Should We Elect An American President?

The "Natural Born Citizen" Issue Explained

It's not a court issue—the Founders defined it—we've just forgotten.

WHITE PAPER
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by ***Alan Korwin***
The Uninvited Ombudsman (GunLaws.com)

Can just anyone be elected President of the United States? No, of course not. Foreigners for example are not eligible. The Constitution spells out the eligibility standards:

Article II, Section 1: "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."

As you can see, Article II distinguishes between *Citizens* and *natural born Citizens.* Although we know the Founding Fathers used language with extreme care, this is now raising a ruckus. I'm a researcher, I've done the legwork, so let me set the record straight. The answers we need are right there in the historical record. This is not a judiciable matter for courts as has been recently suggested, along with other modern-day distractions and red herrings. Here's the short version.

At the time of our nation's founding **Benjamin Franklin** obtained three copies of *Law of Nations* by **Emer de Vattel**. There is a record of the acquisition from Franklin backing this up that still exists today. I'll quote that in a moment. It was the preeminent guide on the subject. Franklin put one in a library, sent one to the College of Massachusetts, and brought one to the Constitutional Convention in Philadelphia for the delegates to use, which they did.

This book they used defines "natural born citizen" clearly as a person born in a country, both of whose parents are citizens of the country at the time of birth. It's a plain, clear definition of the term they used in the Constitution.

It's a three-part requirement. It allows for no foreign birth or parentage in a person who is a natural born citizen. It is distinct from ordinary citizenship. Article II in the Constitution recognizes the distinction.

John Jay, who became our first Chief Justice of the Supreme Court, sent a letter to **George Washington**, which also still exists, which I'll also quote in a moment, confirming that the only way to ensure the U.S. presidency remains free of what today we would call "foreign entanglements" was to require that eligibility be limited to natural born citizens only. Washington replied, thanking him for the advice. In editing the final version of the Constitution, the Framers changed Article II from *citizen* to *natural born Citizen,*capitalized that way. Records of all this exist.

There, in a nutshell, is the entire situation.

No court decision is needed. The idea that a court must weigh in because the Founders didn't define the term in the Constitution is nonsense. It is the same type of nonsense modern people have created to undermine other fundamental elements of our Constitution. The Founders knew exactly what the term meant, just like they knew what "weights and measures" meant when they used that (without defining it) and they used it with precision, for deliberate reason.

The presidency is the only office in our entire legal structure that has this requirement. *Citizen* appears throughout the law. *Natural born citizen* appears in one place and one place only—as a requirement for the highest office in the land. You can stop here and you have the truth of the matter, or read further if this interests you and you want the details.

This White Paper is not about liking one candidate over another—I do not endorse or oppose candidates, as people who know me are well aware. This is about liking the Constitution over any candidate. It would be wrong to let the fact that we have allowed a person into office who somehow avoided proper review and does not meet the eligibility requirements stated in our Constitution, to justify offering up additional candidates who similarly do not meet the fundamental test set out in our nation's charter.

A Way Out of Our Dilemma

Those running who fit this category of ineligible to hold the office of President would do the nation an immense service, cement their place in history forever, and find the love of their countrymen, by stepping down gracefully and with honor. They can state publicly they have seen the light and have come to understand the facts as they should properly be understood. The Constitution comes first.

“Sometimes wisdom comes late,” as Justice Antonin Scalia presciently said. Since they cannot all rise to the top, it would be a far more elegant, courageous and honorable departure than simply conceding the race to someone else based on poll numbers. Such a tactful move would leave them, admired and respected, available for virtually any other office in the land.
[Editor: Short version, 796 words to here]

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The documentation

From Ben Franklin’s letter to Charles William Frederic Dumas: Philadelphia, 9 December, 1775.
“...I am much obliged by the kind present you have made us of your edition of Vattel. It came to us in good season, when the circumstances of a rising state make it necessary frequently to consult the law of nations. Accordingly that copy, which I kept, (after depositing one in our own public library here, and sending the other to the College of Massachusetts Bay, as you directed,) has been continually in the hands of the members of our Congress, now sitting, who are much pleased with your notes and preface, and have entertained a high and just esteem for their author. Your manuscript “Idee sur le Gouvernement et la Royaute” is also well relished, and may, in time, have its effect. I thank you, likewise, for the other smaller pieces, which accompanied Vattel...”
The letter addresses other matters concerning employment of colleagues, and translations of the proceedings of the Congress.

