Of Presidential Eligibility, Doubling Down and Linguistic Torts, Conclusion

A NATION OF LAWS, OR MEN?

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The U.S. Congress convenes at the U.S. Capitol building, which is at the center of the legislative district of Washington, DC

(Feb. 26, 2012) — [**Editor's Note:** In this concluding section of Mr. DeMaio's four-part series on presidential eligibility, the meaning of "natural born Citizen" as utilized in Article II, Section 1, Clause 5 of the U.S. Constitution, and the efforts made by Atty. Jack Maskell of the Congressional Research Service (CRS) to convince his presumed readership that a *jus soli* birth is sufficient to qualify for the presidency, DeMaio questions whether or not an image posted on the internet meets the "Best Evidence Rule" as *prima facie* evidence of Obama's birth as well as Obama's reasons for withholding the original allegedly retrieved by his lawyer from Hawaii. DeMaio raises the question as to how Obama legitimately claims "undivided allegiance" to the United States when his father was born a British subject and never became a U.S. citizen following his extensive analysis of the writings of Emmerich de Vattel, whose *The Law of Nations* described children born of citizen "parents" as "natural born."

The Congressional Research Services states that it employs "450 policy analysts, attorneys and information professionals in a variety of disciplines working in one of five research divisions. The breadth and depth of this expertise – from law, economics and foreign affairs to defense and homeland security, public administration, education, health care, immigration, energy, environmental protection, science and technology – enables CRS to mobilize quickly, working together in flexible groups to provide integrated analyses of complex issues facing the Congress." But have these "professionals," or more specifically, Maskell and his staff, produced not one, but three, memos with the disingenuous intent of convincing members of Congress – and the public, if they were to

read them – that Barack Hussein Obama is eligible to the presidency regardless of the "natural born Citizen" clause of the Constitution?]

The CRSR relies throughout its 37,000 words on the English "common law" in support of its argument that, if a person was born "in" a country and "subject to its jurisdiction," that person was a "natural born subject" of the King of England. Ergo, the Founders must have thought the same thing when they utilized the term "natural born Citizen" in the Constitution. Case closed.

Not so fast.

If reliance on the English "common law" by the CRSR is proper with respect to questions regarding the meaning of "natural born Citizen," similar reliance on other facets of the "common law" should be equally applicable. While the CRSR seeks to "evade" the evidentiary principle of the "Best Evidence Rule" by approving the inferior mechanism of first posting by the White House to the Internet (in June 2008) an image of Mr. Obama's so-called "short form certificate" and then, in April 2011, similarly posting his so-called "long form birth certificate." Both posted images have been roundly denounced by computer forensic experts as being Adobe Photo-shopped frauds, and poorly-executed ones at that. As another website interested in seeking the truth has asked: "Where's the Birth Certificate?"

Turning to the tome relied upon by the CRSR for its expositions of the "common law" – Blackstone's *Commentaries on the Laws of England* – we find in Book III, Ch. 23 at p. 368, dealing with evidentiary principles with respect to "Private Wrongs" the following:

"AGAIN; evidence in the trial by jury is of two kinds, either that which is given in proof, or that which the jury may receive by their own private knowledge. The former, or proofs, (to which in common speech the name of evidence is usually confined) are either written, or parol, that is, by word of mouth. Written proofs, or evidence, are, 1. Records, and 2. Ancient deeds of thirty years standing, which prove themselves; but 3. Modern deeds, and 4. Other writings, must be attested and verified by parol evidence of witnesses. *And the one general rule that runs through all the doctrine of trials is this, that the best evidence the nature of the case will admit of shall always be required, if possible to be had; but, if not possible, then the best evidence that can be had shall be allowed. For if it be found that there is any better evidence existing than is produced, the very not producing it is a presumption that it would have detected some falsehood that at present is concealed.*" (Emphasis added).

By continuing to assert that the image of a document posted to the internet and claimed to be the original of a birth certificate is all that is needed to settle the issue, the CRSR merely compounds its error and hypocrisy. That hypocrisy was unmasked here by analogy to one of the surrealist painter René Magritte's most famous works: *The Treachery of Images*. Painted beneath the image of a brown pipe, in French, are the

words: “Ceci n’est pas une pipe.” Translation: “This is not a pipe.” The truth is that in fact, the image is *not* a pipe but instead is a *picture* of a pipe. Magritte is reputed to have commented when asked about it: “Of course it is not a pipe. Just try filling it with tobacco.”

