Testimony of

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A Simple Matter of Equal Rights:
Let Naturalized Citizens Run for President

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1. Introduction

One of the cornerstones of American democracy is the "self-evident truth" in the Declaration of Independence that "all men are created equal." This truth leads directly to the principle that all citizens should have equal rights. The U.S. Constitution made historic contributions, of course, to the establishment of this principle, by, among other things, setting up the popular election of members of the House of Representatives and by allowing even naturalized citizens, after a waiting period of a few years, to run for the Senate or the House of Representatives.

It is equally true, of course, that the Founding Fathers did not fully implement the equal-rights principle, and throughout its history, this nation has moved toward completing this task. The Constitution's most important limitations on this score obviously were that it allowed the states to disenfranchise people on the basis of sex and race. The Fourteenth, Fifteenth, and Nineteenth Amendments to the Constitution, along with extensive civil rights legislation, have been passed to remove these limitations. The vast majority of American citizens now embrace the principle that all citizens should have equal rights, and our equal-rights legislation has made us a beacon of hope for people around the world striving for freedom and justice.

This hearing is about the next step on the path toward equal rights, namely, ensuring that naturalized American citizens have exactly the same rights as natural-born American citizens. The only difference in rights between these two groups is that naturalized citizens cannot run for President or Vice-President. This difference comes from the clause in the Constitution that limits the presidency to natural-born citizens, along with the Twelfth Amendment to the Constitution, which implicitly extends this limitation to the office of Vice President. Thus, the quintessential dream of our democracy, the dream of being able to grow up to be President, is withheld, for no good reason, from millions of naturalized American citizens, including my son, Jonah, who came to the United States when he was only 4 months old.

The provision in the Constitution that limits presidential eligibility to natural-born citizens grew out of the Founders' fear of foreign influence. As I will show in this statement, however, the Founders expressed serious doubts about this provision, and, as the Founders' own arguments make clear, this provision is both unwise and unnecessary. We should not let a misplaced fear of foreigners prevent us from removing this anachronistic provision from the Constitution and thereby reaffirming the principle of equal rights for all American citizens.

2. The Founders' Doubts About the Natural-Born Citizen Requirement

The issue of presidential eligibility was first raised at the Constitutional Convention fairly early in the deliberations. On July 26, 1787, George Mason of Virginia moved that a committee "be instructed to receive a clause requiring certain qualifications of landed property and citizenship of the United States in members of the legislature." Two other delegates, Charles Pinckney and Charles Cotesworth Pinckney of South Carolina, then "moved to insert by way of amendmt the words Judiciary & Executive so as to extend the qualifications to those departments." This motion carried unanimously. Hence, the Founders' first instinct was to allow all citizens, naturalized and natural-born, to run for President. Moreover, the first draft of the presidential eligibility clause, which appeared on August 22, includes only a time-of citizenship requirement.

The version of the presidential eligibility clause that excludes naturalized citizens did not appear until the final grand compromise on September 4, less than two weeks before the Constitution was signed by most of the delegates. This version was accepted unanimously with no record of any debate. In fact, however, the Founders provided considerable evidence concerning their feelings about restricting the rights of naturalized citizens, and most of these feelings were negative. In this section, I discuss three examples of this evidence: the grandfather clause concerning presidential eligibility, the Founders' recognition that second-class citizenship for naturalized citizens violates the equal-rights principle, and the Founders' demonstrated trust in naturalized citizens.

The Grandfather Clause

The first source of evidence about the Founders' views concerning the treatment of naturalized citizens comes from the presidential eligibility clause itself, which reveals that the Founders did really not want to prevent all naturalized citizens from running for President. To be specific, this clause grants presidential eligibility to any "Citizen of the United States at the time of the Adoption of this Constitution."

