

From: Carmon Elliott [mailto:wizdym4@aol.com]
Sent: Friday, November 06, 2015 12:58 PM
To: Bradford E. Cook; elections@sos.state.nh.us
Subject: RE: Challenge to Ted Cruz's filing to be on New Hampshire's Presidential Primary Ballot

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re:Challenge to Ted Cruz's filing to be on

New Hampshire's Presidential Primary Ballot

"No Person except a natural born Citizen...shall be eligible to the Office of President" ... Article 2, Section 1, Clause 5, US Constitution

I am a fellow citizen who has concerned himself with this issue of Constitutional Presidential eligibility out of a love for our Constitution. When commentators and the press claimed that John McCain was eligible despite his birth in Panama, I filed suit, in the Spring of 2008, in the US District Court In Washington, DC., contesting his eligibility. Officers of the court there ultimately informed me that the appropriate venue for such a challenge was the Secretary of States' Election commission when Candidates file to be on states' Presidential Primary ballots.

I humbly submit this information challenging Senator Ted Cruz's filing to be on New Hampshire's Presidential Primary ballot. I am contending he is not eligible because he is not a natural born citizen, as he was not born in the jurisdiction of the United States. I know that Ted Cruz will affirm that he is a natural born

US citizen in his filing through his interpretation of the term, despite his acknowledged birth in Calgary, Canada.

However, It is the US Supreme Court that is the ultimate legitimate authority on interpreting the Constitution and defining the term in Article 2, Section 1, clause 5, "natural born" citizen, as opposed to naturalized citizen. And the Supreme Court's interpretation, as I'll show in this submission, herein, in several cases appearing before it through the years, is clear, consistent, and unambivalent, and your office is obliged to adhere to it by rejecting Ted Cruz's filing:

"A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, Every person born in the United States, and subject to the jurisdiction thereof becomes at once a citizen of the United States, and needs no naturalization." *Rogers v Bellei* 401 US 815,828 (1971)

" the Court took the position that the Fourteenth Amendment "contemplates two sources of citizenship, and two sources only: birth and naturalization. . . . Persons not . . . subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized," *Elk v. Wilkins*, 112 U. S. 94 (1884)

"all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, *Minor v. Happersett*, 88 U.S.162 (1875)

"The 14th Amendment created an implicit distinction among 14th Amendment native-born citizens, (born in the jurisdiction of the United States) and statutory native-born citizens. A statutory native-born citizen is a person who does not qualify for birthright citizenship under the 14th Amendment, (being born outside the jurisdiction of the United States), but receives U.S. citizenship, at birth, by laws enacted by Congress. For example, foreign-born children of American parents do not receive citizenship from the 14th Amendment; such children acquire U.S. citizenship, at birth, by statute, (a law of naturalization).

So, those born outside the United States to parents who are US citizens at the time of the person's birth are both native citizens and also naturalized citizens, since their citizenship is a) effective from the instant of their birth b) and granted to them by an Act of Congress, based on the fact that the person's parents were US citizens at that moment." (Such is the state of Ted Cruz's citizenship.)

<http://www.freerepublic.com/focus/news/2840767/posts>

respectively submitted by Carmon Elliott



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From: Carmon Elliott <wizdym4@aol.com>
Sent: Wednesday, October 14, 2015 8:43 PM
To: Elections
Subject: Re:informed consideration of filings to be on New Hampshire's Republican Presidential primary ballot
Attachments: challenge submission.odt

William Gardner
 New Hampshire Secretary of State

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"No Person except a natural born Citizen...shall be eligible to the Office of President"

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I humbly submit this information of to provide you with information which could be important in your correct decision in consideration of Senator Ted Cruz's filing to be on New Hampshire's Republican Presidential Primary ballot. I am contending he is not eligible, that he not a natural born citizen, because he was not born within the jurisdiction of the United States. I know that Ted Cruz will affirm that he is a natural born US citizen in his filing, through his interpretation of the term, despite his acknowledged birth in Calgary, Alberta, Canada.

