

# BECOMING PRESIDENT

## NATURAL-BORN CITIZENS ONLY OR ALL CITIZENS?

### NATURAL-BORN CITIZENS ONLY

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**ADVOCATE:** Forrest McDonald, Distinguished University Research Professor of History, University of Alabama

**SOURCE:** Testimony during hearings on “Constitutional Amendment to Allow Foreign-Born Citizens to Be President,” before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, July 24, 2000

### ALL CITIZENS

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**ADVOCATE:** John Yinger, Professor of Economics and Public Administration, The Maxwell School, Syracuse University

**SOURCE:** Testimony during hearings on “Constitutional Amendment to Allow Foreign-Born Citizens to Be President,” before the U.S. House of Representatives Committee on the Judiciary, Subcommittee on the Constitution, July 24, 2000

It is a constant theme in the mythology of American democracy: Any boy or girl can grow up to be president. American children learn about such humble beginnings as Abraham Lincoln being born in a log cabin. And politicians trumpet them. For example, the first line of Richard Nixon’s autobiography, *RN*, is, “I was born in the house my father built.” Similarly, President Jimmy Carter’s wife Rosalyn has recalled that in the elementary school both she and the president attended, their teacher Julia Coleman would tell her students, “We had to be prepared for the outside world. She reminded us that in a country as great as ours, ‘any...one of [us], might grow up to be President of the United States.’”

As it turns out, though, it is not true that any American boy or girl can theoretically grow up to be president. Young Henry Kissinger could not, even though he would one day become Secretary of State. Neither could Madeleine Albright, the girl who grew up to be the first female Secretary of State. More currently, the youths who grew up to be Governor Jennifer Granholm of Michigan and California’s Governor Arnold Schwarzenegger are also ineligible. Indeed, well over a hundred million boys and girls growing up in the United States throughout its history have been unable to aspire to lead their country.

What stands between Governor Granholm, Governor Schwarzenegger, and millions of other Americans from being inaugurated as president is Article II, section 1 of the Constitution, which reads, “No person except a natural-born citizen, or citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of president.” With all Americans who were foreign-born in 1789 long gone, this means that anyone who is not a citizen of the United States by birth cannot become president. According to the 2000 census, this includes 28.4 million resident of the United States, or about 10% of the population, who are foreign-born, legal immigrants. Of these, 10.6 million have already become citizens, and another 17.6 million are eligible for U.S. citizenship

when they have completed the naturalization process under U.S. laws. Oddly, although the process of becoming a citizen is officially called *naturalization*, that does not imply that those granted citizen are natural-born citizens.

It should be noted that this does not mean that being born in a foreign country as such creates the barrier. The rules are complex, but generally children born of American parents anywhere are American citizens, and they would almost certainly be considered natural born. Among other things, the First Congress enacted legislation in 1790 specifying, “The children of citizens of the United States that may be born beyond sea, or outside the limits of the United States, shall be considered as natural-born citizens of the United States.” Beyond this, there are some cases where who are natural-born citizens and who are statutory citizens (naturalized, have become citizens according to provisions of statutory law) is not totally clear because the courts have never dealt with this issue. For example, there is disagreement about whether Puerto Ricans born in Puerto Rico can become president because they were made citizens by statute in 1917, and because Puerto Rico is a commonwealth of the United States, not fully part of it.

Why were foreign-born citizens constitutionally barred from becoming president? The answer is not entirely clear because the direct historical record from the documents of the Constitutional Convention and the *Federalist Papers* is nearly nonexistent, as the advocates in the two accompanying articles explain. But they also discuss the general feeling among historians about the origins of the clause based on indirect evidence.

The issue of the ineligibility of naturalized citizens for the presidency has regularly arisen in Congress, as it did in 2000 when Representative Barney Frank (D-MA) introduced House Joint Resolution 68 to allow foreign-born citizens to become president. That proposal engendered the hearings from which the two articles below are drawn. Like other such proposals, however, Frank’s died in committee after the hearings. At least one reason this idea has never gotten very far is public opinion about it. An October 2003 national poll found that 64% of respondents opposed making naturalized citizens eligible to be president, with 29% in favor and 7% unsure.

