

Is Vattel Irrelevant to the “natural born Citizen” Question?

RESPONSE TO EXPOSURE OF OMITTED INFORMATION BY THE CONGRESSIONAL RESEARCH SERVICE EQUATES “NATIVE BORN” WITH “NATURAL BORN”

by Joseph DeMaio, ©2011



Emmerich de Vattel was a Swiss philosopher who defined various types of citizenship in society

(Aug. 19, 2011) — A short while ago – June 17, 2011, to be precise – one “nolu chan” posted to the Internet an [article](#) dismissing as irrelevant the work of Emmerich de Vattel on the presidential eligibility question and attempting to challenge and undermine a series of three essays previously published at The Post & Email here ([Part 1](#)); here ([Part 2](#)); and here ([Part 3](#)) demonstrating otherwise.

As hereinafter explained, the only thing that the chan post accomplishes is additional fortification of the conclusions reached not only in the three original essays, but in the two follow-up essays published June 27, 2011 [here](#) and July 4, 2011 [here](#). For this, the author expresses his gratitude. With any luck, chan will be posting in due course additional responses to the two follow-up essays, and perhaps even this one, which are eagerly awaited.

The original essays, penned by the undersigned, addressed (1) the teachings of one Emmerich de Vattel in his work, *The Law of Nations*, regarding those who were – and those who were not – properly deemed to be “natural born citizens” as that term was understood by the Founding Fathers in the years leading up to the drafting and ratification of the U.S. Constitution; (2) the general issues surrounding the so-called “eligibility”

albatross now dangling around the neck of one Barack Hussein Obama; and, most importantly, (3) the completely disingenuous, unexplained and possibly felonious alteration of the words of a U.S. Supreme Court decision contained in an April 3, 2009 [“Memorandum”](#) issued by the Congressional Research Service (“CRS” and “CRS Memo”) over the name of a lawyer and presumptive author of the memo there, one Jack Maskell, said memo being intended for distribution to and the edification and guidance of 535 members of the United States Congress.

In addressing the chan post (observing the individual’s apparent preferred use of lower case letters only), the undersigned will exercise linguistic restraint – unlike chan – in explaining its shortcomings. Accordingly, adolescent pejoratives from the same linguistic pouch as “birther,” “blather,” “wingnuts” and “birdcage liners” will be avoided... although the temptation to do otherwise is strong. Instead, an effort will be made to analyze exactly what the chan post says and, critically, what it does not say.

To begin with, the chan article essentially regurgitates and reiterates much of that which Mr. Maskell set out in the April 3, 2009 CRS Memo. The essence of that memo (and quoting from its conclusion, p. 14) is that “[t]he constitutional history and relevant case law thus indicate that one born ‘in the United States,’ and subject to its jurisdiction, that is, when one’s parents are not official diplomatic personnel representing a foreign nation in the U.S., would be considered a U.S. citizen ‘at birth’ or ‘by birth,’ and thus, a ‘natural born Citizen’ of the United States, regardless of the citizenship status of that individual’s parents.”

As pointed out in the original P&E essays, however, the only way that Mr. Maskell (and/or whoever else may have had a hand in crafting the CRS Memo) can reach that conclusion based on “relevant case law” (*i.e.*, the Memo’s immediately antecedent “thus” citation to *Perkins v. Elg*, 307 U.S. 325 (1939), at 330) is by the alteration, through “strategic modification” via ellipsis omission, of certain language from a “letter of advice” from U.S. Attorney General Edwards Pierrepont and correctly quoted by the Supreme Court in *Elg*, “in order to reverse engineer the CRS Memo’s predetermined, desired result. That result, of course, is that: there is (purportedly) no difference between a “natural born Citizen” as that term is used in Article 2, Section 1, Clause 5 of the Constitution and a “citizen” or “native born citizen” as that term is used in the Fourteenth Amendment and in certain other Supreme Court cases, including *United States v. Wong Kim Ark*, 169 U.S. 649 (1898).

If, as posited in the April 3, 2009 CRS Memo and the chan post, there is no difference between a “natural born Citizen” and a “native born citizen” – and wholly without reference to § 212 of de Vattel’s *The Law of Nations* stating otherwise – one must then ask: why does Article 2, Section 1, Clause 5 of the Constitution recognize and differentiate between the two? Specifically, that provision of the Constitution states in relevant part: “No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President....” If, as contended by nolu chan and the CRS Memo, the two are the same, then there would have been no need *in Art. 2, Sec. 1, Cl. 5 of the Constitution itself*, to differentiate between the two. And yet, that is precisely what the Founding Fathers and

Framers of the Constitution did. Apparently, they didn't get the memo channeled to them in the past by Chris Mathews.

