Written by **Joe Wolverton, II, J.D.** on January 6, 2012

Georgia Court to Hear Question of Obama's Qualification for President

Although attorneys representing the President moved for a pretrial dismissal, Deputy Chief Judge Michael Malihi in the Office of State Administrative Hearings denied that motion to dismiss the complaint filed to keep Obama's name off the state ballot during the March presidential primary. An impartial hearing on the issue is scheduled for January 26 in Fulton County, Georgia.

In the many cases previously filed challenging the President's status as a "natural born citizen," the plaintiffs were denied standing and the constitutional question has never been fully considered.

One report discusses what made this latest case different from the others:

> Unlike many other states, Georgia has a statute requiring just that. For Swensson's part, he had "resolved that I would not let anyone on the ballot who is not demonstrably qualified to hold that office." That would appear to be part of his job as party official and it is the job of Georgia's Secretary of State, Brian Kemp (R) to assure election law is justly carried out. Swensson relates, "We have been hounding him at hearings he's been having across the state."
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> And so it came to pass that Kemp after some delay, followed due process and called forth the court designated by Georgia law, to hear such a case. This particular case was brought by Swensson and co-litigant, Kevin Richard Powell, attorney: J. Mark Hatfield, judge: Michael M. Malihi.

Bob Unruh, a journalist who has pursued this story with extraordinary tenacity, described at WND.com his analysis of the Georgia decision:

> While Obama's attorney, Michael Jablonski, had argued that the requirements didn't apply to candidates for a presidential primary, the judge said that isn't how he reads state law.
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> "Statutory provisions must be read as they are written, and this court finds that the cases cited by [Obama] are not controlling. When the court construes a constitutional or statutory provision, the 'first step … is to examine the plain statutory language," the judge wrote. "Section 21-2-1(a) states that 'every candidate for federal and state office' must meet the qualifications for holding that particular office, and this court has seen no case law limiting this provision, nor found any language that contains an exception for the office of president or stating that the provision does not apply to the presidential preference primary."

The case filed by Swensson is one of those cases mentioned by Unruh. Unruh continues:

> The decision from Malihi came as a result of a series of complaints that were consolidated by the

> court. They were brought against Obama's inclusion on the 2012 election primary ballot by David Farrar, Leah Lax, Cody Judy, Thomas Malaren and Laurie Roth, represented by attorney Orly Taitz; David Weldon represented by attorney Van R. Irion of Liberty Legal Foundation; and Carl Swensson and Kevin Richard Powell, represented by J. Mark Hatfield.

Judge Malihi's decision appears to accept the plaintiffs' standing to defend the requirements for President set forth in Article II: Both the Secretary of State and the electors of Georgia are granted the authority under the Code to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b), which authorizes any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

In order to aid the plaintiffs in pursuing their quest to have the qualifications listed in the Constitution enforced, a so-called Super PAC has been formed to accept donations from those supporting the effort nationwide.

What follows is a brief exposition of the possible source and appropriate interpretation of the "natural born citizen" qualification:

At the time of the drafting of the Constitution, a person born subject to the British Crown could hold "double allegiance," a concept similar to "dual citizenship" as understood today.

Our own Founding Fathers, nearly every one of whom was born in some outpost of the British Empire, feared the damage that could come from such divided loyalty. They instituted the "natural born citizen" qualification in order to avoid what Gouverneur Morris described during the Constitutional Convention as "the danger of admitting strangers into our public councils."

As famed jurist St. George Tucker, a contemporary of Morris, explained:

> That provision in the constitution which requires that the president shall be a native-born citizen (unless he were a citizen of the United States when the constitution was adopted) is a happy means of security against foreign influence, which, wherever it is capable of being exerted, is to be dreaded more than the plague. The admission of foreigners into our councils, consequently, cannot be too much guarded against; their total exclusion from a station to which foreign nations have been accustomed to attach ideas of sovereign power, sacredness of character, and hereditary right, is a measure of the most consummate policy and wisdom.

In fact, as indicated in early records of the naturalization process, men applying for American citizenship were required to make two renunciations of all fealty to foreign powers before swearing allegiance to the Republic of the United States.

As a matter of fact, the possibility of any legal acceptance of divided allegiance was explicitly rejected in a report issued by the House of Representatives in 1874: "The United States have not recognized a 'double allegiance.' By our law a citizen is bound to be 'true and faithful' alone to our government."

The practical effect of that proclamation is that in order to be a "natural born citizen" of the United States, one would have to be free from a competing claim for allegiance from another nation.

An important aid in accurately defining the term "natural born citizen" is found in the 14th Amendment. The relevant clause of the 14th Amendment reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside."

The principal architect of the citizenship clause of the 14th Amendment was Michigan Senator Jacob Merritt Howard, a Republican representing Detroit. Senator Howard crafted much of the language that was eventually ratified as part of the 14th Amendment. During the debates that embroiled the Senate in the years following the Civil War, Senator Howard insisted that the qualifying phrase "subject to the jurisdiction thereof" be inserted into Section 1 of the 14th Amendment being considered by his colleagues. In the speech with which he proposed the alteration, Howard declared:

> This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.
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> How could a person "born in the United States" be simultaneously a citizen and a "foreigner" or "alien" if the mere fact of nativity settled the question of citizenship?

This overwhelmingly persuasive historical evidence makes one thing clear: When applied to the case of the current President, the principles of constitutional law and interpretation set forth above casts genuine doubt on the question of Barack Obama's qualification for President. Not even his staunchest defenders can argue that at the time of his birth (regardless of the location), his father was not an American citizen — and thus the President is the child of a person with legal allegiance to a foreign sovereignty and so does not conform to the accepted legal definition of "natural born citizen."

Photo of a young Barack Obama,with his father: AP Images