To return briefly to the idea that every boy and girl can become president, that bit of Americana does not mean that parents or their children necessarily want that to happen on a personal level. In a 1999 survey, 53% of adults thought their children could grow up to be president, but only 30% wanted them to do so. Teenagers were more optimistic about their chances, with 62% thinking they could someday be president. But they were even more turned off than their parents by the prospect, with only 17% wanting to one day occupy the Oval Office.

## POINTS TO PONDER

- Advocates Forrest McDonald and John Yinger explain why, in the view of most historians, the framers of the Constitution barred foreign-born citizens from being eligible to be president. Are those reasons valid today?
- Do you think there is a relationship between people’s views on this topic and their views on some other debates, especially Debate 5 on immigration?
- What is your view of the “guidelines” that John Yinger suggests for amending the Constitution, and do you agree with him that the proposed change meets those guidelines?

## Becoming President: Natural-Born Citizens Only

FORREST McDONALD

To appreciate the significance of the Constitution's restriction of presidential eligibility to natural born citizens, it is useful to place the requirement in historical perspective. Americans of the founding generation were extremely distrustful of executive authority because experience with colonial governors had convinced them that executive power was inherently inimical to liberty, because they felt betrayed by [King] George III [of England], and because they considered a strong executive to be incompatible with the republicanism they embraced when they declared their independence in 1776. As a consequence, their revolutionary state constitutions provided minimal executive branches, and the first national constitution, the Articles of Confederation, established no executive arm.

By the time the Constitutional Convention met in Philadelphia in 1787, difficulties undergone during and after the war for independence had convinced most public spirited men that an energetic national executive was necessary, but they approached the problem cautiously, and at least a third of the delegates to the Convention favored a plural executive in the interest of safety. The others endorsed a single executive, not least because all understood that George Washington, whom everybody trusted, would be the first occupant of the office.

But Washington could not serve forever, and the delegates groped almost desperately to devise a suitable way of choosing his successors. The search took up more of the debates than any other subject the Convention faced. Most delegates favored

having Congress elect the president, but that would make the executive department dependent upon the legislative unless the president were ineligible for reelection, but ineligibility would necessitate a dangerously long term—six or seven years being the common suggestion.

The greatest fear was of corrupt influences upon the election, particularly from abroad. Since the time of [King] Louis XIV in France [1638–1715], every major European power had developed what was called a “secret service” along the lines of the current CIA and the former Soviet KGB. The damage that such agencies could do was vivid in the American imagination, and it was far from imaginary. The delegates repeatedly cited as a horrible example the recent demise of Poland. Poland had an elective monarch, the electorate consisting of a corrupt nobility, and only fifteen years before the American Constitutional Convention, the secret services of Austria, Prussia, and Russia had connived to engineer the election of their own choice for king, whereupon the entirety of Poland was partitioned and divided among those three powers. As Charles Pinckney, a delegate from South Carolina, put it, the danger was that “we shall soon have the scenes of the Polish Diets and elections re-acted here, and in not many years the fate of Poland may be that of United America.”

Fear of foreign influence was pandemic. Elbridge Gerry of Massachusetts wanted to go so far as to prevent foreigners from becoming citizens, taking the position that naturalized citizens would always have divided loyalties. On much the same

ground, John Jay, then Superintendent of Foreign Affairs—the predecessor of the office of Secretary of State—wrote to Washington, as president of the Convention, urging that it would be “wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural *born* Citizen.” Meanwhile, a rumor floated in the summer of 1787 that the Convention intended to invite the Bishop of Osnaburgh, a distant relative of George III, to assume the American crown—a rumor that delegates publicly denied despite the mantle of secrecy cloaking all other deliberations. Such nervous talk emphasized to the Convention that it must come up with something that in no way resembled a monarchy nor could be converted into a monarchy (which would be possible if naturalized citizens should be eligible to head the executive branch).

