts toward eliminating the literacy crisis must focus first and foremost on illiterate adults. Consequently, policy responses to the literacy crisis must embrace three interrelated goals: (1) improving the literacy skills of illiterate adults; (2) fostering the inclusion and full participation of illiterate adults in society; and (3) changing illiterate adults’ negative feelings toward literacy and the educational process. In

44. Hearings on Contract With America at 979 (statement of Sharon Darling) (cited in note 43).

45. There are a number of reasons why the importance of developing literacy skills may be devalued by illiterate parents. First, illiterate parents themselves may have been adversely affected by the intergenerational illiteracy cycle during their childhood. Second, illiterate parents, through their own life experiences, may have discovered that literacy skills are not absolutely necessary in order to survive in society. They may believe that their children will also be able to survive in society without literacy skills. Third, because many illiterate parents lack the skills necessary to help their children develop literacy skills, they may choose instead to disassociate themselves from their children’s learning process. Fourth, many illiterate parents are confronted with other compelling socioeconomic concerns that may make literacy a lesser priority in the household. Finally, illiterate parents may not appreciate or understand the vital role they play in aiding the development of their children’s literacy skills. As such, they may simply ignore their children’s early literacy needs and assume that the public education system will provide adequate literacy training. Id.

46. Statistics from the National Center for Family Literacy in Louisville, Kentucky highlight this concern. According to the Center, over 50% of children living in poverty enter school two or more years behind their peers. Moreover, children who do not have basic development skills when they enter school are 3 to 4 times more likely to drop out in later years. The Center’s research also demonstrates that children whose parents are active participants in their educational process are better achievers, display higher cognitive skills, perform better on achievement tests, and have better attendance records than children whose parents are not involved in their schooling. Statistics cited from 1991 Center distribution (on file with The University of Chicago Law School Roundtable).

47. Hearings on Contract With America at 979 (statement of Sharon Darling) (cited in note 43).
order to break the intergenerational illiteracy cycle, illiterate parents need the tools and the motivation necessary to ensure that their children fully develop their own literacy skills. Without this focus on the needs and values of illiterate parents, the ability to alleviate the literacy crisis is doubtful. Thus, the intergenerational illiteracy cycle serves as another powerful reason why national legislative action is necessary to combat the literacy crisis.

B. TOWARD A MORE PROGRESSIVE STANDARD

This Section has sought to examine the scope of the existing literacy crisis, to highlight the costs and consequences associated with the literacy crisis, and to explore the dimensions of the intergenerational illiteracy cycle. Significantly, up to this point the analysis has assumed a definition of literacy that focuses on the functional aspects of literacy skills. From this perspective, literacy has been considered as a measure of the ability of individual adults to competently perform basic tasks necessary to effectively live and survive in one's community. Under this standard of literacy the scope of the literacy crisis is extensive.\footnote{48}

The results of the NALS and other literacy studies also point to a more fundamental question: What standard \textit{should} be used to assess the literacy crisis? Under the functional standard, literacy is considered primarily as a tool that enables adults to perform particular tasks necessary for daily life. The expectations encompassed by this standard focus almost exclusively on the more tangible aspects of literacy skills—the ability of individuals to read and write well enough to meet some or most of their individual and perhaps, occupational, literacy needs. What the functional standard does not capture as well, however, are the important interconnections between literacy skills and other less obvious issues centered on quality of life, range of life options, and the ability to fully participate in society. In order to more accurately assess the full impact of the literacy crisis, we need to move beyond the functional standard to a more progressive conception of literacy that accounts for these more elusive elements.

Under a more progressive standard, literacy is understood to mean the ability of individuals to gather, process, understand, and affirmatively act upon information about the rights, privileges, and entitlements that they possess as citizens. This conception embraces the idea that literacy encompasses more than just the

\footnote{48. As the results of the NALS indicate, approximately 90 million American adults experience some difficulty in performing daily tasks necessary to survive and to function in their communities because of insufficient literacy skills. Kirsch, et al, \textit{Executive Summary} at iv (cited in note 4). There are both empirical and normative elements involved in assessing these results. From an empirical standpoint, one can challenge the methodology of the NALS or the final calculations that are extrapolated from the samples of the survey. See, for example, Elizabeth Mehren, \textit{A New Reading on U.S. Literacy: Test Scores are Low, but What do They Measure?} LA Times E1 (Sept 29, 1993), available in 1993 WL 2269091. Normatively, whether or not one finds the results of the NALS reason for concern depends in large part on what baseline standard of literacy one adopts. The normative consequences of choosing a particular conception of literacy are discussed in the main text.}
ability to read and write sufficiently well enough to function or to survive in society. Indeed, under a progressive standard literacy is understood as the means to read, write, function, and critically think to a degree necessary in order to have the opportunity to fully participate in society. From this perspective, the expectations embodied within the definition of literacy focus on ensuring that all adults have the literacy skills necessary in order both to be fully aware of the rights, privileges, and entitlements available to all qualified American citizens, and to have the opportunity to exercise these elements of citizenship. In essence, a progressive conception of literacy does not accept the idea that literacy skills sufficient for marginal survival in society is a satisfactory standard. Rather, the progressive standard views the full and active participation of all adults in accessing and exercising the basic elements of citizenship as the end goal of the development of literacy skills.

The main significance of adopting a progressive standard of literacy rests in the way in which such a standard affects our understanding of the scope of the literacy crisis. As the NALS results make clear, under a functional standard 90 million American adults experience some difficulties in performing the day-to-day activities necessary to function and survive in their communities. However, whether or not one considers either the number of adults adversely affected or the fact that so many adults experience some difficulty in performing day-to-day activities as findings worthy of societal concern depends in large part on whether one is comfortable with the baseline position that as long as individuals have sufficient literacy skills to survive and function, however marginally, in their communities, then there is no real literacy crisis. Under the functional standard then, the ability to survive and to function in one’s community, regardless of quality of life concerns, stands as the true measure of the scope of the literacy crisis. As such, even those adults who cannot read at all, yet are minimally functioning in society, could be considered as “literate” under a functional standard.

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49. For purposes of this analysis, I have defined the elements of citizenship to include voting, employment, entitlements, housing, travel, legal rights, and civic participation. These seven elements are more fully discussed in Section II of this Comment.

50. It is important to flesh out this argument here. Under a purely functional standard, the true measure of the scope of the literacy crisis is the ability of individual adults to perform the daily tasks required to survive and to function in their respective communities. Thus, although many adults may experience considerable difficulty in performing these tasks because of their limited literacy skills, they may still be able to function and to survive despite the difficulties they are experiencing. Indeed, this is precisely the inference that the NALS raises when it notes that a large majority of the 90 million adults who performed in Levels 1 and 2 did not necessarily perceive themselves as being at risk. In this case, even though the skills of these 90 million are limited, they may be adequate enough to allow these adults to meet some or most of their personal and occupational literacy needs. As a result, under a purely functional standard the results of the NALS would not necessarily raise significant concerns regarding a national literacy crisis.

Significantly, this is not meant to imply that either the NALS or the IALS embrace a purely functional standard, or that the results of these surveys support the conclusion that under a functional standard a national literacy crisis does not exist. Rather, both studies confirm that under either a functional or progressive standard, a national literacy
In contrast, adopting a more progressive standard of literacy forces us to consider how limited literacy skills adversely affect the ability of American adults both to access and to exercise the basic elements of citizenship. Under this standard, the most accurate measure of the scope of the literacy crisis is the number of American adults whose limited literacy skills prevent them from fully participating as active members of society. The baseline position under the progressive standard holds that as long as a lack of sufficient literacy skills prevents individual adults from fully accessing and participating in the basic elements of citizenship, then a literacy crisis worthy of national concern and action exists. Given the results of the NALS, it is clear that the heightened expectations encompassed within the progressive standard are not being met by 90 million American adults. Consequently, under the progressive standard it is both empirically and normatively apparent that a national literacy crisis does in fact exist.\footnote{In summary, the progressive standard baseline position is the one adopted by this Comment. As such, this Comment also embraces the normative conclusion that it is unacceptable that 90 million American adults experience difficulties which prevent them from fully participating in society because of their limited literacy skills. In response to the literacy crisis, this Comment argues that comprehensive legislative action is necessary in order to remedy the national literacy crisis. The nature and scope of the national action contemplated is discussed in the next Section.}

In summary, the progressive standard baseline position is the one adopted by this Comment. As such, this Comment also embraces the normative conclusion that it is unacceptable that 90 million American adults experience difficulties which prevent them from fully participating in society because of their limited literacy skills. In response to the literacy crisis, this Comment argues that comprehensive legislative action is necessary in order to remedy the national literacy crisis. The nature and scope of the national action contemplated is discussed in the next Section.

II. National Legislative Response

A. RATIONALES FOR A NATIONAL LEGISLATIVE RESPONSE

The argument for a comprehensive national legislative response to the literacy crisis is a compelling one. As illustrated most recently by the Americans With Disabilities Act ("ADA"),\footnote{The Americans with Disabilities Act of 1990, Pub L No 101-336, 104 Stat 327-78, codified at 42 USC 12101 et seq (1990).} Congress is exceptionally capable of enacting crisis does, in fact, exist. Moreover, insofar as both studies employ a broader definition of "literacy" than that used in any prior study, the NALS and IALS move analysis of the literacy crisis closer toward the progressive conception of literacy proposed in this Comment.

\footnote{The functional and progressive standards described in this Section are not mutually exclusive. Rather, the progressive standard moves beyond the functional standard to include concerns about the quality of life, range of life options, and civic participation of adults with limited literacy skills. In essence, the progressive standard makes it clear that adults with limited literacy skills are not only experiencing some degree of difficulty in performing daily tasks necessary in order to function in their communities, but that they are also experiencing considerable difficulty in accessing and participating in the basic elements of citizenship. Accordingly, under the progressive standard the results of the NALS raise a real concern that 90 million American adults are presently unable to fully participate in society because of their limited literacy skills. This, in turn, presents convincing empirical and normative reasons to be concerned about a national literacy crisis.}
comprehensive national legislation designed to protect the fundamental rights of disempowered citizens and to promote the inclusion of segregated groups into society. Indeed, Congress enacted the ADA in large part to eradicate the discrimination suffered by persons with disabilities, and to help Americans understand that people with disabilities are “individuals of inherent worth, equal to all others.” Today, Congress remains in a similarly powerful position to make the affirmative statement that the existence of barriers and obstacles that prevent the full participation of illiterate adults in society and the general disempowerment of individuals with limited or no literacy skills in America are important concerns worthy of national legislative action.

