Written by **Joe Wolverton, II, J.D.** on May 9, 2013

Sheriff Arpaio to Testify in Case Challenging President's Birth

World Net Daily, among others, is reporting that "the nation's toughest sheriff," Maricopa County, Arizona, Sheriff Joe Arpaio (shown), and his team of investigators called the "Cold Case Team" will soon give evidence in a case before the Alabama Supreme Court considering whether Barack Obama is qualified to serve as president of the United States.

Although dismissed by a lower court, the case has been appealed to the Alabama Supreme Court. Specifically, the plaintiffs — 2012 Constitution Party presidential nominee Virgil Goode and Alabama Republican Party leader Hugh McInnish — are suing to force Alabama Secretary of State Beth Chapman to legally verify the Article II eligibility of all candidates for president on the 2012 ballot.

Article II of the Constitution mandates that "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.…"

Goode and McInnish, represented by attorney Larry Klayman (founder and former chairman of Judicial Watch), argue that there is sufficient evidence to disqualify Barack Obama based on their allegation that the birth certificate provided by the White House identifying Hawaii as the state of the president's birth is fraudulent.

Sheriff Arpaio and his lead investigator, Mike Zullo, have been looking into the possible inconsistencies and irregularities in the Obama birth certificate proffered by Hawaii state health department officials.

According to a statement published on a blog written by Commander Charles Kerchner, who filed one of the first cases challenging Obama's status as a "natural born citizen, Zullo is quoted saying, "We recently discovered new irrefutable evidence, which confirms, hands down, the document is a fraud."

While similar challenges have been thrown out of court (including this very case), the likelihood of success of this appeal may be a bit brighter because of the man who was recently re-elected as the chief justice of the Alabama Supreme Court — Judge Roy Moore.

World Net Daily reports that "The case becomes all the more intriguing because Moore is on record previously questioning Obama's constitutional eligibility to serve as president."

The participation of Sheriff Arpaio and Judge Moore in the case may prove to be the perfect storm of personality and pugnacity — and more importantly, compelling evidence — against President Obama's

Article II "natural born citizen" qualifications to propel the issue into greater prominence.

The plaintiffs' most valuable piece of evidence is that the American birth certificate of the president is not legitimate. By association, they believe that President Obama was likely born in Kenya. This is not a new assertion, but the truth is, with regard to Article II and qualifying as a "natural born citizen," it probably doesn't matter.

For an explanation, I turn to two important parts of Anglo-American history.

An important step in the inquiry is to identify the source of our Founders' concept of "natural born citizen." It is almost certain that the men who drafted our Constitution accepted Swiss legal philosopher Emerich de Vattel as the authority on the definition of that vital concept.

In his seminal treatise, The Law of Nations or the Principles of Natural Law, Vattel wrote,

> Natural born citizens are those born in a country to parents who are also citizens of that country. Particularly, if the father of the person is not a citizen then the child is not a citizen either. Children cannot inherit from parents rights not enjoyed by them.

Apart from an appeal to Vattel, there is the definition of "natural born citizen" given in the decision of an English lawsuit from 1608 — Calvin's Case.

In that case, the British court held that natural born subjects were those who owed allegiance to the king at birth under the "law of nature." The court concluded that under natural law, certain people owed duties to the king, and were entitled to his protection, even in the absence of a law passed by Parliament.

Let's explore the possible sources and appropriate interpretations of the "natural born citizen" qualification.

At the time of the drafting of the Constitution, a person born subject to the British Crown could hold "double allegiance," a concept similar to "dual citizenship" as understood today.

Our own Founding Fathers, nearly every one of whom was born in some outpost of the British Empire, feared the damage that could come from such divided loyalty.

They instituted the "natural born citizen" qualification in order to avoid what Gouverneur Morris described during the Constitutional Convention as "the danger of admitting strangers into our public councils."

As famed jurist of the early Republic St. George Tucker, a contemporary of Morris, explained:

> That provision in the constitution which requires that the president shall be a native-born citizen (unless he were a citizen of the United States when the constitution was adopted) is a happy means of security against foreign influence, which, wherever it is capable of being exerted, is to be dreaded more than the plague. The admission of foreigners into our councils, consequently, cannot be too much guarded against; their total exclusion from a station to which foreign nations have been accustomed to attach ideas of sovereign power, sacredness of character, and hereditary right, is a measure of the most consummate policy and wisdom.

In fact, as indicated in early records of the naturalization process, men applying for American citizenship were required to make two renunciations of all fealty to foreign powers before swearing allegiance to the Republic of the United States.

As a matter of fact, the possibility of any legal acceptance of divided allegiance was explicitly rejected in a report issued by the House of Representatives in 1874:

"The United States have not recognized a 'double allegiance.' By our law a citizen is bound to be 'true and faithful' alone to our government."

The practical effect of that proclamation is that in order to be a "natural born citizen" of the United States, one would have to be free from a competing claim for allegiance from another nation.

That such a schizophrenic situation was not only anticipated but accepted by His Majesty's government during the time of the American founding can be inferred from the impressment of American sailors into the service of the Crown. During the War for Independence, British ships would block American ships from sailing and then the seamen on the British vessels would board the American ships and force the Americans to serve the side of the Empire.

The insistence on the part of the British that anyone born within the realm was a British subject regardless of any voluntary severance thereof and subsequent vow of allegiance to another prince was a significant factor in the hostilities known as the War of 1812.

Finally, in this regard, the British required no process of naturalization as such. Simply being born within the dominions of the monarchy of Great Britain was sufficient to endow one with the rights and privileges granted to any British subject.

Nothing such a person did later in life (including becoming a citizen of another country) would ever alter his status as subject.

Obviously, in the United States that concept is neither the law now, nor was it the law at the time of the founding.

The inquiry should turn, therefore, to the 14th Amendment to the Constitution. The relevant clause of the 14th Amendment reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside."

The principal architect of the citizenship clause of the 14th Amendment was Michigan Senator Jacob Merritt Howard, a Republican representing Detroit. Senator Howard crafted much of the language that was eventually ratified as part of the 14th Amendment.

During the debates that embroiled the Senate in the years following the Civil War, Senator Howard insisted that the qualifying phrase "subject to the jurisdiction thereof" be inserted into Section 1 of the 14th Amendment being considered by his colleagues. In the speech with which he proposed the alteration, Howard declared:

> This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.

How could a person "born in the United States" be simultaneously a citizen and a "foreigner" or "alien" if the mere fact of nativity settled the question of citizenship?

Another legislator commenting at the time of the ratification of the 14th Amendment, Representative

John Bingham, provided the following clarification of the meaning behind the "subject to the jurisdiction thereof" clause:

"Every human being born within the United States *of parents not owing allegiance to any foreign sovereignty* is, in the language of your Constitution itself, a natural born citizen." (Emphasis added.)

There's the rub regarding the case of President Obama's legal status. Even were he born, as one comedian joked "out of an apple pie, in the middle of a Kansas wheat field, while Toby Keith sang the National Anthem," Obama's father was not an American citizen — and thus the president is the child of a person with legal allegiance to a foreign sovereignty and therefore does not conform to the accepted legal definition of "natural born citizen."

Photo of Sheriff Joe Arpaio: AP Images

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