The Mooers Comment/Question

by [Joseph DeMaio](), ©2024

Jonathan David Mooers

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"...Bottom line: Bingham believed – correctly – that an nbC was a person born here to two U.S. citizen parents who possessed undivided allegiance to the United States alone...."

So, does this mean that parents of an "nbC" must be born-sole-U.S.-citizens and not naturalized-U.S.-citizens who also posses non-renounced foreign-citizenship(s)? In other words, can an nbC have parents with dual citizenships, such as a parent legally naturalized to be a U.S. citizen, while at the same time, fully retaining, say, a parent's [born in Norway] Norwegian-citizenship?

https://www.scribd.com/doc/48856102/All-U-S-Presidents-Eligibility-Grandfather-Clause-Natural-Born-Citizen-Clause-or-Seated-by-Fraud

https://www.thepostemail.com/2024/01/15/nbc-comment-merits-response/

(Jan. 17, 2024) — **Introduction**

Well, the insightful comments (and questions) on the nbC eligibility issue just keep coming. One particularly interesting and thought-provoking [question]() now comes from reader Mooers. He focuses on your humble servant's assertion in the post that "an nbC was a person born here to two U.S. citizen parents who possessed undivided allegiance to the United States alone…." While the intent was to convey that the "undivided allegiance" of the parents could arise from either (a) their own births as nbC's, or (b) the taking of the strict U.S. allegiance naturalization oath when seeking to become themselves U.S. citizens, it is acknowledged that some ambiguity could arise.

Mooers then asks the interesting question as to whether this means that an nbC candidate for president/vice-president can have dual citizen parents. Very interesting.

As a prefatory point prior to what follows, *P&E* readers must understand that your humble servant's views on the nbC issue are his and his alone. He has attempted to research the history, etymology and meaning of the term from various sources, including, of course, the 1758 treatise by Swiss attorney, jurist and scholar Emer de Vattel, "*The Law of Nations*" and, in particular, § 212, Book 1, Ch. 19 of that treatise.

That said, he concedes that other arguments regarding the topic exist – some even by learned attorneys once in the U.S. Office of the Solicitor General – which might, your servant's opinions to the contrary, ultimately be held by the U.S. Supreme Court ("USSC") to be "correct" or at minimum "pragmatic" or "politically expedient."

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

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

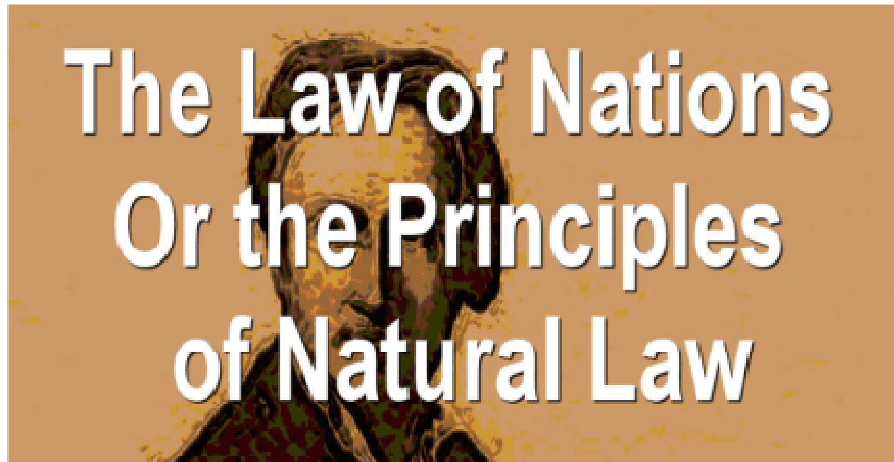
That would be an unfortunate outcome, of course, but it would be naïve to believe that such a result was out of the question. Recall what happened when the Court held that the word "penalty" actually meant "tax" in a completely unprincipled linguistic gyration to rescue "Obamacare" from a well-deserved death. An expedient or pragmatic outcome is also particularly possible in light of the Court's persistent actions to "evade" the nbC issue. It should stop doing that.

Nonetheless, the following observations in response to the Mooers comment and question must be viewed against the foundational precept upon which your servant bases virtually the entirety of his position. That precept is that the Founders intended to erect the highest available barrier to the potential for insinuation of "foreign influence" into their new Republic by adopting both the term – and its associated definition under the nomenclature of the day – of "natural born Citizen" as set out in de Vattel's § 212. Furthermore, that precept will not change unless and until compelling evidence to the contrary is presented, whether or not that evidence comes in the form of a binding "on the merits" decision of the USSC or otherwise.

Analysis

Turning, therefore, to the Mooers comment and question, your humble servant's initial response is: what would the Founders have thought about that situation? Assuming, as your servant has contended for years, that the Founders relied upon the teachings and principles set out in the de Vattel treatise when drafting the Constitution, it occurred that

an answer might be found there. In § 212, de Vattel defines the word "citizen" thusly: "The citizens are the members of the civil society: bound to this society by certain duties, and subject to its authority, they equally participate in its advantages." There is nothing apparent in this definition that either prohibits or acknowledges dual or multiple "memberships" in more than one "civil society."



https://lonang.com/wp-content/download/Vattel-LawOfNations.pdf

Seeking more information, your servant performed a word search of the full text of the treatise. That search revealed no instance of the words "dual" or "shared" or "multiple" or even, surprisingly, the words "citizenship" or "nationality."