This "grandfather" clause gave presidential eligibility to tens of thousands of naturalized citizens, included seven of the people who signed the Constitution. If the Founders thought that, among people meeting the fourteen-year residency requirement, naturalized citizens were inherently unqualified to be President or that naturalized citizens were inherently more likely than natural-born citizens to be subject to foreign influence, then they would not have included this provision.

According to this clause, presidential eligibility was granted to all naturalized citizens at the time the Constitution was adopted in 1789. Based on information available from the U.S. Census, I estimate that roughly 60,000 foreign-born American citizens were eligible to run for President in the elections of 1796 and 1800. Moreover, about 1,500 of these people were born in France and

about 10,000 were born in Great Britain, countries that were at odds with the United States in those years.
Thus, the grandfather clause granted presidential eligibility to about 60,000 foreign-born citizens, including citizens from countries in conflict with the United States. The Founders' ambivalence about limiting presidential eligibility to natural-born citizens is evident in the presidential eligibility clause itself for anyone to see.

Statements that Second-Class Citizenship for Naturalized Citizens Violates the Equal-Rights Principle

Although the records of the Constitutional Convention contain no mention of a debate about the presidential eligibility clause itself, they contain evidence about the Founders' views concerning second-class citizenship for naturalized citizens.

This evidence comes from the debates concerning the time-of-citizenship requirements for the Senate and the House of Representatives. These debates took place on August 9 and August 13, respectively. The key issue in these debates was whether to set long or short time-of-citizenship requirements. The delegates all agreed that long requirements placed an extra burden on naturalized citizens, but some delegates thought this extra burden was appropriate and others did not. A few of the delegates raised the issue of restricting eligibility to natural-born citizens, but no delegate moved to include such a restriction in the Constitution, and only one delegate, Elbridge Gerry of Massachusetts, made a statement in support of such a restriction.

In contrast, numerous delegates spoke out against long time-of-citizenship requirements and, implicitly, against stronger restrictions on naturalized citizens, such as making them ineligible altogether. The most eloquent statements on this matter come from James Madison, who is often called the father of the Constitution. On August 9, Madison declared that a severe restriction on the rights of naturalized citizens would be "Improper: because it will give a tincture of illiberality to the Constitution." He was seconded by Benjamin Franklin "who was not agst. a reasonable time [that is, a reasonable time-of-citizenship requirement], but should be very sorry to see any thing like illiberality inserted in the Constitution." Further endorsement was provided by James Wilson of Pennsylvania who "remarked the illiberal complexion which the motion [to lengthen the time-of-citizenship requirement] would give to the System." As the delegates used the term, "illiberal" means lacking in individual liberty.

Another important argument about naturalized citizens was then made by Edmond Randolph of Virginia, who "could never agree to the motion for disabling them for 14 years to participate in the public honours. He reminded the Convention of the language held by our patriots during the Revolution, and the principles laid down in all our American Constitutions." Randolph is referring to the state constitutions passed shortly after the Declaration of Independence, none of which placed limits on the rights of naturalized citizens.

Madison blended these two issues in another eloquent statement on August 13. "He wished to maintain the character of liberality which had been professed in all the Constitutions & publications of America." This endorsement of the principles in existing "Constitutions and publications" was then seconded by several other delegates. James Wilson "read the clause in the Constitution of Pena. giving to foreigners after two years residence all the rights whatsoever of

Citizens, combined it with the Article of Confederation making the Citizens of one State Citizens of all, inferred the obligation Pena. was under to maintain the faith thus pledged to her citizens of foreign birth." John Mercer of Maryland wanted to "prevent a disfranchisement of persons who had become Citizens under the faith & according to--the laws & Constitution from being on a level in all respects with natives." Nathaniel Gorham of Massachusetts also seems to be referring to existing constitutions in saying "When foreigners are naturalized it wd. seem as if they stand on an equal footing with natives. He doubted then the propriety of giving a retrospective force to the restriction."

