

# Court accepts Wiley Drake's 'birther' appeal

by [Bob Allen](#)

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PASADENA, Calif. (ABP) -- Nearly two-and-a-half years into his term, a federal appeals court has agreed to hear oral arguments in a case alleging that Barack Obama is not eligible to serve as president of the United States.

"Praise the Lord Jesus," plaintiff Wiley Drake, pastor of First Southern Baptist Church in Buena Park, Calif., commented on word that the Ninth U.S. Circuit Court of Appeals had [scheduled](#) a hearing on his case May 2.

Drake, who served as second vice president of the Southern Baptist Convention in 2006-2007, was a third-party candidate for vice president of the U.S. in the 2008 election. He appeared on the California ballot alongside American Independent Party nominee Alan Keyes.

Keyes and Drake [garnered](#) 39,620 votes, 0.3 percent of total ballots, ahead of a Green Party ticket and behind Libertarian Bob Barr and Peace and Freedom nominee Ralph Nader. The state was carried by Democrats Obama and Joe Biden over Republicans John McCain and Sarah Palin 61 percent to 37 percent.

On Jan. 20, 2009, the day that Obama took the oath of office and assumed the presidency, a lawsuit filed by numerous plaintiffs, including Drake and Keyes, asked a federal judge to invalidate Obama's election claiming he failed to present clear evidence that he met a constitutional requirement that the president must be a "natural born citizen" of the United States.

U.S. District Judge David Carter [dismissed](#) that suit in October 2009, saying that failure to file the case until

after Obama took office made it a matter not of determining a candidate's eligibility but instead removal of a sitting president, a power that the Constitution gives to Congress but not to the courts.

The case is one of several lawsuits filed by groups and individuals pejoratively called "birthers," who say that contrary to the President's Hawaii birth certificate, there is evidence that he was actually born in Kenya, making him ineligible for office.

Billionaire Donald Trump, who says he is considering running for president, recently entered the fray, [saying](#) in several media interviews that he has doubts about Obama's nativity.

Drake's lawyer, Gary Kreep of the United States Justice Foundation, said in a media interview [posted](#) on the foundation's website that he does not consider himself a "birther" but rather a "constitutionalist" and that if convinced about Obama's eligibility he would drop the issue.

Kreep said even more than halfway into Obama's first term, he believes eligibility still matters.

"If Mr. Obama is not eligible to serve as president, everything that he has done as president is null and void," Kreep said. "Since only a validly sitting president can nominate someone to the Supreme Court, can sign the Obama care bill, can nominate judges all over the country, U.S. attorneys -- all the actions that the president can do, all that he is required to do by law, without a valid president, none of those actions are valid."

In February the California Supreme Court [declined](#) to review dismissal of a separate lawsuit in the state court system claiming that election officials should have verified Obama's eligibility before putting his name on the ballot. The high court agreed with an appellate ruling that determining eligibility for the office of president is the responsibility of political parties and Congress, not elected officials.