

AMENDING THE NATURAL BORN CITIZEN REQUIREMENT: GLOBALIZATION AS THE IMPETUS AND THE OBSTACLE

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INTRODUCTION

The natural born citizen requirement in Article II of the United States Constitution has been called the “stupidest provision” in the Constitution,¹ “undecidedly un-American,”² “blatantly discriminatory,”³ and the “Constitution’s worst provision.”⁴ Since Arnold Schwarzenegger’s victory in the California gubernatorial recall election of 2003, commentators and policy-makers have once again started to discuss whether Article II of the United States Constitution should be amended to render naturalized citizens eligible for the presidency.⁵ Article II, Section 1, Clause 5 of the Constitution defines the eligibility requirements for an individual to become president. Article II provides:

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.⁶

Although these sixty-two words are far from extraordinary, the natural born citizen provision is controversial because it prevents over 12.8 million Americans from being eligible for the presidency.⁷ In addition to Governor

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1. When asked to identify the stupidest provision in the Constitution for a symposium issue of Constitutional Commentaries, two separate constitutional scholars independently chose the natural born citizen clause. Robert Post, *What is the Constitution’s Worst Provision?*, 12 CONST. COMMENT. 191, 192 (1995); Randall Kennedy, *A Natural Aristocracy?*, 12 CONST. COMMENT. 175, 175 (1995).

2. Editorial, *Don’t Rush to Change Constitution*, GREEN BAY PRESS-GAZETTE, Jan. 4, 2005, at A5.

3. William Safire, Essay, *The Constitution’s Flaw*, N.Y. TIMES, Sept. 6, 1987, at E15.

4. Post, *supra* note 1, at 191.

5. See Martin Kasindorf, *Should the Constitution be Amended for Arnold?*, USA TODAY, Dec. 3, 2004, at 1A.

6. U.S. CONST. art. II, § 1, cl. 5.

7. Editorial, *Time for a Change?: Should Concerns Rooted Firmly in the 18th Century Still Disqualify Immigrants from Serving as President?*, CLEVELAND PLAIN DEALER, Jan. 10, 2005, at B6.

Schwarzenegger, the natural born citizen clause prohibits many other prominent Americans from becoming president, including Michigan Governor Jennifer Granholm,⁸ former Secretaries of State Madeleine Albright and Henry Kissinger, Labor Secretary Elaine Chao,⁹ and over 700 Medal of Honor Winners.¹⁰ Even though many of these individuals have served in high political positions or fought in a war on behalf of America, they are not able to become president simply because they were not born in the United States.¹¹

The natural born citizen clause of the United States Constitution should be repealed for numerous reasons. Limiting presidential eligibility to natural born citizens discriminates against naturalized citizens, is outdated and undemocratic, and incorrectly assumes that birthplace is a proxy for loyalty. The increased globalization of the world continues to make each of these reasons more persuasive. As the world becomes smaller and cultures become more similar through globalization, the natural born citizen clause has increasingly become out of place in the American legal system. However, even though globalization strengthens the case for a Constitutional amendment, many Americans argue against abolishing the requirement. In a recent USA Today/CNN/Gallup Poll taken November 19–21, 2004, only 31% of the respondents favored a constitutional amendment to abolish the natural born citizen requirement while 67% opposed such an amendment.¹² Although some of the reasons for maintaining the natural born citizen requirement are rational, many of the reasons are based primarily on emotion. Therefore, although globalization is one impetus that should drive Americans to rely on reason and amend the Constitution, this paper argues that common perceptions about globalization ironically will convince Americans to rely on emotion and oppose a Constitutional amendment.

Part one of this paper provides a brief history and overview of the natural born citizen requirement. Part two discusses the rational reasons for

8. Jennifer Granholm was born in Canada and moved with her family to the U.S. when she was four years old. Myriam Marquez, Editorial, *No Terminating Inevitable Tugs of the Heart*, ORLANDO SENTINEL, Oct. 24, 2004, at G3.

9. Kasindorf, *supra* note 5, at 2A (noting that Madeleine Albright was born in Czechoslovakia and Henry Kissinger was born in Germany); *Time for a Change?: Should Concerns Rooted Firmly in the 18th Century Still Disqualify Immigrants from Serving as President?*, *supra* note 7, at B6 (noting that Elaine Chao was born in Taiwan).

10. Vicki Haddock, *President Schwarzenegger?: Some Think It's Time to Stop Excluding Foreign-Born Citizens from Serving in the Oval Office*, S. F. CHRON., Nov. 2, 2003, at D1.

11. *A Constitutional Anachronism*, Editorial, N.Y. TIMES, Sept. 6, 2003, at A10. The United States Code clarifies some of the ambiguities regarding who is and who is not considered a natural born citizen. See 8 U.S.C. §§ 1401–1408 (2000).

12. Kasindorf, *supra* note 5, at 2A.

abolishing this requirement and describes why the increase in globalization makes abolishing the natural born citizen requirement more necessary than ever. Part three presents the arguments against allowing naturalized citizens to be eligible for the presidency and identifies common beliefs about globalization that will cause Americans to rely on emotion and oppose a Constitutional amendment.

I. HISTORY AND BACKGROUND OF THE NATURAL BORN CITIZEN REQUIREMENT

For a provision that excludes millions of Americans from having the opportunity to become the next American president, the natural born citizen requirement was added to the Constitution with surprisingly little fanfare. Unlike many other Constitutional provisions that were debated during the Constitutional Convention or analyzed in the Federalist Papers, very little written evidence exists regarding the addition of the natural born citizen requirement to the presidential eligibility clause.¹³ Despite the lack of clear evidence, many commentators trace the origin of the provision to a letter written by John Jay, the future first Chief Justice of the U.S. Supreme Court, to George Washington during the Constitutional Convention in 1787.¹⁴ The letter recommended that the drafters provide a strong check against the admission of foreigners into the government and expressly require that the commander-in-chief be a natural born citizen.¹⁵ Specifically, Jay wrote:

Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen.¹⁶

Many commentators believe that Jay wrote this letter to respond to a rumor that the Convention was secretly designing a monarchy to be ruled by a foreign power.¹⁷ Regardless of whether this letter prompted the inclusion of the natural born citizen requirement, many believe that, at the time of the drafting of the Constitution, Americans had a general fear of foreign influence after witnessing “how Austria, Prussia, and Russia infiltrated

13. *Time for a Change?: Should Concerns Rooted Firmly in the 18th Century Still Disqualify Immigrants from Serving as President?*, *supra* note 7, at B6.

14. Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 MD. L. REV. 1, 5 (1968).

15. *Id.*

16. *Id.*

17. *Id.*

Poland and carved up that country for themselves.”¹⁸ Additionally, some believe that the Founding Fathers were concerned about the possibility that the power of the new government would end up in the hands of a single leader.¹⁹ Furthermore, at the time of the Constitution’s drafting, each state defined citizenship in its own way; therefore, some historians speculate that the natural born citizen provision was adopted in an effort to ensure that every citizen who was eligible for the presidency achieved citizenship in the same manner.²⁰ Yet, even though commentators, scholars, and historians have tried to determine exactly why the Founding Fathers adopted this phrase, “no explanation of the origin or purpose of the presidential qualification clause appears anywhere in the recorded deliberations of the Convention.”²¹

Despite the fact that limited information exists about why the founding fathers included the natural born citizen requirement in the Constitution, Article II has never been amended since the adoption of the Constitution in 1789. Throughout the years, several members of Congress have proposed changing the natural born citizen requirement to allow naturalized citizens to become President,²² but none of these proposed amendments has generated two-thirds of the Congressional votes needed to be presented to the states for ratification.²³ Most recently, Senator Orrin Hatch, a Republican from Utah and former Chairman of the Senate Judiciary Committee, proposed an amendment that would allow an immigrant who has been naturalized for twenty years to run for President.²⁴ The Senate Judiciary Committee held a hearing on the amendment in October 2004 but took no action.²⁵ United States Representative Dana Rohrabacher from California has also introduced a similar Constitutional amendment in the House.²⁶ Additionally, Representative Vic Snyder from Arkansas has pro-

18. Haddock, *supra* note 10, at D1.

19. It is reported that the fear of foreign influence gave rise to the Electoral College because people believed that foreign agents would find it impossible to penetrate and corrupt a presidential election due to the existence of the Electoral College system. Ray O’Hanlon, *Arnie Could Break Presidential Mould; Letter From New York*, IRISH NEWS, Oct. 14, 2003, at 8.