Vattel’s definition of a natural born citizen:

Law of Nations, Book I, Ch. XIX, at § 212:
§ 212: The citizens are the members of the civil society: bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens.

There is more, concerning ordinary citizens, inhabitants, naturalization, duties and responsibilities of citizenship, renouncing citizenship once you become of age, children born of foreigners, or at sea, it is a complex subject and a big book. Read it all here if you wish:http://oll.libertyfund.org/titles/2246#lfVattel_label_1642

John Jay Wrote to George Washington:

July 25, 1787
“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 expresly that the Command in chief of the american army shall not be given to, nor devolve on, any but a natural born Citizen.”

In Sep., 1787, the “**Committee of Eleven**,” chosen at the Constitutional Convention to work out details on numerous occasions, changed the presidential requirement from *citizen* to *natural born citizen*, after receiving Jay’s letter. The Convention accepted the changes, hence the wording we have today.

Additional valuable resources

Attorney Mario Appuzo has made this situation a core of his life’s work and has assembled, in one place, the references, if you care to delve more deeply, with links to the complete edition of Vattel and more. He has been attacked by everyone who wants to hide all this from public view. His lawsuit on this issue on behalf of Navy Cmdr. Charles Kerchner (Ret'd.) and others reached the U.S. Supreme Court, where it was declined. http://puzo1.blogspot.com/

The *Publius Huldah* blog has serious flaws but makes interesting reference to the vast array of wild conjecture that has effloresced lately as to what a natural born citizen is, based upon nothing but idle speculation and blather, giving these examples:

Bret Baier (Fox News) asserts that Congress may define (and presumably *redefine,* from time to time) terms in the Constitution by means of law.

Chet Arthur in American Thinker quips that “the original meaning of ‘natural born citizen’” is determined by reference to “The Heritage Guide to the Constitution” (available on Amazon) and to the definition of “citizen” at Sec. 1 of the 14th Amendment, ratified 1868. (For the record, the 14th Amendment did not amend or even address Article II.)

Human Events claimed in 2012 that *anyone* born within The United States is a “natural born citizen” eligible to be President, and based on a “common-sense logical approach” that includes any foreigner naturalized or otherwise obtaining citizenship as eligible. No support is included (because there isn’t any).

Jake Walker at Red State confuses natural born *subjects* (a function of the British Crown) and natural born*citizens* (in this Republic which we fought a war to achieve).

I’ve seen worse examples on TV but didn’t take notes. Rush Limbaugh suggested on radio the issue is not an issue. Bill O’Reilly said on his FOX-TV show The Factor definitively he will not mention the matter again. The collection of official sounding commentary, from Harvard to hashtags, is mind boggling. One learned fellow tells me Article II was added to keep foreign-born Alexander Hamilton out of office, which makes little sense since all Founders were British subjects when the nation began, and Article II accounts for that. CNN has aired a bewildering array of self-contradictory pontification on who is eligible with barely any reference to history, much of it from talking heads whose ignorance of the subject is self evident.

Here -- I've heard so many reasons why nbC (the common abbreviation for "natural born Citizen") doesn't matter that I've gathered a batch, which really shows how ludicrous this all is. If it didn't matter there would be one sound reason, not dozens all in conflict or simply absurd. Look -- nbC doesn't matter?.

Tokaji and the Tribe Approach

The Donald Tokaji paper for the *Michigan Law Review* (Vol. 107, 2008), often cited and excellent as far as it goes, puts forth credible arguments for why virtually no one will make it through federal or state courts with challenges to aspirants on natural-born-citizen grounds. Fascinating, well reasoned arguments. It seems he misses only one, addressed at the end of this paper.

Lawrence Tribe, a preeminent scholar of today wisely suggested the matter may never be satisfactorily resolved, saying, “there is no single, settled answer.” He also dubiously said, “There is no defense now for retaining the clause in the Constitution. It really needs to be removed,” according to the venerable *New York Times* (which went on to suggest removing it, “with a bit of constitutional copy editing,” seriously.)

