Of Neologisms, End-Around Runs and Gorillas: The Congressional Research Service 2016 Report on Presidential Eligibility

"NOT WHAT THE FOUNDERS INTENDED"

by Joseph DeMaio, ©2016

(Apr. 2, 2016) — **Introduction**

With eerily increasing regularity, the Congressional Research Service ("CRS") has produced yet another in its continuing periodic series of "products" (*i.e.*, research memoranda and reports) calculated to convince the Congress, the judiciary, the U.S. electorate and the world at large that just about anyone who happens to be born in the United States – and even if born outside the United States to at least one "citizen" parent – is a "natural born Citizen" otherwise eligible to serve as its president.

Specifically, on January 11, 2016, over the signature of one Jack Maskell, a CRS senior legislative attorney, the CRS released this product: http://www.scribd.com/doc/295707413/New-CRS-Memo-re-Qualifications-for-President-and-the-Natural-Born-Citizenship-Eligibility-Requirement-Congressional-Research-Service-R42097-2016. References to 2016 CRS Report R42097-2016 will hereafter be shorthand signaled thusly: "2016 CRSR at **."

Beware, P&E reader, because what follows is lengthy, convoluted and complicated. Yet for patriots interested in why the Constitution's "natural born Citizen" clause exists – and more importantly, how its original intent has been reverse-engineered and morphed into a concept which would be unrecognizable to the Founding Fathers – find a comfortable chair, grab some coffee or heavily-caffeinated beverages and continue reading.

As recently noted here, the current Usurper-in-Chief ("UIC") acknowledges that "Americans are hungry for the truth," but complains that it is "hard to find." Memo to

the UIC: the truth is only "hard to find" when it is suppressed or deceitfully and deliberately hidden. Or deleted from a computer server.

This P&E submission will seek briefly to summarize the material issues against the backdrop of, once again, this new CRS Report seeking to persuade a feckless Congress (not a difficult task), an insouciant judiciary (slightly more difficult) and a deeply sycophantic mainstream media (dirt-simple) into believing that, for but one example, Texas Senator Ted Cruz is constitutionally eligible to serve as president. Naturally, the report continues to "validate" the eligibility of the current occupant of the White House. No surprise there.

However, unlike Pravda on the Hudson (aka, the New York Times), media giants like Chris Matthews or leftist law professors – whose hypocrisies and "intellectual" ruminations shift hourly with the political winds – the analysis you are now reading will proceed on the same track as it did in 2008, when it was applied to the nation's current UIC.

In this regard, esteemed former luminaries in the Justice Department's Office of the Solicitor General have also recently opined in an article entitled "On The Meaning of 'Natural Born Citizen'" that, because the Constitution is – to use their words, "refreshingly clear" on the question of who is, and who is not, a "natural born citizen" for Art. 2, § 1, Cl. 5 eligibility purposes – Senator Cruz is constitutionally eligible. *See* 128 Harv. L. Rev. F. 161, 167 (2015). Remarkably, prefacing their "refreshingly clear" contention, Messrs. Paul Clement and Neal Katyal address those who would differ with their conclusion thusly, *id.*: "The less time spent dealing with specious objections to candidate eligibility, the better."

"Specious?" Seriously? Next thing you know, they'll be pressing for criminal prosecutions of "eligibility deniers."

The authors of the article published in the Harvard Law Review Forum periodical (not to be confused with the prestigious Harvard Law Review *Journal*) assert (128 Harv. L. Rev. F. 161 at 166): "Despite the happenstance of a birth across the border [in Calgary, Alberta, Canada], there is no question that Senator Cruz has been a citizen from birth and is thus a "natural born Citizen" within the meaning of the Constitution." There are several counterarguments, as noted here, here and here.

In addition, the following analysis will highlight only the most obvious and egregious deceptions of the 2016 CRSR, since a complete and thorough dissection of the report would make this post five times as long and cause it to stretch out to mid-summer… of 2017.

Parenthetically, that extended analysis would need to include a review the *114 ellipsis omissions* and *85 bracketed textual additions* scattered throughout the document to determine their substantive impact on the overall desired narrative of the document. A

cursory review of a selected few of these anomalies reveals that some are neutral, but others are quite substantive, and several are deceptively so.

