



ALMOST **ELIGIBLE!**

★ **At Least 35 Years of Age**

★ **U.S. Resident at Least 14 Years**

★ **Natural-Born Citizen**

***'Cause two out of three
ain't bad!***

AND NOW: THE FINE PRINT

THE PANAMANCHURIAN CANDIDATE: Why John McCain is INELIGIBLE to be President of the United States

Introduction

John McCain's eligibility to be President in terms of his U.S. citizenship is in question. **Please follow this closely as it is lengthy, but it shows that he is NOT eligible to be President.** The author of this research is not a lawyer and this is not legal advice. It is, however, an eye-opener and a call to action.

To properly answer this eligibility question, we need to examine what the Constitution says on the issue, what the federal law says on the issue, what the federal regulatory policy is on the issue and the legal status of John McCain's place of birth. All of this will determine what makes him eligible (or not) to be President.

The Constitution:

Article II, Section 1, Clause 5 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; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

Amendment 14, Section 1, Clause 1 of the Constitution:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

From Article II, it's clear that, to be President, one must be a "natural born" citizen.

From the 14th Amendment, a U.S. citizen is a person either born or naturalized in the United States (not both, as they are mutually exclusive; more on that below). There is no third type of citizenship.

To be complete, we must first answer the question of whether or not John McCain is, in fact, a citizen. The answer and its references also help answer the natural born question, as well.

In legal circles, the Latin terms of reference are *jus soli* ("right of the soil") for born in the United States, and *jus sanguinis* ("right of blood") for born to citizen parents. Naturalization is referred to by *lex soli* ("law of the soil"). John McCain was born in the Panama Canal Zone in 1936 to American parents, so *jus sanguinis* definitely applies to him, and is

not in dispute here. But, *jus sanguinis* has no basis in U.S. law (only *jus soli* and *lex soli* do), except through applying legislation such as INA below (see the next section), so it falls under *lex soli*. And, therein is the question: Is a citizen born in the Panama Canal Zone in 1936 a citizen under *jus soli* or *lex soli* (born or naturalized)?

The Untied States Code:

A quick look at 8 USC 1400 appears to answer the question. That section of the United States Code comes directly from the Immigration and Naturalization Act (INA) of 1952, which was passed when McCain was 16 years old. First, we must answer the citizenship question.

If you look at 8 USC 1401(a) and (c), you find this:

The following shall be nationals and citizens of the United States at birth:

- (a) a person born in the United States, and subject to the jurisdiction thereof;"
- (c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

If you look at 8 USC 1403(a), it addresses McCain's situation rather clearly:

- (a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

So it's pretty clear that John McCain is a citizen.

**IT'S PRETTY CLEAR THAT
JOHN MCCAIN IS A CITIZEN.**

**BUT IS HE A NATURAL BORN
(JUS SOLI) CITIZEN OR A
NATURALIZED (LEX SOLI)
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But is he a natural born (jus soli) citizen or a naturalized (lex soli) citizen? This is where it gets tricky.

Because 8 USC 1403(a) uses the term "is declared to be a citizen" (emphasis added), that leans heavily towards a *lex soli* position (naturalization). And persons born to citizens between November 1903 (when Panama became independent from Colombia with U.S. intervention) and

February 1904 are not declared citizens under this section, which indicates that the declaration of citizenship is simply naturalization and not by birth, since it is dependent on the law and a calendar date.

Furthermore, naturalization is defined in 8 USC 1101(a)(23):

(a) As used in this chapter—
(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

In other words, naturalization means a person is made, conferred, or "declared" a citizen after birth, leaving "natural born" to only mean becoming a citizen at birth. This is consistent with 8 USC 1403(a), which was enacted when John McCain was 16 years old. *So, at 16 years of age, John McCain was naturalized as a citizen by legislation, that legislation being the INA.*

But, is there anything more concrete than that? The Supreme Court has never addressed the specifics of a natural born citizen, except once in passing, in the dissent of the infamous Dred Scott case, of all places, so it really has no bearing. Other cases have looked at citizenship, but not specifically the natural born part of it.