The National Constitution Center makes reference (as do many) to the 1790 Naturalization Act, to support a broad interpretation, for people born abroad, but that definition includes, “children of citizens of the United

States, that may be born beyond the sea, or out of the limits of the United States...", not "children of a citizen," singular. A colorable argument can be formulated here, but -- replete with imperfections *and replaced five years later*, an act doesn't amend the Constitution. Tribe believes concepts at the time of adoption would appeal best to originalists -- as if this is a flaw. Katyal and Clement, in the *Harvard Law Review*, also frequently cited, argue that one candidate was a *citizen* from birth, and so is a natural-born citizen, conflating the two terms. Many people do this, though the terms are eminently different, even in Article II itself. And so it goes, expert after expert, none the same, *ad infinitum*.

A person can *become* a citizen in many ways, and hold any office, except the presidency, unless the person is a "natural born Citizen" as cited in the Constitution, and for good reason. Natural born citizenship can *only* be acquired at birth. It has only one function in our law. Let me explain, first by example.

Examples Help Clarify

If both of Marco Rubio's parents, for example, were Syrian refugees instead of Cuban, we would likely not be having this conversation. Few people would entertain any notion of his eligibility, as if they were the Framers themselves. Likewise, if Ted Cruz had been born in communist North Korea instead of friendly Canada, to an American mom and an Iranian dad, instead of a communist Cuban refugee dad, it would boggle the American psyche—as it would our Founding Fathers, and for the same reasons—possibly divided loyalties and questionable allegiance. Does this help shake your thinking free? Instead of continuing the permutations—

This interesting conundrum riddle teases out the logical errors:

If *your parents' nationality* is the requirement—

How can Marco Rubio be eligible?

If *your place of birth* is the requirement—

Then how can Ted Cruz be eligible?

If *both* blood and soil are required—

Then how can *either* be eligible?

If *neither* is required—

Then who is *not* eligible?

And *if only one out of three* is required—

What combination of enemies can be *excluded*?

So what protection for the office did the Founders provide?

Surely the Founders intended *some* protective wall around the office in Article II. The deceptive answer being thrown about today is that the Framers believed any toe in the water was sufficient to qualify a person to be Commander In Chief and (to mix time frames) gain access to the nuclear launch codes. North Korean parents? A dad from the Khmer Rouge? Seriously?

How foreign is too foreign?

The Founders wisely decided that, to avoid any split allegiance, any possibly divided loyalty or conflict of interest, the Commander In Chief of the Armed Forces, the Chief Executive and President of the United States had to be 100% American. How foreign is too foreign? *Any amount of foreign is too foreign—that was their plan*, right there in Article II. It can only be changed by amending that specific section of the Constitution itself. That has not happened.

Only pure American by parentage (in Latin it's called *jus sanguinis*, "by blood") and by place of birth (*jus soli*, "by soil"), would do. Vattel defined the constitutional term "natural born Citizen," and the Founders put it, capitalized that way, in Article II. People are arguing about nbC *today*, for good reason, and *that* gets pretty ugly, but they didn't back then. Let's proceed, step by step.

When the Constitution was drafted, the presidential requirement distinguished between the Founding Era ("a Citizen of the United States, at the time of the Adoption of this Constitution"), because no one was a citizen yet, because the nation had just begun. Talk about being precise! This was not a haphazard draft. After the starting period ended, the nbC rule applied. And there you have it.

The sense of things

People have a natural attachment to the land they were born upon, it's only natural, plus the ancestry of their parents. Proud Americans say they've got Greek roots, or are of Irish extraction, or they're of French descent or Italian stallions and have the T-shirt to prove it. There are lots of T-shirts, worn with fervor and dedication, and for good reason. God bless 'em all.

The news media in 2016 refers to two presidential candidates as Cuban Americans (or a Canadian American). Good for them, but maybe not for the office they seek, if our Founders have anything to say about it. Bobby Jindal (both parents from nuclear-armed India), and Rick Santorum (dad from Italy but perhaps a citizen by the time of birth), dropped out of the race and the public eye early. Nikki Haley (both parents from India) is being mentioned as a possible VP (the 12th Amendment requires an "eligible" person for the slot).

Having a native-land attraction is healthy and good. Culturally. But would our Founders believe one parent from an enemy (or any other) foreign nation—and birth on some other country's land—make a person eligible for the presidency? Now you know—they would not.