At the time of independence, eleven of the thirteen original colonies adopted new state constitutions. Not one of these constitutions restricted the rights of naturalized citizens. Two cases are particularly instructive. In Virginia, a draft constitution was written by Thomas Jefferson in June, 1776. This document has special historical significance because it contains a preliminary version of the grievances that would appear in the Declaration of Independence the next month. In addition, this draft includes the following naturalization clause:
All persons who by their own oath or affirmation, or by other testimony shall give satisfactory proof to any court of record in this colony that they propose to reside in the same 7 years at the least and who shall subscribe the fundamental laws, shall be considered as residents and entitled to all the rights of persons natural born.

The draft goes on to say that "every person so qualified to elect shall be capable of being elected" and thereby explicitly makes naturalized citizens eligible for all statewide offices. Although this specific wording was edited out of the final version of the Virginia Constitution, its spirit remained, and this constitution does not place any restrictions on the rights of naturalized citizens.

In the case of New York, the constitution of 1776, which was drafted by John Jay, gives the right of suffrage to "every male inhabitant of full age, who shall have personally resided within one of the counties of this State for six months" and who is a "freeholder," that is, a person who owns property. This constitution also says that the "freeholders" must elect the governor, with no explicit statement about the governor's qualification. Among other powers, the governor was declared to "be general and commander-in-chief of all the militia, and admiral of the navy of this State." Finally, this constitution gives the state legislature the power to naturalize foreigners and to make them "subjects of this State," with no qualifications concerning their rights.

John Jay's role in drafting this constitution is intriguing because many historians believe that Jay is responsible for the natural-born citizen requirement in the U.S. Constitution thanks to a letter he wrote George Washington, who presided over the Constitutional Convention. Jay, who was well known but not a delegate to the Convention, suggested that foreign influence could be minimized by limiting the "Command in chief of the american army" to "a natural born Citizen." Thus, John Jay's own position appears to be contradictory: he saw no need for a natural-born citizen requirement for New York's governor and commander in chief, but then, a decade later, called for such a requirement for the nation as a whole.

In short, speaking though the state constitutions and the debate at the Constitutional Convention, many of our Founding Fathers considered restrictions on the rights of naturalized citizens to be

violations of the fundamental principle of equal rights for all citizens. As Madison put it many years later, "Equal laws, protecting equal rights, are found, as they ought to be presumed, the best guarantee of loyalty and love of country."

Demonstrated Trust in Naturalized Citizens

Presidents George Washington, John Adams, and James Madison revealed their lack of concern about nativity by, among other things, offering high-level federal positions to some of the foreign-born delegates to the Constitutional Convention. Washington appointed William Paterson and James Wilson to the U.S. Supreme Court; he made James McHenry Secretary of the Army; he offered to make Robert Morris Secretary of the Treasury and then gave the job to Alexander Hamilton when Morris turned him down. Adams kept McHenry and Hamilton in his cabinet, later appointed Hamilton as Inspector-General of the Army, and made William Davie first a brigadier general and then Peace Commissioner to France. Finally, Madison offered Davie an appointment as a major-general, but this offer was declined.

An even more dramatic declaration of the Founders' ambivalence, if not outright hostility, toward the natural-born-citizen requirement came out of the U.S. Senate in 1798. In this year, the Senate was full of men who had participated in the founding of the United States. Two senators (John Langdon of New Hampshire and Charles Pinckney of South Carolina) had been delegates to the Constitutional Convention. All but three of the remaining senators had served in at least one of the following: the American Army during the Revolutionary War, the Continental Congress, a state convention to ratify the U.S. Constitution, and the House of Representatives. In December, these men elected a naturalized citizen, John Laurance of New York, to be President Pro Tempore of the Senate.

This action is particularly significant for two reasons. First, the grandfather clause applied to Laurance. He was born in England in 1750, sailed to America in 1767, and was admitted to the bar in 1772--all well before the adoption date of 1789. Second, the Presidential Succession Act of 1792 placed the President Pro Tempore second in the line of succession to the presidency. For a brief period in 1798, therefore, a naturalized citizen, John Laurance, stood behind only Vice President Thomas Jefferson in the sequence of succession.

