



## Ted Cruz: eligible or not?

Earlier this week, Senator Ted Cruz (R-Texas) made official what everyone understood. He will ask the Republican Party to nominate him for the office of President of the United States. He delivered a stem-winding speech at Liberty University in Lynchburg, Virginia. One ought to judge whether stem-winding speeches can substitute for concrete achievement. (Governor Scott Walker, R-Wisconsin, has achieved much that few thought anyone could.) But before anyone can consider whether Ted Cruz or anyone else *should* become President, first one must consider whether he *may* become President. In short: *is he eligible to the office he seeks?*



## The Constitution says who may run

The United States Constitution specifically [says](#):

*No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President.*

The Constitution also sets a minimum age and time of residence. These do not matter. Ted Cruz satisfies both of these.

But: *what does that phrase mean, “natural born Citizen”?*

In 1865, Congress proposed [Amendment XIV](#). They sought to grant citizenship to freedmen and remove all doubt of their “privileges and immunities.” Section 1 of that Amendment begins:

*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.*

Future amendments referred to *the right of citizens of the United States to vote*. So according to the Constitution, any person born *in the incorporated or proper territory of the United States* is a citizen, and may vote, and may claim all the privileges and immunities of citizens. The Supreme Court (*U.S. v. Wong Kim Ark*) reaffirmed that in 1898. Wong Kim Ark, the son of Chinese “coolies” working on a railroad, came back to the United States, sued to claim citizenship on account of his birthplace, and won.

But Wong Kim Ark did not try to run for President. And in fact, *Amendment XIV does not repeat the phrase “natural born Citizen” in its text*. Indeed the Constitution *nowhere* defines that phrase. The Supreme Court, in *Minor v. Happersett* (1875), recognized that fact.

*The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that.*

That one sentence tells us: *Amendment XIV does not define a natural born citizen, however anyone punctuates or capitalizes that phrase.* So: merely because Wong Kim Ark won the absolute right to vote, to buy property, and to run for and hold most offices of honor, trust or profit under the United States or any State, *did not make him eligible to the office of President.*

## Where shall we turn?

Where indeed shall we turn? The *Minor* case tells us: any person born in-country to *two* citizen parents *absolutely* qualifies as a natural born citizen. The Court's opinion even uses that phrase. But what of one born in-country, whose parents were not citizens at the time?

*Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but never as to the first.*

The venerable *Blackstone* says any one born in-country, whose parents were not *agents of a foreign power* at the time, were citizens. The phrase "agents of a foreign power" generally includes *diplomats* and *invaders*. *Blackstone* calls such people *natural born subjects*. *Blackstone* spoke of subjects of the crown of England.

Why, then, did not the *Minor* court accept *Blackstone*? True enough, Virginia *Minor*'s case did not depend on such a complex issue of birthplace and parentage. Still, why should the Court omit the reference, if that reference alone sufficed to define the phrase at issue?

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Emmerich de Vattel, in *The Law of Nations*, defines "natural born citizen" most completely: *one born in-country to two citizen parents.*

The Constitution Society [doesn't seem to find](#) that important. The author of that treatise seemed to think Vattel was discussing the straight parentage or "Law of the Blood" (*jus sanguinis*) rule of natural citizenship. But this correspondent has read the relevant pages of Vattel repeatedly. Why would Vattel mention *both* the birth *place* and the birth *parentage* unless he held *both* vital to defining a natural born citizen?

Finally, let us examine precedent. John Quincy Adams was the first natural born citizen to become President. He qualified under *both* rules: *place* (*jus soli*, or Law of the Soil) and *parentage*. And: *every President after him, so qualified as well.* With *two* exceptions:

1. Chester A. Arthur, who ran for Vice-President in 1881. He succeeded to the Presidency after the assassination of his boss, James A. Garfield. He had the place but not the parentage. And he *hid* his alien parentage from the House and Senate until it no longer mattered.
2. Barack H. Obama. He never claimed the complete parentage. His father (Obama Senior) was a British colonial subject. (He might not even have qualified by birthplace. Only his partisans accept as valid his "long form birth certificate.")

*Both these men "skated" on the double eligibility requirement.* Every other President satisfied both requirements.

