

# The Castro Disqualification and Eligibility Follies

by [Joseph DeMaio](#), ©2023

No. 23-117	
Title:	John Castro, Petitioner v. Donald J. Trump
Docketed:	August 7, 2023
Lower Ct:	United States Court of Appeals for the Eleventh Circuit
Case Numbers:	(23-12111)

DATE	PROCEEDINGS AND ORDERS
Aug 02 2023	Petition for a writ of certiorari before judgment filed. (Response due September 6, 2023) <a href="#">Petition</a> <a href="#">Appendix</a> <a href="#">Proof of Service</a> <a href="#">Certificate of Word Count</a>
Aug 24 2023	Waiver of right of respondent Donald J. Trump to respond filed. <a href="#">Main Document</a>
Aug 30 2023	DISTRIBUTED for Conference of 9/26/2023.

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-117.html>

(Sep. 6, 2023) — Well, faithful *P&E* readers, the 2024 race for the presidency just got a bit more interesting. In addition to all of the “usual suspects” currently recognized as competing against one another for the GOP nomination – President Trump; Governor DeSantis; Vivek Ramaswamy; etc. – a Texas tax attorney, one John Anthony Castro, is also in the “mix.”

Specifically, Mr. Castro has filed a *certiorari* [petition](#) in the U.S. Supreme Court seeking to bar President Trump from being placed on ballots or from serving again as president.

The basis for Mr. Castro’s action is one that would normally be pursued by Democrats, *i.e.*, that Clause 3 of the 14<sup>th</sup> Amendment – barring those who have once sworn to support the U.S. Constitution but later engaged in “insurrection or rebellion” against the United States – disqualifies Mr. Trump from any federal office, including the presidency.

The Supreme Court docket indicates that Castro's *certiorari* petition has been distributed by the court clerk for "conference" on Sept. 26, even before the Court convenes for its 2023 Term session on Oct. 2, the "first Monday in October."

There are a number of Democrat-inspired theories positing that the 14<sup>th</sup> Amendment "disqualification clause" would prevent 45 from again serving as president. But Castro's case seems to be one of only a few, if not the only one, making the argument as a Republican.

Interestingly, the Wikipedia [entry](#) for Castro – and please, spare me the critical comments about open-source websites – notes that, prior to 2020, he was a registered Democrat. Some might question his political bona fides..., but that is another story.

The other very interesting thing that the entry discloses is that he was not born in the United States, but instead was born in Landstuhl, Germany. The entry also identifies his father as John Manuel Castro, stationed in Landstuhl, but does not state the name of his mother. His campaign [website](#) discloses that his father was an army drill sergeant.

The source in the Wikipedia entry – [knewz.com](#) – has a more in-depth profile of Castro. And since Landstuhl, Germany is the site of a U.S. military hospital – the Landstuhl Regional [Medical Center](#) near the large U.S. Ramstein Air Force Base, it is a relatively safe bet that this is where Castro was born on Oct. 4, 1983.

His family moved back to the United States in 1987 when his dad was reassigned to Ft. Hood, Texas. So, in a few weeks, Castro, still living in Texas, will turn 40 years old. Yes, Virginia..., you are correct in seeing where this is going: while Castro meets the age and residency requirements of Art. 2, § 1, Cl. 5 of the Constitution, a significant question remains as to whether he satisfies the "natural born Citizen" ("nbC") provision also contained therein.



*Emmerich de Vattel (public domain)*

Specifically, if – as your humble servant and *many* others have for years argued – a “natural born Citizen,” as understood and intended by the Founders, was (and still *is*) restricted to a *person born in the United States to a mother and father who were (and are) already U.S. citizens*. This, of course, is the definition articulated in § 212 of Book 1, Ch. 19 of [\*The Law of Nations\*](#) (“§ 212”), by Swiss attorney, jurist and legal philosopher Emer de Vattel. The treatise, first written in French in 1758, was translated into English in 1760.

Your servant also posits that this is the definition paraphrased and adopted by the U.S. Supreme Court in *Minor v. Happersett*, 88 U.S. 162 (1875), where the Court stated that, in the nomenclature of the day which the Founders understood, as to the status of persons born here to U.S. citizen parents, there had “never” been any doubts as to their being “natural born citizens.”

The contrary view, of course, is that if one is a “citizen at birth” or a “citizen by birth” – both parents’ citizenship aside and place of birth aside – such is purportedly “close enough” to bestow status as an nbC. Your servant, of course, believes this view to be nonsense.

