OFFICE OF STATE ADMINISTRATIVE HEARINGS

STATE OF GEORGIA

```
- - - - - - - - - - - - - - - - - -
DAVID P. WELDEN                    :
                  Plaintiff        :
                                   :
                                   :
                                   : DOCKET NO.
v.                                 : OSAH-SECSTATE-CE-
                                   :  1215137-60-Malihi
BARACK OBAMA                       :
                   Defendant       :
                                   :
                                   :
- - - - - - - - - - - - - - - - - -
```

230 Peachtree Street, Suite 850
Atlanta, Georgia

Thursday, January 26, 2012

The above-entitled matter came on for hearing pursuant to Notice, at 9:30 a.m.

BEFORE:

MICHAEL M. MALIHI, Deputy Chief Administrative Law Judge

1

2 APPEARANCES:

3 FOR THE PLAINTIFF:

4 VAN R. IRION, Attorney
9040 Executive Park Drive, Suite 223
5 Knoxville, Tennessee 37923

6

7

8 FOR THE DEFENDANT:

9 (No appearance.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2 I N D E X

3 WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
4 David Welden	5	--	--	--
5 Kenneth Allen	8	--	--	--

6 EXHIBITS:	FOR IDENTIFICATION	IN EVIDENCE
7 Plaintiff:		
8 1 - Birth Certificate, Barack Obama, II	5	6
10 2 - INS Barack Obama, Sr. Legal Status	8	--
11 3 - Pages 214-215, Dreams From My Father	7	8

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 JUDGE MALIHI: Thank you, please take your seats.
3 Good morning.
4 Counsel for the Plaintiff, please introduce
5 yourself and your client.
6 MR. IRION: Your Honor, my name is Van Irion and I
7 represent Plaintiff David Welden.
8 JUDGE MALIHI: Good morning, sir.
9 I'm ready to hear from you, sir.
10 MR. IRION: Yes, Your Honor.
11 May it please this very honorable Court, last
12 night, the Court received a letter from Mr. Jablonski,
13 attorney for the Defendant. The last paragraph I'd like to
14 read into the record, states:
15 "We await your taking the requested action,
16 and as we do so, we will, of course, suspend
17 further participation in these proceedings,
18 including the hearing scheduled for January 26."
19 As the Court can see, the -- neither the Defendant
20 nor the Defendant's attorneys are here.
21 The Secretary of State responded with a letter to
22 Mr. Jablonski last night stating that if they don't show up,
23 that it will be at their own peril, I believe is the quote.
24 Your Honor, the Plaintiff calls the Plaintiff, Mr.
25 David Welden.

1 JUDGE MALIHI: Please.
2 Counsel, you have 30 minutes to conclude your
3 case, 10:00 a.m.
4 Sir, will you stand up and raise your right hand?
5 Whereupon,
6 DAVID WELDEN
7 appeared as a witness herein and, having been first duly
8 sworn, was examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. IRION:
11 Q Sir, please state your name for the record.
12 A David Welden.
13 Q Where do you live?
14 A In Powder Springs, Georgia, in Cobb County.
15 Q Are you registered to vote in the State of
16 Georgia?
17 A Yes, I am.
18 Q Showing the witness what has been marked for
19 identification as Plaintiff's 1. Are you familiar with that
20 document?
21 A Yes.
22 (The document referred to was
23 marked for identification as
24 Plaintiff's Exhibit Number 1.)
25 Q What is it?

1 A It's the birth certificate that I downloaded from
2 the WhiteHouse.gov website. It's a birth certificate
3 professed to be of Barack Hussein Obama II.
4 Q And do you see an item on line 8 -- I'm sorry,
5 excuse me -- on item 11. Can you read that?
6 A Yes, item 11 says the birthplace is Kenya, East
7 Africa.
8 Q And that's referring to --
9 A That is the birthplace of the father.
10 MR. IRION: Move to have exhibit marked for
11 identification Plaintiff's Exhibit 1 into the record.
12 JUDGE MALIHI: Plaintiff's 1 is in the record.
13 (The document, heretofore marked as
14 Plaintiff's Exhibit Number 1, was
15 received in evidence.)
16 MR. IRION: That's all I have for this witness.
17 JUDGE MALIHI: Thank you, sir, you may step down.
18 MR. IRION: Calling Kenneth Allen -- oh, I'm
19 sorry, Your Honor, I do have another item for this witness.
20 I apologize.
21 BY MR. IRION:
22 Q Referring the witness to what has been marked for
23 identification as Exhibit 3. What is that -- are you
24 familiar with this?
25 A Yes, I am.

