

Senate Resolution 511

Recognizing that John Sidney McCain III, is a Natural Born Citizen

April 10, 2008

Mrs. McCaskill (for herself, Mr. Leahy, Mr. Obama, Mr. Corburn, Mrs. Clinton, and Mr. Webb) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. Res. 511

Whereas the Constitution of the United States requires that, to be eligible for the Office of the President, a person must be a “natural born Citizen” of the United States;

Whereas the term “natural born Citizen”, as that term appears in Article II, Section 1, is not defined in the Constitution of the United States;

Whereas there is no evidence of the intention of the Framers or any Congress to limit the constitutional rights of children born to Americans serving in the military nor to prevent those children from serving as their country’s President;

Whereas such limitations would be inconsistent with the purpose and intent of the “natural born Citizen” clause of the Constitution of the United States, as evidenced by the First Congress’s own statute defining the term “natural born Citizen”;

Whereas the well-being of all citizens of the United States is preserved and enhanced by the men and women who are assigned to serve our country outside of our national borders;

Whereas previous presidential candidates, were born outside the United States of America and were understood to be eligible to be President; and

Whereas John Sidney McCain, III, was born to American citizens on an American military base in the Panama Canal Zone in 1936; Now, therefore, be it

Resolved, That John Sidney McCain, III, is a “natural born Citizen” under article II, Section 1, of the Constitution of the United States.

Mr. LEAHY. Mr. President, today I join Senator CLAIRE McCASKILL in introducing a resolution to express the common sense of everyone here that Senator McCAIN is a “natural born Citizen,” as the term is used in the Constitution of the

United States. Our Constitution contains three requirements for a person to be eligible to be President—the person must have reached 35; must have resided in America for 14 years; and must be a “natural born Citizen” of the United States. Certainly there is no doubt that Senator McCain is of sufficient years on this earth and in this country given that he has been serving in Washington for over 25 years. However, some pundits have raised the question of whether he is a “natural born Citizen” because he was born outside of the official borders of the United States.

JOHN SIDNEY McCain, III, was born to American citizens on an American Naval base in the Panama Canal Zone in 1936. Numerous legal scholars have looked into the purpose and intent of the “natural born Citizen” requirement. As far as I am aware, no one has unearthed any reason to think that the Framers would have wanted to limit the rights of children born to military families stationed abroad or that such a limited view would serve any noble purpose enshrined in our founding document. Based on the understanding of the pertinent sources of Constitutional meaning, it is widely believed that if someone is born to American citizens anywhere in the world they are natural born citizens.

It is interesting to note that another previous presidential candidate, George Romney, was also born outside of the United States. He was widely understood to be eligible to be President. Senator Barry Goldwater was born in a U. S. territory that later became the State of Arizona so some even questioned his eligibility. Certainly the millions of Americans who voted for these two Republican candidates believed that they were eligible to assume the office of the President. The same is true today.

Because he was born to American citizens, there is no doubt in my mind that Senator McCain is a natural born citizen. I recently asked Secretary of Homeland Security Michael Chertoff, a former Federal judge, if he had any doubts in his mind. He did not.

I expect that this will be a unanimous resolution of the Senate and I thank the Senator from Missouri for working with me on this.

I ask unanimous consent that the relevant excerpt from the Judiciary Committee hearing where Secretary Chertoff testified be made a part of the RECORD.

EXCERPT of SECRETARY CHERTOFF TESTIMONY FROM April 2, 2008

Chairman LEAHY. We will come back to that. I would mention one other thing, if I might. Senator Specter. Let me just ask this: I believe—and we have had some

question in this Committee to have a special law passed declaring that Senator McCain, who was born in the Panama Canal, that he meets the constitutional requirement to be President. I fully believe he does. I have never had any question in my mind that he meets our constitutional requirement. You are a former Federal judge. You are the head of the agency that executes Federal immigration law. Do you have any doubt in your mind—I mean, I have none in mine. Do you have any doubt in your mind that he is constitutionally eligible to become President?

Secretary CHERTOFF. My assumption and my understanding is that if you are born of American parents, you are naturally a natural-born American citizen.

Chairman LEAHY. That is mine, too. Thank you.

