

86 – nbC

by [Joseph DeMaio](#), ©2026

(Jul. 26, 2026) — **Introduction**



“Signing of the Constitution,” [Architect of the Capitol](#) by Howard Chandler Christy,
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The following offering on the “birthright citizenship” decision in [Trump v. Barbara](#) picks up where your humble servant’s initial [offering](#) left off.

Specifically, it will address in greater detail the remote – yet now thanks to the *Barbara* decision – actual potential for the neutering of the Constitution’s “natural born Citizen” (“nbC”) presidential eligibility restriction, at least as understood by the Founders. By analogy, reading the *Barbara* majority opinion is like finding randomly arranged seashells on the beach cryptically messaging “86 – nbC.” Misguided, absurd ..., and dangerous. There is as yet no confirmation of the rumor that James Comey filed a secret *amicus curiae* brief in the case.

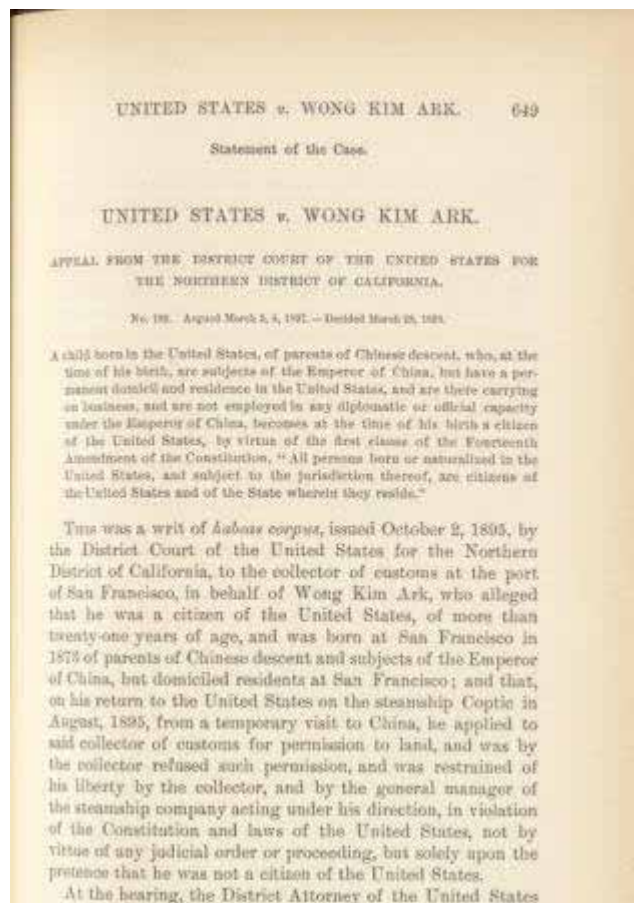
And for those doubting this possibility, stop reading this *P&E* post and first read the dissenting opinions of Justices Thomas, Alito and Kavanaugh in *Barbara*, linked above.

Back already? Let us begin.

Legal Analysis

At bottom, the *Barbara* majority opinion boldly decrees that if a person is merely born here, then under the ancient (and largely globally-jettisoned) rule of “law of the soil” (“*jus soli*”), and regardless of the lawfulness of the mother’s presence here or the citizenship of the mother and father, that person automatically becomes a U.S. “citizen at/by/from birth.” The collateral result is the creation of a false, but perilously open pathway for the gutting of the Constitution’s nbC eligibility restriction and the consequential impact that event could have on the Republic, assuming, of course, that anyone still cares.

That Republic – ahem ..., not a “democracy” – has experienced some 250 years of tumultuous growth and unprecedented prosperity; one Revolutionary War; one Civil War; two World Wars; and several interspersed quasi-wars. And today, it also suffers from a troubling flirtation with communism masquerading as the benevolent “warmth of collectivism.” Memo to the electorate: to Marxists and Communists, the “warmth of collectivism” is the equivalent of taking a blowtorch to reason, logic and the vast spectrum of principles which guided the Founders in crafting the Constitution, with the 1st Amendment thus allowing them to freely belch their gibberish today.