In this regard, P&E readers should keep in mind the Latin term "*falsus in uno, falsus in omnibus,*" translating as "false in one thing, false in all things." A document which is so fraught with errors and deception cannot be seen as trustworthy or as representing a true analysis of a subject. The Latin term is not altogether irrelevant when reading the 2016 CRSR.

In summary, there are many moving parts to the issues, some more easily addressed than others. However, until the U.S. Supreme Court gins up the backbone to take jurisdiction in a live "case or controversy," thereby abandoning its cowardly and reckless prior history of "evading the issue," the question of whether the 2016 CRSR has arrived at the "correct" conclusion, or whether it constitutes just another in the series of result-oriented "products" coming out of the repository of "the nation's best thinking," will remain unanswered.

To be clear, the issues at hand are neither "refreshingly clear" nor "specious." We are, after all, only discussing whether the Republic will persist as originally intended or devolve into something quite different from that which the Founders designed. And, by the way, if faithful P&E readers can detect flaws and errors in the following analysis, please bring them to the attention of your servant as well as to that of the intrepid P&E editor.

Finally, be advised that, literally, the day this post was submitted to the P&E editor for review, it was announced that the Pennsylvania Supreme Court had affirmed (in a *per curiam* decision) the lower court opinion and decision in *Carmon Elliott v. Ted Cruz*, Pennsylvania Commonwealth Court No. 77 M.D. 2016.

In that matter, it was held that, based on a variety of authorities – including the 2016 CRSR and the Clement/Katyal commentary, both of which are hereinafter analyzed – "… because he was a citizen of the United States from birth, Ted Cruz is eligible to serve as President of the United States, and the objection filed by Carmen [*sic*] Elliott to the Nomination Petition of Ted Cruz is denied."

Respectfully, as the ensuing discussion will hopefully reveal, the lower court's opinion may be incorrect and the affirming on appeal may also be incorrect. With due deference to all inferior state and federal appellate courts, including Pennsylvania's, until the Supreme Court itself accepts jurisdiction over a ripe "case or controversy" involving the

presidential eligibility issue and renders a binding decision, the issue of Senator Cruz's eligibility will remain debatable.

In this regard, your faithful servant has begun the draft of yet another P&E post addressing the above-referenced Pennsylvania decisions and hopes to have a submission ready later this month.

Returning, therefore, to the 2016 CRSR, are we ready? Let us begin.

Background and Personal Views

As a preliminary point, understand that your humble servant believes that no one – from the president on down to the homeless person asking for change at the freeway off-ramp – should stand above the law. The laws can be tailored to make exceptions from their coverage, but no one can be seen to be immune from the application of generally-applicable laws. Otherwise, laws don't matter, a state of affairs which, lamentably, we are now quickly approaching.

As for our federal government, it is rapidly becoming (if not already there) the exact opposite of what the Founding Fathers envisioned: the servant of the people. Instead, it is metastasizing into a *de facto* monarchy, headed up by a chief executive who places fundraisers and tee-times ahead of honoring the nation and its Constitution. Sound-bites delivered by teleprompter are hardly presidential.

And when the body supposedly representing the people – the Congress – repeatedly abandons its promises, it should come as no surprise that calls for a complete housecleaning grow louder. Nor does it help to have an insouciant Supreme Court with no time or courage to address the presidential eligibility issue but finds plenty of time to contort the word "penalty" into the word "tax" in order to reverse-engineer a predetermined desired result.

On the other hand, the UIC has definitely kept his core promise: to fundamentally change America. That is akin to saying that the Little Boy and Fat Man fundamentally changed Hiroshima and Nagasaki. Those cities, although destroyed by war, ultimately recovered and survived. So, too, can America recover and survive the trauma of the current usurpation if it can summon the will and principle to do so.

When a government intrudes into the lives of its citizens by telling them how much water they can use to flush their commodes and prescribes how many holes must be cut into slices of cheese to qualify it as "Swiss" cheese, you know something is wrong. Very wrong.

