

# Grand Finale: Presidential Eligibility

## PART 3: HAS EVIL TRIUMPHED?

*by Joseph DeMaio*



John Locke was a 17th-century British physician and political philosopher. Although he died in 1704, his works strongly influenced the signers of the American Declaration of Independence.

(Jun. 2, 2011) — **Editor’s Note:** The following is the conclusion of Joseph DeMaio’s analysis and exposure of the language contained in two memos issued by Atty. Jack Maskell of the Congressional Research Service, apparently prepared with the specific intent of justifying Barack Hussein Obama’s occupation of the White House while failing to meet the constitutional requirement of [Article II](#), Section 1, clause 5 as a “natural born Citizen.” Both “CRS Memos” discussed previously in [Part 1](#) and [Part 2](#) of this series attempt to define a “natural born Citizen” as one simply born on U.S. soil while obfuscating information which would have made the arguments presented therein moot due to Obama’s foreign father, and, later, his release of what he purported to be a [certified copy](#) of his Hawaiian birth certificate.

In CRS Memo 1, Maskell contends that Obama’s short-form “Certification of Live Birth” is an acceptable form of proof of his alleged birth in Hawaii and therefore of eligibility; the second memo cites the case of a young Prussian man who, according to the opinion of the U.S. attorney general and Supreme Court at the time, could have become president even though he was taken away to Germany by his father. DeMaio points out that Maskell’s strategically-placed ellipsis appears to purposely omit the fact that Steinkauler’s father had become a naturalized U.S. citizen *before* his son’s birth on U.S. soil. Obama’s father was never a U.S. citizen, and with the image unveiled to the public on April 27, 2011 having been deemed a [forgery](#) by experienced analysts, Obama’s claim to a birth in Hawaii has yet to be confirmed. While Hawaii [officials](#) Loretta Fuddy, [current](#) Health Department Director; Dr. Chiyome Fukino, former Health Department

Director; former Governor Linda Lingle, and now-Governor Neil Abercrombie, others have stated that Obama was definitely [not born](#) in Hawaii.

[WorldNetDaily](#) has reported in recent weeks that “intelligence reports” from Kenya had indicated that Obama had been born there, and a criminal investigation has been ongoing since 2008 to discover how birth records dating between June 1, 1960 and December 31, 1961 had been [altered](#) or removed from official files.

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## THE NEXT SHOE

On March 18, 2010, the Congressional Research Service issued another memorandum (hereinafter “CRS Memo 2”) further compounding the errors of the prior CRS Memo dated April 3, 2009. CRS Memo 2, entitled “Birth Certificates of Presidential Candidates and Standing to Challenge Eligibility,” was authored by the same individual who authored the original CRS Memo, Mr. Jack Maskell, Legislative Attorney, Congressional Research Service, American Law Division. The document can be accessed [here](#).

First, the CRS Memo 2 is divided into three sections, a “Summary” section, a “Birth Certificate” section and a “Vetting of Candidates: Standing to Challenge” section. The first and second sections, given the April 27, 2011 “release” by the White House of what now purports to be the putative president’s “original long-form Hawaiian birth certificate,” are of greater relevance than the third on “standing.”

Second, the CRS Memo 2, having been issued March 18, 2010, predates by some 13 months the April 27, 2011 release by the White House and Mr. Obama of what is now by them claimed to be his “original long form birth certificate” and, again, solely by the posting to the Internet of an image and not through the release of the “best evidence” of that portrayed by the image, the original, hard copy of the certified document.

Third, the CRS Memo 2 – inexplicably, given that the same author produced both memos – omits any reference whatsoever to the original April 3, 2009 CRS Memo, a most curious omission in light of the facts that the topics are the same, same attorney authored both memoranda, and they were issued a mere 11 months apart. Moreover, CRS Memo 2 makes no mention of the Bilbray Transmittal. Recall that empty room... except for the elephant in the corner.

Fourth – and equally inexplicably, given the identity of authorship – the CRS Memo 2 makes no mention whatsoever of the cornerstone Supreme Court decision cited in the original CRS Memo from 2009, *Perkins v. Elg*. That decision – as modified by ellipsis omission previously discussed – provided the core mechanism generating the conclusion that one needs only to be born “in” the United States, regardless of the nationality or citizenship of the parents, to qualify as a “natural born citizen” under the Constitution.