The debate continues to “bubble, bubble, toil and trouble” within the competing nbC eligibility “camps.” But that is a slightly different issue *vis à vis* Mr. Castro. The threshold and primary issue presently before the U.S. Supreme Court on his *certiorari* petition is whether he has the required litigant “standing” to maintain the litigation.

A U.S. District Court in Florida has dismissed his case and he has filed an appeal in the U.S. Court of Appeals for the Eleventh Circuit, the normal avenue to pursue when challenging an adverse district court ruling.

However, his *certiorari* petition “before judgment” (presumably referring to a future ruling from the Eleventh Circuit Court of Appeals) seeks an expedited U.S. Supreme Court ruling on President Trump’s claimed 14<sup>th</sup> Amendment disqualification because, as stated in his petition, he “intends to use this declaratory judgment to swiftly enjoin both Trump’s submission of a ballot application as well as any state’s acceptance of the ballot application.”

Mr. Castro asserts that the reason this expedited “short-cut” procedure is necessary is that President Trump’s campaign fundraising is adversely impacting his own fundraising efforts, adding that “[a] lack of court intervention would result in an irretrievable loss of both votes and donor funds.... Cash is an inherently finite and limited resource. As such, once those voters have cast their [primary] ballots and/or donors have given their available dollars to *an ineligible candidate*, they are forever lost.” (Emphasis added)

So, there you have it: Castro is contending that if a candidate is “ineligible” – the correct term as to Mr. Trump is “disqualified” rather than “ineligible” – he should not only be excluded from the ballot, he should be excluded from raising campaign donations on the claim that he is “eligible” to be president, when, according to Castro, he is not.

At present, the record is unclear whether John Manuel Castro, John Anthony Castro's father, was a U.S. citizen when candidate Castro was born in 1983..., in Germany. Nor is the record clear whether his mother was at that time also a U.S. citizen. That which *is* clear, however, is that he was *not* born on U.S. soil and thus, under a strict reading of § 212, he may well be constitutionally ineligible himself.

Your servant uses the phrase “may well be” in recognition that the Supreme Court has to this day not directly addressed or on the merits adjudicated the definition of “natural born Citizen” as used in Art. 2, § 1, Cl. 5 of the Constitution, albeit having tangentially noted its likely origin in *Minor*.

As your servant has oftentimes repeated, unless and until the Court in a live and ripe “case or controversy” with a litigant possessed of requisite “standing” in a case involving eligibility to the presidency, hands down a ruling that ....



Supreme Court Justice Thomas: We're Evading Article II Eligibility Issue - 4/16/10

<https://www.youtube.com/watch?v=Eu6OiTiua08>

Hold on... wait... wait... *just... a... second!!* Is not Castro's case *precisely* the vehicle for determining not only the question of President Trump's purported 14<sup>th</sup> Amendment “disqualification,” but *also* the nbC “eligibility” question as it relates to *Castro*, the issue which the Court for years has persisted “[evading](#)?”

Assuming the satisfaction of all of the prerequisites of getting in the Supreme Court's front door – standing, ripeness, justiciability, redressability detailed in Castro's petition – might this be a golden opportunity for the Court to “kill two birds with one stone?”  
Yikes!

Significantly, in his *certiorari* petition, Castro argues: “Pursuant to 28 U.S.C. § 2201(a), a Court ‘may declare the rights *and other legal relations of* Castro *and Trump*, including whether Trump is constitutionally eligible to pursue and/or hold the Office of the Presidency of the United States....” (Emphasis added)

Plainly, this contention opens Castro up to the question of whether his is an nbC otherwise *himself* constitutionally eligible. Wow, Virginia..., would that not be a big deal? The Court could (theoretically) grant Castro's *certiorari* petition, and then order briefing on *both* the issues of (a) whether the 14<sup>th</sup> Amendment disqualifies President Trump, *and* (b) whether Castro should (or should not) be similarly adjudged "ineligible" as being other than an nbC.

Meanwhile, Speaker of the House Kevin McCarthy might be relieved of some angst in preparing for a challenge to Kamala Harris, addressed [here](#), if a dispositive ruling on the nbC issue were forthcoming.

While the Supreme Court might well "evade" and still decide to "punt" on the nbC issue, still, the allure of the opportunity to "move the ball forward" could attract at least four of the justices later this month at the conference where Castro's *certiorari* petition is scheduled to be discussed, that being the magic number of votes needed to grant a petition.



[Darya Sheydel](#), [Pexels](#), [License](#)

All yummy "Master Chef" food for thought..., no? Who said the eligibility follies couldn't be fun? Fasten your seat belts and return your tray tables to their full upright and locked positions, as this could get interesting. Soon..., like Sept. 26, 2023.