Without going into the myriad explanations of why the Founders made that distinction, and specifically identified the distinction between a “natural born Citizen” and a “Citizen at the time of the adoption of this Constitution...,” the fact remains: they did so. And no amount of obfuscation, deflection, invective or linguistic gimmickry will change that. For a particularly comprehensive dissertation on this (and related points), the reader would do well to reference [“Obama Presidential Eligibility – An Introductory Primer”](#) by Stephen Tonchen, as it is well-documented and frequently updated.

Moreover, as noted in the second of the original P&E DeMaio essays, under the Constitution and relevant case law, although all “natural born citizens” are also “native born citizens,” not all “native born citizens” are “natural born citizens.” Accordingly, the only way that the CRS April 3, 2009 Memo can redefine Barack Hussein Obama as being eligible to the presidency is to fashion an argument that a person who is *only* a native born citizen may *nonetheless* be deemed to be a “natural born citizen” under the Constitution. The chan post fails to address this point, preferring instead to lapse into adolescent name-calling. Weak.

As further noted in the second essay, the CRS Memo, through a consciously designed, manipulated and executed ellipsis, alters the language of the Supreme Court's actual verbiage in *Perkins v. Elg*, 307 U.S. 325, 330 (1939) – which verbiage (from the Court) accurately quoted Attorney General Edwards Pierrepont's “letter of advice” in *Steinkauler's Case* – in order to portray an individual's status as being *only* that of a “native-born citizen,” but *nonetheless* eligible to the presidency upon that ground alone. In fact, in *Steinkauler's Case*, the individual's automatic status as a “natural born citizen” – the person being born after the father was naturalized as a U.S. citizen – would have accomplished that anyway. Thus, the individual in *Steinkauler's Case* was in addition to being a native born citizen also a natural born citizen, a fact which the CRS Memo ellipsis erases from the original, genuine opinion in *Elg*.

Stated otherwise, to the extent that the CRS Memo seeks to rely “specifically” on the decision in *Elg* to support its manufactured conclusion, the *only* way it can do so is by omitting from the language of *Elg* the facts which would confirm Steinkauler the younger's status as a natural born citizen.

Thus, through application of the ellipsis, the CRS Memo concocts a result whereby the two concepts – “natural born citizen” and “native born citizen” – are conflated into a single, “one-size-fits-all” theory, and then announces: they are the same. And to seal the deal, the CRS Memo locates a Supreme Court decision addressing the issue, and serendipitously one including a letter of advice from a deceased U.S. Attorney General suiting the needs and quoted in the decision, then simply excises through ellipsis – who on Earth would ever notice? – language in the decision which undercuts the desired conclusion. And, *voilà!*, Barack Hussein Obama is a natural born Citizen eligible to be president. Case closed.

Ummm...wait a second. If all of this was so clear from Blackstone, *Wong Kim Ark* and the Fourteenth Amendment...why did the April 3, 2009 CRS Memo find it necessary to indulge in the use of the ellipsis in the first place?

And while not discussed in the original three P&E essays, why did not the CRS Memos address the U.S. Supreme Court decision in *Minor v. Happersett*, 88 U.S. 162 (1874)? There, as correctly noted in the Tonchen Primer cited above, the Supreme Court defined two classes of persons, one class consisting of persons born in the United States of parents both of whom are U.S. citizens (consistent with § 212 of de Vattel's *Law of Nations*) and a second class consisting of all other persons born on U.S. soil (*i.e.*, those born in the U.S. of parents one or both of whom may not be U.S. citizens). Members of the first class are definitely, without doubt, U.S. citizens by birth and, under § 212 of *Law of Nations*, thus "natural born citizens." But there were doubts as to whether members of the second class were U.S. citizens.

Quoting from the Court's opinion in *Happersett*, 88 U.S. at 167-168:

The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that *all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens*, as distinguished from aliens or foreigners. *Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents.* As to this class there have been doubts, *but never as to the first.*" (Emphasis added).

