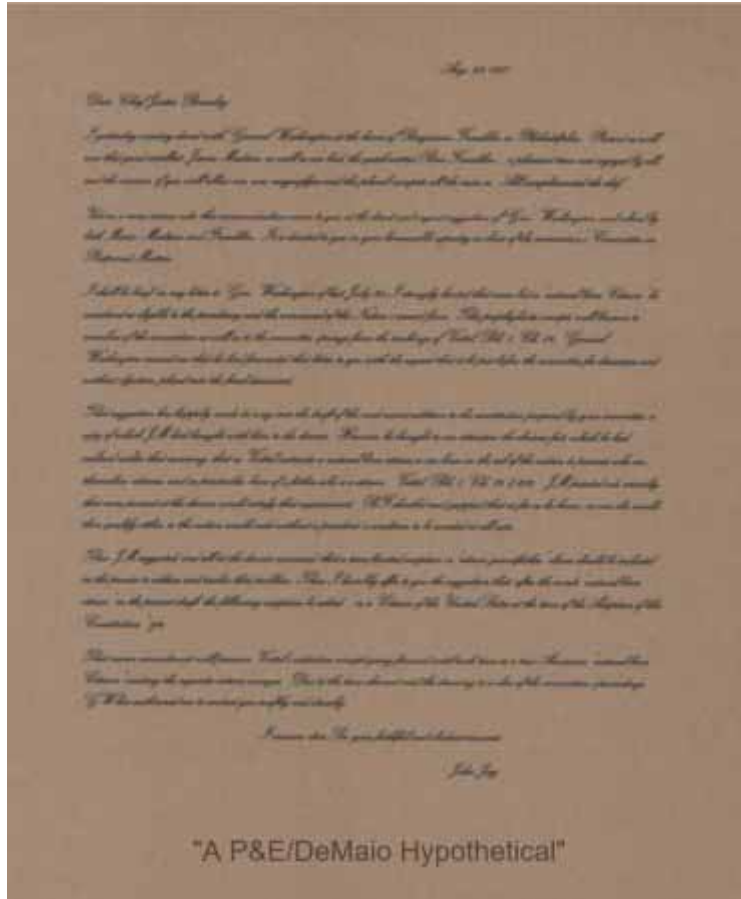


What If...?

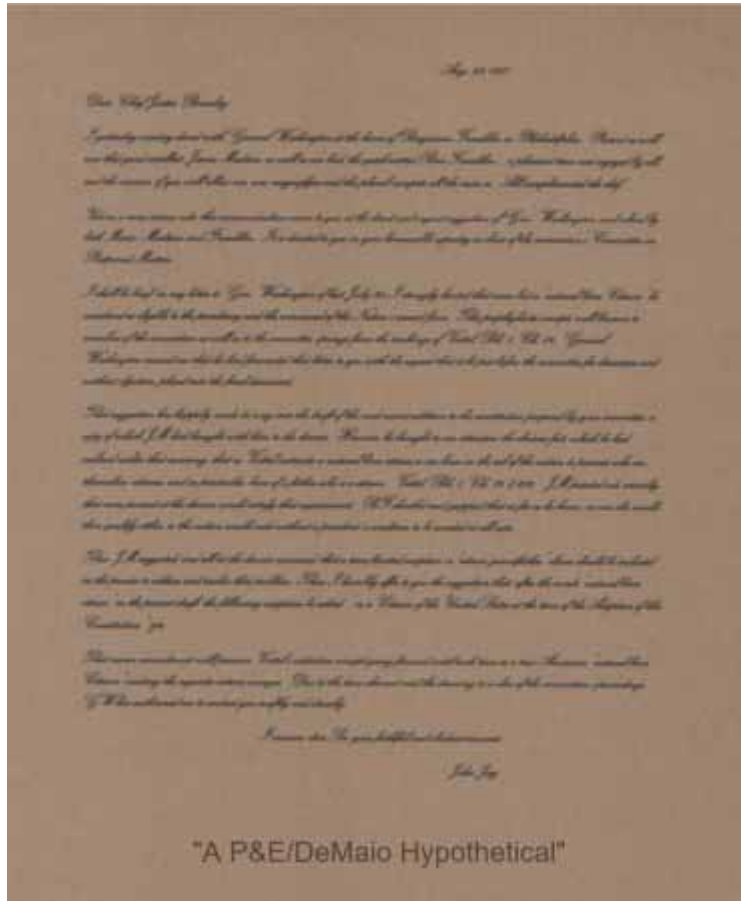
by [Joseph DeMaio](#), ©2022



(Dec. 15, 2022) — What if your humble servant were to reveal something here at The P&E which could, once and for all, put an end to “natural born Citizen” (“nbC”) debate raging in the comments sections of numerous posts here? What if recently-discovered “hard” evidence – in the form of a letter from John Jay to David Brearley, Chairman of the “Committee on Postponed Matters” at the Constitutional Convention in 1787 – was produced? And what if that letter confirmed the intent of the Founders to rely on § 212 of Emmerich de Vattel’s treatise *The Law of Nations* for its definition of an nbC, requiring birth in the nation to parents who were already U.S. Citizens? Would that change any of the minds of those who believe that the only criterion for an nbC is to be born here as a “citizen at birth” or a “citizen by birth?”