April 30, 2008

JOHN S. McCAIN, III CITIZENSHIP

Mr. BROWN. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 715, S. Res 511.

The PRESIDING OFFICER. The clerk will report the Resolution by title.

The legislative clerk read as follows:

A Resolution (S. Res. 511) recognizing that John Sidney McCain, III, is a natural born citizen.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEAHY. Mr. President, today we are considering a bipartisan resolution to express the common sense of all in this Chamber that Senator McCain is a “natural born Citizen,” as then term is used in the Constitution of the United States. Last week the Judiciary Committee voted unanimously to report this resolution to the Senate. I urge Senators to come together to pass this bipartisan resolution without delay.

Our Constitution contains three requirements for a person to be eligible to be President—the person must have reached the age of 35; must have resided in America for 14 years; and must be a “natural born Citizen” of the United States. Certainly there is no doubt that Senator McCAIN is of sufficient years on this earth and in this country given that he has been serving in Washington for over 25 years.

“However, some have raised the question whether he is a “natural born Citizen” because he was born outside of the United States.

JOHN SIDNEY McCAIN, III, was born to American citizens on an American Naval Base in the Panama Canal Zone in 1936. His father was serving in the Navy at that time.

It is possible that at the time of our Nation’s founding, the Framers of our Constitution could not imagine how pronounced our commitments overseas would become but it would make no sense to limit the careers of children born to military families simply because they were stationed overseas. Similarly, it would not make sense to punish children born to foreign service families or Ambassadors stationed overseas or children born overseas to American Missionaries. They are all American citizens at the time of their birth.

Numerous legal scholars have looked into the purpose and intent of the “natural born Citizen” requirement. As far as I am aware, no one has discovered any reason to think that the Framers would have wanted to limit the rights of children born to Americans abroad or that such a limited view would serve any noble purpose enshrined in our founding document. Based on the understanding of the pertinent sources of constitutional meaning, it is widely believed that if someone is born to American citizens anywhere in the world they are natural born citizens.

It is interesting to note that another previous Presidential candidate, George Romney, was also born outside of the United States. He was widely understood to be eligible to be President. Senator Barry Goldwater was born in a U. S. territory that later became the State of Arizona. Certainly those who voted for these two Republican candidates believed that they were eligible to assume the office of President.

Because he was born to American citizens, there is no doubt in my mind that Senator McCAIN is a “natural born Citizen”. I recently asked Secretary of Homeland Security Michael Chertoff, a former Federal judge, if he had any doubts in his mind. He did not.

Former Solicitor General Theodore Olson and Harvard Law School Professor Laurence Tribe also analyzed the issue and came to the same conclusion—that Senator MCCAIN is a natural born Citizen eligible to serve as President.

Our bipartisan resolution would make it clear that Senator McCAIN, born in 1936 on an American Naval base to U. S. citizens, is a “natural born Citizen. We

should act today on a bipartisan basis to erase any doubt that Senator McCain is eligible to run for President because of his citizenship status.

I ask unanimous consent that the legal analysis of Theodore Olson and Laurence Tribe be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Gibson, Dunn & Crutcher LLP,

Washington DC, April 8, 2008

Re legal analysis of question whether Senator John McCain is a natural born citizen eligible to hold the office of President.

Hon. PATRICK J. LEAHY,

Chairman, Committee on the Judiciary, U. S. Senate, Dirksen Senate Office Building, Washington, DC

Dear CHAIRMAN LEAHY: Pursuant to a request received from the staff of your Committee, I enclose for your and your Committee's consideration a copy of my and Professor Laurence Tribe's analysis of the question whether Senator John McCain is a natural-born citizen eligible, under Article II of the Constitution, to hold the office of President of the United States. Professor Tribe and I are in agreement that the circumstances of Senator McCain's birth to American parents in the Panama Canal Zone make him a natural-born citizen within the meaning of the Constitution.

Please do not hesitate to contact me if I can be of further assistance in this matter.

Very truly yours,

Theodore Olson.

Gibson, Dunn & Crutcher LLP

Washington DC, April 8, 2008

Re legal analysis of question whether Senator John McCain is a natural born citizen eligible to hold the office of President.

Hon. Arlene Specter,

Ranking Member, Committee on the Judiciary, U. S. Senate, Dirksen Senate Office Building, Washington DC.

