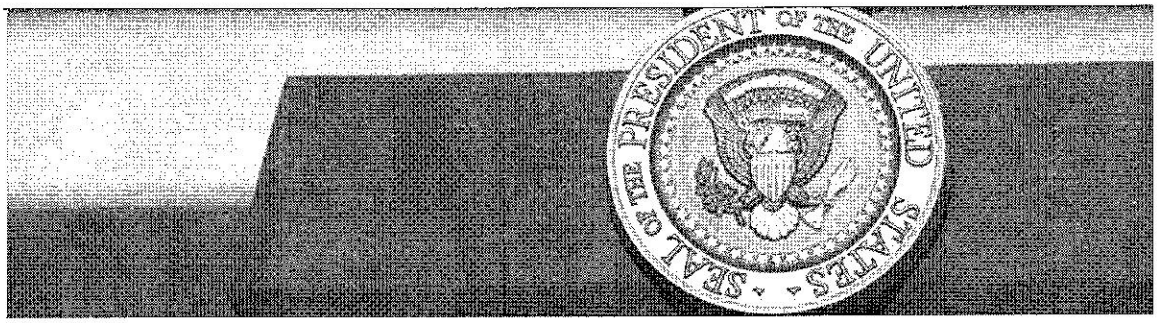

The U.S. Constitution requires that a candidate for president or vice president must have been born in the United States or otherwise a "natural born citizen." Controversies have arisen in U.S. history from time to time as to who is "natural born" and therefore eligible to be president. Furthermore, with so many foreign-born citizens living in the United States, many people believe this constitutional requirement itself should be changed.

In 1787, the Constitutional Convention in Philadelphia wrote the U.S. Constitution and established the eligibility requirements of the Office of the Presidency. Article II, Section 1 makes clear that to be president, a person must be at least 35 years old and have lived in the U.S. for at least 14 years. Importantly, the delegates to the Philadelphia Convention added a clause requiring that the president be a "natural born citizen." The natural-born citizen clause has been traditionally interpreted to allow only those who were born within the United States to be president. It states, "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 . . . ."

Where Does the Term "Natural Born Citizen" Come From?

The term "natural born citizen" has origins in English common law, or the law as understood from the courts in England. In his authoritative *Commentaries on the Laws of England* (1765), William Blackstone wrote, "Natural-born subjects are . . . born within the dominions of the crown of England, that is, within . . . the allegiance of the king; and aliens . . . are born out of it." Allegiance of this kind he called "natural allegiance," because "every man owes natural allegiance where he is born."

Blackstone also provided a definition of "naturalization." A person who is not a natural-born subject (citizen) of the king could be *naturalized*, and therefore made a citizen, by an act of Parliament. A naturalized subject was "in exactly the same state as if he had been born in the king's [allegiance]; except only that he is incapable . . . of being a member of the privy council [or king's advisers], or parliament . . . ."

The earliest known reference to the term "natural-born citizen" in the United States comes from John Jay, the man who would become the nation's first chief justice. When he was secretary of foreign affairs in 1787, he wrote a letter to George Washington, who presided over the Constitutional Convention in Philadelphia. In this letter, Jay suggested that "the

Commander in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen." Jay believed that a foreign-born president was too risky for the nation.

Jay's proposal became a qualification for anyone considering a run for the presidency. The Constitutional Convention did not debate the subject. Some did propose a stricter requirement, which would have meant that the president, vice president, senators, and representatives all have to be natural-born citizens, but the Constitution was ratified without that strict language.

One exception does allow naturalized citizens to be president, but the exception excludes anyone living today. The Constitution allows anyone who had been naturalized by the time of the Constitution's adoption to be president. That exception is obviously no longer relevant to any presidential candidate in the 21st century.

What Does "Natural Born" Mean?

Constitutional scholars are in agreement about what a naturalized citizen is. It means a person who gains citizenship at some point after he or she is born by fulfilling certain legal requirements. There is some disagreement, however, about what a natural-born citizen is.

The text of the Constitution itself offers no definition for the term "natural born citizen," and the Supreme Court has never decided exactly what the term means. Harvard Law Professor Laurence Tribe notes, therefore, that the definition of the term natural-born citizen is "murky and unsettled."

Nonetheless, a majority of scholars read the natural-born citizen clause broadly. They understand that persons born on U.S. soil or within U.S. jurisdiction (geographical governance) are natural-born citizens, as are persons born on foreign soil to two citizen-parents. But they also argue that natural-born citizens can be persons born on foreign soil to at least one parent who is a U.S. citizen, as long as that parent previously lived in the United States. These scholars argue that throughout U.S. history, Congress has consistently passed laws defining citizenship-at-birth this way.

For example, these scholars cite the Naturalization Act of 1790, which provides that "the children of citizens of the United States, that may be born . . . out of the limits of the United states, shall be considered as natural born citizens . . . ." The only limitation was that the child's father must have resided within the United States at some point.

