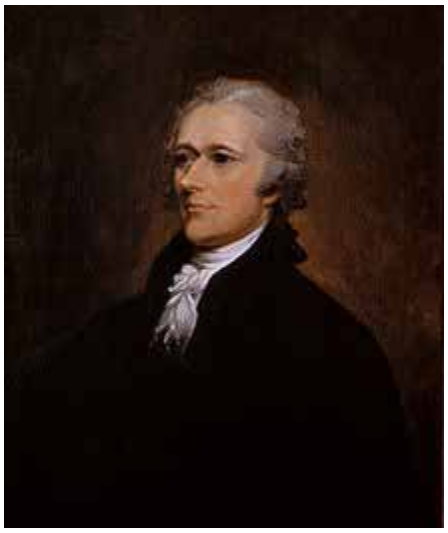
The nbC Eligibility Brainwashing Runs Deep

by Joseph DeMaio, ©2024



"Alexander Hamilton" by John Trumbull, 1806 (public domain)

(Jan. 12, 2024) — Following up on the presidential eligibility posts recently appearing at *The P&E* here and here, the *New York Post* – founded, BTW, by Alexander Hamilton in 1801 – has come out and slammed President Trump's suggestion that Nikki Haley is likely ineligible to the presidency. The *Post* labels President Trump's suggestion that Haley is not a "natural born Citizen" ("nbC") under the Constitution as being "bonkers."

Really? Where to start, where to start?

First, President Trump's post questioned Nikki Haley's eligibility primarily in terms of her pursuit of the presidency, but it also addressed her likely disqualification for the vice-presidency under the 12th Amendment. Problematically, the *Post* article misinforms its readers when it asserts that "[t]he 12th Amendment lays out the procedure for electing the president and vice president ***and makes no mention of eligibility***." (Emphasis added)

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Even the most cursory review of the actual language of the 12th Amendment reveals that its final sentence states: "But no person constitutionally ***ineligible*** to the office of President shall be ***eligible*** to that of Vice-President of the United States." (Emphasis added) Like the caveman said in the Geico commercial from the 1980's, "Yeah, next time, maybe do a little more research."

Second, the author of the *NY Post* article, one Emily Crane, although a journalist for some 15 years with a B.A. degree in "Communications Studies" from Western Sydney University (yes, Virginia, in Australia…, not the United States), does not claim to be a U.S. Constitution scholar. Instead, she relies for her assertions on, among others, one Geoffrey Stone, a University of Chicago professor who, she claims, is an expert on constitutional law.

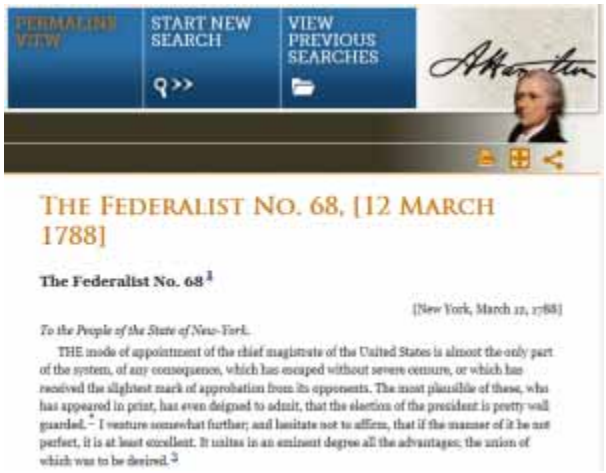
Professor Stone is quoted in the *Post* article as labeling President Trump's (and one Paul Ingrassia's) Haley ineligibility claims as being "bonkers." He added that against the backdrop of the 14th Amendment, there was "no legitimate case that would disqualify Haley from the presidency based on her parents' citizenship."

This, of course, is the same narrative that has been parroted by the vaunted Congressional Research Service ("CRS") – the purported repository of "the nation's best thinking" – since 2009, when it began defending the claimed eligibility and "natural born Citizen" status of one Barack Hussein Obama, Jr.

Respectfully, there is now a ***lot*** of empirical factual and anecdotal evidence that the Founders adopted a definition of an nbC that would – as both Messrs. Trump and Ingrassia posit – disqualify and render Nikki Haley ineligible to the presidency or the vice-presidency. Specifically, a compelling case can be made for the Founders' adoption of the highly restrictive definition of "natural born citizen" found in § 212, Book 1, Ch. 19 of Swiss attorney, jurist and scholar Emer de Vattel's 1758 treatise, *The Law of Nations*.

By contrast, the "14th-Amendment-anyone-born-here-as-a-citizen-alone-makes-one-a-natural-born-citizen" theory is not only wrong, it is counterintuitive. This erroneous fable has been the incessant drumbeat narrative in which people's brains have been marinated for many years. Stated otherwise, eligibility brainwashing has run deep and insidiously over the years. And it hasn't stopped.

