

Is Barack Obama Even Eligible to Become President? - Updated

October 31, 2008 – This is a question that you have probably not asked yourself. According to the Constitution, to serve in the US Senate - which he currently does - requires US citizenship. But there is now a small but growing group of people who are actually questioning Obama's citizenship credentials in the federal court system. To date, they have not had much success, but the courts have skirted the issue and thrown the case out on a technicality. An attorney who filed one such case is now appealing. The reason that ACCESS has decided to look at this story a little more closely is because if it gains legs, it could lead to a constitutional crisis and have serious repercussions on US financial markets.

Background

The Constitution is very clear on who can serve as President of the United States. It says that anyone who stands for election to this post must be a "natural born" citizen. Translated, this means a citizen born on US soil. Anyone born within the borders of the United States is a US Citizen regardless of their parent's citizenship. As an interesting aside, the United States is one of the few countries in the world where this is true. Typically, children born outside of the United States but on US military posts are also considered natural born citizens if their parents are US citizens.

This particular issue of being a natural born citizen actually impacts both of the presidential candidates this year. John McCain was born in the Panama Canal Zone, which was US territory from the time the canal was built until the 1980's when it was given back to Panama. A court case filed earlier this year to challenge his eligibility to run for President was thrown out; although there is little doubt that he would be eligible. McCain's father was an Admiral in the US Navy and was stationed in the Canal Zone at the time of his birth.

The story of Barack Obama is somewhat different. According to most media outlets, he was born in Hawaii in 1961. But for several months now, rumors have persisted that he may actually have been born in Kenya; of which his father was a native. Regardless of this, his mother was a US Citizen so he would be considered to be a US Citizen himself but not a natural born citizen. Although this portion of the claim sounds a bit conspiratorial, it is not the only indication that he may not be able to hold the Presidency. For the record, a number of organizations have published information that refutes these claims. Unfortunately, none of those organizations has been able to claim that they have actually inspected a certified copy of the birth certificate, and some of them are not non-partisan.

For the record, Obama admits that he held Kenyan citizenship until 1982. There are also reports that his Kenyan grandmother has said that she witnessed his birth in Kenya and claims that a tape exists, but which has never been produced.

The real question surrounding his citizenship may actually have nothing to do with his place or birth but rather where he went to school as a child. After Obama's parents split up, his mother married another man who was an Indonesian citizen, and then moved to Indonesia with Barack. At some point, Obama was enrolled in school in Indonesia. And based on Indonesian law at the time, only citizens of Indonesia were eligible to attend school.

This is where things get a little dicey. The Indonesian oath of citizenship requires anyone who becomes a citizen to renounce their citizenship with any other country. This means that Obama's mother would have had to renounce Barack's US Citizenship. And this is not an issue which has been addressed by any of the so-called fact checking websites that have reported on his birth certificate. It is however a subject of some of the court challenges.

When Barack Obama returned to the United States, he did so without his mother. Instead, he was sent to live with his grandmother in Hawaii. If Obama was no longer a US Citizen, then the only way that he could get his citizenship back would have been to go through the naturalization process. There is no evidence that he ever did this. If he was born in Hawaii, gave up his citizenship and then regained it through naturalization, there would be no reason that he couldn't hold office. On the other hand, if he was born outside the US, or gave up his citizenship and never naturalized, or both, then he is ineligible.

The Obama campaign has tried to refute the allegations that he was born in Kenya by releasing a short version of his birth certificate on his campaign website. But the short version does not contain the state seal of Hawaii nor does it contain the requisite signatures to make it official. To date, the campaign has refused to release the full birth certificate. To make matters worse, the governor of Hawaii has had Obama's birth certificate sealed from the public until November 5; the day after the election. And the Obama campaign itself has missed the federal deadline to file a vault copy – meaning an official copy – of his birth certificate. This is truly puzzling if there is no merit to the claim.

More importantly, the campaign has also refused to deal with the issues of Indonesian citizenship and naturalization; simply claiming that the allegations are false.

Current Status of Court Cases

All of this might sound a bit like a conspiracy theory if it weren't for a law suit filed in US District Court by one Philip J. Berg in August of this year. And even that could be dismissed as a smear campaign by some Republican zealot if it weren't for the fact that Berg — an attorney himself — is a Democrat. He also happens to be the former Assistant State Attorney General of Pennsylvania. This gives him some credibility.

In essence, Berg's lawsuit claims that Obama may very well be ineligible to seek or hold the office of President. This is something that you may think that the court would take quite seriously, but last week judge hearing the case threw it out on a technicality. And that technicality should be more than just a little bit troubling for any American citizen.

US District Judge R. Barclay Surrick ruled that Berg did not have standing to challenge the eligibility of a presidential candidate. The ruling actually states that US citizens can't show that they are injured directly if the Constitutional clause requiring citizenship for the President is not upheld. His ruling went on to say that the only way that citizens could sue to enforce this constitutional clause is if Congress grants citizens such a right. He said that under current law, any claim of harm or injury is "too vague and its effects too attenuated to confer standing on any and all voters." This is something that should trouble everyone regardless of party affiliation. This begs the very real question, "if all American's aren't harmed when the Constitution is violated, who is?"

Yesterday, Berg filed a motion with the US Supreme Court to halt next Tuesday's election. It is highly unlikely that this will happen. He has also announced that he intends to appeal his case.

Berg's case is not the only one however. There are seven other lawsuits making similar claims around the country. All of this brings up some very real and very ugly prospects for next Tuesday's elections and their aftermath.

First, if any of the courts involved rule against Obama prior to the election, the Supreme Court may have to get involved just because there is little time between now and the election. An even uglier scenario could play out if Obama wins the election and then one of the courts involved in the lawsuits rules against him. In that case, the Supreme Court could be asked to stop Obama from taking the oath of office; in which case Joe Biden would likely become President and a Vice President will have to be appointed and then approved by Congress.

As if these scenarios are not bad enough, financial markets absolutely hate uncertainty. After the 2000 election, when the Supreme Court became involved and lawsuits were being filed, markets fell and the economy slowed. Fortunately, the economy was stronger then and able to rebound. But today, the economy is in turmoil. A protracted legal battle over the presidency could cause markets to drop dramatically. This would likely result in a spike in layoffs and in both personal and corporate bankruptcies. It may be that a perfect political and financial storm is brewing.

Within the financial community there is now some speculation that after the election, a protracted court battle may ensue leading to a worst case scenario. This would include deflation - something that has not occurred since the Great Depression - layoffs, corporate closures and high unemployment. And such a court battle is quite possible regardless of who wins the election.

As a footnote that has nothing to do with finance, it is doubtful that the Founding Fathers would have agreed with any court ruling that claimed US citizens had no interest in enforcing the Constitution. Such a ruling would have been viewed by them as tyranny, which is precisely why they fought the Revolution in the first place; to throw off the shackles of tyrannical government. If the federal courts do not understand this, then they can no longer claim to protect interests of people of the United States. Unfortunately, the ruling in the Berg case is likely to add to the confusion rather than solve any problems.

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