Debates concerning the mode of electing the president raged until early September, less than two weeks before the Convention adjourned. The Pierce Butler, an Irish-born delegate from South Carolina, came up with a cumbersome plan that overcame all objections that had been raised against earlier proposals. This was the electoral college system: the state legislatures (or, if the legislatures so chose, the voting public) would select a number of electors equal to the states’ Senators and Representatives combined; the electors would vote in their home states for two candidates, one of whom must be an inhabitant of another state. Whoever got the most votes, if a majority, became president, and the runner-up became vice president. If no candidate polled a majority, the House would choose the president, each state delegation having one vote. The president would serve

a four-year term and could be re-elected any number of times.

The system was so diffuse—cockamamie is not too strong a word—that it would be virtually impossible, given the primitive communication facilities then available, for foreign agents to corrupt it. But for good measure, considering the doubts about divided loyalties expressed by Gerry, Jay, and others, as well as the fear of conspirators who might in future invite foreign royalty to assume the presidency, Butler’s proposal included the restrictive language that found its way into Article II, section I, of the Constitution: “No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President.”

That language was adopted without a single dissenting voice. Nor did anyone speak in its support: its meaning and its rationale went without saying. As an aside, the wisdom of the restriction and of the larger electoral system of which it was a part was soon borne out. In the presidential elections of 1796 and 1800 agents of Revolutionary France attempted by both overt and covert means to determine the outcome.

Now, the question before the subcommittee is not the original purpose or understanding of the clause, but whether it has outlived its usefulness. The circumstances both at home and internationally that prevailed at the time of the founding have long since vanished, so perhaps a rethinking is in order. And yet, it seems to me on balance that conditions today and in the foreseeable future warrant a continuation of the caution shown by the framers. Take the matter of possible corruption in the electoral process. The system is structurally as diffuse as it was in the eighteenth century, but in practice it might as well be totally centralized, given modern techniques of communication and the instantaneous portability of money.

Presidential candidates spend scores of millions of dollars; just consider the prospective influence of a few billion—a sum well within the means of a large number of countries any one of which, while unwilling to risk such a sum on a natural born American, might be eager to support a favorite son candidate, that is one who had been born and raised in their country.

The original Constitution contemplated a relatively weak presidency, but the office has become the most powerful in the world, and safeguards surrounding it are therefore more indispensable than ever. The one area of presidential authority that is virtually unchecked and uncheckable (despite the War Powers Act [of 1973] and similar efforts) is the president's power as commander in chief. Can that power be safely entrusted to a foreign-born citizen? John Jay didn't think so; nor do I; nor I suspect do the vast majority of Americans.

Let us consider a few scenarios. Start with an extreme example. The espionage agencies of a number of countries, doubtless including the United States, have sometimes employed what in the spy novel is called an agent under deep cover. A young person is thoroughly trained and indoctrinated before being sent to an enemy country, where he or she becomes a citizen and an exemplar of respectable behavior. This goes on for years, even decades, until the parent agency determines that it is time to activate the agent. It is not difficult to imagine such a person obtaining an office of great trust. But a Senator is one of 100, and a Representative is one of 435. What check is there on the president who is one of one, except for the constitutional restriction?

Should that seem too remote a possibility, consider a more likely case. A person comes to America from country "X" as a young man, takes out citizenship, becomes thoroughly Americanized, and is as loyal to his adopted country as can be. Nonetheless, in dealing with his original country he is

bound to be influenced by his nativity, whether in the form of hostility or favoritism. Even should he prove able to rise above his prejudices and deal with the old country objectively, he would still be widely regarded as prejudiced, and the media would fan such suspicions. As commander in chief, it is not enough to be above reproach, one must be above the suspicion of reproach.

Let me cite a more tangible example, one closer to recent experience. We all know a number of Cuban-Americans. They are loyal to our country, now their country too. They are pillars of their communities and are more fiercely patriotic than most natural born Americans. And yet, as the recent to-do over Elian Gonzalez\* demonstrated, few of them are able to regard Cuba dispassionately or treat relations with Castro's Cuba with equanimity. Suppose we had had a Cuban-born president in the White House at the time of the Gonzalez controversy. Would that president have been able to retain objectivity and, as importantly, any shred of credibility under the circumstances?

In conclusion let me say that on this as on other constitutional questions, we are best guided by the wisdom and prudence of the Founding Fathers. The amendment process is not to be taken lightly, nor should it be used for political or electioneering purposes. The structure created by the Constitution has stood the test of time and continues to stand as the truest foundation for our freedom.