Fifth, instead of addressing the issues within the same context as discussed in the original 2009 CRS Memo, relying on its “ellipsis adjusted” portrayal of the decision in *Perkins v. Elg*, CRS Memo 2 shifts its emphasis to a U.S. District Court decision, *Liacakos v. Kennedy*, 195 F. Supp. 630 (D.D.C. 1961). The decision is cited for the proposition that even a “delayed issued” official birth certificate can be “prima facie evidence” of “natural-born citizenship,” once again, one of the more spectacular *non sequiturs* characterizing CRS Memo 2.

Each of these points will be addressed as follows.

CRS Memo 2 begins (p. 1) with an introductory paragraph by noting that the memorandum “... is submitted in response to congressional requests for a legal opinion concerning President Obama’s ‘birth certificate,’ and the question of legal standing to challenge the eligibility of a presidential candidate on the basis of the lack of ‘natural born’ citizenship.” In the “Summary” section of the memo, it is then stated:

“As discussed in more detail in the following memorandum, the document officially certified by the State of Hawaii and ‘released’ for inspection by the Obama campaign in June of 2008 (and as expressly attested to by Hawaii public health officials), that is the Certification of Live Birth, is in fact a ‘birth certificate’ under uniform standards adopted in federal law for ‘identification-related documents’ [footnote 1, below]. As a public record of the State of Hawaii such documentation is required to be afforded ‘full faith and credit’ by all other states under the provisions of the United States Constitution and federal law. (U.S. Const, [*sic*] Art. IV, § 1; 28 U.S.C. § 1739). Since the officially certified document is *prima facie* evidence of United States birth and citizenship, and there appears to be no actual documentary evidence of any nature to the contrary, such certificate would most likely be deemed conclusive of ‘natural born’ citizenship by a state official or court if any such review were commenced or required.” [footnote 2, below].

[fn. 1, reading: “See P.L. 108-548, ‘Intelligence Reform and Terrorism Prevention Act of 2004,’ title VIII, § 7211(a), 118 Stat. 3825 (2004), amending P.L. 104-208, Div. C, ‘Illegal Immigration Reform and Immigrant Responsibility Act of 1996,’ title VI, § 656, 110 Stat, 3009-716 (1996), now codified at 5 U.S.C. § 301, note.”]

[fn. 2, reading: “See, for example, *Liacakos v. Kennedy*, 195 F. Supp. 630 (D.D.C. 1961), where, in the absence of any foreign birth certificate or other official foreign documentation, the court found that an official state certificate, even one issued 46 years after birth, would establish ‘natural born’ citizenship”]

To begin with, the “Summary” section of the CRS Memo 2 asserts that, because Hawaii officials have “certified” that the image posted on the internet in 2008 was an official “birth certificate,” it would be required under the “full faith and credit” clause of the Constitution, as well as federal statute, to be accepted by any other state official or in any other state court proceeding. The federal law cited in support of that proposition in CRS Memo 2 is 28 U.S.C. § 1739.

Unfortunately, CRS Memo 2 omits mention – but without even the courtesy of an ellipsis signal to the reader – of certain relevant portions of 28 U.S.C. § 1739 in its effort to drive, much as in the original CRS Memo from 2009, its seemingly predetermined conclusion. In fact, the entire first sentence of 28 U.S.C. § 1739 reads as follows:

“All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, *together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, territory, or Possession that the said attestation is in due form and by the proper officers.*” (Emphasis added)

As of March 18, 2010, when CRS Memo 2 was issued, the *only* “thing” that had been released for full inspection by the general public was an *image* of a Hawaiian certificate – purporting to have originated in Hawaii – posted on the Internet in 2008. Indeed, CRS Memo 2 cites as proof of this the internet web address: [http://www.factcheck.org/elections-2008/born\\_in\\_the\\_usa.html](http://www.factcheck.org/elections-2008/born_in_the_usa.html). See CRS Memo 2 at p. 2, n. 7. Interestingly, the author of CRS Memo 2 places quotation marks around the word “released” in the footnote, perhaps in recognition that the only “thing” made generally available in 2008 was an image rather than the original or “hard” piece of paper. This website is also included in the materials accompanying the Bilbray Transmittal, explaining, purportedly, how questions swirling around Mr. Obama’s birth certificate and eligibility “... were ultimately resolved.”

To begin with, any first-year law student knows that an Internet image of a birth certificate would not be admissible as evidence of the birth it purports to document or prove in any court of the land, because it is not the “original” or “best evidence.” And a refusal to produce the original “best evidence” in one’s possession is no excuse for presenting an Internet image as an acceptable substitute.

