

The Continuing Presidential Eligibility Debate

"MANIFESTLY AND DEMONSTRABLY WRONG"

by [Joseph DeMaio](#), ©2021



“No person, except a natural born Citizen...shall be eligible to the office of president...”— Art. II, Sect. 1, cl. 5 of the U.S. Constitution

(Mar. 21, 2021) — Regarding this P&E [post](#), it has attracted a growing number of comments, some insightful, others..., not so much. Your humble servant offers a few observations regarding the comments made by one reader.

Commenter Becker asserts in his 3/20/21 remarks that, “[f]or the most part, those court decisions [*i.e.*, decisions rejecting the de Vattel analysis of “[natural born citizen](#)”] were based on the 1898 Supreme Court decision in [US v Wong Kim Ark](#) [169 U.S. 649 (1898)].

The commenter then adds: “There have been two or three lower court rulings that children born overseas to US citizen parent(s) are also natural born citizens.” The word “also” festoons the comment, seemingly to suggest that the *Wong Kim Ark* decision held that Wong Kim Ark was himself a “natural born citizen” and that the “two or three lower court rulings” merely built on that precedent.

Not so.

As careful readers of that decision know, the Supreme Court case had *nothing* to do with whether Wong Kim Ark was a “natural born citizen.” Rather, the exclusive question presented was whether he was a U.S. “citizen” under the 14th Amendment. All other discussion of “natural born citizen” in the case is “[dicta, pure and simple.](#)”

Moreover, careful readers also know that Justice Gray, author of the majority opinion (Chief Justice Fuller and Associate Justice Harlan dissented) goofed *big time* in misstating the history of two statutes passed in 1790 and 1795 and bearing directly on the issue. That blunder by Justice Gray, joined in by the non-dissenting Justices, is discussed and dissected [here](#).

Specifically, in 1790, Congress passed (and President Washington signed into law) 1 Stat. 103, entitled “An Act to Establish an Uniform Rule of Naturalization.” In that statute, Congress stated, among other things, that children born “beyond sea” to U.S. citizen parents (note the use of the plural term “parents”) were “considered” to be “natural born citizens.” However, only five years later, in 1795, that statute was repealed in its entirety. Yet Justice Gray claimed in his majority opinion that Congress “reenacted, *in the same words*, the 1790 statute” (emphasis added), 169 U.S. at 672-673, with alterations not germane to the question.

That assertion by Justice Gray is manifestly and demonstrably wrong.

In 1795, in a new statute – 1 Stat. 414, entitled “Chap. XX. An act to establish an uniform rule of Naturalization; *and to repeal the act heretofore passed on that subject [i.e., 1 Stat. 103]*” (emphasis added) – the Congress, apparently recognizing that it could not by a statute like 1 Stat. 103 alter or amend the intent of Art. 2, § 1, Cl. 5, the Constitution’s presidential Eligibility Clause, regarding the widely understood definition of “natural born Citizen” therein, consciously *deleted* the words “natural born” before the word “citizens.”

That the Congress actually made the deletion – regardless of whether it was a conscious, intentional excision, as opposed to a “stylistic” or “accidental” omission as some have lamely claimed – is beyond dispute: the words “natural-born” present in 1 Stat. 103 do *not* appear in 1 Stat. 414, exactly the opposite of and contrary to Justice Gray’s “in the same words” assertion.

Gray’s judicial blunder – intentional or not – has enabled “de Vattel deniers” to claim that the *Wong Kim Ark* decision is the “be-all-end-all” of the dispute as to who is or can be deemed to be a “natural born citizen” for both presidential and vice-presidential eligibility questions. Wrong. And the U.S. Supreme Court, even under Chief Justice John Roberts, has never opined to the contrary.



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

Stated otherwise, statements by commenters (and even former U.S. [Solicitors General](#) suggesting or claiming that the 1795 statute, 1 Stat. 414, preserved the “natural born” modifier of the word “citizen” in the 1790 statute, 1 Stat. 103, or that the deletion of the words “natural born” was immaterial, are wrong. Such assertions or suggestions constitute, in the vernacular of leftist “fact-checking” thought police, “misinformation” and, as such, are subject to being censored and purged from the public square.

But because those statements support the false narrative that anyone born here, regardless of the citizenship status of the parents – or even born elsewhere to at least one U.S. citizen parent – is purportedly constitutionally-eligible to the presidency or vice-presidency, not only will those statements likely remain viable and robust, they may even be nominated for a Pulitzer. Or an Emmy. Or even the Nobel Prize for Literature.

Faithful P&E readers, witness the damage attending the election of Democrats to public office and trusting the “products” of the repository of “the [nation’s best thinking](#),” the [Congressional Research Service](#).