OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DAVID FARRAR, LEAH LAX, CODY JUDY, THOMAS MALAREN, LAURIE ROTH, Plaintiffs, v. BARACK OBAMA, Defendant.	:	Docket Number: OSAH-SECSTATE-CE-1215136-60-MALIHI Counsel for Plaintiffs: Orly Taitz Counsel for Defendant: Michael Jablonski
DAVID P. WELDEN, Plaintiff, v. BARACK OBAMA, Defendant.	:	Docket Number: OSAH-SECSTATE-CE-1215137-60-MALIHI Counsel for Plaintiff: Van R. Irion Counsel for Defendant: Michael Jablonski
CARL SWENSSON, Plaintiff, v. BARACK OBAMA, Defendant.	:	Docket Number: OSAH-SECSTATE-CE-1216218-60-MALIHI Counsel for Plaintiff: J. Mark Hatfield Counsel for Defendant: Michael Jablonski
KEVIN RICHARD POWELL, Plaintiff, v. BARACK OBAMA, Defendant.	:	Docket Number: OSAH-SECSTATE-CE-1216823-60-MALIHI Counsel for Plaintiff: J. Mark Hatfield Counsel for Defendant: Michael Jablonski

DECISION[1]

Plaintiffs allege that Defendant President Barack Obama does not meet Georgia's eligibility requirements for candidacy in Georgia's 2012 presidential primary election. Georgia law mandates that candidates meet constitutional and statutory requirements for the office that they seek. O.C.G.A. § 21-2-5(a). Mr. Obama is a candidate for federal office who has been certified by the state executive committee of a political party, and therefore must, under Georgia Code Section 21-2-5, meet the constitutional and statutory qualifications for holding the Office of the President of the United States. *Id.* The United States Constitution requires that a President be a "natural born [c]itizen." U.S. Const. art. II, § 1, cl. 5.

As required by Georgia Law, Secretary of State Brian Kemp referred Plaintiffs' challenges to this Court for a hearing. O.C.G.A. § 21-2-5(b). A hearing was held on January 26, 2012. The record closed on February 1, 2012. Plaintiffs Farrar, Lax, Judy, Malaren, and Roth and their counsel Orly Taitz, Plaintiffs Carl Swensson and Kevin Richard Powell and their counsel J. Mark Hatfield, and Plaintiff David P. Welden and his counsel Van R. Irion, all appeared and answered the call of the case. However, neither Defendant nor his counsel, Michael Jablonski, appeared or answered. Ordinarily, the Court would enter a default order against a party that fails to participate in any stage of a proceeding. Ga. Comp. R. & Regs. 616-1-2-.30(1) and (5). Nonetheless, despite the

[1] This Decision has been consolidated to include the four challenges to President Obama's candidacy filed by Plaintiffs David Farrar, *et al.*, David P. Welden, Carl Swensson, and Kevin Richard Powell. Section I of this Decision applies only to the case presented by Ms. Taitz on behalf of Mr. Farrar and his co-plaintiffs, Leah Lax, Cody Judy, Thomas Malaren, and Laurie Roth, and does not pertain, in any way, to the cases of Mr. Welden, Mr. Swensson, and Mr. Powell. Section II applies to all Plaintiffs.

Defendant's failure to appear, Plaintiffs asked this Court to decide the case on the merits of their arguments and evidence. The Court granted Plaintiffs' request.

By deciding this matter on the merits, the Court in no way condones the conduct or legal scholarship of Defendant's attorney, Mr. Jablonski. This Decision is entirely based on the law, as well as the evidence and legal arguments presented at the hearing.

I. Evidentiary Arguments of Plaintiffs Farrar, *et al.*

Plaintiffs Farrar, Lax, Judy, Malaren, and Roth contend that President Barack Obama is not a natural born citizen. To support this contention, Plaintiffs assert that Mr. Obama maintains a fraudulently obtained social security number, a Hawaiian birth certificate that is a computer-generated forgery, and that he does not otherwise possess valid U.S. identification papers. Further, Plaintiffs submit that Mr. Obama has previously held Indonesian citizenship, and he did not use his legal name on his notice of candidacy, which is either Barry Soetoro or Barack Obama Soebarkah. (Pl.s' Am. Compl. 3.)

At the hearing, Plaintiffs presented the testimony of eight witnesses[2] and seven exhibits in support of their position. (Exs. P-1 through P-7.) When considering the testimony and exhibits, this Court applies the same rules of evidence that apply to civil nonjury cases in superior court. Ga. Comp. R. & Regs. 616-1-2-.18(1)–(9). The weight to be given to any evidence shall be determined by the Court based upon its reliability and probative value. Ga. Comp. R. & Regs. 616-1-2-.18(10).