However, It is the US Supreme Court that is the ultimate legitimate authority on interpreting the Constitution and defining the term in Article 2, Section 1, clause 5, "natural born" citizen, as opposed to naturalized citizen. And the Supreme Court's interpretation, as I'll show in this submission, herein, in several cases appearing before it through the years, is clear, consistent, and unambivalent: **"A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, Every person born in the United States, and subject to the jurisdiction thereof becomes at once a citizen of the United States, and needs no naturalization."** *Rogers v Bellei* 401 US 815,828 (1971)

" the Court took the position that the Fourteenth Amendment "contemplates two sources of citizenship, and two sources only: birth and naturalization. . . . Persons not . . . subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized," *Elk v. Wilkins*, 112 U. S. 94 (1884)

"all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens," *Minor v. Happersett*, 88 U.S.162 (1875)

According to published news accounts:

“Sen. Ted Cruz (R-Texas) felt compelled to release his birth certificate. The right-wing Texan was born in Calgary, Alberta, to an American mother, which immediately made Cruz an American citizen. And so, late yesterday, Cruz renounced any claim to Canadian citizenship, and released a written public statement.

*“Given the raft of stories today about my birth certificate, it must be a slow news day. The facts of my birth are straightforward: **I was born in 1970 in Calgary, Canada.** Because my mother was a U.S. citizen, born in Delaware, I was a U.S. citizen by birth. When I was a kid, my Mom told me that I could choose to claim Canadian citizenship if I wanted. I got my U.S. passport in high school.*

*“Because I was a U.S. citizen at birth, because **I left Calgary when I was 4** and have lived my entire life since then in the U.S., and because I have never taken affirmative steps to claim Canadian citizenship, I assumed that was the end of the matter.*

“Now the Dallas Morning News says that I may technically have dual citizenship. Assuming that is true, then sure, I will renounce any Canadian citizenship. Nothing against Canada, but I’m an American by birth and as a U.S. Senator, I believe I should be only an American.”

<http://www.msnbc.com/rachel-maddow-show/ted-cruz-renounces-canadian-citizenship>

Ted Cruz renounced his Canadian citizenship in 2013

<http://www.washingtonpost.com/news/post-politics/wp/2013/08/19/cruz-will-renounce-canadian-citizenship/>

Black' Law Dictionary(9th Edition) defines "Natural born citizen" as "a person born within the jurisdiction of a national government."

Supreme Court Decisions

In *Rogers v. Bellei* 401 U.S. 815, 828 (1971). "The Supreme Court held that **children born abroad of Americans are not citizens within the citizenship clause of the 14th Amendment.**"... **"To this day, the Constitution makes no provision for jus sanguinis, or citizenship by descent... Thus, acknowledging petitioner's claim that he is a**

Fourteenth Amendment citizen, Pet. 9, does not mean that his children born abroad have any right under the Constitution to United States citizenship at birth.”... “Our law in this area follows English concepts with an acceptance of the jus soli, that is, that the place of birth governs citizenship status except as modified by statute.”” Id. At 828.

Perkins v. Elg, 307 U. S. 325 (1939) In citing a long series of cases, involving minors removed from their US domicile by their foreign born parents, the Supreme Court distinguishes the difference of **“a native born person” of two naturalized citizens can become President.** This distinction of citizenship is not made to the others, only that their Jus soli citizenship is intact if at the age of majority they reclaim it.

“The Fourteenth Amendment of the Constitution, in the declaration that all persons born or naturalized in the United States, and contemplates **two sources of citizenship, and two only: birth within the jurisdiction and naturalization** subject to the jurisdiction thereof, that Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. **Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization.** either by treaty, as in the case [p703] of the annexation of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts. are citizens of the United States and of the State wherein they reside.”

The federal court held in a decision written by U.S. Supreme Court Associate Justice Stephen J. Field) that he was a citizen by birth, and

remained such despite his long stay in China, cited the decision in *Lynch v. Clarke* and described that case:

"After an exhaustive examination of the law, the Vice-Chancellor said that he entertained no doubt that every person born within the dominions and allegiance of the United States, whatever the situation of his parents, was a natural-born citizen, and added that this was the general understanding of the legal profession, and the universal impression of the public mind".

