

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Case Number BLC 2015-2

Carmon Elliott v. Ted Cruz
Christopher Booth v. Ted Cruz

Sen. Ted Cruz is a Republican United States Senator representing the state of Texas. He filed his nomination papers to run in the New Hampshire Presidential Primary during the filing period which ended on November 20, 2015. In those nomination papers, he swore that he qualified for the office of President. The New Hampshire Secretary of State accepted the filing.

New Hampshire statute regarding filing for the “Presidential Nominations,” RSA 655:47 “Declaration of Candidacy,” provides the following:

“I. The names of any persons to be voted upon as candidates for president at the presidential primary shall be printed on the ballots upon the filing of declarations of candidacy with the secretary of state in the following form and signed by the candidate: “I, _____, swear under penalties of perjury that I am qualified to be a candidate for president of the United States pursuant to article II, section I, clause 4 of the United States Constitution, which states, ‘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.’ I further declare that I am domiciled in _____, in the city (or town or unincorporated place) of _____, county of _____, state of _____; that I am a registered member of the _____ party; that I am a candidate for the nomination for the office of president to be made at the primary election to be held on the _____ day of _____; and I hereby request that my name be printed on the official primary ballot of said _____ party as a candidate for such nomination.”

There appears to be no dispute that Senator Cruz was born in Calgary, Alberta, Canada, and that his mother was a United States citizen and his father a Cuban citizen at the time of his birth. The filing has been challenged by Carmon Elliott, of Pittsburgh, Pennsylvania, and by Christopher Booth, an undeclared New Hampshire voter. Both filed identical challenges to the Cruz filing, based on an extensive analysis of the legal definition of “natural born citizen,” it being their assertion that since Cruz was not born in the United States, he is not a “natural born citizen,” and therefore cannot be included on the ballot.

Cruz responded, through counsel, making several preliminary assertions. First, he questioned the jurisdiction of the Commission to consider the matter, citing RSA 655:47 III, which states, “III. The decision of the secretary of state as to the regularity of declarations of

candidacy filed under this section shall be final.” The Commission, and the Secretary of State, interpret this statutory section to mean that the decision of the Secretary of State to accept nomination papers, as to their form, if in a different form than that provided by the Secretary of State, is final, but that the Commission has jurisdiction to hear challenges to filings accepted by the Secretary of State on other bases. The Commission has jurisdiction to hear filing disputes under RSA 665:7.

Further, Cruz asserts that the two individuals challenging his candidacy lack standing to make the challenge. For reasons set forth hereafter, the Commission does not need to decide the standing question, although it notes that an out-of-state person challenging such a filing probably lacks standing, absent some New Hampshire person or entity’s joining in the challenge.

On the substance of the challenge, Cruz presented extensive legal argument and citations asserting that “natural born citizen” means a person who has been a United States citizen for his or her entire life, and is not a “naturalized citizen.” As Cruz’ mother was a United States citizen, he asserts, he has been a United States citizen since birth, and thus is a “natural born citizen.”

The Commission is impressed by the extensive study of precedent and history presented by both sides in this case, which show clearly that there is much written on the subject of what the original framers of the Constitution intended when they drafted the language, many cases which discuss the concept, and much scholarly writing on it. It also is clear that there is no final United States Supreme Court decision deciding the matter, as to Presidential candidates.

The jurisdiction and role of the Ballot Law Commission are set in statute. In our decision in BLC 2011-4, Complaint of Dr. Orly Taitz, Esq. Against Barack Obama, this Commission stated,

“As counsel advised the Commission at its hearing, the jurisdiction of the New Hampshire Ballot Law Commission is limited to that afforded it by the legislature in its enabling legislation. That does not include investigation of asserted criminal activity, conspiracy or other matters. The Commission has no staff, no budget and receives no compensation for the service members provide the state...Absent an obvious defect in a filing for office (such as residency in a district different from that in which a candidate has filed, etc.), the commission is limited to a review of the sufficiency of the filing of a candidate. After such a review, and absent such a showing, there is absolutely no basis to reject...(a candidate’s)...declaration of candidacy or to deny him a place on the...Presidential Primary Ballot.”

Applying that precedent and principle to the present challenge, no obvious defect in the filing of Senator Cruz has been presented to the Commission, and nothing to dispute the reasonableness of the Secretary of State in accepting the filing. Clearly, there is no final decision on the meaning of “natural born citizen,” and this Commission is not the appropriate forum for the determination of major Constitutional questions. (That being said, the Commission notes that the appropriate raising in and deciding of this question by a court equipped to decide such Constitutional matters, so that all election officials and the American people know once and for all the definition of “natural born citizen,” would be helpful in avoiding uncertainty.)

As there is no obvious defect in the filing, and the question of “natural born citizen,” is not answered with certainty so the Commission has no clear standard to apply, the task before the Commission is quite simple. The Secretary of State acted appropriately in accepting the filing of Senator Ted Cruz. Therefore, the action of the Secretary of State is upheld and the challenge is not sustained, and Sen. Cruz’ name will appear on the New Hampshire Republican Presidential Primary Ballot.

Note: At its hearing, the Commission was presented with another challenge to Sen. Cruz filed by one Dyas, and decided that it was covered by the decision in this case as well.

So ordered.

A handwritten signature in blue ink, appearing to read "Bradford E. Cook", is written over a horizontal line.

Bradford E. Cook, Chairman

Michael Eaton

Sheila Francoeur

Beverly Hollingworth

Roger Wellington