

STATE BOARD OF ELECTIONS  
STATE OF ILLINOIS

2329 S. MacArthur Blvd.  
Springfield, Illinois 62704-4503  
217/782-4141  
Fax: 217/782-5959

James R. Thompson Center  
100 W. Randolph St., Ste. 14-100  
Chicago, Illinois 60601-3232  
312/814-6440  
Fax: 312/814-6485



EXECUTIVE DIRECTOR  
Steven S. Sandvoss

BOARD MEMBERS  
Charles W. Scholz, Chairman  
Ernest L. Gowen, Vice Chairman  
William J. Cadigan  
Andrew K. Carruthers  
Betty J. Coffrin  
John R. Keith  
William M. McGuffage  
Casandra B. Watson

AGENDA  
STATE BOARD OF ELECTIONS  
Sitting as the Duly Authorized  
State Officers Electoral Board  
Monday, February 1, 2016  
10:30 a.m.

James R. Thompson Center – Suite 14-100  
Chicago, Illinois  
and via videoconference  
2329 S. MacArthur Blvd.  
Springfield, Illinois

Roll call.

1. Recess the State Board of Elections and convene as the State Officers Electoral Board.
2. Consideration of objections to presidential candidate nominating petitions for the March 15, 2016 General Primary Election;
  - a. *Joyce v. Cruz*, 16SOEBGP526;
  - b. *Graham v. Cruz*, 16SOEBGP527;
  - c. *Graham v. Rubio*, 16SOEBGP528;
  - d. *Davis v. Clinton*, 16SOEBGP533.
3. Objections withdrawn – informational;
  - a. *Hendon & Shaw v. Cohen*, 16SOEBGP529;
  - b. *Hendon & Shaw v. O'Malley*, 16SOEBGP530;
  - c. *Hendon & Shaw v. Sanders*, 16SOEBGP531;
  - d. *Hendon & Shaw v. De La Fuente*, 16SOEBGP532.
4. Other business.
5. Recess the State Officers Electoral Board until February 17, 2016 at 10:30 a.m. in Chicago or until call of the Chairman, whichever occurs first.
6. Reconvene as the State Board of Elections.
7. Other business.
8. Adjourn until February 17, 2016 at 10:30 a.m. in Chicago or until call of the Chairman, whichever occurs first.

**Joyce v Cruz**  
**16 SOEB GP 526**

**Candidate:** Ted Cruz

**Office:** President

**Party:** Republican

**Objector:** Lawrence J. Joyce

**Attorney For Objector:** Pro Se

**Attorney For Candidate:** Sharee Langenstein

**Number of Signatures Required:** 3,000 – 5,000

**Number of Signatures Submitted:** Not in Issue

**Number of Signatures Objected to:** Not in Issue

**Basis of Objection:** The Candidate's nomination papers do not comply with the requirements of Section 7-11 of the Election Code because Ted Cruz, having been born in Canada, does not meet the natural born citizen requirement of Article II, Section 1, Clause 5 of the United States Constitution and, therefore, is not legally qualified to hold the office of United States President.

**Dispositive Motions:** Candidate's Motion to Dismiss Objection, Candidate's Reponse to the Motion of Lawrence Joyce, Memorandum of Law in Support of the Eligibility of Ted Cruz to Serve as President of the United States, Objector's Reply to the Candidate's Response and the Candidate's Memorandum of Law

**Binder Check Necessary:** No

**Hearing Officer:** Jim Tenuto

**Hearing Officer Findings and Recommendations:** The Candidate's Motion to Dismiss raised three grounds for dismissal of the Objection: (1) an electoral board's scope of inquiry is limited to ascertaining whether the nomination papers comply with the provisions of the Election Code; (2) the Objector does not fully state the nature of the objections; and (3) the question of whether a candidate for President of the United States is eligible to hold office is not within the scope of the Electoral Board.

The Hearing Officer considered each ground for dismissal individually. With regard to the first, the Hearing Officer noted that the Statement of Candidacy's validity is challenged, because it is alleged that Candidate is not legally qualified for office as he is not a "natural born citizen." Therefore, the Hearing Officer recommends that the Motion to Dismiss on the ground that an

electoral board's scope of inquiry is limited to ascertaining whether the nomination papers comply with the provisions of the Election Code be denied.

With regard to the second basis for argued for dismissal, the Hearing Officer noted that the central theme of the Objection is clearly stated, and therefore the Hearing Officer recommends that the Motion to Dismiss on the ground that the nature of the objection is not fully stated be denied.

With regard to the third basis of the Motion to Dismiss, the Hearing Officer considered and rejected the Candidate's argument that the question of eligibility for the office of President is only within the purview of the Electoral College and the United State Congress, in recommending that the Board find it does have subject matter jurisdiction to determine the validity of the Statement of Candidacy and that the Motion to Dismiss be denied on this ground.

Finally, the Hearing Officer considered the question of whether a candidate born outside of the United States to a mother who was a United States citizen at the time of the candidate's birth is qualified to hold the office of the President of the United States. Having reviewed the Memoranda of both Candidate and Objector on the matter, the Hearing Officer found that the Candidate is a "natural born citizen" by virtue of having been born in Canada to a United States citizen, thereby not causing the Candidate to have to take any steps or undergo a naturalization process to become a United States citizen. Accordingly, the Hearing Officer recommends that the Board deny the objection.

In summary, the Hearing Officer recommends that the Board deny the Candidate's Motion to Dismiss, deny the Objector's Objection, and order that the name of Ted Cruz be certified to the primary ballot as a Candidate of the Republican Party to the Office of the President of the United States.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE STATE BOARD OF ELECTIONS  
SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
ESTABLISHED PARTY CANDIDATES SEEKING TO APPEAR  
ON THE BALLOT FOR THE MARCH 15, 2016  
GENERAL PRIMARY ELECTION**

In the Matter of:

<b>Lawrence Joyce,</b>	)	
Petitioner(s) – Objector(s),	)	
	)	
v.	)	<b>16 SOEB GP 526</b>
	)	
<b>Ted Cruz,</b>	)	
Respondent(s) – Candidate(s).	)	

**RECOMMENDATION OF THE HEARING OFFICER**

This matter coming before the Illinois State Board of Elections sitting as the duly constituted State Officers Electoral Board and the undersigned Hearing Officer, pursuant to Appointment and Notice, makes the following Findings and Recommendations.

**Objection**

An Objection was timely filed by Lawrence Joyce alleging Ted Cruz’s Statement of Candidacy is invalid because he is not legally qualified to hold office as he is not a “natural born citizen.” Ted Cruz was born in Canada and does not qualify to hold the Office of President of the United States.

**Issue**

The issue presented is whether a Candidate born outside the United States to a mother who was a United States citizen at the time of his birth is qualified to hold the Office of President of the United States.

### **Case Management Conference**

A Case Management Conference was held following the calling of the cases. Objector filed a *Pro Se* Appearance and was present in Chicago. Sharee S. Langenstein filed an Appearance on behalf of the Candidate and was present in the Springfield office of the State Board of Elections.

### **Background**

The Candidate timely filed his nomination petitions seeking the Office of President of the United States as a Candidate in the March 15, 2016, Republican Primary. An Objection was timely filed challenging the Candidate's qualifications. The Objector contends being born outside the United States (Canada) to a mother who was a U.S. citizen at the time of his birth disqualifies Ted Cruz from holding the Office of President of the United States as he is not a natural born citizen.