Historically, the term "natural born" was put in Article II at the request of John Jay (who later helped write the Federalist Papers, became the first Chief Justice of the Supreme Court and pointed out in 1796 that jury nullification is a right and duty of the people) to George Washington in a letter dated 25 July 1787.

McCain has claimed that the Naturalization Act of 1790 (26 March 1790) covers his status as a natural born citizen. *That is not true.* A close look at the Act indicates that it only covers "admission as a citizen" (meaning naturalization), and that Act was repealed in part 29 January 1795 and again in total 14 April 1802. So that argument does not work, because it was repealed, and, because it creates naturalization instead of natural born citizenship.

Federal Policy:

It turns out there actually is something more concrete than just the USC mentioned above, and that is the regulations put forth by the State Department on citizenship. Specifically, 7 FAM 1100 addresses the situation quite clearly:

7 FAM 1111.2 Citizenship (TL:CON-64; 11-30-95)

a. U.S. citizenship may be acquired either

at birth or through naturalization.

b. U.S. laws governing the acquisition of citizenship at birth embody two legal principles:

(1) *Jus soli* (the law of the soil), a rule of common law under which the place of a person's birth determines citizenship. In addition to common law, this principle is embodied in the 14th Amendment to the U.S. Constitution and the various U.S. citizenship and nationality statutes.

(2) *Jus sanguinis* (the law of the bloodline), a concept of Roman or civil law under which a person's citizenship is determined by the citizenship of one or both parents. This rule, frequently called "citizenship by descent" or "derivative citizenship", is not embodied in the U.S. Constitution, but such citizenship is granted through statute. As laws have changed, the requirements for conferring and retaining derivative citizenship have also changed.

7 FAM 1116.1-4 Not Included in the Meaning of "In the United States"

(TL:CON-64; 11-30-95)

c. Despite widespread popular belief, U.S. military installations abroad and U.S. diplomatic or consular facilities are not part of the United States within the meaning of the 14th Amendment. A child born on the premises of such a facility is not subject to the jurisdiction of the United States and does not acquire U.S. citizenship by reason of birth.

So citizenship is either by birth or naturalization, according to 7 FAM 1111.2(a) here and noted above.

Furthermore, the principle of *jus sanguinis* is NOT part of the law, except by statute (*lex soli*) according to 7 FAM 1111.2(b)(2) here and also noted above.

The regulation at 7 FAM 1116.1-4(c) puts forth the idea of a birth in a military installation abroad as not part of the United States under the 14th Amendment, and therefore, children born there must be naturalized in order to be considered citizens.

For 7 FAM 1116.1-4(c) to apply to John McCain, then, it must be shown that the Canal Zone was not "in the United States".

That brings us back to 8 USC 1101(a)(38):

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam and the Virgin Islands of the United States.

Note that the Canal Zone is not listed. However, since the Canal Zone is no longer under United States control as of January 1, 2000, this is only an indicator, and not conclusive.

To get a better understanding of the status of the Canal Zone, we look at the relevant treaties. The first one is the Hay-Bunau Varilla Treaty of 1903, which established

the Canal Zone for the actual building of the Panama Canal. The second one is Torrijos-Carter Treaty of 1977, which transitioned the Canal Zone control back to Panama by December 31, 1999.

Who Owned The Canal Zone?

Was the Canal Zone actually a territory under United States law, or was it just a leased area?

To answer that question, we look at the original Hay-Bunau Varilla Treaty of 1903, negotiated by Theodore Roosevelt and his Secretary of State, John Hay.

**TO DETERMINE TYPE OF
CITIZENSHIP, WE MUST
FIRST DETERMINE THE
CANAL ZONE'S STATUS
AT THE TIME OF JOHN
MCCAIN'S BIRTH.**

Of note are both Article II and Article III:

Article II

The Republic of Panama grants to the United States in perpetuity, the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity, the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity, all islands within the limits of the zone above described and in addition thereto, the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

Article III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement,

and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise, if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

Note that Article II Panama grants the United States "the use, occupation and control of a zone of land and land under water" for the Canal. It does NOT say it cedes that land to the United States, nor does it say that Panama grants ownership of the land to the United States; just use and control of it. This is a lease, not a transfer of real estate, and therefore, Panama still owned the land. Article III is exactly the same in nature, but it applies to auxiliary areas if Panama owns them. Read the sovereign clause carefully as the "it" in there refers to Panama, not the United States.

