

CHAPTER ONE-CONTEMPT FOR THE CONSTITUTION

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The conduct of Barack Obama concerning his Constitutional obligation to demonstrate that he is a natural born citizen of the United States is reminiscent of the chronic liar who tells a lie when the truth would do. The average voter is left to wonder whether Obama is simply so used to obstructionism that he has incompetently and unnecessarily given credence to speculation that he is not a natural born citizen, or he is attempting to delay the discovery of a terrible truth. His tactical choice to slowly release small bits of unverified evidence calls to mind the “ends justifies the means” amorality of his mentor, Saul Alinsky. This is not the transparent and open political leadership style envisioned by our Founding Fathers.

Article II, Section 1 of the Constitution of the United States sets forth three simple requirements for anyone wishing to establish their eligibility for the office of President of the United States:

1. They must be a “natural born” Citizen.
2. They must be over thirty-five years of age
3. They must have been fourteen years a resident of the United States

The exact language is as follows:

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.¹

It is important to note this exact language. The Constitution does not say “no person except someone who is *most likely* a natural born Citizen” or “no person except someone who is *probably* a natural born Citizen” or “no person except someone who is *almost certainly* a natural born Citizen” It clearly requires *absolute certainty* that the person is a natural born citizen.

The Founders included the “natural born” eligibility requirement for the Presidency for good reason. They believed it was necessary to ensure the loyalty of any person who served as President to the country.

It is thought the origin of the natural-born citizen clause can be traced to a letter of July 25, 1787 from John Jay (who had been born in New York City to George Washington (who had been born in Virginia presiding officer of the Constitutional Convention. John Jay wrote: "Permit me to hint, whether it would 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 Commander in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen." There was no debate, and this qualification for the office of the Presidency was introduced by the drafting Committee of Eleven, and then adopted without discussion by the Constitutional Convention.²

The Constitution does not specifically define what is meant by “natural born,” though it does provide for a more detailed definition of the term subsequently by Congress. In the 1790 Naturalization Act, Congress determined that any child born of two American citizens in a location outside of the United States would be deemed a “natural born” citizen, although this law was supplanted by a subsequent 1795 law.³

More than two centuries later, judicial precedent and custom have combined to provide us with a consensus opinion that birth in one of the fifty states of the United States clearly constitutes “natural born.” In addition, birth on a military base in an American territory or protectorate to two American citizen parents constitutes “natural born.” Obtaining “natural born” status under other circumstances becomes less certain.

A child born abroad, not on an American military base or in an American territory or protectorate, to two American citizen parents could claim “natural born” status under the terms of the 1790 Naturalization Act, but it is unclear if a court would find that the terms of that supplanted act still apply. Former Senator Lowell Weicker of Connecticut was born under these circumstances, and briefly ran for President, but he dropped out of the race before his claim of “natural born” status could be tested.⁴

A child born abroad, not on an American military base or in an American territory or protectorate, to a mother who is an American citizen and a father who is not an American citizen would have no defensible claim to “natural born” status. That child could cite the defunct 1790 Naturalization Act, but that Act requires both parents to be American citizens.

Until the Presidential candidacy of Barack Obama there have been relatively few controversies concerning the eligibility of any major party candidate for the office, based on the “natural born” standard.

During the nineteenth century and early twentieth century, when international travel was more limited, the ability to hide a foreign birth was virtually impossible. No one, for instance, ever had reason to question whether Abraham Lincoln or Woodrow Wilson or Franklin Delano Roosevelt were “natural born”.

The first modern instance where a candidate’s “natural born” status was questioned came in 1964, when the issue was raised about Republican Barry Goldwater, who was born in Arizona when it was a territory and before it became a state. The issue was resolved in general agreement that such a situation was considered to be natural born. In 1968, Republican George Romney did not make it far enough through the primary process to have the issue of his birth in the country of Mexico contested. Had it been contested, he would most likely have been declared ineligible. John McCain’s birth on an American military base in the Panama Canal Zone has also questioned as meeting the standard of “natural born”. The consensus is that it meets the standard, since he was born to American citizens living in American territory of a military base.

The question of Barack Obama’s natural born status is far more problematic.

The burden of proof lies with the candidate, and as of this writing, Obama has not met that burden of proof. Therefore, as of this writing, Obama is not constitutionally eligible to serve as President.

The preponderance of evidence that has been produced by the Obama Campaign and investigative journalists as of October 29, 2008 indicates that Senator Obama *probably was* born in Hawaii on August 4, 1961 as he claims. However, *“probably was”* is not good enough to meet the Constitutional requirement of absolute certainty.