There are a number of ways in which comprehensive national legislative action is particularly well-suited as a response to the literacy crisis. A national literacy act based on both remedial and enabling principles would go a long way toward guaranteeing that illiterate adults are able to enjoy the same rights, privileges, and entitlements as other qualified American citizens. Such an act would foster positive outcomes including: (1) the elimination of the stigma associated with illiteracy and the status of being an illiterate adult; (2) the creation of strong incentives for illiterate adults to improve their literacy skills; (3) the effective abolition of literacy-based barriers and obstacles preventing illiterate adults from fully participating in American society; (4) a clear statement of America’s commitment to fairness and civic participation; and (5) the raising of national public awareness concerning the literacy crisis and the status of illiterate adults in American society. Independently, each of these outcomes strongly supports the passage of a national literacy act. Collectively, these outcomes make the case for Congressional action compelling. What follows is a


54. Congressional action in response to the national literacy crisis is not unprecedented. To this point, however, the federal government response has largely focused on providing funding for the creation of adult basic education programs and for research efforts to study various aspects of the national literacy crisis. See, for example, the Adult Education Act of 1966, Pub L No 89-750, 80 Stat 1216, codified at 20 USC § 1201 et seq (1993 Supp V) (making federal funds available to state educational agencies to provide adult basic, adult secondary, and English as a Second Language instruction for out-of-school adults); the National Literacy Act of 1991, Pub L No 102-73, 105 Stat 333, codified at 20 USC § 1201 et seq (1993 Supp V) (creating the National Institute for Literacy (NIL) to serve as a national clearinghouse on literacy, to provide technical and financial assistance to basic skills providers, and to support in-field research efforts).

The scope of the comprehensive national legislative response contemplated in this Comment goes well beyond any previous Congressional response to the literacy crisis. As such, it requires that the federal government undertake a more active and expanded role in combating the existing problem.

55. Another way of characterizing the dual purposes of the statute suggested here is to say that the legislation “adopts the visions of both equal treatment and special treatment.” See Gostin and Berger, Implementing the Americans With Disabilities Act at xiii (emphasis in the original). This is the theory behind the ADA.
brief examination of how each positive outcome serves as a rationale for supporting national literacy legislation.

1. Elimination of Stigma

The stigma associated with illiteracy and the status of being an illiterate adult takes two primary forms: social and self. From a social perspective, literacy has historically been understood and accepted as a measure of intelligence and mental capacity. As such, illiteracy is commonly equated with ignorance, stupidity, retardation, and mental handicap. In this vein, illiteracy is viewed as a "disease"—a chronic affliction with which less fortunate and less able human beings must cope.56

The social stigma associated with illiteracy and with the status of being an illiterate adult is often exacerbated by the negative effects and self stigma experienced by illiterate adults themselves. Many illiterate adults feel personally responsible and morally culpable because they cannot read and write.57 Such feelings commonly exist even though the individuals themselves may have had very little control over the combination of factors that led them to their status as illiterate adults.58 In addition, many also experience strong feelings of inadequacy, low self-esteem and frustration on a daily basis. For example, one study conducted by the University of Tennessee Adult Reading Academy Program identified six categories of illiterate adults and the negative effects of illiteracy typically associated with these categories of people:

1. Workers: embarrassment, frustration, fear
2. Consumers: embarrassment, low self-esteem, frustration
3. Parents: fear of detrimental effects on children
4. Students: frustration, feelings of inadequacy
5. People in social situations: frustration, embarrassment, shame
6. People in leisure situations: lack of pleasure, loneliness, frustration

As the results of the study demonstrate, the status of being an illiterate adult imposes real emotional and psychic costs on those who have limited literacy skills.59

Both forms of stigma—social and self—serve as powerful obstacles preventing progress in the struggle against illiteracy. The social stigma associated with illiteracy and the status of being an illiterate adult makes it exceedingly difficult for individuals to admit that they cannot read or write. Fear of being viewed as ignorant, backward, lazy, inferior, or somehow different from everyone else prevents many illiterate adults both from admitting that they lack sufficient

56. Hunter and Harman, Adult Literacy at 1 (cited in note 15).
57. See, for example, Curtis Wilkie, Locked Out of a World of Words, Boston Globe 1, 23 (Oct 24, 1993), available in 1993 WL 6614425.
58. Id.
59. A full discussion of the University of Tennessee study is found in B.S. Heathington, Expanding the Definition of Literacy for Adult Remedial Readers, 31 J Reading 213-17 (1987). The study is also briefly discussed in Newman and Beverstock, Adult Literacy at 42 (cited in note 15).
reading and writing skills, and from seeking help in order to improve their
skills.\textsuperscript{60} Similarly, the low self-esteem and constant frustration and embarrassment experienced by illiterate adults on a daily basis creates real fears of failure and inadequacy that only make it more difficult for individuals to admit that they are illiterate and need help.\textsuperscript{61}

A comprehensive national legislative response to the literacy crisis would help eliminate the pernicious effects of stigma in a number of ways. First, a national response would provide a clear definitive statement that the United States considers illiteracy and the disempowerment of illiterate adults in America important concerns worthy of national legislative action. Such a statement will help encourage citizens to begin thinking about literacy and the status of illiterate adults in an entirely new context. Indeed, the very fact that Congress has taken national legislative action to address the problems of illiteracy and the status of illiterate adults in America would carry a number of forceful symbolic messages—literacy is an essential "right" of citizenship; the literacy crisis is a problem of national proportions; and all citizens should be concerned about its consequences. This would go a long way toward eliminating the social stigma associated with illiteracy and the status of being an illiterate adult.\textsuperscript{62}

National legislative action would likewise have a significant impact on the problem of self stigma. An integral part of any comprehensive literacy legislation would be a Congressional finding that the causes of illiteracy are complex, often involving the interaction of socioeconomic, educational, and childhood factors over which individuals may have little or no control. This finding means that responsibility for the literacy crisis would not be thrust upon those who cannot read and write. Such a national acknowledgement would help illiterate adults overcome the belief that they are solely responsible for their status as illiterates. Moreover, a clear articulation of the idea that illiterate adults are not worthy of blame would reassure individuals that if they admitted they needed help with their basic literacy skills, they would not be subject to ridicule, scorn or social ostracism. In sum, a comprehensive national legislative response to the literacy crisis would serve as an important validation of the right of illiterate adults to become full citizens.\textsuperscript{63}

\textsuperscript{60} See, for example, Curnette, Cincinnati Enquirer at A1, A6 (cited in note 3); Wilkie, Boston Globe at 22 (cited in note 57).

\textsuperscript{61} Curnette, Cincinnati Enquirer at A6 (cited in note 3); Wilkie, Boston Globe at 22 (cited in note 57).

\textsuperscript{62} Unlike earlier Congressional responses to the literacy crisis which were primarily concerned with providing federal funding for adult basic education programs and research studies, see note 54, one of the central goals of the statute proposed in this Comment is to empower and to connect illiterate adults to mainstream American society. By emphasizing the inclusion of illiterate adults in American life, the proposed statute is intended to change the nation's conceptions of illiteracy and of the status of illiterates in the United States.

\textsuperscript{63} The argument that national legislative action would help reduce the stigmas associated with illiteracy and the status of being an illiterate adult is a controversial one. For starters, not everyone would agree that illiterate adults are not primarily responsible for
2. Incentives for Improvement of Literacy Skills

Although it is difficult to predict precisely how illiterate adults will react to comprehensive national legislative action, there are a number of reasons to believe that such action will provide strong incentives for individuals to improve their literacy skills. First, as noted above, national legislative action will help reduce both the social and self stigma associated with illiteracy and the status of being an illiterate adult. As a result, one of the largest obstacles preventing illiterate adults from seeking to improve their literacy skills—the stigma of admitting that they need help—will be decreased. In the absence of such stigma, seeking help for the improvement of literacy skills becomes a low-risk, high-reward decision; illiterate adults can improve their skills with less fear of ridicule or disdain. The reduction of fear creates a clear incentive for illiterate adults to improve their literacy skills.64

Another incentive encouraging the improvement of literacy skills is created by the type of national legislative action contemplated in this Comment. As more fully developed later in this Section, the proposed statute is intended to serve both remedial and enabling purposes. As such, a central purpose of the proposed statute is to integrate illiterate adults into the mainstream of American life through a system of reasonable accommodations. Assuming that the goal of helping illiterate adults become more active and participating members of society is attainable, then the inclusion and empowerment of illiterate adults fosters strong incentives for those individuals to improve their literacy skills. These incentives are created through a process of experience and expectations-shaping—by exposing illiterate adults to the benefits and positive consequences of possessing literacy skills they will seek to improve their own skills.65

On balance, however, the importance of national legislative action remains its potential impact on the self-esteem of illiterate adults themselves.

64. This is not to imply that low risk is necessarily equivalent to low cost. Even though it may become less risky for illiterate adults to seek help for the improvement of their literacy skills, the process of improving their skills may nonetheless require hard work and a significant time commitment.

65. An example will help demonstrate how the expectations-shaping process is expected to work. Assume that an individual with limited literacy skills is able to secure employment as a result of reasonable accommodations in the employment context as required under the proposed statute. If the statute is functioning effectively, then we can also assume that this individual is someone who, but-for the reasonable accommodations, may not have been able to apply for or to perform the particular job in question. Once this individual is hired, however, it is likely that she will be exposed to the integral role that literacy skills play in the employment context. Thus, even though she was hired despite her limited literacy skills, she quickly will learn through observation and experience that
It is important to note that this argument, and the incentive argument generally, assumes that all things being equal, illiterate adults desire to improve their literacy skills. In other words, given the absence of obstacles and disincentives (like stigma and disempowerment), illiterate adults will admit they need help with their literacy skills and seek to improve those skills. While this assumption is clearly open to debate, there are persuasive reasons to believe that as a general baseline illiterate adults desire to improve their literacy skills.

First, it is difficult to imagine any compelling justification for illiterate adults not wanting to improve their literacy skills (absent obstacles or disincentives). Common sense dictates that given the opportunity to improve one’s literacy skills without significant costs, we would expect to see most illiterate adults seeking help. Second, most individuals with limited literacy skills have important personal reasons for wanting to improve their literacy skills. Indeed, most illiterate adults have a particular goal in mind when they seek to improve their literacy skills and as such, have a strong vested interest in working to improve their skills.66 Finally, the outcomes reported by in-field research and community-based literacy projects point to the desire of illiterate adults to continue to improve their literacy skills even beyond the scope of the particular literacy projects in which they may be participants.67 As the outcomes of one adult basic skills program at a local Head Start program are described:

Lives have changed. Two mothers returned to school to get their GEDs. One has gone on to a community college to train to be an elementary school teacher. Many of the mothers now read routinely to their children; others feel that the educational system isn’t so foreign and scary . . . . Finally, the most profound change comes in the mothers’ view of knowledge and expertise. In a real . . . sense, these women became the creators of knowledge; they are the experts.68

The empowering outcomes associated with improved literacy skills—increased future opportunities; validation of personal experience; voice; a greater control

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66. See, Curnutte, Cincinnati Enquirer at A1 (cited in note 3); Wilkie, Boston Globe at 23 (cited in note 57).
67. Curnutte, Cincinnati Enquirer at A6 (cited in note 3); Wilkie, Boston Globe at 23 (cited in note 57). See also, Leslie Earnest and Hope Hamashige, Reading Their Problem Loud and Clear, LA Times A1 (Nov 10, 1996), available in 1996 WL 12754928 (describing how new adult readers have assumed leadership positions in the national literacy movement and are changing public attitudes about illiteracy and illiterate adults).
over one's life—indicate that all things being equal, illiterate adults will seek to improve their literacy skills.