The Court finds the testimony of the witnesses, as well as the exhibits tendered, to be of little, if any, probative value, and thus wholly insufficient to support Plaintiffs' allegations.[3] Ms. Taitz attempted to solicit expert testimony from several of the witnesses without qualifying or tendering the witnesses as experts. *See Stephens v. State*, 219 Ga. App. 881 (1996) (the unqualified testimony of the witness was not competent evidence). For example, two of Plaintiffs' witnesses testified that Mr. Obama's birth

[2] Originally, Ms. Taitz indicated to the Court that she would offer the testimony of seven witnesses. However, during her closing argument, Ms. Taitz requested to testify. Ms. Taitz was sworn and began her testimony, but shortly thereafter, the Court requested that Ms. Tatiz step-down and submit any further testimony in writing.

[3] The credibility of witnesses is within the sole discretion of the trier of fact. In non-jury cases that discretion lies with the judge. *See Mustang Transp., Inc. v. W.W. Lowe & Sons, Inc.*, 123 Ga. App. 350, 352 (1971).

certificate was forged, but neither witness was properly qualified or tendered as an expert in birth records, forged documents or document manipulation. Another witness testified that she has concluded that the social security number Mr. Obama uses is fraudulent; however, her investigatory methods and her sources of information were not properly presented, and she was never qualified or tendered as an expert in social security fraud, or fraud investigations in general. Accordingly, the Court cannot make an objective threshold determination of these witnesses' testimony without adequate knowledge of their qualifications. *See Knudsen v. Duffee-Freeman, Inc.*, 95 Ga. App. 872 (1957) (for the testimony of an expert witness to be received, his or her qualifications as such must be first proved).

None of the testifying witnesses provided persuasive testimony. Moreover, the Court finds that none of the written submissions tendered by Plaintiffs have probative value. Given the unsatisfactory evidence presented by the Plaintiffs, the Court concludes that Plaintiffs' claims are not persuasive.

II. Application of the "Natural Born Citizen" Requirement

Plaintiffs allege that President Barack Obama is not a natural born citizen of the United States and, therefore, is not eligible to run in Georgia's presidential primary election. As indicated *supra*, the United States Constitution states that "[n]o person except a natural born Citizen . . . shall be eligible for the Office of the President . . . ."[4] U.S. Const. art. II, § 1, cl. 5.

For the purpose of this section's analysis, the following facts are considered: 1) Mr. Obama was born in the United States; 2) Mr. Obama's mother was a citizen of the United States at the time of his birth; and 3) Mr. Obama's father was never a United States citizen. Plaintiffs contend that, because his father was not a U.S. citizen at the time of his birth, Mr. Obama is constitutionally ineligible for the Office of the President of the United States. The Court does not agree.

In 2009, the Indiana Court of Appeals ("Indiana Court") addressed facts and issues similar to those before this Court. *Arkeny v. Governor*, 916 N.E.2d 678 (Ind. Ct. App. 2009). In *Arkeny*, the plaintiffs sought to prevent certification of Mr. Obama as an eligible candidate for president because he is not a natural born citizen. *Id.* at 681. The plaintiffs argued, as the Plaintiffs argue before this Court, that "there's a very clear distinction between a 'citizen of the United States' and a 'natural born Citizen,' and the difference involves having [two] parents of U.S. citizenship, owing no foreign allegiance." *Id.* at 685. The Indiana Court rejected the argument that Mr. Obama was

[4] The definition of this clause has been the source of much debate. *See, e.g.*, Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1 (1968); Jill A. Pryor, Note, *The Natural-Born Citizen Clause and Presidential Eligibility: An Approach for Resolving Two Hundred Years of Uncertainty*, 97 Yale L.J. 881 (1988); Christina S. Lohman, *Presidential Eligibility: The Meaning of the Natural-Born Citizen Clause*, 36 Gonz. L. Rev. 349 (2000); William T. Han, *Beyond Presidential Eligibility: The Natural Born Citizen Clause as a Source of Birthright Citizenship*, 58 Drake L. Rev. 457 (2010).

ineligible, stating that children born within the United States are natural born citizens, regardless of the citizenship of their parents. *Id.* at 688. This Court finds the decision and analysis of *Arkeny* persuasive.

The Indiana Court began its analysis by attempting to ascertain the definition of "natural born citizen" because the Constitution does not define the term. *Id.* at 685-86; *See Minor v. Happersett*, 88 U.S. 162, 167 (1875) ("The Constitution does not, in words, say who shall be natural born citizens. Resort must be had elsewhere to ascertain that."); *see also United States v. Wong Kim Ark*, 169 U.S. 649 (1898) (noting that the only mention of the term "natural born citizen" in the Constitution is in Article II, and the term is not defined in the Constitution).

The Indiana Court first explained that the U.S. Supreme Court has read the Fourteenth Amendment and Article II (natural born citizen provision) in tandem and held that "new citizens may be born or they may be created by naturalization." *Id.* at 685 (citing *Minor*, 88 U.S. at 167); *See* U.S. Const. amend. XIV, § 1. ("All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States . . . ."). In *Minor*, the Court observed that:

> At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts.