Dear Senator SPECTER: Pursuant to a request received from Democratic Committee staff, I enclose for your consideration a copy of my and Professor Laurence Tribe's analysis of the question whether Senator John McCain is a "natural born citizen" eligible, under Article II of the Constitution, to hold the office of President of the United States. Professor Tribe and I are in agreement that the circumstances of Senator McCain's birth to American parents in the Panama Canal Zone make him a natural born citizen within the meaning of the Constitution.

Please do not hesitate to contact me if I can be of further assistance in this matter.

Very truly yours,

Theodore Olson

March 19, 2008.

We have analyzed whether Senator John McCain is eligible for the U. S. Presidency, in light of the requirement under Article II of the U. S. Constitution that only "natural born Citizen[s]...shall be eligible to the Office of President." U. S. Const. art. II, Sec. 1, cl. 5. We conclude that Senator McCain is a "natural born Citizen" by virtue of his birth in 1936 to U. S. citizen parents who were serving their country on a U. S. military base in the Panama Canal Zone. The circumstances of Senator McCain's birth satisfy the original meaning and intent of the Natural Born Citizen Clause, as confirmed by subsequent legal precedent and historical practice.

The Constitution does not define the meaning of "natural born Citizen." The U. S. Supreme Court gives meaning to terms that are not expressly defined in the Constitution by looking to the context in which those terms are used; to statutes enacted by the First Congress. *Marsh v. Chambers*, 463 U.S. 783, 790-91 (1983); and to the common law at the time of the Founding. *United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1898). These sources all confirm that the phrase "natural born" includes both birth abroad to parents who were citizens, and birth within a nation's territory and allegiance. Thus, regardless of the sovereign status of the Panama Canal Zone at the time of Senator McCain's birth, he is a "natural born" citizen because he was born to parents who were U.S. citizens.

Congress has recognized in successive federal statutes since the Nation's Founding that children born abroad to U.S. citizens are themselves U.S. citizens. 8 U.S.C. sec. 1401(c); see also Act of May 24, 1934, Pub. L. No. 73-250, sec. 1 48 Stat. 797, 797. Indeed, the statute that the First Congress enacted on this subject not only established that such children are U.S. citizens, but also expressly referred to them as "natural born citizens." Act of Mar. 26, 1790, ch. 3, sec. 1, 1 Stat. 103, 104.

Senator McCain's status as a "natural born" citizen by virtue of his birth to U.S. citizen parents is consistent with British statutes in force when the Constitution was drafted, which undoubtedly informed the Framers' understanding of the Natural Born Citizen Clause. These statutes provided, for example, that children born abroad to parents who were "natural-born Subjects" were also "natural-born Subjects"...to all Intents, Constructions and Purposes whatsoever." British Nationality Act, 1730, 4 Geol. 2, c. 21. The Framers substituted the word "citizen" for "subject" to reflect the shift from monarchy to democracy, but the two terms are otherwise identical. See, e.g., *Hennessy v. Richardson Drug Co.*, 189 U.S. 25, 34-35 (1903). Thus, the First Congress's statutory recognition that persons born abroad to U.S. citizens were "natural born" citizens fully conformed to British tradition, whereby citizenship conferred by statute based on the circumstances of one's birth made one natural born.

There is a second and independent basis for concluding that Senator McCain is a "natural born" citizen within the meaning of the Constitution. If the Panama Canal Zone was sovereign U.S. territory at the time of Senator McCain's birth, then that fact alone would make him a "natural born" citizen under the well-established principle that "natural born" citizenship includes birth within the territory and allegiance of the United States. See e.g., *Wong Kim Ark*, 169 U.S. at 655-66. The Fourteenth Amendment expressly enshrines this connection between birthplace and citizenship in the text of the Constitution. U.S. Const. amend. XIV, sec. 1("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. ****") (emphases added). Premising "natural born" citizenship on the character of the territory in which one is born is rooted in the common-law understanding that persons born within the British kingdom and under loyalty to the British Crown—including most of the Framers themselves, who were born in the American colonies—were deemed "natural born subjects." See e.g., 1 William Blackstone, *Commentaries on the Laws of England* 354 (Legal Classics Library 1983) (1765) ("Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the ligeance, or as it is generally called, the allegiance of the king, ****").