A fourth-grader – but apparently neither the mainstream media nor the Congressional Research Service – could see the analogy here: the electorate, the people as a whole and, indeed, the populations of the entire *planet* are being asked to accept… correction, ***told***… that the Internet images of two documents purporting by their presenters to be “proof” that Mr. Obama was born “in” Honolulu, Hawaii as thus, “subject to the jurisdiction of the United States” and rendering him a “natural born Citizen” under Art. 2, Sec. 1, Cl. 5 of the Constitution, are all that is needed to confirm his constitutional eligibility and silence any opposing views.

Really? Raise your hand if you believe that you can take your laptop, iPhone or iPad down to the Passport Office, pull up an image of something you claim is your original birth certificate, and get a passport. Raise your hand if you think you can establish entitlement to Medicare or Social Security benefits in the same way.

If, in fact, two original seal-embossed original long-form birth certificates were obtained by Mr. Obama’s lawyer, Ms. Judith Corley, of the Perkins Coie law firm from the Hawaii Department of Health in April 2011, why have they not been made available for independent, forensic examination? The “press gaggle” display orchestrated by White House press flack Jay Carney and the “I-felt-the-raised-seal” assurance by NBC reporter Savannah Guthrie fall so far short of satisfying even the *minimum* standards of the Best Evidence Rule that, were he now alive, Sir William Blackstone would promptly die laughing.

And yet not only is the electorate lampooned for even thinking of *snickering* over the spectacle, Mr. Obama continues to pay his attorneys *real money* to resist any efforts to get a court of law to address the issue, and the Congressional Research Service continues to produce “product,” assuring everyone – and especially everyone in a position to ask really hard questions in the Congress – that there is no need for further inquiry.

Yet the questions remain:

- Is the “raised seal” Ms. Guthrie assures us she “felt” from the Hawaii Department of Health, or might it be from some other Hawaiian governmental office, say, for example, the office of Governor Neil (“I ♥ Obama”) Abercrombie?
- Has Governor Abercrombie (or another Hawaiian official) signed the additional certification required under 28 U.S.C. § 1739 for the purported “birth certificate” to be accorded “full faith and credit” under the Constitution, as discussed in the CRS Memo of March 18, 2010?
- Do the purported “original” documents in the possession of Mr. Obama or his lawyers – there shielded by the attorney-client privilege – match the documents posted to the internet?

- Was the request for the certified copies of the originals transmitted through Mr. Obama's lawyers in order to interpose let another layer of secrecy – attorney-client confidentiality – over the documents once placed into the lawyers' possession?
- Has anyone in the federal "Office if the Inspector General" seen or examined the documents purporting to be "genuine" certified copies of the original Hawaii Department of Health birth records against the findings and recommendations of the September 2000 report of the Inspector General entitled "Birth Certificate Fraud" found here?
- Does the original Hawaii Department of Health microfilm or microfiche chronological record of births taking place in 1961 explain or answer the "anomalies" present in Mr. Obama's proffered "birth certificates" as compared to the then-contemporaneous certificates of other persons born in Honolulu that year?
- If his father was a natural born British subject under the British Status of Aliens Act of 1914, and under British statutory as well as "common law" the children of such natural born British subjects, wherever born, are themselves natural born British subjects, what is the basis for Mr. Obama's claim of the undivided allegiance to the United States required under the Constitution?
- If the British Nationality and Status of Aliens Act of 1943 applied to Mr. Obama's father, was Barack Hussein Obama's purported Hawaiian birth ever "registered at a consulate of His Majesty" as contemplated under the Act?

The CRSR's repeated claim that the Internet image, as opposed to the original, seal-embossed document claimed to have been supplied by Hawaii officials, suffices is absurd. The image does not satisfy either the federal law on "prima facie" evidence of a document nor does it satisfy the "Best Evidence Rule," which (to quote one of the CRSR favorite authorities, Blackstone) has been a part of the common law since written documents were first proffered in evidence. Moreover, the CRSR reprises its misplaced reliance on *Liacakos v. Kennedy*, 195 F. Supp. 630 (D.D.C. 1961) (previously discussed and dismantled here, contending that "even a delayed birth certificate produced by the plaintiff, issued by the State of West Virginia 46 years *after* the alleged birth there, would provide *prima facie* evidence of "natural born citizenship." *See* CRSR at 42.

Quite apart from the fact that Mr. Liacakos produced *the original document* and not an Internet image of the document, the decision, like the CRSR, improperly conflates and equates a "native born citizen" under the 14th Amendment to a "natural born Citizen" under Art. 2, Sec. 1, Cl. 5 of the Constitution. Accordingly, any and all discussion in the case regarding the presidential eligibility clause and/or the term "natural born Citizen" used therein is, as in Wong Kim Ark, dictum. Pure and simple.

