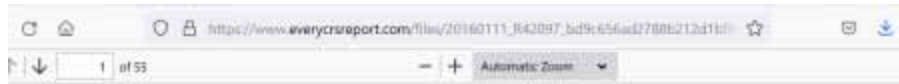


Some Footnote Comments to the “Pure Malarkey” Post

"NAME REDACTED"

by [Joseph DeMaio](#), ©2021



Qualifications for President and the “Natural Born” Citizenship Eligibility Requirement

name redacted
Legislative Attorney

January 11, 2016

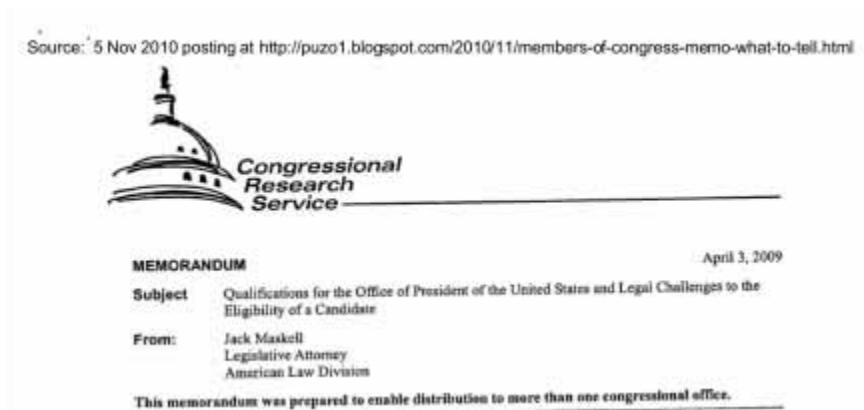
https://www.everycrsreport.com/files/20160111_R42097_bd9c656ad2788b212d1bf045b013728f8ed309ba.pdf

(Jul. 21, 2021) — Periodically, your humble servant submits offerings to the intrepid Editor of The P&E on the topic of constitutional eligibility to the office of the president. This is also known as the “natural born Citizen” issue arising under Art. 2, § 1, Cl. 5.

On occasion, these posts elicit comments from readers, some supporting the assertions and observations in the posts, others opposing them. The comments are frequently spirited and interesting, if sometimes misinformed or poorly researched, confirming once again that the First Amendment is a really good thing.

One recent such [post](#), “A Refresher Course on Pure Malarkey,” has elicited several comments addressing one discrete issue that has bounced around since your servant’s first offerings on the topic back in 2011. That issue involves the alteration by ellipsis of the actual quoted words of a Supreme Court opinion – [Perkins v. Elg](#), 307 U.S. 325 (1939) – by one Jack Maskell, an attorney once employed in the Congressional Research Service (“CRS”).

Specifically, the altered quote is originally set forth in a 2009 research [memorandum](#) intended and “prepared to enable distribution to more than one congressional office.” Rather than unnecessarily reiterate all of the details surrounding the problems with the alteration of the quote, interested readers may wish to examine the facts [here](#) and [here](#) before further reading this post.



<https://www.scribd.com/doc/41131059/CRS-Congressional-Internal-Memo-What-to-Tell-Your-Constituents-Regarding-Obama-Eligibility-Questions>

That examination will supply helpful background information and make the following discussion less confusing. Readers may also find interesting the “correction” (some might deem it “memory holing”) of the ellipsis [here](#).

In the most recent of your servant’s offerings, one commenter in particular, “Wilson,” has taken exception to your servant’s analysis of the *Perkins v. Elg* ellipsis in a series of comments to the “Malarkey” post. Those comments merit responses, generating this offering. Specifically, in the most recent Wilson [comment](#) (7:18 PM, July 20), several claims and assertions are made to which responses and clarifications are needed, so here goes.

Wilson first asserts: “No one disputes the insertion of an ellipsis was intentional. Seeing it as an intent to alter the meaning, on the other hand, is a poorly reasoned conclusion, especially considering the later revision.”

The intentional insertion of an ellipsis was only part of the problem. The other component was the simultaneous deletion of punctuation and language – *i.e.*, “, was naturalized in 1847,” – which altered the meaning of the actual quote from Attorney General Edwards Pierrepont’s analysis of *Steinkauler’s Case* selected and included by the Supreme Court in its original opinion.”