The *Lynch* case was also cited as a leading precedent in the U.S. Supreme Court decision in *United States v. Wong Kim Ark (1898)*, [45] which similarly held that the child born in the United States of two Chinese parents was a birthright US citizen, and that decision also used the phrase "natural born". [46]

In 1939 the U.S. Supreme Court issued its decision in the case of *Perkins v. Elg*

[44]

"The young woman filed suit for a declaratory judgment that she was an American citizen by birth. She won at the trial level, and at the circuit court—where she was repeatedly described as "a natural born citizen" [47] — and finally in the U.S. Supreme Court, where the court decision quoted at length from the U.S. Attorney-General's opinion in *Steinkauler's Case* (mentioned above) including the comment that the person born in America and raised in another country could yet "become President of the United States". [48].

<https://supreme.justia.com/cases/federal/us/401/815/case.html>

Rogers v. Bellei 401 U.S. 815, 828 (1971) US Supreme Court

3."Thus, at long last, there emerged an express constitutional definition of citizenship. But it was one restricted to the combination of three factors, each and all significant: birth in the United States, naturalization in the United States, and subjection to the jurisdiction of the United States. The definition obviously did not apply to any acquisition of citizenship by being born abroad of an American parent. That type, and any other not covered by the Fourteenth Amendment, was necessarily left to proper congressional action."

4." The Court has recognized the existence of this power. It has observed, "No alien has the slightest right to naturalization unless all statutory requirements are complied with. . . ." United States v. Ginsberg, 243 U. S. 472, 243 U. S. 475 (1917). See United States v. Ness, 245 U. S. 319 (1917); *Maney v. United States, 278 U. S. 17 (1928).* "And the Court has specifically recognized the power of Congress not to grant a United States citizen the right to transmit citizenship by descent. As hereinabove noted, persons born abroad, even of United States citizen fathers who, however, acquired American citizenship after the effective date of the 1802 Act, were aliens. Congress

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responded to that situation only by enacting the 1855 statute. Montana v. Kennedy, 366 U.S. at 366 U. S. 311. But more than 50 years had expired during which, because of the withholding of that benefit by Congress, citizenship by such descent was not bestowed. United States v. Wong Kim Ark, 169 U.S. at 169 U. S. 673-674. Then, too, the Court has recognized that, until the 1934 Act, the transmission of citizenship to one born abroad was restricted to the child of a qualifying American father, and withheld completely from the child of a United States citizen mother and an alien father. *Montana v. Kennedy, supra.*"

Mr. Justice Gray has observed that the first sentence of the Fourteenth Amendment was "declaratory of existing

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rights, and affirmative of existing law," so far as the qualifications of being born in the United States, being naturalized in the United States, and being subject to its jurisdiction are concerned. United States v. Wong Kim Ark, 169 U.S. at 169 U. S. 688. Then follows a most significant sentence:

"But it [the first sentence of the Fourteenth Amendment] has not touched the acquisition of citizenship by being born abroad of American parents; and has left that subject to be regulated, as it had always been, by Congress, in the

exercise of the power conferred by the Constitution to establish an uniform rule of naturalization."

Apart from the passing reference to the "natural born Citizen" in the Constitution's Art. II, § 1, cl.5, we have, in the Civil Rights Act of April 9, 1866, 14 Stat. 27, the first statutory recognition and concomitant formal definition of the citizenship status of the native born: "[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States. . . ."

This, of course, found immediate expression in the Fourteenth Amendment, adopted in 1868,

with expansion to "[a]ll persons born or naturalized in the United States."