During this year, the notorious XYZ affair stirred up American patriotism, and tensions between the United States and both Great Britain and France were very high. In the summer of 1798, the Senate responded by passing the infamous Alien and Sedition Acts, which authorized the President to deport "dangerous" aliens and also imposed penalties for "malicious writing." Moreover, the year before, William Blount, a natural-born citizen who had been a delegate to the Constitutional Convention, was expelled from the Senate for the "high misdemeanor" of conspiring with the British.

Despite the turbulence of the times, however, the Senate clearly believed that a man with a distinguished record of service to the United States, namely Laurance, should not be disqualified for the presidency simply because he was born in another country, even a country at odds with the United States.

3. The Case for Removing the Natural-born Citizen Requirement

Thanks to 9/11, this country once again finds itself in a time characterized by concern about the influence of foreigners in the United States. Why is this a good time to eliminate the natural-born citizen requirement? In this section, I evaluate key argument for and against such a change.

Arguments for Removing the Natural-Born Citizen Requirement

The natural-born citizen requirement (including its implicit extension to the Vice President in the Twelfth Amendment) is the only provision in the Constitution, or in our laws, for that matter, that explicitly denies rights to an American citizen based on one of that citizen's indelible characteristics. The equal-rights principle is fundamental to our democracy, and throughout our history we have struggled to extend it. By sanctioning one exception to this principle, we leave open the door to other exceptions. We will strengthen out democracy by closing this door.

The Fourteenth Amendment, which is one of the crowning achievements in this nation's struggle to promote equal rights, says, in part, 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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This amendment prohibits the states from treating naturalized citizens any differently from natural-born citizens. The same prohibition should apply to the federal government. As the U.S. Supreme Court said in another context, "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." In the case of the natural-born citizen requirement, however, the Constitution does impose a lesser duty on the Federal Government than the duty imposed on the states by the Fourteenth Amendment. This "unthinkable" contradiction should be removed.

Eliminating the natural-born citizen requirement from the Constitution would also send a powerful message to people around the world about this nation's commitment to equal rights. We will judge all or our citizens on their merits, this change would say, not on their place of birth. In these troubled times, a statement of this type can only serve to enhance our reputation as the world's standard bearer for democratic values.

Arguments against Removing the Natural-Born Citizen Requirement

Some people have argued recently that we need to keep the natural-born citizen requirement because it makes this country safer. This argument is simply not true.

The delegates to the Constitutional Convention obviously wanted to protect the United States from foreign influence. This concern played an important role in many of their decisions, including the creation of a strong central government, the design of the Electoral College, and the system of checks and balances.

The relationship between foreign influence and the provisions in the Constitution is discussed at length in the Federalist Papers, which are, of course, key documents in interpreting the Founders

intentions. Essays 2 through 5, which were written by John Jay, were titled "Concerning Dangers from Foreign Force and Influence." Although the main focus of these essays is on the need for a strong central government to protect a nation from foreign military action, they also suggest that a strong central government can help protect a nation from "foreign influence." Concern about foreign influence also appears in essay 20, written by Hamilton and Madison; essay 43 by Madison; and essays 66, 68, and 75 by Hamilton.

The role of the presidential selection mechanism, and in particular of the Electoral College, in limiting foreign influence is explicitly discussed by Hamilton in essay 68. Neither this essay, however, nor any of the others, refers to the natural-born citizen requirement. To these three influential Founders, this requirement is not important enough to mention. Even John Jay, whose letter may have inspired the requirement, does not bring it up.

