No. 13-

IN THE

Supreme Court of the United States

H. BROOKE PAIGE,

Petitioner,

v.

STATE OF VERMONT;
JAMES CONDOS, VERMONT SECRETARY OF STATE,
and PRESIDENT BARACK OBAMA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE VERMONT SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether petitioner's complaint filed in Vermont requesting a declaratory judgment that President Barack Hussein Obama is not an Article II "natural born citizen" and requesting an injunction that the Secretary of State not place Obama's name on the presidential primary and general election ballot in Vermont is moot.

2. Whether President Barack Hussein Obama, who assuming was born in the United States to a United States citizen mother and a non-United States citizen British father, which under the Fourteenth Amendment and 8 U.S.C. Sec. 1401(a) made him a "citizen of the United States" at birth and under the British Nationality Act 1948 also a British citizen at birth, is an Article II "natural born Citizen."

3. Whether the State of Vermont and its Secretary of State violated petitioner's rights under the Fourteenth Amendment to life, liberty, and property by allowing then-candidate Barack Hussein Obama to be placed on the Vermont presidential primary and general election ballot.

LIST OF ALL PARTIES TO THE PROCEEDINGS

The parties to the proceedings in Vermont are the petitioner, H. Brooke Paige, and respondents, the State of Vermont, James Condos as Vermont Secretary of State, and President Barack Hussein Obama, in his capacity as a candidate for the Office of President and Commander in Chief of the Military.

TABLE OF CONTENTS

Table of Contents

Page

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

Cases

Page

Page

Page

Constitution

Page

Statutes

Page

Treatises

Page

Other Authorities

Page

OPINIONS BELOW

The opinion of the Vermont Supreme Court (App. B, 3a-11a), affirming the Superior Court, Washington Unit, Civil Division, is reported at 2013 VT 105 (Vt., 2013). The Entry Order of the Vermont Supreme Court, Docket No. 2012-439, denying petitioner's motion for re-argument (App. A, 1a-2a), is not reported. The opinion of the Superior Court, Washington Unit, Civil Division, Docket No. 611-8-12 Wncv, dismissing petitioner's complaint (App. C, 12a-24a), is also not reported.

JURISDICTION

The final opinion and judgment of the Vermont Supreme Court was entered on October 18, 2013. App. B, 3a. Petitioner filed with that Court on November 15, 2013, a motion for re-argument, which that Court denied on December 6, 2013. App. A, 1a. This petition is filed within 90 days of that date. Rule 13.1. This Court's jurisdiction rests on 28 U.S.C. Sec. 1257 (a).

Petitioner brought his state law action for purposes of receiving state court protection of his Fourteenth Amendment rights to life, liberty, and property. The State of Vermont has refused to grant him that protection and has thus deprived petitioner of a reasonable opportunity to be heard (Staub v. City of Baxley, 355 U.S. 313, 319-20 (1958)), or has imposed an undue burden on the ability of petitioner to protect his federal rights (Felder v. Casey, 487 U.S. 131, 138 (1988)).

Mootness goes to justiciability. Hence, mootness can be viewed as involving procedure. So, in essence, the

Vermont Supreme Court dismissed petitioner's claims on a procedural ground. But the underlying rights which petitioner sought that the State of Vermont protect are important rights protected by the Federal Constitution. These rights are the right to life, liberty, and property protected by the Fourteenth Amendment from state deprivation. By declaring petitioner's claims moot, the Vermont Supreme Court in effect deprived the petitioner of any protection of these fundamental constitutional rights. Hence, the Vermont Supreme Court judgment is neither adequate nor independent so as to deprive this Court of jurisdiction. Davis v. Wechsler, 263 U.S. 22, 24–25 (1923); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 455–458 (1958).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND TREATISE INVOLVED

-Article II, Section 1, Clause 5 provides:

> 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 Fourteenth Amendment provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

> are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

-The Naturalization Act of 1790 (1 Stat. 103), found at Appendix D, 25a

-The Naturalization Act of 1795 (1 Stat. 414), found at Appendix D, 26a

-The Naturalization Act of 1802 (2 Stat. 153), found at Appendix D, 29a

-Emer de Vattel, The Law of Nations, or Principles of the Laws of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, bk. 1, c. 19, sec. 212 (London 1797) (1st ed. Neuchatel 1758) § 212. Citizens and natives, found at Appendix D, 34a

-British Nationality Act 1948, found at Appendix D, 37a

STATEMENT OF THE CASE

On August 27, 2012, petitioner filed a verified complaint and petition for declaratory judgment and injunctive relief in the Vermont Superior Court against the State of Vermont, its Secretary of State, and then candidate, Barack Hussein Obama. App. C, 12a. He sought

an injunction barring the Secretary of State from printing or distributing primary and general election ballots containing the name of presidential candidate Barack Hussein Obama on them, contending that he is not an Article II, Section 1, Clause 5 "natural born citizen." He claimed that it would be a deprivation of his Fourteenth Amendment rights to life, liberty, and property to have a non-"natural born citizen" assume the powers of the Executive and Commander in Chief of the Military. App. C, 13a. The court found that petitioner did not have standing. App. C, 20a. The court also found that Obama is a "natural born citizen." The Vermont Supreme Court affirmed, finding that petitioner's claims were moot. That Court reached no other issues. App. B, 11a.

REASONS FOR GRANTING THE PETITION

I. The Vermont Supreme Court has decided a state law issue which seriously impacts upon important questions of federal law and petitioner's constitutional rights concerning federal elections for the Office of President and Commander in Chief of the Military that have not been but should be settled by this Court

This case presents questions of great public importance. This case involves petitioner's claim against the State of Vermont and its Secretary of State for what they did in a federal election and against Obama for not being a natural born citizen. What states do in federal elections has great federal implications. This case implicates the protection of the federal election process. There is a need for state ballot challenges because there is no federal mechanism to challenge presidential candidates running for that

office. Elections are run by the several states. Hence, the states become the agents of the federal government when it comes to elections for federal office including that of President.

This case involves the integrity of the federal election process and federal election ballot for the office of president. The Supreme Court has made it clear that "a State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies. Jenness v. Fortson, 403 U.S. at 403 U. S. 442." Bullock v. Carter, 405 U.S. 134, 145 (1972). This case is about what role, if any, the states play in making sure candidates for President are constitutionally eligible for the office they seek. Should that role include interpreting the Constitution and the "natural born citizen" clause to make sure a candidate for President is constitutionally qualified for the office he or she seeks? Why should our national voting system allow states the authority to keep candidates off presidential ballots when a candidate is clearly ineligibility (does not meet the age or residency requirements and therefore there is no dispute), but no role when a candidate is not clearly ineligible (when the definition of a "natural born citizen" is in dispute)? Should states be allowed to take the position that they should not act in the area of federal elections because then there could be a multitude of conflicting decisions across the nation in the various states and consequently no state takes any action to protect the national elections? Should the states abdicate all authority to decide federal eligibility early in the election process and rather leave it to Congress to decide the issue after the nation has heavily invested politically and economically in a candidate, especially when the Constitution does not give to Congress the

sole authority to decide disputes regarding Presidential eligibility? Is it not wiser that presidential eligibility should be decided by judicial branch of government as early as possible in the political process, rather than later by the political process itself? The answers to these questions have broad implications not only for petitioner but for the nation as a whole.

Whether the petitioner can bring his federal presidential ballot challenge in state court is vitally important to our federal system. By finding that petitioner's claims are moot, the Vermont Supreme Court has not only decided the state issue of mootness against petitioner, but has also decided not to address the vitally critical constitutional questions that lie in the merits of petitioner's case. The merits of petitioner's claims go to the questions of whether Obama is an Article II "natural born citizen" and whether Vermont should have kept his name off the presidential ballot. The merits of petitioners' claims involve the meaning and application of Article II "natural born citizen" clause and the constitutional duty of the States to properly enforce that clause during their federal elections for the Office of President. By finding petitioner's complaint moot, the Vermont Supreme Court has thwarted petitioner from any judicial relief in the only forum that can protect his fundamental constitutional rights to life, liberty, and property.

While the United States Supreme Court in Minor v. Happersett, 88 U.S. 162 (1875) confirmed the definition of an Article II "natural born citizen," and in United States v. Wong Kim Ark, 169 U.S. 649 (1898) decided what is the meaning of a "citizen of the United States" at birth under the Fourteenth Amendment, it has never decided a case in

which it applied the meaning of a "natural born citizen" to the question of whether a presidential candidate (who was already elected President in the previous election) again running for that office meets that criteria in order to be eligible to be President. That the President is a "natural born citizen" is critically important not only to petitioner but to the whole nation. Having a person sit as President and Commander who is not a "natural born citizen" puts the national security of the United States vitally at risk. Whether the president is a "natural born citizen" has direct implication not only for the protection to life, liberty, and property to which the petitioner is entitled under the Fourteenth Amendment, but also for the national security of the United States, for who is allowed to wield the all and singular powers of the President and Commander is of vital importance to the preservation and survival of the constitutional republic. Whether or not the President and Commander is legitimately sitting in those offices impacts the nation's foreign policy.

The Court should also grant the petition because we need to protect the rule of law. By the Vermont Supreme Court declaring petitioner's case moot is to allow these critical question to be decided by political parties and voting majorities rather than the rule of law. Not only is such a proposed remedy both inappropriate and insufficient, but its suggestion understates the gravity to petitioner of the consequences of denying him any right to continue his federal claims in a court of law. The rule of law does not allow that the will of the people or the popular vote should determine the meaning of the "natural born citizen" clause and that Congress should defer to that will on such vital constitutional questions. Rather, only the judicial branch of government can provide that

meaning and by so doing will maintain the rule of law in our nation. It is only by allowing litigants to bring and continue their claims to the courts that the courts can enforce and preserve the rule of law.

