

Common Sense: What Does Natural Born Mean?

Last week, Donald Trump stirred the pot by suggesting there's a question about whether or not Ted Cruz is qualified to be president of the United States.

Cruz, who was born in Calgary, Alberta, Canada, while his mother, a U.S. citizen, and his father, a Cuban exile who had sworn allegiance to the Canadian government at the time, ran their seismic analysis company in the oil fields of Alberta. Legally, he is a U.S. citizen, there is no reasonable argument otherwise.

However, the Constitution of the United States sets an even higher bar for serving as president. From Article II:

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; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen Years a resident within the United States.

Personally, I've long held that Cruz is constitutionally eligible to hold the office of president of the United States. I based that opinion on my understanding of what the Framers probably meant by the phrase "natural-born citizen."

The phrasing for Americans today is ambiguous, but it was just as confusing to legal scholars in the late-1800s as the 14th Amendment was being considered. The Supreme Court, in its review of the amendment, referred to a long-standing concept of citizenship that many argue was passed down from our nation's earliest days as a group of British colonies.

Jus Soli is the concept that by virtue of being born within the sovereign borders of a nation, the child of two citizens of that nation, one automatically becomes a citizen. This is a principle that has always been held to be true in the U.S., one's opinion of the 14th Amendment and immigration notwithstanding.

But as the First Congress noted, this did not answer the question of citizenship for the children of Americans who are born on foreign soil or while at sea. To address this question, they adopted a law that 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.

This is based on the concept of Jus Sanguinis, which holds that citizenship is also passed down from two citizens to their children, regardless of where they are born. This new definition of "natural-born citizen" held for a short time, but was later applied only to the term "citizen."

This, however, doesn't answer the question of natural-born citizenship for the children of a couple in which only one parent is a citizen. And, as a law passed by Congress, not an amendment to the Constitution ratified by the states, it cannot override the Constitution's eligibility requirements.

So, in essence, Rand Paul is right. The matter isn't fully resolved, because no court has been asked to interpret the language. And until there is a court challenge—which Democrats are very likely to do if Cruz wins the GOP nomination—the matter remains unresolved.

Now, I believe such a case would be a huge waste of time and resources, and ultimately, the court would side with Cruz, but it would be an unnecessary distraction. And Jus Sanguinis isn't the only concept for citizenship the courts could

consider.

While most constitutional scholars look to Blackwell and English Common Law for guidance, some also turn to Emmerich de Vattel, an 18th-century contemporary of our Founders, who had his own distinct views on natural-born citizenship:

The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. 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, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent. We shall soon see whether, on their coming to the years of discretion, they may renounce their right, and what they owe to the society in which they were born. I say, that, in order to be of the country, it is necessary that a person be born of a father who is a citizen; for, if he is born there of a foreigner, it will be only the place of his birth, and not his country.

The inhabitants, as distinguished from citizens, are foreigners, who are permitted to settle and stay in the country. Bound to the society by their residence, they are subject to the laws of the state while they reside in it; and they are obliged to defend it, because it grants them protection, though they do not participate in all the rights of citizens. They enjoy only the advantages which the law or custom gives them. The perpetual inhabitants are those who have received the right of perpetual residence. These are a

kind of citizens of an inferior order, and are united to the society without participating in all its advantages. Their children follow the condition of their fathers; and, as the state has given to these the right of perpetual residence, their right passes to their posterity ...

It is asked whether the children born of citizens in a foreign country are citizens? The laws have decided this question in several countries, and their regulations must be followed.(59) By the law of nature alone, children follow the condition of their fathers, and enter into all their rights (§ 212); the place of birth produces no change in this particular, and cannot, of itself, furnish any reason for taking from a child what nature has given him; I say “of itself,” for, civil or political laws may, for particular reasons, ordain otherwise. But I suppose that the father has not entirely quitted his country in order to settle elsewhere. If he has fixed his abode in a foreign country, he is become a member of another society, at least as a perpetual inhabitant; and his children will be members of it also.

So, as you can see, the matter of who is a natural-born citizen isn't fully settled. I think it behooves the Cruz camp to get the courts' opinion on the matter before it becomes an even more troublesome matter, not just for his candidacy, but for the nation as a whole.

The next president must put our nation back on track. Regardless of who that is, that cannot happen if there are questions about his legitimacy.