It would be as if, for example, someone appeared with a laptop computer or iPhone at the passport office and pulled up a posted image of a document claiming it to be the person’s birth certificate. To grossly understate the point, it would be highly unlikely that the passport agent would agree to issue the requested document based on that display alone. Yet this is what the American public is being asked to do with respect to the images purporting to establish Mr. Obama’s constitutional eligibility.

More importantly, at least insofar as the CRS Memo 2 reliance on 28 U.S.C. § 1739 is concerned, without the additional “... certificate of a judge ... or of the Governor, the secretary of state, the chancellor or keeper of the great seal... that said attestation is in due form and by the proper officers...,” it would not be admissible according to the plain terms of the statute itself.

Indeed, even the document recently “released” (albeit confined, as was the 2008 image, to the Internet) by the White House on April 27, 2011 would not be admissible in evidence absent the required additional certificate required under the statute. Look for just such a letter from newly-elected (and Democrat/Obama-supporter) Hawaii Governor Neil Abercrombie as soon as this omission is brought to their attention.

Moreover, the CRS Memo 2 asserts (*see* fn. 8) that “[in] addition to the express attestation on the document that the certificate is a ‘true copy’ of the contemporaneous birth records maintained on file, official personnel of the State of Hawaii verbally indicated that such records were on file at the Department of Health, and show birth in Hawaii as certified...,” thereafter citing certain newspaper articles and Internet websites as sources for that statement. However, as usual, the memo is misleading in this respect.

When the memo asserts that the attestation confirms that the document is a “true copy,” that is not what the full attestation states. As noted on the reverse side of the 2008 image of the document posted on the Internet by Mr. Obama’s team ([http://www.factcheck.org/elections-2008/born\\_in\\_the\\_usa.html](http://www.factcheck.org/elections-2008/born_in_the_usa.html)), the actual attestation by the State Registrar, Alvin T. Onaka, Ph.D., is this: “I certify this is a true copy *or abstract* of the record on file at the Hawaii State Department of Health.” (Emphasis added). There is no language in the attestation that the copy accurately reflects the “contemporaneous” records generated *at the time of birth*. If anything, it reflects only the “contemporary” record “or abstract” of records *then present when the certification was affixed, i.e., June 6, 2007*.

An “abstract” is not an “original,” but is a truncated “synopsis” of an original. It is defined in the online Webster’s “English Learner’s Dictionary” as “a brief written statement of the main points or facts in a longer report, speech, etc.” (<http://www.learnersdictionary.com/search/abstract>). Under this definition, the alteration of certain seemingly innocuous facts (*e.g.*, the name of the birth hospital, the name of the delivering physician or the name of the country of the father’s birth) is more easily accomplished than if an actual copy of an “original,” non-abstracted document is examined.

The only way of knowing what, exactly, the original of a document says is by examining the document itself. A proffered image or abstract of the document is proof of nothing, other than, perhaps, ulterior motives. And yet, that is what was offered in 2008 and accepted as sufficient in CRS Memo 2.

Interestingly, as previously noted here (<http://www.thepostemail.com/2011/04/27/has-the-white-house-has-released-obamas-long-from-birth-certificate/>), the so-called “Nordyke Twins” original (non-computer generated) birth certificates, created and issued in close proximity in time to the image of the one posted in 2008 by (or on behalf of) the putative president, contain the following full attestation at the bottom of both documents: “This certifies that the above *is a true and correct copy of the original record on file* in the Research, Planning and Statistics Office Hawaii State Department of Health.” (Emphasis added).

On the other hand, both the 2008 image and the 2011 image of documents purporting to reveal Mr. Obama's birth data do *not* contain that language, but substitute, instead, Alvin T. Onaka's statement that the documents are either a "true copy" *or* "an abstract" of another record. No explanation has been forthcoming for this anomaly.

Next, since the CRS Memo 2 predates by 13 months the April 27, 2011 "disclosure" by the White House of an Internet image of what is now claimed to be Obama's "original long-form Hawaiian birth certificate," virtually all of the reliance it places on the purported "fact" that the image of the "short-form" birth certificate in 2008 was all that we would ever see on the topic, and that therefore, that was enough to legitimize it as an "official record" entitled to full faith and credit of its verbiage regarding its contents, is now eviscerated. The "revised story" will no doubt now be that the Internet image of this "newly-discovered" long-form and purported "original birth certificate" can be substituted as "the last word." Not so fast.

Apart from the fact that there are literally dozens of new questions raised by the image, the notion that the image itself puts to rest the question of presidential eligibility – including the eligibility of the present occupant of the office – is nonsense. Any yet, that is precisely what is being peddled as the truth by the repository of the "nation's best thinking."