Collectively, these intuitions point to the force of the incentive argument—illiterate adults generally desire to improve their literacy skills and therefore, comprehensive national legislative action targeted toward more fully integrating illiterate adults into American life will only serve to heighten this desire. As such, the fact that national legislative action will help create incentives for the improvement of literacy skills stands as another compelling justification for supporting a legislative response to the literacy crisis.

3. Abolition of Barriers and Obstacles to Full Participation

One of the greatest challenges confronting illiterate adults is the existence of literacy-based barriers and obstacles that prevent them from fully participating in American society. A primary goal of any comprehensive national legislative action must be to help guarantee that illiterate adults are able to access the same rights, privileges, and entitlements as other qualified American citizens. The statute contemplated in this Comment attempts to ensure the full integration of illiterate adults into society through its reasonable accommodations requirement. Under the statute, reasonable accommodations are required in those areas where illiterate adults are not able to fully participate because of literacy-based requirements: voting, employment, entitlements, housing, travel, legal rights, and civic participation. Significantly, these areas represent a baseline of what it means to be a fully active and contributing member of society.

Given the proposed statute’s focus on reasonable accommodations, it is clear that the very heart of the national legislation envisioned is targeted toward eliminating the literacy-based barriers and obstacles preventing the full participation of illiterate adults in society. As a result, national legislative action will promote the full participation and integration of illiterate adults in American life.

69. Indeed, even the Supreme Court, albeit in a different context, has expressly recognized the role that literacy-based barriers play in preventing illiterates from fully participating in American society. In Plyler v Doe, 457 US 202 (1982), the Court considered the constitutionality of a Texas statute which withheld state funding from local school districts for the education of children who were not “legally admitted” to the United States and which also authorized local school districts to deny enrollment to such children. Significantly, in the course of reaching its decision that the Texas statute violated the Equal Protection Clause of the Fourteenth Amendment, the Court noted the following:

Section 21.031 imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.

Id at 223.
4. Clear Statement of Equal Treatment and the Opportunity for Civic Participation

A further reason for supporting national legislative action is the idea that a national response will serve as an affirmative statement that the nation is committed to the principle that illiterate adults are entitled to basic guarantees of equal treatment and the opportunity for civic participation. This argument involves both a legal and a normative component. From a legal perspective, national legislative action will provide guarantees, enforceable by law, that illiterate adults have the same legal rights and opportunities to participate in society as all other qualified American citizens. Normatively, a legislative response will make it clear that the nation believes that illiterate adults are worthy of fair treatment and respect as fellow human beings. As a result of national action, America will demonstrate that it considers equitable treatment of illiterate adults a moral imperative.

Collectively, the legal and normative components reinforce the idea that national legislative action will send a forceful message that the nation considers illiterate adults as deserving of equal treatment and the opportunity to fully participate in American society. This powerful message—inherent in the type of legislative action contemplated by this Comment—offers another compelling justification for supporting a national legislative response.

5. Raising National Public Awareness

Adult literacy is not a sexy issue. Indeed, the issue of adult literacy historically has received very little attention from the general public. Moreover, the limited information concerning adult literacy that has entered American consciousness has often been misleading or patently false. National legislative action will help remedy these problems by raising national public awareness about the adult literacy issue, and in the process, correcting numerous misconceptions and stereotypes concerning illiteracy and adults with limited literacy skills. In this respect, the proposed statute would serve a valuable educative function—literate Americans will become better informed about both the issues involved with adult literacy and the need for national action to address the literacy crisis.

B. PROPOSED STATUTE

Given the compelling rationales favoring a national legislative response to the literacy crisis, it is clear that some type of comprehensive legislative action is warranted. What follows is a proposed statute—“The National Civic Literacy

70. Some of the most common misconceptions concerning illiterate adults include: the belief that all illiterate adults are lazy, unskilled, alcoholic, drug-dependent, and/or members of a minority group; the belief that the number of illiterate adults in America is very small; the idea that the only adults who are illiterate are those who did not graduate from high school; the belief that America's system of free public education has made illiteracy a concern of the past; and the idea that sufficient government resources have been devoted to combating the literacy crisis.
Act"—along with a statute commentary that offers an overview of the purposes of the statute and discusses the major provisions of the proposed Act.

**The National Civic Literacy Act**

**An Act**

To ensure that no American is denied the opportunity to fully participate in society on the basis of illiteracy.

**Sec. 1. Findings And Purposes**

**(A) Findings**—The Congress finds that—

1. Almost 100,000,000 adult Americans have no literacy skills, or literacy skills that are limited;
2. Limited literacy skills have played a central role in denying many Americans the opportunity to fully participate in society;
3. Adults with limited literacy skills face literacy-based barriers and obstacles that prevent them from exercising rights and performing daily activities that literate Americans take for granted;
4. Adults with limited literacy skills face barriers and obstacles in such critical areas as voting, employment, housing, travel, access to public services and entitlements, protection of legal rights, civic participation, and other essential daily functions;
5. Because of their limited literacy skills, millions of American adults are isolated and segregated from society;
6. The disempowerment of illiterate adults results in significant social, political, economic, and cultural costs to American society;
7. Literacy is a complex issue, one not easily defined solely in terms of the ability to read and to write;
8. The causes of illiteracy are also complex, often involving the interaction of socioeconomic, educational, and childhood factors over which one may have little or no control;
9. Stereotypical assumptions about illiterate adults and illiteracy in general are not truly indicative of the individual ability of adults with limited literacy skills to participate in, and contribute to, society.

**(B) Purpose**—It is the purpose of this Act—

1. To eliminate the literacy-based barriers and obstacles that prevent illiterate Americans from fully participating as citizens in society;
2. To eradicate the stigma and misconceptions commonly associated with illiterate adults and illiteracy;
3. To raise public awareness about the issue of illiteracy and the issues confronting illiterate adults;
(4) To demonstrate that illiteracy and the disempowerment of illiterate adults in America are important concerns worthy of national legislative action; and,

(5) To empower adults with limited literacy skills to improve their literacy skills and to achieve their full potential as participants in mainstream American society.

Sec. 2. Definitions

As used in this act:

(1) Illiteracy; illiterate; non-literate; limited literacy skills—means the inability of an otherwise qualified individual(s) to take advantage of rights, privileges, and entitlements offered to members of society because of a lack of reading, writing, and/or more general cognitive skills;

(2) Civic literacy—means the ability of individuals to gather, process, understand, and affirmatively act upon information about the rights, privileges, and entitlements that they possess as citizens;

(3) Full participation—means the opportunity to access rights, privileges, and entitlements offered to members of society without the hindrance of obstacles and barriers that would prevent the enjoyment of those rights, privileges, and entitlements to the extent enjoyed by fully literate citizens;

(4) Public and private entities—means (a) federal, state, or local government; (b) any department, agency, special purpose district, or other instrumentality of the federal government, a state or local government; (c) employers; (d) officials under the color of right; (e) landlords; (f) providers of public transportation; (g) officials in federal, state, and local civil and criminal courts; (h) community officials; (i) organizations; and (j) private individuals;

(5) Affirmative duty—means a requirement to take active steps toward meeting statutory obligations even though meeting those obligations may impose costs and inconveniences on the public or private entity;

(6) Reasonable accommodations—means the creation of non-literacy based procedures, processes, and alternatives intended to remedy those situations in which a lack of reading, writing and/or more general cognitive skills prevents illiterate adults from enjoying the same basic rights of citizenship as other adults. Accommodations will be considered reasonable provided that the required changes do not: (a) impose excessive costs; or, (b) impose an undue hardship; or, (c) cause a direct threat to the safety of the individual, other individuals, or the general public;

(7) Reasonable modifications—means the reconfiguration and/or reshaping of non-essential job duties and responsibilities in order to permit individuals with limited or no literacy skills to obtain and perform employment. Modifications will be considered reasonable provided that the required modifications do not: (a) alter the duties and responsibilities of a job where literacy skills are considered an essential job necessity; or,
(b) impose an undue hardship on the operation of the business; or, (c) cause a direct threat to the safety of the employee, other employees, or the general public;

(8) Undue hardship—means the imposition of significant administrative or financial difficulties in the operation of the public or private entity, when considered in light of the following factors: (a) the overall size of the entity, including the number of employees; (b) the existing organizational structure of the entity; (c) the overall financial resources of the entity; and (d) the net economic consequences of making the accommodation or modification;

(9) Direct threat—means a significant risk to the health or safety of the individual, other individuals, or the general public that cannot be eliminated by reasonable accommodations or modifications;

(10) Essential job necessity—means an element, or elements, that are integral to the performance of the duties and/or the responsibilities of the job.