On January 22, 2016, Candidate's Motion to Dismiss Objection was filed. The grounds for seeking the dismissal of the Objection are as follows:

1. An Electoral Board's scope of inquiry is limited to ascertaining whether the nomination papers comply with the provisions of the Election Code;
2. The Objector does not fully state the nature of the Objections; and
3. The question of whether a Candidate for President of the United States is eligible to hold office is not within the scope of the Electoral Board.

On January 25, 2016, Candidate's Response to the "Motion" of Lawrence Joyce was filed. Therein, the Candidate incorporates the argument made in the Motion to Dismiss. Additionally, attached to the Response was a Memorandum of law in Support of the Eligibility of Ted Cruz to Serve as President of the United States. Therein, the Candidate submits support for the proposition that Ted Cruz is eligible to hold the Office of President of the United States. In essence, the Candidate states that a "natural born citizen" is anyone who was a citizen at the

moment of birth as opposed to becoming a citizen through the naturalization process at some point after birth. Since Ted Cruz's mother was a U.S. citizen at the time of his birth in Canada, he became a U.S. citizen with no need to go through a naturalization proceeding.

Objector's Reply to the Candidate's Response and the Candidate's Memorandum of Law was filed on January 26, 2016.

### **Analysis**

Initially, the 3 issues raised on Candidate's Motion to Dismiss the Objection will be discussed. Thereafter, discussion will follow on the critical issue, to wit, whether a Candidate born outside the United States to a mother who was a U.S. citizen at the time of his birth is qualified to hold the Office of President of the United States.

A. Scope of Inquiry of an Electoral Board.

The Candidate suggests the Electoral Board's scope of inquiry is limited to ascertaining whether the nomination petition complies with the provision of the Election Code. In this case, the Objector does not question the form, filing date or validity of the Statement of Candidacy.

I agree with the Objector that the validity of the Statement of Candidacy is challenged. It is alleged Ted Cruz is not legally qualified because he is not a natural born citizen. Thus, the Statement of Candidacy is properly before the Electoral Board to determine if the Candidate is a natural born citizen.

B. The Objector does not fully state the nature of the Objections.

A cursory review of the Objection indicates that the central theme of the Objection is whether or not Ted Cruz is a natural born citizen. If he is not a natural born citizen, he is ineligible to hold the Office of the President of the United States.

The Objector clearly states the nature of the Objection.

C. Question of whether a Candidate for President of the United States is eligible to hold office is not within the scope of the electoral Board.

The Candidate suggests whether or not a Candidate for President of the United States is eligible to take Office is within the purview of the Electoral College and United States Congress. The question is beyond the scope of inquiry for the Electoral Board.

I disagree with the Candidate's assertion. The Statement of Candidacy is being questioned by the Objector. In order to determine the validity of the Statement of Candidacy, the threshold question of whether or not Ted Cruz is a natural born citizen must be addressed.

Thus, the Electoral Board does have subject matter jurisdiction to determine the validity of the Statement of Candidacy.

- D. Whether a Candidate born outside the United States to a mother who was a U.S. citizen at the time of his birth is qualified to hold the Office of President of the United States.

Article II of the United States Constitution 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 the President." U.S. Constitution, Art. II, Section 1.

As set forth above, Ted Cruz was born in Canada to a mother who, at the time of his birth, was a U.S. citizen. Ted Cruz became a natural born citizen at the moment of his birth because it was not necessary to become a citizen through the naturalization process at some point after birth.

Further discussion on this issue is unnecessary.

### **Findings**

1. Ted Cruz was born in Canada to a mother who was a U.S. citizen at the time of his birth.
2. The Candidate timely filed his nomination papers.
3. The Objector timely filed an Objection to Cruz's nominating petitions.
4. Candidate's Motion to Dismiss is denied for the following reasons:
  - A. The scope of inquiry of the Electoral Board is not limited to whether the nominations petitions comply with the Election Code.
  - B. The Objection does fully state the interest of the Objection.

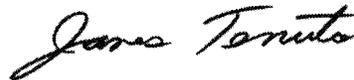
- C. The question of whether a Candidate for President of the United States is eligible to hold the Office of President of the United States is within the scope of inquiry of the Electoral Board.
5. The Electoral Board has subject matter jurisdiction to decide if a person born in Canada to a mother who was a U.S. citizen at the time of his birth is eligible to hold the Office of President of the United States.
  6. The Candidate, Ted Cruz, is a natural born citizen by virtue of being born in Canada to his mother who was a U.S. citizen at the time of his birth as the Candidate did not have to take any steps or go through a naturalization process at some point after his birth. .
  7. The Objection should be DENIED for the reasons set forth in Pars. (5) and (6).

#### RECOMMENDATION

It is the Recommendation of the Hearing Officer that the State Officers Electoral Board DENY the Candidate's Motion to Dismiss, DENY the Objection and order that the name of Ted Cruz be printed on the ballot as a Candidate of the Republican Party to the Office of President of the United States to be voted upon at the March 15, 2016, General Primary Election.

DATED: January 28, 2016

Respectfully submitted,



James Tenuto  
Hearing Officer



**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016**

<b>Lawrence J. Joyce</b>	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	<b>Docket Number:</b>
	)	
<b>Ted Cruz</b>	)	<b>16-SOEB-GP-526</b>
	)	
Respondent-Candidate.	)	

**STATEMENT OF OBJECTOR LAWRENCE J. JOYCE CONCERNING THE NOTICE  
OF FILING AND RECOMMENDATION OF HEARING OFFICER JAMES TENUTO  
TO DENY THE MOTION TO DISMISS AND TO DENY THE OBJECTION**

Your Petitioner-Objector, Lawrence J. Joyce (hereinafter “the Objector”), wishes to note the following points concerning the Notice of Filing and Recommendation of Hearing Officer James Tenuto (hereinafter referred to as “the Hearing Officer”) to Deny the Motion to Dismiss of Respondent-Candidate Ted Cruz (hereinafter referred to as “Respondent Cruz”) and to Deny your Objector’s Verified Objector’s Petition (hereinafter referred to as “the Objection”) in the above-captioned cause:

1. The sole stated basis of the Hearing Officer to Deny your Objector’s Petition lies in the fact that Respondent Cruz “... did not have to take any steps or go through a naturalization process at some point after his birth.” (Not. and Rec. at 6)

2. In your Objector’s Motion, your Objector quoted the Supreme Court of the United States in *United States v. Wonk Kim Ark*, 169 U.S. 649 (1898), as follows:

*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. *Wong Kim Ark* at 702-703 (emphasis supplied) (Obj. Mot. at 4)

3. If italicized specifically to correspond to the Recommendation of the Hearing Officer to Deny your Objector's Objection, however, that exact same quote would read as follows:

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. *Wong Kim Ark* at 702-703 (emphasis supplied)

4. The difference between the italicization of the above quote in your Objector's Motion as compared to that which is given here is that in the quotation given here, it is the word "either" (when used the second time) and the word "or" which are italicized, and nothing else.