The Supreme Court should grant review so as to maintain the proper balance of power between the three branches of government. The judiciary plays a vital role in our constitutional republic. It is the judiciary that keeps the other two branches in check so they do not usurp power that is not given to them by the Constitution. Allowing the other two branches of government to operate outside the Constitution and not providing a litigant access to the judiciary to redress such wrongs can only put the balance of power in jeopardy which ultimately undermines the foundation of the constitutional republic. See Hamdan v. Rumsfeld, 546 U.S. 1002, 126 S.Ct. 2749, 2759 (2006) (certiorari was granted because "trial by military commission is an extraordinary measure raising important questions about the balance of powers in our constitutional structure").

The nation also needs a definition of "natural born citizen" for future presidential and vice presidential elections. What is the correct meaning of the "natural born citizen" clause is also critically important to future presidential and vice presidential elections. Over the years there has been much debate about the meaning of the clause but no definite resolution yet by the Supreme Court. Given the amount of children born in the United States to alien parents (one or two), naturalized citizens, non-citizen permanent residence, and illegal aliens who reside in our nation, this issue can easily repeat in future elections. Neither Congress nor the Executive have constitutional

power to define a "natural born citizen." Neither the political parties nor the popular vote can define the clause. Hence, only the judiciary can define the clause.

II. The Vermont Supreme Court erred in not reaching the constitutional question of whether Barack Obama is a "natural born citizen" and whether he should have been allowed to be placed on the Vermont presidential ballot by finding that petitioner's claims are moot and the Court should exercise its error-correction function to correct such error

We submit that the Vermont Supreme Court committed error in finding that petitioner's claims are moot and thereby not reaching the important federal questions and protecting petitioner's federal rights. The Court should grant certiorari so that it can exercise its error-correction function and thereby protect petitioner's important Fourth Amendment rights to life, liberty, and property. See Perma Life Mufflers, Inc. v. International Parts Corp., 392 U.S. 134, 136 (1968) (certiorari was granted because "these [erroneous] rulings by the Court of Appeals seemed to threaten the effectiveness of the private action as a vital means for enforcing the anti-trust policy of the United States") So too here, the Court should review Vermont Supreme Court's ruling on mootness, which precludes any means for petitioner to enforce Article II's "natural born citizen" clause and to make sure that the Vermont presidential ballot sufficiently protects his Fourth Amendment rights to life, liberty, and property.

A. The Mootness Standard

Even though the 2012 presidential election is over, this case is not moot because the controversy presented in the case is capable of repetition, yet evading review. Chase v. State, 2008 VT 107, ¶ 16, 184 Vt. 430, 966 A.2d 139. The U.S. Supreme Court has dealt with the issue of mootness and its inapplicability when a controversy is capable of repetition, yet evading review. In Storer v. Brown, 415 U.S. 724 (1974), the Court found:

> The 1972 election is long over, and no effective relief can be provided to the candidates or voters, but this case is not moot, since the issues properly presented, and their effects on independent candidacies, will persist as the California statutes are applied in future elections. This is, therefore, a case where the controversy is "capable of repetition, yet evading review." Rosario v. Rockefeller, 410 U. S. 752, 756 n. 5 (1973); Dunn v. Blumstein, 405 U. S. 330, 333 n. 2 (1972); Moore v. Ogilivie, 394 U. S. 814, 816 (1969); Southern Pacific Terminal Co. v. ICC, 219 U. S. 498, 515 (1911). The "capable of repetition, yet evading review" doctrine, in the context of election cases, is appropriate when there are "as applied" challenges as well as in the more typical case involving only facial attacks. The construction of the statute, an understanding of its operation, and possible constitutional limits on its application, will have the effect of simplifying future challenges, thus increasing the likelihood that timely filed cases can be adjudicated before an election is held."

Id., n. 8, at 755. See also Anderson v. Celebrezze 460 U.S. 780, n.3, 806 (1983) (finding that even though the election was over, the case was not moot and citing Storer v. Brown, 415 U. S. 724, 737, n. 8 (1974)).

In Norman v. Reed, 502 U.S. 279 (1992), the Court found:

> We start with Reed's contention that we should treat the controversy as moot because the election is over. We should not. Even if the issue before us were limited to petitioners' eligibility to use the Party name on the 1990 ballot, that issue would be worthy of resolution as 'capable of repetition, yet evading review.' Moore v. Ogilivie, 394 U.S. 814, 816 (1969). There would be every reason to expect the same parties to generate a similar, future controversy subject to identical time constraints if we should fail to resolve the constitutional issues that arose in 1990."

Id. at 287-88. See also Moore v. Ogilivie 394 U.S. 814 (1969) (even though appellees urged that the election was over and there was no possibility of granting to appellant any relief, the Court found that "[t]he problem is therefore 'capable of repetition, yet evading review,' Southern Pacific Terminal Co. v. Interstate Commerce Commission, 219 U. S. 498, 515. The need for its resolution thus reflects a continuing controversy in the federal-state area where our "one man, one vote" decisions have thrust. We turn then to the merits.") ; Rosario v. Rockefeller, 410 U.S. 752, 763, n.5 (1973) (stating: "Although the June primary election has been completed and the petitioners will be eligible to vote

in the next scheduled New York primary, this case is not moot, since the question the petitioners raise is " `capable of repetition, yet evading review.' " Dunn v. Blumstein, 405 U. S. 330, 333 n. 2 (1972); Moore v. Ogilivie, 394 U. S. 814, 816 (1969); Southern Pacific Terminal Co. v. ICC, 219 U. S. 498, 515 (1911)); Dunn v. Blumstein, 405 U.S. 330, 360 n. 2 (1972) (the Court stated "[a]lthough appellee now can vote, the problem to voters posed by the Tennessee residence requirements is 'capable of repetition, yet evading review.' Moore v. Ogilivie, 394 U.S. 814, 816 (1969); Southern Pacific Terminal Co. v. ICC, 219 U. S. 498, 515 (1911)"); and Mandel v. Bradley, 432 U.S. 173, 175 (1977) ("Bradley successfully gathered the requisite number of signatures, obtained a place on the ballot, ran, and lost. This case is nonetheless not moot. Storer v. Brown, 415 U. S. 724, 415 U. S. 737 n. 8 (1974)").

B. Application of the standard

The issue of whether a candidate running for president is a "natural born citizen" and whether he or she should be placed on the Vermont primary and general election ballot is also "capable of repetition, but evading review." Petitioner did everything that he could to expedite the case in the state court so as to have a decision prior to the election. Despite those efforts, the election came and went without the state court deciding the case. The issue of what is a "natural born citizen" and the state's role in answering that question as it applies to placing candidates for president on the state election ballots remains even though the election is over. The Constitution at Article II, Section 1, Clause 5 still requires that a would-be President has to be a "natural born citizen" in order to be President. The coming and going of the 2012 election

has not changed that constitutional requirements nor has it resolved the question of the state's role in resolving questions of whether a presidential candidate meets that definition. The issue of what is a "natural born citizen" has been raised in the past elections. Those elections have been long over. But as we can see, in both the 2008 and 2012 presidential elections, the same issue appeared and was the subject of much litigation in both our state and federal courts. There are other persons such as Senator Marco Rubio, Governor Bobby Jindal, and Senator Ted Cruz who have been mentioned as possible presidential candidates and who also are not Article II "natural born citizens."

Appellant's request for such a declaration protecting his constitutional rights arises out of a live controversy and legal action against real defendants in which he seeks to protect his constitutional rights to life, liberty, and property and is therefore not a request for an advisory opinion. Petitioner's request for a declaration that Obama is not a "natural born citizen" has its own life and does not die with his application for an injunction. Even though Obama has been sworn into office for two terms, the question of whether he is a "natural born citizen" still exists. Occupying a political office does not determine whether one is qualified for that office. Petitioner can still use a declaration by this Court that Obama is not a "natural born citizen" to seek relief from Congress. Armed with an opinion by the courts that Obama is not a "natural born citizen," petitioner can under the First Amendment petition Congress for a redress of his grievance. Congress, through its impeachment powers, can remove a de facto sitting president who is not Article II eligible.

Petitioner is subject to having to comply with all laws and executive orders which Obama signs into law. Those laws and orders cover national defense and security, health care, tax, and immigration issues, to name a few. These laws and orders greatly impact upon petitioner's life, liberty, and property. Petitioner continues and will continue to suffer the collateral consequences of these laws. See In re P.S., 167 Vt. 63, 67, 702 A.2d 98, 101 (1997) (even if otherwise moot, a case may retain legal life if "negative collateral consequences are likely to result" from the action under review). All Cycle, Inc. v. Chittenden Solid Waste Dist., 164 Vt. 428, 432, 670 A.2d 800, 803 (1995) (continuing negative collateral consequences can keep a case a live and not moot); State v. J.S., 174 Vt. 619, 620, 817 A.2d 53, 55-56 (2002) (mem.) (same). In such cases, petitioner's injury results from Congress's invalid law, invalid because a constitutionally unqualified person is acting as president, with such office needed in order to enact valid laws under the Constitution. These collateral consequences are curable, for these laws and orders are not valid if Obama is declared not to be constitutionally eligible to be President. See Bond v. United States, 564 U. S. ____ (2011) (by analogy, one compelled to pay some money or take some course of action because of a law passed by Congress after action or inaction of Obama acting as the President, would have standing to challenge the constitutionality of the law based on the law lacking the action of a legitimate President which is needed under Article I, Section 7, Clause 2 of the Constitution for laws to be passed. The standing argument would be made in the context of separation of powers and checks and balances); Noel Canning v. N.L.R.B., 705 F.3d 490 (D.C. Cir. 2013) (finding that actions of the NLRB was void ab initio for lack of power and authority when the President

violated the recess appointment clause in appointing commissioners to that Board).

III. Obama is not an Article II "natural born citizen"

While the Vermont courts have not decided the merits of petitioner's federal claims, we are respectfully requesting that because petitioner has shown that his complaint is not moot and that the Vermont courts should have taken jurisdiction over these merits, their vital importance to the petitioner and to the protection and preservation of our constitutional republic, and the need for "swift review" by this Court, the Supreme Court exercise its "before . . . rendition of judgment" discretion under 28 U.S.C. Sec. 1254(1), 28 U.S.C. Sec. 2101(e), and Rule 11 and also decide those merits. See Chief Justice Burger, Annual Report on the State of the Judiciary, 62 A.B.A.J. 443, 444 (1976) (the Supreme Court grants expedited review when circumstances warrant that action).