The proof of Barack Obama's birth status lies in the files of the State of Hawaii's Department of Health Vital Records Office, of which Dr. Alvin Onaka is the Chief.

If he was born in Hawaii on August 4, 1961, both a "long form" certification of live birth created at the hospital of his birth and signed by his mother's attending physician (or a microfiche copy of this document), and a "short form" certification of live birth which contains a subset of the information included in the "long form" certification exists in the Vital Records Office.

Physical production of both the original "long form" certification and the "short form" certification, combined with an affidavit signed by Dr. Alvin Onaka that he can confirm the authenticity of both documents would qualify as absolute certain proof of Obama's birth.

Providing such evidence should be fairly easy, but, due to Hawaii's privacy laws, this information can not be released without Barack Obama's consent. For mysterious reasons that fuel conspiracy theories across the internet, Senator Obama has refused to provide such authorization.

In his memoirs, Obama claims to have seen a copy of his birth certificate in the 1970s, but he has been either unwilling or unable to produce a copy of that document. Obama spoke of how he found a 1962 newspaper article about his father:

I discovered this article, folded away among my birth certificate and old vaccination forms, when I was in high school.⁵

When asked to produce his birth certificate in 2008, he was unable to discover this birth certificate and offer it as proof. Instead, he posted a digital image image that purports to be Senator Obama's "Certification of Live Birth" which was first posted on the Obama Campaign's Fight the Smears website in June of 2008. A valid copy of "Certification of

Live Birth” document issued by the State of Hawaii looks very much like this digital image.⁶

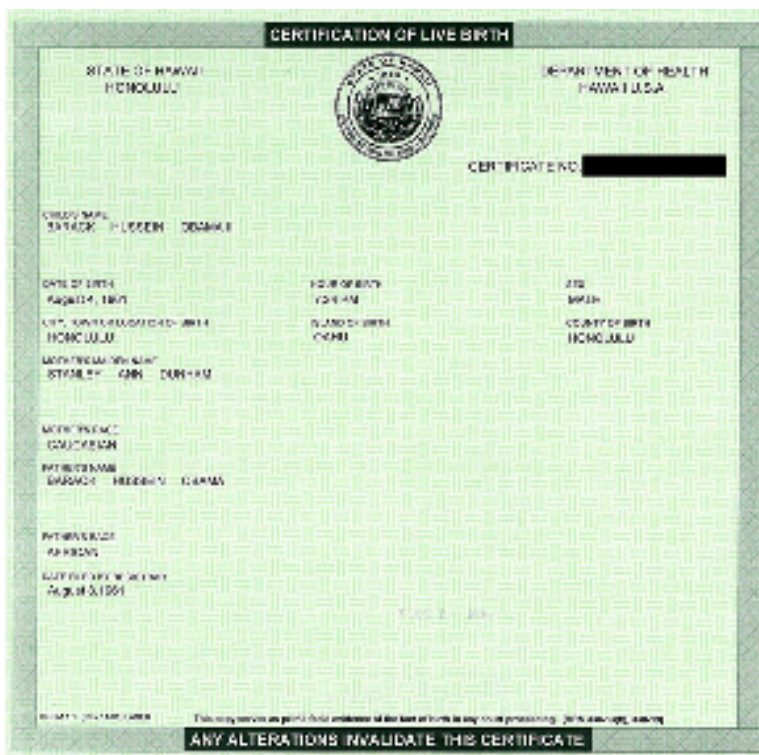


Image 1: Certificate of Live Birth image on the Fight the Smears website.

After conspiracy theorists criticized this digital image as an easy forgery, and pointed out that it was impossible to determine from this image if the back of the document contained the required signature of Dr. Onaka on the back,

as well as the raised seal of the State of Hawaii, the Obama Campaign invited two young journalists from the Annenberg Center's Fact Check organization, Joe Miller and Jess Henig, to visit their facilities in Chicago and view a hard copy of the document.

