



Written by [Steve Byas](#) on April 3, 2016

## Pennsylvania Supreme Court Rules Cruz Eligible

The Supreme Court of Pennsylvania has ruled that Ted Cruz (shown) is a natural born citizen, and is therefore constitutionally eligible to serve as president of the United States.



The dispute over whether a person born outside of the United States to American parents, or just one parent, meets the constitutional qualification has been disputed for years. It has arisen more intensely this presidential election year because Senator Ted Cruz of Texas is locked in a tough battle with New York businessman Donald Trump for the Republican nomination. Cruz's father, an immigrant from Cuba, and Cruz's mother, clearly a U.S. citizen, were in the oil business in Texas, and this business took them to Canada. While they were there, the future presidential hopeful was born. But when Ted was only four years old, they moved back to Texas,

While the issue has been the point of much contention over the years, including disputes about President Barack Obama's status (since his mother named her husband, a non-citizen from Kenya, as Obama's father), no courts had ever ruled on the merits of the issue before. Multiple lawsuits against Cruz's eligibility have been dismissed, but most of the cases involved procedural questions, unlike the Pennsylvania case.

Federal lawsuits are still pending in Texas and Alabama, and the plaintiff in the Pennsylvania case vows to appeal the decision to the U.S. Supreme Court. There is no guarantee that the U.S. Supreme Court would choose to hear the case.

The Pennsylvania Supreme Court rejected an appeal of a state judge's decision that held Cruz was, indeed, a natural born citizen, and thus qualified under the U.S. Constitution to serve as president. Pittsburgh resident Carmon Elliott had filed suit in an effort to have Cruz removed from the ballot in Pennsylvania's April 26 primary.

Pennsylvania Senior Judge Dan Pellegrini found Cruz to be a natural born citizen, and the Pennsylvania Supreme Court agreed. Pellegrini used a 1968 memo by the then-general counsel of the U.S. Immigration and Naturalization Service, Charles Gordon. In the memo, Gordon had argued, "The Framers were well aware of the need to assure full citizenship rights to the children born to American citizens in foreign countries."

Another source used by Pellegrini was the 2011 Congressional Research Service Memo "Qualification



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for President and the ‘Natural Born’ Citizenship Eligibility Requirement.” According to the memo, “The weight of legal and historical authority indicated that the term ‘natural born’ citizen would mean a person, who is entitled to U.S. citizenship ‘by birth’ or ‘at birth’ either by being born ‘in’ the United States and under its jurisdiction, even those born to alien parents; by being born abroad to U.S. citizen-parents.”

A *Harvard Law Review* article by Paul Clement and Neal Katyal was also cited by Pellegrini. This article asserted that Congress recognized from the time of the founding that “a person born abroad to a U.S. citizen parent is generally a U.S. citizen from birth with no need for naturalization. And the phrase ‘natural born citizen’ in the Constitution encompasses all such citizens from birth.”

While understandably disappointed, Elliott’s lawyer, David Farrell, was upbeat. “For the first time a court has addressed the issue substantively,” he noted, predicting the U.S. Supreme Court “is going to have to eventually take it [the question of what constitutes a natural born citizen] up.”

If the U.S. Supreme Court does eventually take up this case, or one similar to it, at issue will be the words of the U.S. Constitution which outline the qualifications for a person serving as president: One must be at least 35 years of age, must have lived in the United States for at least 14 years, and — relevant for the Cruz case — be a “natural born” citizen. What is problematic is that the Constitution does not define the term ‘natural born citizen,’ and neither does any current law. Some contend that a person must be born within the borders of the United States to be considered a natural born citizen. On the other hand, others believe that the actual location of the birth does not matter so long as at least one of the parents is a citizen, and still others argue that both parents must be citizens in order for their offspring to be considered a natural born citizen. If the latter position is the correct one, then of course President Obama would not be a natural born citizen and would therefore be holding his office unconstitutionally, regardless of whether or not he was born in Hawaii.