A. The Rule of Constitutional Construction

"The framers of the Constitution employed words in their natural sense; and where they are plain and clear, resort to collateral aids to interpretation is unnecessary and cannot be indulged in to narrow or enlarge the text; but where there is ambiguity or doubt, or where two views may well be entertained, contemporaneous and subsequent practical construction are entitled to the greatest weight." McPherson v. Blacker, 146 U.S. 1, 27 (1892). Also, District of Columbia v. Heller, 554 U.S. 570 (2008) provides a methodology for interpreting the Constitution.

B. The Constitutional Text

Article II, Section 1, Clause 5's text does not provide a meaning of the "natural born citizen" clause. The text shows that the Framers wrote "natural born citizen" and not "born citizen," "citizen at birth," or some other like description.

C. The Constitutional Structure

Article II, Section 1, Clause 5 includes both a "natural born citizen" and "Citizen of the United States," with only the former being eligible to be President for those born after the adoption of the Constitution. Hence, the text of Article II sets a "natural born citizen" apart from a "Citizen of the United States." Given the distinct meaning that Article II gives to these separate clauses, we cannot conflate and confound them. Given that an Article II "natural born citizen" is a word of art, an idiom, a unitary clause, we cannot simply substitute in its place an Article I "Citizen of the United States" as defined by the Fourteenth Amendment or Acts of Congress which have a different constitutional meaning. Hence, demonstrating that one is a "citizen of the United States" under the Fourteenth Amendment or some Act of Congress is not sufficient to show that one satisfies the "natural born citizen" clause.

D. Historical Evidence

The meaning of a "natural born citizen" must be shown as it existed at the time the Founders and Framers wrote the clause into the Constitution in 1787. Its meaning must be found within the context of America fighting and winning a bloody revolution against Great Britain.

Understanding the intellectual mindset that brought Americans to revolution is critical to understanding the meaning of the clause. We fail to show what the definition was then by only citing the Fourteenth Amendment or cases like Wong Kim Ark which came 81 and 111 years later, respectively, without showing how those sources either confirmed or changed the specific definition that existed when the Constitution was adopted in 1787. Rather, what is needed to conduct a proper analysis of the meaning of a "natural born citizen" is identifying contemporaneous and subsequent sources from the Founding era which inform on the clause's meaning and Congressional Acts and U.S. Supreme Court cases that confirm that meaning.

1. Purpose of the "natural born citizen" Clause

Examining what the Founders' and Framers' purpose was for including the "natural born citizen" clause as a requirement to be eligible to be President can assist us in discovering its meaning. A narrow interpretation of the "natural born citizen" clause is warranted given the enormous civil and military powers given to the Office of President and that the Founders and Framers demanded that future Presidents and Commanders born after the adoption of the Constitution be born with no allegiance to any foreign power. The Founders and Framers knew that the nation would be populated by many persons from foreign lands who would bring with them foreign ideas, cultures, customs, and loyalties. But for the sake of preserving and perpetuating the new republic, they also expected the person who was to assume the great and singular civil and military powers of the Office of President and Commander in Chief, to be born in full and

complete allegiance and jurisdiction to the U.S. and free of any monarchial and foreign influence and allegiance to any other nation. Hence, they saw the "natural born citizen" clause as a means by which to preserve, perpetuate, and provide for the safety of the new republic. To accomplish their goal, they would have used a bright-line eligibility test that was based on a citizenship clause that provided a "strong check" on foreign influence[1] and no doubt as to its meaning.

2. The Founders Looked to the Law of Nations and Emer de Vattel and Not the English Common Law for Their Definition of a "natural born citizen"

Giving the "natural born citizen" clause its true meaning depends upon correctly resolving the conflict of laws between the law of nations and the English common law as to its definition. The Founders and Framers did not define a "natural born citizen" clause under the English common law and did not give to it the same meaning that such law gave to an English "natural-born subject." Contemporaneous and subsequent sources outside the Constitution show that "natural born citizen" was a word of art, an idiom in the political discourse of the founding generation and had only one specific meaning which was known and accepted by ordinary citizens in the founding generation. The historical evidence, as confirmed by case

1. John Jay to George Washington, July 25, 1787, Max Ferrand, editor, The Records of the Federal Convention of 1787, Revised Edition, Volume III (New Haven: Yale University Press, 1937), p. 61. See also The Federalist No. 67-77, at 405-63 (A. Hamilton) (C. Rossiter, ed. 1999) (explains the need to insulate the Commander in Chief from foreign influence).

law, shows that they defined a "natural born citizen" under natural law and law of nations as presented by Emer de Vattel and his The Law of Nations, Sec. 212 (London 1797) (1st ed. Neuchatel 1758), where he said that the "natural-born citizens, are those born in the country,[2] of parents who are citizens" and added that "in order to be of the country, it is necessary that a person be born of a father[3] who is a citizen, for if he is born there of a foreigner,[4] it will be only the place of this birth, and not his country."[5] The historical record and Minor v. Happersett, among

2. Vattel defined "country" as "the state, or even more particularly the town or place, where our parents had their fixed residence at the moment of our birth." Id. at Sec. 122.

3. The Founders and Framers would have understood the reference to "father" to mean the citizenship of both the father and mother, for the wife acquired the citizenship of the husband. 1 William Blackstone, Commentaries 442. See also Dred Scott v. Sandford, 60 U.S. 393, 476-77 (1857) (Daniels, J., concurring) (took out of Vattel's definition the reference to "fathers" and "father" and replaced it with "parents" and "person," respectively).

4. Jay would have considered anyone owing allegiance to a foreign state or sovereign a foreigner. Black's Law Dictionary 776 (4th ed. 1968) (defining "foreigner").

5. The pre-1797 editions used the words "natives, or indigenes." The 1797 edition replaced those words with "natives, or natural-born citizens," as did all other subsequent U.S. Supreme Court decisions such as Dred Scott, 60 U.S. at 476, Minor v. Happersett, 88 U.S. 162, 167 (1875), and U.S. v. Wong Kim Ark, 169 U.S. 649, 680 (1898). This is strong evidence that even after the Constitution was adopted in 1787 the definition of an Article II "natural born citizen" was thought to come from Vattel.

other U.S. Supreme Court and lower court cases,[6] confirm that Vattel's definition became American common law and was incorporated into Article III "Laws of the United States."[7] This natural law/law of nations definition was also

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6. The Venus, 12 U.S. 253 (1814) (Marshall, C.J., dissenting and concurring for other reasons) (cites and quotes Vattel); Inglis v. Sailors' Snug Harbor, 28 U.S. 99 (1830) (child's citizenship follows that of the father); Shanks v. Dupont, 28 U.S. 242 (1830) (same); Dred Scott, 60 U.S. 393, 476-77 (1856) (Daniels, J., concurring) (cites and quotes Vattel); Ludlam, Executrix, & c., v. Ludlam, 26 N.Y. 356 (1863) (partus sequitur patrem prevailed in the common law); Ex parte Reynolds, 20 F. Cas. 582 (C.C.W.D. Ark 1879) (same and cites Vattel); United States v. Ward, 42 F. 320 (1890) (same); and Wong Kim Ark, 169 U.S. at 680 (1898) (discussed below).

7. John Jay considered the laws of nations part of the "laws of the United States." Patrick J. Charles, Decoding the Fourteenth Amendment's Citizenship Clause: Unlawful Immigration, Allegiance, Personal Subjection, and the Law, 51 Washburn L.J., Issue 2 (forthcoming Spring 2012) (citing The City Gazette and Daily Advertiser (Charleston, S.C.), August 14, 1793, at 2, col. 1). See Andrew C. Lenner, The Federal Principle in American Politics, 1790-1833 (2001) (Shows that the Federalist considered the Constitution has being grounded on natural law and the law of nations and that it could be understood only in light of principles under those laws. Explains how the Federalist incorporated the law of nations into American common law and considered that law as part of the laws of the United States. Lenner thoroughly examines how the Federalist looked to the law of nations and Vattel to resolve many national problems with which they were faced in the republic's early years). The English common law continued to have limited application in the states, but not on the national level where it gave way to the supremacy of the national authority. See also Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1966) (J. Souter, dissenting) (the Founders were hostile to receiving English common law as federal law for "the political systems of the new Republic"). Compare Smith v. Alabama, 124 U.S. 465,

confirmed by David Ramsay (1789), the early Congresses in 1790, 1795, and 1803, and St. George Tucker (1803).[8]

3. David Ramsay

Founder historian, David Ramsay, A Dissertation on the Manners of Acquiring the Character and Privileges of a Citizen (1789) , provides direct convincing evidence from the Founding period that the Founders and Framers required citizen parents to produce a "natural born citizen"[9] and that they did not simply take the English

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478 (1888) (there is no "national customary law" apart from the English common law which the states selectively adopted as local law and did not abrogate by statute; only use the English common law to assist in interpreting the Constitution if its "language" is implicated).

8. Some other sources, among others, are John Locke (1689) (a minor child follows the parents' condition); Samuel von Pufendorf (in 1691 he said the "*Indigenae,* or Natives" are born to "Citizens"); Jaques Burlamaqui (in 1747 said citizenship belongs in the founders of a society and to the children of citizens); Thomas Jefferson (his 1779 citizenship laws were jus sanguinis based); Alexander Hamilton (in Rutgers v. Waddington (1784) relied heavily upon the law of nations and Vattel); and James Madison (wrote to George Washington on October 18, 1787 that the convention did not adopt the English common law); House Speaker Langdon Cheves (1814) (gives Vattel's citizenship definition); and Pastor Alexander McLeod (1815) (same).

