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Dear Mr. Bauer:

I am contacting you regarding your role as General Counsel to the Democratic National Committee. As such, you are obviously responsible to advise the Executive Committee on legal matters before them, including most prominently the imminent nomination of Barack Obama as the Democratic Party's Presidential candidate.

Please be advised that Hawaii State Registrar, Alvin Onaka, was asked directly by Arizona Secretary of State Ken Bennett to verify the birth facts for Barack Hussein Obama that are claimed on the birth certificate posted on the White House website, and Mr. Onaka pointedly *failed* to do so. He did, however, verify that "the information in the copy of the Certificate of Live Birth for Mr. Obama that you attached with your request matches [the information in] the original record in our files." (See the enclosed 4 pages of Bennett's request – his letter to the DOH, the completed DOH application, the attached image from whitehouse.gov, and Onaka's letter of verification in response). In addition, Mr. Onaka *undeniably failed* to verify that the image posted at whitehouse.gov "is a true and accurate representation of the original record in [the DOH] files."

Here is the statute governing Mr. Onaka's official response, HRS 338-14.3 (emphasis added):

§338-14.3 Verification in lieu of a certified copy. (a) Subject to the requirements of section 338-18 [which governs those who qualify to make such a request], the department of health, upon request, shall furnish to any applicant, in lieu of the issuance of a certified copy, a verification of the existence of a certificate and any other information that the applicant provides to be verified relating to the vital event that pertains to the certificate.

(b) A verification shall be considered for all purposes certification that the vital event did occur and that the facts of the event are as stated by the applicant.

Thus it is evident that there is no discretion on the part of Mr. Onaka and the DOH to ignore any part of a request by a qualified requestor. ("The department of health, upon request, ***shall furnish to any applicant a verification of...any...information that the applicant provides to be verified.***") Thus the only legal reason for Onaka to not verify those facts is if he can't *legally* do so. Since he verified that those claims *are* on the record in the DOH files, the record itself must not have "probative value." (See HRS 338-17, provided hereafter.) Likewise, the only legal reason for not verifying that the posted long-form "is a true and accurate representation of the original record in [the DOH] files" is if it is not. There is no other plausible explanation.

To assume that Mr. Onaka simply *overlooked* a part of the request would be to nullify the validity, indeed the clear purpose, of the entire “verification” process, as well as to suggest an unwarranted degree of professional incompetence on the part of Mr. Onaka and the DOH.

As you are aware, Mr. Bauer, in the context of an official legal process, administered by the state, the *presumption of regularity* must apply: *Absent evidence to the contrary, legal professionals must presume that routine requests are handled in the prescribed way.* It must, therefore, be presumed that Onaka responded both accurately and in accordance with the controlling law just cited (HRS 338-14.3), and that he refrained from verifying the key requested items because he *cannot*.

In addition, the undeniable legal presumption at this point must be that the whitehouse.gov image is *not* legally verifiable, and therefore *cannot*, as *prima facie* evidence, stand alone as legal proof of any non-verified facts contained therein.

It will here be noted that the key birth facts 'provided to be verified' on the application itself (enclosed) - to wit, the date of birth (essential to verify candidate Obama's eligibility with respect to the Constitutionally-specified age requirement), the city and island of birth, the name of the father, and name of the mother - were also *not* verified by Mr. Onaka; and once again, the presumption of regularity must be applied. There is no evidence to suggest that he simply failed (forgot?) to verify these key fundamental facts surrounding the birth of the sitting President of the United States. The mere suggestion would be to ascribe to Mr. Onaka, a PhD with many years of experience, an unprecedented degree of professional negligence and/or incompetence.

The legal presumption at this point must, therefore, be that the certificate (image) posted on the whitehouse.gov website as well as the “original” record on file with the HI DOH are *not* legally valid or binding; i.e., its probative value can only be determined by the public official before whom it is being “offered as evidence.” (See statute below.)

The only Hawaii statute rendering completed (and therefore numbered) birth certificates to be non-legally binding (having undetermined probative value) is HRS 338-17, which applies to ALTERED or LATE birth certificates. As Mr. Onaka and the Hawaii DOH have now verified that Mr. Obama's birth certificate is numbered (151 61 10641) and on file, it stands to reason that the certificate on file is “late” and/or “altered.”