<https://www.govinfo.gov/content/pkg/USREPORTS-169/pdf/USREPORTS-169-649.pdf>

If and/or when that day of the Republic's collapse dawns, Ben Franklin's warning regarding the demise of the "republic, if you can keep it" will have happened not because of a failure to fight for its preservation, but instead because of five bewildered SCOTUS judges seemingly quite comfortable with blind adherence to the deeply flawed reasoning – and manifest factual errors – of its prior decision in [*United States v. Wong Kim Ark*](#) ("WKA"). Sometimes, the Latin phrase "*stare decisis*" ("the decision stands") is properly replaced by the English term "overruled," starting with the WKA decision.

But I digress.

Carried to its absurd and yet potential end, the *Barbara* decision allows the offspring of illegal alien parents (or their respective handlers) from anywhere – including China, Iran, North Korea, Russia..., or Sri Lanka – to (a) claim *forever irrevocable* U.S. citizenship, even though they may be returned to and raised back in their parents' home countries, there to be inculcated 24/7 to hate America; (b) refuse to learn, speak, read or understand "American," a close dialect of English; and (c) run for president as a purported, yet counterfeit nbC, insisting that if elected, the inauguration oath be administered by the Chief Justice with the right hand on "Das Kapital" or the Koran ..., or both.

Stated otherwise, through its reliance on the *jus soli* principle for its 14th Amendment flawed result, the *Barbara* majority opinion collaterally suggests – "between the lines" – that the Founders in 1787 understood, intended and embraced these lunatic potentials as they adopted the nbC restriction into Art. 2, § 1, Cl. 5 of the Constitution, the presidential "Eligibility Clause." Thus, the majority opinion allows for the potential entry of anti-American foreign influence into the presidency and hints that the Founders acknowledged that potential as an acceptable risk. Respectfully, that *sub rosa* proposition is intellectual goo ..., elevated to an art form.

In addition, it is dangerous goo spawned in large measure by the *Barbara* Court's woefully misguided reliance on WKA and its disregard of "[Gray's Anomaly](#)" therein, which the majority opinion completely ignores as if it did not even exist. The problem, of course, is that it **does** exist, infecting from the outset the underlying rationale of the WKA decision, again not that anyone, including the majority opinion Justices of the *Barbara* Court, seems to care.

ELK v. WILKINS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEBRASKA.

Argued April 28, 1884.—Decided November 3, 1884.

An Indian, born a member of one of the Indian tribes within the United States, which still exists and is recognized as a tribe by the government of the United States, who has voluntarily separated himself from his tribe, and taken up his residence among the white citizens of a State, but who has not been naturalized, or taxed, or recognized as a citizen, either by the United States or by the State, is not a citizen of the United States, within the meaning of the first section of the Fourteenth Article of Amendment of the Constitution.

A petition alleging that the plaintiff is an Indian, and was born within the United States, and has severed his tribal relation to the Indian tribes, and fully and completely surrendered himself to the jurisdiction of the United States, and still so continues subject to the jurisdiction of the United States, and is a *bona fide* resident of the State of Nebraska and city of Omaha, does not show that he is a citizen of the United States under the Fourteenth Article of Amendment of the Constitution.

This is an action brought by an Indian, in the Circuit Court of the United States for the District of Nebraska, against the registrar of one of the wards of the city of Omaha, for refusing to register him as a qualified voter therein. The petition was as follows:

<https://www.govinfo.gov/content/pkg/USREPORTS-112/pdf/USREPORTS-112.pdf> (p. 94)

Worse, the *Barbara* majority opinion's anemic gambit to distinguish – and thus sideline and disregard the “inconvenient” controlling precedent established by its prior decision in [Elk v. Wilkins](#) on the precise meaning of the 14th Amendment's “subject to the jurisdiction thereof” requirement – borders on the comical.