5. In your Objector's Reply to the Candidate's Response and to the Candidate's Memorandum of Law, your Objector made note of the fact that said Candidate's Response and Memorandum itself seemed to have been addressed to persons who had not yet read your Objector's Motion (Obj. Reply to Resp. and Mem. of Law at 3); following that, for the sake of emphasis on the substance of the matter itself, your Objector then gave the exact same quote from the Supreme Court yet again, just as it had appeared in your Objector's Motion. (Obj. Reply to Resp. and Mem. of Law at 6).

6. Your Objector incorporates herein his Objection, his Motion, his initial Reply, and his Reply to the Candidate's Response and to the Candidate's Memorandum of Law by reference.

7. Your Objector shall be present at the meeting of the State Officers Electoral Board on Monday, February 1, 2016 to ask this Honorable Board to ADOPT the Recommendation of the Hearing Officer to Deny the Motion to Dismiss of Respondent Cruz, to ask this Honorable Board to REJECT the Recommendation of the Hearing Officer to Deny your Objector's Objection, and for such other and further relief as this Honorable Board may deem it meet to grant; your Objector shall also be present at said meeting to discuss this Statement itself and all other filings before this Honorable Board in this case and to make himself available to the members of the Board for any discussion or questions which they may have for your Objector.

Respectfully submitted,



Lawrence J. Joyce, Esq.  
*In Pro Se*  
115 Seminole Pl NW  
Poplar Grove, IL 61065  
(815) 601-0191  
(520) 247-0136  
ljballot@gmail.com

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on the following party before 5:00 P.M. on January 29, 2016, to the email addresses listed below in accordance with the Rules of the Illinois State Board of Elections.



Lawrence J. Joyce

Sharee Langenstein  
ShareeLangenstein@yahoo.com

Jim Tenuto  
jtenuto@elections.il.gov

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016.**

LAWRENCE J. JOYCE,	)	
Objector,	)	
	)	
v.	)	No. 16-SOEB-GP-526
	)	
TED CRUZ,	)	
Candidate.	)	

**CANDIDATE'S RESPONSE TO THE "MOTION" OF OBJECTOR  
LAWRENCE JOYCE**

NOW COMES the Candidate, Ted Cruz, through his attorney, Sharee S. Langenstein, who makes the following Response to the "Motion" filed on January 22, 2016, in the above-captioned case:

1. On January 4, 2016, Ted Cruz filed a Statement of Candidacy for the office of President of the United States, which contained his oath, signed before a Notary Public in the State of Illinois, swearing that he was qualified for office and requesting that his name be printed on the ballot for the March 15, 2016 General Primary Election. Attached to that Statement were Nominating Petitions containing approximately 5,000 signatures of registered voters in the State of Illinois.
2. On January 6, 2016, a document entitled "Verified Objector's Petition" was submitted to this Board by Lawrence J. Joyce of Poplar Grove, Illinois.
3. On January 22, two documents were filed in this case. One was the Candidate's Motion to Dismiss, and the second was a "Motion" filed by the objector, purportedly in support of his initial Objection.

4. The arguments made by the Candidate in his Motion to Dismiss are herein incorporated by reference.

5. The Candidate maintains that his Motion to Dismiss should be granted by this Board and that no other substantive arguments are necessary. However, should this Board find against the Candidate on the jurisdictional issue, the Candidate maintains his eligibility to serve as President of the United States. A Memorandum of Law regarding the substantive issue is attached hereto and is incorporated herein.

WHEREFORE, the Candidate, Ted Cruz, respectfully requests a finding that the Objection filed to his candidacy be OVERRULED and that this Board enter an Order that the name Ted Cruz SHALL APPEAR on the ballot for the General Primary Election to be held on March 15, 2016.

Respectfully submitted,

Ted Cruz

By



Sharee S. Langenstein  
Attorney for Ted Cruz

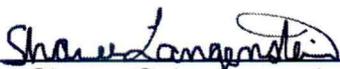
Sharee S. Langenstein, esq.  
The Law Office of Sharee S. Langenstein  
P.O. Box 141  
Murphysboro, IL 62966  
ShareeLangenstein@yahoo.com  
Phone or Fax: 855-694-8671

Prerak Shah, esq.  
Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue  
Dallas, TX 75201-6912  
Phone: 214-698-3193

Fax: 214-571-2944  
PShah@gibsondunn.com  
www.gibsondunn.com

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on the following parties before 5:00 pm on January 25, 2016, to the email addresses listed below in accordance with the Rules of the Illinois State Board of Elections.

  
Sharee S. Largenstein

Lawrence Joyce  
ljballot@gmail.com

Jim Tenuto  
jtenuto@elections.il.gov

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016.**

LAWRENCE J. JOYCE,	)	
Objector,	)	
	)	
v.	)	No. 16-SOEB-GP-526
	)	
TED CRUZ,	)	
Candidate.	)	

**MEMORANDUM OF LAW IN SUPPORT OF THE ELIGIBILITY OF TED CRUZ TO  
SERVE AS PRESIDENT OF THE UNITED STATES**

The Candidate, Ted Cruz, through his attorney, Sharee S. Langenstein, offers the following Memorandum of Law in support of his eligibility to become President of the United States.

**I. Introduction.**

Article II of the U.S. Constitution states that “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.” U.S. Const. art. II, § 1, cl. 4.

The Constitution does not define the phrase “natural born Citizen,” but its meaning is easily ascertainable. Every judicial decision and virtually every constitutional authority agree that a “natural born Citizen” is anyone who was a citizen at the moment they were “born”— as opposed to becoming a citizen through the naturalization process at some point after their birth. See, e.g., Paul Clement & Neal Katyal, *On the Meaning of “Natural Born Citizen”*, 128 Harv. L. Rev. F. 161, 161 (Mar. 11, 2015) (“All the sources routinely used to interpret the Constitution confirm that the

phrase ‘natural born Citizen’ has a specific meaning: namely, someone who was a U.S. citizen at birth with no need to go through a naturalization proceeding at some later time.”); Laurence H. Tribe & Theodore B. Olson, *Presidents and Citizenship* (March 19, 2008), *reprinted in* 2 Pub. L. Misc. 509 (2012) (“The U.S. Supreme Court gives meaning to terms that are not expressly defined in the Constitution by looking to the context in which those terms are used; to statutes enacted by the First Congress; and to the common law at the time of the Founding. These sources all confirm that the phrase “natural born” includes . . . birth abroad to parents who were citizens.”) (citations omitted).

**II. Every Reliable Source From the Time of the Writing of the U.S. Constitution Confirms That a Person Who Was a U.S. Citizen at Birth, Like Senator Cruz, is a “Natural Born Citizen” Eligible to Serve as President.**

“The constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that.” *United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1897) (quoting *Minor v. Happersett*, 88 U.S. 162, 167 (1875)). For example, “[t]he interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history.” *Id.* at 655 (quoting *Smith v. Alabama*, 124 U.S. 465, 478 (1888)). The Court also looks to enactments “passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument,” as “contemporaneous and weighty evidence of its true meaning.” *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888).

This makes sense. The first United States Congress was convened just three years after the drafting of the Constitution, so its enactments are strong indicators of what particular terms meant to the Framers at the time the Constitution was written. See, e.g., *Bowsher v. Synar*, 478 U.S. 714, 723 (1986) (the views of the First Congress provide “contemporaneous and weighty evidence of the Constitution’s meaning”) (internal quotation marks omitted).

