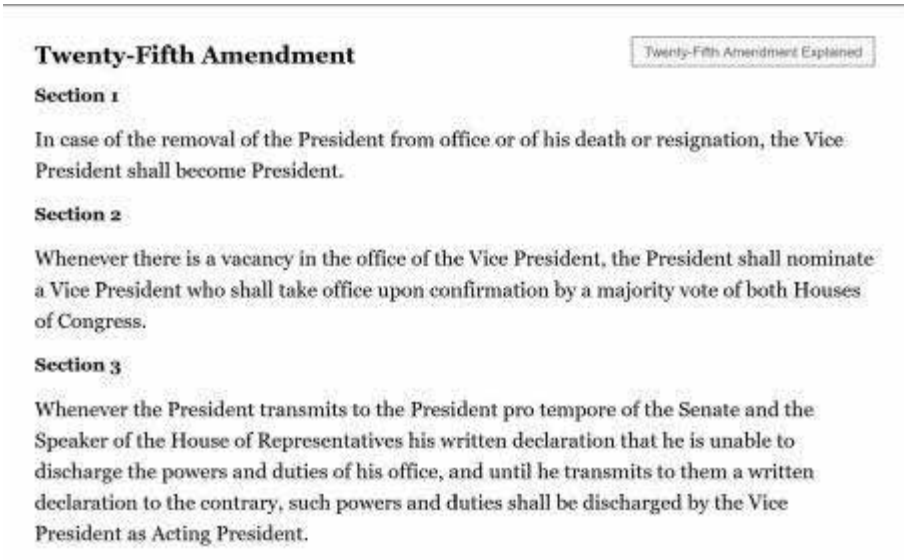
A Modest Proposal 4.0

"NOT FOR THE FAINT OF HEART"

by Joseph DeMaio, ©2023



Twenty-Fifth Amendment

Twenty-Fifth Amendment Explained

Section 1

In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2

Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

https://constitution.congress.gov/constitution/amendment-25/

(Jun. 16, 2023) — Every now and then a "left field" idea strikes your humble servant. The term "left field" is used because to many, the idea would seem so far-fetched and improbable that it could never come to pass in reality. But the only way to ensure failure is to forego the attempt altogether.

Such ideas have in prior posts here at *The P&E* included (1) a proposal that after his second term ended, Obama waive confidentiality under the Health Insurance Portability and Accountability Act ("HIPAA") so that his purported birth hospital in Hawai'i could confirm (or deny) his claim of birth in Honolulu; (2) that as "reparations" for the damages wrought upon the nation by Brandon and his storm troopers, a one-time tax surcharge in the amount of one-third of their 2020 gross income be levied upon all registered Democrats; and (3) a repeat in 2023 of the tax surcharge proposal of 2017, but reflecting a compounding for the additional damage done, increasing the surcharge amount equal to one- half of their 2022 gross income.

In candor, despite the appeal of these proposals, none have come to fruition. However, the present "Modest Proposal 4.0" takes a slightly different tack as a result of the rapidly declining ability of Brandon to fulfill the duties of the presidency, even modest ones like walking upright. One more fall like the one he took while riding his bicycle or when he fell at the Air Force Academy or the next time he deplanes or tries to board Air Force One could be fatal: after all, the guy is 80 years old, going on 113. Never mind that his brain is vanilla yogurt, his physical abilities are minimal, and rapidly declining.

Indeed, even the Democrats are muttering aloud that he should not be their candidate for the 2024 general election. Again, another physical mishap – if not immediately incapacitating – could rapidly evolve into an inevitable resignation without regard to the other potential for a resignation based on the "Burisma Tapes." The following scenario assumes that he actually resigns either prior to another fall and resulting incapacitation or fully documented proof – which apparently we do not yet have – that he took a bribe while vice president.

Under the 25th Amendment to the Constitution, in the event of the death or resignation of a President, "the Vice President shall become president." This amendment came as a result of the assassination of President Kennedy and the surrounding confusion of swearing in then Vice-President Lyndon Johnson.

Rep. Kevin McCarthy, current Speaker of the House

Thus, assuming that following the announcement of his resignation, there would be a short period of time before Kamala Harris was actually sworn in as President – and here is where Modest Proposal 4.0 ventures out onto the left field warning track – Speaker of the House Kevin McCarthy could file a court challenge to the constitutional eligibility of Harris.

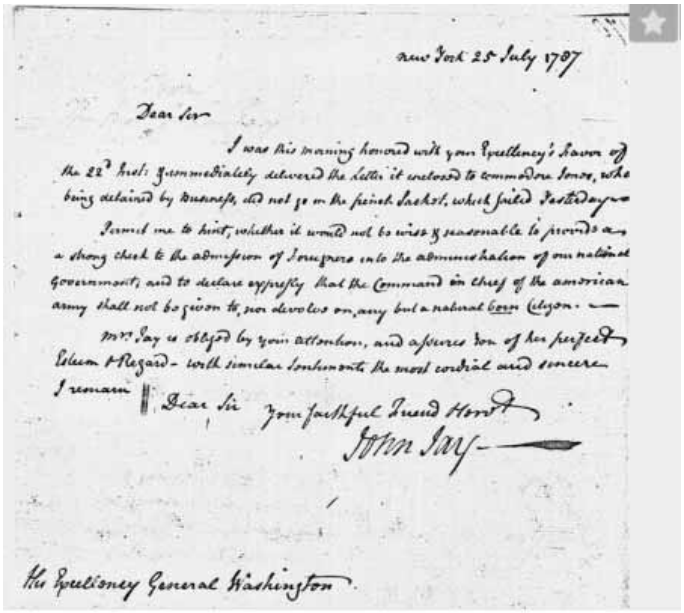
As faithful *P&E* readers are well aware, Art. 2, § 1, Cl. 5 of the Constitution mandates that only a "natural born Citizen" ("nbC") may serve as President. As readers also know, there is a continuing debate over whether Harris is an nbC because, although she was born in Oakland, California, the evidence is that neither of her parents were U.S. citizens at that time. Some contend that if one is merely a "citizen at birth" or a "citizen by birth" with no need for further naturalization proceedings, such satisfies the nbC requirement. Others contend that the definition articulated in § 212 of Emer de Vattel's "*The Law of Nations*," where an nbC is defined as a person born in a country to parents who are already citizens, controls.