The problem, of course, is that there is nothing in the *least* measure amusing about a ruling that opens an illegitimate pathway to the presidency for people who may detest the United States and who strive 24/7 for its failure. Not only does that entirely avoidable calamity contravene the 1787 intent of the Founders as they adopted the nbC presidential eligibility restriction, it completely ignores Publius Alexander Hamilton's warning in Federalist 68, discussed, *post*.

As Supreme Court Justice Joseph Story wisely noted in his seminal 1833 treatise, *Commentaries on the Constitution of the United States*, the nbC clause was adopted by the Founders in order specifically to **prevent and preclude** not only the actuality of foreign influence invading the presidency, but also to prevent *all* potentials for that infection even threatening the office. The *Barbara* decision scoffs at that potential, in effect stating, as did the Wizard admonishing Dorothy and her companions in Oz: “Pay no attention to that ... [peril] behind the curtain.”

So while under current precedent a naturalized foreigner who has complied with all of the laws and procedures needed to become a legal U.S. “citizen” and has specifically renounced and abjured any and all prior foreign allegiances yet still cannot serve as president, the U.S.-born offspring of Kim Jong Un and whomever was the female he impregnated nine months ago can: (a) come (or sneak) into this country; (b) give birth and then go back to Pyongyang with the new U.S. citizen; (c) raise him/her as a devout Marxist hating America; (d) return here for fourteen years; and then (e) jump on the path to the presidency.



Thank you (**not**), Chief Justice John Roberts, *et al.*

This is a scenario – improbable and unlikely as it may seem – which the Founders decidedly did **not** intend, even in their most fevered and terrifying dreams, when they selected the highly restrictive nbC eligibility requirement for inclusion in the Constitution. And yet the *Barbara* majority opinion ratifies and creates such an illegitimate pathway, constructed and calculated – intentionally or not – **around** the nbC presidential eligibility restriction instead of in **conformity** with it.

Moreover, the fact that the pathway may not be often or heavily traveled is immaterial. The fact that it has been created and exists **at all** is the problem, thanks to what dissenting Justice Alito understates is a “serious mistake” which the Court has now committed. A larger interpretive blunder than that which is the majority opinion would be hard to imagine ..., assuming of course that it was a “blunder” and not a conscious decision.

After all, if under the *Barbara* majority opinion, *jus soli* principles alone can produce a U.S. citizen under the 14th Amendment, why should the result be any different for nbC eligibility purposes under Art. 2, § 1, Cl. 5?

Indeed, because the Trump EO 14160 operated prospectively only, the *Barbara* decision ratifies and preserves the U.S. citizenship of the offspring of illegal aliens as well as the

offspring of “birthright tourists” born here well **before** the EO was issued. Thus, already existing offspring such as in the Kim Jong Un he/she hypothetical above – imbued with a virulent hatred for the United States inculcated since birth – may *already* be living somewhere in the United States.

Their most likely residence or “domicile” might be in the deep blue “sanctuary” jurisdictions within California, Washington, Illinois, Minnesota or New York. There, under the watchful eyes of their “long view” handlers, they might simply be waiting out the rest of any 14-year residency requirement of Art. 2, § 1, Cl. 5 as a precondition of running for president as the nominee of the Communist Party of the United States or the Democratic Socialists of America. And anyone questioning their ethnic or native backgrounds will be unmercifully excoriated by a once but no longer principled Fourth Estate as a racist. Oh, the humanity ..., the horror!

Furthermore, as for those contending or suggesting that no such plot or scenario could **ever** exist here, they fail to acknowledge, much less understand, the depth and density of the ideological hatred and disdain harbored by America’s enemies, both here and abroad. Fortunately, there are, for now, still more people worldwide who support the United States than seek ways to destroy it. That said, the collectivists and those on the left are doing whatever they can to alter that ratio.

Federalist No. 68

The Mode of Electing the President

From the *New York Packet*:

Friday, March 14, 1788.

