No. 12-1124

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CHARLES TISDALE
Plaintiff-Appellant

v.

THE HONORABLE BARACK H. OBAMA, II, PERSONALLY AND IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, AND DON PALMER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE VIRGINIA STATE BOARD OF ELECTIONS, AND THE VIRGINIA STATE BOARD OF ELECTIONS, AND NEIL H. MACBRIDE, IN HIS OFFICIAL CAPACITY AS UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF VIRGINIA, AND THE FEDERAL ELECTION COMMISSION,
Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT RICHMOND
(The Honorable John A. Gibney, District Judge)

BRIEF OF AMICUS CURIAE IN SUPPORT OF THE PLAINTIFF-APPELLANT AND URGING REVERSAL AND REMAND

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On the Amicus Curiae Brief

CORPORATE DISCLOSURE STATEMENT

Amicus curiae is a natural person and an attorney at law of the State of New Jersey. He is not a publicly held corporation or other publicly held entity. Amicus curiae does not have any parent corporations. Amicus curiae is a natural person and does not issue any stock. No publicly held corporation or other publicly held entity has any ownership interest in amicus curiae. There is no other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of this litigation. Amicus curiae is not a trade association. This case does not arise out of a bankruptcy proceeding.

CERTIFICATE OF SERVICE

I certify that on March 20, 2012, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below. I also served a hard copy by mail on the pro se plaintiff-appellant, Charles Tisdale, by sending him a copy at his address of record which is Charles Tisdale, P.O. Box 401, Richmond, VA 23970.

Dated: March 20, 2012

s/Mario Apuzzo
Mario Apuzzo

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STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE

Amicus curiae is an attorney at law of the State of New Jersey. He has been practicing law since 1983 in the various courts of the State of New Jersey and in the federal courts in the Third Circuit. He is also admitted to the U.S. Supreme Court.

In December 2008, amicus curiae became interested in the question of whether President Barack Obama is an Article II "natural born Citizen." In that month, amicus curiae opened his blog at http://puzo1.blogspot.com for the purpose of examining the issue of whether Mr. Obama is a "natural born Citizen." Amicus curiae has been researching and studying the meaning of a "natural born Citizen" since then and continues to do so at present. During this time period, amicus curiae has gained a great amount of knowledge on the meaning of a "natural born Citizen." He has written many essays on the topic which he has published on his blog.

In 2009, amicus curiae represented the plaintiffs in Kerchner v. Obama, 612 F.3d 204 (3rd. Cir. 2010), cert. denied, 131 S.Ct. 663 (2010). The New Jersey District Court dismissed the case for standing and political question. The Third Circuit Court of Appeals affirmed on standing. The U.S. Supreme Court denied certification.

Amicus curiae greatly admires and respects the work of the Founders and Framers in drafting the Constitution and in creating the constitutional republic. Amicus curiae has an interest in making sure that the courts have all the pertinent information and arguments which show what the meaning of a "natural born Citizen" is. He believes that there has been a distortion of American history regarding the sources of law and other information to which the Founders and Framers looked in forming the new republic. Defining a "natural born Citizen" has fallen victim to this distortion and amicus curiae wants to do what he can to present to the courts what he believes is the correct source of law which impacts on how we define a "natural born Citizen."

The Tisdale case is the first federal court case that has ruled on the merits of the meaning of a "natural born Citizen." The plaintiff was pro se. Given the great constitutional implications of the District Court's decision, amicus curiae wants to be able to provide the Circuit Court through additional briefing with relevant matters concerning a "natural born Citizen" which the parties probably will not bring to the attention of the Court. This information will be of considerable help to the Court.

Amicus curiae plans on litigating the Obama eligibility issue in the state courts of the State of New Jersey. He wants to do what he can to make

sure that other courts do not adopt the decision of the District Court which would give the decision a binding effect throughout the nation. Given the great amount of research and time that he has devoted to the "natural born Citizen" issue, he believes that he will be able to provide information and arguments to the Court which will assist it in making a just decision.