Here is the governing statute:

§338-17 Late or altered certificate as evidence. *The probative value of a "late" or "altered" certificate shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence. [L 1949, c 327, §21; RL 1955, §57-20; HRS §338-17; am L 1997, c 305, §4]*

Unless and until Mr. Obama's original birth record, on file with the Department of Health in Hawaii, is presented as evidence to a judicial or administrative body or official, it cannot legally be considered to have probative value. In other words, as *prima facie* evidence, it cannot stand alone without further

corroboration, as required by an “administrative body or official.” Until that happens and all the evidence is weighed by the proper legal authorities according to legal evidentiary standards (see Federal Rules of Evidence, Article IX, Rule 901 – Authenticating or Identifying Evidence), no one can state *with any legal certainty* that candidate Obama is even old enough to be President, much less that he meets the exclusively high bar of “natural-born citizen” status, required by Article II, Section 1, Clause 5.

A certification is a solemn oath that a person KNOWS their statement to be true. Until the above-described procedure is followed, and it is definitively determined by the authorized government officials, that the Hawaii birth record is legally probative, NO ONE can legally swear that Mr. Obama is Constitutionally-eligible to be President; and because the DNC by-laws *require* the Democratic Presidential candidate to be Constitutionally-eligible, there is also, therefore, NO PARTY OFFICIAL who can legally swear that Mr. Obama is the “legally-qualified candidate” of the Democratic Party, *under its own by-laws*.

For any party official to do so at this point would be to perjure him or herself. In addition, any attorney, Mr. Bauer, who would counsel any party official to swear to either of those things (candidate Obama’s Constitutional eligibility or his fitness as the Democratic Candidate in accordance with their own DNC by-laws) suborns perjury. Furthermore, anyone who submits (or any attorney who either *advises* or *fails to advise* anyone to submit) an Official Certification of Nomination containing a perjurious oath, to a state elections official, *would be guilty of committing federal and state election fraud*.

In 2008 the Hawaii Democratic Party specifically removed the standard language heretofore employed certifying the “Constitutional eligibility” of candidates Obama and Biden for the office of the Presidency of the United States. In other words, the state party *most keenly aware* of Mr. Obama’s existing records *would not* (and *did not*) *certify* their Constitutional eligibility. At the same time, as you must surely be aware, Mr. Bauer, the DNC, under the signature of then-Speaker Nancy Pelosi, *did* certify their Constitutional eligibility in the OCON it presented to election officials in Hawaii, while removing that same standard language from the OCON’s it presented in at least some (if not *all*) of the remaining states.

Now that the non-validity of Mr. Obama’s Hawaii birth certificate has been demonstrated as described in detail herein, and as explained, no state party official can *know*, much less “certify” under oath, candidate Obama’s eligibility, absent the open legal process described above. There is therefore no longer *any* state or national official in the Democratic Party who can escape legal responsibility for ignoring the proof herein provided, and a plea of ignorance of the facts will no longer be possible, especially under the informed legal counsel provided by you (and your state counterparts), Mr. Bauer.

At the same time that you are receiving this legal analysis, each DNC Executive Committee member - as well as each state Democratic Party chair, secretary of state, and state attorneys general - is receiving a certified letter advising them of the legal jeopardy in which they place themselves should they proceed – in the light of the facts herein presented – to certify to state or national election officials that Barack Hussein Obama is the Constitutionally and legally-qualified Democratic candidate for President of the

United States, assuring his placement on any official state ballot, via a perjurious Certificate of Nomination. From its founding, America has been unique in the world because our system of government is based on the Rule of Law rather than the Rule of Men. We have a system of accountability, based on the Supreme Law, the Constitution, which insures that the Rule of Law is

obeyed, and that NO ONE is above the law – whether he or she be president, elected or appointed official, or those charged with responsibility to administer the sanctity of the ballot, for which countless brave men and women have given their lives.

I pray that you will honor your own sacred duty under the Constitution, and your sworn duty as an officer of the Court, placing the loyalty you feel towards your country above that which you may feel for your party or its appointees.

Sincerely,



Larry Klayman

Enclosures: Ken Bennett's Request for Verification (3 pages)
Alvin Onaka's Certificate or Letter of Verification (1 page)

Cc: Democratic National Committee Executive Committee
Nancy Pelosi
State Democratic Party Chairs
State Secretaries of State
State Attorneys General
Commission on Presidential Debates

LEK/tmb