As for the fact that CRS Memo 2 fails to make any reference at all to the original CRS Memo of April 3, 2009, the only word coming close to describing that blatant omission is: "bizarre." In light of the fact that both memoranda have sections specifically dedicated to addressing the issue of what, purportedly, constitutes a "natural born citizen," the lack of an explanation for same simply invites more scrutiny.

First, one reason might lie in the shifting reliance in CRS Memo 2 away from the Supreme Court decision which formed the core of the "conclusion" in the original 2009 CRS Memo, *Perkins v. Elg*, to a different "core" decision, this time from a U.S. District Court: *Liacakos v. Kennedy*, 195 F. Supp. 630 (D.D.C. 1961). However, why the same author of a more recent memorandum on the "native born citizen" issue would exchange reliance on a U.S. Supreme Court decision for reliance on a federal district court (essentially, trial court) decision is unknown, yet it is a fact.

Adding to the mystery of why CRS Memo 2 makes no mention whatsoever of the original CRS Memo is the circumstance that the original April 3, 2009 document *specifically* cites *Liacakos* in secondary support of its conclusions. *See* CRS Memo at 12, n. 60. Since the second memo was authored by the same lawyer and cited the same case, one would have expected at least a passing reference to the first memo.

For reasons detailed, *post*, the trial court ruling in *Liacakos* is likely wrong because of the trial judge's apparent misapprehension of the facts. Thus, any reliance on the case to support the claimed "Maskell-engineered" ruling in *Perkins v. Elg*, the cornerstone of the original CRS Memo, is misplaced.

Although *Elg* has been cited or mentioned in at least 100 reported cases since it was decided in 1939, the decision in *Liacakos* has been cited favorably only 5 times, and mentioned only twice, but in no instance for the core proposition claimed for the case in the CRS Memo 2, *i.e.*, that "... in the absence of any foreign birth certificate or other foreign documentation, the court found that an official state [birth] certificate, even one issued 46 years after birth, would establish 'natural born' citizenship." See CRS Memo 2, at 1, fn. 2. To put it bluntly: no it did not.

And, as pointed out here (<http://www.thepostemail.com/2011/05/03/regarding-natural-born-citizenship/>), while the Constitution requires that eligibility to the presidency requires the person to be a "natural born Citizen," there is no such animal as "natural born citizenship." The term seems to have been created from whole cloth by the author of CRS Memo 2.

The CRS Memo 2 thus commits the same analytical "error" (there may be other terms to describe what is going on here) as was committed in the original 2009 CRS Memo, specifically, advancing the claim that a "delayed certificate" as was issued in the case of Mr. Liacakos, would in and of itself establish "natural born citizenship." No it won't.

CRS Memo 2 proceeds on the assumption that, because the judge there held that the person was born "in" the United States and was, as the person claimed, a "natural born citizen," the case supports the conclusion – much like that announced in the unmentioned original 2009 CRS Memo – that even if the certificate was delayed by 46 years, it purportedly "... would establish 'natural born' citizenship" (assuming, again, that such a constitutional concept existed).

That conclusion cannot be sustained under the language of *Liacakos*. Although the judge there did, in fact, state (195 F. Supp. at 634) that "... the plaintiff has established by a preponderance of the evidence that he is a natural born citizen of the United States, and the Court so holds..." the fact is that the trial court judge (Judge Alexander Holtzoff) was likely mistaken because, had that decision been appealed (for whatever reason, then-Attorney General Robert Kennedy determined not to do so), the likelihood is that a reversal would have resulted.

The reversal would likely have centered on the fact that the same body of evidence used by the trial court judge to conclude that a delayed certificate for Mr. Liacakos established his birth "in" Wheeling, West Virginia and that there was no evidence of a foreign birth certificate *also* established that Mr. Liacakos was *not* and *could not* have been a natural born citizen.

This is because, as conceded by Judge Holtzoff (195 F. Supp. at 633): "There is a certificate from the Mayor of Cythion [Greece] to the effect that plaintiff's name is carried on the Males Register of the Municipality as having been *born in America of Greek citizen parents...*" (Emphasis added). Thus, while Mr. Liacakos was, under the *Wong Kim Ark* case, a native born citizen, by definition he could not have been under the reasoning of § 212 of *The Law of Nations* or § 212 of the Lord Chief Justice of England's work "Nationality," a "natural born citizen."