Though Cruz was born in Canada, he was raised in Texas, eventually winning election to the Senate in 2012. This issue did not arise in the Senate race, because the Constitution requires only that senators be citizens of the United States — they do not have to be natural born citizens, as is the case with presidential eligibility.

The only time that a “natural born citizen” was ever defined by Congress was in the Naturalization Act of 1790, which unequivocally stated, “the children of citizens of the United States, that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural-born citizens.”

Since eight of the 11 members of the congressional committee that drafted this language also served at the Constitution Convention a mere three years earlier, and James Madison (the Father of the Constitution) was a member of the Congress that adopted this law, without debate, and President George Washington (who, of course, presided over the Constitutional Convention) signed the bill into law, a good case can be made that the Naturalization Act of 1790 reflects the intent of the drafters of the Constitution. But whether Cruz would qualify as a natural born citizen based on the language of this act depends on whether (as some have concluded) the Act required that *both* parents be citizens, or (as others have concluded) the act required only that *at least one parent* be a citizen.

Moreover, some who argue that Cruz is a not a natural born citizen point out that the next Naturalization Act, passed in 1795, did not use the same natural born language. Their thesis is that the Congress slipped up in 1790, and wanted to correct their language five years later. Perhaps, or perhaps not. The 1790 law also said that “the right of citizenship shall not descend to persons whose fathers



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have never been resident in the United States.” This would seem to preclude a child from attaining the status of natural born citizen, if an American woman had a child by a foreigner in a foreign country and that foreigner had never lived in the United States. For example, the children of Grace Kelly by the ruler of Monaco would never be considered as natural born citizens and thus eligible for president of the United States, although Kelly, a former Hollywood actress, was a U.S. citizen.

But would it exclude Cruz from natural born citizenship?

Michael Ramsey, a professor at the University of Sand Diego law school, has contended in a his scholarly article on this matter that the Constitution gives Congress plenary power to determine citizenship status, citing Article I, Section 8 of the Constitution, which states, “Congress shall have power ... to establish an uniform rule of naturalization.” Ramsey, who considers himself an “originalist” — a person who believes the Constitution should be interpreted the way the Founders and the ratifying state conventions meant it — makes the argument that this would include the constitutional authority to define what is a natural born citizen, which, he says, is what they did in 1790.

Emer de Vattel, an 18th-century Swiss political theorist, is often cited by those who believe Cruz is not eligible because his father, Rafael Cruz, was not yet a U.S. citizen when Ted was born. Vattel, they point out, was quoted by those of the founding generation on other legal matters. Regarding natural born citizens, Vattel wrote, “The natives, or natural born citizens, are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers.... By the law of nature alone, children follow the condition of their fathers.”

However, there are no extant quotations of any of the Framers specifically citing Vattel as to the definition of a natural born citizen as found in the Constitution. The Framers were certainly influenced by many political philosophers, including John Locke, Baron de Montequieu, and even the ancients — after all, the term “Senate” was derived from the body of ancient Rome, though our Senate is considerably different from theirs (and not always for the better!).

It is doubtful that the decision by the Pennsylvania Supreme Court will settle the issue legally (outside of Pennsylvania), or even in the popular mind. There will continue to be those who believe Ted Cruz is a natural born citizen and thus eligible to serve as president, and those who will continue to argue that he is not a natural born citizen.

Even a decision by the U.S. Supreme Court, or an act of Congress, would not be accepted by all parties to this dispute. As it stands now, according to polling about one-fourth of the Republican electorate does not believe Cruz is constitutionally qualified. It can be presumed, however, that most of these are Republicans who are presently not supporting him.

Unfortunately, the Framers of the Constitution are no longer available to speak to this issue. And, even if they did, many people today who have opined on this issue would still hold to their present position. After all, we can safely conclude that the architects of the 14th Amendment did not intend to legalize same-sex marriage or abortion in all 50 states, yet President Barack Obama and other liberals say, with a straight face, that is what the 14th Amendment did.

*Photo: Ted Cruz*

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