Written by **Steve Byas** on June 21, 2021

Evidence Is Clear: Vice President Harris Is Not Constitutionally Eligible to Hold the Office She Now Holds

Vice President Kamala Harris is not a natural-born citizen of the United States and is thus ineligible to ever serve as president of the United States, or even to continue in office as vice-president. That is the contention of a lawsuit filed in federal court in California by the Constitution Association, Inc.

The case was filed while Harris was a candidate for vice president, with the argument in the brief with the court asserting that "at the time of the birth of [Kamala] Harris, the Father of Harris was in the United States as a temporary visitor on a student visa and was not otherwise a lawful permanent resident, and was not, and never has been a citizen of the United States."

Constitution Association (CA) further argues that Harris' mother, Shymala Gopolin, was a "citizen of India at the time of the birth of Harris, the Mother of Harris was in the United States as a temporary visitor on a student visa and was not otherwise a lawful permanent resident, and was not a citizen of the United States, however, many years after the birth of Harris, the Mother of Harris did apply and was granted United States citizenship."

Vice President Kamala Harris (U.S. Army photo)

One of the ways that courts often get rid of cases they would rather not rule on is to declare that the plaintiff has no "standing." Standing basically means that a person has substantial personal interest in the outcome of the case. CA's argument that they do have legal standing is that they will suffer "actual injury" if Harris continues as vice president. "Such injury accrues from the failure of Harris to be legally qualified to hold the office for which she is a candidate [again, the case was filed before Harris was sworn in]. Such injury consists of the inability of Plaintiffs, the Association and its principal officers, to effectively or rationally fulfill one of their core principles, electing candidates who will support and defend the Constitution, a critical piece of that advocacy consisting of knowing if candidates are even constitutionally eligible."

In other words, how can Harris uphold the Constitution if her very holding of an office for which she is ineligible under the Constitution is a violation of her oath?

In the filing, CA noted that there is considerable "confusion" over the meaning of "natural born citizen," and that the Supreme Court has never adjudicated the question. Rather than meet CA with constitutional arguments, opponents of the lawsuit have chosen to charge the plaintiffs with racism and being "conspiracy theorists."

The plaintiffs argue that the Constitution requires the president of the United States (or the vice-president) to be a "natural born citizen." While the Framers of the Constitution did not define "natural born citizen," the plaintiffs note that they "clearly required different levels of allegiance" for president and vice president than they required for holding office in the House of Representatives (a minimum of seven years as a U.S. citizen), or in the Senate (a minimum of nine years as a U.S. citizen). There is no "natural born citizen" requirement in the Constitution to hold office in either house of Congress, but there is for president or vice-president.

They quote famed 19th-century Supreme Court Justice Joseph Story, who wrote in his *Commentaries on the Constitution* that the natural-born citizen requirement:"cuts off all chances for ambitious foreigners, who might otherwise be intriguing for office; and interprets a barrier against those corrupt interferences of foreign governments."

Over the course of American history, the issue of whether a person is a natural-born citizen, and is therefore qualified to serve as president (or vice-president) of the United States, has arisen. For example, Chester Alan Arthur was elected vice-president in 1880, on a Republican Party ticket led by James Garfield. Since Arthur's father was a traveling Free Will Baptist minister who often crossed the border into Canada to preach, it was uncertain if Chester Arthur was born on the soil of the United States or was born in Canada, while his father was preaching there. In the end, the matter was dropped.

Another time that this question arose involved Senator Barry Goldwater of Arizona, the Republican nominee for president in 1964, who was born in Arizona while it was still a territory, not a state. Mitt Romney's father, George, was born in Mexico while his parents were Mormon missionaries there, and John McCain was born while his father was stationed in the Panama Canal Zone. But, in all of these cases, it was held that clearly *both* parents of these men were U.S. citizens. Historically, citizenship has been a matter of who one's parents are (especially the father), *not where one was born*. Bible readers might recall that the Apostle Paul was a Roman citizen because his *father* was a Roman citizen, not because he happened to be born inside the Roman Empire.

Thornier questions have arisen in recent years. While it is not disputed, for example, that Barack Obama's *mother* was a U.S. citizen, born in Kansas, his *father* was a citizen of Kenya, and only in the United States on a temporary student visa. The dispute on whether President Obama was born in Hawaii or in Kenya is actually irrelevant, *if* only one citizen parent is required to be a "natural born citizen."

Senator Ted Cruz of Texas finished second to Donald Trump for the 2016 Republican nomination. In Cruz's case, his mother was a U.S. citizen, but his father, an immigrant from Cuba, was only a permanent legal resident of the United States. And, Cruz was born in Canada while his father was involved there in the oil business. Then, there is the case of Senator Marco Rubio of Florida. Like Cruz's father, both of Rubio's parents left Cuba (not caring much for the Communist dictatorship of Fidel Castro), and they were permanent legal residents of the United States, in the process of becoming U.S. citizens, when little Marco was born.

This is important because the 14th Amendment is often cited as making someone a U.S. citizen simply because that person happens to be born on U.S. soil. Actually, the 14th Amendment says no such thing. It requires that a person be born *under the jurisdiction of the United States* in order to be a U.S. citizen. Some argue that this would make Cruz, Obama, and Rubio all constitutionally eligible to serve as president, because they were clearly citizens of the United States at the time of their births. Others argue that only the children of a *citizen father* can be a "natural born citizen," and thus qualified to be president.

Regardless of who is correct on that argument, the situation with Kamala Harris is quite clear. Neither her mother nor her father was a U.S. citizen at the time of her birth in 1964 — *neither was even a permanent legal resident of the United States!* They were in the United States on *temporary student visas*. Kamala Harris' mother was a citizen of India at the time of Kamala Harris' birth. She did not even apply for lawful permanent residence in America until 1967, *three years after Harris' birth.* This means that no logical interpretation of the 14th Amendment would have Harris' mother as having placed herself "under the jurisdiction of the United States" at the time of the birth of her daughter, Kamala.

Harris' father did not even begin the *process* of obtaining U.S. citizenship until May 2015. Furthermore, Jamaican law specifically states that children born outside Jamaica to a Jamaican parent are Jamaican citizens. In blunt terms, neither of Kamala Harris' parents had placed themselves under the jurisdiction of the United States when she was born in 1964.

The most that Kamala Harris could be is a naturalized citizen of the United States, not a natural-born citizen. This makes her ineligible to serve as either president or vice-president of the United States.

Mere birth on U.S. soil is not enough to make Harris eligible. As Dr. John Eastman, a professor of law and dean of the law school at Chapman University, wrote in *Newsweek* magazine last year, "[T]here is some dispute over whether [her father] was in fact ever naturalized, and it is also unclear whether Harris' mother ever became a naturalized citizen."

Eastman lamented, "I have no doubt that this significant challenge to Harris' constitutional eligibility to the second-highest office in the land will be dismissed out of hand as so much antiquated constitutional tripe. But the concerns about divided allegiance that led our nation's Founders to include the 'natural-born citizenship' requirement for the office of president and commander-in-chief remain important."

The evidence is very clear — Harris is not constitutionally eligible to hold the office she now holds, much less any elevation to the presidency itself. Sadly, what is not clear is whether federal judges, including those who sit on the Supreme Court and took an oath to the Constitution of the United States, will have the will to do the right thing. We can only hope.