Author: **Alexander Hamilton**

To the People of the State of New York:

THE mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censure, or which has received the slightest mark of approbation from its opponents. The most plausible of these, who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded.¹ I venture somewhat further, and hesitate not to affirm, that if the manner of it be not perfect, it is at least excellent. It unites in an eminent degree all the advantages, the union of which was to be wished for.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.

It was also peculiarly desirable to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of the government as the President of the United States. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief. The choice of SEVERAL, to form an intermediate body of electors, will be much less apt to convulse the community with any extraordinary or violent movements, than the choice of ONE who was himself to be the final object of the public wishes. And as the electors, chosen in each State, are to assemble and vote in the State in which they are chosen, this detached and divided situation will expose them much less to heats and ferment, which might be communicated from them to the people, than if they were all to be convened at one time, in one place.

[Library of Congress](#)

Also escaping doubters’ attention in that regard are the lengths to which America’s enemies may be prepared to go in order to harm the Republic. Specifically, what better way to facilitate the crippling of the Republic than to install an America-hating individual of divided fidelity and allegiance into the presidency? Recall what Publius Alexander Hamilton said in 1788 when he addressed that **exact** peril in [Federalist 68](#).

There, Hamilton warned that in crafting the Constitution, the Founders understood:

“**Nothing** was more to be desired, than that **every** [i.e., “all”] practicable obstacle[s] should be opposed to cabal, intrigue and corruption. The most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but **chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy** [i.e., the presidency] **of the union?**” (Emphasis added)

Against Hamilton’s timeless caveat, it is at minimum problematic – even shameful – that none of the *Barbara* majority opinion Justices paid any attention to his warning before issuing their dangerous edict potentially allowing a “creature with foreign allegiance” to occupy the presidency. Yet post-*Barbara*, that is a possibility. Some might argue that this is a textbook example of *res ipsa loquitur*, “the thing speaks for itself,” while others might contend it comes close to constituting judicial malpractice ..., and yet others could plausibly argue that it is both.

Since the nation has already endured two likely ineligible presidents and one likely ineligible vice-president, now that the *Barbara* decision is in place, with progressives, leftist academics and a TDS-afflicted Fourth Estate giddy over the decision **only** because it undercuts President Trump ..., never mind its impact on the Republic ..., who needs drone swarms or ICBM’s?

Stated otherwise, short of waging direct war against the Republic’s military personnel and assets across the globe, as “Commander in Chief” of the military, might an America-hating president do equivalent harm by ordering the gradual (or even immediate) closure of **all** U.S. military bases, and recalling of all Trident submarines wherever located, as a gesture of “peace and goodwill” to the globe? And once that happened, what might be the reactions of nuclear-armed adversaries, perhaps by then even including Iran?

Impossible, you say? Really? Recall that it was once an axiomatic impossibility to believe that the Earth orbited the sun rather than the “dogma of the day” that the sun orbited the Earth; or impossible for machines to fly through the air or venture into space and travel to other planets; or unthinkable that common uranium ore could be refined into deadly nuclear weapons, and worse.

Moreover, those who persist in minimizing the danger as being “impossible” ignore the results of Neville Chamberlain’s World War II appeasement of Hitler and Nazi Germany or, more recently, the skyrocketing crime rates in blue sanctuary jurisdictions where the police are vilified, attacked and “defunded.” With collectivist governors and mayors in control, bad things always happen. **Always.**

Both dissenting Justices Alito and Thomas articulate their concerns over the possibility of another ineligible president, although not directly invoking the nbC eligibility issue. Your humble servant is now doing that while asking this: although having a true nbC

president cannot invariably and absolutely guarantee sole fidelity and allegiance to the Republic, why, through decisions like *Barbara*, are we making it incrementally *easier* for our avowed enemies to ruin and perhaps even destroy the nation? As dissenting Justice Robert Jackson noted in [*Terminiello v. Chicago*](#) neither the Bill of Rights nor the Constitution is a suicide pact. Sadly, the *Barbara* majority opinion challenges that truth.