9. The law of nations definition of a "natural born citizen" is a combination of natural law (citizenship inherited from parents) and positive law (citizenship acquired from place of birth) or otherwise stated as the unification of jus sanguinis and jus soli at birth which produces unity of allegiance and citizenship from the moment of birth. Vattel, Sections 212-17.

common law "natural born subject" and substitute in its place a "natural born citizen." He said that after July 4, 1776, birthright citizenship as a "natural right" was preserved only for a child born to citizen parents, that such "[c]itizenship is the inheritance of the children of those who have taken part in the late revolution; but this is confined exclusively to the children of those who were themselves citizens…." Id. at 6. He explained that there is an "immense" difference between a British "subject" and a United States "citizen." He added that "citizenship by inheritance belongs to none but the children of those Americans, who, having survived the declaration of independence, acquired that adventitious character in their own right, and transmitted it to their offspring…." Id. at 7. Ramsay did not look to English common law but rather to natural law. As we can see, Ramsay required the future "natural born citizens" to be children of citizens.

4. The Early Naturalization Acts

As we can see from reading the text of the early naturalization acts,[10] they did not provide that any person by mere birth in the U.S. was a "citizen of the United States." Many Founders and Framers sat in the Congresses that passed these laws. There exists an article written by "Publius," probably James Madison of The Federalist Papers, and published on October 7, 1811, in The Alexandria Herald, concerning the 1802 Act. Publius stated:

> Mr. Rodman hints, that it would have been sufficient for James McClure to have been *born*

10. The Naturalization Acts of 1790 (1 Stat. 103), 1795 (1 Stat. 414), 1802 (2 Stat. 153), and 1855 (10 Stat. 604).

> in the United States—he is mistaken. The law of the United States recognizes no such claim. The law of Virginia, of 1792, does—for, "all free persons *born* within the territory of this commonwealth," is deemed a citizen. The law of Virginia considers him as a son of the soil. An alien, as well as a citizen, may beget a citizen, but the U. States' act does not go so far. A man must be naturalized to make his children such (emphasis in the original)

Hence, regarding children born in the U.S., it was the citizenship of a child's parents which determined whether the child was a citizen or not under U.S. law. Even if the child was born in the U.S., if his or her parents were not U.S. citizens, the child was nevertheless not recognized to be born a citizen and had to naturalize derivatively or on his or her own. As to children born abroad, if they were born to U.S. citizen parents, they were naturalized at birth and needed no further naturalization. These Congressional Acts abrogated any English common law rule that may have prevailed in the colonies before the revolution and the Constitution was adopted. They also stood supreme over any state laws concerning how one became a "citizen of the United States."[11]

5. St. George Tucker

St. George Tucker, a highly influential founding generation lawyer and jurist, known as America's Blackstone, wrote Blackstone's Commentaries: with

11. As a result of Wong, 8 U.S.C. § 1431(a) (2006) now specifically refers only to children "born outside the United States."

Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of The Commonwealth of Virginia (1803) ["Commentaries"]. Tucker's purpose in writing his Commentaries was to show that American common law was different from English common law.[12] Tucker's definition of a "natural born citizen" coincides with the law of nation's definition and not with the English common law's.

On expatriation, Tucker criticized Blackstone for maintaining that "universal law" dictated that such a right did not exist.[13] Tucker, in analyzing what that alleged "universal law" was, said that it would have been the "law of nature and nations." In explaining what that "law of nature and nations" was, he looked to "divine law," the "law of nature," and the "law of nations" themselves. He then showed that these sources did not support what Blackstone said. We know that expatriation is tied to citizenship. It is therefore reasonable to conclude that the Founders and Framers would also have looked to this "universal law" as Tucker did and not Blackstone's English common law when they sought to define a "natural born citizen."

Tucker also specifically addressed what a "natural born citizen" was by informing who had the "civil right"

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12. Davison M. Douglas, Foreword: The Legacy of St. George Tucker, 47 Wm. & Mary L.Rev. 1113 (2006) (explains that Tucker wrote his commentaries from notes of his lectures given to his law students at the College of William and Mary in which he explained to them how the law of the United States and that of Virginia had departed from the English common law as a result of the American Revolution, Virginia Constitution, and U.S. Constitution.

13. Commentaries 1:App. 184-85, 254-59; 2:App. 90-103.

to be elected President.[14] He explained that the right to be elected President was one of the most important "civil rights", "civil rights" were only possessed by citizens who either inherited or acquired rights, and while naturalized citizens acquired "civil rights," only a person born to citizen parents inherited them. He said that naturalized citizens were forever barred from possessing the right to be elected President.[15] Hence, the "civil right" to be elected President could only be inherited and not acquired. Since only a child born to citizen parents inherited civil rights and the right to be elected President could only be inherited, the civil right to be elected President belonged only to a child who was born to citizen parents. So only a person born to citizen parents became a citizen not by naturalization. And only a person born to citizen parents was a "natural born citizen" and therefore eligible to be President. From Tucker's explanation as to who possessed the "civil right" to be elected President, we arrive at the inescapable conclusion that a "natural born citizen" could only be a child born to citizen parents.

What is critical about Tucker's work and definition of a "natural born citizen" is that not only did he reject Blackstone's doctrine of the indelibility of allegiance, but he also rejected his definition of a "natural born subject" as being applicable to defining a "natural born citizen." Hence, Tucker would have also rejected any definition of a "natural born citizen" which followed the English common law model.[16] Given the stature that Tucker had during the

14. Commentaries, at Book First, Part Second, Chapter I.

15. Id. at Chapter X

16. Tucker would have rejected the views of William Rawle, A View of the Constitution of the United States (2nd ed. 1829),

Founding, we can reasonably conclude that the Founders and Framers probably thought as he did regarding how a "natural born citizen" was defined and that they did not define a "natural born citizen" under the English common law, but rather under the law of nations.

E. The Fourteenth Amendment

The Fourteenth Amendment was passed only to give basic citizenship to blacks and to make "citizens" equal which did not include making them equal to "natural born citizens" who are the only ones who are eligible to be President and Vice-President. There is nothing in the text of or debates on the Fourteenth Amendment which suggests that it was intended to confirm or amend the "natural born citizen" clause. The Fourteenth Amendment did not change the American common law definition of a "natural born citizen." It did not give "citizens" any new rights.[17] The amendment did not include "citizens" who are not "natural born citizens" into the latter class. Hence, showing that one is a Fourteenth Amendment "citizen of the United States" is not sufficient to demonstrate that one is an Article II "natural born citizen."

F. Minor v. Happersett

In Minor, the Court defined the Article II "natural-born citizen" class as part of its analysis of whether

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Lynch v. Clark, 1 Sandf.Ch. 583 (1844), and Ankeny v. Governor of the State of Indiana, 916 N.E.2d 678 (Ind.Ct.App. 2009), pet. to transfer denied, 929 N.E.2d 789 (Ind. Supreme Court, April 5, 2010), which all disregarded the citizenship of the child's parents when defining a "natural born citizen."

17. Minor, 88 U.S. at 171 ("The amendment did not add to the privileges and immunities of a citizen").

Virginia Minor was a "citizen." The Court held that under "common-law" with which the Framers would have been familiar,

> it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first.

Id., at 167-68 (emphasis supplied). Minor explained that all members of the U.S. were called "citizens." It added that the children born in a county to "citizen" parents were the "natural-born citizens." Here we see the difference between a "citizen" and a "natural-born citizen," with the latter coming into being only by birth in a country to "citizen" parents. Minor did not cite Vattel, but the Court's definition of a "citizen" and a "natural born citizen" is paraphrased directly from Section 212 of his treatise. It was not taken from the English common law.

When Minor said that "there have been doubts" regarding whether a child "born in the jurisdiction" to alien parents was a "citizen," the Court was not questioning whether that child was a "natural born citizen." Rather, it was referring to whether that child was a "citizen" under the Fourteenth Amendment. First, Minor's text distinguishes between a "citizen" and a "natural-born citizen" and rightfully so. Our nation

has since the Founding always distinguished between a "natural born citizen" and a "citizen." The Constitution clearly distinguishes between an Article II "natural born citizen" and an Article I "Citizen." Even though this other class of citizen could potentially be a citizen from birth, the Court was not willing to put them into the "natural born citizen" class.

Second, Minor could not have doubted whether a child born in the U.S. to alien parents was a "natural born citizen," for the Court knew very well that such a child could not be a "natural born citizen" under the very definition of the clause that it gave in the very same paragraph.

Third, the Court was clear that it defined two separate classes of "citizens," the "natural-born citizens," and the "citizens." Minor's "doubts" were about whether a child born in the country to alien parents was born "subject to the jurisdiction" of the U.S. and therefore belonged to that other class of "citizen" created by the newly passed Fourteenth Amendment. Minor had good reason to state that "there have been doubts" about that given the prior history regarding who were "citizens" of the U.S. That child who created such doubts about his or her citizenship surely could not have been a "natural born citizen" which status was never in doubt.

The Fourteenth Amendment is part of the Constitution and was already passed in 1875 when the Court decided Minor. So when Minor said that the definition of a "natural born citizen" was in the "common-law" and not in the Constitution, it also meant that it was not found in the Fourteenth Amendment. Given the Court's definition,

which included citizen parents, clearly the Court did not rely upon any English common law which did not include such a requirement. Rather, the Court relied upon American "common-law" which had its origins in natural law and the law of nations, as commented upon by Vattel in Section 212.

Finally, Minor said that "[t]he Constitution does not in words say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that." The Court only gave us one definition of who "shall" be "natural-born citizens." If there were any others, it would have told us. So the Court gave us that one definition, not just one example among others of a "natural born citizen."

G. U.S. v. Wong Kim Ark

Wong Kim Ark held that a child born in the U.S. to permanently domiciled and resident alien parents was a Fourteenth Amendment "citizen of the United States" from the moment of birth. Wong's holding did not define an Article II "natural born citizen." It did not change the common law definition of a "natural born citizen" provided by Minor. It only decided the Fourteenth Amendment question left open by Minor.

