

Testimony of
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More than any other nation in history, this country and its system of equal justice and economic freedom beckons not only the downtrodden and the persecuted--indeed, all those "yearning to breathe free"--but also those who seek opportunity and a better future for themselves and their posterity.

By the very nature of the principles upon which it is established, the United States encourages immigration and promotes the transformation of those immigrants into Americans--welcoming newcomers while insisting on their learning and embracing America's civic culture and political institutions, thereby forming one nation from many peoples.

"The bosom of America is open to receive not only the opulent and respectable stranger," George Washington wrote, "but the oppressed and persecuted of all Nations and Religions; whom we shall welcome to a participation of all our rights and privileges if, by decency and propriety of conduct, they appear to merit the enjoyment."

Yet there is one legal limitation on the potential rights of immigrant citizens: only those who are native born can become president of the United States. Why the exception to this otherwise universal principle? The immediate answer seems to be clear: Poland, where in 1772, as the historian Forrest McDonald explains, "the secret services of Austria, Prussia and Russia had connived to engineer the election of their own choice for king, whereupon the entirety of Poland was partitioned and divided among those three powers." Indeed, South Carolina delegate Charles Pinckney worried that "in not many years the fate of Poland may be that of the United States." Perhaps with this in mind, John Jay, then Superintendent of Foreign Affairs wrote to Washington, as president of the Convention, urging that it would be "wise & 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." Thus the phrase, as Justice Joseph Story later explained in his Commentaries on the Constitution, "cuts off all chances for ambitious

foreigners, who might otherwise be intriguing for the office."

But there is something more going on here as well, that points back to the Founders' general views about immigration. The purpose of immigration policy, as Hamilton put it succinctly, was for immigrants "to get rid of foreign and acquire American attachments; to learn the principles and imbibe the spirit of our government." The immediate fear was a foreign takeover, but the larger concern was foreign influence.

At the Constitutional Convention there was a lively and illuminating debate about the eligibility of foreign immigrants for federal office. Elbridge Gerry wanted to restrict membership to those born in the United States, while Gouverneur Morris and Charles Pinckney advocated a qualifying period of at least 14 years before eligibility. George Mason was all for "opening a wide door for emigrants; but did not choose to let foreigners and adventurers make law for and govern us." Indeed, were it not for the many immigrants who had acquired great merit in the Revolution, he, too, would be "for restraining the eligibility into the Senate to natives."

Other, more numerous delegates vigorously criticized this position. Scottish-born James Wilson knew from experience "the discouragement and mortification [immigrants] must feel from the degrading discrimination now proposed." Benjamin Franklin opposed such illiberality and argued that when a foreigner gives a preference to America "it is a proof of attachment which ought to excite our confidence and affection." James Madison wanted to maintain the "character of liberality" of the state governments and "to invite foreigners of merit and republican principles among us," while West Indies-born Alexander Hamilton spoke of attracting respectable immigrants who would "be on a level with the First Citizens."

These views prevailed and the Constitution required relatively modest residency periods for immigrant citizens who aspired to the federal legislature: seven years for the House and nine years for the Senate. This was long enough, Madison later wrote in *The Federalist*, to assure that legislators are "thoroughly weaned from the prepossessions and habits incident to foreign birth and education."

But again, why the natural born citizenship requirement for the presidency? In the House of Representatives and the Senate, members check each other and diffuse the influence of any one individual. Not so in the case of the president. With a single executive, at the end of the day, there are no checks, no multiplicity of interests that would override the possibility of foreign intrigue or influence, or mitigate any lingering favoritism--or hatred--for another homeland.

The attachment of the president must be absolute, and absolute attachment comes most often from being born and raised in--and educated and formed by--this country, unalloyed by other native allegiances. "The safety of a republic," as Hamilton observed, "depends essentially on the energy of a common national sentiment; on a uniformity of principles and habits; on the exemption of the citizens from foreign bias, and prejudice; and on that love of country which will almost invariably be found to be closely connected with birth, education, and family." The natural born citizen requirement for the presidency seeks to guarantee, as much as possible, this outcome where it matters most.

And while the practical circumstances have changed--there is no threat of a foreign royal taking the reins of power--the underlying concerns about foreign attachments and favoritism, and the

need for absolute allegiance and loyalty in the executive, still make sense. The question is whether you can expand the eligibility to non-native born citizens without undermining the wisdom and caution inherent in the Framers' design.

One possible proxy could be a significant citizenship requirement, along with a significantly increased residency requirement for presidential eligibility. How much? Enough to approximate the attachment that comes with having been born here, raised here, and educated here; in short, having lived in America for almost all of one's life and thus fundamentally shaped by this regime, its history, institutions, and way of life. The average age of twentieth century presidents is 54. A thirty-five year citizenship requirement (combined with a substantial residency requirement) would assure that most would-be presidents are citizens before they are eighteen years old and residents for much of the time thereafter.

Let me add four brief caveats:

1. Opening the presidency to naturalized citizens, who in theory but often not in practice have renounced their past allegiances, compels us to consider the question of Dual Citizenship. This is a significant issue and, unless addressed, could be a particularly thorny problem. If the natural born citizen requirement violates the idea that anyone can become an American, so the reality of multiple citizenships violates the idea that becoming an American is meaningful.
2. In order to have the intended effect, this effort must be part of a renewed, deliberate and self-confident policy of patriotic assimilation that seeks to Americanize immigrants and educate them about this country's political principles, civic traditions and cultural heritage. If we remove the barrier to our highest office, let's make a better effort to get new citizens started on the right path.
3. I am concerned about the politicization of this question. We are trying to square an important principle of our Constitution with the legitimate concerns of national unity. It should not be resolved based on immediate calculations to advance or hinder the political aspirations of any particular individual or party. I am tempted to suggest that any amendment should include language that it would not take effect for ten years or so, when the current candidates are not on the scene.
4. I must say that the more I have looked into the matter, the more I am intrigued by the legislative approach. Recognizing the difficulty in amending the Constitution, and noting Madison's advice that we should change the document only on "certain great and extraordinary occasions," the possibility of correcting the more obvious loopholes of the clause by legislation is attractive. The First Congress, which included a number of the Framers, provided in the Naturalization Act of 1790 that "the children of citizens of the United States, that may be born beyond the sea, . . . shall be considered as natural born citizens." This suggests that the phrase could include those who are citizens at birth by statute because of their citizen parents. I won't speculate about how the Supreme Court might rule on this question, but it seems compatible with Court precedents (and the Court's deference) to allow Congress this latitude in its plenary powers over naturalization. It is also not obvious that Congress could not include foreign-born children adopted by US citizens. The Child Citizenship Act of 2000, after all, treats those adopted children as if, from the time of their birth, they were born to United States citizens abroad. As long as there is any ambiguity, Congress should pursue these legislative options first.

Let me end, very briefly, on a personal note. Last year, my wife and I adopted two Russian orphans, age three and a half and one. They hold birth certificates in our name, and are American citizens. Joseph knew some broken Russian, but one of the first English phrases he learned was

"God bless America." He knows that George Washington is the Father of his Country. Yet, he can never grow up to be president of the United States. What is worse, in reading stories of our nation's heroes and in emulating their patriotism, he can't dream, as little boys do, of serving his country in its highest office, "on a level with the First Citizens."

Nevertheless, these children--our children--will be as natural born citizens. Not because of where they were born, but because they will be raised and educated to know, as Lincoln said of those who did not themselves descend from the Founders but came to understand the truths of the American creed, that they are "blood of the blood, and flesh of the flesh, of those who made the Revolution." And so they are.

Thank you.

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