However, as discussed here, under a strict analysis of the words of Congressman John Bingham (R. OH) when commenting on the 14th Amendment on March 9, 1866, he posited that if a child is to be acknowledged as an nbC, he/she must have been born to parents "***not owing allegiance to any foreign sovereignty***...." (Emphasis added) His words were offered in support of your servant's position that the author of the 14th Amendment acknowledged and differentiated between mere "native-born or naturalized" citizens and nbC's, thus undercutting the narrative that if one is merely a "citizen at/by birth" under the amendment, one is purportedly, *ipso facto*, an nbC.

Under the Bingham view, if the parents had been born in the United States, that would have qualified them as nbC's too, just like their offspring. That interpretation would raise the barrier against the potential for the insinuation of foreign influence into the new Republic's "chief magistracy" – the presidency – even higher.

On the other hand, however, that stricter interpretation could result in eviscerating the nbC restriction itself, swallowing it in an internal conundrum and thus neutering it altogether. That is likely ***not*** a result that the Founders would have intended or favored.

Specifically, if the analysis were to require the parents to be nbC's themselves, since there were ***no*** parental nbC's as defined by de Vattel in existence in 1787 – because there was no "United States" prior to 1776 – the inclusion of the "citizen-grandfather" nbC exception would have made no sense. This is because its application was limited to the

children of citizen parents, not the parents themselves. If there were no nbC parents, it is difficult to see how there could have been nbC children, at least consistent with Congressman Bingham's statement made nearly 80 years after the Constitution was drafted.

What did the Framers mean by the term "natural born Citizen"?

The more likely interpretation, and arguably a more palatable one to the USSC, might be that, reading the provisions of Art. 2, § 1, Cl. 5 as a whole, the Founders likely intended to restrict the ***direct*** application of the nbC term to those who would aspire to be president rather than extend it as well to those who would be that person's parents lest that interpretation destroy the conceptual basis of the primary nbC presidential eligibility restriction.

If the parents were mere "citizens," as that term was meant when used in the "citizen-grandfather" clause, the Founders' underlying objective – insulating the presidency ***itself*** from the insinuation of "foreign influence" – would still be met, albeit at a slightly lower level. Clearly, the Founders conceptually differentiated between a "citizen" and a "natural born Citizen" in the Eligibility Clause by providing the narrow, time-limited "citizen-grandfather" exception to the otherwise controlling nbC restriction on the president.

Fast-forwarding to the present, the Mooers question remains: if a presidential (or 12th Amendment vice-presidential) candidate is the offspring of two parents, one or both of whom are "dual citizens" or "dual-nationals" of the United States and a foreign nation, will that be a disqualifying event?

In all candor, your humble servant cannot give a categorical answer, primarily because – news flash: – he is not a Hah-vahdh constitutional law professor or a USSC justice. Frankly, an answer to the Mooers question may remain elusive unless and until either a binding "on the merits" decision of the USSC is handed down or a constitutional amendment is proposed, passed and ratified clarifying the issue.

As to the latter constitutional amendment process, while it has been successfully completed 27 times thus far – reaching such fundamental issues as whether alcoholic beverages can be manufactured, transported or sold in the United States…, and then

repealing that prohibition – the process is not easy. Guess what: the Founders intended that the process be more than a simple task. They intended the Constitution to last indefinitely, but understood that, as times change, perhaps the Constitution would need to be amended. That is why they included Article 5.

The Larger Question

https://www.msn.com/en-us/news/politics/weve-got-to-earn-reelection-kamala-harris-talks-about-campaign-on-the-view/ar-AA1n8zYo

The larger question beyond the one posed in the Mooers comment is this: apart from the nbC *bona fides* of Vivek Ramaswamy – who has ended his campaign and endorsed President Trump – there remains the eligibility issue regarding Nikki Haley (still in the race) and, of ***compelling*** concern, the purported nbC status of Kamala Harris.

That's right, Virginia, the ***same*** nbC questions which have been simmering following President Trump's post casting doubt on Nikki Haley's eligibility and which have been the topic of much discussion here at *The P&E* lately are rapidly coming to a boil with regard to the person residing at One Observatory Circle in Washington, D.C.

Indeed, the issue is of even greater import as to Kamala Harris: Nikki Haley is merely ***aspiring*** to the presidency while Kamala Harris – if she is shown to be constitutionally ineligible – is presently ***usurping*** the vice-presidency and is aspiring to ***continue*** usurping it if she and Brandon win the general election in November. And insofar as the Mooers question is relevant, there is no "dual citizenship" question presented as to Kamala Harris's parents: neither of them were U.S. citizens – dual or naturalized – when she was born in Oakland, California. Under the § 212 definition, therefore, she is not an nbC.

That being the case, but again reserving any answer to the important question posed by Mr. Mooers, the greatest service that Mr. Ramaswamy could perform (joined potentially by Nikki Haley as well in a month or two) would be to (a) research and understand the nbC issue and thereafter hopefully (b) articulate agreement with the theory that, in order to be an nbC, one must fit the de Vattel § 212 definition. Then he, with or without Nikki Haley, could (c) campaign like gangbusters to undercut the rote narrative that Harris is an nbC eligible to be Vice-President now or (perish the thought) President tomorrow if Brandon takes another serious or fatal fall and cracks his head open.

Hey…, there may even be a few Democrats who would welcome that gambit, as it could improve, at least in their minds, their chances in November by ridding the Democrat ticket – whoever might finally be on it – from a "word-salad queen" who has become as much of a political anchor as Brandon himself.