Also of note is the resource use grant in Article IV:

Article IV

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity, to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or waterpower or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

In other words, the landowner (Panama) granted water rights to the lessee (United States).

Further, note the payment schedule in Article XIV:

Article XIV

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid.

Notice it never says these payments are compensation for the land, just the "rights, powers, and privileges" to use it. This is RENT.

One last part adds to the lease argument, Article XXV:

Article XXV

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for the naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

If the United States owned the Canal Zone land, thereby making it a United States territory, then this clause would not be necessary, as they could build such stations within the zone, and this clause would not have been necessary.

It's pretty clear from the original treaty that the Canal Zone was actually Panamanian land leased to the United States.

The Torrijos-Carter Treaty of 1977 further backs this up:

Article I

2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.

Note this treaty declares Panama as the territorial sovereign, meaning they own the land and water, and they grant to the United States use of the land and water.

It is conclusive that the Panama Canal Zone was Panamanian sovereign land

administered and operated under treaty by the United States, and that popular belief that the Canal Zone was a United States territory is mistaken. This also is consistent with the State Department regulations in 7 FAM 1100 and 8 USC 1403(a) cited above.

Since the Canal Zone was not "in the United States" with respect to the 14th Amendment, it must follow that the only place it can be is outside the United States. John McCain was born outside the United States in the Canal Zone, and as we have already seen, was covered under 8 USC 1403(a).

**SHALL WE SIMPLY
DISREGARD PORTIONS OF
OUR U.S. CONSTITUTION
AT WHIM?

WHY HAVE IT, THEN?**

If you look again at 8 USC 1401(c) and 1403(a), you see a big difference. 8 USC 1401(c) address births outside the U.S., meaning clearly that the "born in the United States" clause of the 14th Amendment cannot apply to this form of citizenship. Therefore, a person that falls under 8 USC 1401(c) has to be a naturalized citizen. 8 USC 1403(a) already "declares" citizenship and implies naturalization. The only logical conclusion is that the Canal Zone was considered to be outside the United States, else these sections (8 USC 1401(c) and 8 USC 1403(a)) never needed to be codified into law in the first place, and 8 USC 1401(a) would apply instead (see above).

Conclusion

That leads us all back to the Constitutional requirements. The citizenship definitions of both Article II and Amendment 14 apply in terms of McCain running for President.

So, tying it all together:

1. **The 14th Amendment and matching regulations limit citizenship to natural born and naturalized.**
2. **John McCain was born in the Canal Zone to citizen parents.**
3. **8 USC 1403(a) declares naturalized citizenship on persons born in the Canal Zone to citizen parents.**
4. **Therefore 8 USC 1403(a) applies to John McCain.**
5. **Therefore John McCain is a naturalized citizen.**
6. **The Canal Zone was not part of the United States.**
7. **Therefore John McCain was not born in the United States.**
8. **Therefore John McCain is a citizen not born in the United States.**
9. **Therefore John McCain is not a natural born citizen.**
10. **Article II of the Constitution states to be President a person must be a natural born citizen.**
11. **THEREFORE John McCain is not eligible to be President of the United States under Article II of the Constitution.**

Sources:

(type in URLs without any spaces)

- *Latin terms from Black's Law Dictionary.*
- *State Department Regulations from <http://www.state.gov/documents/organization/86755.pdf>*
- *United States Code from Findlaw.*
- *Hay-Bunau Varilla Treaty of 1903 from <http://www.bartleby.com/43/47.html>*
- *Torrijos-Carter Treaty of 1977 from <http://www.state.gov/p/wha/rlnks/11936.htm>*
- *The 14th Amendment: <http://www.constitution.org/usconsti.htm#amend14>*

McCain is *McCan't!*

If McCain has problems abiding by our U.S. Constitution now, how much more so if he (illegally!) sits in the Oval Office?