Part of our government includes the Library of Congress. One of the divisions of the Library of Congress is the Congressional Research Service ("CRS"). Quoting from its website: "[The] CRS is well-known for analysis that is authoritative, confidential, objective and nonpartisan. Its highest priority is to ensure that Congress has 24/7 access to the nation's best thinking." Respectfully, that is not universally true, a fact most evident in its reports and memoranda regarding the issue of eligibility to the presidency shortly to be discussed here.

Specifically, the core argument being repeatedly advanced in the CRS products on the issue – with selected variations on the theme as needed depending on the political affiliation of the candidate being scrutinized – is that despite credible evidence to the contrary, the Founding Fathers intended in 1787 that, forevermore in this nation, if a person is merely born here, for example, to foreign non-diplomatic, non-hostile military aliens present in this country – lawfully or not and regardless of his race, religion or political philosophies – or born to at least one citizen parent abroad, the foreign national citizenship status of the other parent aside, that person would be a "natural born Citizen" under Art. 2, § 1, Cl. 5 of the Constitution, the so-called "Eligibility Clause." *See* 2016 CRSR at "Summary." Thus, claims the 2016 CRSR (and its predecessors), that person would be, purportedly, eligible to the presidency.

Respectfully, that is a completely absurd proposition. Moreover, it is a dangerous proposition. For proof of its absurdity and menace, one need look no farther than the serial catastrophes that have befallen the nation over the last seven years of usurpation of the office by its current occupant, facilitated and defended by prior "products" produced by the CRS.

He bows to foreign heads of state, particularly ones from Muslim and Arab nations; the "sweetest sound" he knows is not "The Star Spangled Banner," "God Bless America" or even "Born in the USA"…, oh, wait, that might not fit…, but instead is that of the Muslim call to prayer; he frees Islamist terrorists from Guantanamo, who promptly return to the battlefield to kill Americans; he invites terrorists and other sworn enemies of America to White House dinners; he enters into nuclear "containment agreements" with rogue nations as they chant "death to America" in their streets; he denigrates the United States at the United Nations headquarters in New York, mere blocks from the site of the World Trade Center attacks; he saddles future generations of children with monumentally crushing debt that they will never be able to pay, turning them into perpetual tax slaves; he frolics with Communists at baseball games;) he tangoes in Argentina while Islamist savages detonate suicide bombs in airports, sever Christian heads and machine-gun cartoonists; he orders the censoring of the President of France's references to "Islamist terrorism" on video of his speech posted on the White House website; etc., etc. etc.

Ask yourself this: are these the acts of someone possessed of absolute, undivided allegiance to the United States, its people and its Constitution? You get the picture: so many outrages, so little time. Stated otherwise, he is an abject, classless, disgraceful stain on the office and living proof that the Founders were correct in seeking to restrict the presidency to only a "natural born Citizen." They would be first horrified at what has happened to the nation under his reign of deceit and dissembling, and then deeply saddened. He should never have been elected to the office in the first place, and he should be immediately impeached and removed from the office. That, of course, will not happen.

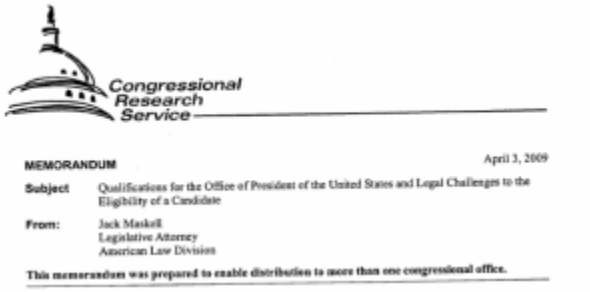
Under principles which guided the Founders and as articulated by Emmerich de Vattel in § 212 of his tome, "The Law of Nations," the current occupant of the office cannot properly be considered a "natural born Citizen" as the term was intended to be understood in Art. 2, § 1, Cl. 5 of the Constitution. And yet the electorate elevated him to the highest office in the land. Not once. Twice. One is compelled to ask: "What on Earth were we thinking?"

