



Written by [Steve Byas](#) on February 20, 2016

## Will Illinois Lawsuit Settle Question of Cruz's Eligibility?

Some argued that he was born in Canada, of an American citizen mother and a foreign-born father who was a Baptist minister, and thus not a "natural born" citizen, and because of that, not eligible to serve as president of the United States.

This was Chester Alan Arthur, elected vice president in 1880 on a ticket led by James Garfield of Ohio. He later ascended the presidency after Garfield was assassinated during his first year in office. Some contended at the time that Arthur was not a natural born citizen, despite the fact that his mother was a U.S. citizen; his father was not yet a naturalized citizen, and Arthur was born in Canada.



But unlike Texas Senator Ted Cruz (shown), who was clearly born in Canada to an American citizen mother and a foreign born father not yet naturalized, it is not clear exactly where Arthur was born. Arthur's father was a Free Will Baptist preacher, and the family lived for a time in Vermont, and for a time in Canada. Most historians who have studied the issue have concluded that Arthur was most likely born in Vermont.

Ted Cruz's status has come under fire, principally by Republican opponent Donald Trump, who has threatened to sue to keep Cruz off the ballot as not constitutionally qualified.

Now, however, a judge in heavily Democrat Cook County, Illinois has agreed to hear a case on Cruz's eligibility for the Illinois primary ballot next month. The case was brought by Lawrence Joyce, a pharmacist who backs another Republican for president, Ben Carson. Joyce originally took up the issue with the Illinois State Board of Elections, which dismissed the case as without merit on February 1. However, Judge Maureen Ward Kirby granted a hearing Friday to hear arguments in the case.

Joyce claims that his support for Carson has nothing to do with his challenge of Cruz's eligibility. He told *USA Today* that he fears Cruz could become the nominee, then get challenged by a host of Democrat lawsuits.

If the judge were to decide to dismiss the case as without merit, following the decision of the election board, this would set a precedent that Cruz could point to when facing challenges from Trump and others. On the other hand, if she were to decide that the case should proceed, it might throw a cloud over the Cruz campaign.

As it is, the case comes at a bad time for Cruz, on the eve of the South Carolina primary, where he is expected to finish in a close race with Trump and Florida Senator Marco Rubio. A recent *Wall Street Journal* poll indicated that Cruz is only five points behind Trump, after earlier trailing by double digits.

At issue are the words of the Constitution, which outlines 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



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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, like Joyce, 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 believe that both parents must be citizens in order for their offspring to be a natural born citizen.

Some have even questioned the natural born status of Senator Marco Rubio. He was born in the United States, but his parents were not yet citizens of the United States, although they were in the process of obtaining citizenship, a status they would soon achieve. The 14th Amendment states that, “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.”

Since Rubio’s parents were legal residents of the United States, it is argued that they were “subject to the jurisdiction thereof,” and no longer subject to the nation of Cuba from whence they came. Therefore, under this reasoning, Rubio is a “natural born citizen,” because he was a citizen at the time of his birth. Those who contend that Rubio is not a natural born citizen accept that he did become a citizen at birth — just not a natural born citizen, eligible for the presidency.

But what about Cruz?

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, where Cruz was raised, eventually winning election to the Senate in 2012.

The only time that “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 served at the Constitutional Convention only three years earlier, and James Madison (the so-called Father of the Constitution) was a member of the Congress which 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 that at least one parent be a citizen.

Moreover, some who argue that Cruz is not a natural born citizen point out that the next Naturalization Act, passed in 1795, did not use the “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 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 the foreigner had never lived in the United States.

But would it exclude Ted Cruz from natural born citizenship?

Michael Ramsey, a professor at the University of San Diego law school, has contended in his scholarly [article](#) on this matter that the Constitution gives Congress plenary power to determine all



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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 contend, was quoted by those of the founding generation on other legal matters, and his writings concerning “the law of nations” were probably the same as understood by the Framers of the Constitution. 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.

Of course, there are no extant quotations of any of the Framers specifically citing Vattel as to the definition of natural born citizen as found in the Constitution. The Framers were certainly influenced by many political philosophers, including John Locke, Baron de Montesquieu, 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 to the better!).

In 2008, Congress passed a “sense of the Congress resolution” asserting that Senator John McCain was a natural born citizen, and thus eligible for the office of president, despite McCain’s having been born outside the borders of the United States in the Canal Zone. Of course, at the time of McCain’s birth, it could be argued that the Canal Zone was sovereign U.S. territory (before it was “given away” by President Jimmy Carter and the U.S. Senate in 1978) and both of McCain’s parents were clearly American citizens. And, after Cruz’s publicly blasting many of his fellow Republican senators, including Majority Leader Mitch McConnell, last year, it is not very likely they would do the same for him, in any case.

This question of exactly what is a natural born citizen has come up before in American history, as illustrated by the Arthur case in the 19th century. Some even challenged Senator Barry Goldwater’s status as a natural born citizen in 1964, because he was born in Arizona while it was still a territory in 1908 — it did not become a state until 1912.

Mitt Romney’s father, George, faced some questions when he was briefly in the presidential race in 1968, because his parents had been born in Mexico (of Mormon missionary parents). Since Romney exited the race so early, the issue was never really resolved.

But Ted Cruz is a serious contender for the Republican Party nomination, and it is doubtful that the decision of an obscure judge in Illinois will settle the issue legally, or even in the popular mind. Whichever way the judge rules in this case, 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 believe 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, about one-fourth of the Republican electorate does not believe Cruz is constitutionally eligible. It can be presumed, however, that these are Republicans who are presently



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supporting one of his rivals.

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 the matter 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 Democrat liberals say, with a straight face, that that is what the 14th Amendment did.

*Photo of Sen. Ted Cruz: AP Images*

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