Ted Cruz -- 2016 Republican's Citizenship Makes Hlm Elligible to be President

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Cruz speaks at the Growth & Opportunity Party in Des Moines, Iowa, in October. (Gage Skidmore/Flickr)

by John C. Eastman January 15, 2016 6:04 PM
Arguments to the contrary are just proof that the silly season is fully upon us.

Every four years, as the presidential campaigns start kicking into high gear for the Iowa caucuses and early primaries in New Hampshire, South Carolina, and beyond, some partisans begin feeling desperate about their candidate's prospects. We then see a flurry of half-truths, distortions of the historical record, and downright silly claims. The latest charge against Senator Ted Cruz falls into that latter category.

The charge, first pushed by Donald Trump, is that because Senator Cruz was born in Canada, he is not a natural-born citizen and therefore ineligible for the office of president. No serious constitutional scholar adheres to the view that the meaning of the "natural-born citizen" requirement contained in Article II, Section 1, Clause 5 of the Constitution applies only to people born on American soil. Nevertheless, out trots Mary Brigid McManamon, primarily a civil-procedure professor at Widener University's Delaware Law School who also teaches constitutional law, to argue in a *Washington Post* article earlier this week that the natural-born citizen language in the U.S. Constitution comes from the English common law, which "is clear and unambiguous," she claims, in holding that only persons "born within the dominions" are natural-born citizens." Professor McManamon is simply mistaken, both about the common law and about the Constitution.

After the English civil wars of the mid 17th century and the return of a number of English subjects who had departed the realm during the wars, an Act of Parliament determined that all children who, during the period of the wars, "were born out of his majesty's dominions, and whose fathers or mothers were natural-born subjects of this realm," were themselves natural-born subjects. (The act was cited in the landmark 1898 Supreme Court case *United States v. Wong Kim Ark* that ruled that the children of non-citizen lawful permanent residents born in the United States are automatically U.S. citizens.) That position was repeated and made more comprehensive in 1708, during the reign of Queen Ann: "the Children of all natural born Subjects born out of the Ligeance of Her Majesty, Her Heirs, and Successors shall be deemed adjudged and taken to be natural born Subjects of this Kingdom to all Intents Constructions and Purposes whatsoever." So English law is "clear and unambiguous," but the clarity is precisely the opposite of what Professor McManamon claimed.

McManamon's reliance on William Blackstone's *Commentaries on the Laws of England* as disposition evidence to the contrary is simply wrong; indeed, she would have realized that had she included the opening words of the sentence from which she quotes, or read a bit further in the chapter. Blackstone did not claim that all children born outside of the dominions of the king were aliens and not natural-born subjects. Rather, he said that was "generally speaking" the case. A bit further on, he specifically recognizes that the children born abroad of natural-born English subjects are themselves natural-born subjects. And a few pages after that, he recited several acts of parliament that established the broad proposition that children born abroad to English subjects were themselves natural-born subjects "in allegiance to the king." One statute provided that "all children, born out of the ligeance of the crown, whose fathers (or grandfathers by the father's side) were natural-born subjects, were to be deemed natural-born subjects

themselves, to all intents and purposes." Another statute provided that "every person born out of her majesty's dominions of a mother being a natural-born subject of the United Kingdom, 'shall be capable of taking to him, his heirs, executors, or administrators, any estate, real or personal, by devise or purchase, or inheritance of succession'" — in other words, were deemed natural-born subjects, since only natural-born subjects could inherit land and fulfill the allegiance to the king that was thereby due.

The story about the language in the U.S. Constitution is only slightly less clear. The definition of "natural-born citizen" in the Constitution has never been adjudicated by the Supreme Court, and I suppose that — at least for some judicial supremacists — until the High Court speaks, all is up for grabs. But for most constitutional law scholars who have considered the subject, the issue is relatively straightforward and long settled. The requirement in Article II that one be a "natural-born citizen" in order to be eligible for the presidency simply means that one be a citizen from birth, rather than subsequently becoming a citizen by later naturalization.

Moreover, this was the understanding of the clause given by the very first Congress in a bill passed in 1790 and signed into law by President George Washington: "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." Under that widespread and long-standing interpretation, Senator Cruz is clearly a natural-born citizen and therefore eligible for the presidency. His mother was a U.S. Citizen (born in Delaware) as well as a long-time resident of the United States, who happened to be living in Canada when Ted was born while her husband was temporarily employed there.

So let's move on from this particular silliness, and get back to the business of choosing a president from among the broad slate of well-qualified — and fully eligible — candidates before us.

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