

**STATE OF NEW HAMPSHIRE
BALLOT LAW COMMISSION**

Case Number BLC 2015-4

Robert Laity v. Ted Cruz and Marco Rubio

This matter comes before the Commission on the e-mailed complaint of one Robert Laity, who identifies himself as “Founder and President, Society for the Preservation of our American Republic, 43 Mosher Drive, Tonawanda, NY 14150.” In his communication, Mr. Laity challenges the acceptance of filed nomination papers of four candidates for President of the United States, all of which were accepted as complete filings by the Secretary of State, during the filing period which ended on November 20, 2015. In those nomination papers, the candidates, Marco Rubio, Ted Cruz, Bobby Jindal and Rick Santorum each swore that he qualified for the office of President. The challenge to each candidate is based upon the fact that one or both of his parents was not a citizen of the United States at the time the candidate was born, and thus, he was not a “natural born citizen” as required by the Constitution of the United States. After the challenge was received, Gov. Jindal withdrew from the race, and the challenge to former Sen. Santorum was withdrawn.

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.”

Mr. Laity did not appear at the hearing, and no testimony was offered under oath verifying the assertions in his filing, which was that Sen. Rubio’s “Parents were un-naturalized ‘Permanent resident’ Cuban citizens when he was born,” and Sen. Cruz “was born in Canada to a Cuban Father and American Mother who may have naturalized as a Canadian.” The Commission assumes that “American” means “citizen of the United States.” The filing claims

that having parents who are not United States citizens disqualifies someone as a “natural born citizen” and therefore disqualifies someone from serving as President under the Constitution, and, further, that being born outside of the United States, even if of one parent who is a citizen and one who is a non-citizen, also disqualifies a candidate’s being “natural born.”

Sen. Cruz and Sen. Rubio, through counsel, urge the Commission to dismiss this challenge due to the lack of standing of Mr. Laity, his non-appearance to present the case, and on the merits of the case, stating that their clients in fact qualify as “natural born citizens.” Further, they question 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 cites its decision BLC 2015-2, issued this day, in which the Commission disagrees with the same challenge to its jurisdiction, and in which it finds it unnecessary to decide the standing issue, due to the findings in the decision.

As in BLC 2015-2, 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 of “natural born citizen,” and much scholarly writing on it. It also is clear that there is no final United States Supreme Court decision deciding the matter, as applied to candidates for President.

The jurisdiction and role of the Ballot Law Commission are set in statute. We repeat what we said in BLC 2015-2. “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.” This same reasoning applies to the challenge to Sen. Rubio, and his filing also was properly accepted, and his name will appear on the New Hampshire Republican Presidential Primary Ballot, as well.

So ordered.



Bradford E. Cook, Chairman

Michael Eaton

Sheila Francoeur

Beverly Hollingworth

Roger Wellington