

Is Tulsi Gabbard a Natural Born Citizen?

“PART OF THE UNITED STATES,” OR NOT?

by [Joseph DeMaio](#), ©2019



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(Jun. 28, 2019) — Well, well, well..., who woulda thunk? Following the first round of Democrat Loser Debates, it seems that a consensus is developing that the junior representative from Hawaii, Ms. [Tulsi Gabbard](#) may just be rising in the [polls](#). In an unofficial “poll” conducted online by The Drudge Report during and following the debate, some 40% of around 50,400 respondents picked Gabbard as the winner of the debate, with her closest 2nd place rival, Sen. Elizabeth Warren, coming in at less than 12.5%.

Say what? A relatively unknown representative from Hawaii gets more than three times the number of votes than her second-place, far more well-known competitor, Senator Warren? While the poll sample size is minute compared to the entire electorate, what is up with that? Perhaps it is because (a) Gabbard is a military veteran, having served in Iraq and now commissioned as a full major in the Hawaii Army National Guard; (b) she decimated Congressman Tim Ryan (Ohio) by correcting him that it was members of Al Qaeda, not the Taliban, who destroyed the World Trade Center towers on 9/11/01; and (c) she hails from a state that has already given us Barack Hussein Obama II.

Wait a second... while Obama claims to have been born in Hawaii, faithful P&E readers know two things: (1) that assertion is likely false or, at minimum, unsubstantiated, and (2) even if true, the documentation he has supplied seems clearly to establish in any event that he is not (and was not when he usurped the presidency) a “natural born Citizen” as required under the Constitution.

But what about Gabbard? Apart from most of her goofy ideas and positions trending toward the radical-progressive wing of the Democrat Party (she was a vice-chair of the “Democratic [*sic*] National Committee” for a brief period of time before resigning to endorse Bernie Sanders for president in 2016... not the smartest move...), there is another impediment she will likely face. She, along with another Democrat presidential-wannabe, Kamala Harris, must prove that she is eligible as a “natural born Citizen” under Art. 2, § 1, Cl. 5 of the Constitution.

This task arises, of course, because although from all appearances, both of her parents – Carol (née Porter) and Mike Gabbard – were both already U.S citizens on April 12, 1981, Tulsi Gabbard’s birth did not take place within the United States. Rather, it took place in Leloalua, Maoputasi County, American Samoa. As faithful P&E readers also know, under the provisions of § 212 of Emmerich de Vattel’s *The Law of Nations* – and upon which tome the Founders “continually relied” while drafting the Constitution, including the “natural born Citizen” restriction of Art. 2, § 1, Cl. 5 – in order for one to satisfy the eligibility restriction, not only must the child’s parents be citizens of the nation where the birth occurs, the birth must take place on that nation’s soil.

This is where it gets sticky. While [American Samoa](#) is a “territory” of the United States, it is not an “incorporated territory.” This is the same issue that faced Sen. John McCain in 2008, when he faced off against Monsieur Obama as discussed [here](#). Among several issues in McCain’s case was whether he was born at the Coco Solo Naval Air Station hospital, a U.S. military base in the Panama Canal Zone, or whether he was born in a hospital in Colón, Panama, which has never has been a part of the United States. Parenthetically, in a case challenging his eligibility – *Hollander v. McCain*, 566 F. Supp. 2d 63 (D.N.H. 2008) – the record indicated that a copy of McCain’s birth certificate was received in evidence, with the judge stating that the birth certificate “lists his place of birth as Colón.” *Id.* at 65.

At the time of his birth (1936), the [Panama Canal Zone](#) was an unincorporated territory under the control of the United States. However, the United States Supreme Court had ruled 35 years earlier that unincorporated territories, even if under the control of the United States, are not, prior to formal action by the Congress, a part of the United States. *Downes v. Bidwell*, 182 U.S. 244 (1901). Thereafter, the Court ruled that the full spectrum of the Constitution’s provisions apply only in incorporated territories of the United States, thereby excluding from that full spectrum its application in unincorporated territories. *Rassmussen v. United States*, 197 U.S. 516 (1905).



Before anyone jumps to the erroneous conclusion that this means that the natural born Citizen restriction would not apply at all to a person born in American Samoa (or any other unincorporated territory of the United States), note that the *Rassmussen* case involved only the question of whether a person’s constitutional *rights* under the 6th Amendment applied at all in the Territory of Alaska and *not* whether the *mandates* of other constitutional provisions applied.

In addition, the *Downes* case affirmed the principle that, whether a territory was already “incorporated” into the United States by act of Congress or not, “[o]ur Constitution, in its operation, is co-extensive with our political jurisdiction...,” citing *The City of Panama*, 101 U.S. 453, 460 (1879). Thus, the Supreme Court has seemingly confirmed that the mandate of Art. 2, § 1, Cl. 5 of the Constitution – the “natural born Citizen” eligibility restriction clause – would be and is, as intended by the Founders, applicable to a child born to U.S. citizen parents *anywhere*, including, as to Senator McCain, the Panama Canal Zone or, as to Representative Gabbard, American Samoa.

This conclusion is also fortified by recognition that, after enacting 1 Stat. 103, the “1790 Naturalization Act,” declaring children born to U.S. citizen parents “beyond sea” (*i.e.*, not in the United States) to be “considered” as natural born citizens, Congress repealed altogether that law by enacting 1 Stat. 414 in 1795, the “1795 Naturalization Act.” The title of the 1795 act was: “An Act to establish an [*sic*: so in original] uniform rule of *Naturalization; and to repeal the act heretofore passed on that subject.*” (Emphasis added)

There is no indication in the 1795 Act’s title of any intent to *preserve* the “considered as natural born citizens” modifier of the children affected. Instead, there is a clear objective of totally repealing that provision along with the rest of the prior statute. In so doing, Congress changed the language of the prior law by declaring that such children born “beyond sea” would thereafter be considered “citizens,” but *not* “natural born citizens.”

So what does all of this mean for Tulsi Gabbard? It seems to mean the same thing as for [Kamala Harris](#). Until an insouciant Supreme Court finds the backbone to undertake an examination of the “natural born Citizen” issue under Art. 2, § 1, Cl. 5 in a live “case or controversy,” we will need to remain satisfied with watching the Democrat circus

stumble forward laboring under the belief that both Harris and Gabbard (and perhaps others) are constitutionally eligible. Both are likely ineligible.

Time to go make some more popcorn.