H. Application to Candidate Obama

Obama is not a "natural born citizen" because he was not born to two U.S. citizen parents. While he may have been born to a U.S. citizen mother, he was not born to a U.S. citizen father. Consequently, at the time of his birth, under the British Nationality Act 1948, he inherited a foreign allegiance and citizenship from his British alien

father, Barack H. Obama. Being born a British citizen allowed him to become a Kenyan citizen at age 2. Under the early naturalization acts, Obama would not even have been a "citizen of the United States," let alone a "natural born citizen." Being born to a non-U.S. citizen father, he was not born within the full and complete allegiance and jurisdiction of the U.S. which prevented him from being born with unity of allegiance and citizenship to the U.S. He is therefore not a "natural born citizen." Obama is neither a "natural born Citizen, [n]or a Citizen of the United States, at the time of the Adoption of this Constitution." Hence, he is not eligible to be President.

IV. The Vermont Secretary of State violated petitioner's right to life, liberty, safety, security, tranquility, and property under the Fourteenth Amendment

Petitioner is challenging the Vermont Secretary of State's failure to protect his Fourteenth Amendment rights to life, liberty, and property by failing to be bound by the meaning and intent of Article II's "natural born citizen" clause and to prevent persons who are not qualified to be President from being place on the Vermont state ballot for President.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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Attorney for the Petitioner

Dated: March 6, 2014

APPENDIX

APPENDIX A — ENTRY ORDER OF THE VERMONT SUPREME COURT, FILED DECEMBER 6, 2013

ENTRY ORDER

SUPREME COURT DOCKET NO. 2012-439

DECEMBER TERM, 2013

H. Brooke Paige

v.

State of Vermont, et al.

APPEALED FROM:

Superior Court, Washington Unit, Civil Division

DOCKET NO. 611-8-12 Wncv

In the above-entitled cause, the Clerk will enter:

The motion to reargue, filed with the Court on November 15, 2013, fails to identify any material points of law or fact overlooked or misapprehended by this Court. The motion is therefore denied. See V.R.A.P. 40.

BY THE COURT:

/s/_____
Paul L. Reiber, Chief Justice

Appendix A

/s/_____
John A. Dooley, Associate Justice

/s/_____
Marilyn S. Skoglund, Associate Justice

/s/_____
Brian L. Burgess, Associate Justice

/s/_____
Thomas A. Zonay, Superior Judge, Specially Assigned

APPENDIX B — OPINION OF THE VERMONT SUPREME COURT, FILED OCTOBER 18, 2013

Paige v. State of Vermont, James Condos, Secretary of State and Barack Obama (2012-439)

2013 VT 105

[Filed 18-Oct-2013]

NOTICE: This opinion is subject to motions for reargument under V.R.A.P. 40 as well as formal revision before publication in the Vermont Reports. Readers are requested to notify the Reporter of Decisions by email at: JUD.Reporter@state.vt.us or by mail at: Vermont Supreme Court, 109 State Street, Montpelier, Vermont 05609-0801, of any errors in order that corrections may be made before this opinion goes to press.

2013 VT 105

No. 2012-439

H. Brooke Paige	Supreme Court
v.	On Appeal from Superior Court, Washington Unit, Civil Division
State of Vermont, James Condos, Secretary of State and Barack Obama	April Term 2013

Appendix B

Robert R. Bent, J.

H. Brooke Paige, Pro Se, Washington, and Mario Apuzzo, Jamesburg, New Jersey, for Plaintiff -Appellant.

William H. Sorrel, Attorney General, and Todd W. Daloz, Assistant Attorney General, Montpelier, for Defendants-Appellees State of Vermont and James Condos.

PRESENT: Reiber, C.J., Dooley, Skoglund and Burgess, JJ., and Zonay, Supr. J., Specially Assigned

¶ 1. **BURGESS, J.** Plaintiff H. Brooke Paige appeals a decision by the Washington Superior Court, Civil Division, granting a motion to dismiss by the State and its Secretary of State James Condos.[1] Plaintiff contends the trial court erred in dismissing the suit on jurisdictional grounds because injury to his life, liberty, and property confers standing, as do Vermont election statutes, 17 V.S.A. §§ 2603 and 2617. Plaintiff also asserts that the past presidential election does not render his case moot because this Court can still provide declaratory relief. We disagree, and dismiss the appeal as moot.

1. As used in this opinion, defendants refers to the State of Vermont and Secretary of State James Condos. Plaintiff named the State of Vermont, Secretary of State James Condos, and then-presidential-candidate Barack Obama as defendants. On appeal, plaintiff and defendants presented arguments on the issue of service of process on President Obama, and whether or not President Obama was a necessary party to the suit. Because this Court decides the case on jurisdictional grounds, these issues need not be resolved.

Appendix B

¶ 2. The facts and procedural history are summarized as follows. Plaintiff, a Vermont resident and voter, filed a complaint on August 27, 2012, seeking declarations that Barack Obama is not a "natural born Citizen" as required for eligibility to be President in Article II, Clause 4, of the Federal Constitution and was thus unqualified to be on the ballot for the Office of President, and that Barack Obama's Petition for Nomination for the primary election and filings for the general election were "null and void" because of his ineligibility to hold office. Plaintiff defined "natural born Citizen," according to treatises and other writings preceding and contemporaneous to the Constitution's founding, as a person born to two parents who were citizens of the United States at the time of the person's birth. In addition, plaintiff sought an injunction against the Vermont Secretary of State to bar the Secretary from including Barack Obama's name on the election ballot in Vermont.

¶ 3. On September 25, 2012, defendants filed a motion to dismiss plaintiff's complaint pursuant to Vermont Rule of Civil Procedure 12(b)(1) and (6). Defendants argued that the court lacked jurisdiction to hear the case because plaintiff's injury was "generalized and speculative," and so did not establish standing. Defendants further asserted that the trial court did not have jurisdiction because the court was the wrong forum in which to request relief. On the merits of the case, defendants maintained that the Secretary of State does not have the authority to determine a presidential candidate's eligibility, and argued that the Constitution

does not require a candidate for President to be born of two citizen parents to qualify as a "natural born citizen."

¶ 4. Recognizing the passage of the general election, on November 8, 2012, plaintiff filed a letter with the trial court requesting a pre-trial conference and expedited hearing. Plaintiff sought to ensure enough time for the trial court to thoroughly review all issues and direct the Secretary of State to carry out his election duties prior to the state's participation in the Electoral College.

¶ 5. On November 14, 2012, the court granted defendants' motion to dismiss, ruling that plaintiff lacked standing to bring the suit because the claim was "an impermissible generalized grievance." Plaintiff filed a timely notice of appeal, and subsequently filed a motion in late December 2012 for an expedited hearing before this Court in advance of the Joint Session of Congress that would take place on January 6.[2] This Court denied the motion.

¶ 6. The central question now before this Court on appeal is whether the mootness doctrine bars review of plaintiff's case. Plaintiff argues this case is not moot because the Court can provide relief by declaring that Barack Obama is not a natural-born citizen, and asserts

2. In plaintiff's "Motion for an Order Requiring Appellees to Immediately Respon[d] and for an Expedited Hearing, Review and Final Determination," plaintiff stated that the Joint Session would take place January 6, 2012. The Court proceeds under the assumption that plaintiff intended the date of January 6, 2013

that a controversy continues through plaintiff's efforts to safeguard his life, liberty and property. Plaintiff also contends that this case satisfies two exceptions to the mootness doctrine. First, plaintiff anticipates that a situation involving an ineligible presidential candidate is capable of repetition yet evades review because President Obama may run for a third term if Congress repeals the Twenty-Second Amendment, or other presidential candidates not born of two U.S. citizens are likely to run for president in the future. Second, plaintiff asserts that he suffers negative collateral consequences as a result of Barack Obama's presidency that impact his life, liberty, and property.

¶ 7. The case is moot. Neither exception advocated by plaintiff applies here. Accordingly, this Court need not address plaintiff's other arguments on standing or the merits.

¶ 8. We review dismissal for lack of subject-matter jurisdiction de novo. See *Brod v. Agency of Natural Res.*, 2007 VT 87, ¶ 2, 182 Vt. 234, 936 A.2d 1286 (citing *Town of Bridgewater v. Dep't of Taxes*, 173 Vt. 509, 510, 787 A.2d 1234, 1236 (2001) (mem.)). In order for the Court to rule on substantive issues, an appeal must involve "either a 'live' controversy, or the parties must have a 'legal y cognizable interest in the outcome' of the case throughout the entire proceeding." *In re S.N.*, 2007 VT 47, ¶ 5, 181 Vt. 641, 928 A.2d 510 (mem.) (quoting *In re P.S.*, 167 Vt. 63, 67, 702 A.2d 98, 100 (1997)). Additionally, "an issue becomes moot 'if the reviewing court can no longer grant effective relief.' " *Chase v. State*, 2008 VT 107,

¶ 11, 184 Vt. 430, 966 A.2d 139 (quoting *In re Moriarty*, 156 Vt. 160, 163, 588 A.2d 1063, 1064 (1991)). "Unless an actual or justiciable controversy is present, a declaratory judgment is merely an advisory opinion which we lack the constitutional authority to render." *Doria v. Univ. of Vt.*, 156 Vt. 114, 117, 589 A.2d 317, 318 (1991).

¶ 9. Recognized principles of mootness apply to the present case because it no longer involves a live controversy. Plaintiff has no legally cognizable interest in the outcome. Barack Obama's name was on the ballot, and he is now the President of the United States. President Obama is also unable to seek re-election. U.S. Const. amend. XXII. The issuance of an advisory opinion assessing the merits of plaintiff's argument about the meaning of "natural born Citizen" is beyond this Court's constitutional prerogative. See *In re Keystone Dev. Corp.*, 2009 VT 13, ¶ 7, 186 Vt. 523, 973 A.2d 1179 (mem.) (explaining that this Court lacks authority to render an advisory opinion).