In addition, even as another spring arrives, the bitter, bottomless hypocrisy of the left is in full bloom. Pravda on the Hudson has discovered that perhaps because there is a GOP candidate who might be constitutionally ineligible – as opposed to the usurper now at 1600 Pennsylvania Avenue, when he is not on some golf course in Hawaii or hobnobbing with Communists on their Caribbean turf – the issue should be addressed by the judicial branch.

Harvard law professors, awakened by the potential for a Republican president with less-than-clear constitutional eligibility, slither out of their teak-paneled classrooms to opine that someone who was not born here, regardless of parentage, might in fact not be constitutionally eligible. Where, pray tell, were these Einsteins in 2008? Oh, wait… that's right. They were getting ready to vote for the guy from "Hawaii."

To be clear, while none of the current candidates is perfect, Senator Ted Cruz is probably the most well-qualified candidate presently running for the office among the entire remaining field of candidates from either political party, assuming one still believes that the socialist masquerading as a "Democrat" counts. A President Cruz would likely prove to be entirely capable of well and faithfully adhering to the Constitution and skillfully discharging the duties of the office. Then again, so would a President Trump. In any event, either man would be parsecs ahead of their competitors from across the aisle. To quote one of the candidates: "Believe me."

But being "skilled" and "qualified" for a position is not the same as being "eligible" to the position. This is a point sought to be obfuscated throughout the series of CRS products, including the most recent 2016 CRSR.



Congressional Research Service

MEMORANDUM April 3, 2009

Subject: Qualifications for the Office of President of the United States and Legal Challenges to the Eligibility of a Candidate

From: Jack Maskell
Legislative Attorney
American Law Division

This memorandum was prepared to enable distribution to more than one congressional office.

The primary architect of the CRS narrative, Jack Maskell, has produced no less than four (4) articles on the issue over the past seven years: in 2009; in 2010; in 2011; and now, on January 11, 2016.

Under the CRS theory – and until the U.S. Supreme Court hands down a definitive ruling on the issue, it will remain merely a theory – if, for example, Osama bin Laden had been born in Honolulu, Hawaii at, say, the Kapi'olani Maternity and Gynecological Hospital to his Saudi national parents – Mohammed bin Awad bin Laden and his tenth wife, Hamida al-Attas – while they were vacationing in Hawaii in 1957, he would have been, under the CRS reports at issue, a "natural born Citizen" otherwise eligible to serve as president of the United States.

Really?

Respectfully, such a position turns the Constitution on its head; disregards the original intent and meaning ascribed by the Founders to the term "natural born Citizen;" ignores the principles set out in The Federalist regarding the Founders' goal of absolutely preventing, and not merely hindering, "foreign influence" in the presidency; is contrary to the few decisions of the U.S. Supreme Court even tangentially addressing the issue; and, cutting to the chase, is just silly.

And yet, as the Third Reich's Minister of Propaganda Josef Goebbels noted: "If you tell a lie big enough and keep repeating it, people will eventually come to believe it. The lie can be maintained only for such time as the State can shield the people from the political,

economic and/or military consequences of the lie. It thus becomes vitally important for the State to use all of its powers to repress dissent, for the truth is the mortal enemy of the lie, and thus by extension, *the truth is the greatest enemy of the State*." (Emphasis added).

When Benjamin Franklin left the Constitutional Convention at its conclusion in 1787, he was asked by a woman: "Well, Doctor, what do we have – a Republic or a Monarchy?" Franklin replied: "A Republic, if you can keep it."

From all appearances, we are well on our way to losing the Republic that the Founders created. The critical question is: can that trajectory be halted and reversed? Both GOP candidates Cruz and Trump think it can; their opponents are doing everything possible to accelerate its continued downfall and descent into socialism…. or worse.

Finally, before turning to a semi-detailed review of the January 11, 2016 CRS Report, your faithful servant wishes to offer thanks to two people without whose dedication and courage the analysis would never have taken place. First, kudos to the intrepid, tenacious and fearless editor of The P&E, Sharon Rondeau. Second, thanks and acknowledgments are owed to Stephen Tonchen, for without his "Presidential Eligibility Tutorial," your servant's task would have been far more arduous. And for anyone seeking more information on the topic (and without the sarcasm) than produced here, go read that tutorial.