20. Haddock, *supra* note 10, at D1.

21. J. Michael Medina, *The Presidential Qualification Clause in this Bicentennial Year: The Need to Eliminate the Natural Born Citizen Requirement*, 12 OKLA. CITY U. L. REV. 253, 260 (1987) (quoting Gordon, *supra* note 14, at 4).

22. The idea of abolishing the natural born citizen requirement has died in Congress more than two dozen times since the 1870s. Kasindorf, *supra* note 5, at 2A.

23. *Id.* The requirements for amending the Constitution are set forth in Article V of the U.S. Constitution. U.S. CONST. art. V.

24. Chris Andrews, *White House out of Reach: Not All Americans Are Equal—Path to Presidency Blocked for Naturalized Citizens*, LANSING ST. J., Jan. 9, 2005, at 1A.

25. *Id.*

26. *Id.*

posed an amendment that would allow a citizen who has lived in the United States for thirty-five years to become eligible for the presidency.²⁷ In addition to Congressional action, Arnold Schwarzenegger supporters have developed a website and advertised on television advocating a Constitutional amendment to help the amendment process gain momentum.²⁸ Yet, regardless of the recent political action and the political popularity of Arnold Schwarzenegger, the natural born citizen requirement has yet to be changed.

II. WHY THE INCREASE IN GLOBALIZATION PRESSES FOR AN AMENDMENT TO THE NATURAL BORN CITIZEN REQUIREMENT

Although varying definitions of globalization exist and considerable debate continues regarding the true meaning of globalization, for the purposes of this paper, the term globalization refers to the concept of “goods and services, or social and cultural influences, gradually becom[ing] similar in all parts of the world.”²⁹ In other words, globalization can be seen as the process by which cultures and societies are becoming more and more similar because of the increase in communication, ease of travel, media access, and immigration. The process of globalization provides a number of attractive reasons why the natural born citizen requirement should be abolished. This section of the paper identifies some of the reasons why supporters of a Constitutional amendment seek to abolish the natural born citizen requirement and also identifies why the increase of globalization makes each of these reasons more persuasive. Specifically, the natural born citizen requirement is discriminatory, the requirement is outdated and undemocratic, and a person’s place of birth is not an effective means of determining whether he or she will be a good president.

A. *The Natural Born Citizen Requirement Is Discriminatory*

The most frequently cited reason for abolishing the natural born citizen provision is that the provision is discriminatory.³⁰ This provision pre-

27. Joe Mathews, *Maybe Anyone Can Be President: Support Is Growing to Amend the Constitution to Let Foreign-Born Citizens Lead the Nation. So, Which Governor Comes to Mind?*, L.A. TIMES, Feb. 2, 2005, at A1.

28. See AmendforArnold&Jen, <http://www.amendforarnold.com> (last visited June 17, 2005).

29. Cambridge Advanced Learners Dictionary, <http://dictionary.cambridge.org/define.asp?key=33184&dict=CALD> (last visited June 17, 2005).

30. Some people feel quite strongly that the natural born citizen requirement is discriminatory. John Dean, former counsel to President Nixon, noted, “It will never be known how many potentially great presidents have never even aspired to the office because of the constitutional prohibition. Show me a person who believes that the natural born qualification clause should remain in the Constitution,

vents over 12.8 million Americans, including two governors, numerous statesmen, and 700 Medal of Honor winners, from having the same opportunities as their natural born counterparts.³¹ Therefore, the natural born citizen requirement does not promote “equality[,] which ought to be the basis of every law.”³² This lack of equality is especially abhorrent when one recognizes that the difference between a naturalized citizen and a natural born citizen is arbitrary. For example, many Americans, if asked whether the natural born citizen requirement should be repealed may respond, “No, of course not, only an American should be President.” However, this response fails to recognize that naturalized citizens are American citizens. “Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency.”³³ Moreover, many people would probably agree that a naturalized citizen who is born abroad and adopted by American parents at the age of three months and goes to American schools would have better qualifications to be president than a person who is born in the United States but moves to France at the age of three months, attends French schools, moves back to the United States at the age of forty, enters politics, and runs for the presidency at the age of fifty-four.³⁴ Allowing the natural born citizen in the preceding example to be eligible for the presidency discriminates against the naturalized citizen because it provides the natural born citizen with an opportunity that is not available to the naturalized citizen.

In addition to limiting the opportunities available to one class of citizens and therefore harming those individuals, this type of discrimination also harms America as a whole. Advocates of a Constitutional amendment argue that this provision relegates “naturalized citizens to second-class status.”³⁵ Discrimination harms the country because it creates an additional

and I will show you a bigot, pure and simple.” John W. Dean, *The Pernicious “Natural Born” Clause of the Constitution: Why Immigrants Like Governors Schwarzenegger and Granholm Ought to be Able to Become Presidents*, FINDLAW, Oct. 8, 2004, <http://writ.news.findlaw.com/dean/20041008.html>. “[I]t is absurd that [Arnold Schwarzenegger] and other foreign-born citizens of the U.S. do not have the right to run for president.” Joanne Madden, Editorial, *No Right to Run for President*, TORONTO STAR, Jan. 21, 2005, at A17.

31. Kasindorf, *supra* note 5, at 2A.

32. *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 854 (1995) (Thomas, J., concurring) (quoting James Madison, Memorial and Remonstrance Against Religious Assessments, (June 20, 1785), http://press-pubs.uchicago.edu/founders/documents/amendI_religions43.html).

33. Post, *supra* note 1, at 193 (quoting *Luria v. United States*, 231 U.S. 9, 22 (1913)).

34. Article II of the Constitution also requires that a person be a resident of the United States for fourteen years in order to be eligible for the Presidency. U.S. CONST. art. II, § 1, cl. 5.

35. Safire, *supra* note 3, at E15. Representative Barney Frank, a Democrat from Massachusetts said that the natural born citizen clause “tells immigrants they are somehow flawed.” *Drive Aims to Let Foreign-Born Seek Presidency*, TULSA WORLD, Dec. 13, 2004, at A14. See also Kennedy, *supra* note 1, at 175 (discussing the natural born citizen clause and noting “[o]ne concrete way of measuring the

dividing line separating one class of Americans from another. In a country divided by race, religion, abortion, and countless other issues, an unjustifiable distinction based on a person's place of birth merely contributes to the internal divisions that already pervade America. Amending the Constitution to abolish this arbitrary distinction would eliminate one more division amongst Americans and would help to ensure that all Americans are treated equally under the law.