Plaintiff-appellant, Charles Tisdale, consents to the filing of this amicus curiae brief. This District Court dismissed this case sua sponte without any appearance of any defendant. Consent from defendants has therefore not been sought. In any event, amicus curiae has been instructed by the Clerk's Office to file a motion for leave to file this amicus curiae brief.

This brief was not composed in whole or in part by counsel for any party or by any pro se party. Funding for this amicus curiae brief comes only from amicus curiae himself; no money was contributed by a party, their counsel, or any other person, to fund its preparation and/or submission.

SUMMARY OF ARGUMENT

The District Court has disregarded the key to understanding the meaning of a "natural born Citizen," i.e., the law of nations and allegiance. It has conflated what is an Article I "Citizen," as defined by the Fourteenth Amendment, with an Article II "natural born Citizen," which is a child born in the country to parents who are "citizens" either by birth or naturalization after birth. Without constitutional amendment, the Court has transformed a "citizen" into a "natural born Citizen" and thereby diluted the critical allegiance requirements to be a "natural born Citizen" and consequently the eligibility requirements to be President.

LEGAL ARGUMENT

I. THE DISTRICT COURT ERRED IN HOLDING THAT THOSE BORN IN THE UNITED STATES, REGARDLESS OF THE CITIZENSHIP OF THE PARENTS, ARE CONSIDERED ARTICLE II "NATURAL BORN CITIZENS"

The Court said "[i]t is well settled that those born in the United States are considered natural born citizens. See, e.g., United States v. Ark, 169 U.S. 649, 702 (1898) ('Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States.'). . . . Moreover, 'those born 'in the United States, and subject to the jurisdiction

thereof,' . . . have been considered American citizens under American law in effect since the time of the founding . . . and thus eligible for the presidency' (citing and quoting Hollander v. McCain, 566 F.Supp.2d 63, 66 (D.N.H. 2008)). The Court has not provided sound reason, historical analysis, or controlling authority for its conclusion that any child born in the U.S., regardless of the parents' citizenship, is a "natural born Citizen." On the contrary, a "natural born Citizen" is defined by the law of nations, which became American common law, as a child born in the country to two citizen parents.

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 which is what the District Court did here. Given that an Article II "natural born Citizen" is a word of art, an idiom, 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.

[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 president from foreign influence and the president's power including those over treaties, international relations, appointing ambassadors, and operations of war).

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. Implicit in the District Court's ruling is the notion that the Founders and Framers defined the "natural born Citizen" clause under the English common law and gave to it the same meaning that such law gave to an English "natural born subject." But the Founders and Framers did not define a "natural born Citizen" the same as the English common law defined a "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 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 other U.S. Supreme Court and lower court cases,[6] confirm that

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[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.

[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.,

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

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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, 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).

definition was also 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 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

[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.

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:

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

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

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

St. George Tucker, a highly influential founding generation lawyer and jurist, wrote Blackstone's Commentaries: with 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] The work earned him the title of the "American Blackstone." 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 and not to the English common law. He then

[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.

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" 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

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

[15] Id. at Chapter X

was a "natural born Citizen" and therefore eligible to be President. In his discussion on naturalization, Tucker explained that a child born to alien parents, no matter where born, is an alien and becomes a "citizen of the United States" by law when his parents naturalize if done before the age of majority or by his own right if done thereafter. This is the same rule that our early Congresses used when they wrote the Naturalization Acts of 1790, 1795, and 1802. 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 Founding, we can reasonably conclude that the Founders and

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

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, a case that the District Court neither cited nor discussed, the U.S. Supreme Court explained that the Fourteenth Amendment does not

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

provide the standard for defining a "natural born Citizen." As we shall see below, Wong Kim Ark, when it gave us its definition of a "natural born Citizen," cited and quoted Minor and made no reference to the Fourteenth Amendment as it did in deciding whether Wong was a "citizen of the United States."

Engaging in a thorough and insightful analysis of U.S. citizenship, the Court recognized that the citizenship of women had always been assumed in the nation and set out to firmly establish that it existed. Id. at 168-70. Hence, the Court concluded that it was necessary to first analyze citizenship before reaching the issue of whether Virginia Minor had the constitutional right to vote under Article IV's privileges and immunities clause. The Court defined the Article II "natural-born citizen" class as part of its analysis of whether 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. Finding this source for the Court's definition is critical because it shows that the entire Minor Court, like Chief Justice Marshall in The Venus, and Justice Daniels in Dred Scott did not rely upon the English common law to define the clause, but rather Vattel.

