The Presidential Candidacy of Shiva Ayyadurai

by Joseph DeMaio, ©2023

https://www.youtube.com/watch?v=OEkgZtu_Q2Q

(Jul. 18, 2023) — As noted here, earlier this year Dr. Shiva Ayyadurai formed an exploratory committee to "test the waters" for a run as an Independent for president and is now a full-fledged candidate as reflected in Federal Elections Commission (FEC) filings. As also noted, the "long-shot" nature of that effort is capably and competently addressed by frequent *P&E* contributor CDR Charles Kerchner here, so repetition will be avoided in this offering. On the other hand, some additional related observations may be in order.

First, unlike some other eligibility-challenged candidates, Dr. Ayyadurai is not actually claiming that he is a "natural born Citizen" ("nbC") as seemingly plainly required by Art. 2, § 1, Cl. 5 of the Constitution, the presidential "Eligibility Clause." Instead, he is candidly admitting up front that he is a naturalized U.S. citizen but that, as such, the Fifth Amendment (1791), coupled with the 14th Amendment (1868) in effect "repealed" or at minimum modified the nbC restriction of Art. 2, § 1, Cl. 5 limiting eligibility exclusively to an nbC.

However, unlike the 21st Amendment which specifically repealed the 18th Amendment prohibiting the sale of alcoholic beverages, neither the 5th nor the 14th Amendments contains any expression of intent to "repeal" Art. 2, § 1, Cl. 5. Thus, his argument boils down to claiming that the later amendments merely created an "exception" to the nbC eligibility restriction.

Thus, as a naturalized U.S. citizen, he claims that the denial of the opportunity to run for president constitutes an abridgement of his right to the "equal protection of the laws" and

"privileges and immunities" guaranteed by the 14th Amendment as well as "due process of law" under the 5th Amendment. Stated otherwise, he contends that naturalized citizens are to be excepted from the nbC eligibility restriction and be acknowledged as eligible to the presidency.

A Japanese-American citizen held in an internment camp during World War II (NARA)

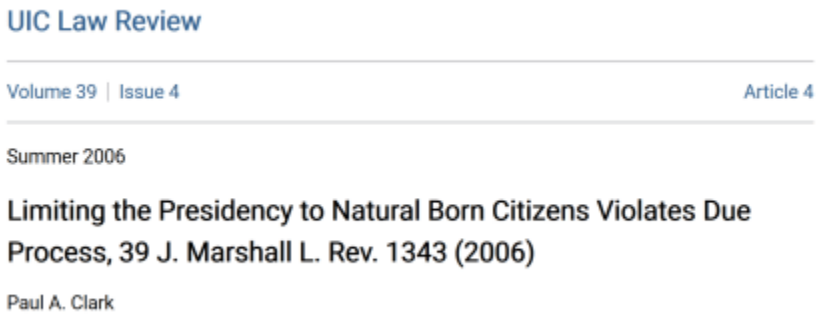
Second, on the surface, that claim does not appear to be an entirely specious one. The Constitution, along with numerous Supreme Court cases, declares that discrimination based on race or national origin – except in extraordinary circumstances – is unconstitutional. One example of such an "extraordinary circumstance" arose during World War II, when nearly 112,000 U.S. citizens of Japanese descent were forcibly removed from the West Coast of the country and incarcerated in numerous "internment camps" in the nation's interior following the Dec. 7, 1941 attack by Japan on Pearl Harbor.

The action was initiated by the executive order of President Franklin D. Roosevelt (a Democrat) on February 19, 1942 and lasted until December 18, 1944, the day before the Supreme Court ruled in *Korematsu v. United States* upholding the removals against a challenge that they violated the 5th Amendment's "due process of law" provision. The decision is widely regarded as being one of the worst decisions of the Court, rivaling the decision in *Dred Scott v. Sandford.*

Returning to Dr. Ayyadurai's effort, his argument is that the fact of his birth in India to parents who were not U.S. citizens at the time is irrelevant: because he has abjured altogether any and all political ties, loyalty and allegiance to India, now, as a loyal and productive naturalized U.S. citizen, he should be allowed to seek the presidency despite *not* being an nbC.

Candidly, both he and Vivek Ramaswamy – the latter being born in Cincinnati, Ohio to immigrant parents not then naturalized as U.S. citizens – would from an intellectual perspective be far preferable and more capable of fulfilling the duties of the U.S. presidency than Brandon. Brandon is not only incompetent and stupid, but he resembles, once again, a despicable pedophile creep while masquerading as our nation's chief executive in Finland. But that is another story.