Accordingly, the reliance placed by CRS Memo 2 on the decision in *Liacakos* is, at minimum, wildly misplaced because it attempts, as does the original CRS Memo, to conflate and equate a “native born citizen” with the much smaller subset of such citizens, the “natural born citizen.” CRS Memo 2 then states (p. 3):

“The federal court in *Liacakos v. Kennedy* found that with no official *foreign* contemporaneous documentation, even a ‘delayed birth certificate’ produced by the plaintiff [*i.e.*, Mr. Liacakos], issued by the State of West Virginia 46 years *after* the alleged birth there, would provide *prima facie* evidence of ‘natural born citizenship.’[*sic*] That *prima facie* evidence, un-rebutted by any official foreign documentation, along with collateral evidence of self-assumed and asserted U.S. citizenship, would thus be conclusive and establish ‘natural born’ status by a ‘fair preponderance of the evidence.’ [fn.19, below]. In the case of President Obama, rather than any actual contrary documentary evidence, there have instead been several ‘theories,’ allegations, rumors, and self-generated ‘doubts’ and ‘questions’ concerning the place and circumstances of President Obama’s birth which, as noted in court decisions, have been posted on the Internet and ‘television news tabloid[s],’ and upon which several of the lawsuits were based.” [fn. 20 omitted]

[fn. 19, reading: “195 F. Supp. at 634.”]

First, as previously noted, there is no such thing as “natural born citizenship.” It is a hypothetical, conceptual term concocted by the author of CRS Memo 2 found nowhere in *Liacakos v. Kennedy*. How, therefore, the judge in that case could be deemed to have “found” that the delayed Liacakos birth certificate provided *prima facie* evidence of a concocted concept not even present in the opinion remains obscure.

Second, so-called “prima facie” evidence “...is a minimum quantity. It is that which is enough to raise a presumption of fact ... [or] it is that which is sufficient, when unrebutted, to establish the fact.” *Mah Toi v. Brownell*, 219 F.2d 642, 644 (9th Cir.1955). Presumptions of fact, in turn, have been called “... the bats of the law, flitting in the twilight, but disappearing in the sunshine of actual facts.” *Mockowick v. Kansas City, etc., Ry. Co.*, 196 Mo. 550, 94 S.W. 256, 262 (1906). As long as only Internet images of documents, rather than the documents themselves, are made available for analysis, those images will remain Mr. Obama’s eligibility “bats, flitting in the twilight,” with no sunshine in the forecast.

Finally, in what can only be described as a shining monument to hypocritical thought, CRS Memo 2 replicates the tactics of the prior Bilbray Transmittal by denigrating challenges to the legitimacy of the putative president’s claims – or more precisely, the claims of Mr. Obama’s sycophants – that he is eligible to the office as a natural born citizen because, among other things, they were posted on the Internet.

And yet neither CRS Memo 2 nor the CRS Bilbray Transmittal seemingly finds any problem *at all* with elevating the Internet-posted image of the 2008 document – then purporting to be the “only birth certificate” available – as ending the debate. One is

reminded of the rules established by Comrade Napoleon the Pig in Orwell's "Animal Farm": "All animals are equal, but some animals are more equal than others." Or, in the CRS lexicon: "All images posted by Obama supporters on the Internet must be accepted, but all images or postings challenging or questioning them must be rejected."

Accordingly, the CRS Memo 2 as well as the CRS Bilbray Transmittal both suffer from all of the infirmities of the original CRS Memo, with additional ones of their own. If this is an example of the best that can be expected from the repository of "the nation's best thinking..." we are in deep, deep... *deep* trouble.

## **SO WHAT DOES IT ALL MEAN?**

Who knows? That which is clear, however, demonstrates that there are far more questions than answers generated by the original CRS Memo, the Bilbray Transmittal and their spawn, CRS Memo 2. These irregularities need to be investigated and divulged to the American people and a full congressional hearing should be launched immediately to review and examine what plainly appears to be the manipulated crafting of the original CRS Memo, the Bilbray Transmittal and CRS Memo 2, each seemingly engineered to "reach" a result rather than to examine a legitimate question in an objective and non-partisan fashion.

Granted, if there are simple explanations for the "irregularities" identified in the CRS Memo and CRS Memo 2, as well as in the Bilbray Transmittal, they should be easily provided by the CRS itself, then corrected documents could be printed and redistributed to the members of Congress to whom the originals were sent. Then again, given the stakes... maybe not.

But just remember the words of two additional famous Englishmen other than William Blackstone or Sherlock Holmes: John Locke and Edmund Burke.

Locke gave us this: "Where law ends, tyranny begins."

Burke likely did not use these precise words, but they have evolved in his name: "The only thing necessary for the triumph of evil is for good men to do nothing."