1 (The document referred to was
2 marked for identification as
3 Plaintiff's Exhibit Number 3.)
4 Q What is it?
5 A This is pages 214 and 215 of a book authored by
6 Barack Obama entitled Dreams From My Father.
7 Q Can you read the highlighted portion?
8 A Yes. The portions that I highlighted --
9 (Alarm sounds.)
10 JUDGE MALIHI: Sorry for the interruption.
11 THE WITNESS: The portions that I highlighted
12 are -- the first one is on page 214 where I just highlighted
13 a couple of lines to indicate the time frame within the
14 book. And this was in 1966 or '67, according to Mr. Obama.
15 The section on page 215, I highlighted with the
16 purpose of illustrating some history of his father; and his
17 father had been having trouble with obtaining employment up
18 to this point and I'm going to quote here. It says:
19 "When he went to foreign companies to look
20 for a post, the companies were warned not to hire
21 him. He began looking abroad and was hired to
22 work for the African Development Bank in Addis
23 Ababa, but before he could join them, the
24 government revoked his passport and he couldn't
25 even leave Kenya."

1 MR. IRION: That's all I have for this witness,
2 Your Honor.
3 JUDGE MALIHI: Thank you, you may step down.
4 (Witness excused.)
5 MR. IRION: Calling witness Kenneth Allen.
6 Whereupon,
7 KENNETH ALLEN
8 appeared as a witness herein and, having been first duly
9 sworn, was examined and testified as follows:
10 DIRECT EXAMINATION
11 BY MR. IRION:
12 Q Referring the witness to what has been marked for
13 identification as Plaintiff's Exhibit 2.
14 (The document referred to was
15 marked for identification as
16 Plaintiff's Exhibit Number 2.)
17 MR. IRION: And move that Plaintiff's exhibit
18 marked for identification as Exhibit 3, be moved into the
19 record.
20 JUDGE MALIHI: Three is in the record.
21 (The document, heretofore marked as
22 Plaintiff's Exhibit Number 3, was
23 received in evidence.)
24 BY MR. IRION:
25 Q Are you familiar with the document I just handed

1 to you?
2 A I am.
3 Q What is it?
4 A Well, it's from Immigration and Naturalization
5 Services and it actually is -- it's about Barack Obama, Sr.
6 and it's -- it was notice of his F-1 student immigration
7 status.
8 Q And what is the date at the bottom of this
9 document?
10 A June 27, 1962.
11 Q There's a form number at the top of the document.
12 Could you read that?
13 A Yeah, it's I-208 -- or 20B-208.
14 Q What's your understanding of the purpose for this
15 document?
16 A Well, this document actually helped him get into
17 Harvard.
18 Q So what does it say about his status as a citizen
19 of the United States?
20 A Well, he's not a citizen of the United States. It
21 says status is he's from Africa.
22 Q All right. How did you come to obtain this
23 document?
24 A Through a Freedom of Information Act that I filed
25 in February of 2011.

1 Q And is this the copy -- is this copy an accurate
2 copy of the document that you received from your Freedom of
3 Information Act request?
4 A It is.
5 MR. IRION: And for the record, I'd like to read
6 Georgia Code Section 24-1-4, matters judicially recognized -
7 - excuse me -- Judicially Recognized Matters, and I'm
8 quoting:
9 "...the laws of the United States and of the
10 several states...customs of merchants...and all
11 similar matters of public knowledge shall be
12 judicially recognized without the introduction of
13 proof."
14 I read that to point out the fact that this
15 document, under not only Georgia statute, is judicially
16 recognized, but under Georgia precedent, and should fall
17 within the business records exception to a hearsay
18 objection.
19 That's all I have for this witness. And that's
20 the close of the evidence for Mr. Weldon.
21 JUDGE MALIHI: You may step down, sir.
22 (Witness excused.)
23 JUDGE MILLER: Okay, counsel, you have 20
24 minutes.
25 MR. IRION: And I believe that I can cover it in

1 20 minutes, Your Honor.

2 As I stated before, our hope here is to help the

3 Court understand what our core argument is. What we're

4 trying to show here is that Barack Obama -- by the evidence,

5 Barack Obama's father was not a United States citizen at the

6 time of the Defendant's birth. And under Article II of the

7 United States Constitution, that means that he is not a

8 natural born citizen, as was defined by the Supreme Court in

9 Minor v. Happersett.

10 In Minor v. Happersett, the Court recognized three

11 categories of people -- natural-born citizens, citizens and

12 everybody else. Now the Court also noted that all natural-

13 born citizens are citizens, but not all citizens are

14 natural-born citizens.