Sec. 3. General Provisions
Public and private entities have the affirmative duty to eliminate barriers and obstacles that prevent illiterate adults from fully participating in society through reasonable accommodations in the following areas:

(1) Voting

(a) Voter registration procedures not requiring reading and writing skills must be provided for all federal, state, and local elections. Non-literacy based voter registration procedures may include oral registration and/or aid in preparing registration documents;

(b) Information explaining that registration is required in order to vote, and that literacy skills are not necessary in order to register or to vote must be made available through public service announcements in non-print media sources at least one month prior to the registration deadline for the next election;

(c) Good faith efforts must be made by election officials to expand access to voter registration to illiterate adults by offering registration opportunities at places and environs where illiterate adults are commonly present. Such environs may include adult basic education classes, vocational/technical education classes, Head Start sites, day care sites, and job-training programs;

(d) All non-literacy based aid necessary to permit illiterate adults to perform the actual exercise of voting must be provided by election officials in all federal, state and local elections;

(2) Employment

(a) Public and private employers shall not consider an individual's lack of reading and/or writing skills as a factor affecting employment
decisions including hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment unless: (1) such literacy skills are an essential job necessity; or, (2) the lack of such literacy skills would impose an undue hardship on the operation of the business; or, (3) the lack of such literacy skills would cause a direct threat to the safety of the employee, other employees, or the general public;

(b) Employment application procedures not requiring reading and writing skills must be made available by all employers for jobs where literacy skills are not an essential job necessity. Non-literacy based employment application procedures may include oral interviews and/or aid in completing necessary employment application forms;

(c) Job-training procedures not requiring reading and writing skills must be made available by all employers for jobs where literacy skills are not an essential job necessity. Non-literacy based job-training procedures may include oral training and/or demonstrative/experience-based training;

(d) Employers must reasonably modify non-essential job duties and responsibilities in order to permit individuals with limited or no literacy skills to obtain and perform employment. Non-literacy based job modification may include shifting reading and writing responsibilities from one job to another, shifting reading and writing responsibilities from one employee to another, permitting oral reports to satisfy record-keeping or other administrative obligations, and reconfiguring particular jobs so they require little or no literacy skills on the part of the employee;

(e) Exceptions—Employers need not make reasonable modifications where: (1) literacy skills are an essential job necessity; or, (2) modifications would impose an undue hardship on the operation of the business; or, (3) modifications would cause a direct threat to the safety of the employee, other employees, or the general public;

(f) Quid Pro Quo—In return for providing reasonable modifications, employers may require non-literate employees to make good faith efforts to improve their literacy skills. A good faith effort to improve literacy skills may include enrollment in an adult basic education class (or an equivalent tutoring program) for no less than one year;

(g) Tax Credit—Private employers who provide reasonable accommodations in the employment context are entitled to a tax credit equaling 20 percent of the cost of the reasonable accommodations;

(3) Entitlements

(a) Federal, state, and local entities responsible for administering and directing government entitlement programs must make available non-literacy based enrollment procedures in order to permit illiterate
adults to receive benefits for which they qualify. Non-literacy based enrollment procedures may include oral interviews and/or aid in completing written enrollment forms. Government entitlement programs covered by this subsection include, but are not limited to, those federal, state, and local programs intended to provide aid in the following areas: care for the elderly (Social Security); health care (Medicare/Medicaid); welfare; child care (Head Start); employment (unemployment compensation and disability); and education (training/vocational education);

(b) Information explaining that government entitlements are available for those who qualify, and that literacy skills are not necessary in order to receive benefits must be made available by the federal, state, and local entities described in subsection (a) through public service announcements in non-print media sources;

(c) Federal, state, and local entities as described in subsection (a) must make information about rights, responsibilities, possible benefits, qualification standards, reasons for reduction or termination of benefits, and any other material information about particular entitlement programs available to illiterate adults through non-literacy based informational procedures. Non-literacy based informational procedures may include oral explanations, oral notifications, use of non-print media sources, direct counseling, and informational seminars and/or workshops;

(d) Federal, state, and local entities as described in subsection (a) must establish toll-free information hotlines designed to help illiterate adults gain access to the entitlements for which they qualify. The entities must make information available about the existence of these hotlines through public service announcements in non-print media sources;

(4) Housing

(a) Public and private landlords must ensure that non-literate tenants are made aware of their rights, obligations, responsibilities, and any other material information as specified by the terms contained in a particular lease. Landlords may ensure awareness of material provisions through an oral discussion of the terms and conditions of the lease with the non-literate tenant;

(b) Public and private landlords must provide non-literacy based housing application procedures for illiterate adults desiring to rent or to own housing. Non-literacy based housing application procedures may include oral application procedures and/or aid in preparing housing application forms;

(c) Information explaining that subsidized housing is available for those who qualify, and that literacy skills are not necessary in order to apply for, and to receive public housing, must be made available by
public landlords who offer subsidized housing through public service announcements in non-print media sources;

(5) Travel

(a) Public and private entities responsible for providing public transportation must ensure that non-literacy based information concerning schedules, routes, fares, stations, transfers, safety, and policies is made available to non-literate adult passengers;

(b) As part of the requirement specified in subsection (a), public and private entities responsible for providing mass transit transportation, defined to include buses, trains, trams, boats, and other means of transportation designed to accommodate in excess of ten individuals, must establish public information booths to dispense the material information specified in subsection (a) through non-literacy based mediums in all public transportation stations;

(c) Public and private entities responsible for providing public transportation must establish toll-free information hotlines designed to help illiterate adults use public transportation systems. The entities must make information available about the existence of these hotlines through public service announcements in non-print media sources;

(6) Legal Rights

(a) Federal, state, and local civil and criminal courts must ensure that non-literate adults are made fully aware of, and understand, their legal rights, privileges, options and any other material information that may affect their legal status before any actions, sanctions, awards, punishments, or judgments may be enforced against them. Courts may ensure that non-literate adults possess a full awareness of their legal rights, privileges, options, and material factors through an oral interview with the non-literate adult herself, or by an assurance by legal counsel representing the non-literate adult that her client understands her legal rights, privileges, options, and the material factors involved in the case, provided that such an assurance is verified by an affirmative statement by the non-literate adult;

(b) This requirement is intended to supplement, not replace, any and all existing substantive and procedural legal protections and procedures already in place to safeguard the legal rights of individuals;

(7) Civic Participation

(a) Governments, communities, and public and private organizations shall not deny an individual the right to participate in traditional civic responsibilities and/or functions solely because of that individual’s lack of reading and/or writing skills. Traditional civic respon-
sibilities and functions may include, but are not limited to, jury
duty, service as a public official, membership in community organi-
izations, service on a school board, volunteer activities, and partici-
pation at town meetings.

Sec. 4. Interaction With Other Laws
Nothing contained is this Act is intended to replace any existing procedure,
process, protection, or guarantee already in place to safeguard the rights,
privileges, and/or opportunities of either literate or illiterate individuals. Where
this Act either supplements or duplicates an existing procedure, process, protec-
tion and/or guarantee, the provisions of this Act are to be applied in addition to
the existing procedure, process, protection and/or guarantee.

C. STATUTE COMMENTARY

1. Overview

The proposed statute focuses on two interrelated goals. The first goal is to
ensure that illiterate adults are fully aware of the rights, privileges, and
entitlements available to all qualified American citizens. Toward this end, the
statute strives to make information about basic rights, privileges, and
entitlements available to illiterate adults through non-literacy based sources. In
this manner, the statute attempts to guarantee that illiterate adults know that
rights, privileges, and entitlements for citizens exist, understand that they are
entitled to exercise those rights and to benefit from those entitlements, and
appreciate that literacy skills are not a prerequisite for accessing these elements
of citizenship.

The second goal embraced by the proposed statute is centered on the desire
to ensure that illiterate adults have the opportunity to exercise these elements of
citizenship. The statute attempts to guarantee opportunity by requiring public
and private entities to make reasonable accommodations in those areas of society
where illiterate adults encounter literacy-based barriers and obstacles to full
participation. Under the statute, the process of providing reasonable accommodate-
tions requires “the creation of non-literacy based procedures, processes, and
alternatives intended to remedy those situations in which a lack of reading
and/or writing skills prevents illiterate adults from enjoying the same basic civic
rights as other adults.” All possible non-literacy based accommodations designed
to promote access to and the opportunity to exercise rights are considered to be
presumptively valid and reasonable, unless they fall within one of three exceptions.
In this case, accommodations will not be considered reasonable if the
proposed modifications: (a) impose excessive costs; (b) impose an undue hard-
ship; or, (c) cause a direct threat to the safety of the individual, other individuals,
or the general public.\(^7\)

\(^7\) Some general points should be made about these exceptions to the reasonable
accommodations requirement:

First, these exceptions are intended to have real meaning—if an entity can demon-
The proposed statute is based on a progressive, participatory conception of literacy. From this perspective, "literacy" means more than the mere ability to read and to write at a particular grade level. Instead, "literacy" is defined more broadly to include the idea that literacy encompasses the ability to read, write, function, and to access and exercise basic civic rights to the degree necessary in order to have the opportunity to fully participate in society. This conception of literacy focuses on the consequences that flow from the status of being either a literate or illiterate adult in America. In this respect, literacy, by insuring the opportunity to fully participate in society, also serves as a guarantee that the rights of citizens to make their own life decisions, to exercise the basic rights, privileges, and entitlements of citizenship, and to enjoy the equal protection of the laws will be protected.

More specifically, the proposed statute embraces the idea that at a minimum, American citizens should be able to function at a level of "civic literacy." Here, civic literacy is defined to mean the ability of individuals to gather, process, understand, and affirmatively act upon information about the rights, privileges, and entitlements that they possess as citizens. Thus, a standard of civic literacy insures that no individual is denied the opportunity to know about or to act upon her rights, privileges, or entitlements because of a lack of reading, writing, communication, or general cognitive skills.

The proposed statute actively promotes the concept of a civic literacy standard through its emphasis on eliminating the literacy-based barriers that prevent illiterate adults from reaching full participation in society. Toward this end, the statute broadly defines full participation to mean:

[T]he opportunity to access rights, privileges, and entitlements offered to members of society without the hindrance of obstacles and barriers that would prevent the enjoyment of those rights, privileges, and entitlements to the most complete extent possible . . . .

strate that a particular proposed accommodation would impose a significant financial, administrative, or safety threat, then the accommodation will not be required. Such a showing of hardship will not excuse the entity from performing any reasonable accommodations, but it will allow the entity to more flexibly approach the process of providing reasonable accommodations.

Second, a mere showing of minor administrative inconvenience or increased cost is not sufficient to fall under one of the exceptions. In order to fall within one of the exceptions to the reasonable accommodations requirement, the entity must demonstrate that the proposed change constitutes a significant, substantial, or severe financial, administrative or safety-based threat to the viability of the entity.

Third, although these exceptions are defined in the proposed statute, it is anticipated that the exceptions will be more specifically developed and tailored through the rulemaking process. In this vein, it is intended that the definitions should serve as guidelines for the further refinement and specification of those circumstances in which the reasonable accommodations requirement will be suspended.
In addition, the statute specifies seven areas of society in which illiterate adults are not able to fully participate because of literacy-based obstacles and barriers. These areas—voting; employment; entitlements; housing; travel; legal rights; and civic participation—represent a baseline of what it means to be a fully active and contributing member of society for purposes of the statute.

The proposed statute’s emphasis on both civic literacy and reasonable accommodations serves a dual purpose. In one respect, the statute serves a remedial purpose—it forces public and private entities to change existing literacy-based practices which tend to disempower illiterate adults. In another respect, the statute strives to achieve an enabling purpose—it promotes the idea that illiterate adults are unique individuals with numerous strengths and abilities who deserve the same opportunity to fully participate in society that literate Americans enjoy.