Blackstone's evidentiary rule is carried forward to today's Rule 1002 of the Federal Rules of Evidence, requiring that: "To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in these rules of by Act of Congress." *See, generally*, McCormick on Evidence, § 233. Since no other evidentiary rule or act of Congress exists which would obviate the

need for the *original* of the purported certified copy of Mr. Obama's long-form birth certificate, including the raised certification seal, the April 27, 2011 Internet image, as well as the anemic CRSR attempt to validate it, are worthless to resolve the question. Worse, they are disingenuous efforts to camouflage the truth – whatever that truth may be – regarding ***all*** of the circumstances attending Mr. Obama's birth.

Finally, the hypocrisy of the CRSR's position that the Internet images should be all that is needed, because the "original" sealed certificates were obtained from the Hawaii Department of Health by Mr. Obama's lawyers, is manifest. One need look no further than the principles of the "common law" as articulated by Blackstone above quoted: "…the one general rule that runs through all the doctrine of trials is this, that *the best evidence the nature of the case will admit of shall* ***always*** *be required, if possible to be had*." (Emphasis added). The circumstance that the original birth certificates – if indeed they exist – are in the possession of Mr. Obama or his lawyers, but that they don't *want* to disclose them, does ***not*** render them other than "possible to be had."

More importantly to the Best Evidence Rule issue, however, are the words of Blackstone following those just quoted. "*[I]f it be found that there is any better evidence existing than is produced, the very not producing it is a presumption that it would have detected some falsehood that at present is concealed.*" Really? There is a potential that a "falsehood that at present is concealed" might be perpetrated by allowing into evidence something other than the genuine original of the document? Imagine that. Secreting away from evidentiary disclosure the original of a genuine document which one does not *want* to disclose cannot justify the substitution of a purported "copy." Moreover, it raises the presumption that the person refusing to disclose the original in his/her possession does, in fact, have some falsehood concealed or some truth preferred kept secret.

It is important that one focus on the word "presumption," as it has legal significance. Here, since the purported originals, certified and bearing the requisite seals, are *known to be* in the possession of Mr. Obama or his lawyers, it is *those* documents – not photocopies handed out a press conferences; not pictures of birth certificates posted to the Internet; and not parol (verbal) statements claiming to have "seen and touched the originals and the raised seal" – which alone will satisfy the Best Evidence Rule.

In any instance other than the present one, where the President of the United States of America or his lawyers were in possession of the original of a document which could, to a high degree of certainty, establish whether he/she was eligible to serve, or instead was a usurper, the mainstream media would be in 24/7 soprano apoplexy screaming for its release… especially if the President were a Republican. *See*, *e.g.*, *United States v. Nixon*, 418 U.S. 683 (1974). Instead, the erstwhile "Fourth Estate" which has served the nation since before it was a nation seems to have come down with a terminal case of laryngitis. One wonders if there is anything in the behemoth known as "Obamacare" which might address the ailment.

Sad… very sad, indeed.

Why Now?

The nagging question of "why now?" continues to perplex. After all, if the series of prior CRS Memos, the successful marginalizing of the "birthers" by virtually *all* media outlets and journalists and the deepening sycophancy of Mr. Obama's supporters have all combined to create the perception that, in fact, if you even *dream* of questioning Mr. Obama's eligibility, you are a nut-case…. why is there a need now for yet *another* novelette on the topic, the November 14, 2011 CRSR? Stay with me, as what follows may qualify in some peoples' eyes as "Area 51" material.

The timing of the release of the CRSR merits examination, as does the audience to which it may have been disseminated. Specifically, the release comes at a time when it is unlikely that the U.S. Supreme Court – even if otherwise inclined – would have time to accept jurisdiction over and render a decision on the constitutional eligibility issue before November 6, 2012, now less than 9 months away. Indeed, as previously noted, there is even a suggestion from sitting Associate Supreme Court Justice Clarence Thomas that as to appeals drawing into question the president's constitutional eligibility, the Court is "… evading that one." It is interesting that Justice Thomas, in explaining why the Supreme Court has not yet taken up an "eligibility" case on the merits would select the term "evading" as opposed to "avoiding," since the prior term suggests a conscious decision to shirk or avoid a known obligation.

In addition, however, it cannot (or should not) be ignored or forgotten that to the extent other individuals having presidential aspirations or being "rumored" as possessed of "presidential or vice-presidential timber" may also have eligibility issues impacting them – including Florida Senator Marco Rubio and/or Louisiana Governor Bobby Jindal – the release of the CRSR might well have the effect, whether calculated or not is a separate question, of fortifying in those persons' minds a belief that, in fact, they are constitutionally eligible as "natural born Citizens," regardless of the citizenship of their parents at the times of their births. Such a scenario might also have the effect of cooling any ardor such persons might otherwise have to continue (or even begin) questioning Mr. Obama's constitutional eligibility.