¶ 10. Plaintiff's assertion that the Court can proceed to the merits because this case fits within two established exceptions to the mootness doctrine is unavailing. First, plaintiff argues that the situation where an unqualified person runs for the Office of the President "is capable of repetition, yet evades review." *State v. Condrick*, 144 Vt. 362, 363, 477 A.2d 632, 633 (1984) (citing *State v. O'Connell*, 136 Vt. 43, 45, 383 A.2d 624, 626 (1978)). To fall within the mootness exception for situations capable of repetition yet evading review, plaintiff must satisfy a two-prong test. First, "the challenged action must be in its

duration too short to be fully litigated prior to its cessation or expiration." *Price v. Town of Fairlee*, 2011 VT 48, ¶ 24, 190 Vt. 66, 26 A.3d 26 (citing *State v. Tallman*, 148 Vt. 465, 469, 537 A.2d 422, 424 (1987)). Second, "there must be a reasonable expectation that the same complaining party wil be subjected to the same action again." *Id.*

¶ 11. Assuming, without deciding, that plaintiff satisfied the first prong of this exception, plaintiff failed to establish the second prong, i.e., a reasonable expectation that he will again be subjected to the same action. The "reasonable expectation" requirement necessitates "more than just a theoretical possibility that the same event will happen again in the future." *Doria*, 156 Vt. at 118, 589 A.2d at 319 (citing *In re Green Mountain Power Corp.*, 148 Vt. 333, 335, 532 A.2d 582, 584 (1987)). As previously stated, President Obama cannot seek reelection. Therefore, plaintiff will not again be subject to the same litigation—the "same event"—with regards to President Obama. Plaintiff points to the fact that there is a bill in the House of Representatives that proposes repealing the Twenty-Second Amendment to the Constitution, the provision limiting the number of terms a person may hold the Office of the President. Plaintiff also asserts that other politicians such as Senator Marco Rubio, Senator Ted Cruz, and Governor Bobby Jindal may run for President in 2016 and, like Barack Obama, were not the issue of two citizens. Assuming those claims as to parentage are correct, the candidacies complained of are entirely speculative and are not for this Court's consideration. If one of the above-mentioned politicians should run for President, that situation would be a new and different

event. See *In re P.S.*, 167 Vt. at 68, 702 A.2d at 101 (holding that capable of repetition but evading review exception did not apply because any future orders with regards to non-hospitalization would be considered "new fact patterns"). The exception to the mootness doctrine for issues capable of repetition yet evading review does not apply to the present case.

¶ 12. Plaintiff also posits that his case fits within the second exception to the mootness doctrine because he will suffer negative collateral consequences of laws and orders that are invalid by virtue of the President's continued ineligibility for office. The so-called negative collateral consequences exception to the mootness doctrine "is limited to situations where proceeding to a decision in an otherwise dead case is 'justified by a suf icient prospect that the decision will have an impact on the parties.'" *In re Collette*, 2008 VT 136, ¶ 16, 185 Vt. 210, 969 A.2d 101 (quoting *All Cycle, Inc. v. Chittenden Solid Waste Dist.*, 164 Vt. 428, 432, 670 A.2d 800, 803 (1995)). This exception often applies in mental health cases where "involuntary commitment results in social stigma," *E.S. v. State*, 2005 VT 33, ¶ 7, 178 Vt. 519, 872 A.2d 356 (mem.), and potential "legal disabilities." *State v. J.S.*, 174 Vt. 619, 620, 817 A.2d 53, 56 (2002) (mem.).

¶ 13. Plaintiff fails, however, to identify any negative result specific to him. His claim is a generalized grievance, in common with anyone sharing his interpretation of Article II. The injury asserted is not analogous to the social stigma or legal disability capable of invoking the exception because plaintiff cannot

demonstrate how the injury is personal or debilitating. Furthermore, a declaration by this Court with regards to plaintiff's "natural born Citizen" argument would have no impact on the qualification-related laws and orders to which plaintiff refers, since a ruling by this Court would bind no other state or federal presidential election authority. Whatever the merit of his argument, plaintiff's cure in the form of declaratory relief is futile and so beyond this Court's constitutional jurisdiction. Absent a direct link between the challenged laws and orders and the purportedly negative collateral consequences suffered by plaintiff, the collateral consequence exception to mootness is inapplicable. Accordingly, the appeal must be dismissed as moot.

Appeal dismissed as moot.

FOR THE COURT:

_____

Associate Justice

APPENDIX C — DECISION OF THE SUPERIOR COURT OF VERMONT, CIVIL DIVISION, FILED NOVEMBER 14, 2012

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION

Docket No. 611-8-12 Wncv

H. BROOKE PAIGE,

Plaintiff,

v.

JAMES CONDOS, Vermont Secretary of State,
and PRESIDENT BARACK OBAMA,

Defendants.

DECISION re:

The State's Motion to Dismiss

This suit was commenced by Plaintiff Brooke Paige to obtain an injunction against the Vermont Secretary of State to bar the printing or distribution of ballots with Barack Obama shown as candidate for United States President because he is not a "natural born citizen" under the U.S. Constitution. U.S. Const. art. II, § 1 ("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."). Mr. Paige also seeks declaratory relief to the same effect.

Mr. Paige claims that President Obama is not a "natural born Citizen" because, though Mr. Obama's mother was a U.S. citizen and he was born in Hawaii (in 1961), his father was not a U.S. citizen. "Natural born Citizen," argues Mr. Paige, means that both of Mr. Obama's parents had to be U.S. citizens.

Mr. Paige asserts that he is injured by the possibility that Mr. Obama could be (and now has been) re-elected. However, his description of that injury is generalized. *See* Complaint ¶¶ 105-110. "Allowing candidate Obama to be placed on the presidential election ballot jeopardizes plaintiff's life, liberty, and property under the Fourteenth Amendment." *Id.* ¶ 110.

Plaintiff's complaint was filed on August 27, 2012. The Vermont Secretary of State was served on September 5, 2012. The court will address service on Mr. Obama separately. This court previously denied a request for issuance of preliminary injunctive relief on September 21, 2012. On September 25, 2012, Defendants the State of Vermont and Secretary of State Condos, through the Vermont Attorney General, filed a motion to dismiss. Mr. Paige filed a response on October 10 and the State filed a reply on October 19. Mr. Paige filed a supplemental memorandum on October 31.

Appendix C

In reviewing a motion to dismiss for failure to state a claim, the court must accept all well-pleaded (not conclusory) allegations as true. *Colby v. Umbrella, Inc.*, 184 Vt. 1, 9 (2008). The purpose of motions filed under Rule 12(b)(6) is to test the law as related to the alleged non-conclusory facts in the complaint. The purpose of Rule 12(b)(1) motions is to test the jurisdiction of the court. Issues of standing are implicitly a part of the jurisdictional analysis.

In its motion, the State asserts that dismissal is proper because: (1) Plaintiff lacks standing to bring this action; (2) the court has no authority to determine a candidate's eligibility for the office of president of the United States; (3) the Vermont secretary of state has no authority to determine the same, and lastly; (4) the phrase "natural born Citizen" does not have the meaning attributed to it by Mr. Paige—Mr. Obama is a natural born citizen.

Standing

The standing doctrine—the refusal to address a legal claim unless the litigant advancing it is "properly situated to be entitled to its judicial determination"—has a rich history both in Vermont and outside Vermont. Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d § 3531. In the same month as this suit was brought, the Vermont Supreme Court decided the case of *Franklin County Sheriff's Office v. St. Albans City Police Dep't,* 2012 VT 62. In that case, the court held as follows:

Appendix C

> Vermont courts are limited to deciding actual cases or controversies. *In re Constitutionality of House Bill 88,* 115 Vt. 524, 529 (1949) ("The judicial power, as conferred by the Constitution of this State upon this Court, is the same as that given to the Federal Supreme Court by the United States Constitution; that is, 'the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.'" (quoting *Muskrat v. United States,* 219 U.S. 346, 361 (1911)). An element of the case-or-controversy requirement is that a plaintiff must have standing—that is, "must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law." *Parker v. Town of Milton,* 169 Vt. 74, 77 (1998). To bring a case, a plaintiff must show "(1) injury in fact, (2) causation, and (3) redressability." *Id.*

Franklin County Sheriff's Office, 2012 VT 62, ¶ 11.

Here, the Plaintiff has not alleged any injury-in-fact within the contemplation of standing doctrine. While he states that he has or may suffer injury to his life, liberty, or property, he makes no allegations as to why his claim is heightened or particularized to his situation so that it is differentiated from the harm experienced by the public at large. In short, Mr. Paige seeks to raise an impermissible generalized grievance.

The law of Vermont prohibits its courts from exceeding the province assigned to them; Vermont courts

decide actual cases or controversies only and do not enter the political arena.

> The existence of an actual controversy "turns on whether the plaintiff is suffering the threat of actual injury to a protected legal interest, or is merely speculating about the impact of some generalized grievance." The standing and case or controversy requirements thus enforce the separation of powers between the three different branches of government by confining the judiciary to the adjudication of actual disputes and preventing the judiciary from presiding over broad-based policy questions that are properly resolved in the legislative arena.

Parker v. Town of Milton, 169 Vt. 74, 77 (1998) (citations omitted).

At first blush, it might appear that the legislature has conferred jurisdiction on the courts to hear this matter, either through 17 V.S.A. § 2603(a)(3), which allows any legal voter to challenge an election after it occurs, or § 2617, which reads: "In all cases for which no other provision has been made, the superior court shall have general jurisdiction to hear and determine matters relating to elections and to fashion appropriate relief." This court does not conclude that either of these statutes was designed to alter the standing doctrine as it applies to this case.

Appendix C

Subsections 2603(a) and (b) of title 17 permit citizens to contest elections by raising specifically listed claims. However, § 2603(b)(3)—a catchall provision—allows voter suits alleging "that for any other reason the result of the election is not valid." On its face, there is no limit to the issues which might be raised under § 2603(b)(3). Nonetheless, the court does not read § 2603(b)(3) to allow this suit concerning the national eligibility of a presidential candidate. The character of the bases of contests permitted by § 2603(b)(1) and (2) indicates the nature of disputes which the legislature intended to be decided by the courts under § 2603(b)(3). Subsection (b)(1) allows the court to consider errors committed in the conduct of the election sufficient to change the result. Subsection (b)(2) allows the court to consider whether there was fraud in the conduct of the election sufficient to change the result. Both subsections address the actual conduct of the electoral process on a post-hoc basis. The court applies the statutory interpretation rubric of *ejusdem generis* when the legislature makes lists such as the above. "[W]hen construing an enactment with a series of defining terms, we will apply the rule of *ejusdem generis*" pursuant to which general terms that follow specific terms "will be construed to 'include only those things similar in character to those specifically defined.'" *Vt. Baptist Convention v. Burlington Zoning Bd.,* 159 Vt. 28, 30 (1992) (quoting *Kalakowski v. John A. Russell Corp.,* 137 Vt. 219, 224 (1979)). In this case, the court does not believe the general provision of § 2603(a)(3) applies outside the actual manner in which the election process occurred and which would skew or alter the casting of the votes themselves.