As for Dr. Ayyadurai's eligibility argument, and as noted here, the Supreme Court has stated in *Minor v. Happersett* that its "province is to decide what the law is, not to declare what it should be." In that regard, Dr. Ayyadurai has a tall mountain to climb.


UIC Law Review

Volume 39 | Issue 4 Article 4

Summer 2006

Limiting the Presidency to Natural Born Citizens Violates Due Process, 39 J. Marshall L. Rev. 1343 (2006)

Paul A. Clark

https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1287&context=lawreview

In support of his position, Dr. Ayyadurai cites an "adjunct professor of philosophy" at Hudson County Community College, Jersey City, New Jersey (the college website identifies him as an "instructor"), one Paul Clark, and a 2006 law review article he wrote entitled "Limiting the Presidency to Natural Born Citizens Violates Due Process." The article appears at 39 John Marshall Law Review 1343 (2006). After citing the Supreme Court's decision in *Bolling v. Sharpe* (holding that racial segregation in District of Columbia public schools was unconstitutional), Prof. Clark states:

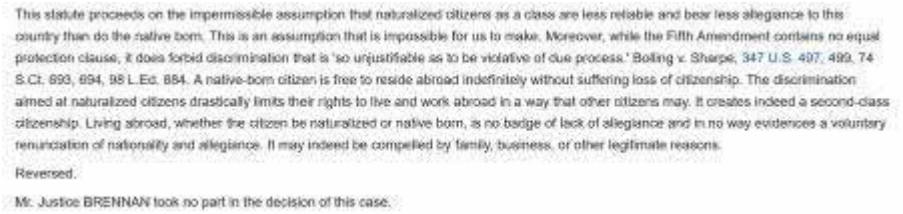
"Ten years after *Bolling*, in *Schneider v. Rusk*, [377 U.S. 163 (1964)], the Court declared unconstitutional a statute that revoked the citizenship of naturalized citizens who lived abroad but did not revoke the citizenship of 'natural born citizens' in the exact same circumstances. The [*Schneider*] Court held that:

'This statute proceeds on the impermissible assumption that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born. This is an assumption that is impossible for us to make. Moreover, while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process. A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship. The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship.'

"This should be the end of the story. *Schneider* is clear that treating natural born citizens and naturalized citizens differently is contrary to the Fifth Amendment. Forbidding naturalized citizens from being president or vice president is a form of discrimination that limits their options and treats them as second-class citizens."

In fact, the Court in *Schneider* itself begins its opinion thusly (377 U.S. at 165):

"We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. ***The only difference drawn by the Constitution is that only the 'natural born' citizen is eligible to be President. Art. II, s 1.*****"** (Emphasis added)



This statute proceeds on the impermissible assumption that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born. This is an assumption that is impossible for us to make. Moreover, while the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.' Bolling v. Sharpe, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884. A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship. The discrimination aimed at naturalized citizens drastically limits their rights to live and work abroad in a way that other citizens may. It creates indeed a second-class citizenship. Living abroad, whether the citizen be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may indeed be compelled by family, business, or other legitimate reasons.

Reversed.

Mr. Justice BRENNAN took no part in the decision of this case.

https://en.wikisource.org/wiki/Schneider_v.*Rusk*(377_U.S._163)/Opinion_of_the_Court

Thus, in the same case which the Clark law review article contends forbids discrimination between naturalized citizens and natural born Citizens, the Supreme Court… validates discrimination between naturalized citizens and natural born citizens. That is the only plain reading of the Court's opening statement. And, parenthetically, the "only difference" noted by the Court in *Schneider* is entirely consistent with the definition of "natural born citizen" found in Book, 1, Ch. 19, § 212 of Emer de Vattel's seminal tome *The Law of Nations*, a treatise well-known and relied upon by the Founders when drafting the Constitution.

The only rational explanation for the apparent inconsistency in *Schneider* is to acknowledge that the Clark law review article ignores that which the Supreme Court in the case inferentially recognized: the law review article disregards the distinction between a "native-born citizen" (large Euler circle) and a native born citizen who in addition is ***also*** an nbC (smaller interior Euler circle).

