



Written by [Joe Wolverton, II, J.D.](#) on January 10, 2013

Texas Sen. Ted Cruz: Constitutionally Qualified to be President?

Senator Ted Cruz (R-Texas) has hardly had time to learn his way around the serpentine halls of the Dirksen Senate Office building where his office is located, but his name is already being bandied about as a possible presidential contender.

The freshman senator's possible run for the White House was featured in [a story published Monday, January 7, by Politico](#). This is the first time such "buzz" has been heard about Cruz. Before Cruz even won the Republican Senate nomination, several stories considered the "Cruz for President" question.



While Cruz's conservative bona fides are impressive (Senator Rand Paul considers him an ally in the fight to restore constitutional fidelity to Congress), the Politico article (and hundreds of derivative pieces) are now questioning Cruz's eligibility to occupy the Oval Office.

Politico's David Catanese writes:

Ted Cruz may have the aura of a future presidential contender, but is he even eligible to run?

The newly sworn-in Texas senator and rising Republican star was born in Canada, to a mother who was born in Delaware and a Cuban father. That's triggered a debate about whether he's eligible for the nation's highest office — nevermind that he's been in Congress less than a week.

There's the rub, constitutionally speaking. Cruz's north-of-the-border nativity added to his father's Cuban nationality might add up to his being disqualified before he even steps up to the blocks to run for the White House.

The bundle begins to unravel, however, when one begins to wade into the historical origins of the "natural born citizen" phrase used in Article II of the Constitution. The Constitution does not define natural born citizenship, neither have Supreme Court and Congress. The term "natural born citizen" comes from the English concept of "natural born subject," which came from [Calvin's Case, a 1608 decision](#).

Natural born subjects were those who owed allegiance to the king at birth under the "law of nature." The court concluded that under natural law, certain people owed duties to the king, and were entitled to his protection, even in the absence of a law passed by Parliament.

Let's explore the possible sources and appropriate interpretations of the "natural born citizen" qualification.

At the time of the drafting of the Constitution, a person born subject to the British Crown could hold "double allegiance," a concept similar to "dual citizenship" as understood today.



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Our own Founding Fathers, nearly every one of whom was born in some outpost of the British Empire, feared the damage that could come from such divided loyalty. They instituted the “natural born citizen” qualification in order to avoid what Gouverneur Morris described during the Constitutional Convention as “the danger of admitting strangers into our public councils.”

As famed jurist of the early republic St. George Tucker, a contemporary of Morris, explained:

That provision in the constitution which requires that the president shall be a native-born citizen (unless he were a citizen of the United States when the constitution was adopted) is a happy means of security against foreign influence, which, wherever it is capable of being exerted, is to be dreaded more than the plague. The admission of foreigners into our councils, consequently, cannot be too much guarded against; their total exclusion from a station to which foreign nations have been accustomed to attach ideas of sovereign power, sacredness of character, and hereditary right, is a measure of the most consummate policy and wisdom.

In fact, as indicated in early records of the naturalization process, men applying for American citizenship were required to make two renunciations of all fealty to foreign powers before swearing allegiance to the Republic of the United States.

As a matter of fact, the possibility of any legal acceptance of divided allegiance was explicitly rejected in a report issued by the House of Representatives in 1874:

“The United States have not recognized a “double allegiance.” By our law a citizen is bound to be “true and faithful” alone to our government.”

The practical effect of that proclamation is that in order to be a “natural born citizen” of the United States, one would have to be free from a competing claim for allegiance from another nation.

That such a schizophrenic situation was not only anticipated but accepted by His Majesty’s government during the time of the American founding can be inferred from the impressment of American sailors into the service of the Crown. During the War for Independence, British ships would block American ships from sailing and then the seamen on the British vessels would board the American ships and force the Americans to serve the side of the Empire.

The insistence on the part of the British that anyone born within the realm was a British subject regardless of any voluntary severance thereof and subsequent vow of allegiance to another prince was a significant factor in the hostilities known as the War of 1812.

Finally, in this regard, the British required no process of naturalization as such. Simply being born within the dominions of the monarchy of Great Britain was sufficient to endow one with the rights and privileges granted to any British subject. Nothing such a person did later in life (including becoming a citizen of another country) would ever alter his status as subject.

Obviously, in the United States that concept is neither the law now, nor was it the law at the time of the founding, despite assurances from Politico’s cadre of “constitutional scholars,” nearly all of whom reportedly signed off on Cruz’s constitutional qualifications.

One of the scholars named in the Politico piece, Temple University law professor Peter Spiro, is quoted as opining that Cruz has a “very strong argument” for being a natural born citizen.

Spiro cites the 14th Amendment to the Constitution as further evidence that although born outside the U.S. to a foreign father, Cruz fits the 14th Amendment’s definition of a natural born citizen.



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The relevant clause of the 14th Amendment reads:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside.”

The principal architect of the citizenship clause of the 14th Amendment was Michigan Senator Jacob Merritt Howard, a Republican representing Detroit.

Senator Howard crafted much of the language that was eventually ratified as part of the 14th Amendment.

During the debates that embroiled the Senate in the years following the Civil War, Senator Howard insisted that the qualifying phrase “subject to the jurisdiction thereof” be inserted into Section 1 of the 14th Amendment being considered by his colleagues. In the speech with which he proposed the alteration, Howard declared:

This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.

How could a person “born in the United States” be simultaneously a citizen and a “foreigner” or “alien” if the mere fact of nativity settled the question of citizenship?

Another legislator commenting at the time of the ratification of the 14th Amendment, Representative John Bingham, provided the following clarification of the meaning behind the “subject to the jurisdiction thereof” clause:

“Every human being born within the United States of parents *not owing allegiance to any foreign sovereignty* is, in the language of your Constitution itself, a natural born citizen.” (Emphasis added.)

While similar questions have been raised regarding the Article II eligibility of Senator John McCain (R-Ariz.) who ran for president in 2000 and in 2008, and Mitt Romney, who ran in 2008 and 2012, the case of those two men is distinct from that of Cruz.

Both McCain, who was born in the Panama Canal Zone to an American father serving overseas in the military, and Romney, whose father was born in Mexico to American parents, pass constitutional muster.

However, although not necessarily in the way claimed by Professor Spiro, when applied to the case of Senator Ted Cruz, the principles of constitutional law and interpretation set forth above call into question his qualification for president.

There is no debate that at the time of his birth (regardless of the location), his father was not an American citizen — and thus the president is the child of a person with legal allegiance to a foreign sovereignty and so does not conform to the accepted legal definition of “natural born citizen.”

Photo of Sen. Ted Cruz (R-Texas): AP Images

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