Mr. Miller and Ms. Henig reported on the results of this visit on the Fact Check website on August 21, 2008 (updated on August 26, 2008), and included photographs of their inspection of the document, which are copied here:⁷

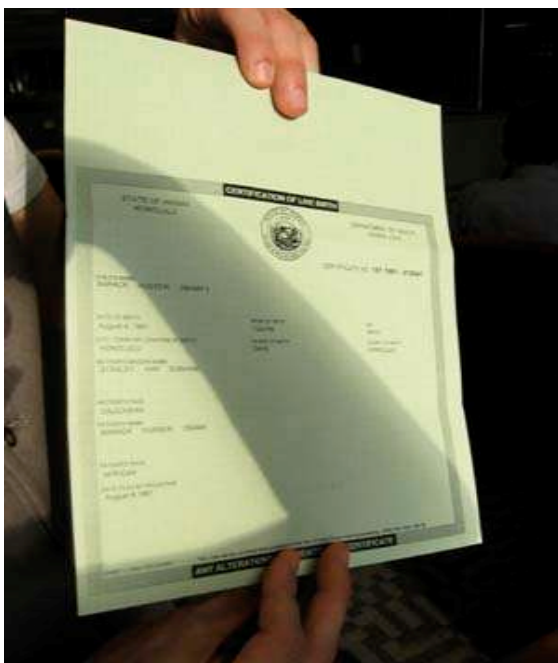


Image 2: Fact Check's Joe Miller holds the purported Obama birth certificate

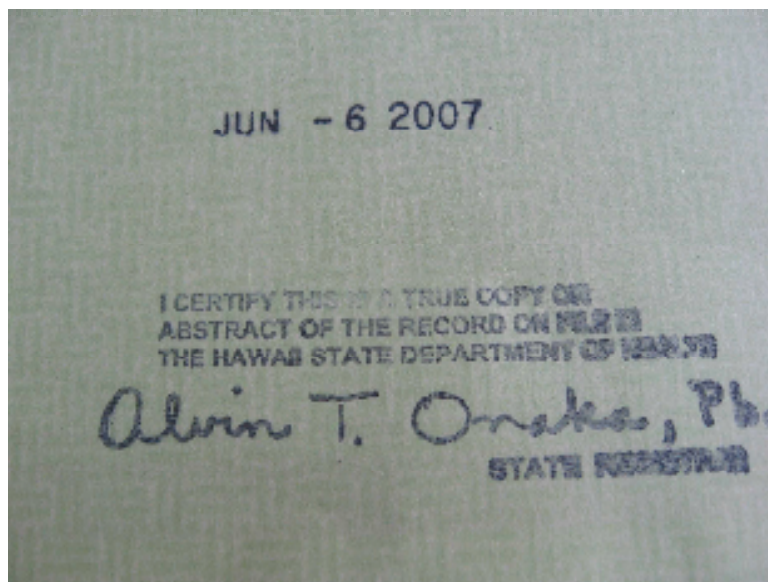


Image 3: Photograph of Dr. Alvin Onaka's stamped signature on the back of the purported Obama birth certificate.



Image 4: Photograph of the raised Hawaii State seal on the back of the document.

Ms. Henig and Mr. Miller conclude the following:

FactCheck.org staffers have now seen, touched, examined and photographed the original birth certificate. We conclude that it meets all of the requirements from the State Department for proving U.S. citizenship. Claims that the document lacks a raised seal or a signature are false. We have posted high-resolution photographs of the document as "supporting documents" to this article. Our conclusion: Obama was born in the U.S.A. just as he has always said.⁸

They offer as additional evidence, the following digital image, said to be from an August 13, 1961 birth announcement in the Honolulu Advertiser:⁹

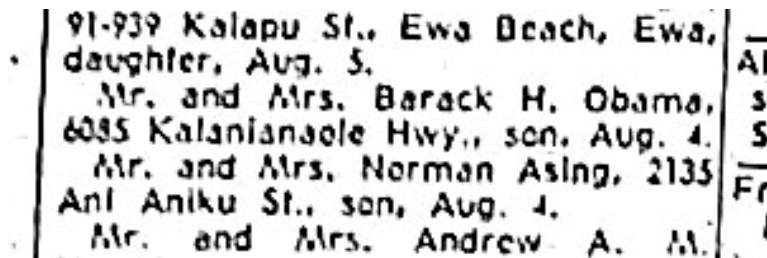


Image 5: Purported August 13, 1961 birth announcement in the Honolulu Advertiser

Brooks Jackson, Director of the Annenberg Center Political Fact Check organization made the following comment on October 27, 2008:

We asked the Obama campaign to consider asking Hawaii officials to release copies of his birth certificate to reporters, or at least to confirm publicly that the birth certificate he has produced is an official document. That way there could be absolutely no question of its authenticity. But they didn't think that was necessary.¹⁰

Jackson went on to state that, based on his career as an investigative journalist, he was satisfied that Obama was a natural born citizen.¹¹

Jackson's standards, however, seem too low for the high standard of absolute certainty required by the Constitution.