Similarly, British law at the time of the Founding of the United States also provides essential context for determining the meaning of terms used by the Framers of the Constitution. The Constitution’s authors were, after all, raised in the British legal tradition. See, e.g., *Ex parte Grossman*, 267 U.S. 87, 109-09 (1925) (“The language of the Constitution cannot be interpreted safely except by reference to the common law and to the British institutions as they were when the instrument was framed and adopted.”); *Ex parte William Wells*, 18 How. (59 U.S.) 307, 311 (1855) (“We must then give the word the same meaning as prevailed here and in England at the time it found a place in the constitution.”)

With respect to the phrase “natural born Citizen,” the First Congress and British law at the time of the founding are in agreement; a person who is a citizen at birth is a “natural born” citizen. In 1790, the first Congress enacted legislation explicitly providing that “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*.” Naturalization Act of 1790, ch. 3, 1 Stat. 104, 104 (emphasis added). Considering that the First Congress includes eight of the eleven members of the committee that proposed the Natural Born Citizen Clause to the Constitutional Convention, the

definition within the Naturalization Act is particularly compelling. None of them objected to the 1790 statute. See *Clement & Katyal, supra* at 163.

Similarly, British law dating back to the 1350s, and in force at the time of founding, made clear that children born outside the British Empire to a subject of the Crown were themselves subjects of the Crown at birth, emphasizing that those children were accordingly “*natural-born Subjects . . . to all Intents, Constructions, and Purposes whatsoever.*” British Nationality Act, 1730, 4 Geo. 2, c. 21 (emphasis added). As the Supreme Court has observed: “Mr. Dicey, in his careful and thoughtful Digest of the Law of England with Reference to the Conflict of Laws, published in 1896, states the following propositions, his principal rules being printed below in italics: . . . ‘Natural-born British subject’ means a British subject who has become a British subject at the moment of his birth.” *United States v. Wong Kim Ark*, 169 U.S. 649, 657 (1897) (emphasis in original). British law further recognized that “[i]t is competent to any country to confer by general or special legislation the privileges of nationality upon those who are born out of its own territory . . . Great Britain considers and treats such persons as natural-born subjects.” *Id.* at 671-72 (emphasis added).

The original understanding of “natural born Citizen,” i.e., anyone who was a citizen of the United States at the moment of their birth, also comports with the Framers’ purpose in adopting this requirement in the Constitution. The Framers included the Natural Born Citizen Clause in response to a 1787 letter from John Jay to George Washington, in which Jay suggested that the Constitution prohibit “Foreigners” from attaining the position of Commander in Chief. See Letter from John Jay to George Washington (July 25, 1787), in 3 *The Records of the Federal Convention of 1787* 61

(Max Farrand ed., 1911) (“[W]hether it would not be wise & seasonable to provide a . . . strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the [A]merican army shall not be given to, nor devolve on, any but a natural *born* citizen.”).

The Framers in no way intended to exclude a U.S. citizen at birth from holding the office of President, simply because of where he or she happened to be born. After all, that individual is not a “foreigner,” but rather a U.S. citizen from birth. Indeed, John Jay himself would certainly not have held such a view, considering that, when he wrote this letter to Washington, he was serving abroad as the Secretary of Foreign Affairs and had already fathered three children abroad. Surely Jay did not believe his own children were “foreigners,” constitutionally ineligible to hold the office of President.

Moreover, note what the text of the Constitution does *not* say. The Constitution also requires that a person have “been fourteen Years a *resident* within the United States” to serve as President. Nowhere does the Constitution say that a person must be “born” “within the United States.” Indeed, many members of the Framing era used the term “native” citizen during the debates over the Constitution. See 2 M. Farrand, *The Records of the Federal Convention of 1787*, at 236, 243 (rev. ed. 1937); see also *The Federalist* No. 52, at 326 (J. Madison) (C. Rossiter ed. 1961). They did not limit Presidential eligibility to “native” U.S.-born Americans.

Though the meaning of “natural born citizen” has never been decided by the United States Supreme Court, Justice Clarence Thomas has stated (and no other justice disagreed) that “children born abroad to U.S. parents, subject to some exceptions, are natural-born citizens who do not need to go through the naturalization

process.” *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2110 (2015) (Thomas, J., concurring in part and dissenting in part). Indeed, Justice Thomas explicitly invoked the successor to the statute that conferred citizenship at birth on Senator Cruz in his description of “natural-born citizens.” See *id.* (citing 8 U.S.C. § 1401(g)).

All of these sources comport with the common understanding of the term “natural” or “natural born.” Not surprisingly, then, numerous dictionary definitions of these terms also reflect this interpretation.<sup>1</sup> Similarly, numerous legal dictionaries define “natural born” to mean born with “allegiance” to, that is, born a citizen of, a particular nation.<sup>2</sup>

### **III. Historical Precedent Confirms That Persons Born U.S. Citizens are “Natural Born” Citizens.**

---

<sup>1</sup> See, e.g., 7 Oxford English Dictionary 38 (1961) (defining “natural born” as “having a specified position or character by birth; used esp. with subject”); The Compact Edition of the Oxford English Dictionary 1899 (1971) (defining “natural-born” as “Having a specified position of character by birth; used esp. with subject”—“1701 Act 7 Anne x. 5 § 3 The Children of all natural-born Subjects, born out of the Ligeance of her Majesty . . . shall be deemed . . . to be natural-born Subjects of this Kingdom.”—“1833 Penny Cycl. I. 338/2 It is not true that every person, born out of the dominion of the crown, is therefore an alien; nor is a person born within them necessarily a natural-born subject.”); *id.* (defining “natural” as “Having a certain relative status by birth; natural-born”); Webster’s New International Dictionary 1439 (1923) (defining “natural-born” as “Having a (certain) status or character by birth; as, natural-born citizens; a natural-born coward”); *id.* (defining “natural” as “Of, from, or by, birth; natural-born; as, a natural fool; a natural athlete or musician; existing or characteristic from birth; innate; inborn; as, natural instincts or talents.”)

<sup>2</sup> Note, for example, Black’s Law Dictionary. See Black’s Law Dictionary (1st ed. 1891) (defining “natural-born subject” as “born within the dominions, or rather within the allegiance, of the king”); Black’s Law Dictionary (2nd ed. 1910) (same); Black’s Law Dictionary (3rd ed. 1933) (same); Black’s Law Dictionary (4th ed. 1941) (same); Black’s Law Dictionary (5th ed. 1979) (same); see also Black’s Law Dictionary (6th ed. 1990) (defining “natural born citizen” for the first time to include “those born of citizens temporarily residing abroad”). Other legal dictionaries from the Founding era reflect the same meaning. See, e.g., Thomas Walter Williams, A Compendious and Comprehensive Law Dictionary (1816) (defining “Natural Born Subjects” as “born within the dominions of the crown of England; that is, within the ligeance, or, as it is generally called, the allegiance of the king”); James Whishaw, A New Law Dictionary (1829) (same); Henry James Holthouse, A New Law Dictionary (1847) (Henry Penington ed., Am. ed.) (defining “Natural Born Subjects” as “Those who are born within the dominions, or rather within the allegiance of the King of England”); Alexander M. Burrill, A New Law Dictionary and Glossary (1850) (defining “Natural-Born Subjects” as “Such persons as are born within the dominions of the crown of England, that is, within the ligeance, or, as it is generally called, the allegiance of the king”).