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\*[Elian Gonzalez is a Cuban boy who survived the sinking of the boat in which his mother and others fleeing Cuba died in 1999. The father, who was still in Cuba, and the Cuban government demanded the boy's return. The Cuban American community strongly opposed his return, but he was eventually taken by force by U.S. marshals from his relatives in Miami and sent back to Cuba.]

## Becoming President: All Citizens

JOHN YINGER

### INTRODUCTION

The U.S. Constitution declares that only “natural born” citizens are eligible to be president. Because this provision denies naturalized citizens an important civil right, namely, the right to run for president, it turns them into second-class citizens. The constitutional amendment proposed in H. J. Res. 88 would extend presidential eligibility to naturalized citizens and would thereby ensure that all American citizens have exactly the same rights. This amendment therefore represents another important step in America’s longstanding quest to guarantee equal rights for all its citizens.

The right to run for president is obviously not as important for a person’s daily life as the right to free speech, the right to worship as one chooses, and the right to vote, among others. Nevertheless, this right has enormous symbolic power. Indeed, one could say that running for president is the ultimate symbol of equal opportunity. Regardless of income or ethnicity, parents of a natural born citizen can tell their child that he or she could grow up to be president. This is part of what makes the United States such a great country: You do not have to be born into wealth or social position to aspire to or even to attain the nation’s most powerful and prestigious job.

Because of its symbolic power, the right to run for president is important even for people who have no intention to run themselves. Imagine a high school civics class conducting a mock presidential election. Should the teacher tell naturalized citizens in the class that they are not allowed

to run for president, just as they could not run in a real election? Or should the teacher simply point out that their candidacy in class would not carry over if the election were real? Either way, this situation undermines the standing of some citizens and is therefore an assault on the principle of equal rights.

Since the U.S. Constitution was passed, this nation has steadily expanded the coverage of constitutional rights and added new ones. The Bill of Rights and many other amendments to the Constitution provide examples of this process. So do the civil rights laws of the last few decades. Thus, eliminating the second-class citizenship of naturalized citizens would simply add another chapter to this long and honorable tradition. Indeed, given the symbolic importance of the Presidency, this step would make an abiding contribution to the equal-rights principle that is at the heart of the American democracy.

In the rest of this statement, I will bolster this argument by examining the origins of the presidential eligibility clause in the Constitution and by asking whether presidential eligibility is a suitable subject for a constitutional amendment.

### THE ORIGINS OF THE PRESIDENTIAL ELIGIBILITY CLAUSE IN THE U.S. CONSTITUTION

The historical record does not provide a full explanation for the origins of the requirement that the president be a “natural born” citizen. Nevertheless, some evidence about the origins of this requirement can be found in the records of the Constitutional

Convention and elsewhere. In this section I summarize this evidence and discuss the implications of the historical record for H. J. Res. 88.

### EVIDENCE FROM THE CONSTITUTIONAL CONVENTION

The clause restricting presidential eligibility to natural born citizens appeared in constitutional drafts near the end of the Constitutional Convention in 1787. The records of the Convention and other related material provide some evidence concerning the origins of this clause.

James Madison's detailed notes on the proceedings of the Constitutional Convention reveal that the delegates were deeply concerned about foreign influence on the national government, and in particular on the president. At the beginning of the debate, they wanted the legislature to select the president, and they tried to limit foreign influence on the president by devising time-of-citizenship and other requirements for members of the legislature. Presidential qualifications as such were mentioned, but they received little attention at this stage in the debate. Ultimately, however, the delegates decided that a president elected by the legislature could not be insulated from foreign influence, no matter what eligibility requirements were placed on legislators, and they turned, instead, to the Electoral College.

The first draft of the Constitution that contained the Electoral College also was also the one that first contained the clause restricting presidential eligibility to natural born citizens. This joint appearance of the Electoral College and the denial of presidential eligibility for naturalized citizens is somewhat ironic. After all, the switch to the Electoral College lowered the need for explicit presidential qualifications because it minimized the line of potential foreign influence running to the president through

the Legislature. However, the long debate about eligibility requirements for legislators apparently left the Founders uncomfortable with the prospect of eliminating all eligibility requirements in the process of presidential selection. As a result, they added the natural born citizen requirement even though it was no longer needed.