Let us now turn, therefore, to the January 11, 2016 CRS Report itself.

The Deceptions Begin With The Title

The title of the January 11, 2016 CRS Report is "Qualifications for President and the 'Natural Born' Citizenship Eligibility Requirement." To begin with, the terms "qualifications" and "eligibility" are not synonyms. One can be eminently "qualified" for a job, and yet still be "ineligible."

By way of analogy, a highly-skilled NFL football player may be extraordinarily "qualified" by virtue of speed, dexterity and physical abilities to catch long passes. But if the referee throws a penalty flag for "*ineligible* receiver downfield," the play will be nullified, even if the pass is caught. The same principle applies to the presidency: one who is ineligible to the presidency, yet nonetheless occupies the office illegitimately through usurpation, is subject to the penalty of impeachment and removal. It is that simple.

In addition, and as noted here, there is no such thing as "natural born citizenship" under the Constitution. Indeed, the word "citizenship" appears nowhere *at all* in the Constitution. Nor does the term appear in any of the 27 Amendments. Stated otherwise, within the 2016 CRSR, the term "natural born citizenship" is a neologism. The dictionary defines a neologism as "1. A new word, usage or expression…" and, in the realm of psychology, "2. A new word that is coined especially by a person affected with schizophrenia and is *meaningless except to the coiner*."

The 2016 CRSR, on the other hand, uses the neologism "natural born citizenship" seven (7) times, frequently seeking to conflate and equate it with the decidedly different term "natural born Citizen" as it appears in Art. 2, § 1, Cl. 5 of the Constitution. Under that ruse, it is more easily argued that if one merely enjoys U.S. "citizenship at birth" or "citizenship by birth," – other than "naturalized" citizenship – one is to be considered a "natural born Citizen" for presidential eligibility purposes. Not so fast.

The operative words in Art. 2, § 1, Cl. 5 of the Constitution are "natural born Citizen," not "natural born citizenship," as a casual reading of the 2016 CRSR might suggest. While United States "natural born citizens," "native born citizens" and "naturalized citizens" all enjoy "citizenship" in this nation, the Constitution and the Founders distinguished each of the three terms and ascribed to them decidedly different meanings and, specifically, restricted eligibility to the presidency to a "natural born Citizen" alone. The 2016 CRSR seeks to obliterate those distinctions and create a "one-size-fits-all" definition of who is eligible to the presidency, regardless of what the Founders intended.

In the "Summary" section of the 2016 Report (2016 CRSR at i), for example, it is asserted that numerous lower court decisions have "validated" the notion that the "term 'natural born' citizen is one who is entitled to U.S. citizenship 'by birth' or 'at birth.'"

The Report then boldly (but erroneously) claims: "This would include those born 'in' the United States and under its jurisdiction (*i.e.,* 'native' born), even those born to alien parents; those born abroad to U.S. citizen-parents; or those born in other situations meeting legal requirements for U.S. citizenship 'at birth.'"

Despite these linguistic shenanigans, the 2016 CRSR Summary correctly notes: "There is no Supreme Court case which has ruled specifically on a challenge to one's eligibility to be President (although several cases have addressed the term 'natural born citizen')…." That is why it is critically important that at some point in time, the Supreme Court *must* accept such a case and render a definitive decision rather than continue to "evade the issue." Otherwise, the continuing confusion over the question will only make matters worse. And it does not help that the CRS continues to produce documents such as the 2016 CRSR which alter the words of Supreme Court decisions, misinterpret those same decisions and proffer something less than "the rest of the story" in the overall analysis.

The linguistic deception continues in the report's table of contents, where it refers to Art. 2, § 1, Cl. 5 of the Constitution as the "Qualifications Clause," utilizing capital letters in an effort to elevate the term into something more than it is, which is to say, something other than a figment of Mr. Maskell's imagination. There is no such thing as a "Qualifications Clause" in the Constitution. Period.

