

# “In the Same Words?”

"A DEMONSTRABLY WRONG HISTORICAL FACT"

by [Joseph DeMaio](#), ©2021



*U.S. Supreme Court Associate Justice Horace Gray ([public domain](#))*

(Jan. 22, 2021) — With the current censoring and banning of facts casually labeled by the leftist language police to be “misinformation” and “disinformation” subject to purging from the public square, one must ask: under that protocol, when will the U.S. Supreme Court’s decision in [United States v. Wong Kim Ark](#), 169 U.S. 649 (1898) (“WKA”) be censored and erased from public view?

The scrubbing of the opinion seems clearly to be warranted on the grounds that, at its core, its author, Justice Horace Gray, disseminates “misinformation” and, worse, potential “disinformation” bearing directly on the question of who is – and of greater importance, who is not – a “natural born Citizen” for presidential eligibility purposes. Moreover, because of the 12<sup>th</sup> Amendment, the question applies as well to the Office of the Vice-President. And no, Virginia, these are not academic or hypothetical questions. Curious? Read on.

Recall that the *WKA* decision held that a child (Wong Kim Ark) born in San Francisco to two permanent resident alien Chinese citizens was, under the 14<sup>th</sup> Amendment, a “citizen of the United States.” The decision addressed *only* the question of the person’s U.S. citizenship under the 14<sup>th</sup> Amendment and *not* whether the person was in addition a “natural born Citizen” under Art. 2, § 1, Cl. 5 of the Constitution regarding eligibility to the presidency. A good argument exists that those who would contend otherwise are themselves engaging in the dissemination of misinformation.

One of the more recent ominous assaults on freedom of speech and the First Amendment takes the form of censorship and “[memory-holing](#).” These information assassinations are deployed by Leftists and the mainstream media – forgive the redundancy – against either inconvenient, empirical facts or against assertions which are deemed to be “misinformation” and/or “disinformation” because they are purportedly “false” or because they deviate from the Democrat Party’s acceptable narratives or the conclusions of the Left’s “fact checkers.”

If, for example, someone has the temerity to suggest that under the Constitution, only a “natural born Citizen” – as defined and articulated by Emmerich de Vattel in § 212 of his 1758 tome, *The Law of Nations* – is allowed to serve as President, that suggestion is subjected to ridicule, lampooning, invective and, ultimately, censorship and memory-holing.



Emmerich de Vattel

Stated otherwise, because, according to the Congressional Research Service (“[CRS](#)”), two former U.S. [Solicitors General](#) and a bevy of lower court state and federal judges, the issue is “settled” other than consistently with the definition set out by de Vattel, any further discussion of the issue is forbidden. Mind you, it is not only to be marginalized and erased from public view..., it is *forbidden*. How that dictatorial edict squares with the First Amendment remains obscure, but no doubt leftist lawyers are working on a justification right now.

How *dare* conservatives and constitutionalists posit that the issue is *not* already “settled,” particularly in light of the 14<sup>th</sup> Amendment and the Supreme Court’s decision in *WKA*? These conservative troglodytes must be taught a lesson: mock them on national television; censor their words on social media platforms; and memory-hole their contentions as being “misinformation” and/or “disinformation.” Banish them to the nearest Trumper deprogramming camp, into the “birther” section!

Really?

Memo to the few Democrats and Leftists who visit and read postings at The P&E: if you will calm down for a moment, take a few deep breaths and reflect on some empirical facts, perhaps you will realize that the issue of presidential and vice-presidential constitutional eligibility with regard to who is – and who cannot be – a “natural born Citizen” as contemplated by the Founders is not as “settled” as you believe it to be. This is particularly true once the details of the history of the 14<sup>th</sup> Amendment – not to mention its plain language – and the fundamental misstatement of fact lying at the core of the *WKA* decision are studied.

First, the 14<sup>th</sup> Amendment says nothing – repeat, *nothing* – about “natural born citizens” for presidential eligibility purposes. It speaks of “citizens” and the “citizenship” status of such persons. And, as long-time P&E readers know from studying [Euler diagrams](#), while all “natural born citizens” are “citizens,” not all “citizens” are “natural born Citizens” within the contemplation of the Constitution’s presidential Eligibility Clause, Art. 2, § 1, Cl. 5.

Second, and of greater importance after January 20, 2021, the factual error made by Justice Horace Gray in the *WKA* decision only underscores the likelihood that Mrs. Kamala Devi Harris now occupies the Office of the Vice-President as a common usurper, not unlike the Second Usurper in Chief (“SUC”), Barack Hussein Obama, Jr., who occupied the Oval Office between 2009 and 2017.