"Afroyim's broad interpretation of the scope of the Citizenship Clause finds ample support in the language and history of the Fourteenth Amendment. Bellei was not "born . . . in the United States," but he was, constitutionally speaking, "naturalized in the United States." Although those Americans who acquire their citizenship

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under statutes conferring citizenship on the foreign-born children of citizens are not popularly thought of as naturalized citizens, the use of the word "naturalize" in this way has a considerable constitutional history. Congress is empowered by the Constitution to "establish an uniform Rule of Naturalization," Art. I, § 8. Anyone acquiring citizenship solely under the exercise of this power is, constitutionally speaking, a naturalized citizen. The first congressional exercise of this power, entitled "An Act to establish an uniform Rule of Naturalization," was passed in 1790 at the Second Session of the First Congress. It provided in part:

"And the children of citizens of the United States, that may be born beyond sea, or out of the

limits of the United States, shall be considered as natural born citizens: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States." {This was replaced in 1795 by an act not using the term "natural born"}

1 Stat. 103, 104. This provision is the earliest form of the statute under which Bellei acquired his citizenship. Its enactment as part of a "Rule of Naturalization" shows, I think, that the First Congress conceived of this and most likely all other purely statutory grants of citizenship as forms or varieties of naturalization. However,

'the clearest expression of the idea that Bellei and others similarly situated should for constitutional purposes be considered as naturalized citizens is to be found in United States v. Wong Kim Ark, 169 U. S. 649 (1898):

"The Fourteenth Amendment of the Constitution . . . contemplates two sources of citizenship, and two only: birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere

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fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof becomes at once a citizen of the United States, and needs no naturalization. A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case of the annexation of foreign territory; or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts."

169 U.S. at 169 U. S. 702-703. "The Court in Wong Kim Ark thus stated a broad and comprehensive definition of naturalization. As shown in Wong Kim Ark, naturalization, when used in its constitutional sense, is a generic term describing and including within its meaning all those modes of acquiring American citizenship other than birth in this country. All means of obtaining American citizenship which are dependent upon a congressional enactment are forms of naturalization. This inclusive definition has been adopted in several opinions of this Court besides United States v. Wong Kim Ark, supra. Thus, in Minor v. Happersett, 21 Wall. 162, 88 U. S. 167 (1875), the Court said: "Additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization. . . . [N]ew citizens may be born, or they may be created by naturalization."

And in Elk v. Wilkins, 112 U. S. 94 (1884), the Court took the position that the Fourteenth Amendment "contemplates two sources of citizenship, and two sources only: birth and naturalization. . . . Persons

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not . . . subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either

individually, as by proceedings under the naturalization acts, or collectively,
as by the force of a treaty by which foreign territory is acquired"

U.S. Supreme Court Elk v. Wilkins, 112 U.S. 94 (1884)

<https://supreme.justia.com/cases/federal/us/112/94/case.html>

"The distinction between citizenship by birth and citizenship by naturalization is clearly marked in the provisions of the Constitution, by which

"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,"and "The Congress shall have power to establish an uniform rule of naturalization." Constitution, Article II, Section 1; Article I, Section 8.This section contemplates two sources of citizenship, and two sources only: birth and naturalization. The persons declared

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to be citizens are "all persons born or naturalized in the United States, and subject to the jurisdiction thereof." The evident meaning of these last words is not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other.

Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively,

as by the force of a treaty by which foreign territory is acquired.

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It is also worthy of remark that the language used about the same time by the very Congress which framed the Fourteenth Amendment, in the first section of the Civil Rights Act of April 9, 1866, declaring who shall be citizens of the United States, is "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed." 14 Stat. 27; Rev.Stat. § 1992. Such Indians, then, not being citizens by birth, can only become citizens in the second way mentioned in the Fourteenth Amendment, by being "naturalized in the United States," by or under some treaty or statute.

· To Page 112 U. S. 109

390. be a citizen of the United States is a political privilege which no one not born to can assume without its consent in some form. By the Act of April 9, 1866, entitled "An act to protect all persons in the United States in their civil rights, and furnish means for their vindication," 14 Stat. 27, it is provided that

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"all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States."

Beyond question, by that act, national citizenship was conferred directly upon all persons in this country, of whatever race (excluding only "Indians not taxed") who were born within the territorial limits of the United States, and were not subject to any foreign power.

"It is only those who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens, and there can be no objection to the proposition that such persons should be citizens."