Words are important. It is lamentable that the 2016 CRS uses them so carelessly. On the other hand, it is one thing to be careless, which is mere negligence. It is quite another to harbor intentionally deceptive motives.

Plainly, by seeming intentionally to conflate the concept of a "natural born Citizen" as used in Art. 2, § 1, Cl. 5 with the concept of "citizenship" – again, a term that is not used anywhere in the Constitution, even as amended – and attempting to morph the Art. 2, 1, Cl. 5 "natural born citizen" or "Eligibility Clause" into a nonexistent "Qualifications Clause" – which again appears nowhere in the Constitution – the 2016 CRSR suggests, for example, that case-law decisions addressing "citizenship" issues would have direct applicability to how the words should be interpreted under Art. 2, § 1, Cl. 5. If the terms "natural born citizenship" and "natural born Citizen" are synonyms, then to state (and rule) on one is, purportedly, to state and rule on the other. That is not what the Founders intended and it is not what the Constitution provides.

The 1790 and 1795 Naturalization Acts

In support of its argument that even if one is born "beyond sea" or outside the geographic boundaries of the United States to parents at least one of whom is, at the time of birth, a U.S. citizen, the 2016 CRSR also discusses the import of one of the first pieces of legislation passed by the Congress following ratification of the Constitution. Specifically, in 1790, Congress enacted "An Act to establish an uniform Rule of Naturalization," 1 Stat. 103.

As a prefatory matter, note that the title of 1 Stat. 103 – "An Act to establish an uniform Rule of *Naturalization*" (emphasis added) confirms that the statute following the title deals *only* with the naturalization of persons. Where the title of an act and the text of the act are clear, reference to the title in determining legislative intent is proper. *See*, *e.g.*, *Lapina v. Williams*, 232 U.S. 78 (1914). Moreover, even without that rule, plainly, Congress possesses no authority whatsoever to alter or amend the Constitution by enacting an inconsistent or contrary statute. Indeed, that is how the term "unconstitutional" came into being. *Cf. Marbury v. Madison,* 5 U.S. 137 (1803).

In addition, because the statute dealt with the naturalization of aliens, it is plain that Congress would be empowered to "naturalize" only someone who was already something ***other*** than a natural born citizen. Stated otherwise, Congress cannot by a "naturalization" statute bestow citizenship upon those who are already natural born citizens, nor can it convert an alien by the naturalization process into something other than a "naturalized citizen."

Even the 2016 CRSR acknowledges that a "naturalized citizen" is not eligible to the presidency, noting that "[w]hatever the term 'natural born' means [*ed.*: you mean… there could be questions…?], it no doubt *does not include a person who is naturalized*." (Emphasis added). *See* 2016 CRSR at 4 text and fn. 14. The Supreme Court confirms this reality. *See, e.g., Rogers v. Bellei*, 401 U.S. 815 (1971); *Schneider v. Rusk*, 377 U.S. 163 (1963).

In this regard, the Supreme Court's decision in the *Schneider* case is instructive. Two points emanate from the Court's holding, points ignored – as usual – in the 2016 CRS Report. First, the Court confines its discussion of the term "citizenship" to those persons who are either "native born" or "naturalized," and confirms that, as to the smaller subset of native-born citizens who are also "natural-born citizens," "… *only* the 'natural born' citizen is eligible to be President." (Emphasis added). *Schneider,* 377 U.S. at 165. Even Mr. Maskell concedes that the naturalized citizen is ineligible to be president, but seeks to redefine, through misleading language, misquoted decisional authority and ellipsis omissions, what it takes to be a "natural born Citizen" for constitutional eligibility purposes.

Second, the Court in *Schneider* confirms that the narrowly circumscribed power of the Congress "… is to prescribe a uniform rule of naturalization, *and the exercise of this power exhausts it, so far as respects the individual."* (Emphasis added). *Id.* at 166. Stated otherwise, the power of the Congress to act *at all* is confined *exclusively* to matters of naturalization and the concomitant citizenship status of persons affected thereby.