In sum, “The National Civic Literacy Act” seeks to make it possible for a significant segment of the population to become reconnected with American society. Through this statute, the Congress recognizes that illiterate adults are not presently participating as active and contributing members of society and that many of the essential rights, privileges, and entitlements enjoyed by fully literate citizens are not available to individuals with limited or no literacy skills. In response, the Act requires that literacy-based barriers which prevent illiterate adults from gathering, processing, understanding, and affirmatively acting upon information about their rights, privileges, and entitlements be abolished through reasonable accommodations. In the end, it is anticipated that “The National Civic Literacy Act” will successfully integrate illiterate adults into the mainstream of American life, allow them the opportunity to become active and contributing members of society, empower them to improve their literacy skills, and serve as a stimulus for national awareness of the existing literacy crisis and for a commitment to the improvement of the nation’s literacy skills.

2. Specific Provisions

a. Voting

The rationale for requiring covered entities to make reasonable accommodations in the voting context stems from the idea that the right to vote is one of the most fundamental elements of American citizenship. Without the ability to exercise the right to vote, individuals are excluded from the “polity” and from the essence of citizenship in a very meaningful way.

72. See Judith N. Shklar, American Citizenship: The Quest for Inclusion 3 (Harvard 1991); see also, Reynolds v Sims, 377 US 533, 561-62 (1964): Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

73. See Shklar, American Citizenship at 3 (cited in note 72); see also, Plyler, 457 US at 233 (Blackmun, J. concurring): [T]he right to vote is accorded extraordinary treatment because it is, in equal protection terms, an extraordinary right: a citizen cannot hope to achieve any meaningful degree of individual political equality if granted an inferior right of...
In the case of illiterate adults, although they nominally enjoy the same legal right to vote as other American citizens, they experience significant literacy-based obstacles and barriers that prevent them from fully exercising this right. Illiterate adults are adversely affected by the current voter registration process that presumes basic literacy skills in at least three distinct ways: (1) they are unable to actually register to vote because they cannot perform the literacy-based procedures required to register to vote (i.e., filing out a voter registration form); (2) they experience great disincentives toward exercising the right to vote because they know that they cannot perform the literacy-based procedures necessary to register to vote; and (3) in some instances, they experience an information gap concerning the ability to learn what procedural requirements are, in fact, necessary in order to exercise the right to vote. Moreover, illiterate adults encounter a number of literacy-based obstacles that make it difficult for them to perform the actual exercise of voting.

Reasonable accommodations in the voting context help to alleviate these difficulties in a number of ways. Reasonable accommodations ensure that illiterate adults: (1) have access to information that explains that registration is necessary in order to vote; (2) have non-literacy based procedures for registering to vote made available to them; (3) receive encouragement to register and to vote through registration efforts at places and environs where illiterate adults are commonly present; and (4) receive whatever aid is necessary in order to allow them to perform the actual exercise of voting. Through reasonable accommodations in the voting context, illiterate adults are reconnected with the most direct form of political participation—voting. In addition, because through reasonable accommodations they are able to exercise the right to vote, illiterate adults gain a meaningful voice in the political process.

b. Employment

Along with the right to vote, the opportunity to earn a living stands as one of the most fundamental elements of American citizenship. These “two, great participation in the political process. Those denied the vote are relegated, by state fiat, in a most basic way to second-class status.

74. See, for example, Truax v Raich, 239 US 33, 41 (1915) ("It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure.") (citations omitted). As one commentator has observed:

Countless sociologists and historians have told us that in the United States, perhaps more than in most other nations, work is essential to a person's standing as an equal member of the community and polity. Psychologists and ethnographers too confirm . . . that chronic lack of work erodes the self-respect and respect from others that enable one to feel free, and be treated as, an equal in American life. Equality of worth, not in dollars, but in a sense of having the opportunity to earn a decent living, to make some socially recognized contribution, is a constitutional matter.

William E. Forbath, Why is this Rights Talk Different from all Other Rights Talk? Demoting the Court and Reimagining the Constitution, 46 Stan L Rev 1771, 1791 (1994).
emblems of public standing”—the vote and the opportunity to earn—represent “the attributes of an American citizen.” As Judith Shklar notes, “people who are not granted these marks of civic dignity [the vote and the opportunity to earn] feel dishonored, not just powerless and poor. They are also scorned by their fellow-citizens.”

Illiterate adults are especially at risk to experience difficulties in exercising the opportunity to earn a living. In this context, illiterate adults encounter numerous literacy-based barriers and obstacles that prevent them from exercising the opportunity to earn, including: (1) job application procedures that require basic reading and writing skills; (2) job-training procedures that require basic reading and writing skills; (3) non-essential job duties and responsibilities that require reading and writing skills; (4) the use of literacy skills as a factor affecting employment decisions, including hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment; and (5) employers’ use of levels of literacy skills as both an implicit and explicit measure and proxy of intelligence and the ability to work. More generally, the use of procedures and processes that presume basic literacy skills in almost all facets of the employment context adversely impacts illiterate adults in two primary ways. First, the use of literacy-based procedures prevent illiterate adults from securing employment in the first instance. Second, such procedures disproportionately affect the type and quality of employment that illiterate adults are able to secure.

The proposed statute attempts to remedy these difficulties by requiring reasonable accommodations in the employment context. Under the statute, all public and private employers are explicitly barred from considering an individual’s lack of basic literacy skills as a factor affecting any material employment decisions unless one of three basic exceptions to the reasonable accommodations requirement included in the general statutory scheme is triggered. In addition, all employers must make available to illiterate adults non-literacy based job

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75. Shklar, American Citizenship at 3 (cited in note 72).
76. Id.
77. For example, according to the American Management Association one of three job applicants tested by major U.S. companies in 1995 lacked sufficient reading skills to perform the jobs they sought. Message from the Publisher, Montreal Gazette G2 (Sept 3, 1996), available in 1996 WL 4201997.
78. It is estimated that one-half of all Americans cannot fill out a job application. Adults Who Can’t Read, SF Examiner C6 (July 14, 1996), available in 1996 WL 3713995.
79. The correlation between job-related skills requirements and the type and quality of employment opportunities open to illiterate adults was expressly documented in the EPI study. From Welfare to Work (cited in note 32). The report demonstrates that “literacy proficiency helps to predict an individual’s future earnings and his or her general success in the labor market.” Id at 2. Literacy skills are, similarly, “a determinant of one’s professional status.” Id. As the report explicitly notes, individuals with limited literacy skills may have jobs, but “their potential for professional and income growth is severely limited.” Id.
80. These three general statutory exceptions to the reasonable accommodations requirement were discussed in the Overview portion of the Statute Commentary.
application and training procedures. Moreover, the proposed statute requires employers to modify existing non-essential job duties and responsibilities in order to permit adults with limited or no literacy skills to obtain and perform employment. Employers are further required to minimize, where possible, the amount of non-essential reading and writing necessary in order to perform the particular job in question.

The proposed statute anticipates that requiring reasonable accommodations in the employment context will impose increased costs and administrative burdens on both public and private employers. In some instances, these increased costs and administrative burdens may be significant. As a result, the proposed statute attempts to mitigate these potential costs in three ways. First, the statute exempts employers from providing reasonable accommodations if they meet one of the three general statutory exceptions. Second, the statute gives private employers who provide reasonable accommodations in the employment context a tax credit equaling 20 percent of the cost of the reasonable accommodations. The purpose underlying the tax credit is two-fold: 1) it reduces the aggregate costs incurred by private employers as a result of their obligation to provide reasonable accommodations; and 2) it creates an additional incentive for employers to comply with the proposed statute and to hire illiterate adults. Finally, the statute incorporates a "quid pro quo" provision that permits employers, in return for providing reasonable accommodations, to require accommodated employees with limited literacy skills to make "good-faith efforts" to improve their literacy skills. These good-faith efforts may include enrollment in an adult basic education class or an equivalent tutoring program for no less than one year. The purpose behind the quid pro quo provision focuses on the idea that accommodated employees should be obligated to help offset the costs and administrative burdens associated with future reasonable accommodations. By requiring accommodated employees to improve their literacy skills, the need for, and scope of, future accommodations decreases. If accommodated employees are able to improve their skills, employers will, over time, be required to make fewer, and less extensive, reasonable accommodations.

c. Entitlements

Through the political process, America has created a basic safety net of support and entitlement programs that provide the right to public assistance for all citizens who qualify. In this respect, society has made the normative judgment that all American citizens who qualify are entitled to receive public assistance from a variety of government support programs. In essence, society has endorsed the principle that the right to collect public assistance for which one qualifies is an essential aspect of American citizenship.81

81. The Supreme Court has held on a number of occasions that once a state obligates itself to provide services or benefits to qualified citizens, it may not dispense or withdraw such services or benefits in an irrationally arbitrary or discriminatory manner. See, for example, Goldberg v Kelly, 397 US 254, 261-64 (1970) (holding that AFDC benefits could not be terminated for qualified recipients without a pre-termination evidentiary hearing);
Illiterate adults experience a number of difficulties in attempting to exercise their rights to collect public assistance and receive benefits for which they qualify. First, many illiterate adults encounter an information gap concerning awareness that government entitlements are available for those who qualify. In addition, many illiterate adults are not aware of material information related to each particular program that may well affect their eligibility or ability to collect benefits. Moreover, most government entitlement programs utilize literacy-based enrollment procedures that create barriers preventing illiterate adults from exercising their rights to receive public assistance for which they qualify.

In order to eliminate these obstacles, the proposed statute requires covered entities to make available non-literacy based enrollment procedures for all government entitlement programs. The proposed statute also requires covered entities to take affirmative actions toward overcoming the information gap confronting illiterate adults. Toward this end, covered entities are required to make material information relating to each particular entitlement program available through non-literacy based informational procedures, including direct counseling and informational seminars and workshops. Covered entities must also establish toll-free information hotlines designed to help illiterate adults learn how to gain access to the entitlements for which they qualify. These hotlines are intended to serve as a continuing source of information and counseling as illiterate adults work their way through the administrative process of applying for, and receiving, public assistance. Through such accommodations, illiterate adults will be better able to gain information about the benefits to which they are entitled, and to exercise their right to collect these benefits.\(^\text{82}\)

\textit{New Jersey Welfare Rights Organization v Cabill,} 411 US 619, 620-21 (1973) (per curiam) (holding that a state program which extended welfare benefits to “legitimate” children could not deny the same benefits to “illegitimate” children); \textit{United States Dept of Agriculture v Moreno,} 413 US 528, 534-35 (1973) (invalidating a provision of the Food Stamp Act which denied food stamps to households containing unrelated individuals). In addition, the Court has expressly commented on the vital role that public assistance plays in enabling individuals to participate as active citizens of our nation:

> From its founding the Nation’s basic commitment has been to foster the dignity and well-being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to “promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”
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> \textit{Goldberg,} 397 US at 264-65. Thus, while the Court has clearly never recognized an actual “right to public assistance,” it has repeatedly acknowledged both the right of citizens who qualify to receive public assistance and the integral role that such entitlements occupy in the lives of qualifying citizens.