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"By the express terms of the 14th Amendment, persons of foreign birth, who have never renounced the allegiance to which they were born, though they may have a residence in this country, more or less permanent, for business, instruction, or pleasure, are not citizens."

{Mr. Ted Cruz, who was born in Calgary, Alberta, Canada, did not renounce his Canadian citizenship until 2013.}

http://www.fourwinds10.net/siterun_data/government/us_constitution/news.php?q=1308252582

The constitutional authority on all terms and phrases mentioned in the U.S. Constitution; The Supreme Court of the United States:

First, let me note that there are 4 such cases which speak of the notion of "natural born citizenship".

Each of these cases will cite or apply the definition of this term, as given in a book entitled, The Law of Nations, written

by Emmerich de Vattel, a Swiss-German philosopher of law. In that book, the following **definition of a "natural born citizen"**

appears, in Book I, Chapter 19, § 212, of the English translation of 1797(p. 110): 212. "Citizens and natives." 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."

De Vattel talks about the relationship between individuals and government in Book 1 of *The Law of Nations*. He describes two types of citizen. In § 212. **Citizens and natives.** He says: "The natives, or **natural-born citizens, are those born in the country, of parents who are citizens.**"

The second type of citizenship is discussed in § 214. **Naturalization.** Of Naturalized citizens de Vattel says: "A nation, or the sovereign who represents it, may grant to a foreigner the quality of citizen, by admitting him into the body of the political society." These are made citizen by the law of the country or the grant of the sovereign.

The Wong Kim Ark Court explained: "The fundamental principle of the common law with regard to English nationality was birth within the allegiance-also called „ligealty," „obedience," „faith," or „power"-of the king. The principle embraced all persons born within the king's allegiance, and subject to his protection."

Justice Curtis's dissent in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856): The first section of the second article of the constitution uses the language, „a natural-born citizen." It thus assumes that citizenship may be acquired by birth. Undoubtedly, this language of the constitution was used in reference to that principle of public law, well understood in this country at the time of the adoption of the constitution, which referred citizenship to the place of birth.

The Venus, 12 U.S. 8 Cranch 253 253 (1814)

WHAT THE VENUS CASE SAYS ON CITIZENSHIP

In the *Venus Case*, Justice Livingston, who wrote the unanimous decision, quoted the entire §212nd paragraph from the French edition, using his own English, on p. 12 of the ruling:

“Vattel, who, though not very full to this point, is more explicit and more satisfactory on it than any other whose work has fallen into my hands, says:

"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 indigenes are those born in the country of parents who are citizens. Society not being able to subsist and to perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights."

Shanks v. Dupont, 28 U.S. 3 Pet. 242 242 (1830) "children born in a country, continuing while under age in the family of the father, partake of his national character as a citizen of that country. **Her citizenship, then, being prima facie established**"

Minor v. Happersett , 88 U.S. 162 (1875)The Chief Justice of the Supreme Court in that year, wrote the majority opinion, in which he stated:"The Constitution does not in words say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners. Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents."

United States v. Wong Kim Ark, 169 U.S. 649 (1898) Justice Gray gave the opinion of the court. On p. 168-9 of the record, He cites approvingly the decision in Minor vs. Happersett: "At common law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children, born in a country of parents who were its citizens, became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners."

On the basis of the 14th Amendment, however, the majority opinion coined a new definition for "native citizen", as anyone

who was born in the U.S.A., under the jurisdiction of the United States.

CONCLUSION: Finally it should be noted, that to define a term is to indicate the category or class of things which it signifies. In this sense, **the Supreme Court of the United States has never applied the term "natural born citizen" to any other category than "those born in the country of parents who are citizens thereof"**.

Hence, every U.S. Citizen must accept this definition or categorical designation, and fulfil his constitutional duties accordingly. **No member of Congress, no judge of the Federal Judiciary, no elected or appointed official in Federal or State government has the right to use any other definition; and if he does, he is acting unlawfully, because unconstitutionally.**

<http://www.thepostemail.com/2009/10/18/4-supreme-court-cases-define-natural-born-citizen/>