Although discrimination between natural born and naturalized citizens has existed since the ratification of the Constitution, globalization dictates that we amend the natural born citizen clause now because discriminating against naturalized citizens in favor of natural born citizens is no longer justified. In 1789, the Founding Fathers presumably included the natural born citizen clause because they were afraid of a foreigner becoming president.³⁶ They were allegedly afraid that a person who was born abroad, in a foreign culture, and with foreign influences would come to America, become president, and take over the country. Today, unlike in 1789, discriminating against naturalized citizens based solely on the fact that they were not born in the United States is no longer justified because globalization has lessened the differences between natural born citizens and foreign-born citizens. The increase in travel, the growth of international economic markets, and the increase in the number of people who are multi-lingual contribute to making people in the world more similar. Globalization is breaking down the differences amongst cultures because people throughout the world now have access to the same information, buy and sell the same products, and frequently travel or move out of their "home" countries during their lifetimes. Accordingly, the natural born citizen requirement no longer serves the same purpose that it did in 1789 when travel was extremely limited and foreign cultures were, in many cases, very different than the culture in America.

In addition to minimizing the differences between cultures, globalization is also one of the reasons³⁷ why discrimination against naturalized citizens is as widespread as it is today. Globalization and the homogenization of the world have led to an increase in the number of foreign compa-

extent to which people affiliated with different social groups are full and equal members of this nation is to ask whether a person associated with that group could plausibly be elevated to the highest office in the land"); Editorial, *A More Perfect Democracy: Why Not a Naturalized Citizen for President?*, DALLAS MORNING NEWS, Sept. 28, 2004 ("It doesn't make sense to keep the 12 percent of the U.S. population that was born overseas in a second-class political category.").

36. See *supra* p. 277-79.

37. The United States' policy on immigration could also be cited as a reason why discrimination is as widespread as it is today.

nies doing business in America, the number of Americans adopting foreign-born children, and the number of people moving from one country to another.³⁸ These increases result in the number of people being discriminated against being higher than ever. For example, in 2000, there were over nine million naturalized American citizens. However, in 2004, there were over 12.8 million naturalized Americans.³⁹ Therefore, even if there was previously no urgency to amend the natural born citizen requirement because the provision did not discriminate against very many people, the increase of globalization should now compel Americans to pass a Constitutional amendment because the natural born citizen requirement discriminates against more Americans with each passing year.

B. *The Natural Born Citizen Clause Is Outdated*

Those opposed to the natural born citizen clause also argue that the clause is outdated.⁴⁰ Specifically, the increase of globalization has made this provision a relic of the past. Over 200 years have passed since the original drafting of the natural born citizen clause. During those 200 years, technological innovations have made it possible for people to travel and move from one country to another during their lifetimes, and the growth and development of the world market has created a need for people to move from one country to another because companies have to staff their offices, manufacturing facilities, and retail outlets throughout the world.

Additionally, considering that the Founding Fathers presumably included the natural born citizen clause in the Constitution partly out of fear of foreign subversion, the current stability of the American government and the intense media scrutiny of presidential candidates virtually eliminates the possibility of a “foreigner” coming to America, becoming a naturalized citizen, generating enough public support to become president, and somehow using the presidency to directly benefit his homeland. The successful implementation and maintenance of a separation of power amongst the

38. See *Let Arnold Run*, ECONOMIST, Dec. 18, 2004, at 16 (noting that the need to abolish the natural born citizen clause has “become more pressing with the ever larger numbers of people flowing into the country”). Compare James C. Ho, *Unnatural Born Citizens and Acting Presidents*, 17 CONST. COMMENT. 575, 575 n.2 (2000) (noting that in 1997, there were over nine million naturalized citizens in the United States), with Kasindorf, *supra* note 5, at 2A (recognizing that there are currently over 12.8 million naturalized citizens in the United States).

39. Kasindorf, *supra* note 5, at 2A.

40. Proponents of a constitutional amendment argue that the prohibition against naturalized citizens being president is “archaic” and “even xenophobic.” *Drive Aims to Let Foreign-Born Seek Presidency*, *supra* note 35, at A14. See also Madden, *supra* note 30, at A17 (referring to the natural born citizen requirement as “a relic from the past” and stating that the Constitution’s “qualifications for the office of president have become outdated and out of step with modern American society”).

branches of government as well as the effective checks and balances in today's government make this scenario extremely unlikely. Therefore, because the basis for initially including the natural born citizen clause is no longer as necessary as it once may have been, the requirement has become an outdated remnant from a previous era. It is a remnant that should be repealed because globalization has caused the world to change significantly since the time of the drafting of the Constitution, and because the federal government is no longer as open to the possibility of foreign subversion as it might have been in the late 18th century.⁴¹

C. *Place of Birth Is Not a Proxy for Loyalty*

The Constitution should be amended because birthplace is not a proxy for loyalty. One of the reasons for having presidential eligibility requirements is to ensure that the person that Americans choose to be their leader is a "good American." The "leader of the free world" needs to have numerous qualities, and arguably the most important is that the individual be loyal to America. Unfortunately, where a person is born tells nothing of a person's loyalty or whether that person will be a good president. Moreover, place of birth is not something that a person chooses. For example, many Americans view the actor Tom Hanks as a loyal and arguably "good" American, while those same Americans may perceive the actor Martin Sheen as decidedly un-American or disloyal because of his political views. However, both Martin Sheen and Tom Hanks are natural born Americans.⁴² Similarly, many people consider the comedian Bob Hope to have been a "good" American—after all, he spent countless holidays traveling around the world entertaining U.S. soldiers; yet Bob Hope was not a natural born American citizen. He was born in England.⁴³ In contrast, John Walker Lindh, the twenty-year-old American who was captured while fighting for the Taliban in Afghanistan was born in Washington, D.C., and therefore is eligible to run for President.⁴⁴

Ultimately, the natural born citizen requirement is illogical because it requires a person's birthplace to act as a proxy for determining an individ-

41. See *Let Arnold Run*, *supra* note 38, at 16 (referring to the natural born citizen requirement as an "outdated and pointless piece of discrimination").

42. Tom Hanks was born in Concord, California. Tom Hanks, Wikipedia, http://en.wikipedia.org/wiki/Tom_Hanks (last visited Sept. 2, 2005). Martin Sheen was born in Dayton, Ohio. Martin Sheen, Wikipedia, http://en.wikipedia.org/wiki/Martin_Sheen (last visited Sept. 2, 2005).

43. Charlie LeDuff, *Bob Hope Turns 100, With Quiet Thanks for the Memories*, N.Y. TIMES, May 30, 2003, at A18.

44. Paul Bradley, *Lindh, Who Fought For Taliban, Gets 20 Years*, RICHMOND TIMES-DISPATCH, Oct. 5, 2002, at A6.

ual's loyalty to America. Birthplace may at one time have been a more accurate indicator of persons' loyalty to their native country than it is today because 200 years ago people rarely moved from one country to another. In today's world, people are much more likely to move from one country to another and to raise their children in a country different from the country that is their homeland. This increased movement of people in the world and the resulting lack of differences between cultures decreases the effectiveness of using a person's place of birth as an indicator of that person's loyalty.⁴⁵ Accordingly, the natural born citizen provision should be repealed because it does not determine whether a person is a loyal American and therefore does not provide insight into whether a person should be eligible for the presidency.

D. The Natural Born Citizen Requirement Is Undemocratic

America is "a land of opportunity."⁴⁶ People come to America for the opportunities that it provides. They leave their homelands, leave their families, and move to America because they know that they will be treated fairly and have the same opportunities as their next-door neighbors. After all, the Pilgrims originally left England and moved to America to have the opportunity to practice their religion without fear of retaliation. The practice of limiting the opportunities available to people in one segment of the population simply because those people were born in a foreign country runs counter to the American concept of equality. More importantly, limiting presidential eligibility based on place of birth is contrary to the American concept of democracy. The American government is a representative democracy, where American voters vote for the candidate that they choose. Currently, Americans cannot do that. For example, even if every voter wanted to vote for Arnold Schwarzenegger in the next presidential election (implausible as that may be), Governor Schwarzenegger would not be able to become the next President of the United States solely because he was not born in this country. Preventing Americans from being able to vote for the candidate that they choose is undemocratic. Although some may argue that the other presidential qualifications prevent American voters from having

45. "The natural-born citizen requirement embodies the presumption that some citizens of the United States are a bit more authentic, a bit more trustworthy, a bit more American than other citizens of the United States, namely those who are naturalized." Kennedy, *supra* note 1, at 176.

