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President Must Be Natural-Born Citizen -- But What Is That?

By David Houghton
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The long-running “birther” controversy—a rather bizarre conspiracy theory which holds that President Obama was not born in the United States—refuses to go away, kept alive by business celebrity Donald Trump and other assorted critics.

And then last week it was unwittingly rekindled by Republican presidential candidate Mitt Romney, who said at a campaign stop in Michigan that “no one’s ever asked to see my birth certificate” – a witticism not everyone found amusing, given the bitterness of the controversy.

The Constitution, as we know, merely says that the president must be a “natural-born citizen,” and many Americans assume this means that presidential candidates have to be physically born in the United States to be eligible to run. But is this so?

Given that Obama’s mother was a U.S. citizen, would it even matter if her son was born in Kenya or Indonesia, rather than Hawaii? Serious analysts do not question the authenticity of Obama’s Hawaii birth certificate, and Mitt Romney has said publically that he does not doubt it, either.

Romney’s father faced a somewhat analogous controversy in the late 1960s. George Romney was born in Mexico to U.S. parents, Mormons whose grandparents had fled the United States to avoid American polygamy laws. George Romney always held that he was eligible to run for president in 1968 because he was a natural-born citizen, although he acknowledged that he was born on foreign soil.

Although the Constitution is notoriously vague on exactly what “natural born” really means—and the issue has never been fully tested in the courts in relation to presidential eligibility—the vast preponderance of legal opinion since the 1790s supported George

Romney's constitutional right to run, holding that a person born overseas to at least one U.S. citizen is eligible.

Statutes have consistently defined a natural-born U.S. citizen as someone who is entitled to be so "at birth" or "by birth," regardless of where he or she was born (contrasting this with "naturalized" citizens, who become so entitled in later life). At least two other Republican presidential candidates have run on this definition of what it means to be natural born: John McCain, born in the Panama Canal Zone, who ran in 2008, and Barry Goldwater, born in Arizona before it was a state, who ran in 1964.

"Hang on," you might say. "How did Goldwater get away with that?"

A brief consideration of our own history reveals why it would have been absurd not to have accepted Goldwater's right to run. Even George Washington was not a natural-born citizen in the sense of being born "in the United States," and nor were John Adams, Thomas Jefferson, James Madison, James Monroe, John Quincy Adams or Andrew Jackson—all for the simple reason that they were born before the U.S. legally existed. All were born in what was then a British colony.

Our first seven presidents were, in effect, "naturalized" in 1787 when the Constitution came into being, and they ensured their own eligibility for the highest office by adding the phrase "or a citizen of the United States at the time of the adoption of this Constitution" to the better-known "natural-born" requirement.

While the Supreme Court may at some point have to rule on exactly what it means to be natural born in terms of presidential eligibility—probably sooner rather than later, given the growing ethnic diversity of the United States—this is all a murky and much misunderstood area as things stand.

Of more immediate importance, legions of Americans still apparently share Trump's belief that Obama's place of birth should make him ineligible to be president.

Although Romney welcomes the backing of "birthers," he must feel torn on this issue because the attack on Obama's right to be president is also logically an attack on his own father's candidacy.

Even if one adopts the long-discredited view that Obama was born in Kenya to a Kansas-born mother, to deny his status as "natural born" is also to deny that of George Romney.

Granted, Obama's father was Kenyan and both of George Romney's parents were American, only one parent needs to be a U.S. citizen for their children to take citizenship at birth.

In sum, even if Obama were born overseas, one can imagine few Republican candidates less suitable to challenge his constitutional legitimacy than Romney, except perhaps McCain, the Republican Party's nominee in 2008.

And the fact that Trump is directly, albeit retrospectively, challenging the constitutional right of George Romney to run for the presidency seems entirely lost on the former, which makes the political alliance between Trump and Mitt Romney all the stranger.

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