

Judge sets court date in 'birther' case filed by Wiley Drake

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BUENA PARK, Calif. (ABP) — The so-called "Birthers" claimed a small victory Sept. 8 when a federal judge set a tentative trial date of Jan. 26, 2010, for a lawsuit claiming that President Obama is constitutionally ineligible for his office.

"We won again," Wiley Drake, a former second vice president of the Southern Baptist Convention, said of the ruling by federal judge David Carter. Drake is one of several plaintiffs in the lawsuit alleging that Obama cannot hold his office because he does not meet the constitutional requirement that the president be a "natural-born" citizen.



'Birthers' believe this "Certification of Live Birth" produced by the Obama campaign to quell rumors about his citizenship is a forgery.

Carter, who sits on the U.S. District Court for the Central District of California, denied a request by plaintiffs to remove a judge who ruled against them in a motion Aug. 6. He vacated one of the lower court's orders, however — a voluntary dismissal that Drake and another plaintiff said their former lawyer filed without their permission.

Originally Drake, pastor of First Southern Baptist Church in Buena Park, Calif., and fellow plaintiff Markham Robinson hired [Orly Taitz](#), a lawyer, dentist and real estate agent who has filed several suits alleging that Obama is not a natural-born citizen, as their legal counsel.

Taitz has become something of a mini-celebrity in recent months, appearing on cable-television news shows to defend her charge that Obama was actually born in Kenya. She has produced a succession of documents, alleging each time that it is Obama's actual Kenyan birth certificate. Their authenticity has been widely discredited.

Obama has posted online images of his birth certificate, showing that he was born in Hawaii to an American mother and Kenyan father. Independent journalists and fact-checking groups have examined it and affirmed that it appears authentic. Hawaiian state officials — including the state's Republican governor — have also indicated that the document is official.

But that hasn't stopped conspiracy theorists who believe Obama is attempting to hide the truth about his background.

In July Drake and Robinson filed papers to switch attorneys to [Gary Kreep](#), executive director of the United States Justice Foundation; they sent a copy to Taitz for her signature. Taitz responded with an e-mail saying that past experience taught her that she and Kreep did not work well together and suggested the plaintiffs should voluntarily dismiss themselves from the case and re-file it separately if they wish.



Former Southern
Baptist Convention
officer Wiley
Drake's lawsuit
challenging
President Obama's
election may get its
day in court.

According to Judge Carter's Sept. 8 [order](#), Taitz refused to sign the substitution-of-attorney documents and filed a notice of voluntary dismissal on behalf of Drake and Robinson. After U.S. Magistrate Judge Arthur Nakazato granted the dismissal Aug. 6, Drake and Robinson claimed they did not give consent to the voluntary dismissal and Taitz had filed it against their wishes. Carter said Taitz acted improperly because "a client has the right to fire a lawyer at any time, with or without cause."

Carter said requiring Drake and Robinson to file a new case that would end up being consolidated with the one already before the court "would cause significant and needless delay."

The plaintiffs had asked Carter to remove Judge Nakazato from the case, arguing that his ruling against them violated Judge Carter's earlier verbal pledge that the case would be allowed to proceed on its merits "without undue regard to technicalities."

Carter said his earlier comment did not intend to suggest that the plaintiffs' legal counsel would be given "a *carte blanche*" to disregard rules that attorneys must follow in California courts.

-Bob Allen is senior writer for Associated Baptist Press.

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