Why should both place and parentage matter? Simple. Any woman, wishing to secure privileges and immunities for

her child and an eventual means of entry for herself, can fall pregnant, rent a hotel room or apartment in the United States, and book a stay through her “Estimated Date of Confinement.” Theorists and watchers of immigration practice now have coined a catchy new phrase for this practice: *birth tourism*. Here’s the key: typically such a “birth tourist” takes the child back home. So the child does not grow up with American values. Such a child grows up with the values of the mother. For that child to come back to the United States, and offer himself as a candidate for the office of President, when he knows nothing of American traditions, would be incongruous in the extreme. Had Wong Kim Ark so offered himself, he would have shown the incongruity as no other candidate could.

## Disputes on Ted Cruz, citizen

No one doubts the loyalty of Raphael Edward “Ted” Cruz. Ted Cruz proved that loyalty many times over in his career. Nor will anyone doubt his right to vote or hold the office he holds. Statutes grant citizenship by birth to those born to American parents, or even one American parent, no matter where.

The same Constitution Society that effectively gives Chester A. Arthur a pass, strictly on his birthplace, does not give that pass to Obama. They cite the doubtful birth certificate. If not for that, they would have no doubt. But they also admit: the Congress needed to pass judgment on the validity of Electoral College ballots in 2009 and 2013. They accepted them as valid. The Society accepts no other authority to overrule the Congress in this matter.

But they *also* suggest Ted Cruz *cannot* claim eligibility. He was born in Calgary, Alberta, Canada. They actually suggest the only way to make him eligible is for Canada to cede the parcel of land including that Calgary hospital where Ted Cruz was born to the United States for however long he seeks to serve as President. Either that, or Alberta Province must secede from the Dominion of Canada and seek admission as a new State within the United States.

Senator Marco Rubio (R-Fla.) has the opposite problem. He was born in Miami, Florida, to two Cuban refugees. Those two worthies became naturalized citizens *five years after young Marco’s birth*. Meaning they were not citizens at the time. The Constitution Society would no doubt rely on *Blackstone* and regard Rubio as a natural born citizen. Emmerich de Vattel would not.

The Constitution Society forgets one other problem: the edition of *Blackstone* they cite, *came after* the signing of the Constitution of the United States. Vattel’s *Law of Nations* was in print during the Constitutional Convention. Vattel, not *Blackstone*, would have been the reference of choice of James Madison and his fellow Framers.

Mr. Bob Allen [warns](#) Ted Cruz to write a paper refuting the Constitution Society’s analysis if he can. Mr. Mark Horne [does not agree](#). He says no citizen, voting in an election of Presidential Electors, need concern himself with hoary questions of whether Ted Cruz (or Marco Rubio or any other candidate) does or does not make the grade as a natural born citizen. *CNAV* must disagree. Presidential Electors run with a pledge to vote for certain candidates for President and Vice-President. No one even knows those Electors’ names. Voters might as well vote for so many rubber stamps! Maybe we should reform the Electoral College so that Electors run under their own names and take no instruction other than to use their own judgment and discretion on eligibility and other matters. But we have no hope of enacting such a reform in time for the election of 2016. So if Ted Cruz is not eligible, we’d best find out about it now.

And remember: Congress did not catch the eligibility question in 2009 or 2013. They ignored it. And the federal judiciary, every State judiciary, and every State Office of Administrative Law that has ever faced the issue, has ducked it. So: *the burden falls on the voter*. Especially any voter who happens to be a veteran of United States military service



or who once worked, permanently or even temporarily, for any federal agency. (Your correspondent, as a house officer in Pathology at the Nashville Veterans' Affairs Medical Center, and then as a crew member for the United States Census of 2000, did so work.) Any such person takes an oath of office that does *not* terminate with said person's employment:

*I do solemnly swear [to] support and defend the Constitution of the United States against all enemies, foreign and domestic, [and to] bear true faith and allegiance to the same.*

To take so cavalier an attitude toward Presidential eligibility, even for a candidate like Ted Cruz who says all the right things, would be to declare that even a first-generation immigrant could offer himself as a candidate for the office of President directly his naturalization papers came through. To require anything less than *both* American place *and* American parentage would defeat the purpose of asking that "no person except a natural born citizen...shall be eligible." It would allow foreign influence to take command, through the alienage of place or parentage. And it would bring the United States one step closer to dissolution, in favor of the concept of "citizenship of the earth" or "citizenship of all of humanity," according to the vision of Presidents T. Woodrow Wilson and Franklin D. Roosevelt and the Charters of the League of Nations and the United Nations.

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