Despite all the protections built into the governmental system created by the Constitution, some people still insist that we gain additional protection from the natural-born citizen requirement. If naturalized citizens were allowed to run for President, these people argue, foreign powers might scheme to have their citizens elected here. In fact, however, this Manchurian Candidate imagery has two major flaws. The first flaw was articulated by Benjamin Franklin at the Constitutional Convention on August 9. He "reminded the Convention that it did not follow from an omission to insert the restriction [in the form of a long time-of-citizenship requirement for naturalized citizens] in the Constitution that the persons in question wd. be actually chosen into the Legislature." Representative Charles T. Canady echoed this point during hearings he convened on this issue in 2000. According to Canady, eliminating the natural-born citizen requirement would not give naturalized citizens "a right to be President"--only a right to run for President. Moreover, any naturalized citizen running for President would face an extremely high burden convincing a majority of the American people that he or she is the best candidate for President. This point was made by Madison on August 13. "For the same reason that they [men with foreign predilections] would be attached to their native Country, our own people wd. prefer natives of this Country to them. Experience proved this to be the case. Instances were rare of a foreigner being elected by the people within any short space after his coming among us."

The second flaw in the Manchurian Candidate image is that any foreign power wishing to undermine our government is more likely to use a natural-born citizen than a naturalized one, precisely because of the suspicion falling on naturalized citizens. This argument was forcefully made by Madison at the Constitutional Convention. On August 9 he said that "He was not apprehensive ... that foreign powers would make use of strangers as instruments for their purposes. Their bribes would be expended on men whose circumstances would rather stifle than excite jealousy & watchfulness in the public." He repeated this argument on August 13. "If bribery was to be practised by foreign powers," he said, it would be attempted "among natives having full Confidence of the people not among strangers who would be regarded with a jealous eye."

Restricting the rights of all naturalized citizens out of the fear than one of them might try to undermine our government by running for President is an extreme form of profiling with no basis in logic or history. Does it make sense to discriminate against 12.8 million naturalized citizens, including over 250,000 foreign-born adoptees, because one of them might both harbor negative

attitudes toward this country and decide to run for President? Of course not: It makes no sense at all. The natural-born citizen requirement may make some people feel better, but it adds nothing of substance to the extensive protection provided by our constitutional election procedures, by our checks and balances, and by the judgment of the American people.

Another argument against changing the natural-born citizen requirement is that it is a poor subject for a constitutional amendment, either because it is tied to the political fortunes of a particular person or because it is just not important enough to justify altering the Constitution.

A constitutional amendment to eliminate the natural-born citizen requirement might, depending on its time-of-citizenship requirement, enable two current governors, Arnold Schwarzenegger of California and Jennifer Granholm of Michigan to run for President. Both of these governors are naturalized citizens. Some people have argued for or against an amendment because of their feelings about one of these governors. In my view, however, this amendment is about principle, not politics.

We do not disqualify other potential presidential candidates on the basis of their experience or their stands on substantive issues, and we should not disqualify Governors Schwarzenegger or Granholm, either. The principle of equal rights for all American citizens should not have an exception based on nativity--or on any other indelible characteristic--and these two governors should be allowed to run for President if they choose to do so.

This principle does not imply, of course, that voters would have to ignore a candidate's nativity, and, as Madison said long ago, it might be more difficult for Governors Schwarzenegger and Granholm than for a natural-born candidate to convince voters that they would act in our country's best interests. Instead, the principle of equal rights simply requires than neither of these governors nor any other citizen be automatically disqualified from the presidency because of their place of birth.

The argument that presidential eligibility is not substantive enough for a constitutional amendment also does not hold up under scrutiny. The distinguished, non-partisan organization called the Constitution Project has developed a series of guidelines for constitutional amendments. According to these guidelines, a constitutional amendment "should address matters ... that are likely to be recognized as of abiding importance by subsequent generations," "should be utilized only when there are significant practical or legal obstacles to the achievement of the same objectives by other means;" "should not be adopted when they would damage the cohesiveness of constitutional doctrine as a whole;" and "should embody enforceable, and not purely aspirational, guidelines."