Justice Thomas notes (Thomas dissent at 56): “The Court’s decision ... hold[s] the Citizenship Order facially unconstitutional, in other words, makes it unlawful for the President to enforce the Order against a single person. He cannot enforce the Order against a child of an alien enemy or a child of a foreign spy. ***He cannot even enforce the Order against children who are raised in foreign countries, join foreign armies, and fight wars against the United States.*** The Court, without considering any of these individual circumstances, holds unconstitutional the application of the Citizenship Order in all of them.” (Emphasis added)

Justice Alito adds (Alito dissent at 38-39): “Suppose that a person’s only connection to this country is that he was born here to a mother who was present just long enough to give birth and then quickly returned to her native country. Suppose that country is a strategic adversary or enemy of the United States. ***Suppose the child never visited the United States while growing up and was inculcated with hatred of this country. According to the Court, that person is a citizen of the United States. He can enter and leave the country as he pleases.*** He can travel the world on a United States passport. ***Even if he plots to harm this country, he cannot be deprived of his status as a citizen, at least under current precedent.*** See *Vance v. Terrazas*, 444 U. S. 252, 259–260 (1980).” (Emphasis added)



And these dissenting observations – clear to rational observers but obscure to the result-oriented and willfully ignorant – are disregarded by Chief Justice Roberts and the other majority opinion Justices, including the wee-bit-less-than-sharpest-SCOTUS-pencil in the box, Justice Ketanji Brown Jackson, as being inconsistent with what was purportedly

intended by the Framers of the 14th Amendment and, by tortured retrospective extension, the Founders when adopting the nbC restriction in 1787. Nonsense. Intellectual goo.

There is, however, one remaining glimmer of hope, albeit a very faint one at that While Justice Kavanaugh sided with the majority on the issue of the EO violating statutory law (but **not** the 14th Amendment) on the facts presented, in a contemporaneous dissent he states: (Kavanaugh dissent at 10): “Congress could – consistent with the Fourteenth Amendment – amend [this law] [i.e., 8 U.S.C. § 1401(a)] or *otherwise enact new legislation establishing exceptions to birthright citizenship for children born to foreign citizens unlawfully or temporarily in the country*. But Congress has not yet done so.”

This invitation is entirely consistent with § 5 of the 14th Amendment, which provides: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” The “enforcement” of the “provisions,” including the Framers’ underlying intentions regarding disqualification of the offspring of illegal aliens from U.S. citizenship includes – your humble servant posits – the power to disqualify from eligibility to the presidency any person **not** meeting the nbC requirements of being born **here** to parents who are **already** U.S. citizens, all in conformity with the 14th Amendment as well as the Constitution’s Eligibility Clause restrictions.

Stated otherwise, according to Justice Kavanaugh, it is up to Congress, rather than the President, to establish that the offspring of illegal aliens, while being born here, are not to be automatically recognized as U.S. “citizens,” let alone deemed automatic U.S. nbC’s. Accordingly, he believes that consistent with the 14th Amendment, Congress could accomplish by legislative action that which under *Barbara*, EO 14160 cannot. In effect, he says that the ball is now in Congress’s lap.

Indeed, on July 13, 2026, shortly after *Barbara* was decided, Senator Jim Banks (R. IN) introduced his [Citizenship Act of 2026](#) in response to Justice Kavanaugh’s suggestion. Lamentably, at present the bill says nothing about prohibiting any person enjoying birthright citizenship from being otherwise equated with an Eligibility Clause nbC as the Founders understood the term in the nomenclature of that day. Such an omission, however, could be corrected as the bill moved through the process.

Enjoying vested, although improperly bestowed birthright *citizenship*, does not now – nor did it **ever** – make one a natural born *Citizen* under the Constitution’s Eligibility Clause. Unless one is born here to parents both of whom are already U.S. citizens, while one may be a 14th Amendment “citizen,” he/she will **not** be an nbC, at least as properly understood and adopted by the Founders in 1787. And recall as well that while all nbC’s are also native-born citizens, not all native born citizens are nbC’s.