46. *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 486 (1979) (Powell, J., dissenting) (referring to America as the "land of opportunity for diverse ethnic and racial groups"); President William Jefferson Clinton, State of the Union 1995, Jan. 24, 1995 reprinted in *The President's Address: 'We Heard America Shouting'*, N.Y. TIMES, Jan. 25, 1995, at A17 ("America has always been a land of opportunity, a land where, if you work hard, you can get ahead.").

the ability to vote for the candidate of their choice, the natural born citizen requirement is inherently different than the other requirements. For example, Americans cannot vote for someone who is under the age of thirty-five or for someone who has not lived in the United States for fourteen years. However, the requirement that someone be a natural born citizen is inherently different than the other qualifications because a person's place of birth is immutable. Barring calamity, a thirty-three-year-old will eventually become thirty-five years old. Similarly, a person who is unable to meet the fourteen-year residency requirement could move to the United States and live here for fourteen years in order to be eligible for the presidency. A person's age and length of residency are not immutable. They can change as time progresses, and when they do, the American public will be able to use the democratic system to vote for the candidate of their choice. In contrast, the requirement that a person be a natural born citizen is undemocratic because it prevents Americans from ever having the opportunity to vote for a naturalized citizen.

Additionally, globalization is the impetus that should compel Americans to change this practice of only allowing natural born citizens to be president because one of America's major exports is its belief in democracy and the beliefs surrounding the democratic system. Specifically, throughout its history, America has consistently tried to encourage other nations to adopt democratic systems and to convince other countries that freedom of speech, free press, and equality for every citizen are necessary ingredients for a successful democracy.⁴⁷ Globalization and the increase of movement of people between countries make the American concept of democracy more and more visible throughout the world, resulting in other countries looking towards America as an example of a successful democracy.⁴⁸ The existence of an anti-democratic and discriminatory provision such as the natural born citizen requirement in the American Constitution means that Americans do not "practice what they preach."⁴⁹ To continue to set the

47. The current situation in Iraq is the most recent example of America exportation of democracy to other countries.

48. As one commentator testifying before the House Judiciary Committee noted:

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 [sic] 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.

Maximizing Voter Choice: Opening the Presidency to Naturalized Americans: Before the United States Senate Judiciary Committee (Oct. 5, 2004) (written testimony of Professor John Yinger, Trustee Professor of Public Administration and Economics, The Maxwell School of Citizenship and Public Affairs, Syracuse University) available at http://judiciary.senate.gov/testimony.cfm?id=1326&wit_id=3885.

49. This conflict between what America preaches by exporting democracy and what America practices by maintaining an undemocratic requirement such as the natural born citizen requirement

right “democratic” example for others to follow, globalization dictates that America should lead by example and amend the Constitution to end discriminating against citizens based on their place of birth.

III. ARGUMENTS AGAINST A CONSTITUTIONAL AMENDMENT AND WHY COMMON AMERICAN PERCEPTIONS OF GLOBALIZATION WILL PREVENT THE NATURAL BORN CITIZEN REQUIREMENT FROM BEING ABOLISHED

Although the increase in globalization has made the natural born citizen clause a relic of the past, the reality is that American perceptions about globalization will permit Americans to rely on their illogical fears and insecurities and reject any attempt to abolish the requirement. The first portion of this section will identify reasons why many Americans will choose not to abolish the natural born citizen requirement and highlight why many of these reasons are based on emotion rather than on reason. The second half of this section will identify some common reactions and beliefs about globalization and argue that these beliefs will be the justification that Americans seek to allow them to rely on their irrational fears rather than logic when they vote against a Constitutional amendment.

A. *Reasons to Oppose Abolishing the Natural Born Citizen Requirement*

The following section will identify some of the reasons that Americans will rely on for not amending the Constitution. Not all of these reasons are illogical; however, many of them are based on emotional beliefs about what it means to be a natural born citizen, and others are based simply on generalized fear. Additionally, although I would prefer to refer to the reasons in this section as “the most popular” or “the most frequently cited” reasons that Americans cite for not amending the Constitution, the truth is that some of these reasons are not things that people openly admit. People rarely write law review or newspaper articles touting their personal racist beliefs and admitting that the reason why they would not want to see a

could affect how the world views America. Joseph Nye, Dean of Harvard’s Kennedy School of Government believes that “soft power,” the “ability to get what you want by attracting and persuading others to adopt your goals,” is a powerful tool to be used in foreign relations. Joseph S. Nye, Jr., *Soft Power: Propaganda Isn’t the Way*, INT’L HERALD TRIB., Jan. 10, 2003, at 6. However, this ability to attract others depends on your credibility. *Id.* If you are not credible, it will be increasingly difficult to convince others to do what you want through soft power alone and you will have to resort to “hard power,” “the ability to use the carrots and sticks of economic and military might to make others follow your will,” in order to achieve your goals. *Id.* Accordingly, if one of America’s goals is to export democracy without having to resort to economic sanctions or military action, the existence of this anti-democratic provision in our Constitution detracts from America’s credibility. This lack of credibility could cause other countries to view America negatively, thereby limiting the effectiveness of our soft power, which may prevent America from achieving its goal of exporting democracy.

naturalized citizen in the White House is because they believe that a naturalized citizen is more likely to be a race other than Caucasian. Therefore, although not all of the following reasons are frequently discussed in articles debating the merits of amending the Constitution, I believe that they carry significant force and play an important role in a person's decision-making process.

1. Fear of Change

Many Americans fear change. Admittedly, Americans do not fear all change. Although Americans tend to embrace change in certain areas such as technology, medicine, and manufacturing, a large number of Americans are hesitant to tinker with traditional American institutions such as the Constitution⁵⁰ because of the possible consequences that may result.⁵¹ Specifically, people fear that passing a constitutional amendment will somehow destabilize the American legal system because any amendment to the Constitution opens the door for others to push forward Constitutional amendments to advance their own causes.⁵² The thought of an onslaught of amendments to the Constitution scares people into thinking that the Constitution will soon become nothing more than the United States Code—a set of laws that changes based on the whims of society—rather than the supreme law of the land to be amended only when absolutely necessary.⁵³

Moreover, people are afraid that each amendment represents a movement away from the original intent of the Founding Fathers. A substantial number of Americans believe in the wisdom of the Founding Fathers and

50. Tom Blackburn, *Amending the Constitution Hard, for a Reason*, COX NEWS SERVICE, Nov. 28, 2004 (“Most Americans are averse to tinkering with the Constitution.”).

51. This fear of change can be seen in the recent debate over whether the phrase “under God” should be removed from the Pledge of Allegiance. Even though this phrase was only inserted into the Pledge in 1954, many people believe that it has become part of the social fabric of America and should not be removed; however, others argue that it should be removed because the phrase violates the division between church and state. See KeepThePledge.com, *Defending the Pledge of Allegiance and American Freedom*, <http://keepthepledge.com> (last visited June 20, 2005); see also *Elk Grove Unified School Dist. v. Newdow*, 542 U.S. 1 (2004).