Today, Section 1401 of Title 8 in the U.S. Code similarly defines what "citizen at birth" means. It says that "nationals and citizens of the United States at birth" include "a person born in the United States, and subject to the jurisdiction thereof . . . ." In addition, anyone born outside the U.S. but who has at least one citizen-parent who has lived in the United States for more than five years is also a U.S. citizen at birth.

Other scholars read the natural-born citizen clause more narrowly, arguing that *only* persons born within the borders or within the jurisdiction of the United States are natural born citizens. All other citizens are naturalized. These scholars generally define the term according to English common law (as in Blackstone's *Commentaries*, where natural-born citizenship was determined by the "dominion" in which someone was born).

Before the 14th Amendment was ratified in 1868, they argue, even a person born to immigrant parents on U.S. soil was not considered a citizen-at-birth. The amendment changed that understanding, stating "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." Supporters of the narrow definition argue that this only shows that persons born or naturalized "*in* the United States" (or its jurisdiction) are citizens.

When Arnold Schwarzenegger became California's governor in 2003, some of his supporters wanted to amend the U.S. Constitution so he could run for president.

Supporters of the narrow definition also argue that a "citizen at birth" is not a synonym for "natural-born citizen." If it was, then the laws would have said so. In 1795, Congress passed a new Naturalization Act that replaced the 1790 statute and removed language about natural-born citizens. The label "natural-born" never again appeared in a U.S. naturalization statute. Citizens at birth, therefore, may be "naturalized at birth" or gain citizenship by descent (from their parents), but they are not "natural born citizens."

In some presidential election years, the natural-born citizenship of candidates has been challenged. Republican Senator Barry Goldwater of Arizona ran for president in 1964, but he had been born in Arizona when it was still a U.S. territory (and not a state). Similarly, Republican Senator John McCain of Arizona ran for president in 2008, but he had been born in the Panama Canal Zone (a U.S. territory from 1903 to 1979). Neither Goldwater nor McCain, however, were disqualified from running for president. In McCain's case, the Senate voted unanimously that he was eligible to run for president.

Naturalized Citizens for President?

Over the years, some politicians have advocated changing or eliminating the natural-born citizen clause itself. They tend to see it as an anachronism (a throw-back to a previous era). John Yinger, a professor of economics and public administration at Syracuse University, has challenged the clause as being simply "no longer relevant" because the "Founder Fathers included the natural-born-citizen clause so no foreign prince could buy his way into the presidency." Beyond that, Yinger argues, the clause contradicts the basic American principle that "All citizens should have equal rights."

The only way to alter the Constitution would be through the amendment process. In July 2003, Senator Orrin Hatch (R-Utah) introduced the Equal Opportunity to Govern Amendment. It would have terminated the requirement that a person must be born in the U.S. to become president or vice president. The amendment would have allowed naturalized citizens the opportunity to serve as the head of state, provided that they had lived in the country for at least 20 years and fulfilled the other requirements. In support of this amendment, Senator Hatch spoke on the Senate floor:

> Ours is a nation of immigrants. The history of the United States is replete with scores of great and patriotic Americans whose dedication to this country is beyond reproach, but who happen to have been born outside of Her borders.... More than 700 recipients of the Congressional Medal of Honor—our Nation's highest decoration for valor—have been immigrants. But no matter how great their sacrifice, leadership, or love for this country, they remain ineligible to be a candidate for President. This amendment would remove this unfounded inequity.

Since the 1870s, 26 similar amendments have been proposed in Congress to change or eliminate the natural-born citizen clause; all have failed in subcommittees. Hatch's proposal met the same fate.

The reason is that many people want to keep the clause. They argue that the founders had good reason to include it. There was widespread caution throughout the United States at the time of the Constitutional Convention about the new government becoming a hereditary monarchy. Some feared that delegates to the Convention wanted either Prince Henry of Prussia or the Frederick the Duke of York, the second son of King George III of England, to be the new monarch for America. John Jay feared a monarchy when he wrote his letter to Washington.

Today, the fear of monarchy is gone. But in the aftermath of the September 11, 2001 terrorist attacks, the fear of an assault from a foreign entity exists. One task of the president of the United States is to be commander in chief of its armed forces. According to Matthew Spalding of the Heritage Foundation, a conservative think tank, naturalized citizens as president may have reservations about using the military against the country of their birth. He has warned that:

> The presidency is unique: One person makes crucial decisions, many having to do with foreign policy and national security. With a single executive, there are no checks to override the possibility of foreign intrigue or influence, or mitigate any lingering favoritism for one's native homeland.

If the U.S. ever allows naturalized citizens to run for president, a constitutional amendment will have to be passed. No such amendment is on the immediate horizon.