If the CRSR analysis is to be believed and accepted – as the CRSR seemingly wants the reader to do – then under the decision in *Wong Kim Ark*, Senator Rubio and Governor Jindal, among others, would be "deemed" eligible without the need for a Supreme Court decision or a constitutional amendment confirming same. If such a result found widespread appeal among such a persons' supporters, it could have a significant impact on their willingness to persist in questioning Mr. Obama's eligibility. On the other hand, if the original intent of the Founding Fathers as gleaned from sources dismissed or altogether ignored in the CRSR is found more to comport with the teachings of de Vattel and the apparent concerns of John Jay in writing to George Washington on the point, then Senator Rubio and Governor Jindal, as well as all others similarly-situated, and talented as they may be, would be ineligible, for they would not meet the definition of a "natural born Citizen," at least as articulated by de Vattel.

Insidious and unlikely as it might seem, if one of the objectives of Mr. Obama's supporters were to entice and tempt those in political parties other than his own – and perhaps even including Senators who might be called upon to voice any objections when the electoral college votes are tallied next January – to accept the CRSR and its reasoning in order to fortify their own proclivities or candidacies as a "natural born Citizen," that would be an improper and unfortunate motivation. Indeed, such an objective, if the CRS were complicit, would reduce the Congressional Research Service into little more than a co-conspirator or lobbyist seeking to accomplish an objective through guile and cunning.

And that would be a bad thing…. would it not?

Conclusion

And so, he debate continues: is Barack Hussein Obama eligible – or ineligible and thus disqualified – to either serve as president or to be legitimately excluded from future election by virtue of the U.S. Constitution? While the person now "occupying" the White House marshals his supporters, enablers and lawyers to make sure the "response" to that question – not to be confused with an "answer" to the question – ratifies and confirms his continued residence there, substantial doubts and a growing mountain of evidence continue to accumulate indicating that, in fact and in law, not only is he ineligible under Article 2, Section 1, Clause 5 of the U.S. Constitution,, a massive and unprecedented bamboozling of the American people, not just the electorate, has taken place. In fact, the ruse today continues to take place to ensure he stays there, including, at minimum, past November 6, 2012.

Aided and abetted by a mainstream media cabal that gives new meaning to the term "propaganda," coupled with a somnambulant Congress seemingly more focused on individual members' re-election than on adherence to the Constitution and rule of law, those who would have the temerity to even ***suggest*** that the issue of presidential eligibility should be examined have been relentlessly criticized, trivialized, marginalized, demonized, vilified and, finally, lampooned. And above it all wheels and dives Mr. Obama, not unlike a raptor scanning the ground – America – for more prey, his teleprompters locked and loaded. And yet, the constitutional eligibility issue remains. Why? Because one cannot rope-a-dope and dodge the public forever, because the truth will always come out. Always. In this regard, the U.S. Supreme Court may wish to revisit its not-infrequent citation to reports of the Congressional Research Service as a source of impartial and authoritative data.

The only remaining question of any relevance to the issue is whether enough of the electorate on November 6, 2012 will sip again Mr. Obama's cocktail, a mixed adult beverage consisting of equal parts of hubris and arrogance, with a heaping dash of narcissism, and listen once more to his siren song of "hope and change" – along with another chorus of "it's Bush's fault" – to finally ensure that a nation once hailed as the planet's last best hope for liberty and freedom crashes and burns like so many other failed nations of the past. Think "Yugoslavia." Think "Greece."

Since the judicial branch of the government – from the United States Supreme Court down to, for example, the Georgia Office of State Administrative Hearings – has shown approximately *zero* interest in addressing the issues on the merits, there is but one court remaining in which to seek redress, *i.e.*, the Court of Public Opinion. There are times when the exigencies of a situation leave no option other than resort to the public: "we, the people." If the Supreme Court is "evading" the issue, it is now up to the electorate to find the fortitude which apparently is lacking elsewhere.

Accordingly, assuming that these issues are not otherwise resolved before then, the final hearing on the matter will be held in that court on November 6, 2012. If you care about your country and its future, along with the future of your children, your grandchildren, and their great-great grandchildren, be in the courtroom – which is actually scattered across the nation in the form of tens of thousands of places called "voting booths" – on November 6, 2012. Unless, of course, either New Black Panther Party or SEIU "peaceful polling place monitors" intimidate you away or you actually prefer the "nation of men and not laws" that is being designed, assembled and imposed on Mr. Obama's watch.

Yes, Virginia… it is that serious.