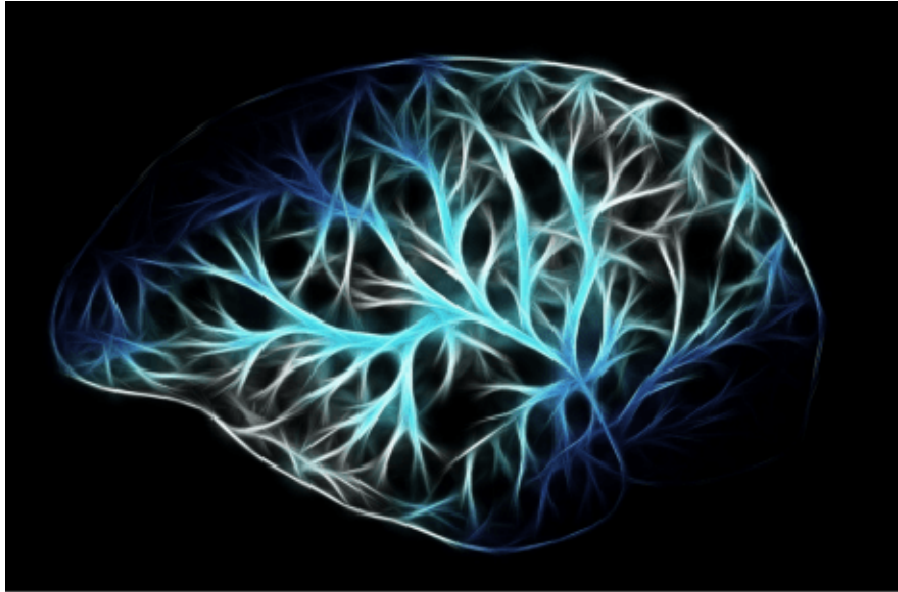


The “ONPS” Disorder

by [Joseph DeMaio](#), ©2024



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(Jan. 25, 2024) — The “Obot Neural Paralysis Syndrome” (for brevity, “ONPS”) continues to spread, despite all efforts to bring it to ground. Forget about Wuhan and the Covid-19 lab leak. The ONPS continues to attack functioning rational brain cells and neural synapses when it comes to the “natural born Citizen” (“nbC”) presidential eligibility issue.

Recently, *The P&E’s* intrepid editor penned a [post](#) addressing the questionable nbC status of Nikki Haley. The post cited the work of one Paul Ingrassia, who has offered useful support for the proposition that Haley may, in fact, be constitutionally-ineligible.

The Editor’s post drew a comment from one Joe Leland addressing language she cited from the Supreme Court’s split 6-2 (Justice McKenna recusing) decision in *United States v. Wong Kim Ark*, (“WKA”) authored by Associate Justice Horace Gray, with him in turn quoting from another prior Supreme Court decision, *Minor v. Happersett* (“*Minor*”).

The Leland comment sought to “explain” Justice Gray’s remarks regarding the decision in *Minor*. The exercise was undertaken seemingly in an effort to shore up the contention that the language of the quote from *Minor* does not really mean what it says, at least according, purportedly, to Justice Gray.

Really?



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

In challenging the reasoning of *The P&E* Editor in the post addressing the eligibility *bona fides* of Nikki Haley, commenter Leland claims that Justice Gray “resolved” certain purported “doubts” in the language of *Minor*. However, apart from whether that claim succeeds, he neglects to note that in the process, Gray created and compounded more serious additional doubts about the factual and legal accuracy – not to mention the precedential value – of his majority opinion in *WKA*.

Specifically, the commenter persists in relying on the 6-2 split *WKA* decision in purported proof that it “settled” the nbC issue regarding presidential eligibility. *WKA* did not; does not; nor will it likely in the future settle the nbC issue, assuming it is not in the meantime overturned or neutered by the Congress.

There are three core reasons for questioning the value of *WKA*, none of which commenter Leland addresses in his latest post, much less explains.

First, as confirmed at the outset in ¶ 3 of Justice Gray’s majority opinion (yes, Virginia, there is a cogent dissent casting substantial doubt on the reasoning of Gray’s opinion), the *sole* question being presented was whether Wong Kim Ark was a 14th Amendment “citizen” of the United States. The case did *not*, in addition, involve whether he or any other person similarly-situated was also an nbC for presidential eligibility purposes. Any contention to the contrary is without solid legal foundation.



Wong Kim Ark, [Wikimedia Commons](#)/National Archives, public domain

Recall that while all nbC's born here are also 14th Amendment citizens, not all 14th Amendment citizens are nbC's. Accordingly, the rest of the *WKA* majority opinion mentioning or discussing cases referencing, directly or tangentially the nbC issue in contexts *other* than the presidency or Wong Kim Ark's status as a 14th Amendment "citizen" is, and remains in totality non-binding and non-precedential *obiter dictum*.

In this regard, as your servant has previously referenced, the Supreme Court has noted that "[d]ictum settles **nothing**, even in the court that utters it." (Emphasis added) See *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 351, n. 12 (2005). And, by the way, the tangential discussion of the nbC issue in *Minor v. Happersett*, quoted by Justice Gray in *WKA*, says what it says. Period.

