

PRESIDENT SCHWARZENEGGER – OR AT LEAST HUGHES?

OVER 35 MILLION CALIFORNIANS are now governed by the Terminator – yet 250 million other Americans will never have that pleasure. Presidential aspirations are similarly dashed for Michigan Governor but Canadian-born Jennifer Granholm, Labor Secretary Elaine Chao, two former secretaries of state, and about ten million other Americans. That's because Article II of the U.S. Constitution provides that “[n]o Person except a natural born Citizen ... shall be eligible to the Office of President.”

The conventional argument for repealing the natural born citizen requirement is straightforward: It's unfair, even un-American, to create a second class of citizens who are ineligible to serve as President. Throughout history, there have been numerous efforts to repeal the requirement – including one as early as 1868 and two in the current Congress (H. Res. 269, 40th Cong.; S. 284, 41st Cong.; H. Res. 52, 42nd Cong.; H.J. Res. 259, 80th Cong.; H.J. Res. 28, 81st Cong.; H.J. Res. 795, 90th Cong.; S.J. Res. 161, 92nd Cong.; S.J. Res. 72, 98th Cong.; H.J. Res. 229, 100th Cong.; H.J. Res. 450, 101st Cong.; H.J. Res. 88, 106th Cong.; H.J. Res. 47, 107th Cong.; H.J. Res. 59, 108th Cong.; S.J. Res. 15, 108th Cong.).

The Founders, however, were concerned about national security. In a July 25, 1787 letter to George Washington, who was then serving as President of the Constitutional Convention, John Jay wrote: “Permit me to hint, whether it would not 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.”

The Founders' concerns may seem obsolete to some today. And why shouldn't the American people have the *option* to elect a governor

born in Austria or Canada as President? On the other hand, it was precisely the fear of Austria (and Prussia and Russia, too) that motivated the Founders. Those powers had just rigged the election of their own candidate as the new monarch of Poland, in order to divide that nation's territory among themselves.

There's an even stronger argument, however, for amending the natural born citizen requirement: At a minimum, anyone who has been an *American throughout his entire life* should be eligible to become President. Yet the Constitution arguably excludes from Presidential eligibility persons born to U.S. citizens, and thus born as Americans, *but born abroad*.

Many academics, to be sure, argue that such persons are eligible. Nevertheless, these two million Americans fall under a substantial legal cloud. In *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), the U.S. Supreme Court explained that the natural born citizen clause “was used in reference to that principle of public law, well understood in this country at the time of the adoption of the Constitution, which referred citizenship to the place of birth” (quoting Justice Curtis's dissent in *Dred Scott*). See also *United States ex rel. Guest v. Perkins*, 17 F. Supp. 177 (D.D.C. 1936).

Eight proposals have been introduced to extend eligibility to lifelong Americans born abroad to U.S. citizens – and in particular, to U.S. servicemen (H.J. Res. 645, 84th Cong.; H.J. Res. 80, 85th Cong.; H.J. Res. 612, 85th Cong.; H.J. Res. 205, 86th Cong.; H.J. Res. 214, 86th Cong.; H.J. Res. 517, 86th Cong.; H.J. Res. 571, 87th Cong.; H.J. Res. 397, 88th Cong.). Surely, the sons and daughters of our soldiers should be able to run for President. As First Lady Laura Bush recently pointed out in support of repeal, “even Karen Hughes [daughter of a U.S. serviceman] was born in Paris. Karen Hughes for President.”

– James C. Ho