This addition may have been controversial. In fact, two of the most influential Founding Fathers, Alexander Hamilton and James Madison, argued against it, at least implicitly, earlier in the Convention by warning against any provision that created second-class citizens. Hamilton pointed out the "advantage of encouraging foreigners" to come to the United States. Then he said: "Persons in Europe of moderate fortune will be fond of coming here when they will be on a level with the first citizens." Madison agreed with Hamilton. "He wished to invite foreigners of merit & republican principles among us."

The records of the Convention do not contain any explanation for the restriction of presidential eligibility to natural born citizens, but this restriction might have been viewed as additional insurance against foreign influence. This interpretation is supported by a letter that John Jay wrote to George Washington, who was president of the Convention. In this letter, dated July 25, 1787, Jay wrote:

Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural *born* Citizen (emphasis in the original).

The meaning of this letter is not entirely clear. According to one historian, the first

part of this letter was primarily directed at members of the legislative branch. Moreover, the second part of the letter, where the expression “natural born” appears, probably was also not directed at the president; at that point Jay had no way of knowing that the Convention would ultimately make the president the commander-in-chief. Nevertheless, this letter may have had an impact on the delegates when the decision to merge these two positions was made. When Jay’s letter arrived, probably sometime before August 13, the Convention was not ready to deal with it. But several weeks later, the idea of the Electoral College appeared and the president was made the commander-in-chief of the armed forces. In this new context, the seed that Jay had planted appears to have born fruit.

#### OTHER EVIDENCE

Evidence from the period right after the Constitutional Convention supports the view that the Electoral College was seen as the principal means of protecting the president from foreign and other undesirable influences, and that the presidential eligibility clause was, at most, a supplement to this objective. Two pieces of evidence are particularly instructive.

First, the issue of foreign influence is a key theme of the famous *Federalist Papers*, which were written by Alexander Hamilton, John Jay, and James Madison between October 1787 and May 1788. The role of the presidential selection mechanism in limiting foreign influence is explicitly discussed by Hamilton in [*Federalist*] essay number 68.

Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from

more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the conventions have guarded against all danger of this sort, with the most provident and judicious attention. They have not made the appointment of the president to depend on any pre-existing bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the president in office. No senator, representative, or other person holding a place of trust or profit under the United States, can be of the numbers of the electors.

Second, these issues were directly addressed in a statement by Charles Pinckney in the U.S. Senate in 1800. Pinckney had been a delegate to the Constitutional Convention and, on July 26, 1787, had been the first delegate to raise the issue of presidential qualifications in the debate. On March 25, 1800, Pinckney gave a detailed explanation for the Electoral College, emphasizing that the rules governing the Electoral College were designed so “as to make it impossible...for improper domestic, or, what is of much more consequence, foreign influence and gold to interfere.” The Founders “knew well,” he said

that to give to the members of Congress a right to give votes in this election, or to decide upon them when given, was to destroy the independence of the Executive, and make him the creature of the Legislature.

This therefore they have guarded against, and to insure experience and attachment to the country, they have determined that no man who is not a natural born citizen, or citizen at the adoption of the Constitution, of fourteen years residence, and thirty-five years of age, shall be eligible....

Thus, in Hamilton's view, the problem of foreign influence was solved by the Electoral College. He does not even mention the presidential eligibility clause. In contrast, Pinckney sees a role for the eligibility clause, but this role is clearly a secondary one. In particular, this clause promotes "attachment to the country" but is not needed to guard against "foreign influence and gold."

#### IMPLICATIONS FOR H. J. RES. 88

A central example of the genius of the founding fathers was their creation of a process for electing the president that was insulated from, to use Hamilton's words, "cabal, intrigue, and corruption," foreign or otherwise. In this context, the restriction of presidential eligibility to natural born citizens appears to be a carryover from the debate, early in the Convention, about qualifications for legislators. Indeed, the Founder's substantive arguments about the strengths of their constitutional protections against foreign influence all refer to the Electoral College, not to presidential eligibility. Pinckney asserts that limiting presidential eligibility to natural born citizens is a way to ensure "attachment to the country," but he does not provide any justification for this conclusion. Moreover, Hamilton does not feel the need to mention the presidential eligibility clause at all in the *Federalist Papers*, and his most relevant comment on the issue in the Constitutional Convention was to warn against the creation of second-class citizens.