American history and practice, as evidenced by previous candidates for President who were born outside the United States, confirms the original understanding of the term “natural born Citizen.”

In 2008, for example, Senator and presidential-candidate John McCain was considered a natural born citizen due to his birth to U.S. citizen parents, notwithstanding the fact that he was born in the Panama Canal Zone. Indeed, the United States Senate unanimously passed a resolution confirming that Senator McCain was a natural born citizen, due to his birth to U.S. citizen parents. See S. Res. 511, 110th Cong. (2008) (“previous presidential candidates were born outside of the United States of America and were understood to be eligible to be President,” consistent with “the purpose and intent of the ‘natural born Citizen’ clause of the Constitution of the United States, as evidenced by the First Congress’s own statute defining the term ‘natural born Citizen’”).

Courts uniformly concluded that Senator McCain was eligible to serve as President on account of his birth to citizen parents. See, e.g., *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1146 (N.D. Cal. 2008) (finding it “highly probable . . . that Senator McCain is a natural born citizen” due to his birth to at least one U.S. citizen parent, before dismissing case for lack of standing); *Hollander v. McCain*, 566 F. Supp. 2d 63, 66 & n.3 (D. N.H. 2008) (noting that “the weight of the commentary falls heavily on the side of eligibility” for persons born outside the U.S. to at least one U.S. citizen parent, before dismissing case for lack of standing); *Ankeny v. Governor of State of Indiana*, 916 N.E.2d 678, 685 n.10 (Ind. Ct. App. 2009) (concluding that “Plaintiffs do not cite any authority or develop any cogent legal argument for the proposition that a person must

actually be born within one of the fifty States in order to qualify as a natural born citizen”).

Senator McCain is but one example. Governor George Romney, born in Mexico to U.S. citizen parents, was also understood to be a natural born citizen when he ran for President in 1968. See, e.g., Clement & Katyal, *supra* at 164; see also S. Res. 511, 110th Cong. (2008) (“previous presidential candidates were born outside the United States of America and were understood to be eligible to be President”); Eustace Seligman, *A Brief for Governor Romney’s Eligibility for President*, 113 Cong. Rec. 35019, 35020 (1967) (“It is well settled that the term ‘natural born’ citizen (or subject) included not only all those born within the territorial limits of England or of the Colonies but likewise all those who were citizens at birth, wherever their birthplaces might be.”); *Id.* at 35021 (“It follows from the preceding that Governor Romney, who was a citizen of the United States from his birth by virtue of his parentage, is a natural-born citizen and therefore is eligible under the constitution to be elected to the office of President of the United States.”).

Unsurprisingly, then, the Congressional Research Service (“CRS”), a non-partisan agency within the Library of Congress that provides legal and policy analysis to members of Congress, has also come to the same conclusion. In 2011, the CRS issued a report concluding that the “weight of legal and historical authority indicates that the term ‘natural born’ citizen would mean a person who is entitled to U.S. citizenship ‘by birth’ or ‘at birth,’” including “by being born abroad to U.S. citizen-parent.” Jack Maskell, *Qualifications for President and the “Natural Born” Citizenship Eligibility Requirement* (Congressional Research Service, Report No. 7-5700, Nov. 14, 2011),

available at <http://www.fas.org/sgp/crs/misc/R42097.pdf>; *Id.* at 50 (“The weight of more recent federal cases, as well as the majority of scholarship on the subject, also indicates that the term ‘natural born citizen’ would most likely include, as well as native born citizens, those born abroad to U.S. citizen-parents, at least one of whom had previously resided in the United States, or those born abroad to one U.S. citizen parent who, prior to the birth, had met the requirements of federal law for physical presence in the country.”).

Founding-era sources, Congressional statements, historical precedent, case law, and the overwhelming weight of scholarly authority all command the same conclusion: a “natural born Citizen” is a person who was a U.S. citizen at birth, without the need for later naturalization.

The fact that Senator Cruz satisfies this definition cannot be questioned. At the time of Senator Cruz’s birth, 8 U.S.C. § 1401(a)(7) provided that: “The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.”<sup>3</sup>

---

<sup>3</sup> Today, the relevant law is codified at 8 U.S.C. § 1401(g) (2012): “The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.”

Senator Cruz fulfills these criteria. He was born outside the United States, and his mother was a U.S. citizen who was physically present in the U.S. for more than ten years, including at least five after attaining the age of 14. Accordingly, Senator Cruz was a United States citizen at the moment of his birth, and thus is a "natural born Citizen" eligible to serve as President of the United States.

WHEREFORE, the Candidate, Ted Cruz, respectfully requests a finding that the Objection filed to his candidacy be OVERRULED and that this Board enter an Order that the name Ted Cruz SHALL APPEAR on the ballot for the General Primary Election to be held on March 15, 2016.

Respectfully submitted,

Ted Cruz

By   
Sharee S. Langenstein  
Attorney for Ted Cruz

Sharee S. Langenstein, esq.  
The Law Office of Sharee S. Langenstein  
P.O. Box 141  
Murphysboro, IL 62966  
ShareeLangenstein@yahoo.com  
Phone or Fax: 855-694-8671

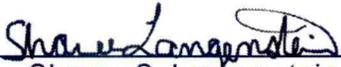
Prerak Shah, esq.  
Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue  
Dallas, TX 75201-6912  
Phone: 214-698-3193  
Fax: 214-571-2944  
PShah@gibsondunn.com  
www.gibsondunn.com

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on the following parties before 5:00 pm on January 25, 2016, to the email addresses listed below in accordance with the Rules of the Illinois State Board of Elections.

Lawrence Joyce  
[ljballot@gmail.com](mailto:ljballot@gmail.com)

Jim Tenuto  
[jtenuto@elections.il.gov](mailto:jtenuto@elections.il.gov)

  
Sharee S. Langenstein

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016**

<b>Lawrence J. Joyce</b>	)	
	)	
Objector,	)	
	)	
v.	)	<b>Docket Number:</b>
	)	
<b>Ted Cruz</b>	)	<b>16-SOEB-GP-526</b>
	)	
Candidate.	)	

**MOTION**

Your Objector, Lawrence J. Joyce, hereby moves that this Honorable Election Board order that the name of Ted Cruz as a participant in the expression of the sentiment and will of the voters of the Republican Party with respect to Republican candidates for nomination to the Office of President of the United States BE NOT PRINTED on the OFFICIAL REPUBLICAN PRIMARY BALLOT for the General Primary Election to be held in the State of Illinois on March 15, 2016, and for such other and further relief as this Honorable Election Board may deem it meet to grant.