From the Court's wording in *Happersett*, therefore, it is apparent that the term "natural born citizen" is properly applied *only* to members of the first class, and not the second. And yet, by conflating and merging the two concepts to reverse-engineer the result sought, the CRS Memo stands not only the *Elg* decision on its head, it completely disregards the earlier decision in *Happersett* as if it did not even exist.

Indeed, given the conclusion articulated in *Happersett*, perhaps this explains why neither of the CRS Memos dated April 3, 2009 and March 18, 2010, respectively, both purporting to be authored by Jack Maskell (and discussed in the original P&E DeMaio essays) cites, much less discusses, the case. Much like the decision to avoid mentioning or discussing de Vattel, Mr. Maskell would prefer to ignore *Happersett*, since it conflicts with the "modified" ruling of *Elg* produced in his April 3, 2009 CRS Memo.

It is also interesting to note that one of the attorneys active in the Obama "eligibility arena," one Leo Donofrio, states on his website that, much like Mr. Maskell's "*Elg* ellipsis," there seems to be a movement afoot at certain other websites to actually scrub from other U.S. Supreme Court decisions which have favorably cited *Happersett* any reference therein to the case's discussion of "natural born citizens" altogether. It is Mr. Donofrio's contention that one website in particular – "Justia.com" – has actively excised from at least two U.S. Supreme Court decisions (*i.e.*, *Boyd v. Nebraska, ex rel. Thayer*, 143 U.S. 135 (1892) and *Pope v. Williams*, 193 U. S. 621 (1904)) any references to that

part of *Happersett* [above-quoted](#), leaving intact reference to *Happersett* as to issues unrelated to the citizenship question.

Against this backdrop, one might well ask: what is the chan article's explanation for the "*Elg* ellipsis" found in the April 3, 2009 CRS Memo? The answer: zip.

That's right. Zilch. Zero. Nada.

Taking a cue from Mr. Maskell, nolu chan offers no explanation *whatsoever* for the ellipsis. Indeed, once one gets past the chan post's erroneous attributions, run-on sentences and reliance on sandlot lexicon, the closest the article comes to addressing the issue is in a quote coming not from DeMaio, but from the P&E editor merely reciting what the prior DeMaio essay had demonstrated, *i.e.*, that the "strategically placed" ellipsis altered the purported meaning of the Supreme Court's actual opinion in *Elg* to make it appear that the Court was recognizing that one who was *only* a native-born citizen was eligible to the presidency as if he were a natural born citizen *because the two were purportedly the same*. Memo to chan: they are *not* the same and the Supreme Court has *not* otherwise held, Mr. Maskell's now exposed, botched linguistic surgery notwithstanding.

Furthermore, chan offers no explanation at all – rational or otherwise – purporting to detail the basis or legitimate need for Mr. Maskell (and/or whoever else participated in the procedure) to slice away from the *Elg* opinion words which radically change the impression being left with readers. As noted in the original DeMaio P&E essays, if Mr. Maskell, or members of the CRS management hierarchy or even Chris Mathews or George Soros can offer an explanation, that action should be undertaken now. If chan has an explanation, that should be disclosed now.

And if any of them can explain why [2 U.S.C. § 166\(d\)\(1\)](#) (mandating that the CRS perform its work "without partisan bias") and/or 18 U.S.C. § 1001 (criminalizing the acts of knowingly and willfully making material false, fictitious or fraudulent statements or representations, including false writings or documents knowing that the same contain any materially false, fictitious or fraudulent statements or entries) have not been violated, they should speak now. Not tomorrow or next week or next general election. Now. But, to quote the title of the DeMaio P&E essay posted on Independence Day, July 4, 2011: "The Silence is Deafening."

Indeed, the underlying premise of both the April 3, 2009 and March 18, 2010 CRS Memos, as well as that of the chan article, is that since, purportedly, Mr. Obama has disclosed on the Internet images of what are claimed to be his "short form" birth certificate (in 2008) as well as his newly-acquired "long form" birth certificate (in 2011), showing a birth in Honolulu, Hawaii, the matter has thus been resolved. Being born in Hawaii, rendering him a "native born citizen" under the Fourteenth Amendment and the decision in *United States v. Wong Kim Ark*, means that no further inquiry is required... or, in chan's view, allowed.

Stated otherwise, chan and Maskell seem plainly to be contending that, the legal requirements of the “best evidence rule” aside, the images posted on the Internet are all that should be needed to silence the non-believers. They chant in unison: “Ignore those heretics behind the curtain... the Emperor *does too* have clothes!!”