Some argue that when Minor said that "there have been doubts" regarding whether a child born in the U.S. to alien parents was a "citizen," the Court meant that "there have been doubts" whether that child was a "natural born citizen." In other words, these persons argue that Minor included those other potential "citizens" into the "natural-born citizen" class. But this argument not only ignores the clear text of what the Court wrote, but also puts intentions into the mind and words into the mouth of our U.S. Supreme Court which simply are not there.

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." It 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. Wong Kim Ark

Wong held that a child born in the U.S. to domiciled alien parents was a Fourteenth Amendment "citizen of the United States." Wong's holding did not define an Article II "natural born Citizen." Nowhere in the question presented or in Wong's holding do we find the words "natural born Citizen." The Court said in its holding that it was deciding "the single question." The only question before the Court was whether Wong was a Fourteenth Amendment "citizen." Wong's holding did not alter or amend the definition

of an Article II "natural born Citizen" other than to increase the class of people who can be "citizens" and who then can go on to procreate "natural born Citizens." Yet, relying upon Wong's holding, the Court took Wong's definition of a Fourteenth Amendment "citizen" and used that definition to define an Article II "natural born Citizen." From the clear text of the Wong holding which relates only to a "citizen of the United States," Wong's holding does not support the Court's statement regarding a "natural born Citizen."[18]

The doubts identified by Minor in 1875, whether a child born in the U.S. to alien parents is born "subject to the jurisdiction" of the U.S., were finally resolved by Wong. As we saw in Minor, Fourteenth Amendment "jurisdiction" analysis has no part in determining whether one is a "natural born Citizen." Accepting its definition of those who make up the "natural born Citizen" class, Wong explained that Minor was not committed to finding that another class of persons, children born in the U.S. to alien parents, were not born "subject to the jurisdiction" of the U.S. Id. at 679-80. If Wong had been born a "natural born Citizen" like Virginia Minor had

[18] See Charles Gordon in his, Who Can Be President of the United States: The Unresolved Enigma, 28 Md. L.Rev. 1, 31-32 (Winter 1968) (says Wong had nothing to do with defining a "natural born Citizen"). See also Cohens v. Virginia, 6 Wheat. 264, 399 (1821) (cited in Wong and cautions on using a case's dicta).

been, the Court would not have had to analyze whether he was born "subject to the jurisdiction" of the U.S. and thereby create another class of "citizen." With the definition of a "natural born Citizen" never being in dispute, what became "well settled" with Wong was the meaning of a Fourteenth Amendment "citizen," not the meaning of an Article II "natural born Citizen." After all, it is unreasonable to think that the Framers would have used a presidential eligibility clause whose definition was not already "well settled" in 1787 or which could be expanded in later years to include more people without a constitutional amendment.

While it relied on the English common law to resolve the doubts concerning the status of "citizen" identified in Minor, it cited and quoted Minor's law of nations and American "common-law" definition of a "natural-born citizen," with no criticism or distinguishing of that definition to reach its holding that Wong was a "citizen of the United States." If Wong were addressing the meaning of a "natural born Citizen" it would have had to explain why Minor's "common-law" definition was either wrong or did not apply. But we know that the only thing the Court did regarding Minor was cite and quote the same definition of a "natural-born citizen" which it confirmed. If the Court needed to abandon or distinguish that definition, it would have done so. If Wong had meant to rule that Wong

was a "natural born Citizen," it would have also told us that now there were two definitions of the clause, one provided by Minor and the other established by Wong. It also goes against sound public policy that the Founders and Framers would have had two different definitions of the "natural born Citizen" clause which was one of the eligibility requirements to be President.