15 There are three paths to citizenship in the United

16 States, all of them founded within the Constitution. The

17 first one is Article II, natural-born citizen, as defined by

18 Minor v. Happersett. The second one is naturalized

19 citizens, which is defined under -- excuse me -- which is

20 defined by Congress as they are authorized to do under

21 Article I. And then there's the 14th Amendment.

22 Now, it should be noted that all naturalized

23 citizens that are naturalized under Congress' authority

24 under Article I cannot be natural-born citizens specifically

25 because Congress does not have the authority to alter the

1 Constitution other than through the amendment process. So,
2 therefore, all of the statutes and laws, whether or not they
3 purport to define the term "natural-born citizen," do not,
4 because they cannot alter Article I.
5 Now the 14th Amendment is a separate issue, but it
6 also does not include natural-born citizens, for reasons
7 that I'll get to here in a moment.
8 In order to get there, we first have to remind
9 ourselves of the rules of construction that were set forth
10 by the early Supreme Court in Marbury v. Madison and it has
11 been followed ever since by every court.
12 The rules of construction that are applicable here
13 are first, under Marbury v. Madison, Chief Justice Marshall
14 stated that no clause in the Constitution can be construed
15 in a way by any court that would leave it without
16 independent meaning.
17 Now a corollary to this rule is any future
18 amendments to the Constitution must not be construed in a
19 way that removes independent meaning from another clause,
20 unless that amendment specifically states that it's changing
21 the earlier clause, or there's no way to construe that
22 amendment in any other way other than changing the earlier
23 clause. So with that rule of construction in mind, we look
24 at the fact that the Minor Court defined natural-born
25 citizen, and that definition was:

1 "...it was never doubted that all children
2 born in a country of parents who were its citizens
3 become themselves, upon their birth, citizens
4 also. These were natives, or natural-born
5 citizens, as distinguished from aliens or
6 foreigners."
7 So there's two elements to this definition.
8 First, both parents have to be citizens at the time that the
9 Defendant was born, and the Defendant had to have been born
10 in the country.
11 Now a lot of people say that this is dicta and
12 that, therefore, the Court doesn't have to follow it. It's
13 persuasive, but it's simply dicta. That is absolutely
14 incorrect, and we will prove that beyond any doubt, starting
15 by looking at the definitions of holding, dicta, and
16 precedent.
17 The definition from BLACK'S LAW of holding is:
18 "A court's determination of a matter of law
19 pivotal to its decision."
20 Dicta is the opposite:
21 "A court's discussion of points or questions
22 not raised by the record or its suggestion of
23 rules not applicable in the case at bar."
24 Now, as to precedent:
25 "A case becomes precedent only for such a

1 general rule as is necessary to the actual
2 decision reached."
3 What I'm going to show is that the definition from
4 Minor was pivotal to the decision of that court and is,
5 therefore, holding of that court and, therefore, precedent,
6 which is binding -- Supreme Court precedent, binding on
7 every court in this country.
8 The definition was -- what the Minor Court had to
9 decide was whether or not Ms. Minor was allowed -- had a
10 right to vote under the 14th Amendment; however, it
11 specifically stated that before it got to that part of the
12 question, it first had to determine whether or not she was a
13 citizen.
14 Well, using the well-known doctrine of judicial
15 restraint, the Supreme Court will not reach a -- will not
16 construe a Constitutional clause if it does not have to, to
17 answer the question presented. And in this case, Minor was
18 born in the United States and had both parents -- and both
19 parents were citizens at the time she was born. So,
20 therefore, what the Court did was it defined natural-born
21 citizen and then specifically said she's a natural-born
22 citizen; therefore, we don't have to determine whether or
23 not she's a citizen under any other rule. It was pivotal
24 that she was a natural-born citizen. The definition they
25 came to was part of the holding and is binding precedent.

1 Now there's other language in this paragraph that
2 others point to as saying well, there was doubts about this
3 particular definition, even if it's precedent, because the
4 paragraph goes on to say:
5 "Some authorities go further and include as
6 citizens children born within the jurisdiction
7 without reference to the citizenship of their
8 parents."
9 However, the Court -- or it should be recognized
10 also that the term "citizen" is not natural-born citizen,
11 and the term "citizen" was specifically defined by the Minor
12 Court on the previous page. In fact, they spent at least a
13 couple of paragraphs discussing what a citizen was and
14 describing how it's a very broad term. And at the end of
15 that, they concluded that when they say citizen, they mean
16 nothing more than this broad, nebulous term that they don't
17 need to define and can't define. And in fact, the rest of
18 the paragraph goes on to say -- goes on to reflect this
19 judicial restraint that the Minor Court was using when they
20 say for the purposes of this case it is not necessary to
21 solve these questions about the doubt of what a citizen is.
22 "It is sufficient for everything we have now
23 to consider that all children born of [citizen]
24 parents within the jurisdiction are themselves
25 citizens."

