DeMaio Responds to Recent "natural born Citizen" Comments

"THE ONLY PRECEDENT THAT COUNTS"

by Joseph DeMaio, ©2020

(Feb. 13, 2020) — [**Editor's Note:** Legal scholar Joseph DeMaio offers the following in response to comments to his February 9, 2020 article, "Is Mayor Pete a Natural Born Citizen?"]

The J.J. Thompson comments of 2/12/20 are, respectfully, ill-reasoned and wrong. Neither the Ankeny case (an Indiana state court case) nor the Tisdale case (a garbled federal trial court "order" from the Eastern District of Virginia) ever made it to the U.S. Supreme Court for review. That, in itself, undermines the argument that they constitute "binding Supreme Court precedent," which is the only precedent that counts when finally interpreting the Constitution.

As for the conceptual infirmities of Ankeny, those are addressed here.

As for the similar defects in the District (trial) Court "order" – not an "opinion" – of Judge John A. Gibney, Jr., appointed by one Barack Hussein Obama Jr. barely thirteen months prior to issuing his dismissal order in Tisdale (ahem…, with no recusal by the jurist…), apart from the order's:

(1) mis-naming of the opinion in Wong Kim Ark ([*sic*]: "United States v. Ark");

(2) mis-naming of the Court of Appeals decision in Perkins v. Elg ([*sic*]: "Perkis v. Elg");

(3) omission of the fact that the U.S. Supreme Court modified the Elg opinion on appeal;

(4) disregarding of the fact that Marie Elg was, in fact, a "natural born citizen" because both of her parents were naturalized before her birth; and

(5) disregarding of the fact that in the Hollander v. McCain case, the record there indicated that a copy of Senator John McCain's birth certificate was received in evidence, with the judge stating that the birth certificate "lists his place of birth as Colón," which is a city in Panama, not the United States or a U.S. military base in the Canal Zone …,

those parts of the Tisdale "order" purporting to articulate "the law" on the eligibility topic are, with due respect, *ipse dixit*: "it is so because I say it is so." And that doesn't even touch the issue of the Congressional Research Service's ellipsis alteration of the words of the Supreme Court in its Perkins v. Elg opinion discussed here.

Finally, J.J. Thompson positions a cherry on top of his/her argument: "If the child of British commoners or a North Korean male and an Iranian female were born on US soil they would be a natural born citizen." The absurdity of that conclusion is also addressed here, positing that if the Saudi parents of Osama bin Laden had given birth to their son while on vacation in Honolulu, at the required age and residency status, the son would have been eligible to the presidency. This is the argument being advanced by the comments of J.J. Thompson and the lawyers at the Congressional Research Service.

Rest assured, fellow Americans, that is an outcome which the Founders would decidedly have not intended, which is why they turned to § 212 of Emmerich de Vattel's *The Law of Nations.* Additional thrust-and-parry comments would serve no useful purpose, unless the result is getting the issue before the Supreme Court. Stay tuned.