\(^{82}\) The case for requiring reasonable accommodations in the entitlements context is even more persuasive given the correlations between levels of literacy skills and other socioeconomic factors as discussed in Section I. Since society has decided to provide public
d. Housing

While there is no existing legal "right" to housing, there is good reason to consider housing as a fundamental element of citizenship for purposes of the proposed statute. Indeed, housing is an issue central to the lives of all American citizens, literate or not. As such, basic fairness suggests that we should be committed to the principle that all citizens should enjoy the same access and opportunity to obtain housing which they can afford. Not surprisingly, however, illiterate adults encounter the same types of literacy-based barriers and obstacles in the housing context as they do in other fundamental aspects of life. These difficulties stem from a number of areas including: (1) an information gap concerning rights, obligations, responsibilities and other material information relating to terms contained within a lease; (2) literacy-based housing application procedures; and (3) an information gap concerning the existence of subsidized housing for those who qualify and the process by which qualified individuals can obtain public housing. Collectively, these literacy-based obstacles adversely affect the ability of illiterate adults to obtain housing that they can afford.

The proposed statute seeks to remedy these literacy-based obstacles through various reasonable accommodations. First, the statute requires both public and private landlords to ensure that non-literate tenants are made aware of all material information relating to the terms of their leases through non-literacy based means. Second, covered entities must provide non-literacy based housing application procedures for illiterate adults who desire to rent or own housing that they can afford. Finally, public landlords must publicize information explaining that subsidized housing is available for those who qualify, and that literacy skills are not a prerequisite in order to apply for, and to receive, public or subsidized assistance for citizens in need, and adults who have limited literacy skills are more likely than other citizens to receive public assistance, it seems wholly inconsistent to permit literacy-based barriers to prevent illiterate adults from collecting benefits and entitlements for which they qualify. If the purpose of providing public assistance through government entitlement programs is to help those citizens in need, then the goal should be to make it as easy as possible for those citizens who qualify to collect their benefits. Reasonable accommodations in the entitlement context maximize the ability of illiterate adults to access and receive the benefits to which they are entitled.

83. See, generally, Nancy Wright, Not in Anyone's Backyard: Ending the "Contest of Nonresponsibility" and Implementing Long-Term Solutions to Homelessness, 2 Georgetown J on Fighting Poverty 163 (1995) (reviewing the plight of homelessness and arguing that cities, states and the federal government must take responsibility for the homeless).

84. It is important to emphasize that this argument does not propose that housing be recognized as a guaranteed right for all Americans. See Lindsey v Normet, 405 US 56, 74 (1972) ("Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions."). Rather, the proposed statute focuses solely on ensuring that illiterate adults enjoy the same chance as literate citizens to access and exercise the existing rights and opportunities provided by society. As a result, reasonable accommodations in the housing context require only that illiterate adults have equal access to the housing market and an equal opportunity to purchase or obtain housing that they can afford.
housing. This information must be disseminated through public service announcements in non-print media sources.

e. Travel

The idea of freedom of travel has long been considered a fundamental right of all American citizens. Consequently, the proposed statute adopts “travel” as one of the seven basic elements of citizenship in which reasonable accommodations for illiterate adults are required. The statute recognizes that although illiterate adults do not encounter legal prohibitions in their attempts to freely travel, they do experience substantial literacy-based difficulties in their efforts to act on their right to travel.

The primary literacy-based obstacles that illiterate adults encounter in the travel context arise from their inability to gather and understand material information—schedules, routes, fares, stations, transfers, safety, policies—relating to the use of public transportation systems. This makes it exceedingly difficult for illiterate adults to access and to use public transportation. In response, the proposed statute requires covered entities to provide illiterate adults with access to material information concerning the use of public transportation through non-literacy based sources. Included among the required informational sources are public information booths that provide material information in all public transportation stations, and toll-free information hotlines designed to help illiterate adults use public transportation systems. Under the proposed statute, covered entities must also publicize the existence of the assistance hotlines through public service announcements in non-print media sources.

While many of these non-literacy based services are already offered by transportation providers, the proposed statute imposes a uniform reasonable accommodations requirement on all public and private entities responsible for providing public transportation. Through this uniform requirement, illiterate adults are better guaranteed the opportunity to exercise their right to freely travel without encountering undue burdens and literacy-based barriers.

f. Legal Rights

American citizens enjoy a number of fundamental constitutional and procedural rights that cannot be lawfully abridged except in specific circumstances. These rights—due process, equal protection, criminal and civil procedural rules and regulations—are intended to be accessed and exercised equally by all American citizens. The ability to fully access and exercise one’s legal rights, however, is jeopardized when individuals do not possess basic reading and

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85. See, for example, Kent v Dulles, 357 US 116, 129 (1958) (“[T]he right of exit [to obtain a passport] is a personal right included within the word ‘liberty’ as used in the Fifth Amendment.”); and Shapiro v Thompson, 394 US 618, 629 (1969) (“This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”).
writing skills. As such, there is a real danger that in many instances illiterate adults will be less able to protect and to exercise their legal rights than more literate citizens.

The proposed statute attempts to respond to this danger by requiring federal, state, and local civil and criminal courts to ensure that illiterate adults are made fully aware of, and understand, legal rights, privileges, options and any other material information that may impact upon their legal status before any legal actions, sanctions, awards, punishments, or judgments may be entered and enforced against them. The statute mandates that no adjudication of a legal action involving an illiterate adult can occur without the covered entity taking steps to ensure that the individual has a complete understanding of her legal rights, options, privileges, and other material information that may affect her legal status.

Under the proposed statute, covered entities may ensure that illiterate adults understand and are aware of their legal rights through two primary processes. First, courts may meet their statutory obligations through a court-conducted oral interview and discussion with the non-literate individual. Second, courts may accept a written assurance by legal counsel representing the illiterate adult as evidence that she understands and is aware of all material information concerning her legal rights. Importantly, this written assurance will only be deemed sufficient if verified by an affirmative statement by the illiterate adult in front of the court.

Regardless of which process the court chooses, it must ensure that a painstaking inquiry has occurred before it will presume that an illiterate adult fully understands and is aware of all her material legal rights. Only after the court is convinced that such an inquiry has, in fact, happened, may a legal action proceed and be enforced against an illiterate adult.

g. Civic Participation

The right and opportunity of citizens to participate in traditional civic activities, including jury duty, service as a public official, membership in community organizations, service on a school board, volunteer activities, and participation at town meetings, has historically been considered a fundamental element of American citizenship. Indeed, these civic activities have often functioned as the primary means whereby citizens are connected with their communities and with society as a whole. As such, participation in these activities—"civic participation"—can be understood as essential for inclusion in the polity and full citizenship.86

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86. One of the most famous observers of the importance of "civic participation" in American society was Alexis de Tocqueville. Commenting on the connection between jury service and citizenship in America, Tocqueville remarked:

[T]he institution of the jury raises the people itself, or at least a class of citizens, to the bench of judges. The institution of the jury consequently invests the people, or that class of citizens, with the direction of society... [The jury] invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge towards society, and the part which they take in its government.
Illiterate adults are especially at risk of being excluded from achieving full “civic participation” because of their limited literacy skills. In fact, many of the traditional civic activities presume that individuals possess a basic level of literacy skills in order to participate in these activities. In response to this presumption, the proposed statute adopts an explicit antidiscrimination principle—it is unlawful to exclude illiterate adults from participation in volunteer and community activities solely because of their limited literacy skills.

Significantly, the proposed statute does not enunciate any specific reasonable accommodations requirements in the civic participation realm. This omission is intentional and reflects the difficulty in anticipating the types of reasonable accommodations that covered entities may wish to provide in this area. Notwithstanding this substantial discretion, covered entities are required to ensure that, at a minimum, their reasonable accommodations serve either to help overcome the information gap confronting illiterate adults or to increase the ability of illiterate adults to access or exercise their rights to full civic participation. In this respect, the types of reasonable accommodations required in the civic participation area do not substantially differ from those required in other sections of the proposed statute.

III. Assessing The Proposed Statute

A. INTRODUCTION

There can be little doubt that the statute advanced and analyzed in Section II of this Comment—“The National Civic Literacy Act”—is controversial. Indeed, the proposed statute embodies a number of normative and ideological assumptions that are open to substantial debate and disagreement. Nonetheless, there are compelling arguments available to counter criticisms of the proposed statute. In fact, the case in favor of the proposed statute remains exceedingly strong even in the face of potential criticism. This Section will examine the controversial nature of the proposed statute by briefly considering a number of potential substantial criticisms of the statute and offering responses to these criticisms.

B. CRITICISMS

1. Is There a Need for the Proposed Statute?

The first potential criticism of the proposed statute is one that challenges its very existence. This criticism maintains that there is no need for a national statute because no real literacy “crisis” exists. The rationale underlying this criticism focuses on the idea that empirical data demonstrates that most Ameri-
can adults can read well enough to meet some or most of their individual and occupational literacy needs. Since a large majority of the 90 million adults who performed in Levels 1 and 2 on the NALS do not necessarily perceive themselves as being at risk, there is persuasive evidence that most American adults with limited literacy skills are able to function and survive in society despite their reading and writing difficulties. Such evidence expressly repudiates the idea that there is an extensive literacy crisis in America, and thus eliminates the need for a national statute requiring reasonable accommodations for illiterate adults.

The primary response to this criticism is to challenge the use of a purely "functional" standard to assess the scope of the literacy crisis in America. From this perspective, the use of a functional standard to assess the scope of the literacy crisis is inadequate because it fails to capture fully the important interconnections between literacy skills and issues such as quality of life, range of life options, and participation in society. Moreover, measuring the literacy levels of American adults under a purely functional standard fails to account for the possibility that both individuals and the nation as a whole may have higher expectations for literacy skills than merely the ability to perform particular tasks necessary for survival in daily life. As a consequence, the conclusion that there is no literacy crisis because adults with limited literacy skills are surviving day-to-day life seems both inaccurate and overstated.

In contrast, under a more progressive conception of literacy that goes beyond the functional standard, there is little doubt that a literacy crisis of significant magnitude presently exists in the United States. The progressive standard forces us to look beyond the limited question of whether adults with limited literacy skills are merely functioning and surviving in society. Instead, the progressive standard commands us to consider qualitatively how limited literacy skills adversely affect the ability of American adults to access and to exercise basic elements of citizenship, and hence, to fully participate as active members of society. Clearly, this standard of literacy encompasses heightened expectations of what it means for an adult to be considered "literate." Given the results of the NALS, however, it is readily apparent that these heightened expectations are not being met by 90 million American adults.