A few months ago communist Cuba was a mortal enemy, a human-rights atrocity (still is), willing to deploy nuclear bombs aimed at us. Now they just want to sell us cigars, which unlike cigarettes with fine Virginia leaf tobacco, are highly prized. How do these loyalties switch so fast? (Please skip the tobacco hypocrisy for now.) A bunch of old dead white tobacco growers who got the U.S. started would counsel caution.

The Old Days

All manner of intrigue was the politics of the Founding era, not all that different from today really. The Founders were deeply concerned that the Chief Executive—as Commander in Chief of the Armed Forces—should have absolutely undivided loyalty to the nation. The Commander's allegiance could have no foreign claims or foreign fealty whatsoever. How do you do that?

Back then, your *legience* (allegiance in modern terms) sprang by the very nature of things, from two natural forces—blood and land. These were *natural laws* you hear so much about, brought up in the Declaration of Independence. The standards among nations differed, with some recognizing *duties and privileges* of citizenship based on soil (the place you were born), and others seeing it as a function of blood (parenthood). Some nations considered both relevant. They applied these to *subjects*. We championed the idea of*citizens*.

You cannot escape your natural native heritage, even if you hate it, it's yours. You're German, Nigerian, Cuban? It is what it is, you are what you are, our Founders understood this. You do too, unless you're in denial.

Where parenthood was concerned, the mother's (matrilineal) or father's (patrilineal) blood was a key, though obviously, the father's lineage (which

Britain favored) could be questionable. No one asks a pregnant woman, “Are you sure it’s yours?”

Blood and soil combined guarantee the greatest likelihood of love and devotion to a nation, so two citizen parents—at the time of birth on native American soil was—many would say wisely—seen as the best natural pedigree to hold the highest office in this land. It is perfectly reasonable. A British officer’s son born to an American woman in Spain who lived there for ten years might have divided loyalties, yes?

The Modern Day

Chris Matthews of MSNBC told Ted Cruz on air about the two-parent requirement (Cruz has only one, his dad’s Cuban). Matthews then referred to the so-called “Boss” requirement (“Born in the U.S.A.,” from the Bruce “The Boss” Springsteen song). Cruz, proud of his foreign birth (he was born in Canada, and held Canadian citizenship until 2014), replied by denigrating Donald Trump on unrelated subjects.

Matthews seized this golden opportunity by not following up, for reasons that remain unclear at press time. All four “questionably” eligible 2016 candidates have argued they are just good enough to go. One drop of American contact, it seems, is enough to satisfy the Constitution in the days of a pen and a phone. And there, my friends, is the root of the real problem.

McCain Grilled by the Senate on C-SPAN

As luck would have it, I flipped on C-SPAN back in April, 2008, and got to watch the entire Senate hearing over John McCain’s eligibility to run for president. It was fascinating, at least to me. With a little tortured logic the committee decided, in a nonbinding resolution, the Panama Canal Zone was indeed U.S. soil, and since both of McCain’s parents were U.S. citizens, he qualified and was good to go.

What was stunning to me however was that the subsequent hearing, for the candidate where there was a real deep eligibility question, the candidate with the Arabic name, was never held. I could never get an answer as to why or how the Senate evaded that hearing. Lots of conjecture and speculation, all of it nasty, and just no examination. And it wasn’t really about the long-stalled birth certificate, though that might have mattered. It was about the acknowledged Kenyan father (and lots of “sealed” records, conveniently ignored). The Kenyan American got a pass.

And now we’re at the real reason, the ugly reason, why Ted Cruz, Marco Rubio and the rest will *not* be found ineligible to become President under

Article II, the one item Tokaji omitted, even though you can see they are ineligible. Because: **If current candidates are officially determined to be ineligible to be President under Article II, it would mean the person currently in the office of President is ineligible for the same reason.** This would lead to a constitutional crisis and charges of misprision of treason beyond anything America could withstand.

A blogger writing as bob68 framed it perfectly, let him speak here:

The reason the meaning of *natural born citizen* has been tortured into meaning virtually anyone is one is because this discussion is taking place after the commission of a crime “too big to prosecute,” by a lot of rich, powerful and influential people.