Furthermore, regardless of “intent” – whether good, bad or neutral – the deletion of the words and the addition of the ellipsis had the actual, substantive effect of altering, in the minds of anyone reading the CRS report, the meaning of the quote that the Supreme Court had included in its original opinion. In fact, the ellipsis is a signal to readers that something has been omitted from the quoted source.

A strong majority of readers of the report, most likely including 535 members of Congress, among others (*e.g.*, a president, a vice-president and nine members of the Supreme Court), would blow right past that ellipsis and the deletion it replaced and think nothing more of it. Your humble servant, on the other hand, is always suspicious of the use of an ellipsis, particularly when it appears in a governmental document, and especially one emanating from the repository of – purportedly – “the [nation’s best thinking](#).”

Wilson next asserts: “[I]t would have been dishonest if it [*i.e.*, the CRS] had been aware of the mistake and didn’t correct it.”

Precisely. That assertion assumes that the CRS and its author, Jack Maskell, were, in fact, unaware of the “mistake” prior to 2016, an as yet unconfirmed fact. Since your humble servant’s P&E posts on this topic were widely available online between 2009 and 2016 – and evidence confirms that P&E online site visits have been made from federal IP addresses associated with the Executive Office of the President, the Department of Justice, the FBI and other government agencies – what evidence exists to confirm that the CRS and/or Mr. Maskell were *unaware* of the “mistake” before “correcting” it in 2016? While no direct evidence has yet been discovered directly linking the CRS with a P&E site visit, that does not mean that the CRS knew – or did not know – of the “mistake.”

Wilson then asserts: “And it [*i.e.*, CRS Report [R42097](#)] was republished in 2016 only because there was a renewed interest in the topic due to [Senator Ted] Cruz’s candidacy.”



Qualifications for President and the “Natural Born” Citizenship Eligibility Requirement

Jack Maskell
Legislative Attorney

November 14, 2011

https://www.everycrsreport.com/files/20111114_R42097_4a0b60ed6b82d74f31cd99252e0d1d272eebf4fd.pdf

Really? If that were true, one would then logically expect the report to mention – as it did with regard to Barack Obama, John McCain and George Romney, among others – the name of potential presidential candidate Ted Cruz. A close examination of the report, however, reveals exactly *zero* references to Senator Cruz. Moreover, whereas the 2009 and 2011 versions of the CRS Report prominently bear the name of its author, Jack Maskell, the revised “corrected” 2016 version lists as the author: “[name redacted](#).”

Wilson finally asserts: “Regardless, a single ellipsis in a footnote of a heavily research [*sic*] paper did not detract from the paper’s thesis.”

Had CRS Report R42097, including its prior versions, been closely examined, it would have revealed scores of ellipses scattered throughout each document. More importantly, the critical *Perkins v. Elg* ellipsis – and the 2016 elimination of the ellipsis and restoration of the original omitted text – appears in each and all of the CRS “products” *in substantive, indented, quotation-mark-enclosed text and not in a footnote*. A footnote usually explains or qualifies the substantive text to which it is attached, not the other way around.

Had the ellipsis (or the 2016 “restoration”) been logically and adequately “explained” or “justified” in a footnote from the outset, this discussion would be unnecessary. But because the original deletion and the subsequent restoration were not justified or explained at all, logic and adequacy aside, the present discussion is not only necessary, it is plainly justified.

Accordingly, faithful P&E readers, as we await the Supreme Court’s ruling on the Petition for Reconsideration in *Laity v. Harris*, we also await an explanation for the original (2009) ellipsis in *Perkins v. Elg*; its repetition in 2011; and its erasure restoring the original words in 2016.

The image shows a screenshot of a court case page. At the top, there is a search bar with the text "Search documents in this case" and a "Search" button. Below this, the case number "No. 20-1503" is displayed. The case details include: Title: Robert C. Laity, Petitioner v. Rasmie D. Harris; Decided: April 28, 2021; Level: United States Court of Appeals for the District of Columbia Circuit; Case Number: 20-1503; Decided Date: February 5, 2021; Rehearing (Grant): March 18, 2021.

DATE	PROCEEDINGS AND ORDERS
Apr 18 2021	Petition for a writ of certiorari. (Response due May 28, 2021) Petitioner: Certificate of Writ Court: Appendix Print of Petition
May 07 2021	Writ of right of respondent Harris, Rasmie to respond filed. Main Document
May 11 2021	DISTRIBUTED for Conference of 5/21/2021.

Again, the First Amendment is really cool, don't you think?