Id. at 167-68. Plaintiffs ask this Court to read the Supreme Court's decision in *Minor* as defining natural born citizens as only "children born in a country of parents who were its

citizens." 88 U.S. at 167. However, the Indiana Court explains that *Minor* did not define the term natural born citizen. In deciding whether a woman was eligible to vote, the *Minor* Court merely concluded that children born in a country of parents who were its citizens would qualify as natural born, and this Court agrees. The *Minor* Court left open the issue of whether a child born within the United States of alien parent(s) is a natural born citizen.

Next, the Indiana Court looked to *United States v. Wong Kim Ark*, in which the Supreme Court analyzed the meaning of the words "citizen of the United States" in the Fourteenth Amendment and "natural born citizen of the United States" in Article II to determine whether a child born in the United States to parents who, at the time of the child's birth, were subjects of China "becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the fourteenth amendment . . . ." *Id.* at 686 (citing *Wong Kim Ark*, 169 U.S. at 653). The Indiana Court determined that the two provisions "must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the constitution." *Id.* (citing *Wong Kim Ark*, 169 U.S. at 654). The Indiana Court agreed that "[t]he interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history." *Id.* (citing *Wong Kim Ark*, 169 U.S. at 655) (internal citation omitted). The *Wong Kim Ark* Court extensively examined the common law of England in its decision and concluded that Wong Kim Ark, who was born in the United States to alien parents,

became a citizen of the United States at the time of his birth.[5] *Wong Kim Ark*, 169 U.S. at 705.

[5] The *Wong Kim Ark* Court explained:

> The fundamental principle of the common law with regard to English nationality was birth within the allegiance, also called "ligealty," "obedience," "faith" or "power," of the King. The principle embraced all persons born within the King's allegiance and subject to his protection. Such allegiance and protection were mutual . . . and were not restricted to natural-born subjects and naturalized subjects, or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the kingdom. Children, born in England, of such aliens, were therefore natural-born subjects. But the children, born within the realm, of foreign ambassadors, or the children of alien enemies, born during and within their hostile occupation of part of the King's dominions, were not natural-born subjects, because not born within the allegiance, the obedience, or the power, or, as would be said at this day, within the jurisdiction of the King.

169 U.S. at 655.

> It thus clearly appears that by the law of England for the last three centuries, beginning before the settlement of this country, and continuing to the present day, aliens, while residing in the dominions possessed by the Crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, the jurisdiction, of the English Sovereign; and therefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign State, or of an alien enemy in hostile occupation of the place where the child was born.

Id. at 658. Further:

> Nothing is better settled at the common law than the doctrine that the children, even of aliens, born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto, are subjects by birth.

Id. at 660 (quoting *Inglis v. Trustees of Sailors' Snug Harbor*, 28 U.S. (3 Pet.) 99, 164 (1830) (Story, J., concurring)). And:

> The first section of the second article of the constitution uses the language, 'a natural-born citizen.' It thus assumes that citizenship may be acquired by birth. Undoubtedly, this language of the constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the constitution, which referred citizenship to the place of birth.

Id. at 662 (quoting *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 576 (1856) (Curtis, J., dissenting)). Finally:

> All persons born in the allegiance of the king are natural-born subjects, and all persons born in the allegiance of the United States are natural-born citizens. Birth and allegiance go together. Such is the rule of the common law, and it is the common law of this country, as well as of England.

Id. at 662-63 (quoting *United States v. Rhodes*, (1866) (Mr. Justice Swayne)).

Relying on the language of the Constitution and the historical reviews and analyses of *Minor* and *Wong Kim Ark*, the Indiana Court concluded that

> persons born within the borders of the United States are "natural born citizens" for Article II, Section 1 purposes, regardless of the citizenship of their parents. Just as a person "born within the British dominions [was] a natural-born British subject" at the time of the framing of the U.S. Constitution, so too were those "born in the allegiance of the United States [] natural-born citizens."

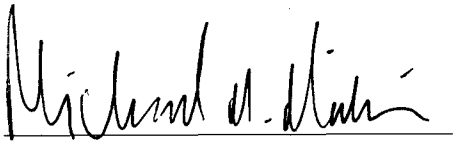
916 N.E.2d at 688. The Indiana Court determined that a person qualifies as a natural born citizen if he was born in the United States because he became a United States citizen at birth.[6]

For the purposes of this analysis, this Court considered that President Barack Obama was born in the United States. Therefore, as discussed in *Arkeny*, he became a citizen at birth and is a natural born citizen. Accordingly,

CONCLUSION

President Barack Obama is eligible as a candidate for the presidential primary election under O.C.G.A. § 21-2-5(b).

SO ORDERED, February 3rd, 2012.



MICHAEL M. MALIHI, Judge

[6] This Court recognizes that the *Wong Kim Ark* case was not deciding the meaning of "natural born citizen" for the purposes of determining presidential qualifications; however, this Court finds the Indiana Court's analysis and reliance on these cases to be persuasive.