52. See Michael McGough, Editorial, *Guns and the Governor: Two Reasons to Amend the U.S. Constitution, but Some Liberals Don't Want to Alter a Jot or Tittle of that 'Scripture.'* PITTSBURGH POST-GAZETTE, Jan. 3, 2005, at A-15 (recognizing that Americans' desire to change the Constitution “may be dulled because the Constitution is under assault by various zealots who would amend it—in order to ban the virtually non-existent problem of flag burning, to make discrimination official with a gay-marriage prohibition, to take powers away from the Supreme Court to rule on such issues as the Pledge of Allegiance”).

53. Although this slippery slope argument has some basis in reason, the fact remains that the difficult amendment process should prevent an amendment such as removing the natural born citizen requirement from opening the floodgates for an influx of other constitutional amendments.

have faith that the Founding Fathers made the best decisions for America.⁵⁴ Ultimately, whether fear of amending the Constitution is rational or irrational, the reality is that many Americans will oppose a Constitutional amendment to the natural born citizen clause because they are afraid that a Constitutional amendment will diminish the stability of the law in America and will move America further away from its roots.⁵⁵

2. This provision just does not affect that many people.

Additionally, opponents of a Constitutional amendment argue that even if it makes logical sense to allow naturalized citizens to be eligible for the presidency, the natural born citizen clause simply does not affect enough people to justify a constitutional amendment. Unlike the Thirteenth Amendment, which abolished slavery, or the Nineteenth Amendment, which gave women the right to vote, the number of citizens that the natural born citizen clause discriminates against is relatively minimal. In addition to not affecting a huge class of people like the Thirteenth or Nineteenth Amendments, preventing someone from being eligible for the presidency is not as extreme as denying someone the right to be free or the right to vote because of the unlikelihood that a naturalized citizen will ever become president. When slavery was abolished, every slave was liberated. When women were given the right to vote, every woman was able to vote. In contrast, if the natural born citizen requirement is passed, not every naturalized citizen will run (or even want to run) for president. Only forty-three people have ever been president of the United States, and even though this provision discriminates against naturalized citizens, many argue that this discrimination is so limited in scope that it does not warrant the extraordinary remedy of a Constitutional amendment.⁵⁶

54. See Editorial, *Unnatural Act?/Foreign-Born Citizens Don't Need to Become President*, PITTSBURGH POST-GAZETTE, Oct. 11, 2004, at A-10 ("It is a brave person who contradicts the wisdom of the Founding Fathers.").

55. It could be argued that this fear of change is one of the primary reasons why the Constitution has been amended only 27 times in the last 225 years. See Haddock, *supra* note 10, at D1 (noting that a constitutional amendment requires a "swell of public support"); see also Mathews, *supra* note 27, at A1 (noting that only twenty-seven of more than 10,000 proposed Constitutional amendments have succeeded).

56. See *Unnatural Act?/Foreign Born Citizens Don't Need to Become President*, *supra* note 54 ("[A] good reason exists why other generations haven't rushed to change the situation—this isn't a problem and it doesn't need the drastic remedy of a constitutional overhaul. . . . President and vice president are the only offices in the land that naturalized citizens can't aspire to, but millions of Americans, by virtue of their circumstances and talents, can't reasonably expect to either. Only 43 men have been president, so the injustice of Article II is very marginal.").

3. Fear of Foreigners

Although people arguing against a Constitutional amendment do not typically admit that they oppose abolishing the natural born citizen requirement because they are afraid that a naturalized citizen might actually be working for a foreign government, the fear of foreigners amongst Americans has increased in the wake of the September 11th attacks. Similar to the fears that the Founding Fathers felt and the fear that John Jay mentioned in his letter to George Washington, the possibility that a foreigner will come in and somehow “take over” America continues to exist in America, albeit in a slightly different form.⁵⁷ Although it seems unlikely and has even been called ludicrous that a foreign power would conspire to place someone with foreign allegiances in the White House,⁵⁸ some Americans more legitimately fear that a naturalized citizen will somehow try to change America by promoting his own culture to the exclusion of others. For example, a foreign-born president could soften immigration policies towards immigrants coming from his “home” country, or allow his previous ties to a different country to influence certain foreign policy decisions such as whether to attack another country, when to issue economic sanctions against that country, or when to provide that country with American aid.⁵⁹ Although these concerns may appear reasonable,⁶⁰ this argument fails to recognize that a person seeking to become president will face intense public scrutiny during the election process, making it doubtful that anyone would be able to come to the presidency with a hidden agenda regarding a foreign country. Therefore, although people may claim that they do not want a foreign-born person in the White House because of the influ-

57. Unlike the situation today, the Founding Fathers were presumably afraid of foreigners out of fear that they were working for another sovereign. In contrast, today people are afraid of terrorists who are not working for a foreign government. Typically, today’s terrorists are groups of people who share the same ideological beliefs and goals. *See generally* FRONTLINE, *infra* note 63.

58. *Time for a Change?: Should Concerns Rooted Firmly in the 18th Century Still Disqualify Immigrants from Serving as President?*, *supra* note 7, at B6.

59. As one commentator noted:

Here’s another scenario. Let’s say foreigners are allowed to run for president, and someone from France gets elected. He’s a great, upstanding individual with great ideas for this country’s future. How do you think he would react if, during his term, we had to go to war against France, his homeland, a place where many of his relatives still reside?

Will Gardner, Editorial, *Foreign-Born Not Fit for Presidency*, THE POST ONLINE, Jan. 31, 2005, <http://thepost.baker.ohiou.edu/E.php?article=E4&date=013105>.

60. If this generalized fear of foreigners was a rational reason to oppose amending the Constitution, one would assume that the natural born citizen requirement would extend to other high-ranking political positions in the United States. However, the prohibition against naturalized citizens only applies to the president and the vice-president. Naturalized citizens are eligible to run for the Senate, to sit on the Supreme Court, and to be the Secretary of State. *See* Lawrence J. Siskind, Editorial, *Arnold for Prez: Fix the Constitution and Let Foreign-Born Citizens Run for the White House*, LEGAL TIMES, Jan. 3, 2005, at 28, 29.

ence that a person's foreign status may have on that person's policy decisions, the truth is that many people simply distrust foreigners.⁶¹

Distrust of foreigners is nothing new. The Founding Fathers distrusted foreigners so much that they included the natural born citizen clause in the Constitution initially. Although some people argue that a general distrust of foreigners is merely thinly veiled racism,⁶² older Americans may believe that their fear of foreigners is legitimate after having lived through World War I, World War II, and the Cold War. Although people hope that this fear diminishes as these events fade into history, events such as September 11th continue to bring this fear back to the forefront in the minds of Americans. Accordingly, even though being afraid of foreigners may seem warranted and rational in the wake of September 11th, relying on this fear as a reason not to amend the natural born citizen requirement is irrational because it is doubtful that a threat to America today would come from a foreign country. It is more likely that a threat would come from a group of people who are not officially sanctioned by any one particular foreign government, but instead are trying to achieve an agenda that includes destroying America.⁶³ However, because the fear of terrorism often translates into a generalized fear of everything non-American,⁶⁴ and some Americans believe that naturalized citizens are not "as American" as natural born citizens because of their ties to another country, fear of foreigners may be one of the main reasons why people will refuse to vote for a constitutional amendment regarding presidential eligibility.

61. According to Forrest McDonald, a retired University of Alabama professor of American History, "Most Americans have an instinctive distrust of foreigners . . . and this has not changed appreciably in the last two, three, four years." Kasindorf, *supra* note 5, at 2A.