To not disturb the definition of an Article II "natural born Citizen," Wong simply distinguished between a "natural born Citizen" and a "citizen." Wong Kim Ark said, by quoting Mr. Binney:

> "The right of citizenship never descends in the legal sense, either by the common law, or under the common naturalization acts. It is incident to birth in the country, or it is given personally by statute. The child of an alien, if born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle."

Id. at 169-70 (citing and quoting Horace Binney, The Alienigenae of the United States Under the Present Naturalization Laws (1853)). Here the Court recognized that only a child born "in the country" to citizen parents can be a "natural-born citizen." The Court said that while both a child "born in the country" to citizen parents and a child "born in the country" to alien parents are "citizens" by the mere fact of being "born in the country," only a child born "in the country" to citizen parents is a "natural-born citizen." In other words for children born in the country, one born to citizens is a

"natural born" citizen and one born to aliens is a "citizen." The reason for this distinction is that under the English common law which the Court applied to make Wong a "citizen," any person born in the King's dominions and in allegiance to him, regardless of how weak that allegiance was due to the child's parents being aliens, was a "natural born subject." Vattel in Section Section 214 of the The Law of Nations explained that this form of granting subjectship in England was actually naturalization at birth when he said: "Finally, there are states, as, for instance, England, where the single circumstance of being born in the country naturalises the children of a foreigner."

Wong Kim Ark was willing to make Wong a "citizen" because he was born in the U.S. and his parents' domicile in the U.S. at the moment of his birth created a strong enough allegiance to the U.S. (in the words of Lord Coke and Blackstone local and temporary) which was "strong enough to make a natural subject, for if he hath issue here, that issue is a natural born subject." Calvin's Case, 7 Rep. 6a (1608). Wong, 169 U.S. at 693. Yet that allegiance was not as strong as if the parents had been citizens of the U.S. and therefore not strong enough to make Wong a "natural-born citizen." Under American constitutional "common-law," which in the area of national citizenship is based on natural law and the law of nations (a combination of

natural law and positive law), such local and temporary allegiance in the child's parents could be strong enough to satisfy the "subject to the jurisdiction" requirement of the Fourteenth Amendment, but it could never be strong enough to make a "natural born Citizen," which is the exacting standard used in our Constitution for presidential eligibility.

Wong Kim Ark used the English common law with its broad allegiance to resolve the question of whether a person born in the U.S. to alien parents was born "subject to the jurisdiction thereof" and therefore a "citizen." With the "jurisdiction" clause not being part of the "natural born Citizen" model used by the Founders and Framers, they would not have had any need to look to the English common law to make such an amendment fit to create a new class of American birthright citizenship. Furthermore, the Founders and Framers would never have adopted the English common law standard of a "natural born subject" (which also included naturalized subjects) to define an Article II "natural born Citizen." And we can be assured of this because, among the many other existing sources revealing this fact, James Madison tells us this. In The Federalist No. 42 (J. Madison), Madison said that the English common law was "a dishonorable and illegitimate guide" for defining piracies and felonies as included in the

Constitution. Madison said the law of nations would be the proper source to be used for defining such constitutional terms.

The dissenting opinion and the government's arguments in Wong expressed concern that the majority's view would render Wong eligible to be President. But this does not mean that the Court's holding declared Wong a Fourteenth Amendment "citizen of the United States" and also an Article II "natural born Citizen." First, the majority opinion did not declare Wong an Article II "natural born Citizen" but only a Fourteenth Amendment "citizen of the United States." Second, the dissent statement is dicta. There is no thorough analysis of historical sources defining the clause or the constitutional debates regarding how the clause came to be included in the Constitution or what the Founder's and Framers' purpose was for including the clause in the Constitution. Third, the Federal District Court had found Wong to be a "natural born citizen." There is nothing unusual about the dissent and government taking issue with that ruling and arguing that he should not be declared to be a "natural born citizen." This shows that the issue was squarely before the Supreme Court but it chose not to find Wong to be an Article II "natural born Citizen," but rather only a Fourteenth Amendment "citizen of the United States." Therefore, Wong's holding, rationale, or passing comment by the dissent cannot be used as authority for

the proposition that any child born in the U.S. and "subject to the jurisdiction thereof" is an Article II "natural born Citizen."