**Statement of the Case**

Your Objector hereby incorporates his Verified Objector’s Petition in this case by reference. In addition, your Objector wishes to add the following details: Senator Ted Cruz (hereinafter referred to as “Sen. Cruz”) was born on December 22, 1970 in the City of Calgary, in the Province of Alberta in Canada; Sen. Cruz has been a citizen of the United States continuously since birth under § 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401.<sup>1</sup> Sen. Cruz recently renounced his Canadian citizenship.<sup>2, 3, 4, 5</sup> That being the case, the only issue in this case is whether the citizenship conferred on Sen. Cruz by statute satisfies the natural born citizen eligibility criterion which one must meet in order for one to hold the Office of President of the United States, as follows:

---

<sup>1</sup> <http://codes.lp.findlaw.com/uscode/8/12/III/1/1401>  
<sup>2</sup> <http://fusion.net/video/159305/ted-cruz-seriously-i-am-not-canadian-anymore/>  
<sup>3</sup> [http://www.nytimes.com/2013/08/21/us/politics/fueling-talk-of-a-2016-run-texas-senator-renounces-canadian-citizenship.html?\\_r=1](http://www.nytimes.com/2013/08/21/us/politics/fueling-talk-of-a-2016-run-texas-senator-renounces-canadian-citizenship.html?_r=1)  
<sup>4</sup> <http://time.com/3754408/ted-cruz-history-natural-born/>  
<sup>5</sup> <http://www.dallasnews.com/news/politics/headlines/20130818-ted-cruz-born-a-citizen-of-canada-under-the-countrys-immigration-rules.ece>

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. Art. II, § 1, Cl. 5

More specifically, the part of that clause which is pertinent to this case reads as follows:

No person except a natural born Citizen ... of the United States ... shall be eligible to the Office of President; Art. II, § 1, Cl. 5

### **Argument**

#### **I. Sen. Cruz Is Not A Natural Born Citizen Of The United States And Is Not Eligible To Have His Name Appear On the Ballot In The Presidential Preference Vote**

To say that the exact meaning of the term natural born citizen has been the subject of much debate is to indulge in understatement. To help clarify matters, however, your Objector will begin this discussion by boiling it down to this: under the Constitution of the United States, natural born citizenship is, quite simply, citizenship which arises naturally. That is to say, it pertains to a citizenship which arises by itself without the need for any intervention on the part of the government: *i.e.*, in the United States, by an Act of Congress. Instead, it arises of its own natural accord, and is thus appropriately called natural born citizenship.

The only other form of citizenship arises solely by intervention of the government through an Act of Congress. Such citizenship does not occur naturally, of its own accord. This is naturalized citizenship.

The Supreme Court of the United States has spoken to this issue. One key aspect which the Court made a particular point of stressing was this: you cannot inherit United States citizenship. It is to be emphasized: you do not---you cannot---inherit United States citizenship. Rather, it arises only by virtue of being born within the territorial limits of the United States or by an act of naturalization provided for by the United States Congress:

[United States citizens are] such only as are either born or made so, born within the limits and under the jurisdiction of the United States, or naturalized by the authority of law, either in one of the States before the Constitution, or since that time, by virtue of an act of the Congress of the United States ... The right of citizenship never descends in the legal sense, either by the common law, or under the common naturalization acts. It is incident to birth in the country, or it is given personally by statute. *U.S. v. Wong Kim Ark*, 169 U.S. 649, 665 (1898) (internal quotes and citations omitted)<sup>6</sup>

The Court went on to say,

---

<sup>6</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#665>

The notion that there is any common-law principle to naturalize the children born in foreign countries, of native-born American father 'and' mother, father 'or' mother, must be discarded. There is not, and never was, any such common-law principle. And the great weight of the English authorities, before and since [Mr. Binney] wrote, appears to support his conclusion. The acquisition ... of nationality by descent, is foreign to the principles of the common law, and is based wholly upon statutory enactments. *Wong Kim Ark*, 169 U.S. at 670 (internal quotes and citations omitted)<sup>7</sup>

In 1971 the Court was faced with a case pertaining to a man who was born abroad to a U.S. citizen mother, but the man failed to meet a condition subsequent to his birth that was necessary for him to retain the U.S. citizenship which he would otherwise have by statute. In deciding his case, the Court said,

1. Not until 1934 would that person have had any conceivable claim to United States citizenship. For more than a century and a half no statute was of assistance. *Maternal citizenship afforded no benefit. Rogers v. Bellei*, 401 U.S. 815, 826 (1971) (emphasis supplied)<sup>8</sup>

The Court in *Wong Kim Ark* also took note of the fact that although the Code of Napoleon of 1807 started to move France, and then certain other countries, away from the principle of citizenship by virtue of the place of birth (*jus soli*) and toward the principle of citizenship by inheritance (*jus sanguinis*), it was nonetheless the case that by the time of the ratification of the Fourteenth Amendment to the United States Constitution (in 1868), this rule, which had never been adopted in the U.S., was still not universally accepted even in Europe. The Court said:

There is, therefore, little ground for the theory that, at the time of the adoption of the Fourteenth Amendment of the Constitution of the United States, there was any settled and definite rule of international law, generally recognized by civilized nations, inconsistent with *the ancient rule* of citizenship by birth within the dominion. *Wong Kim Ark* 169 U.S. at 667 (emphasis supplied)<sup>9</sup>

Thus, the Court recognized that even the Fourteenth Amendment, which likewise addresses the topic of U.S. citizenship, did not alter the long-standing, traditional rule that United States citizenship comes about either by birth within the United States, or by naturalization. Shortly thereafter, the Court summed up the issue of United States citizenship coming about only by birth within the boundaries of the United States or by naturalization:

The Fourteenth Amendment of the Constitution, in the declaration that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," contemplates two sources of citizenship, and two only: birth and naturalization.

---

<sup>7</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#670>

<sup>8</sup> <http://caselaw.findlaw.com/us-supreme-court/401/815.html#826>

<sup>9</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#667>

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. *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. *Wong Kim Ark* at 702-703 (emphasis supplied)<sup>10</sup>

It is true that this statement of the Court expressly mentions only the Fourteenth Amendment, which was ratified in 1868,<sup>11</sup> and not the provision of Article II wherein the conditions of eligibility to be President of the United States are given. For the sake of emphasis, however, let us consider again what the Court said about whether United States citizenship can arise by virtue of being born to a mother or father who is a United States citizen: “There is not, *and never was*, any such common-law principle.” *Wong Kim Ark*, 169 U.S. at 670 (emphasis supplied).<sup>12</sup> Likewise, let us also consider again this statement of the Court: “A person born out of the jurisdiction of the United States can *only* become a citizen by being naturalized ...” *Wong Kim Ark*, 169 at 702 (emphasis supplied).<sup>13</sup> And again, when the Court was talking about the “settled and definite rule of international law” of citizenship, the Court said it was talking about “... *the ancient rule* of citizenship by birth within the dominion.” *Wong Kim Ark*, 169 U.S. at 667 (emphasis supplied).<sup>14</sup> In other words, the Court’s statement of the law of citizenship is a statement about an accepted concept of citizenship which predates the Fourteenth Amendment, that it is in fact “ancient” in nature, and that there *never* was any contrary rule. Furthermore, since the Fourteenth Amendment was ratified long after the original articles of the Constitution were adopted, and since Article II does not itself, in any event, define natural born citizenship, these statements of the Court that naturalization is the only way for foreign-born children of citizens to become citizens themselves must be taken as being the definitive statement of the moment by the Court on how natural born citizenship is acquired and how foreign born children of U.S. citizens obtain their citizenship by a naturalization law.