In fact, unless otherwise rationally explained, the use of the ellipsis in the April 3, 2009 CRS Memo is both disingenuous and constitutes an event of outright misrepresentation. Had the deceit been practiced on a court of law, as opposed to having been inflicted on 535 members of Congress, it would have been no different than the ellipsis caught and condemned by the court in *BaliJewel, Inc. v. John Hardy, Ltd.*, 2008 WL 4425886 (N.D. Ill., Sept. 24, 2008). There, the court stated:

Moreover, BaliJewel is disingenuous, to the point of outright misrepresentation, when it further cites *Pickens-Kane Moving and Storage Co. v. International Brotherhood of Teamsters, Local Union 705* in support of its contention that there is a federal common law cause of action for tortious interference with business relations. No. 98 C 4683, [1999 WL 89649, at *1](#) (N.D. Ill. Feb 12, 1999). According to the court in *Pickens-Kane*: “An action for tortious interference with a labor contract may be brought under the federal common law.” [1999 WL 89649, at *3](#) (citing *Wilkes-Barre Publishing Co. v. Newspaper Guild of Wilkes-Barre, Local 120*, 647 F.3d 372, 381 (3rd Cir.1981)). In its response brief, *BaliJewel* conveniently deletes the words “with a labor contract” with an ellipsis; however, it is precisely those words that define the ambit of such a cause of action.” (Emphasis added).

Not surprisingly, the court ruled against BaliJewel, Inc. and granted the motions to dismiss of the defendant, John Hardy, Ltd. On the other hand – and most disappointingly – 535 members of Congress, a somnambulant mainstream media and those in a position to explain why the linguistic lobotomizing of a United States Supreme Court opinion has been allowed to take place.... remain mute. chan says the “dog won’t hunt” while Congress and the MSM say: “Leave sleeping dogs lie.” Sad. Very sad.

Perhaps a better way to communicate the nonsensical nature of the arguments being generated in support of Obama’s eligibility, and *à propos* the “be-all-end-all” reliance of Mr. Obama’s sycophants on the pictures and images of his claimed “birth certificates” on the Internet, would be to direct attention to the paintings of a Belgian surrealist artist, René François Ghislain Magritte. Magritte’s works have been [described](#) as consisting of “...a number of witty and thought-provoking images...” and that “... [h]is work challenges observers’ preconditioned perceptions of reality.”



One of Magritte's most famous paintings – begun in 1928 and completed in 1929 and now on display in the Los Angeles County Museum of Art – [depicts](#) a pipe with a brown bowl and brown/black stem split by a gold or brass connector ring. Beneath the graphic are the words “Ceci n’est pas une pipe.” Even the Founding Fathers, being classically-educated individuals familiar with various languages, including both English and French, and thus able to read and understand other works in French – such as, say, *The Law of Nations* – would have been able to understand the translation: “This is not a pipe.”

True... it is *not* a pipe. As Magritte is reported to have observed when discussing the painting with others: “Of course it is not a pipe; just try filling it with tobacco.” It is a *picture* of a pipe.

And so too it is (or should be) that a *picture* of a birth certificate is not a birth certificate. The best evidence of the birth certificate claimed to document and prove the nativity of an individual – including putative presidents of the United States – is the original, hard copy of the birth certificate created at the time of the actual birth and *not* an image claiming to be the “real thing” posted on the Internet. To draw upon the analogy used in one of the prior DeMaio P&E essays, just try to go get a passport by showing the clerk or officer in charge an image of your birth certificate (even an image of an *authentic* birth certificate) displayed on your iPhone or iPad. Then again, given this regime’s attitude toward border security, who knows? Nothing ventured, nothing gained.

And, by the way, the actual title of Magritte’s work was not “This is not a Pipe.” Rather, the title he gave to the painting was “*La Trahison des Images*” or, for those not fluent in French: “The Treachery of Images.” Ironic, no?

So, Mr. DeMaio awaits with anticipation nolu chan’s (and/or Jack Maskell’s or anyone else’s) response disclosing, finally, (a) the reasons for the “*Elg* ellipsis;” (b) why [2 U.S.C. § 166\(d\)\(1\)](#) and 18 [U.S.C. § 1001](#) [have not been violated; and \(c\)](#) why the picture or image of a birth certificate is, in fact, the birth certificate itself. Talk about treachery.

And please, limit the invective, as it is getting really old.