62. See Dean, *supra* note 30.

63. For example, Osama bin Laden's movement against America is not meant to defend a foreign country; the purpose is to defend Muslim land. As Osama bin Laden stated in an interview with John Miller from ABC:

Allah has ordered us to glorify the truth and to defend Muslim land, especially the Arab peninsula . . . against the unbelievers. After World War II, the Americans grew more unfair and more oppressive towards people in general and Muslims in particular. . . . The Americans started it and retaliation and punishment should be carried out following the principle of reciprocity, especially when women and children are involved. Through history, American [sic] has not been known to differentiate between the military and the civilians or between men and women or adults and children. Those who threw atomic bombs and used the weapons of mass destruction against Nagasaki and Hiroshima were the Americans. . . . We believe that the worst thieves in the world today and the worst terrorists are the Americans. Nothing could stop you except perhaps retaliation in kind.

Interview by John Miller with Osama bin Laden, in Afghanistan, May 1998, <http://www.pbs.org/wgbh/pages/frontline/shows/binladen/who/interview.html>.

64. "Recent polls suggest that two-thirds of the country is not ready for a foreign-born president. And broad anecdotal evidence, admittedly less scientific, indicates that we pretty much still hate immigrants." Gersh Kuntzman, *American Beat: Hyphenated in the U.S.A.*, NEWSWEEK, Oct. 27, 2003.

A good illustration of Americans' fear and distrust of foreigners can be seen through an analysis of America's views on racial profiling both before and after September 11th. Prior to September 11th, many Americans believed that racial profiling was merely a method of discriminating against foreigners.⁶⁵ However, post-September 11th, public opinion on this topic shifted markedly.⁶⁶ Post-September 11th, many Americans came to believe that the need to protect national security justified the use of racial profiling. People throughout the country became suspicious of foreigners, even those "foreigners" who were actually American citizens.⁶⁷ Ultimately, this fear, whether rational or irrational, will most certainly affect whether Americans abolish the natural born citizen requirement.

4. Loyalty

Along the same lines as a generalized fear of foreigners, opponents of a constitutional amendment argue that foreign-born citizens should not be eligible for the presidency because foreign-born citizens retain an emotional attachment and a sense of loyalty to their homelands. As California Senator Diane Feinstein noted, "I don't think it is unfair to say the president of the United States should be a native-born citizen. . . . Your allegiance is driven by your birth."⁶⁸ Accordingly, Americans fear that a president who has an attachment to another country may allow that attachment to affect the decisions that he or she makes.⁶⁹ Americans expect the

65. According to Professor Ramirez,

[N]ational surveys conducted prior to September 11 indicated that a majority of Americans, regardless of race, believed that racial profiling was a significant social problem. According to a national Gallup Poll released on December 9, 1999, fifty-nine percent of the adults polled believed that the police actively engaged in racial profiling and, more significantly, eighty-one percent said that they disapproved of the practice.

Deborah Ramirez et al., *Defining Racial Profiling in a Post-September 11 World*, 40 AM. CRIM. L. REV. 1195, 1199–1200 (2003).

66. "Since the September 11, 2001 attacks on the Pentagon and the World Trade Center towers, racial profiling has taken on new significance and has left people who were previously committed to eradicating racial profiling less sure of where they stand." *Id.* at 1224. "A practice that once was considered by many to be a blatant civil rights violation is now accepted by some as a necessary tactic during a time of terrorism." *Id.* "According to a Gallup Poll, forty-nine percent of Americans would support a practice of Arabs and Arab-Americans, United States citizens or not, being forced to carry a special identification card; fifty-eight percent would support requiring Arabs to undergo more security checks at airports." *Id.* at 1225.

67. See Phil Hirschorn & Michael Okwu, *Airline Faces Post 9/11 Racial Profiling, Discrimination Suits*, June 4, 2002, CNN.COM, <http://archives.cnn.com/2002/LAW/06/04/airlines.discrimination/> (explaining how three American citizen passengers are suing four U.S. airlines for allegedly discriminating against them based on race).

68. Siskind, *supra* note 60, at 29.

69. Along these same lines, it is impossible to know whether a person who was born in Mexico and came to live in America as a child has more or less of an emotional tie to Mexico than a person who was born in America to a Mexican-American family and culture.

president to put the United States above everything else. The American president must be prepared to make decisions for the good of the country. Whether a candidate is prepared to do that should be one of the primary inquiries of each presidential hopeful, not where the individual was born. Although the argument that naturalized citizens will have emotional ties to their homeland seems like a rational reason to oppose amending the natural born citizen clause, this argument fails to take into account the various situations under which many immigrants come to the United States. Many immigrants come to the United States to escape persecution in their own countries. Many naturalized Americans have been forced to risk their own lives and the lives of their children to escape tyrannical governments in their “home” country. Accordingly, these individuals may be more likely than natural born citizens to be loyal to America, the country that provided them with an opportunity to live free from fear of persecution.⁷⁰

Secondly, deciding not to vote for an amendment abolishing the natural born citizen requirement because a potential presidential candidate may be loyal to his place of birth ignores the fact that many naturalized citizens believe very strongly in America and the opportunities available to immigrants in America because they did not have those same opportunities in their homelands. As Arnold Schwarzenegger stated in his speech at the Republican National Convention:

[I]n this country, it doesn't make any difference where you were born. It doesn't make any difference who your parents were. It doesn't make any difference if, like me, you couldn't even speak English until you were in your 20's. America gave me opportunities, and my immigrant dreams came true. I want other people to get the same chances I did, the same opportunities.⁷¹

Furthermore, voting against an amendment abolishing the natural born citizen requirement ignores the fact that many naturalized citizens made a conscious decision to live in the United States. They are not here simply by an accident at birth. Many of these immigrants risked their lives and left their family, friends, and culture to make America their home. These people often do not know anyone in the United States, are unfamiliar with the culture, and cannot even speak the language. Additionally, a naturalized citizen, unlike a natural born citizen, makes a conscious decision to become

70. Siskind, *supra* note 60, at 29 (“Foreign-born Americans, particularly those from totalitarian countries, tend to be the most fiercely loyal of all citizens.”).

71. Todd S. Purdum, *Upbeat Republicans Revive Bush Theme of Compassion*, N.Y. TIMES, Sept. 1, 2004, at A1.

a U.S. citizen and has to take an oath of allegiance to the United States.⁷² Citizenship is not automatic like it is for natural born citizens. Therefore, although believing that a foreign-born citizen should not be president because he has an emotional tie to his homeland may be a valid reason to vote against amending the constitution, this belief fails to take into account the rigors and sacrifices that naturalized citizens make in order to have the opportunities of American citizenship.

5. Failing to Understand What It Means to Be a Natural Born Citizen

Additionally, Americans may oppose amending the Constitution to allow naturalized citizens to run for president because they do not understand the difference between being a natural born citizen and being a naturalized citizen. Specifically, they do not understand what it takes to become a naturalized citizen.⁷³ Therefore, when asked if the Constitution should be amended to allow naturalized citizens to run for president, many people may respond, “No, I don’t want a foreigner to be president. An American should be president.” Even though naturalized citizens are Americans who have satisfied very strict requirements before being eligible to become citizens, requirements that natural born citizens have not had to satisfy, some Americans believe that naturalized citizens are less American than natural born citizens. Although the ignorance of the American people sounds like a foolish and embarrassing reason for refusing to doing away with this dis-

72. United States Citizenship and Immigration Services, Naturalization Oath of Allegiance to the United States of America, <http://uscis.gov/graphics/aboutus/history/teacher/oath.htm> (last visited June 20, 2005). The naturalization oath states:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

Id.

73. The United States Citizenship and Immigration Services website lists the following general requirements for a person to become a naturalized citizen:

1. Live in the U.S. as a permanent resident for a specific amount of time (Continuous Residence).
2. Be present in the U.S. for specific time periods (Physical Presence).
3. Spend specific amounts of time in your state or district (Time in District or State).
4. Behave in a legal and acceptable manner (Good Moral Character).
5. Know English and information about U.S. history and government (English and Civics).
6. Understand and accept the principles of the U.S. Constitution (Attachment to the Constitution).

United States Citizenship and Immigration Services, Becoming a U.S. Citizen, <http://uscis.gov/graphics/citizenship/becoming.htm> (last visited June 20, 2005).

criminy practice, the failure of Americans to fully understand who is and who is not a natural born citizen may very well prevent a Constitutional amendment from passing simply because people do not truly understand what they are being asked to vote for.

6. Racism and Religious Intolerance

It is an unfortunate truth that many Americans are racist. Although tremendous progress has been made in race relations throughout this country's history, and especially within the last fifty years, racism continues to exist in American politics. For example, black candidates rarely generate enough votes to be elected, and researchers believe that this is primarily because white voters are reluctant to vote for a black candidate.⁷⁴ This reluctance to vote for a non-white candidate⁷⁵ may cause voters to oppose amending the natural born citizen clause because they fear that this is a first step toward having someone who is not white occupying the White House. This fear is irrational because non-white citizens are just as capable of being president as white citizens, and non-white natural born citizens, under the existing language of Article II, are eligible to be president. Despite these facts, it is possible that some Americans will oppose a Constitutional amendment because of their racist beliefs.

Similarly, there is a chance that Americans will not vote to amend the natural born citizen requirement for religious reasons.⁷⁶ America faced the

74. See Patrick Reddy, *For Black Candidates, A Ceiling of Their Own*, WASH. POST, Jan. 19, 2003, at B4. Reddy highlights the impact that racism plays on politics and attempts to answer the question, "Why do mediocre white candidates often win the highest-level jobs while stellar black candidates succeed only when everything goes right?" "There seems to be a 'tinted glass ceiling' preventing black candidates from reaching the top offices—a ceiling held in place by a hard-core group of white voters who, in the words of former Congressional Black Caucus chairman Parren Mitchell, wouldn't vote for you, if you were black, 'even if you walked on water.'" *Id.*

75. *Id.* This reluctance to vote for a non-white candidate is apparent through an analysis of pre-election and post-election polling figures. *Id.* Pollsters have found that it is common for "white voters [to tell] interviewers that they are undecided and then [to vote] 10 to 1 against a black candidate." *Id.* Moreover, research demonstrates that "on average, the margin in the actual election results differs from the margin in the pre-election poll by 10 percentage points to the white candidate's favor." *Id.* "When Anglo voters were asked by a pollster, they would indicate that they were supporting [the black candidate] because they didn't want to be perceived as a bigot. But in the privacy of the voting booth, they may have voted differently." Matt Hendrix, *Suppressed Prejudices Could Dash Kirk's Senate Bid*, DAILY TEXAN, Oct. 14, 2002, at 4.

76. A recent posting on a weblog included what its author would like to see if the presidential eligibility clause were to be amended.

Given the choice to amend the Constitution I would place the following requirements on the Presidential Nominee and the same for VP or a member of the Presidential Cabinet. Parents: Both US born, Christian, raised and educated, Nominee: US born, Christian, raised and educated with four years active military service. (preferably one who has seen combat on the ground and the fighting from a foxhole when an enemy was trying to kill him.) I want a President who knows and understands that America was founded under the Christian philosophy, not Hindu or Muslim.

“religion” question when John Fitzgerald Kennedy ran for President in 1960. Kennedy was the first Catholic ever to serve as President and many people in the country feared that this would somehow influence him while he was in office.⁷⁷ Although it is doubtful today that Americans would have much to say if a Catholic was running for President, religion would likely be a central issue if a Muslim were to run for the highest office in America. Even though this concern is not a legitimate reason to vote against abolishing the natural born citizen clause because many natural born Americans are Muslims, many Americans may oppose a Constitutional amendment because of the possibility that a naturalized citizen would be more likely to be a Muslim, Hindu, or some other religion besides Christian.

7. The Signal this Amendment Would Send to the Rest of the World

Americans may oppose a Constitutional amendment because of the international perception that it would create. Even though the increase of globalization dictates that America should amend the natural born citizen requirement, Americans may oppose a Constitutional amendment because this type of change would signal to the rest of the world that America is willing to be one country of many and that Americans are interested in becoming part of a global world culture. Commentators refer to the symbolic nature of the law as the “expressive function of law” and recognize that Constitutional amendments may have a dual effect.⁷⁸ For example, a Constitutional amendment to ban flag burning may not only deter people from burning American flags but also signal how important patriotism is to America.⁷⁹ Similarly, opponents of a Constitutional amendment to amend the natural born citizen clause may believe that such an amendment would have dual effects. In addition to allowing naturalized citizens to become president, this amendment would signal to the global community that Americans want to become integrated with the rest of the world and that Americans no longer feel the need to be the leading country in the world but are content in being on equal footing with every other country. Although some Americans may believe that the expressive function of a Constitutional amendment is a positive signal to send, United States foreign

Posting of B4Ranch to Free Republic, <http://www.freerepublic.com/focus/f-news/1294714/posts> (Dec. 5, 2004, 5:28 PST).

77. Herbert G. Klein, *Bush's Win, Bush's Challenge*, SAN DIEGO UNION-TRIB., Nov. 14, 2004, at G6.

78. See Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2023 (1996).

79. *Id.*

policy indicates otherwise. Specifically, the United States government, led by the President who is elected by the people, takes great care in preserving its position as the world's only superpower.⁸⁰ In light of this consistent policy, it is doubtful that Americans will support an amendment to the presidential eligibility clause because this could send the wrong signal to the rest of the world.

8. The President as a Symbol of America

Another powerful argument against abolishing the natural born citizen clause is based on the American tradition and history surrounding the presidency. Americans view the presidency not only as a symbol of America and American values but also as a symbol of America's power and strength. Symbols such as flags, ribbons, songs, and phrases have been important parts of the American cultural landscape, and although some people may not believe that the president is a symbol simply because he is a human being, the president and the presidency represent the traditions of America. Not only is the president the direct product of the American democratic system, but in his position as Commander-in-Chief of the armed forces, the president symbolizes the strength of America's military power and supremacy in the world. Accordingly, some Americans may believe that any change to the requirements for presidential eligibility will begin to chip away at the traditions and values of America that the presidency represents.⁸¹ Although this may seem like an irrational reason for not abolishing discrimination against naturalized citizens, Americans may find that the symbolism behind the presidency is more important than the limited discrimination that the natural born citizen provision causes.

An interesting situation arises when one stops to consider what impact globalization will have on symbols such as flags, songs, and the presidency. Although Americans' need for symbols may lessen as the world becomes smaller and nations become more homogenized, it is possible that the continued expansion of globalization will force Americans to cling to these symbols in order to preserve the American identity. This need to preserve the American identity may very well be one of the main reasons why

80. See CHI. COUNCIL ON FOREIGN RELATIONS, GLOBAL VIEWS 2004: AMERICAN PUBLIC OPINION AND FOREIGN POLICY 1 (2004) ("The United States is the world's undisputed military and economic superpower. It has a more formidable global presence than ever, maintaining approximately 700 military installations abroad in 2003 and spending as much on defense in 2004 as the next 20 nations combined.").

81. "Whoever holds this office represents our country to the world. He or she is the embodiment of what we are all about. In my eyes, for someone to fit the aforementioned criteria, he or she has to be a natural-born U.S. citizen." Gardner, *supra* note 59.

Americans will view globalization in a negative light. Once this occurs, the impetus for repealing the natural born citizen clause ceases to have much force. Accordingly, Americans may rely on their belief that globalization is effectively eating away at “America” by lessening the strength of symbols such as the presidency to justify their decision to leave the natural born citizen requirement in place.

B. *Common Perceptions About Globalization*

As noted previously, globalization provides a number of rational reasons to amend the Constitution and abolish the natural born citizen requirement. However, globalization and Americans’ perceptions regarding globalization will also be a reason why Americans’ irrational beliefs will prevail over the rational reasons.⁸² Whether these perceptions about globalization are valid or are actually misconceptions is not really the issue. Regardless of their validity, these perceptions about globalization will convince the American public to oppose a Constitutional amendment. This section will identify some of these common beliefs⁸³ about globalization and identify why these beliefs will cause Americans to fall back on their emotional beliefs and lead them to vote against a proposed Constitutional amendment.

1. Americans do not understand globalization.

One common belief about globalization that may influence whether Americans rely on the rational reasons versus the emotion-based reasons is that globalization is really nothing more than the Americanization of the world. Many Americans simply do not understand the nature of the global economy and the concept of a global culture. Although it may be clear to scholars and economists that globalization is about the world coming together both culturally and economically, a typical American citizen may

82. It is important to remember the difficulty that any Constitutional amendment faces. The sheer groundswell of support needed to have an amendment pass by two-thirds of the Congress and then to be ratified by three-fourths of the states is an enormous hurdle. *See supra* notes 22, 23 and accompanying text.

83. It should be noted that these beliefs about globalization are certainly not the only beliefs about globalization, and some would argue that more positive beliefs about globalization are slowly replacing the negative or indifferent views expressed in this paper. *See infra* note 86. However, this paper does not argue whether Americans view globalization positively versus negatively; this paper argues that the negative or indifferent beliefs about globalization are plentiful enough to justify Americans’ reliance on irrational fears rather than logical reasoning to avoid amending the Constitution’s natural born citizen requirement. Therefore, even though Americans may be slowly becoming more accepting of globalization, there is simply not enough positive public support for globalization to make a Constitutional amendment a likely possibility.

have trouble understanding this because he sees globalization as it is portrayed on television. He is likely to see globalization as the idea of spreading McDonald's and Hollywood throughout the world.⁸⁴ As Thomas Friedman recognized, "[G]lobalization is in so many ways Americanization: globalization wears Mickey Mouse ears, it drinks Pepsi and Coke, eats Big Macs, [and] does its computing on an I.B.M. laptop with Windows 98."⁸⁵ Because these Americans do not understand that globalization is a two way street, including not only the exportation of American ideals and products but also the importation of foreign influences, products, and technology into America, many Americans are unlikely to feel that an increase in globalization is a good reason to change a 216-year-old presidential eligibility requirement. This failure to appreciate that globalization is about more than just spreading American products, ideals, and values throughout the world will effectively prevent people from understanding why the increase in globalization makes the natural born citizen requirement objectionable.

2. America as the World Leader

Additionally, a common reaction to globalization from Americans is that globalization can only bring America down. Although globalization, from an academic standpoint, sounds impressive and useful, the idea that America will benefit from cultural globalization when viewed from a practical standpoint is somewhat questionable. Americans already see America as the world's only superpower because of the strength of the American economy and the American military. Accordingly, when faced with whether to vote for a constitutional amendment abolishing the natural born citizen clause, globalization is unlikely to pressure Americans into doing so. Americans are likely to recognize that America is the leader of the world and that America achieved this position without having to change its cultural institutions to be more "global"; therefore, the only place that America can go by attempting to assimilate with the rest of the world is down. From a practical and short-term standpoint, a belief that globalization is unnecessary may cause Americans to rely on their emotional beliefs rather than reason and oppose amending the Constitution.

84. Thomas L. Friedman, Op-Ed, *Angry, Wired, and Deadly*, N.Y. TIMES, Aug. 22, 1998, at A15. See also Kurt Kuehn, *Managing the Brand in an Age of Anti-Americanism*, SHIPPING DIG., Oct. 4, 2004, at 78. "We know that, increasingly, the line is blurred between globalization and Americanization. For many people, the terms are synonymous. For some, globalization is an American-led phenomenon designed to benefit the U.S." *Id.*

85. Friedman, *supra* note 84, at A15.

3. Americans are not prepared to give up the American identity in favor of globalization.

In addition to not wanting to change the Constitution because America is already the world leader, many Americans simply do not believe that globalization is necessary because they see globalization as a process that will cause America to lose its identity. American history, traditions, values, and morals took America from a fledging group of colonies and made America into a superpower. A movement towards globalization, especially cultural globalization, could be seen as stripping America of the attributes that led to her rise in power. As seen in the aftermath of September 11th, Americans are proud of their heritage and proud of their country. Any attempt to change that identity will certainly be viewed with skepticism and this skepticism may concern Americans enough to convince them to leave the Constitution as it is.

4. Globalization as a Threat

Another issue with globalization is that many Americans see globalization in a negative light because it negatively affects their individual lifestyle.⁸⁶ Specifically, many Americans believe that Americans are losing their jobs because of economic globalization and the resulting movement of American manufacturing jobs to places in the world where labor is less expensive. Additionally, many people view globalization in terms of America's immigration policy, believing that allowing widespread immigration directly affects them because many immigrants are willing to work for lower wages than their American counterparts.⁸⁷ Therefore, increased immigration results in American employers hiring immigrants rather than natural born citizens because employers are able to pay immigrants lower wages. Ultimately, the perception is that a natural born citizen must either accept lower wages in order to compete for jobs with immigrants or lose his job. In addition to these tangible economic perceptions about globalization,⁸⁸ Americans may also see globalization as a threat to American values

86. Interestingly, although polls indicate that 62% Americans believe that "globalization" has a "good" effect on the United States, these same polls indicate that 64% of Americans believe that "their way of life needs protection from foreign influence." PEW GLOBAL PROJECT ATTITUDES, VIEWS OF A CHANGING WORLD 85, 94 (June 2003).

87. CHI. COUNCIL ON FOREIGN RELATIONS, *supra* note 80, at 13, fig. 1-2 (noting that 78% of Americans polled believe that "protecting the jobs of American workers" should be a "very important goal of U.S. foreign policy").

88. *See generally* Michael Sasso, *Little Local Effect Seen on Moving Jobs Abroad*, TAMPA TRIB., Oct. 26, 2004, at 1 (recognizing that public perception "holds that globalization is hurting the economy and job market").

and morality. The millions of immigrants in this country bring with them their own cultures, languages, and ways of life. Therefore, the combination of lost jobs and perceived cultural erosion may scare Americans into believing that globalization is not a good thing, and that they should resist globalization by voting against a Constitutional amendment that would essentially be a movement towards globalization.

CONCLUSION

Ultimately, the emotional reasons to oppose a constitutional amendment abolishing the natural born citizen requirement for presidential eligibility will prevail over the rational reasons because the rational reasons derive, in large part, from the increase in globalization. The current American perceptions about the effects of globalization and the misunderstandings about what globalization actually is will result in Americans deciding that naturalized citizens should not be president because this would, in effect, be promoting globalization. Although this argument is admittedly circular, because globalization is the thing that makes the need to abolish the requirement more and more persuasive, Americans' subsequent perceptions about globalization are the very things that will prevent Americans from embracing the idea of eliminating the natural born requirement. Logical Americans are looking for a reason to ignore the rational reasons promoted by globalization so that they may vote based on their own emotions and instincts. Whether it is because of fear, racism, religious intolerance, or blind faith in the decisions of the Founding Fathers, Americans want to find a way to avoid changing the natural born citizen provision to allow naturalized citizens to be eligible for the presidency. Ultimately, Americans will rely on the perceived negative effects of globalization, or rather their perceptions of globalization's negative effects, to justify their decision to allow emotion to prevail over reason.