Moreover, notwithstanding Justice Gray's "spin" on the nbC definition in *Minor* which he quoted in *WKA*, while arguably itself "dictum," the *Minor* Court's observations regarding the definition of an nbC constitute "*judicial dictum*" rather than "*obiter dictum*" and thus carry precedential weight in lower courts. This aspect is discussed [here](#).

Second, the Leland comment ignores the patent blunder – assuming, of course, that it was merely an unintended or negligent act rather than purposeful – where Justice Gray misinforms everyone who might read his majority opinion (at ¶ 42) that the 1790 Naturalization Act, 1 Stat. 103, was "re-enacted, in the same words..." in 1795. 1 Stat. 103 stated that children born "beyond sea" to U.S. citizen parents were to be "considered" as natural born citizens. That is manifestly wrong and at minimum, pure misinformation.

In reality, in 1795, Congress – likely realizing that it could not by a statute alter the nbC definition the Founders had adopted and engrafted into Art. 2, § 1, Cl. 5 of the Constitution – enacted 1 Stat. 414. That statute **repealed** the "considered as natural born

citizens” language of the prior law. Memo to Justice Gray (actually, his progeny) and his present-day acolytes: “repealed” is *not* a synonym for “re-enacted, in the same words.” This significant anomaly is addressed [here](#).

Third, and finally, the commenter ignores the flat-out butchering and misrepresentations of the Congressional Research Service (“[CRS](#)”) – the purported repository of the “nation’s best thinking” – in addressing the words of the *WKA* dissenters.

Specifically, in CRS Report [R42097-2016](#), dated Nov. 11, 2016, the CRS author (likely one Jack Maskell, although his name is since redacted) asserts at p. 47, footnote 215:

“Note that the *dissent in Wong Kim Ark stated* that under the majority’s *controlling decision*, a child born to alien parents in the United States ‘whether of the Mongolian, Malay or other race, were eligible to the Presidency ...’ 169 U.S. at 715 (Fuller, C.J. and Harlan, J. dissenting).” (Emphasis added)



The Congressional Research Service (CRS) works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for more than a century.

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.

<https://www.loc.gov/crsinfo/>

That is a reprehensible falsehood that eviscerates the CRS claim that it is where the “nation’s best thinking” can be found. Instead, that footnote represents one of the worst examples of linguistic chicanery and deceit since the “Elg Ellipsis” revealed and discussed [here](#).

After relating some of the history of the Constitutional Convention’s discussion of the term “natural born citizen,” here is what Chief Justice Fuller, with Associate Justice Harlan concurring, *actually* stated in the dissent (*see* 169 U.S. at 715):

“Considering the circumstances surrounding the framing of the [C]onstitution, *I submit that it is unreasonable to conclude that ‘natural-born citizen’ applied to everybody born within the geographical tract known as the United States, irrespective of circumstances; and that the children of foreigners, happening to be born to them while passing through the country, whether of royal parentage or not, or whether of the Mongolian, Malay, or other race, were eligible to the presidency, while children of our citizens, born abroad, were not.*” (Emphasis and bolding added)

Even if one recognizes and accepts that this statement, like the statements in the majority opinion, constituted dictum, the dissent was *not* parroting or acknowledging as correct what the CRS would have the casual reader believe, *i.e.*, that the majority's "*controlling*" holding was that anyone born in the United States, whether "... of the Mongolian, Malay, or other race..." was eligible to the presidency. In fact, the dissent was stating the opposite. And by "casual reader" is meant all 535 members of the Senate and House of Representatives.

On the contrary, the dissent was instead articulating Justices Fuller's and Harlan's view that, given the backdrop and "circumstances surrounding the framing of the [C]onstitution...", it was *unreasonable* – *i.e.*, *wrong* – to conclude that the Founders intended that *any* "citizen" *other* than a "natural born Citizen," as contemplated by Emer de Vattel in § 212, Book 1, Ch. 19 of his 1758 Treatise, *The Law of Nations*, was to be eligible to the presidency.

The CRS Report's deceptive and false suggestion that the dissenters' comments as to presidential eligibility, articulated as a general proposition, were the functional equivalent of acknowledging that the majority opinion was a "controlling decision" correctly ruling on the matter is beyond unprincipled. It is deceitful. One is tempted to examine whether 18 U.S.C. § 1001, the federal False Statements Act, might be applied to this CRS "product" coming from the site of the "nation's best thinking."

Commenter Leland's observations typify those of persons with ONPS. And while lamentable, it merely underscores the adage that people believe what they *want* to believe as opposed to what might otherwise be the empirical truth.



GEICO Cavemen: "The Apology"

<https://www.youtube.com/watch?v=0trj6jCsm6E>

In short, the ONPS disorder continues to impact large segments of the population. While no Fauci-recommended vaccine is yet available, your humble servant suggests in the meantime that those being affected by the disorder – as well as the electorate at large – do as the Geico caveman suggested: "Yeah, next time maybe do a little research."