BOOK I. The citizens are the members of the civil society; bound
 CHAP. XII. to this society by certain duties, and subject to its authority,
 § 212. Citizens and natives. they equally participate in its advantages. The natives, or
 natural-born citizens, are those born in the country, of pa-
 rents who are citizens. As the society cannot exist and per-
 petuate itself otherwise than by the children of the citizens,
 those children naturally follow the condition of their fathers,
 and succeed to all their rights. The society is supposed to
 desire this, in consequence of what it owes to its own preser-
 vation; and it is presumed, as matter of course, that each
 citizen, on entering into society, reserves to his children the
 right of becoming members of it. The country of the fa-
 thers is therefore that of the children; and these become
 true citizens merely by their tacit consent. We shall soon
 see whether, on their coming to the years of discretion, they
 may renounce their right, and what they owe to the society
 in which they were born. I say, that, in order to be of the
 country, it is necessary that a person be born of a father who
 is a citizen; for, if he is born there of a foreigner, it will be
 [102] only the place of his birth, and not his country.
 § 213. Inhabitants. The inhabitants, as distinguished from citizens, are fo-
 reigners, who are permitted to settle and stay in the country.
 Bound to the society by their residence, they are subject to

This reality, of course, comes from Book 1, Ch. 19, § 212 of Swiss attorney, jurist and scholar Emer de Vattel's tome *The Law of Nations* (London 1760 English Ed.), upon which the Founders most certainly relied for their definition of an nbC as found in the Constitution. Closely related to this principle is de Vattel's parallel recognition that "... naturally, it is our **extraction**, [*i.e.*, parental relationship] **not the place of our birth**, that gives us rights..." (Emphasis added), *idem.* at § 216, also highly likely relied upon by the Founders while drafting the Eligibility Clause. If these rational concepts are to change, it would need to be the result of a constitutional amendment, not the enactment or amendment of a statute by Congress.

That detail, of course, will not stop post-*Barbara* "de Vattel Deniers" from arguing that if one is born here as merely a "citizen at/by/from birth," that status alone will suffice to render one an automatic nbC. Respectfully, your servant posits: no, it will not.

That fatuous "*jus soli* controls" proposition was advanced in 2015 by former Justice Department Solicitors General Paul Clement and Neal Katyal [here](#) in support of the purported nbC status of Senator Ted Cruz as he was running for president. Their *Harvard Law Review Forum* article was dissected by your humble servant [here](#), [here](#) and [here](#). Ironically, their article even discards the *jus soli* "born here" requirement for Calgary, Alberta Canada-born Ted Cruz as an irrelevant "happenstance." Seriously?

However, given the lethargy and even paralysis of Congress on critical legislation these days, it remains to be seen when – and even whether – Senator Banks' bill might make it to the Oval Office for signature by President Trump. Stay tuned.

Conclusion

The majority opinion in *Barbara* is not, as Justice Alito states, merely a “serious mistake.” It is in addition a dangerous and embarrassing judicial blunder which could well metastasize into a calamitous event in the history of the Republic. With home-grown Marxists in and out of academia and intractable enemies of the United States everywhere, coupled with TDS-crippled media hyenas and a largely indifferent, even insouciant electorate at work (or at rest...) rooting for the failure of the Republic ,,, the outcome remains unclear.

Senator Banks’ bill, properly amended, may be the last best hope for perpetuation of the presidential eligibility nbC restriction. A failure to pass it and sign it into law – while there is still time – could trigger the emergence of Ben Franklin’s prediction.



Joseph DuPlessis, 1785 ([public domain](#))

With any kind of luck, however, Franklin’s admonition will remain only an admonition and not a reality. Your servant may be wrong in his “Kim Jong Un” hypothetical, but he is *not* wrong that under the *Barbara* “serious goo” decision, the hypothetical exists. Time will tell.