It should be noted that *Wong Kim Ark*, from 1898, does not stand alone in this respect in the Supreme Court’s jurisprudence. It was cited with approval by the Supreme Court 45 years ago in the aforementioned case of *Rogers v. Bellei*, 401 U.S. at 827-828 (1971),<sup>15</sup> which itself also contains within those same pages a reference to yet another case, one from 1927, in which Chief Justice Taft likewise cited to *Wong Kim Ark* with approval for its discussion of citizenship. See *Weedin v. Chin Bow*, 274 U.S. 657, 660-661 (1927).<sup>16</sup>

<sup>10</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#702>

<sup>11</sup> <https://www.loc.gov/rr/program/bib/ourdocs/14thamendment.html>

<sup>12</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#670>

<sup>13</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#702>

<sup>14</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#667>

<sup>15</sup> <http://caselaw.findlaw.com/us-supreme-court/401/815.html#827>

<sup>16</sup> <http://caselaw.findlaw.com/us-supreme-court/274/657.html#660>

## A. The Naturalization Act of 1790 Points to the Conclusion that Those Who Gain Citizenship by Statute at Birth Are Naturalized Citizens of the United States

If there is one thing that is a common thread within all of the discussion which one can find in law libraries, online, on television, or from various sources of the news media on this topic, it is this: the Naturalization Act of 1790, it is said, supports the idea that Ted Cruz is a natural born citizen of the United States. The thing is, however, that precisely the opposite is the case instead.

The specific provision of that Act which is thought of as supporting the idea that persons in the position of Sen. Cruz are natural born citizens reads as follows:

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:<sup>17</sup>

It is said that because this statute simply parallels the statutory law of Britain on citizenship for those born abroad to British subjects at the time of the founding of our country, and because the First Congress would have been aware of this, then it must follow that those who adopted the Constitution surely would have thought of persons in the position of Sen. Cruz today as falling within the meaning of the natural born citizen requirement of the Constitution. There are flaws with that line of argument, however:

First, such a line of argument actually constitutes an admission instead that at the time of the adoption of the Constitution, it was the law of Britain that such British citizenship came about only by way of a statute of naturalization, and not at Common Law. The Supreme Court of the United States took note of this in *Wong Kim Ark*. *Wong Kim Ark*, 169 U.S. at 670-671.<sup>18</sup> That being the case, the awareness of the First Congress as to what the state of British law was at the time of the founding of our country would presumably include a recognition that such citizenship arose by naturalization as provided for by statute instead of at Common Law.

Second, in the Naturalization Act of 1795, the Fourth Congress changed the wording pertaining to citizenship for those born abroad to U.S. citizens from the wording of the 1790 Act to say that they "... shall be considered as citizens of the United States".<sup>19</sup> Notice the deletion of the phrase "natural born" in this Act, a phrase which had been contained in the 1790 Act.<sup>20</sup>

Are we to conclude, then, that the members of the Fourth Congress, in deleting that phrase from the naturalization laws of the United States in 1795, thought that they could prevent the acquisition of natural born citizenship for persons born from 1795 onward which those persons would otherwise have under the Constitution itself? For if it supposedly is the case that they thought that the First Congress had somehow extended natural born citizenship at the

---

<sup>17</sup> <http://www.indiana.edu/%7Ekdhist/H105-documents-web/week08/naturalization1790.html>

<sup>18</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#670>

<sup>19</sup> <http://www.indiana.edu/%7Ekdhist/H105-documents-web/week08/naturalization1790.html>

<sup>20</sup> <http://www.indiana.edu/%7Ekdhist/H105-documents-web/week08/naturalization1790.html>

constitutional level with the Act of 1790, then surely it must follow that they thought that they were then preventing natural born citizenship at the constitutional level from being acquired from that point on by deleting that phrase in 1795. In fact, as Prof. Mary Brigid McManamon of Widener University's Delaware School of Law has pointed out, there were several decades in the 1800s when there was no statute at all on the books to give U.S. citizenship to children born abroad to U.S. citizens.<sup>21</sup> So if the theory about the 1790 Act embraced by Sen. Cruz is correct, then this would supposedly be an example right there of Congress denying natural born citizenship at the constitutional level during the 1800s.

With that in mind, let us look once again to the aforementioned Supreme Court case of *Rogers v. Bellei*. In that case, a certain Mr. Bellei was born in Italy in 1939 to a U.S. citizen mother. *Rogers v. Bellei*, 401 U.S. at 817.<sup>22</sup> Under the U.S. statute in effect at the time Mr. Bellei would gain U.S. citizenship; however, that statute also provided that Mr. Bellei would lose his U.S. citizen "...unless, after age 14 and before age 28, he shall come to the United States and be physically present here continuously for at least five years." *Rogers v. Bellei*, 401 U.S. at 816-817.<sup>23</sup> Mr. Bellei failed to comply with this condition subsequent in order to retain his U.S. citizenship, and so, as the Supreme Court held, he actually did lose his U.S. citizenship. *Rogers v. Bellei*, 401 U.S. at 817, 836.<sup>24</sup>

All in all, then, we must ask ourselves, "If the citizenship which arises by statute is really natural born citizenship at the constitutional level, then how is it that Congress could deny such status for years at a time by not providing for such status by statute, or by providing it only when subject to certain statutory limitations, as in the *Bellei* case? Or conversely, if such status can be denied by the refusal of Congress to provide for it by statute or by making it otherwise limited by statute, then how can such natural born citizenship by statute be truly constitutional in nature?"

All things considered, then, we must recognize that the phrase "natural born Citizen" means something more than simply "born a Citizen" or "a Citizen since birth". It is instead a state-of-art term in law. If such were not the case, then why wouldn't the Constitution have been worded to reflect that? Why wouldn't the Constitution say, "No person except a person born a citizen shall be eligible ...," or "No person except a person who has been a citizen since birth shall be eligible ..."?

That being the case, we should recognize the truth of what has been said with respect to this criterion of eligibility: it was inserted in our Constitution in order to prevent a foreign prince from ever buying so much influence that he could get someone with more loyalty to his own realm than to the United States to be elected President of the United States.<sup>25</sup> And that, after all, is something which certainly is not addressed or dealt with by including those who may have been born outside of the U.S. within the term natural born Citizen. On top of all that, we must also ask ourselves why on earth Congress would even bother to enact a law---either in 1790, or

---

<sup>21</sup> [https://www.washingtonpost.com/opinions/ted-cruz-is-not-eligible-to-be-president/2016/01/12/1484a7d0-b7af-11e5-99f3-184bc379b12d\\_story.html](https://www.washingtonpost.com/opinions/ted-cruz-is-not-eligible-to-be-president/2016/01/12/1484a7d0-b7af-11e5-99f3-184bc379b12d_story.html)

<sup>22</sup> <http://caselaw.findlaw.com/us-supreme-court/401/815.html#817>

<sup>23</sup> <http://caselaw.findlaw.com/us-supreme-court/401/815.html#816>

<sup>24</sup> <http://caselaw.findlaw.com/us-supreme-court/401/815.html#817> ; see also, <http://caselaw.findlaw.com/us-supreme-court/401/815.html#836>

<sup>25</sup> [http://www.legalaffairs.org/issues/March-April-2004/argument\\_amar\\_marpar04.msp](http://www.legalaffairs.org/issues/March-April-2004/argument_amar_marpar04.msp)

today---to extend citizenship by statute if it supposedly was the common understanding at the time that children born abroad to U.S. citizens were already U.S. citizens themselves (“natural born citizens”) anyway.