Two further points about this debate are particularly important. First, the potential for "cabal, intrigue, and corruption" is not just about *foreign* influence. This point is made very clearly in the above statements by Hamilton and Pinckney. The presidential election process has served this nation so well because it minimizes the role of these factors from whatever source. This process allows the American people, and the people they elect to the Electoral College, to select a president who will serve the nation's interests. There is nothing special about the potential for foreign influence in this process and no need for a special provision to deal with foreign influence.

To put it another way, no presidential candidate will be successful unless he (or she) can convince a majority of the American people that, among other things, he is "attached to the country," not subject to foreign influence, not subject to subversive domestic influence, and not corrupt. Some presidential candidates face an extra burden to prove that they meet these conditions because of events in their past that make voters suspicious. Similarly, presidential candidates who are naturalized citizens would have to overcome suspicions associated with the circumstances of their birth and with their life before they became citizens. The clause limiting presidential eligibility to natural born citizens adds nothing of substance to this process.

Second, the distinction between natural born and naturalized citizens has no power whatsoever to identify people who might be subject to foreign influence, or any other kind of undesirable influence for that matter. To put it another way, being natural born is neither necessary nor sufficient for "attachment to the country." Millions of naturalized citizens have served this country with honor and distinction in the government, in the mil-

itary, and indeed in all walks of American life. Moreover, it is my impression that most of the cases of treason or governmental corruption that are discussed in newspapers or history books involve natural born Americans who turned against their country. It is simply preposterous to think that this nation can rule out or indeed even minimize the possibility of undesirable presidential candidates, regardless of how “undesirable” is defined, by limiting presidential eligibility to natural born citizens.

In short, there is no evidence that the clause limiting presidential eligibility to natural born citizens played an important role in the Founders’ scheme to protect the presidential selection process from foreign influence. Instead, this protection is provided by the Electoral College, and restricting eligibility to natural born citizens does not, and indeed logically cannot, provide any additional protection. This nation would do well to heed the warning against second-class citizens that was voiced by Hamilton and seconded by Madison. The presidential eligibility clause is an entirely pointless assault on the rights of naturalized citizens. It is time to stand up for the fundamental principle of equal rights for all citizens by eliminating this anachronistic provision.

#### **IS PRESIDENTIAL ELIGIBILITY AN APPROPRIATE SUBJECT FOR A CONSTITUTIONAL AMENDMENT?**

Another important issue is whether the denial of presidential eligibility to naturalized citizens is an appropriate subject for a constitutional amendment. Recently, a group called Citizens for the Constitution released a set of guidelines for constitutional amendments. According to its website, this group “is an action-oriented public education effort that is led by a non-partisan, blue-ribbon committee of

former public officials, scholars, journalists, and other prominent Americans.” Five of its guidelines refer to the substance of amendments; three others refer to the process by which amendments should be enacted. This section asks whether the amendment in H. J. Res. 88 fits the five substantive guidelines.

#### **GUIDELINE 1: CONSTITUTIONAL AMENDMENTS SHOULD ADDRESS MATTERS OF MORE THAN IMMEDIATE CONCERN THAT ARE LIKELY TO BE RECOGNIZED AS OF ABIDING IMPORTANCE BY SUBSEQUENT GENERATIONS**

The principle of equal rights for all Americans is at the heart of our democracy. The Constitution and the Bill of Rights outline many rights that belong to all Americans. The Fourteenth Amendment ensures that no state can restrict the constitutional rights of any citizen. Overall, as pointed out by Citizens for the Constitution, seventeen of the twenty-seven amendments to the Constitution “either protect the rights of vulnerable individuals or extend the franchise to new groups.” By making all citizens eligible to be president, the amendment in H. J. Res. 88 would be another step down this long and honorable path toward equal rights for all.