As noted here, while all nbC's are also native born citizens (Chevrolet Corvettes), not all native born citizens are nbC's (all other Chevrolets). *Schneider* articulates two complementary principles: (1) ***only*** nbC's are eligible to the presidency; and (2) the Due Process clause only forbids discrimination against naturalized citizens *vis à vis* native-born citizens ***who are not nbC's.*** The record in the case discloses that Angelika Schneider was born in Germany but became a naturalized U.S. citizen when she was 16. Thus, although she was, so to speak, a "Chevrolet," she was not a "Corvette." Thus, the Court held that discriminating against her was unconstitutional.

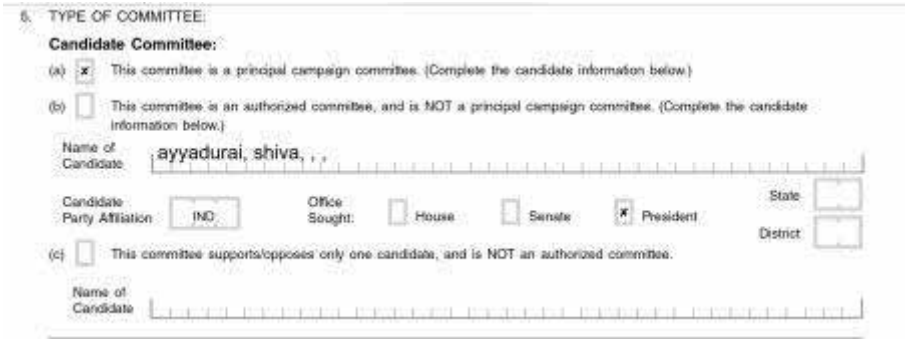
Accordingly, there is no internal inconsistency in the *Schneider* opinion and, accordingly, there is also no basis for Dr. Ayyadurai's claim or the law review article's argument that

Schneider supports the eligibility of naturalized citizens like him. Indeed, it confirms just the opposite.

Third, the only principled way to reconcile and harmonize the Court's two holdings is to acknowledge that, for Art. 2, § 1, Cl. 5 purposes, discrimination against naturalized citizens as compared to native-born citizens who are also Corvettes (*i.e.*, nbC's) is ***not*** a due process and/or equal protection violation, but that discrimination against naturalized citizens as compared to native-born citizens who are generic Chevrolets ***is*** a due process and/or equal protection violation.

Professor Clark also mischaracterizes *Schneider* as contending that the "Court declared unconstitutional a statute that revoked the citizenship of naturalized citizens who lived abroad but did not revoke the citizenship of 'natural born citizens' in the exact same circumstances." In fact, the "failure to revoke the citizenship" component related to "native born [generic Chevrolet] citizens" rather than "native born [Corvette] citizens." Stated otherwise, and in non-automotive terms, apples are not oranges.

If that result is to be changed, the Supreme Court will need to either overrule *Schneider* or, at minimum, clarify it. And whether there is enough time left before the 2024 general election to succeed in convincing a lower court – and thereafter the Supreme Court – to accept jurisdiction over the issue is, of course, a debatable issue.


6. TYPE OF COMMITTEE:

Candidate Committee:

(a) [x] This committee is a principal campaign committee. (Complete the candidate information below.)

(b) [ ] This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate: ayyadurai, shiva, , ,

Candidate Party Affiliation: IND

Office Sought: [ ] House [ ] Senate [x] President

State:

District:

(c) [ ] This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate:

Source: FEC.gov

On the other hand, if Dr. Ayyadurai is serious about his quest, he should begin soon in attempting to get his name on the various states' ballots and/or his issue before the Supreme Court. Until he becomes a viable "candidate," as confirmed or demonstrated by polls, debates, donations etc. – as did Alan Keyes in his 2008 challenge to Barack Obama – his claims and arguments will not be "ripe" or "justiciable" and the Court would likely rule – no surprise here – that he lacks "standing." But as they say, nothing ventured, nothing gained.

And if he fails to climb the mountain looming before him…, a not unlikely outcome…, perhaps he could consider taking a clue from Virginia Minor. After losing her case in the Supreme Court, she became a leading "suffragette," predating even Susan B. Anthony. Ayyadurai could launch a campaign to amend the Constitution if he thinks there are enough states (38) that would ratify it…, hey, it worked to end Prohibition.

Stay tuned, faithful *P&E* readers, as this could get interesting.