There is substantial legal support for the proposition that the Panama Canal Zone was indeed sovereign U. S. territory when Senator McCain was born there in 1936. The U.S. Supreme Court has explained that, “[f]rom 1904 to 1979, the United States exercised sovereignty over the Panama Canal and the surrounding 10-mile-wide Panama Canal Zone.” *O’Connor v. United States*, 479 U.S. 27, 28 (1986). Congress and the executive branch similarly suggested that the Canal Zone was subject to the sovereignty of the United States. See, e.g., *The President—Government of the Canal Zone*, 26 Op. Att’y Gen. 113, 116 (1907) (recognizing that the 1904 treaty between the United States and Panama “imposed upon the United States the obligations as well as the power of a sovereign within the [Canal Zone]”); Panama Canal Act of 1912. Pub. L. No. 62-337, sec. 1, 37 Stat. 560, 560 (recognizing that “the use, occupancy, or control” of the Canal Zone had been “granted to the United States by the treaty between the United States and the Republic of Panama”). Thus, although Senator McCain was not born within a State, there is a significant body of legal authority indicating that he was nevertheless born within the sovereign territory of the United States.

Historical practice confirms that birth on soil that is under the sovereignty of the United States, but not within a State, satisfies the Natural Born Citizen Clause. For example, Vice President Charles Curtis was born in the territory of Kansas on January 25, 1860—one year before Kansas became a State. Because the Twelfth Amendment requires that Vice Presidents possess the same qualifications as Presidents, the service of vice President Curtis verifies that the phrase “natural born Citizen” includes birth outside of any State but within U.S. territory. Similarly, Senator Barry Goldwater was born in Arizona before its statehood, yet attained the Republican Party’s presidential nomination in 1964. And Senator Barack Obama was born in Hawaii on August 4, 1961—not long after its admission to the Union on August 21, 1959. We find it inconceivable that Senator Obama would have been ineligible for the Presidency had he been born two years earlier.

Senator McCain’s candidacy for the Presidency is consistent not only with the accepted meaning of “natural born Citizen,” but also with the Framers’ intentions when adopting that language. The Natural Born Citizen Clause was added to the Constitution shortly after John Jay sent a letter to George Washington expressing concern about “Foreigners” attaining the position of Commander in Chief. 3 Max Farrand, *The Records of the Federal Convention of 1787*, at 61 (1911). It goes without saying that the Framers did not intend to exclude a person from the office of the President simply because he or she was born to U.S. citizens serving in the U.S. military outside of the continental United States; Senator McCain is certainly

not the hypothetical “Foreigner” who John Jay and George Washington were concerned might usurp the role of Commander in Chief.

Therefore, based on the original meaning of the Constitution, the Framers’ intentions, and subsequent legal and historical precedent, Senator McCain’s birth to parents who were U.S. citizens, serving on a U.S. military base in the Panama Canal Zone in 1936, makes him a “natural born Citizen” within the meaning of the Constitution.

Laurence H. Tribe

Theodore B. Olson.

Mr. BROWN. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. 511) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. Res. 511

Whereas the Constitution of the United States requires that, to be eligible for the Office of the President, a person must be a “natural born Citizen” of the United States;

Whereas the term “natural born Citizen” as that term appears in Article II, Section 1, is not defined in the Constitution of the United States;

Whereas there is no evidence of the intention of the Framers or any Congress to limit the constitutional rights of children born to Americans serving in the military nor to prevent those children from serving as their country’s President;

Whereas such limitations would be inconsistent with the purpose and intent of the “natural born Citizen” clause of the Constitution of the United States, as evidenced by the First Congress’s own statute defining the term “natural born Citizen”;

Whereas the well-being of all citizens of the United States is preserved and enhanced by the men and women who are assigned to serve our country outside of our national borders;

Whereas previous presidential candidates were born outside of the United States of America and were understood to be eligible to be President; and

Whereas John Sidney McCain, III, was born to American citizens on an American military base in the Panama Canal Zone in 1936:

Now, therefore, be it

Resolved, That John Sidney McCain, III, is a “natural born Citizen” under Article II, Section 1, of the Constitution of the United States.