Here are several problems associated with the proof offered to date:

1. There is no "chain of custody" from the State of Hawaii to the Obama Campaign for the document examined by Hening and Miller. While these two are very competent young journalists, they are not experts at verifying the authenticity of documents.
2. Dr. Onaka's signature on the back of the document is a stamp, not an original. For a document of this significance, an original signature would be appropriate.
3. The certification on the back of the document above Dr. Onaka's stamped signature states "I certify this is a true copy or abstract of the record on file in the Hawaii State Department of Health." In this case, it is probably an abstract of an original document, which exists either on microfiche, in a database, or as an original document. For a document of this significance, either the microfiche, the source database, or the original document should be produced and capable of public viewing and examination.
4. The certified copy in question is generated by a clerk who simply accesses a database that contains content previously entered, supposedly from the original long form "vault copy" of certificate of live birth. If there has been any misstep along the line about the integrity of the database, then the certified copy is

not accurate. While there are no cases of database integrity problems, it is not known what level of security is associated with this database, and how easily it could have been manipulated.

5. As a follow up to number 4 above, it is quite possible that Doctor Onaka himself had absolutely no review or involvement in the process of generating the certified copy in question. Given the sophistication of today's computer hackers, it seems quite possible that this database could be hacked into and manipulated.
6. The newspaper notice of birth (Image 5 above) does not state place of birth. It would have been possible for anyone to have submitted this information to the paper after the fact, even if the birth occurred outside of Hawaii.

What standard would suffice ? Mr. Jackson's recommendation for transparency is one that seems quite reasonable.

Three documents, all brought forward in the light of day, all made available in a public press conference held by the appropriate officials of the State of Hawaii Department of Health for review and inspection by the public would be sufficient. Those documents are:

1. A certified copy of his birth certificate ("short form") issued by the State of Hawaii bearing the appropriate seal and the signature of the State of Hawaii official responsible for creating these documents: (most likely Dr. Alvin Onaka, State Registrar and Chief of Vital Records Office of Health Status Monitoring, Department of Health, State of Hawaii, who offices at Room 1250 Punchbowl Street in Honolulu).
2. The original "vault copy" or "long form" original of the birth certificate upon which this certified copy is

based. This document should be an original document created in 1961 at the hospital where Obama was born, and should include additional information, such as the name and signature of the attending physician, the hospital at which the birth took place, the marital status of his parents, and the address of his parents at the time.

3. An affidavit signed by the State of Hawaii official whose signature appears on the back of the certified copy of the birth certificate (again, Dr. Alvin Onaka), stating the original document used to create the certified copy, and the date on which this verification took place.

The mystery of Barack Obama is why he hasn't taken the simple step to write a letter to Dr. Onaka instructing to do just this, and hold a press conference showing the document (certified copy, original "vault copy", and his own signed and notarized affidavit).

In a July 14, 2008 article in the Honolulu Star Bulletin, Dr. Onaka commented on the many questions he has received to confirm the authenticity of the purported birth certificate .

Onaka said he has had many calls asking him to confirm Obama's birth certificate, but he cannot disclose such information: "Only Obama can consent to that."¹²

For a question of this national importance, only these three documents will suffice, and with Senator Obama's consent, all three could be provided within less than twenty four hours.

Dr. Onaka himself appears to agree with the assessment that there are problems with maintaining the security of Birth Certificate Databases. At a presentation entitled "Birth

Certificate Integrity: Strengthening National Security” to the National Association for Public Health Statistics and Information Systems on July 16, 2005, he concluded that:

(1) Existing birth certificate system has risks (2) Birth certificate integrity can be improved ¹³

Based on a year and a half of public actions, it is finally clear that Senator Barack Obama will never voluntarily produce the evidence that will lay all these objections that he is, in fact, not “natural born” to rest. American citizens, then, are left with the courts as the last resort to secure this vital information.

To date, courts at both the State and Federal level have rejected claims from voters who assert an interest in having these documents released.

Federal District Judge Surrick dismissed Philip J. Berg’s lawsuit on October 25, 2008, in part for the following reasons:

Based in part on HOLLANDER [VS MCCAIN], Surrick concludes, “The alleged harm to voters stemming from a presidential candidate’s failure to satisfy the eligibility requirements of the Natural Born Citizen Clause is not concrete or particularized enough to constitute an injury.” ¹⁴

Earlier in the week, on October 22, 2008, the Hawaii Supreme Court also made a procedural ruling in the Martin vs. Obama case, finding that:

“the department [of Health] shall not permit inspection of public health statistics records, or issue a certified copy of any such record or part thereof, unless it is satisfied that the applicant has a direct and tangible interest in the record.” Therefore petitioner [Martin] is not entitled to mandamus relief

against the respondent [Department of Health] public officials.
15

Both courts concluded the average voter didn't have standing. While technically true, neither Berg nor Martin are "average voters". Both are well known gadflies, who lack a degree of public credibility.