*Kamala Harris from her Senate website*

The author of the *WKA* majority opinion, Justice Horace Gray (appointed to the Court by the Nation's First Usurper-in-Chief, Republican Chester A. Arthur) – intentionally or not – fundamentally misstated the history of two of the first enactments of the Congress in reaching his ultimate conclusion that Wong Kim Ark was a “citizen” under the 14<sup>th</sup> Amendment. Here is why.

In 1790, Congress passed (and President Washington signed into law) 1 Stat. 103, entitled “An Act to Establish an Uniform Rule of Naturalization.” In that statute, Congress stated, among other things, that children born “beyond sea” to U.S. citizen parents were “considered” to be “natural born citizens.” However, only five years later, in 1795, that statute was repealed in its entirety.

Yet Justice Gray claimed in his opinion that Congress “reenacted, *in the same words*, the 1790 statute” (emphasis added), with alterations not germane to the question. For this demonstrable “disinformation” and/or “misinformation” transgression, under the tech tyrant censorship pogrom now in place, the *WKA* opinion – and all later cases, law review articles, Gray Trollop op-eds and professorial dissertations relying on it... should be memory-holed. Erased. Forgotten.

In 1795, a new statute – 1 Stat. 414, entitled “Chap. XX. An act to establish an uniform rule of Naturalization; *and to repeal the act heretofore passed on that subject [i.e., 1 Stat. 103]*” (emphasis added) – the Congress, apparently recognizing that it could not by a statute like 1 Stat. 103 alter or amend the intent of the Constitution's presidential Eligibility Clause regarding the understood definition of “natural born Citizen” therein, *deleted* the words “natural born” before the word “citizens.”

That the Congress actually made the deletion – regardless of whether it was a conscious, intentional excision, as opposed to a “stylistic” or “accidental” omission – is beyond dispute: the words “natural-born” present in 1 Stat. 103 do *not* appear in 1 Stat. 414, contrary to Justice Gray's assertion.

And yet, 103 years after 1 Stat. 414 became law – deleting the “natural-born” modifier of the word “citizens” that had previously existed – this is what Associate Supreme Court Justice Horace Gray said in the majority opinion he authored in *WKA*, 169 U.S. at 672-673:

“In the act of 1790, the provision as to foreign-born children of American citizens was as follows: ‘The children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as *natural-born* citizens: provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.’ 1 Stat. 103 [at 104]. In 1795, this was re-enacted, *in the same words*, except in substituting, for the words ‘beyond sea, or out of the limits of the United States,’ the words, ‘out of the limits and jurisdiction of the United States.’ Id. 415.” (Emphasis added).



of minor children derivatively naturalized upon the naturalization of their parents, who are not ‘natural born,’ as well as to the children born abroad to U.S. citizens, *so it is possible that the deletion is merely a stylistic/grammatical decision.*”

(Emphasis added)

As now departed Supreme Court Justice Antonin Scalia would say: “Pure applesauce.” One is reminded of Chief Justice Roberts’s linguistic gymnastics in morphing the word “penalty” into the word “tax” in order to save the SUC’s signature law, Obamacare. Even a first-year law school *dropout* learns that when a legislating body (such as Congress) changes the language of a statute – as occurred in 1795 with the formal repeal of 1 Stat. 103 and the enactment of 1 Stat. 414 – and in the process deletes words or modifiers, it intends to change the law in some way.



*U.S. Supreme Court Chief Justice John G. Roberts*

The conscious deletion of the modifier “natural born” before the word “citizen” in 1 Stat. 414 plainly confirms that, although Congress was still prepared to deem children born abroad to citizen parents to be themselves “citizens” and thereby welcome them into citizenship of the United States body politic, they were no longer to be even “considered” or deemed to be “natural born citizens.”

Stated otherwise, plainly, these were *not* mere “stylistic” or “grammatical” changes. The deletion of the modifier was a deliberate action by the Congress intended to change the law from what it was in 1790 to what it became in 1795, and indeed, in the 220-plus years and numerous variations on the naturalization statutes amended and enacted thereafter.

Accordingly, since Justice Gray's majority opinion relies on a demonstrably wrong historical fact, it constitutes at minimum "misinformation" and at maximum "disinformation." As such, it is a prime candidate for the Left's memory-holing exercise..., no?

A few [posts ago](#), your humble servant suggested a new term – a "[portmanteau](#)," if you will – describing the favored pastime of liberals and the Left. That term is "stupocrisy," a blend of the words "stupid" and "hypocrisy." Kinda has an appropriate ring when it comes to discussing the Left's lionizing of *WKA* on the constitutional eligibility issue while simultaneously defending Justice Gray's error, dontcha think?