H. Perkins v. Elg

The Court cited Perkins v. Elg, 99 F.2d 408, 409 (1938) for support of its decision. But that case supports the plaintiff's position and not the Court's. In that case, the child was born in the U.S. to naturalized citizen parents. The lower court found Elg to be a "natural born citizen." The Supreme Court confirmed that decision. Hence, the case cannot be cited for the proposition that a child simply born in the U.S. without more is a "natural born Citizen" when Elg was born in the U.S. to citizen parents.

I. Hollander v. McCain

The Court cited Hollander and provided this quote:

> Moreover, "those born 'in the United States, and subject to the jurisdiction thereof,' . . . have been considered American citizens under American law in effect since the time of the founding . . . and thus eligible for the presidency" (citing and quoting Hollander, 566 F.Supp.2d at 66).

First, the Court in Hollander dismissed the case for plaintiff's failure to prove Article III standing. With no subject matter jurisdiction, the Court could not have decided anything substantively. Hollander did not quote Wong Kim Ark as if it said that any person born in the U.S. is a "natural born Citizen" and therefore eligible to be President. Rather, it only quoted

Wong Kim Ark to confirm that persons born in the U.S. and "subject to the jurisdiction thereof" are considered "American citizens" under the Fourteenth Amendment. Hollander then took Wong's holding and expanded upon it to say that it led to the conclusion that such "citizen" is also a "natural born Citizen." Hollander made the leap from "citizen" to "natural born Citizen" without any analysis or legal authority. What is worse, the Hollander Court had no subject matter jurisdiction. So is surely could not make such a constitutional decision while not having any jurisdiction.

J. Schneider v. Rusk

Schneider v. Rusk, 377 U.S. 163 (1964) explained that a "native born" citizen and a naturalized citizen have the same rights, but only a "natural born" citizen is eligible to be President. Hence, the Court properly made a distinction between a "native born" citizen and a "natural born" citizen as they apply to presidential eligibility. The Court said that a "natural born" citizen is not the equivalent of a "native born" citizen, for it said that under the Constitution only a "natural born" citizen can be President. The Court also said that it is necessary to be a "natural born" citizen to be President and that "only" a "native-born" citizen may become President, meaning it is necessary to be born in the U.S. to be eligible to be President. Hence, Schneider informs that a person must be a "natural born" citizen to be

President and being a "native-born" citizen (born in the U.S.) is necessary but not sufficient to satisfy that standard. With Schneider not saying what Hollander says it says, the District Court surely cannot properly rely on Hollander's citation of the Schneider "dicta" which simply does no exist.

We have seen that the contemporaneous history and practical construction of the "natural born citizen" clause show that the Framers defined the clause under the law of nations which became American common law and not under the English common law. With no Supreme Court precedents showing otherwise, this evidence is "too strong and obstinate to be shaken or controlled." McPherson, 146 U.S. at 28.

K. Application to Candidate Obama

Obama is not a "natural born Citizen" because, having failed to provide valid proof that he was born in the United States,[19] we can only conclude that he was not born in the United States. Even if he was born in the United States, he still 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

[19] On March 1, 2012, Arizona Maricopa County Sheriff, Joe Arpaio, announced at a news conference that his investigation shows that there is "probable cause" to conclude that Obama's April 27, 2011 internet-released Certificate of Live Birth is a forgery.

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." Not being born in the U.S. and/or 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."

CONCLUSION

For these reasons, the decision of the District Court must be reversed and the case remanded to that Court for further proceedings.

Dated: March 20, 2012

Respectfully submitted,

s/Mario Apuzzo
Mario Apuzzo, Esq.

CERTIFICATE OF COMPLIANCE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 12-1124 Caption: Charles Tisdale v. Barack Obama et al.

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Amicus Curiae Supporting Plaintiff-Appellant
Dated: March 20, 2012

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I certify that on March 20, 2012, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below. I also served a hard copy by mail on the pro se plaintiff-appellant, Charles Tisdale, by sending him a copy at his address of record which is Charles Tisdale, P.O. Box 401, Richmond, VA 23970.

Dated: March 20, 2012

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