An amendment to eliminate the natural-born citizen requirement clearly meets all of these tests. The equal-rights principal is a matter of "abiding importance." Because the natural-born citizen requirement is in the Constitution, there are significant legal obstacles to obtaining equal rights through other means. As pointed out earlier, this requirement contradicts the Fourteenth Amendment, so eliminating it would actually enhance constitutional doctrine as a whole. And an amendment to eliminate this requirement would obviously be easy to enforce.

Although elimination of second-class citizenship for all naturalized citizens would require a constitutional amendment, full citizenship for foreign-born adoptees, a subset of naturalized citizens, might be achieved through the Natural Born Citizen Act, S. 2128, introduced by

Senators Nickles, Landrieu, and Inhofe. This bill provides a definition of a natural-born citizen that includes foreign-born adoptees. If it were passed and upheld by the U.S. Supreme Court, therefore, it would allow foreign-born adoptees, but not other naturalized citizens, to run for President.

4. A Simple Matter of Equal Rights

The principles on which our democracy is founded need to be protected, extended, and reaffirmed. The Equal Opportunity to Govern Amendment (with a 20-year time-of-citizenship requirement) introduced by Senator Hatch and Representative Rohrabacher and the President and Vice President Eligibility for Office Bill (with a 35-year time-of-citizenship requirement) introduced by Representatives Snyder, Issa, and Frank provide an opportunity to protect, extend, and reaffirm one of our most fundamental principles, namely, the principle that all American citizens should have equal rights. The Natural Born Citizen Act moves move toward equal rights without a constitutional amendment; it creates equal rights for foreign-born adoptees, like my son, but not for most naturalized citizens.

In practical terms, the right to run for President is not the most important right a citizen can have. After all, the vast majority of American citizens will never attempt to run for President. In symbolic terms, however, the right to run for President is vitally important.

Commentators, politicians, and teachers are fond of saying that the United States is a country where anyone can grow up to be President, because this expression conveys the essence of our democracy. This expression clearly sends the signal that political offices in this country are not inherited or restricted to a select few, but instead are open to anyone who can convince the voters of his or her merit. This message gets through. In an ABC News poll taken earlier this year, 54 percent of Americans between the ages of 12 and 17 believe they could grow up to be President.

The power of this symbolism was brought home to me just a few days ago. On September 22, the Syracuse Post-Standard wrote an editorial in support of the amendments to eliminate the natural-born citizen requirement that were introduced by Senator Hatch and Representative Rohrabacher. The author of this editorial knew about me and my work because of my testimony before a House Committee in 2000, and the editorial contained a quote from me and mentioned by son, Jonah. The next day I received a letter in the mail from Ms. Cathy Fedrizzi, one of my son's second-grade teachers. Here is some of what this letter said:

Dear Dr. Yinger,

As I read this morning's editorial about Jonah, I had a feeling this would be a hard day. I was scheduled to visit Jonah's class to teach about the upcoming election. Part of my lesson involves teaching about who is eligible to become president...

....As we worked our way through the lesson, I noticed Jonah sitting on the edge of the group. That's unusual for Jonah...whenever I've taught guest lessons before, he's been front and center, so I had a feeling he wasn't happy. Before I got to the rules for becoming President, he told me the rule about being born a citizen. I explained that some laws are made a long time ago and

seem like a good idea at the time, but I didn't like the law the way it was either. He didn't seem satisfied with my answer, and neither was I.

I feel sad every time this situation occurs. .... I hope that some day, before I stop teaching, I can tell eight year old students that anyone sitting on the floor at my feet could one day be president of the United States.

My son should not have to feel this way. No American second grader should have to feel this way. No American citizen should have to feel this way. I urge the members of this committee, and indeed all members of Congress, to support Senator Hatch's Equal Opportunity to Govern Amendment, one of the comparable amendments introduced in the House, or, as a second-best solution, the bill proposed by Senator Nickles. Let us renew our commitment to the equal-rights principle, one of the cornerstones of our democracy, by giving naturalized citizens the right to run for President.