Utilizing the progressive standard baseline then, as long as a lack of sufficient literacy skills prevents individual adults from fully accessing and participating in the seven elements of citizenship, a literacy crisis worthy of national concern and action exists. Considering the staggering costs and consequences associated with illiteracy and the literacy crisis, it is clear there is a critical need for a comprehensive national statute requiring reasonable accommodations for illiterate adults.

2. Why Reasonably Accommodate Illiterate Adults?

A second substantial criticism of the proposed statute centers on the question of why illiterate adults should be recognized as a group entitled to national legislative action. Central to this criticism is the claim that there are no distinguishing factors or principles that justify singling out illiterate adults as a group deserving special legislative relief. Critics of the proposed statute can argue that
unlike other groups which have benefitted from either judicial or legislative action designed to alleviate barriers and obstacles associated with discrimination against the group, there is nothing unique about illiterate adults or the difficulties they encounter that warrants special legislative treatment.

The failure to identify distinguishing factors or principles that justify special treatment for illiterate adults raises a number of other concerns related to this criticism. One such concern involves a question of fairness: If we cannot identify distinguishing factors that entitle illiterate adults to legislative relief, then it is unfair to recognize selectively illiterate adults as a group worthy of special statutory treatment. Absent distinguishing principles, there is no compelling reason for Congress to show a greater concern for the status of illiterate adults than for the status of any other cognizable groups in society.

In addition to the problem of selective favoritism, the lack of distinguishing factors raises the opposite concern: If illiterate adults are recognized as a group entitled to national legislative action, then there is no way to limit such special treatment solely to illiterate adults. This problem introduces a basic slippery-slope criticism—if Congress enacts national legislation to aid illiterate adults, it cannot stop with just illiterate adults. The fear here, of course, is that Congress could well face intense interest group pressure to provide the same type of comprehensive legislative relief for other social groups.

These criticisms, however, underestimate the strength of the case that can be made in support of recognizing illiterate adults as a group specially deserving national legislative action. First, the scope and magnitude of the literacy crisis suggest that illiteracy, and the costs and consequences associated with illiteracy, are serious problems warranting national action. Considering the sheer number of individuals who experience difficulties in accessing and exercising basic citizenship rights due to their limited literacy skills, only a comprehensive national statute applicable to all public and private entities would be sufficient to lessen the barriers and obstacles that illiterate adults encounter as they attempt to access and exercise their rights.

Second, the correlations between literacy and other socioeconomic factors indicate that national action targeted toward alleviating the literacy crisis may create positive externalities in the form of helping to reduce these other societal ills. As demonstrated, the proposed national statute focuses on reconnecting illiterate adults to mainstream society and helping them to access and exercise citizenship rights. These anticipated outcomes promise to generate significant spillover benefits relating to employment, income, crime, civic participation, and other areas of both public and private life.

A further justification for supporting action to aid illiterate adults relates to the fact that national legislative action along the lines of the proposed statute is not without precedent. Indeed, as recently as in 1990, Congress enacted the Americans With Disabilities Act, which was intended to eradicate the discrimination experienced by persons with disabilities and to promote the inclusion of the disabled into society. The ADA, despite widespread concerns about the costs imposed on the private sector by its reasonable accommodations requirements, was passed by the Congress with strong bipartisan support, indicating an
unwillingness on the part of Congress to allow a large segment of the population to remain segregated from mainstream society.\textsuperscript{87}

Conceptually, the proposed National Civic Literacy Act would serve the same functions as the ADA—eradicate the obstacles and barriers encountered by illiterate adults and foster the inclusion of illiterate adults in mainstream society. Significantly, the proposed literacy statute would actually reach more people than the ADA, since according to the Findings and Purposes section of the ADA, it is estimated that at the time of its passage there were 43 million disabled Americans,\textsuperscript{88} as opposed to the 90 million adults who possess limited literacy skills according to the NALS. In addition, although there is no direct empirical evidence to support the claim, it is likely that the reasonable accommodations required under the proposed literacy statute will impose significantly less costs on both the public and private sectors than the reasonable accommodations required under the ADA. This will likely be the case because whereas the ADA requires substantial structural and architectural modifications in order to comply with the law, the literacy statute proposed here anticipates that most reasonable accommodations can be accomplished with few or no major structural changes. Given both the public and political support for the goals of the ADA, and the expectation that the proposed literacy statute will serve more people for significantly less cost, it appears that precedent helps to justify the idea of national legislative action to aid illiterate adults.

A final rationale for supporting national legislation to aid illiterate adults is the normative argument that principles of equity and fairness impel the nation to take action. In this case, illiterate adults represent an identifiable group of citizens unable to access and exercise a number of fundamental rights to which they are entitled as citizens of the United States. The denial of these rights derives from the fact that society has conditioned access to these rights on a presumption that all citizens possess basic literacy skills. Since illiterate adults are not primarily responsible for their status as illiterates, their denial of rights is conditioned on a status they cannot fully control. The denial of basic rights on the basis of status runs counter to our shared understanding of what is fair and equitable. Moreover, the inability of illiterate adults to access and exercise their basic rights serves to segregate them from mainstream society. The isolation of such a large segment of society seems inconsistent with America's traditional commitment to equality and civic participation.

\textsuperscript{87} See, for example, Justin W. Dart, Jr., The ADA: A Promise to be Kept, and Sara D. Watson, A Study in Legislative Strategy: The Passage of the ADA, both in Gostin and Beyer, Implementing the Americans With Disabilities Act at xxi-xxvii, 25-33 (cited in note 53). Of course, a more cynical interpretation of the bipartisan support for the ADA would be that public opinion and the power of disabilities interest groups made it impossible for members of Congress not to support the ADA in one form or another.

\textsuperscript{88} 42 USC § 12101 (cited in note 52).
3. Why This Solution?

Even if one accepts the basic premises that a national literacy crisis exists and that illiterate adults are a group entitled to special national legislative action, a substantial question remains as to the type of action which should be enacted. In this case, a serious potential criticism of the proposed statute could focus on its reliance on reasonable accommodations. The reasonable accommodations requirement of the proposed statute, some may argue, creates the wrong incentives for illiterate adults by making it easier for them to remain illiterate. The proposed statute could generate these negative incentives by requiring public and private entities to create non-literacy based processes and procedures which make it possible for illiterate adults to access and exercise their rights without possessing basic literacy skills. As a result, under the proposed statute illiterate adults achieve significant gains without having to improve their literacy skills.

In addition to the potential for negative incentives, the proposed statute's reliance on reasonable accommodations raises two other primary concerns. First, it is unclear whether reasonable accommodations for illiterate adults will actually help reconnect illiterate adults with mainstream society. In this respect, we cannot be certain how many illiterate adults will take advantage of reasonable accommodations to help them access and exercise their basic rights. Similarly, we cannot be certain how many illiterate adults actually need reasonable accommodations in order to help them access and exercise their basic rights. Second, critics may not be convinced that the reasonable accommodations approach embraced by the proposed statute is the best type of national action to help the overall status of illiterate adults in society. Perhaps a more effective way to empower illiterate adults is to provide greater levels of federal funding for adult basic education programs designed to help improve the literacy skills of illiterate adults.

Although these criticisms of the nature of the relief offered by the proposed statute carry some persuasive force, there are compelling reasons to believe that the proposed statute, along with its focus on reasonable accommodations, will help create strong incentives for illiterate adults to improve their literacy skills. First, as developed in Section II of this Comment, the very existence of national legislative action will significantly reduce both the social and self stigma associated with illiteracy and the status of being an illiterate adult. Since the fear of stigmatization is one of the largest obstacles preventing illiterate adults from seeking to improve their literacy skills, the reduction of this fear will increase the incentives for illiterate adults to improve their skills.

A second reason to presume that the proposed statute will provide illiterate adults with incentives to improve their literacy skills involves the idea of positive expectations-shaping. By relying on reasonable accommodations to connect illiterate adults to mainstream society, it is anticipated that they will become exposed to the integral role that literacy skills play in society, and that they will also recognize the positive consequences that flow from possessing literacy skills. Similarly, it is expected that illiterate adults will come to understand that future opportunities for improving the quality of their lives may well require them to
possess greater literacy skills. Through first-hand exposure to the benefits and positive outcomes associated with literacy, illiterate adults will have powerful incentives to increase their own literacy skills.

A final reason to believe that the proposed statute will create powerful incentives for illiterate adults to improve their literacy skills relates to the empowering nature of the reasonable accommodations model. Through reasonable accommodations, many illiterate adults will have, for the first time, the opportunity to participate in basic activities that more literate citizens take for granted. As a result, many illiterate adults may experience a newfound sense of empowerment, identity, and voice. This new sense of inclusion and empowerment could well encourage many illiterate adults to decide to further improve the quality of their lives by seeking to improve their literacy skills. Insofar as the proposed statute succeeds in engendering a sense of identity and empowerment in illiterate adults, one of the most important outcomes of the proposed statute will be the creation of incentives for illiterate adults to improve their literacy skills.

In response to other criticisms of the nature of the proposed statute, the first point to consider is that unanswered questions concerning the potential effectiveness of reasonable accommodations should not deter the nation from supporting a proposed statute which, on balance, promises to produce significant benefits for both illiterate adults and society as a whole. Even if reasonable accommodations prove to be only moderately successful in integrating illiterate adults into mainstream society, the fact that 90 million adults experience some difficulties with their literacy skills suggests that the number of illiterate adults benefitted will still be substantial. Moreover, even if we concede that we cannot know for certain how many illiterate adults will benefit from reasonable accommodations, there is still strong reason to support the proposed statute given its expected psychic and moral benefits. Speculative doubts concerning the nature of the proposed statute should not serve to dissuade people from supporting a national legislative act that possesses great practical and moral force.

Doubts concerning whether the proposed statute is the best type of national action to help the overall status of illiterate adults in society are similarly misplaced. Admittedly, additional funding for adult basic education programs designed to improve the literacy skills of illiterate adults would be of great benefit. However, unless illiterate adults are integrated into mainstream society, very few will willingly commit themselves to an adult basic education program. Moreover, increased funding will only help address one part of the problem—illiterate adults will continue to experience literacy-based barriers and obstacles in their efforts to access and exercise their basic rights as citizens. Consequently, although increased funding for adult basic education is essential,
Congress's first priority must be directed toward promoting the inclusion of illiterate adults in society. As such, the proposed statute clearly represents the best type of national legislative action to aid the overall status of illiterate adults in America.