As discussed earlier, the right to run for president is not the most important right a person can have, but it is a right of enormous symbolic importance. An amendment declaring that all citizens can run for president (after reaching a certain age and spending a certain amount of time in the country) would forcefully declare this nation’s commitment to equal rights and equal opportunity, and would therefore be recognized “as of abiding importance by subsequent generations.”

Over 30 years ago a legal scholar, Charles Gordon, addressed the question of

whether people born overseas to United States citizens could be called “natural born” citizens and hence be eligible to be president. After reviewing the legal history of the clause and subsequent legislation, Gordon answers this question in the affirmative. However, he also points out that the Supreme Court has never ruled on the issue and “that the picture is clouded by elements of doubt.” This analysis leads him to the following conclusion:

It is unfortunate that doubts remain on an issue of such vital importance to many Americans. We live in a fluid and ever diminishing world. The interests of our nation and its people are constantly expanding and millions of Americans reside for short or long periods in foreign countries. They are there in pursuit of inspiration, enlightenment, profit, pleasure, repose or escape. All of these have a right to retain their status as American citizens while they live abroad. One can perceive no sound reason for shutting off aspiration to the Presidency for the children born to them while they are temporarily sojourning in foreign countries.

With some editing, this eloquent statement can be expanded to include the case of all naturalized citizens.

We live in a fluid and ever diminishing world. The interests of our nation and its people are constantly expanding. Millions of Americans reside for short or long periods in foreign countries, where their children may be born, or build their families by adopting orphans born in a foreign country. Millions of other people come to the United States from other nations and become productive, loyal citizens. All of these people and their children should have full rights as American citizens. One can perceive no sound reason for shutting off

aspiration to the Presidency for any American citizens, regardless of the path by which their citizenship was obtained.

**GUIDELINE 2: CONSTITUTIONAL AMENDMENTS SHOULD NOT MAKE OUR SYSTEM LESS POLITICALLY RESPONSIVE EXCEPT TO THE EXTENT NECESSARY TO PROTECT INDIVIDUAL RIGHTS**

An amendment to ensure full American citizenship for naturalized citizens is a fortuitous case that both expands individual rights and makes our system more politically responsive by expanding the pool of people who can run for president. It does not limit any policy choices or create barriers to political debate.

**GUIDELINE 3: CONSTITUTIONAL AMENDMENTS SHOULD BE UTILIZED ONLY WHEN THERE ARE SIGNIFICANT PRACTICAL OR LEGAL OBSTACLES TO THE ACHIEVEMENT OF THE SAME OBJECTIVES BY OTHER MEANS**

In many cases, a problem of unequal rights can be addressed through administrative procedures or legislation. This is not one of those cases. The exact distinction between “natural born” and “naturalized” citizens is not entirely clear. However, it is clear that the Constitution makes many American citizens ineligible to be president. A person who was born overseas to citizens of another country, moves to the United States, and then becomes an American citizen is clearly included in this category. Administrative procedures and legislation cannot overrule a constitutional provision, so the only way to change this situation is with a constitutional amendment. To put it another way, the only way to ensure that all American citizens are eligible to be president is through a constitutional amendment, such as the one in H.J. Res 88.

**GUIDELINE 4: CONSTITUTIONAL AMENDMENTS SHOULD NOT BE ADOPTED WHEN THEY WOULD DAMAGE THE COHESIVENESS OF CONSTITUTIONAL DOCTRINE AS A WHOLE**

As pointed out earlier, an amendment to make naturalized citizens eligible to be president is very much in keeping with the equal rights tradition in the U.S. Constitution and its amendments. This amendment would contribute to one key constitutional doctrine—equal rights for all citizens—and damage none.

**GUIDELINE 5: CONSTITUTIONAL AMENDMENTS SHOULD EMBODY ENFORCEABLE, AND NOT PURELY ASPIRATIONAL, GUIDELINES**

In this case, the enforcement issue is straightforward; after all, the amendment in H. J. Res. 88 simply eliminates a restriction on the rights of one group of citizens. All that needs to be done to enforce it is to allow any naturalized citizen who meets the age and residency requirements to run for president (and to assume the office if he or she wins the election!).

