

# 'Birther' lawsuit has setback

by [Bob Allen](#)

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WASHINGTON (ABP) – California pastor Wiley Drake’s three-year legal battle challenging President Obama’s eligibility received a setback Dec. 22, when the U.S. 9th Circuit Court of Appeals said he and other plaintiffs lacked legal standing to file their complaint.

A three-judge panel of the federal court based in Washington upheld a central California district court’s October 2009 [dismissal](#) of the lawsuit filed Jan. 20, 2009, the day Barack Obama was sworn in as president, but for slightly different reasons.

U.S. District Judge David Carter had said the plaintiffs lacked standing because Congress – not federal courts – has authority to remove a sitting president. The appellate court didn’t dispute the “redressability” issue cited by the lower court but added that in order to have standing the plaintiffs should have filed the lawsuit prior to the November 2008 election.

Drake, pastor of First Southern Baptist Church in Buena Park, Calif., ran as Alan Keyes' running mate on the American Independent Party's ticket in 2008. Along with party officials, they argued in the complaint that the race wasn’t fair because the winning candidate shouldn’t have been allowed to run. Claiming Obama does not meet the constitutional requirement that the president must be a “natural born citizen,” Drake and Keyes claimed an interest in having a fair competition for the positions they sought to obtain.

The appellate court said that once the 2008 general election was over, Drake and Keyes were no longer “candidates” who could claim they would be injured by the “potential loss of an election.”

“The political candidates failed to establish redressability sufficient to establish standing,” the judges [ruled](#). “They cannot claim competitive standing because they

were no longer candidates when they filed their complaint.”

Orly Taitz, one of the plaintiffs' lawyers, [told](#) reporters outside the courthouse she would ask the appeals court to convene a full 11-judge panel to review the case and if denied she would appeal to the Supreme Court.

The lawsuit is one of a number of so-called "birther" lawsuits against Obama's election filed by individuals or groups who disbelieve the president's claim that he was born in Hawaii to an American mother, thus establishing his citizenship. So far none has succeeded.

Drake, 69, who served as second vice president of the Southern Baptist Convention in 2007-2008, has been a fixture at floor microphones during business sessions at the SBC annual meeting since the 1990s. He was a driving force behind the convention's 1997 [boycott](#) of the Disney Company because of its gay-friendly corporate policies. In 2005 the convention called off the boycott, [declaring](#) it a success.

Once celebrated as a symbol of the small-church pastor who sacrificed to travel to SBC annual meetings to cast ballots for conservative candidates during a leadership change known to the winners as the "conservative resurgence" and to the losers as a "fundamentalist takeover, Drake's reputation became tarnished after he [said](#) on the Alan Colmes Show on June 2, 2009, that he was praying for President Obama to die.

SBC leaders distanced themselves from the comment, describing Drake's views as outside the mainstream. At the 2011 SBC annual meeting in Phoenix, the convention passed a [resolution](#) on "civil discourse" that denounced unspecified groups and individuals who have gained publicity by tactics including "calling for prayers for the deaths of public officials."

On Jan. 3 Drake sent out an e-mail announcing he is the official presidential candidate of the American Independent Party, a conservative alternative to the Republican Party established in 1967.