While this issue has been addressed and critiqued here at *The P&E* as long ago as 2009 by *P&E* Founder John Charlton, one of the more recent triggers for that mental marinating procedure was a 2015 article authored by two former United States Solicitors General, Paul Clement and Neal Katyal, entitled "On the Meaning of Natural Born Citizen." That article has been critiqued, of course, by your humble servant at *The P&E* here, here and here.



https://founders.archives.gov/documents/Hamilton/01-04-02-0218

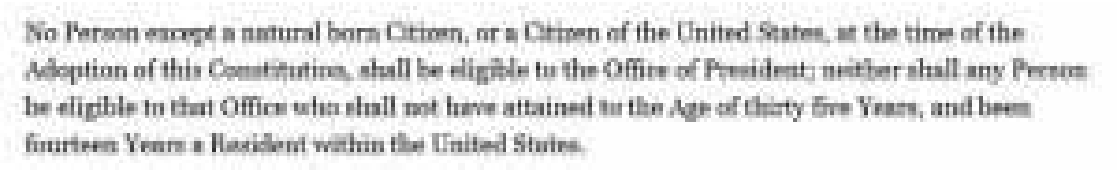
As a matter of undisputed historical fact – and as noted by Publius Alexander Hamilton in *Federalist 68* – the Founders viewed the potential for the insinuation of "foreign influence" into the highest office of the new Republic with great suspicion and trepidation.

Federalist 68 confirms the Founders' determination to prevent this danger, stating that it arose "chiefly from the desire in foreign powers to gain an improper ascendant in our councils. ***How could they better gratify this, than by raising a creature of their own to the chief magistracy of the union?"*** (Emphasis added). The objective was to shield and vigorously protect the "chief magistracy" – the Office of the President – from that potential.

Accordingly, the Founders sought to establish the highest possible available barrier to that danger by mandating, as John Jay had "hinted" to George Washington, that the presidency be restricted to not merely a "citizen" – as Alexander Hamilton himself had once proposed, which the Founders ultimately rejected as being too weak – but instead to a "natural born Citizen." The highest available and known nbC definitional barrier in existence in 1787 was the de Vattel § 212 definition: a person born in the country to two parents who were already its citizens. Full stop.

Third, the Professor Stone/Clement-Katyal theory is that, under the 14th Amendment – which, BTW, ***nowhere*** uses the term "natural born Citizen" – if one is a "citizen at birth" or a "citizen by birth," with no need for any further "naturalization proceedings," that fact ***alone*** is sufficient to make one an nbC.

Respectfully, such a definition establishes a much lower "foreign influence" barrier than does the de Vattel § 212 "born-here-to-two-citizen-parents" definition. It defies logic – and, moreover, is outright goofy – to argue that the Founders consciously intended to choose a definition of the nbC term which established a ***lower*** barrier to foreign influence when a known, ***higher*** barrier was available.


No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

The only exception to the nbC mandate in the Constitution's presidential "Eligibility Clause" – Art. 2, § 1, Cl. 5 – allowed by the Founders was the "citizen-grandfather" clause, now long since expired under the march of time.

Because there were no "natural born Citizens" under a de Vattel § 212 definition in 1787, the Founders added that time-limited provision to allow, for example, the first seven presidents to serve *despite* not being nbC's. To quote a ***recognized*** constitutional scholar, Professor Edward S. Corwin, in his book "*The President*: *Office and Powers*, *1787 – 1984*" (5th Revised Ed. 1984), at p. 38: "*The first President born under the American flag was Martin Van Buren.*" (Emphasis added)

Thus, the mere ***existence*** of the "citizen-grandfather" clause while it was operative (1787 – 1837) strongly fortifies, if not outright confirms, the conclusion that the Founders adopted de Vattel's § 212 nbC definition rather than any other inferior one that presented a lower barrier to foreign influence than that of the Swiss jurist.

Fourth, and finally, the marinating-brainwashing operation has been widespread and quite successful in convincing most people that, if one is merely born here – or in some scenarios, born anywhere on the planet such as, say, Canada or Panama – to one citizen parent, thus becoming a "citizen at/by birth," with no need for further "naturalization" proceedings, one becomes, *ipso facto*, an nbC. There is a better Latin term to describe what has been going on, now even reaching the pages of the *New York Post*: ***ipse dixit***: "It is so, because I say it is so." Respectfully, again: not so fast.

Few are to be pitied more than the willfully uninformed. Nikki Haley – as well as Kamala Harris, Vivek Ramaswamy and, of course, Barack Hussein Obama, Jr. – are still burdened with unanswered nbC "eligibility" questions which are definitely not yet "settled."

Therefore, against the foregoing empirical, factual backdrop, it would seem that a ***far*** better case can be made for labeling the *NY Post* article, as well as the CRS and 14th Amendment "citizen at/by birth" narratives – rather than President Trump's post – to be "bonkers."