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Citizen McCain

By MICHAEL I. MEYERSON JULY 17, 2008

Baltimore

ARTICLE II of the Constitution declares that “No person except a natural-born citizen ... shall be eligible to the office of president.” This undemocratic provision could prevent voters from selecting their top choice, be it Arnold Schwarzenegger, the Austrian-born governor of California, or Jennifer Granholm, the Canadian-born governor of Michigan.

We cannot just wish away inconvenient constitutional language. Clearly, a child born in a foreign country to two non-American parents cannot ascend to the nation’s highest office. But does the Constitution also prohibit John McCain — who was born to two Americans in the Panama Canal Zone in 1936, while his father served in the Navy — from becoming president?

The Constitution does not define the phrase “natural-born citizen,” and there was virtually no discussion of it by those who drafted or ratified the Constitution. The language originated in a letter that John Jay, the future chief justice of the United States, wrote to George Washington during the Constitutional Convention.

“Permit me to hint, whether it would not be wise and seasonable to provide a strong check to the admission of foreigners into the administration of our national government; and to declare expressly that the command in chief of the American

Army shall not be given to nor devolve on, any but a natural-born citizen,” Jay wrote.

In a short note to Jay, Washington replied cryptically, “I thank you for the hints contained in your letter.” Two days later, the requirement that the president be a “natural-born citizen” was formally proposed to the Convention. The proposal passed unanimously without debate.

In March 1790, within a year after first convening, the first Congress elected under the new Constitution enacted our first naturalization law. That Congress, which included 20 members who had been delegates to the Constitutional Convention, decreed that “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.”

History, however, is not free from ambiguity. When Congress five years later passed a naturalization law that replaced the 1790 law, it said merely that these children “shall be considered citizens.”

And those hoping for guidance from England find that while English common law indicated that nationality was based on where one was born, English statutes in the late 18th century gave full citizenship rights to children born in foreign lands to English parents.

We can be reasonably certain that the purpose of the framers was to prevent a European nation from installing a member of its royal family to rule our country. But the language of the Constitution plausibly permits multiple meanings compatible with that purpose. What is to be done when there is no easy answer?

In such a case, it would be foolish to select an interpretation that defeats other constitutional values. The phrase “natural-born citizen” should be given a meaning consistent with our transcendent right to select those whom we believe are most fit to govern us.

Unless the Constitution is amended, we must accept that we are barred from electing the next Albert Einstein to the White House. But ambiguous constitutional language should not be interpreted to deprive Americans of the right to vote for

children of their fellow citizens who, by happenstance or due to their parents' military obligations, chance to be born overseas.

Michael I. Meyerson, a professor of law at the University of Baltimore, is the author of "Liberty's Blueprint: How Madison and Hamilton Wrote The Federalist, Defined the Constitution and Made Democracy Safe for the World."

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