Curious? Read on.

What if that letter, dated August 29, 1787, creased and aged by time, looked like this:



That image, converted to a more readable font, states:

My Dear Chief Justice Brearley:

I yesterday evening dined with General Washington at the home of Benjamin Franklin in Philadelphia. Present as well was that great intellect, James Madison, as well as our host, the quick-witted Ben Franklin... a good time was enjoyed by all, and the venison, if you will allow me, was *magnifique* and the plumb compôte all the more so.

Yet on a more serious note, this communication comes to you at the direct and urgent suggestion of Gen. Washington, and echoed by both Messrs. Madison and Franklin. It is directed to you in your honourable capacity as chair of the convention's Committee on Postponed Matters. I shall be brief: in my letter to Gen. Washington of last July 25, I strongly hinted that none but a "natural born Citizen" be considered as eligible to the presidency and the command of the Nation's armed forces.

This prophylactic concept, well known to members of the convention as well as to the committee, springs from the teachings of Vattel, Bk. 1, Ch. 19. General Washington assured me that he had forwarded that letter to you with the request that it be put before the committee for discussion and, without objection, placed into the final document.

That suggestion has happily made its way into the draft of the most recent addition to the constitution proposed by your committee, a copy of which JM had brought with him to the dinner. However, he brought to our attention the obvious fact, which he had realized earlier that morning, that as Vattel instructs, a natural born citizen is one born on the soil of the nation to parents who are themselves citizens, and in particular, born of a father who is a citizen. Vattel, Bk. 1, Ch. 19, § 212. JM pointed out, correctly, that none present at the dinner would satisfy that requirement. BF chortled and quipped that as far as he knew, no one else would then qualify either, so the nation would exist without a president, a condition to be avoided at all costs.

Thus, JM suggested, and all at the dinner concurred, that a time-limited exception or “citizen grandfather” clause should be included in the proviso to address and resolve that problem. Therefore, I humbly offer to you the suggestion that, after the words “natural born citizen” in the present draft, the following exception be added: “, or a Citizen of the United States at the time of the Adoption of this Constitution,” &tc.

That minor amendment will preserve Vattel’s restrictive concept going forward until such time as a true American “natural born Citizen” meeting the requisite criteria emerges. Due to the time element and the drawing to a close of the convention’s proceedings, GW has authorized me to contact you swiftly and directly.

I remain, dear Sir, your faithful and obedient servant,

/S/ John Jay

If confronted with hard, documentary evidence such as this, if true, can there remain any opposing credible claim that the nbC provision of the Constitution, coupled with the addition of the “grandfather citizen” clause, compels the conclusion that the Founders intended to define an nbC as a person born here to two parents who were already citizens? As the Supreme Court has already done in *Minor v. Happersett*?

Or would those who refuse to even consider the relevance of Vattel on the Founders and the nbC clause deem such evidence worthy of being disregarded and ignored as being at such radical variance with the accepted “narrative” that if one is a “citizen at birth” or a “citizen by birth,” regardless of parental citizenship – or, in certain cases, even birth in the United States – that is enough?

Worse, even if the “de Vattel-Deniers” admitted the authenticity of the letter imaged above, would they be so invested in preserving the mirage of legitimacy and patina of a very mixed legacy – a ruse that was perpetrated on the American electorate not once, but twice, in 2008 and 2012 – that they would do everything in their power to make sure the

image never saw the light of day... or the interior of the U.S. Capitol? If we are already there, then we are, indeed, in deep and abiding trouble.

And, by the way – for the slower-than-normal – the “what-ifs?” prefacing the discussions of the image of the letter should have been a give-away: the image is the product of your humble servant’s stitching together of a few pieces of historical facts and a bit of not-so-far-fetched hypothetical discussions which *might* – but then again might *not* – have taken place back in Philadelphia... on that muggy Wednesday evening of August 29, 1787.

And to those who say it could never have happened that way... are you sure? Really sure?