In this regard, under the Supreme Court decision in *Minor v. Happersett*, and the principles of § 212 of de Vattel's treatise upon which the Founders relied when drafting the Constitution, Harris is very likely not a natural born Citizen as contemplated by the Founders. The Congressional Research Service ("CRS") and others, of course, have a different view…, but they did not draft the Constitution.

If McCarthy had the courage to formally challenge her eligibility – at this point, a ***huge*** assumption – then, for the first time since then-Vice President Michael Pence forfeited the chance to act, and thereby possibly contributed to the chaos on January 6, 2021 –, the person who is second in the statutory line of succession under 3 U.S.C. § 19 and possessed of legal "standing" could raise in court the issue of Harris's eligibility to the presidency.

If he were prepared to do so, the action would undoubtedly reach the Supreme Court on a highly compressed timeline…, perhaps even hours. Once there, *finally*, a decision might actually be forthcoming on the presidential eligibility question, one which the Court has successfully "evaded" since original challenges were brought in 2009 against Barack Obama by patriots like CDR Charles Kerchner in *Kerchner v. Obama*.

If such a case survives the "standing" challenge, the Court could still "evade" clarification and resolution of the issue by interposing another of its favorite dodges, the "political question" doctrine or the "separation of powers" doctrine…, or both. Or the Court could cave and take the easy way out by simply declaring Harris to be an eligible nbC based on the "citizen at/by birth" theory peddled by the CRS and others and its (irrelevant) decision in *United States v. Wong Kim Ark*.



New York 25th July 1787

Dear Sir

I was this morning honored with your Excellency's Letter of the 22d Inst: I immediately delivered the Letter it enclosed to Commodore Jones, who being detained by business, did not go in the Packet, which sailed Yesterday—

I invited me to hint, whether it would not be wise & reasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the american army shall not be given to, nor devolve on, any but a natural born Citizen. —

Mrs. Jay is obliged by your attention, and assures You of her perfect Esteem & Regard — with similar Sentiments the most cordial and sincere I remain Dear Sir Your faithful Friend Humble

John Jay —

His Excellency General Washington.

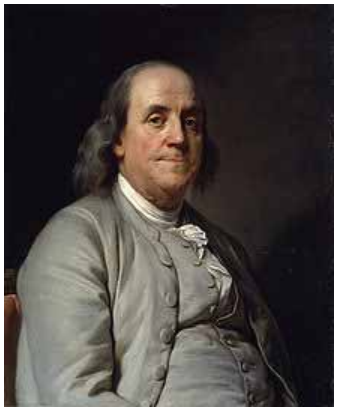
On the other hand, if the Court took the time to actually study and analyze the history of the nbC definition and the Founders' intent in adopting the "hint" made by John Jay to George Washington, generally regarded as the genesis of the nbC clause, there is a slight potential – but bigger than zero – that a decision holding Harris ineligible could, in fact, issue…, likely a "split decision," perhaps 5-4 or 6-3, but still a decision holding she is not an nbC.

If that occurred, then 3 U.S.C. § 19(a)(1) would come into play and former Speaker McCarthy would become the "Acting" President, assuming that he too could prove his nbC bona fides under 3 U.S.C. § 19(e). Under the 25th Amendment, upon being sworn in, he would "immediately assume the powers and duties of the office as Acting President." The terms "act" under 3 U.S.C. § 19(a)(1) and "Acting" under the Constitution reflect the fact that the person succeeding to the office (here, McCarthy) was not "elected" president and serves as a president possessed of all the powers and duties of the office only until a new "President" *is* elected.

Among the powers and duties under Art. 2, § 2 of the Constitution, the Acting President would assume – following Brandon's resignation and Harris's disqualification by the Supreme Court – are those of firing incompetent cabinet members; hiring competent personnel (subject, of course, to Senate "advice and consent" confirmation); and, naturally, granting "Reprieves and Pardons for Offenses against the United States…."

Hint…, hint….

A bold proposal? Absolutely. Does McCarthy have the courage even to make the attempt? Perhaps…, but perhaps not. And if the recent failure to censure the oleaginous Adam Schiff because 20 RINO GOP members sided with the Democrats is any indicator, Modest Proposal 4.0 is likely DOA before it even hits McCarthy's inbox. Democrats warn enemies not to bring a knife to a gunfight: the RINO defenders of Schiff brought toothpicks and excuses.



Challenging the Deep State both within and beyond the Beltway is not for the faint of heart. But after all, are we not talking about the preservation of the nation and pursuit of Ben Franklin's admonition that we have a "Republic, if [we] can keep it"?

Hint…, hint….