Once Congress allowed and assisted the ineligible, identity fraud con artist Barack Hussein Obama to usurp the presidency there was no one complicit in Obama’s successful takeover of America’s highest office, and her military, who was not going to fight, with everything in them, to insure he remains officially a legitimate president. Anything else subjects the complicit, many at the highest possible level, to charges of treason for literally giving America’s government and her military to the enemy.

No amount of history, common sense or anything else will ever get an admission from the media, Congress or the others involved that they were complicit in, as a minimum, misprision of a felony [18 USC §4] or misprision of treason [18 USC §2382] for their part in the biggest hoax in history. Obama must be protected from the truth about him being fully revealed and acted upon. When a regime owns the courts, Congress and the media, that job becomes doable, no matter how compelling or plentiful evidence to the contrary may be.

Supporting and defending as many ineligible presidential candidates as possible is a way of protecting Obama’s false eligibility, as ineligible candidates are molded into natural born citizens by those who want the Obama fraud and their paid assistants to just fade away. Every ineligible candidate accepted as “eligible,” no matter what it takes for that to happen, helps them reach their goal. Those complicit believe their personal freedom could depend on continuing the charade of legitimacy they have surrounded Obama with, both by their actions and inaction.

In Conclusion

So there you have it. The Founders wanted and specified a totally American president: two citizen parents and born here. It is documented beyond reproach in the historical record. Modern wishes that this weren’t so count

for nothing. The Founding Fathers' fears have been realized—all sorts of pretenders have been and are aspiring to the seat of power. Arguments and hyperbole running rampant today confirm the wisdom of the original requirement: Only a natural born Citizen as the Founders understood the term may legitimately hold the office.

If the U.S. Supreme Court gets hold of the issue, which now seems likely, it may find itself compelled to water down the answer to "How foreign is too foreign?" to satisfy the mess we find ourselves in. And as we perhaps officially abandon our Founders' sage instructions, that dilemma and its unsavory result will afflict this nation for as long as it may continue to exist. May God bless and keep us all.

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Postscript

This White Paper is not about liking one candidate over another—I do not endorse or oppose candidates, as people who know me are well aware. This is about liking the Constitution over any candidate. It would be wrong to let the fact that we have allowed a person into office who somehow avoided proper review and does not meet the eligibility requirements stated in our Constitution, to justify offering up additional candidates who similarly do not meet the fundamental test set out in our nation's charter.

A Way Out of Our Dilemma

Those running who fit this category of ineligible to hold the office of President would do the nation an immense service, cement their place in history forever, and find the love of their countrymen, by stepping down gracefully and with honor, stating publicly that they have seen the light and have come to understand the facts as they should properly be seen.

"Sometimes wisdom comes late," as Justice Antonin Scalia presciently said. Since they cannot all rise to the top, it would be a far more elegant, courageous and honorable departure than simply conceding the race to someone else based on poll numbers. Such a tactful move would leave them, admired and respected, available for virtually any other office in the land.

One preemptive word to critics...

... who are already asking where I come off disagreeing with scholars from Harvard (as if this formerly unassailable school still lives up to its reputation), seasoned attorneys (and I'm not even a lawyer), constitutional

geniuses (who have the undebatable truth locked down), journalists (though I'm widely published and a 25-year member of the Society of Professional Journalists) and other know-it-alls who I should not dare to impugn, question or challenge:

I faced similar opprobrium when common wisdom insisted the U.S. Supreme Court had said little about guns and everything was a settled matter of law, until I published, after six years of labor in 2003, *Supreme Court Gun Cases*, with the 92 gun cases the High Court had decided up to that point in time.

By the time the *Heller* case was decided, the total had risen to 96, the word firearm (in some form) had been used in decisions more than 2,900 times and virtually all the cases were consistent with an individual rights interpretation of the Second Amendment. To this day, "geniuses" like the Associated Press and other ivory-tower scholars insist that the Second Amendment doesn't mean what it always used to mean, and doesn't support the idea that we have gun stores all across this nation for the public to use. My work on natural born citizens and Article II stands despite the interest of some to deny it and concoct realities that do not exist.

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Alan Korwin is the author of 14 books, 10 of them on gun law. He has been invited twice to observe oral argument in gun cases (*Heller*, *McDonald*) at the U.S. Supreme Court. His book *After You Shoot*examines ways to lower your risks after a self-defense shooting. Reach him at GunLaws.com , where he is the publisher of Bloomfield Press.

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