1 In other words, Minor is a natural-born citizen;
2 therefore, she's a citizen. And they moved on to the next
3 question, which was construing, not the whole 14th
4 Amendment, but just what rights arise from the 14th
5 Amendment, whether or not she could have the right to vote.
6 And, by the way, that Court held that the 14th Amendment
7 does not create any new privileges or immunities.
8 Therefore, someone who is not qualified as a
9 natural-born citizen to run for President before the 14th
10 Amendment is not -- does not have that right. Because the
11 14th Amendment didn't create any new rights, they don't have
12 that right after the 14th Amendment.
13 So, that's the holding of Minor. A lot of people
14 say that Minor was overruled by Kim Wong Ark. That's
15 absolutely not true. The holding of Kim Wong Ark is right
16 up here (indicating), and it's very limited. There's lots
17 of caveats, there's lots of conditions, but the point is
18 that the Minor Court -- excuse me, the Kim Wong Ark Court
19 was determining what the Minor Court had left behind. The
20 Minor Court had said we're not going to determine what a
21 citizen is under the 14th Amendment because we don't have
22 to, because she's a natural-born citizen. The Kim Wong Ark
23 Court had that case because they had Kim Wong Ark whose
24 parents weren't citizens when he was born, though he was
25 born here, is he a citizen.

1 They answered that question and that's all they
2 answered. Everything else that they answered, everything
3 else that's in there, anything that could possibly be
4 construed to change the holding of Minor, the definition of
5 natural-born citizen under Minor, was dicta and is,
6 therefore, not binding and certainly, under the rules of
7 construction, cannot overrule an earlier holding. Dicta
8 certainly can't overrule a holding.
9 So the point here is these cases don't conflict.
10 They might look like they conflict if you read them, but if
11 you look at the holding of Kim Wong Ark and the holding of
12 Minor, they don't conflict. And when they clearly don't
13 conflict, they certainly don't overrule each other.
14 If anyone was to argue that the Minor definition
15 of natural-born citizen is unclear as to whether or not it's
16 required to have one parent or both parents, I would like it
17 stated for the record that the Minor Court's definition of
18 natural-born citizen uses the term "parents." Parent is the
19 singular. If the Court wanted to use parent, it could have
20 used parent. If the Court meant mother, it could have used
21 mother; if it meant father, it could have used father. It
22 used the term "parents," and that has to be given, again --
23 a rule of construction -- its plain meaning. It's plain
24 meaning is both parents. So that argument doesn't fly.
25 In closing, this case is about the Constitution.

1 Holding public office is not about the individual, it's
2 about service to the public. Anyone who has run for public
3 office ought to know that and that means that even if an
4 individual has an unfortunate situation where they can't
5 rise to the level that they want to -- politics is not a
6 career, a typical career field, where we want the person to
7 rise as far as they can. Politics is about service to the
8 public and that should be kept in mind.
9 And my final comment -- excuse me, let me make the
10 point for the record -- we've shown, I believe, that Barack
11 Obama's father was not a citizen of the United States ever,
12 certainly during the time period when Barack Obama was born.
13 I don't think that's ever been disputed by the Defendant
14 himself. And that means that he is not Constitutionally
15 qualified to hold office. It's not a statement about his
16 ability, it's a statement about his Constitutional
17 qualifications.
18 Finally, the man -- the Defendant -- was ordered
19 to be here today and he's not here. His attorneys are even
20 boycotting this hearing. And I want it stated on the record
21 that that shows a -- not just a contempt for this Court, but
22 a contempt for the Judicial Branch and --
23 JUDGE MALIHI: I'm not interested in any
24 commentary on that, counsel.
25 Are you done with your argument?

1

2 1 MR. IRION: Yes, Your Honor.

3 2 JUDGE MALIHI: Thank you very much.

4 3 (Whereupon, the hearing was concluded at 9:50

5 4 a.m.)

6

7

8

9

10

11

12 C E R T I F I C A T E

13 I, Peggy J. Warren, do hereby certify that the

14 foregoing pages represent a true and accurate transcription

15 of the events which transpired at the time and place set out

16 in the caption, to the best of my ability.

17

18 _____

Peggy J. Warren, CVR-CM, CCR A-171

19

20

21

22

23

24

25