**CONCLUSION**

Overall, therefore, the amendment in H. J. Res. 88 clearly meets all five of these guidelines. It addresses a matter of abiding importance, it makes our system of government more politically responsive, it does not have an administrative or legislative alternative, it reinforces the cohesiveness of

constitutional doctrine as a whole, and it is easy to enforce.

**SUMMARY AND CONCLUSION**

The principle of equal rights for all citizens is one of the central themes of our democracy. The constitutional provision that limits presidential eligibility to natural born citizens is a direct assault on this principle, and it should be amended to make all citizens eligible to be president. The amendment in H. J. Res. 88 accomplishes this objective and indeed would significantly expand the rights of millions of Americans.

This limitation on presidential eligibility was of secondary concern to the Founders, who relied on presidential elections and on the Electoral College to limit foreign and other undesirable influence. Today, this limitation is simply an anachronism that undermines the principle of equal rights while serving no useful purpose.

The amendment in H. J. Res. 88 also unambiguously meets the thoughtful guidelines for constitutional amendments laid out by Citizens for the Constitution. Most importantly, this amendment would make an abiding contribution to the principle of equal rights.

All it takes to support H. J. Res. 88 is a belief in the principle of equal rights for all Americans. I hope everyone at this hearing joins me in supporting this vital principle. I hope you will all join me in supporting H. J. Res. 88.

## THE CONTINUING DEBATE: Becoming President

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### What Is New

New proposals to make foreign-born citizens eligible to become president were introduced in the 108th Congress (2003–2004). In the House, liberal Barney Frank (D-MA) was again a sponsor and was joined by such conservatives as Darrell Issa (R-CA). In the Senate, Orrin Hatch (R-UT) introduced the “Equal Opportunity to Govern” amendment, designating a 20-year citizenship waiting period before eligibility. Although Hatch is politically friendly with Arnold Schwarzenegger, and even though the 20 years that Hatch proposed in 2003 neatly fits with period since the governor became a citizen in 1983, the senator denied that the possibility of a President Schwarzenegger was connected to the proposed constitutional amendment. Still, doubters dubbed Hatch’s proposal the “Arnold amendment.”

Apart from and more important than the Schwarzenegger factor, changing demographics have brought new prominence to the issue. Changed immigration laws have increased the percentage of foreign-born citizens, and that figure continues to grow. Moreover, politics is becoming more diverse, with an increased number of naturalized citizens in prominent positions. Ironically, two members of President George W. Bush’s cabinet whose office put them in the line of succession to the presidency are constitutionally excluded. These two Cabinet members are Secretary of Labor Elaine Chao, who was born in Taiwan, and Secretary of Housing and Urban Development Mel Martinez, who is a native of Cuba.

### Where to Find More

You can find out more on the attempt in the House and Senate during the 108th Congress to amend the constitution on this issue by going to the Thomas, the Web site of Congress, at <http://thomas.loc.gov/>. For the proposal by Representative Frank and others, keyboard in HJRes 59 in the “Bill Number” search window. For the Hatch proposal, keyboard in SJRes 15.

There is surprisingly little written on this subject. Among the few short essays available is Erin Montgomery, “Immigrants for President?” *The Weekly Standard*, October 24, 2003, which is available on the Web at <http://www.weeklystandard.com/Search/FreeSearch.asp>, then keyboarding in the author’s name in the search window. If the proposed amendments submitted in Congress begin to move toward passage, there will be an upsurge of articles and other sources that can be accessed, among other ways, by entering such word combinations as “natural born,” “president,” and “amendment” into the leading search engine, Google.

### What More to Do

There are two suggestions here about what more to do, and they parallel similar suggestion in many of the other debates herein. First, stimulate your intellect by finding out more about what is going on and the arguments pro and con, then debating or discussing the issue with your friends and classmates. At least as important, perhaps more so, is to get involved in the national debate by letting your members of Congress know what you think, by writing an op-ed piece for a newspaper or other publication, by joining a group that is active on the issue, or by taking any one of the myriad other steps available to ensure you have a voice. It is, after all, your country; it is a democracy, albeit an indirect one; and the mantra for each citizen in a democracy with this and every other issue in this volume should be, **You Decide!**