Appendix C

Mr. Paige directs the court's attention to an article by Professor Daniel P. Tokaji—in fact, he incorporates the article into his submission. Daniel P. Tokaji, *The Justiciability of Eligibility: May Courts Decide Who can be President?,* 107 Mich. L. Rev. First Impressions 31 (2008). In short, Professor Tokaji posits that the limitations on the justiciability of the question of Mr. Obama's eligibility to be president in the federal courts likely prevent the issue from being addressed in that forum. He views state courts as not being similarly limited. His premise is that there "is no requirement that a plaintiff in a state court lawsuit meet the Article III or prudential requirements for standing." While there may be no such requirements as a matter of federal law, Vermont has adopted the federal injury-in-fact standard articulated in *Lujan v. Defenders of Wildlife,* 504 U.S. 555 (1992), in *Hinesburg Sand and Gravel Co. v. State,* 166 Vt. 337, 340-44 (1997).

Federal courts considering citizen challenges to presidential eligibility have dismissed on standing grounds. Among many others, see generally, *e.g., Berg v. Obama,* 586 F.3d 234 (3d Cir. 2009); *Sibley v. Obama*, No: 12-cv-1 (JDB), 2012 WL 2016809 (D.D.C. June 6, 2012); *Hollander v. McCain,* 566 F. Supp.2d 63 (D.N.H. 2008).

The standing requirement also incorporates a prudential component such that "a plaintiff's claim must fall within the zone of interests protected by the law invoked, which requires inquiry into the substance of a plaintiff's claim." *Franklin County Sheriff's Office,* 2012 VT 62, ¶ 12 (citations and quotation marks omitted). Here,

the interest in challenging the vote is largely vested in Congress through the constitutional provisions of the Twelfth Amendment and the process for members of Congress to object to the votes of the electors as they occur as described in 3 U.S.C. § 15. There is no specific right to challenge the qualifications of a national candidate for President given to either the Vermont Secretary of State or individual citizens, notwithstanding 17 V.S.A. §§ 2603, 2617. *See also* 17 V.S.A. § 2732 (requiring Vermont's electors to fulfill their duties according to "the constitution and laws of the United States"). Mr. Paige has not pointed to any statutory process by which the Secretary of State is called on to vet the eligibility of national candidates and counsel for the Secretary of State has specifically disavowed any such authority. There is a fundamental logic to limiting the right to make such challenges from the various state courts. To do otherwise would invite wholesale chaos and lingering uncertainty to presidential elections as litigation surrounding such issues might crop up in hundreds of courthouses around the country following an election, leaving the results in limbo for howsoever long the process might take to wind through trials and appeals.

Dovetailing with the prudential reasons for dismissing the claim, this court concludes it has no jurisdiction. The State argues that under the Twelfth Amendment and the federal statutes controlling the process by which electors' votes are cast and counted, the issue of a presidential candidate's eligibility remains exclusively within the province of Congress to determine. Several courts have so ruled. *See, e.g.*, *Strunk v. New York State Bd. of Elections,* No. 6500/11, 2012 WL 1205117, *11-12 (N.Y. Sup. Ct.

Apr. 11, 2012). Electoral votes are counted during a joint session of Congress. That process includes a mechanism by which senators and representatives may object to particular votes and have those objections resolved. 3 U.S.C. § 15. Section 15 does not specifically state that it applies to the issue of a presidential candidate's eligibility and it nowhere says that it is the exclusive mechanism by which such an issue may be raised and resolved. It is thus unclear whether § 15 fully renders presidential eligibility a political question.

However, the necessity of avoiding the chaos that would result if this issue were within the jurisdiction of the nation's many state trial courts is ample enough reason to conclude that the issue does not belong there, whether the issue is characterized as a nonjusticiable political question, raises other separation-of-powers concerns, or otherwise.

This court is not satisfied that it has jurisdiction over the claims raised by Mr. Paige.

Merits

In the alternative, and for the sake of judicial economy in the event that the Supreme Court finds error in the analysis above, this court will address the merits of the case.

While the court has no doubt at this point that Emmerich de Vattel's treatise *The Law of Nations* was a work of significant value to the founding fathers, the court does not conclude that his phrase—"The natives, or natural born citizens, are those born in the country, of

parents who are citizens."—has constitutional significance or that his use of "parents" in the plural has particular significance. Thus far, no judicial decisions have adopted such logic in connection with this or any related issues. In fact, the most comprehensive decision on the topic, *Ankeny v. Governor of Indiana,* 916 N.E.2d 678 (Ind. Ct. App. 2009), examines the historical basis for the use of the phrase, including the English common law in effect at the time of independence, and concludes that the expression "natural born Citizen" is not dependent on the nationality of the parents but reflects the status of a person born into citizenship instead of having citizenship subsequently bestowed. The distinction is eminently logical.

Although not a case deciding eligibility for president, the case of *U.S. v. Wong Kim Ark,* 169 U.S. 649 (1898) discussed the common law of citizenship extensively.[1] Justice Gray, writing for the court, held:

> It thus clearly appears that by the law of England for the last three centuries, beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the

1. *Wong Kim Ark* provided an answer to the question left unanswered in the case of *Minor v. Happersett,* 88 U.S. 162 (1874), whether, under the common law, children born within a jurisdiction of parents who were not its citizens "became themselves, upon their birth, citizens also." *Minor,* 88 U.S. at 167; see also *id.* at 167-68 ("Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first.").

> crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, and the jurisdiction of the English sovereign; and therefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born.

Id. at 658. While the term used in *Wong Kim Ark* in relation to the English common law is "natural-born subject," there is no apparent distinction between it and "natural born citizen."

Mr. Paige has tendered a scholarly article authored by Attorney Mario Apuzzo of New Jersey (*see* below). Mr. Apuzzo argues that originalist thinking as to the meaning of the phrase "natural born citizen" was consistent with an intent on the part of the authors of the constitution to adopt a *jus sanguinus* citizenship model rather than the *jus soli* model of the English common law.[2] There has been academic controversy over aspects of the meaning of the expression "natural born citizen," particularly with respect to individuals born to American parents outside of the United States. *Hollander v. McCain,* 566 F.Supp.2d 63, 66 (D.N.H. 2008). This controversy attended the candidacies of at least George Romney and John McCain.

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2. *Jus sanguinas* is "[t]he rule that child's citizenship is determined by the parent's citizenship." Black's Law Dictionary 880 (8th ed. 2004). *Jus soli* is "[t]he rule that a child's citizenship is determined by place of birth." *Id.*

While Mr. Apuzzo mightily attempts to distinguish the conclusion of the United States Supreme Court in *Wong Kim Ark,* that English common law was adopted as to which model of citizenship was intended by the original framers, this court concludes that his arguments are, in the face of such a decision, academic only.

Mr. Paige's argument on the merits fails.

Renewal of Plaintiff's request for Mr. Apuzzo's assistance

Plaintiff has asked this court to somehow intervene for Mr. Apuzzo, a New Jersey attorney, with the professional conduct board or bar counsel, so he may be a legal consultant to Mr. Paige. The court will not issue any rulings of the nature requested. As the court has previously stated, if Mr. Apuzzo wishes to appear in this court, there is a process for him to do so. If he wishes to perform legal tasks in Vermont which constitute the practice of law he will need to be licensed. If he is doing tasks which do not constitute the practice of law, he does not need to be licensed. Where those lines fall might be hard to tell, they might not be. But there is no provision in law for the court to do more than allow Mr. Apuzzo to be admitted on a *pro hac vice* basis, presuming he qualifies. The court has no authority to make up special rules for this situation or give dispensation for unlawful conduct.

Request for Default Against President Obama

Mr. Paige has caused several letters to be sent to the White House, some by certified mail, some by express

courier, all of which appear to have been signed for by a person at 1600 Pennsylvania Avenue. Plaintiff has asked the court to conclude that service thus has been accomplished under V.R.C.P. 4(f), and that since no answer was filed within 20 days of receipt, default should be entered.

The motion is denied. Rule 4(f) does not apply to these proceedings. Service by mail only applies to defendants in cases which fit into the categories described in that rule, where the defendant has an interest in property located in Vermont which might be attached or in divorce cases. This being neither, Rule 4(f) does not apply. One attempt at personal service by a process server does not establish sufficient evidence of diligent efforts at service to authorize service by publication.

In any event, Mr. Paige's lawsuit, interesting as it is for its extensive historical analysis, has no viability because he has no standing and the court has no jurisdiction. It is dismissed in its entirety.

ORDER

For the foregoing reasons, the State's motion to dismiss is granted; Mr. Paige's motion for entry of default is denied.

Dated at Montpelier, Vermont on November 13, 2012.

/s/
Robert R. Bent, Presiding Judge

APPENDIX D — RELEVANT STATUTORY PROVISIONS

United States Congress, "An act to establish an uniform Rule of Naturalization" (March 26, 1790).

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any Alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof on application to any common law Court of record in any one of the States wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such Court that he is a person of good character, and taking the oath or affirmation prescribed by law to support the Constitution of the United States, which Oath or Affirmation such Court shall administer, and the Clerk of such Court shall record such Application, and the proceedings thereon; and thereupon such person shall be considered as a Citizen of the United States. And the children of such person so naturalized, dwelling within the United States, being under the age of twenty one years at the time of such naturalization, shall also be considered as citizens of the United States. And the children of citizens of the United States that may be born beyond Sea, or out of the limits of the United States, shall be considered as natural born Citizens: Provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States: Provided also, that no person heretofore proscribed by any States, shall be admitted a citizen as aforesaid, except by an Act of the Legislature of the State in which such person was proscribed.