4. Is The Proposed Statute Realistic?

There are two primary lines of argument that critics can make regarding whether the proposed statute is a realistic response to the difficulties experienced by illiterate adults. The first strand of argument involves the practical realities of the proposed statute: Can the proposed statute be feasibly implemented? The central concern here focuses on the potential financial costs imposed on the public and private sectors as a result of providing reasonable accommodations to illiterate adults. The second strand of criticism relates to the political realities involved with securing political support for the passage of the proposed statute. Here, the basic concern rests on the question of whether, given the present political climate, it is reasonable to expect Congress to enact comprehensive national legislation designed to extend special legislative protection to a particular class of individuals.

There is no certain method to accurately estimate the financial costs associated with providing reasonable accommodations for illiterate adults. However, it is not anticipated that the proposed statute will create significant financial burdens for either covered entities or the economy as a whole. In most cases, the creation of alternative non-literacy based accommodations should not impose significant financial costs on the complying entities. Similarly, where the proposed statute requires covered entities to provide non-literacy based informational services, it is not expected that the costs will be unreasonable.

The cost issue becomes most relevant when reasonable accommodations are required in the employment context. Here, accommodations are certain to impose some degree of cost on the covered entities. In some cases, these costs may even prove to create heavy financial burdens for some entities. However, there are a number of reasons why the potential imposition of heavy costs on some entities should not dissuade us from supporting the proposed statute in general.

First, the proposed statute excepts employers from providing reasonable accommodations in the workplace. This conclusion is further reinforced by the fact that previous Congressional literacy efforts focused on funding for adult basic education have failed to stem the rapid growth of the national literacy crisis. Indeed, despite the expenditure of hundreds of millions of dollars annually on more than six dozen federal literacy programs, only 3.6 million illiterates were served by these programs between 1990 and 1992. From Welfare to Work at 4 (cited in note 32). Moreover, despite this level of funding, the literacy skills of persons 21 to 25 years old dropped 11 to 14 points on a 500-point scale between 1985 and 1992. Id at 4-5. Clearly, increased funding for adult basic education will not remedy the literacy crisis by itself.

91. For example, reasonable accommodations in the voting, housing, travel, and legal rights contexts are not terribly extensive, and, as a result, are not expected to impose significant costs on the entities required to provide them.
accommodations where they would impose an undue hardship on the operation of the business. This undue hardship exception incorporates an explicit consideration of the potential financial costs encountered by employers as they provide reasonable accommodations for illiterate adults.

Second, the proposed statute provides private employers with a 20 percent tax credit equal to the aggregate costs incurred by them in making reasonable accommodations in the employment context. The tax credit represents an effort to help make compliance with the proposed statute as affordable as possible for private employers.

Third, the "quid pro quo" requirement suggests that employers may only be required to make limited initial reasonable accommodations for non-literate employees. In this case, the proposed statute envisions that while reasonable accommodations may be necessary to make it possible for illiterate adults to initially join the workforce, there will be a diminishing need for reasonable accommodations as non-literate employees improve their literacy skills. The proposed statute does not anticipate that non-literate employees who enter the workforce will need to be continuously accommodated; in many instances employers will be able to provide initial reasonable accommodations for non-literate employees and end their statutory responsibilities there.

Finally, it is presumed that in the aggregate, the proposed statute will create significant benefits for the economy as a whole. This expectation is based on the idea that the exclusion of illiterate adults from mainstream society imposes a severe economic cost on the U.S. economy. This is the same argument that was used to help counter cost-based arguments in opposition to the ADA. Intuitively, this argument seems correct—if we integrate excluded individuals into mainstream life, there is a strong possibility that they will become contributing members of society. More specifically, in the case of illiterate adults, the proposed statute will enable them to more fully participate as citizens in society. Considering the correlations between literacy and other socioeconomic factors, there is good reason to conclude that the inclusion of illiterate adults in the mainstream will generate, on balance, significant economic, as well as social and political, gains for the nation.

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92. See text accompanying notes 38-42.
93. See Dart, The ADA: A Promise to be Kept at xxvi (cited in note 87) (“Former President Bush estimated the economic cost of excluding two thirds of Americans with disabilities from the mainstream to be about $200 billion annually.”).
94. Clearly, this conclusion is open to debate. For example, there is conflicting empirical data concerning whether the reasonable accommodations provisions of the ADA have resulted in net economic gains or losses for both disabled individuals and the nation as a whole. Compare Shelley Donald Coolidge, Fewer With Disabilities at Work Since Passage of Civil Rights Act, Christian Science Monitor 1 (Mar 7, 1995), available in 1995 WL 6392285 (reporting a drop in the employment rate of men with disabilities), and Sue A. Krenek, Beyond Reasonable Accommodation 72 Tex L Rev 1969 (1994) (examining the tension between the economics of the employment market and the "social emphasis" of the disability-rights movement), with Peter David Blanck, Transcending Title I Of The Americans With Disabilities Act: A Case Report On Sears, Roebuck and Co., 20 Mental
From a political perspective, it would be naive to assume that given the political priorities and makeup of the present Congress, the proposed statute could garner much support. There are a number of elements that factor into this conclusion. First, the recent trend toward limiting the scope and reach of civil rights laws and remedies, as evidenced by the flurry of efforts to repeal affirmative action policies, suggests that Congress might be reluctant to extend legislative relief to illiterate adults as a group. Given this trend, Congress could well be skeptical and fearful of any proposed statute that asks it to officially recognize a particular class of individuals as worthy of special treatment and legislative protection. Second, illiterate adults exercise little influence on the political process as an organized political interest group. Finally, there is no indication that the present Congress considers either the literacy crisis or the status of illiterate adults as critical matters demanding immediate attention.

While these political realities offer possible explanations as to why Congress might be reluctant to support the proposed statute, they do not reflect negatively on the substantive and moral value of the proposed statute itself. Moreover, the fact that it may be difficult to secure immediate Congressional support should not be used as an excuse for not seriously considering the merits and benefits to be gained from implementing the proposed statute. Consideration of both the general idea of national action designed to address the literacy crisis, and the specific idea of the national statute proposed in this Comment, should occur without focusing on political realities. In this case, the hope is that the merits and benefits of supporting comprehensive national legislative action to remedy the literacy crisis will generate a firm commitment to take action. It is only after

85. The most visible sign of this trend is the California Civil Rights Initiative ("Proposition 209"), an amendment to the California Constitution adopted by voters on November 5, 1996. Cal Const art 1, § 31(a). Proposition 209 bars the state from providing preferential treatment on the basis of race or gender in the operation of public employment, public education or public contracting. The Ninth Circuit recently affirmed the constitutionality of the measure under the Equal Protection Clause and vacated the temporary injunction preventing its enforcement. Coalition for Economic Equity v Wilson, 1997 WL 160667 (9th Cir, Apr 8, 1997). Some believe that the success of Proposition 209 in California, coupled with the Ninth Circuit's decision, will spur similar state and federal efforts to enact outright bans on affirmative action programs. See, for example, Michael A. Fletcher, Opponents of Affirmative Action Heartened by Court Decision, Wash Post A21 (Apr 13, 1997), available in 1997 WL 10012382. Ultimately, however, it is likely that the Supreme Court will have to determine how far states and the federal government may go in rolling back affirmative action. See Bias Confusion, Natl L J A16 (Apr 21, 1997).
this commitment to take action is secured that we should be concerned with
political realities. Therefore, despite real doubts concerning potential Congressio-
nal support for the proposed statute, we should remain committed to developing
the most persuasive case possible for supporting the proposed statute.

Conclusion

It is exceedingly difficult to assess, to discuss, and to remedy one of the
nation's most intractable societal ills in the course of a single Comment. None-
theless, this Comment has attempted to do exactly that with respect to the issue
of illiteracy. Hopefully, this effort to address the issue of illiteracy has not been
without some merit.

This Comment has argued that the nation suffers from a significant literacy
crisis worthy of national legislative action. From this perspective, a national
response to the literacy crisis is warranted because of the severe costs and
consequences, experienced by both individuals and the nation as a whole,
resulting from the literacy crisis. In addition, this Comment has maintained that
the country has a moral obligation to take affirmative steps to end the wide-
spread exclusion of illiterate adults from mainstream American society. Given the
tremendous number of American citizens unable to fully participate in society as
a result of their limited literacy skills, this Comment concludes that extensive
national action must be taken immediately in order to alleviate the literacy crisis.

In response to the literacy crisis, this Comment has argued for the passage of
a National Civic Literacy Act designed to reconnect illiterate adults with main-
stream society through the use of reasonable accommodations in seven different
areas. Reasonable accommodations for illiterate adults are necessary because
society conditions access to basic rights of citizenship on sufficient literacy skills.
Reasonable accommodations would permit illiterate adults to overcome literacy-
based obstacles and barriers and to access and exercise the same rights of
citizenship as literate Americans.

The passage of the proposed statute will not only help integrate illiterate
adults into society, but will also result in a number of other positive outcomes
including the creation of strong incentives for the improvement of literacy skills,
the reduction of socioeconomic ills associated with illiteracy, and the diminution
of the self and social stigma associated with illiteracy and the status of being an
illiterate adult. The adoption of the proposed statute will also serve an important
educational function as an affirmative statement that illiteracy is a significant
issue worthy of national concern, and that illiterate adults do not bear full re-
sponsibility for their status as illiterates. Despite a number of meritorious
criticisms of the proposed statute, this Comment concludes that the social,
economic, political, and cultural benefits of the proposed statute strongly counsel
for its passage.

On a final note, it is worth returning to the work of Jonathan Kozol, for
whom the issue of whether this nation responds to the literacy crisis has always
remained, at heart, a moral one. In the final chapter of Illiterate America, Kozol
confronts the question of why he has argued in his book for a widespread
societal response to the literacy crisis when he recognizes that it is unlikely that such a response will occur in the near future.\textsuperscript{96} His answer, it seems, is that illiteracy is perhaps the one issue around which human beings will be able to transcend the bounds of individual prejudices and biases and come together to find a common ground.\textsuperscript{97} In Kozol's own words:

Illiteracy, when widely recognized and fully understood, may represent the one important social, class, and pedagogic issue of our times on which the liberal, the radical, and the informed conservative can stand on common ground and toil, no matter with what caution and what trepidation, in a common cause that offers benefits to all. Some of those benefits are hard and tough and painfully pragmatic. Others possess a dignified and searching character which recognize an absolute imperative to lessen the ordeal of those who are in pain and to create a less divided nation in a less torment-ed world.\textsuperscript{98}

While the author of this Comment does not possess any grand delusions concerning the "transcendental" nature of his Comment, it is hoped that this Comment can serve as a step toward raising public awareness concerning the literacy crisis and offering a comprehensive national legislative solution to the crisis.

\textsuperscript{96} See Kozol, \textit{Illiterate America} at 199 (cited in note 1).
\textsuperscript{97} Id.
\textsuperscript{98} Id.