Presidential Electors, Presidential Candidates from other parties, and members of Congress all would likely be considered to have standing, as all could claim to varying degrees that they would be harmed by the candidacy of an ineligible Barack Obama.

Lawsuits challenging Barack Obama's eligibility are likely to be filed between the days preceeding the Presidential Election, the meeting of each state's Presidential Electors on December 15, 2008, the joint session of Congress to count the votes on January 6, 2009, and the inauguration later that month.

Should any of these lawsuits succeed, the possibilities of Constitutional crisis are significant. Here's what the process looks like, according to the Code of Federal Regulations:

Counting electoral votes in congress

§ 15. Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. . .

Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received.

When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified...

When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of.¹⁶

Vice President Dick Cheney, as President of the Senate, will preside over the joint session of Congress that counts the electoral college votes on January 6, 2009. At this joint session, if a court challenge has succeeded in requiring the State of Hawaii to produce an original long form vault copy of Barack Obama's birth certificate, and no such document is produced, then the courts can declare that Obama has failed to meet the burden of proof of "natural born" status, and is ineligible for the Presidency. Written objections by one member of the House of Representatives and one member of the Senate are likely to be made to any state that submits Electoral College votes for the disqualified candidate.

If these votes have been cast by Presidential Electors on December 15, 2008, but Obama has been disqualified, they may not be counted, and if McCain, not have a majority of Electoral College votes, the election goes to the House of

Representatives, where the Democratic majority will elect the next President.

If the Obama Electoral College votes are accepted at this joint session of Congress, then an immediate challenge to the Constitutionality of the results will be sent to the Supreme Court.

The record of objections having been established in the joint session of Congress on January 6, 2009, the Supreme Court is likely to reject the results of the Joint Session, throwing the election back to the House of Representatives.

A successful lawsuit that requires the State of Hawaii to produce and verify the long form *vault copy* of Barack Obama's birth certificate will have two possible outcomes. It will either confirm his claim that he was born in Hawaii, or it will disprove it.

If it is confirmed that Obama was born in Hawaii, then the issue is closed. If the evidence disproves his claim that he was born in Hawaii, and if Obama wins enough votes next Tuesday to secure an Electoral College majority, we will see a political and Constitutional crisis between November of 2008 and Inauguration Day, January 2009 that will make the 2000 Presidential Election crisis look like child's play.

Though the final outcome of such an unprecedented Constitutional crisis is unclear, one possible outcome if Barack Obama is ruled ineligible, and Presidential Electors from states he wins casts their votes for him and those votes are disallowed at the joint session of Congress that counts the votes on January 6, 2009, is that no candidate receives an Electoral College majority. Under such circumstances the Constitution requires the House of Representatives to select the next President. That body, which is likely to have a Democratic majority, could select who it wants as President. The leading candidates would be Hillary Clinton, though both Joe Biden and Nancy Pelosi might also make a claim for the office at that time.

NOTES

Chapter One—Contempt for the Constitution

1. <http://www.usconstitution.net/const.html>
2. http://en.wikipedia.org/wiki/Natural-born_citizen
3. Ibid
4. Ibid
5. Obama, Barack, *Dreams From my Father* (Three Rivers Press: New York), 1995, page 26.
6. <http://www.fightthesmears.com/articles/5/birthcertificate>
7. http://www.factcheck.org/elections-2008/born_in_the_usa.html
8. Ibid
9. Ibid
10. Author phone interview with Brooks Jackson, Director of the Annenberg Center for Public Policy Factcheck.org October 27, 2008
11. Jackson interview
12. <http://archives.starbulletin.com/2008/07/14/news/story07.html>
13. <http://74.125.113.104/search?q=cache:IBnCJJ1oCXsJ:www.nacrc.org/events/AnnualConfPresentations2005/BirthCertificateIntegrity.pdf+Integrity+of+Vital+Records+Databases&hl=en&ct=clnk&cd=1&gl=us>
14. <http://www.worldnetdaily.com/index.php?fa=PAGE.view&pageId=79086>
15. <http://www.state.hi.us/jud/opinions/sct/2008/29414ord.pdf>
16. 3 USC Code Chapter 1 Paragraph 15

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