Appendix D

United States Congress, "An act to establish an uniform rule of Naturalization; and to repeal the act heretofore passed on that subject" (January 29, 1795).

For carrying into complete effect the power given by the constitution, to establish an uniform rule of naturalization throughout the United States:

SEC.1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise: --

First. He shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the states, or of the territories northwest or south of the river Ohio, or a circuit or district court of the United States, three years, at least, before his admission, that it was bona fide, his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at that time, be a citizen or subject.

Secondly. He shall, at the time of his application to be admitted, declare on oath or affirmation before some one of the courts aforesaid, that he has resided within the United States, five years at least, and within the state or territory, where such court is at the time held, one year at least; that

he will support the constitution of the United States; and that he does absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly by name, the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. The court admitting such alien shall be satisfied that he has resided within the limits and under the jurisdiction of the United States five years; and it shall further appear to their satisfaction, that during that time, he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

Fourthly. In case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made; which renunciation shall be recorded in the said court.

SEC. 2. Provided always, and be it further enacted, That any alien now residing within the limits and under the jurisdiction of the United States may be admitted to become a citizen on his declaring, on oath or affirmation, in some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction

of the same, and one year, at least, within the state or territory where such court is at the time held; that he will support the constitution of the United States; and that he does absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly by name the prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and when the alien applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission; all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.

SEC. 3. And be it further enacted, that the children of persons duly naturalized, dwelling within the United States, and being under the age of twenty-one years, at the time of such naturalization, and the children of citizens of the United States, born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States: Provided, That the right of citizenship shall not descend to persons, whose fathers have never been resident of the United States: Provided also, That no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great

Britain during the late war, shall be admitted a citizen as foresaid, without the consent of the legislature of the state, in which such person was proscribed.

SEC. 4. And be it further enacted, That the Act intituled, "An act to establish an uniform rule of naturalization," passed the twenty-sixth day of March, one thousand seven hundred and ninety, be, and the same is hereby repealed.

CHAP XXVIII

An Act To establish an uniform rule of Naturalization and to repeal the acts heretofore passed on that subject

Approved April 14 1802 US Statutes at Large Vol 2 pp 153 155

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That any alien being a free white person may be admitted to become a citizen of the United States or any of them on the following conditions and not otherwise

First That he shall have declared on oath or affirmation before the supreme superior district or circuit court of some one of the states or of the territorial districts of the United States or a circuit or district court of the United States three years at least before his admission that it was bona fide his intention to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince potentate state or sovereignty

whatever and particularly by name the prince potentate state or sovereignty whereof such alien may at the time be a citizen or subject

Secondly That he shall at the time of his application to be admitted declare on oath or affirmation before some one of the courts aforesaid that he will support the constitution of the United States and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince potentate state or sovereignty whatever and particularly by name the prince or potentate state or sovereignty whereof he was before a citizen or subject which proceedings shall be recorded by the clerk of the court

Thirdly That the court admitting such alien shall be satisfied that he has resided within the United States five years at least and within the state or territory where such court is at the time held one year at least and it shall further appear to their satisfaction that during that time he has behaved as a man of a good moral character attached to the principles of the constitution of the United States and well disposed to the good order and happiness of the same Provided that the oath of the applicant shall in no case be allowed to prove his residence

Fourthly That in case the alien applying to be admitted to citizenship shall have borne any hereditary title or been of any of the orders of nobility in the kingdom or state from which he came he shall in addition to the above requisites make an express renunciation of his title or order of nobility in the court to which his application shall

be made which renunciation shall be recorded in the said court Provided that no alien who shall be a native citizen denizen or subject of any country state or sovereign with whom the United States shall be at war at the time of his application shall be then admitted to be a citizen of the United States Provided also that any alien who was residing within the limits and under the jurisdiction of the United States before the twenty ninth day of January one thousand seven hundred and ninety five may be admitted to become a citizen on due proof made to some one of the courts aforesaid that he has resided two years at least within and under the jurisdiction of the United States and one year at least Immediately preceding his application within the state or territory where such court is at the time held and on his declaring on oath or affirmation that he will support the constitution of the United States and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince potentate state or sovereignty whatever and particularly by name the prince potentate state or sovereignty whereof he was before a citizen or subject and moreover on its appearing to the satisfaction of the court that during the said term of two years he has behaved as a man of good moral character attached to the constitution of the United States and well disposed to the good order and happiness of the same and where the alien applying for admission to citizenship shall have borne any hereditary title or been of any of the orders of nobility in the kingdom or state from which he came on his moreover making in the court an express renunciation of his title or order of nobility before be shall be entitled to such admission all of which proceedings required in this proviso to be performed in the court shall be recorded by

the clerk thereof and provided also that any alien who was residing within the limits and under the jurisdiction of the United States at any time between the said twenty ninth day of January one thousand seven hundred and ninety five and the eighteenth day of June one thousand seven hundred and ninety eight may within two years after the passing of this act be admitted to become a citizen without a compliance with the first condition above specified

SEC 2 *Provided also and be it further enacted* That in addition to the directions aforesaid all free white persons being aliens who may arrive in the United States after the passing of this act shall in order to become citizens of the United States make registry and obtain certificates in the following manner to wit every person desirous of being naturalized shall if of the age of twenty one years make report of himself or if under the age of twenty one years or held in service shall be reported by his parent guardian master or mistress to the clerk of the district court of the district where such alien or aliens shall arrive or to some other court of record of the United States or of either of the territorial districts of the same or of a particular state and such report shall ascertain the name birthplace age nation and allegiance of each alien together with the country whence he or she migrated and the place of his or her intended settlement and it shall be the duty of such clerk on receiving such report to record the same in his office and to grant to the person making such report and to each individual concerned therein whenever he shall be required a certificate under his hand and seal of office of such report and registry and for receiving and registering each report of an individual or family he shall receive

fifty cents and for each certificate granted pursuant to this act to an individual or family fifty cents and such certificate shall be exhibited to the court by every alien who may arrive in the United States after the passing of this act on his application to be naturalized as evidence of the time of his arrival within the United States

SEC 3 And whereas doubts have arisen whether certain courts of record in some of the states are included within the description of district or circuit courts Be it further enacted that every court of record in any individual state having common law jurisdiction and a seal and clerk or prothonotary shall be considered as a district court within the meaning of this act and every alien who may have been naturalized in any such court shall enjoy from and after the passing of the act the same rights and privileges as if he had been naturalized in a district or circuit court of the United States

SEC 4 And be it further enacted That the children of persons duly naturalized under any of the laws of the United States or who previous to the passing of any law on that subject by the government of the United States may have become citizens of any one of the said states under the laws thereof being under the age of twenty one years at the time of their parents being so naturalized or admitted to the rights of citizenship shall if dwelling in the United States be considered as citizens of the United States and the children of persons who now are or have been citizens of the United States shall though born out of the limits and jurisdiction of the United States be considered as citizens of the United States provided That the right of

citizenship shall not descend to persons whose fathers have never resided within the United States Provided also that no person heretofore proscribed by any state or who has been legally convicted of having joined the army of Great Britain during the late war shall be admitted a citizen as aforesaid without the consent of the legislature of the state in which such person was proscribed

SEC 5 And be it further enacted That all acts heretofore passed respecting naturalization be and the same are hereby repealed

Emer de Vattel, The Law of Nations, or Principles of the Laws of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, bk. 1, c. 19, sec. 212 (London 1797) (1st ed. Neuchatel 1758)

> 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. The natives, or natural-born citizens, are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of

> it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent. We shall soon see, whether, on their coming to the years of discretion, they may renounce their right, and what they owe to the society in which they were born. I say, that, in order to be of the country, it is necessary that a person be born of a father who is a citizen; for if he is born there of a foreigner, it will be only the place of his birth, and not his country.

Id. Sec. 212 Citizens and natives.

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Finally, there are states, as, for instance, England, where the single circumstance of being born in the country naturalises the children of a foreigner.

Id. Sec. 214 Naturalisation.

It is asked, whether the children born of citizens in a foreign country are citizens? The laws have decided this question in several countries, and their regulations must be followed. By the law of nature alone, children follow the condition of their fathers, and enter into all their rights (Sec. 212); the place of birth produces no change in this particular, and cannot of itself furnish any reason for taking from a child what nature has given him; I say "of itself," for civil or political laws may, for particular reasons, ordain otherwise. But I suppose that the father has not

entirely quitted his country in order to settle elsewhere. If he has fixed his abode in a foreign country, he is [sic] become a member of another society, at least a perpetual inhabitant; and his children will be members of it also.

Id. Sec. 215 Children of citizens, born in a foreign country.

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[N]aturally, it is our extraction, not the place of birth, that gives us rights . . .

Id. Sec. 216 Children born at sea.

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The *natural* or *original settlement* is that which we acquire by birth, in the place where our father has his; and we are considered as retaining it, till we have abandoned it, in order to chuse another. The *acquired settlement* (*adscititium*) is that were we settle by our own choice (emphasis in the original).

Id. Sec. 218 Settlement.

Vagrants are people who have no settlement. Consequently those born of vagrant parents have no country, since a man's country is the place where, at the time of his birth, his parents had their settlement (Sec. 122), or it is the state of which his father was then a member;--which comes to the same point: for to settle for ever in a nation, is to become a member of it, at least

as a perpetual inhabitant, if not with all the privileges of a citizen (emphasis in the original).

Id. Sec. 219 Vagrants.

The British Nationality Act of 1948

4. Subject to the provisions of this section, every person born within the United Kingdom and Colonies after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by birth:

Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth—

(*a*) his father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to His Majesty, and is not a citizen of the United Kingdom and Colonies; or

(*b*) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

5.—(1) Subject to the provisions of this section, a person born after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by descent if his father is a citizen of the United Kingdom and Colonies at the time of the birth: