

would make him a "natural born" citizen under the well-established principle that "natural born" citizenship includes birth within the territory and allegiance of the United States. See, e.g., Wong Kim Ark, 169 U.S. at 655-66. The Fourteenth Amendment expressly enshrines this connection between birthplace and citizenship in the text of the Constitution. U.S. Const. amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. \* \* \*") (emphases added). Premising "natural born" citizenship on the character of the territory in which one is born is rooted in the common-law understanding that persons born within the British kingdom and under loyalty to the British Crown—including most of the Framers themselves, who were born in the American colonies—were deemed "natural born subjects." See, e.g., 1 William Blackstone, Commentaries on the Laws of England 354 (Legal Classics Library 1983) (1765) ("Natural-born subjects are such as are born within the dominions of the crown of England, that is, within the ligeance, or as it is generally called, the allegiance of the king. \* \* \*").

There is substantial legal support for the proposition that the Panama Canal Zone was indeed sovereign U.S. territory when Senator McCain was born there in 1936. The U.S. Supreme Court has explained that, "[f]rom 1904 to 1979, the United States exercised sovereignty over the Panama Canal and the surrounding 10-mile-wide Panama Canal Zone." *O'Connor v. United States*, 479 U.S. 27, 28 (1986). Congress and the executive branch similarly suggested that the Canal Zone was subject to the sovereignty of the United States. See, e.g., The President—Government of the Canal Zone, 26 Op. Att'y Gen. 113, 116 (1907) (recognizing that the 1904 treaty between the United States and Panama "imposed upon the United States the obligations as well as the powers of a sovereign within the [Canal Zone]"); Panama Canal Act of 1912, Pub. L. No. 62-337, § 1, 37 Stat. 560, 560 (recognizing that "the use, occupancy, or control" of the Canal Zone had been "granted to the United States by the treaty between the United States and the Republic of Panama"). Thus, although Senator McCain was not born within a State, there is a significant body of legal authority indicating that he was nevertheless born within the sovereign territory of the United States.

Historical practice confirms that birth on soil that is under the sovereignty of the United States, but not within a State, satisfies the Natural Born Citizen Clause. For example, Vice President Charles Curtis was born in the territory of Kansas on January 25, 1860—one year before Kansas became a State. Because the Twelfth Amendment requires that Vice Presidents possess the same qualifications as Presidents, the service of Vice President Curtis verifies that the phrase "natural born Citizen" includes birth outside of any State but within U.S. territory. Similarly, Senator Barry Goldwater was born in Arizona before its statehood, yet attained the Republican Party's presidential nomination in 1964. And Senator Barack Obama was born in Hawaii on August 4, 1961—not long after its admission to the Union on August 21, 1959. We find it inconceivable that Senator Obama would have been ineligible for the Presidency had he been born two years earlier.

Senator McCain's candidacy for the Presidency is consistent not only with the accepted meaning of "natural born Citizen," but also with the Framers' intentions when adopting that language. The Natural Born Citizen Clause was added to the Constitution shortly after John Jay sent a letter to George Washington expressing concern about

"Foreigners" attaining the position of Commander in Chief. 3 Max Farrand, *The Records of the Federal Convention of 1787*, at 61 (1911). It goes without saying that the Framers did not intend to exclude a person from the office of the President simply because he or she was born to U.S. citizens serving in the U.S. military outside of the continental United States; Senator McCain is certainly not the hypothetical "Foreigner" who John Jay and George Washington were concerned might usurp the role of Commander in Chief.

Therefore, based on the original meaning of the Constitution, the Framers' intentions, and subsequent legal and historical precedent, Senator McCain's birth to parents who were U.S. citizens, serving on a U.S. military base in the Panama Canal Zone in 1936, makes him a "natural born Citizen" within the meaning of the Constitution.

LAURENCE H. TRIEBE.  
THEODORE B. OLSON.

Mr. BROWN. Mr. President, I ask unanimous consent the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. 511) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 511

Whereas the Constitution of the United States requires that, to be eligible for the Office of the President, a person must be a "natural born Citizen" of the United States;

Whereas the term "natural born Citizen", as that term appears in Article II, Section 1, is not defined in the Constitution of the United States;

Whereas there is no evidence of the intention of the Framers or any Congress to limit the constitutional rights of children born to Americans serving in the military nor to prevent those children from serving as their country's President;

Whereas such limitations would be inconsistent with the purpose and intent of the "natural born Citizen" clause of the Constitution of the United States, as evidenced by the First Congress's own statute defining the term "natural born Citizen";

Whereas the well-being of all citizens of the United States is preserved and enhanced by the men and women who are assigned to serve our country outside of our national borders;

Whereas previous presidential candidates were born outside of the United States of America and were understood to be eligible to be President; and

Whereas John Sidney McCain, III, was born to American citizens on an American military base in the Panama Canal Zone in 1936: Now, therefore, be it

*Resolved*, That John Sidney McCain, III, is a "natural born Citizen" under Article II, Section 1, of the Constitution of the United States.

#### ORDER FOR AUTHORITY TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS

Mr. BROWN. Mr. President, I ask unanimous consent that during the adjournment of the Senate, the majority leader be authorized to sign duly enrolled bills or joint resolutions.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d-276g, as amended, appoints the following Senators as members of the Senate Delegation to the Canada-U.S. Interparliamentary Group conference during the Second Session of the 110th Congress: the Honorable GEORGE V. VOINOVICH of Ohio, and the Honorable LISA A. MURKOWSKI of Alaska.

#### ORDERS FOR THURSDAY, APRIL 30, 2008

Mr. BROWN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m. tomorrow, Thursday, May 1; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, there then be a period of morning business for up to 1 hour with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first half and the majority controlling the second half; and following morning business, the Senate resume consideration of H.R. 2881, the FAA reauthorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDER FOR ADJOURNMENT

Mr. BROWN. If there is no further business to come before the Senate, I ask unanimous consent it stand adjourned under the previous order, following the remarks of the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FAA REAUTHORIZATION

Mr. REID. Mr. President, as we close tonight, I want everyone within the sound of my voice to understand this: We are working on a very important piece of legislation, the reauthorization of the Federal Aviation Administration—the agency responsible for making sure aircraft is safe and reliable.

Right now, we have an antiquated system. This legislation will do what has been needed for a long time to change the way we do aviation in this country. All the experts say it is long past due. We have had hard work for a

long period of time. This bill is way overdue. Senator ROCKEFELLER has worked very hard in bringing the product to the floor. It is a good product.

We had an issue today that came up, and Senator ROCKEFELLER offered an amendment which takes away that as an issue. My friends, the Republicans, obviously, want to kill this bill to add to the other list they have sent to the graveyard. They are using an excuse: Well, we don't have the ability to offer amendments.

Mr. President, I have offered them anything possible to make sure they can offer all the amendments they want. The distinguished Senator from Texas, Mrs. KAY BAILEY HUTCHISON, obviously does not like some of the tax portions of this bill. Offer an amendment to try to take them out. I have offered the Republican leader: Give us a list of the amendments you want to offer. This is very standard procedure around here. No response to that.

It is very obvious to me this is an effort to kill this bill. Let's be logical. We are on the floor. I have said: Any amendments you want to offer that are germane or relevant to this bill, you can do that. Now, that is very wide. It allows anything that relates basically to transportation to be offered on this bill. But they have turned that down.

They have broken all records for filibuster—they, the Republicans. On this one, on the motion to proceed, I said on the floor earlier this week, this was not their fault. We did not have the substitute Senators ROCKEFELLER and BAUCUS had worked on. It was not ready until Monday night. But it was ready Tuesday morning, and they had every opportunity to work at that time and give us a list of amendments they wanted to do. We would give them ours.

I was told today, when the Durbin amendment was filed, that they wanted to offer the next amendment. They wanted to offer it from Senator BUNNING. No problem. We have been waiting all day for the language of that amendment, which is probably nonexistent.

We have been fair. We have been reasonable. But, obviously, we are now at a point where they are back to their old tricks and just killing the bill. They should just tell us this rather than play the games. They should say: We do not want this bill.

I have spoken to the Republican leader saying: If we really want to get this bill done, why don't I file cloture then, because no one seems to be wanting to offer any amendments. He said: No, it's too early. You have not allowed us to offer any amendments. I say: Offer amendments.

So this is really, Mr. President, a typical procedure around here, that the minority, wanting to maintain the status quo with air travel, as everything else, puts us in a position where we have no alternative but to either pull the bill or file cloture, and they said they will not give us the extra nine votes we need.

Remember, Mr. President, this bill has, for example, the Passenger Bill of Rights in it so that when people are held up on a flight—you are on a runway for hours at a time—there are certain rights passengers have. All those things that cause so much consternation when you are trying to travel on an airplane—the Passenger Bill of Rights addresses many of those. But with Republicans that will go down the tubes with everything else in this bill.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. REID. Mr. President, I am happy to yield.

Mr. DURBIN. Mr. President, I know the Senator and I spoke earlier, and I heard his conversation on the floor earlier.

I would say, through the Chair, if the Republican minority came forward, in the morning, with a list of germane amendments to this bill, it is my understanding the majority leader has said we will entertain and consider those amendments. This is open for an amendment process, for deliberation, and for votes on this important aviation safety bill. Is that correct?

Mr. REID. Mr. President, I even went one step further. I said the distinguished Republican leader would have the right to look at our amendments. It would not be just me; I want him in on the deal.

Mr. DURBIN. Mr. President, if I can further ask the majority leader: The Senator from Texas, Mrs. HUTCHISON—who has put a lot of time in this, along with Senator ROCKEFELLER—has objected to two or three provisions in the bill from the Finance Committee related to transportation and financing. I have said I support those provisions. But if the Senator from Texas, Mrs. HUTCHISON, wants to offer a motion in the morning to strike those provisions, is the majority leader saying—I ask through the Chair—is the majority leader saying it is her right to offer that motion to strike?

Mr. REID. Mr. President, I say to my friend from Illinois, I asked our staff: When we close today, let's not have morning business. Let's go directly to the bill. But we found that was fruitless. They did not want us to go to the bill. I have said so many different times, in so many different ways, that we want to finish this legislation. We want to work with Republicans to finish this legislation.

And I say to my friend, the Senator from Texas, it is my understanding, has asked other people: Why don't you offer the amendment to strike all this stuff? For whatever reason, she does not want to have her fingerprints on eliminating this amendment, obviously. I just think it is really too bad.

I want this bill to go forward. The main thing I want is to make sure everyone understands we Democrats want to change things. We want change. We need change in a lot of different places, but one place we need change is the way air traffic is handled

today. And the Republicans, obviously, want it to stay the same; let's keep it the same; let's maintain the status quo.

Mr. DURBIN. Mr. President, if I could ask the majority leader to yield for one other question.

It is my understanding, so far in this session, the Republicans have initiated 68 filibusters, which is an attempt to slow down or stop the business of the Senate. But that breaks all records in the Senate, and they are on course, if they continue at this pace, to offer over 100 filibusters before the end of the year, maybe even more.

I would like to ask the majority leader, if they continue trying to stop us from even bringing bills to the floor, debating them, amending them, and bringing them to a vote—I would like to ask the majority leader how we could reach a point where we actually do change things for the better, where we can see the progress that the American people expect.

Mr. REID. Mr. President, there are things we need to do. The No. 1 issue in America today: gas prices. We cannot go to gas prices because we are stuck on this thing that they will not let us move on, and that is the way it has been going since we took the majority. That is something they have had trouble getting over, that we are in the majority. It is a slim majority, but it is the majority, and because of that, we have the opportunity to determine what issues come to the floor. The issue that was long past due was FAA reauthorization. But they are stopping us from doing virtually anything that needs to be done for this country.

I have trouble understanding why they want to continue to up the record they have already broken. They broke the 2-year filibuster record in 10 months. But now I guess they want to keep adding to their record to see how many filibusters they can conduct. And they have been fairly successful stopping us from passing things that the American people want, such as the matter now on the floor. But energy legislation—they stopped us on that. That is to go to alternative energy so we do not have to use 21 million barrels of oil every day. We have wanted to do things dealing with education. We have not been able to do that. Health care, we haven't been able to do that. Things that the American people want are being stopped because of the Republicans' love of the status quo.

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ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

Mr. REID. Mr. President, if there is nothing more to come before the Senate, I ask unanimous consent that it stand adjourned under the previous order.

There being no objection, the Senate, at 8:01 p.m., adjourned until Thursday, May 1, 2008, at 9:30 a.m.