Once Congress acts in that restricted area, its power is *exhausted* and cannot by any mechanism other than a constitutional amendment invade the structural integrity of the Constitution with respect to the *Founders'* intent – as opposed to the intent of the Congressional Research Service or law professors – regarding who was, as well as who was *not***,** to be considered eligible to the presidency as a "natural born Citizen."

Since many of the members of the first Congress were also participants in the recently-drafted Constitution, their actions with regard to legislation passed in close proximity to the adoption of that document would, purportedly, shed additional light on their intent with regard to the term "natural born Citizen." In 1 Stat. 103, which dealt exclusively with "naturalization," Congress included the following language addressing the citizenship status of children born to U.S. citizen parents abroad: "And 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…."

Under that language, so argues the 2016 CRSR (*see* CRSR at 3), the Congress in closest proximity in time to the drafting, adoption and ratification of the Constitution, including Art 2, § 1, Cl. 5, was articulating a rule purporting to ratify the conclusion that "… the most logical inferences would indicate that the phrase "natural born Citizen" would mean a person who is entitled to U.S. citizenship 'by birth' or 'at birth.'" Note the Report's use of the capitalized "C" in the word "Citizen," as it appears in Art. 2, § 1, Cl. 5, rather than as it appears without a capitalized "c" in 1 Stat. 103.

But wait: there's more.

In 1795, a mere five years after enacting 1 Stat. 103, Congress repealed that law in its entirety and re-enacted a new "Act to establish an [*sic*: so in original] uniform rule of Naturalization; and to repeal the act heretofore passed on that subject." In the new act, 1 Stat. 414, the language relating to children born to U.S. citizen parents beyond the geographic borders was changed to read: "and the children of citizens of the United States, born out of the limits and jurisdiction of the United States, shall be considered as *citizens* of the United States…." (Emphasis added).

Again, take note of the title of the 1795 act: "An Act to establish an uniform rule of *Naturalization*; and to repeal the act heretofore passed on that subject." There is no indication in the title of any intent to *preserve* the "considered as natural born citizens" modifier of the children affected. Instead, there is a clear objective of repealing that provision along with the rest of the prior statute.

Plainly, 1 Stat. 414 eliminated the modifier "natural born" in front of the word "citizen" as it had appeared in the law five years earlier. Stated otherwise, between March 26, 1790, when 1 Stat. 103 became law, and January 29, 1795, when 1 Stat. 414 repealed 1 Stat. 103 and itself became law, the argument that the children of U.S. citizens born

abroad might properly be "considered" as "natural born citizens" was correct. However, after the "natural born" modifier before the word "citizen" in the 1790 act was repealed *and not re-enacted* in the 1795 act, any contention that thereafter the same conclusion that applied under the former law still applied evaporated.

The 2016 CRSR disingenuously explains this chronology thusly (*see* 2016 CRSR at 20, fn. 96): "The 1790 statute was repealed and superseded by a 1795 naturalization statute which omitted the phrase 'natural born.' Act of January 29, 1795, ch. 20, 1 Stat. 414, 415. *There is no legislative history indicating the reason for the deletion of that term*; however, in that statute the phrase 'shall be considered as citizens' referred to the status 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).

Wrong again. Even a first-year law school dropout learns that when a legislating body (such as Congress) changes the language of a statute – as occurred with the 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. The conscious deletion of the modifier "natural born" before the word "citizen" in 1 Stat. 414 plainly shows that, although Congress was still prepared to deem children born abroad to citizen parents to be "citizens" and thereby welcome them into citizenship of the body politic, they were no longer to be considered "natural born citizens."

Stated otherwise, plainly, mere "stylistic" or "grammatical" changes these were ***not.*** The deletion of the modifier was a conscious, 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 since then.

The 1790 law (1 Stat. 103) was the sole statute in the naturalization laws of the nation ever to use the words "natural born citizens," and those words were jettisoned from the law by 1 Stat. 414 a mere five years after they first appeared. The attempt by the 2016 CRSR to resurrect those words from the dead in an attempt to cobble together a rationale for its reasoning is a futile one, but one which remains appealing to those who prefer expediency over principle.