There is an alternative explanation to the idea that the Naturalization Act of 1790 extended natural born citizen status at the constitutional level, however. Consider what the Act itself had to say about how immigrants generally could become United States citizens:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That any Alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years, may be admitted to become a citizen thereof on application to any common law Court of record in any one of the States wherein he shall have resided for the term of one year at least, and making proof to the satisfaction of such Court that he is a person of good character, and taking the oath or affirmation prescribed by law to support the Constitution of the United States, which Oath or Affirmation such Court shall administer, and the Clerk of such Court shall record such Application, and the proceedings thereon; and thereupon such person shall be considered as a Citizen of the United States.<sup>26</sup>

With that in mind, would it not be more reasonable to think that by saying in that same Act that foreign-born children of U.S. citizens shall themselves be considered as natural born citizens, Congress was simply streamlining the process for children born abroad to U.S. citizens to be able to come here and enjoy all the rights of citizenship (*e.g.*, the right to come here, the right to remain here, the right to vote, the right to hold public office, and the right to inherit property) without first having to go through the entire normal process and waiting period of naturalization for other immigrants? For the benefit of obtaining citizenship and the right to inherit property without having to go through all the usual things required of other aliens is a benefit which had already been enjoyed by children born abroad to British subjects during our colonial era, thanks to an Act of Parliament; and in fact, the right to inherit property seems to have been the principle reason for the enactment of that British statute above and beyond any concern for any other aspect of citizenship. *Wong Kim Ark*, 169 U.S. at 661.<sup>27</sup> And so, would it not be more reasonable to think on the one hand that Congress was simply trying to streamline the process of naturalization for children of our own citizens rather than believe on the other hand that Congress somehow wanted to affect the parameters and requirements of the Constitution, first by supposedly granting such constitutional status by statute somehow, and then by deleting it again, and then by reinstating it by statute yet again? This should be particularly considered in light of the fact that in addition to streamlining the naturalization process for persons born abroad to U.S. citizens, the whole purpose of the 1790 and 1795 Acts was simply to provide a uniform Act of naturalization for immigrants, and that these Acts were not somehow supposed to affect our understanding of the eligibility requirements to be President, anyway.

---

<sup>26</sup> <http://www.indiana.edu/%7Ekdhist/H105-documents-web/week08/naturalization1790.html>

<sup>27</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#661>

Third, the language of the Naturalization Act of 1790 itself does not support the idea that those who are made citizens under the statute are in fact natural born citizens. As the statute says, children born abroad to United States citizens and who are made citizens under that statute "... shall be *considered as* natural born" citizens.<sup>28</sup> (emphasis supplied). In like manner, one might say that one shall treat an artificial flower as if it were a flower. But one would never say that one will treat an actual rose itself *as if* it were a flower; for an actual rose is in fact a true flower. And to say that one shall treat a true rose "as if" it were a flower would suggest an absurdity: namely, that there even could be such a thing as a true rose that is not also a true flower. Thus, the wording of the statute itself points to the conclusion that such citizenship is not true natural born citizenship, but rather that those who are made citizens under the Act shall simply be *considered as* natural born citizens.

The case would perhaps be different if the First Congress had used the term "natural born citizen" in a way which assumed that everyone commonly thought of the foreign-born children of U.S. citizens as being natural born citizens themselves. For instance, if the First Congress had passed some statute which said something like, "Upon arriving in this country by ship, persons born abroad to parents who are U.S. citizens, as well as *other* natural born citizens, shall not be required to pay an excise tax on the following items;" then this would reflect the idea that there was a general understanding at the time that such persons are indeed natural born citizens. But the Naturalization Act of 1790 is not a statute which uses the term "natural born citizen" in a context which simply assumes that such persons are natural born citizens, as would be the case in the hypothetical just given. With that in mind, it is to be emphasized, as was stated above, that if it really were the case that there was at the time a common understanding that such persons are true natural born citizens, then why would Congress even bother to pass an Act which would make it so?

Fourth, the fact that the First Congress passed a particular piece of legislation does not have a perfect track record of reliability when it comes to serving as a standard for interpreting the Constitution. For instance, the Act which was the subject of the Supreme Court's most famous case in constitutional law, *Marbury v. Madison*,<sup>29</sup> was one which Congress had passed one year prior to the Naturalization Act of 1790: the Federal Judiciary Act of 1789;<sup>30</sup> yet the Supreme Court famously struck this statute down in pertinent part as being unconstitutional. And at that, the party who was defending the statute, James Madison, has been famously called the "Father of the Constitution".<sup>31</sup> Yet the Court found that even his impeccable stature as an expert on the Constitution could not save the statute.

Fifth, perhaps the strangest aspect of this whole debate lies in the fact that those who think that the Naturalization Act of 1790 supports the idea that Sen. Cruz is a natural born citizen completely overlook the very name of the statute itself: the *Naturalization* Act of 1790 (emphasis supplied).<sup>32</sup> How could anyone miss that?

---

<sup>28</sup> <http://www.indiana.edu/%7Ekdhist/H105-documents-web/week08/naturalization1790.html>

<sup>29</sup> *Marbury v. Madison*, 5 U.S. 137 (1803). <http://caselaw.findlaw.com/us-supreme-court/5/137.html>

<sup>30</sup> <http://www.americanbar.org/content/dam/aba/migrated/publiced/lawday/marbury.authcheckdam.pdf>

<sup>31</sup> <https://www.constitutionfacts.com/us-constitution-amendments/james-madison/>

<sup>32</sup> <http://www.indiana.edu/%7Ekdhist/H105-documents-web/week08/naturalization1790.html>

B. The Meaning of the Phrase Natural Born Citizen as Traditionally Established  
By The Supreme Court Is Not Rebutted by Reference to the  
Circumstances of John Jay or John McCain

Some might wonder whether the case of *Wong Kim Ark* would work a hardship on those in the service of the United States or their children. One type of case, for example, would pertain to the children born to John Jay while he was serving abroad as a diplomat of the United States. It was John Jay who came up with the idea that the Constitution should contain a natural born citizen requirement in order to hold the Office of President of the United States; and at the convention in Philadelphia in 1787 where the United States Constitution was drafted he made a request in writing to George Washington that the Constitution contain this provision.<sup>33</sup> Mr. Jay was a distinguished attorney whom President George Washington would later appoint to be the first Chief Justice of the Supreme Court of the United States.<sup>34</sup> He was also one of three authors of the collection of essays known as *The Federalist*, which explained the proposed Constitution of the United States to the citizens of the new nation, and which urged the ratification of the Constitution.<sup>35</sup> Mr. Jay also had a very distinguished career of service to the new nation in many other respects.<sup>36</sup> And one line of thought says that surely he could not have intended to have his own foreign-born children be made ineligible to hold any office in the very government which he was helping to create, and that furthermore, to conclude otherwise would work a manifest injustice upon a truly exemplary servant of the new nation and his children.

The issue of natural born citizenship was also raised when United States Senator John McCain ran for President of the United States in 2008. Sen. McCain was born in the Panama Canal Zone while his father was serving there as an officer in the United States Navy, and on that basis some questioned whether Sen. McCain is a natural born citizen.<sup>37</sup> However, in *Wong Kim Ark*, the Supreme Court anticipated and addressed potential objections of that sort, and stated that the traditional view of international law had recognized all along that the foreign-born children of the diplomatic and military servants of any government would be an exception to the standard which the Court had otherwise just laid down. *Wong Kim Ark*, 169 U.S. at 683-685.<sup>38</sup>

What the Court was talking about, in essence, is diplomatic immunity.<sup>39</sup> Significantly, in *Wong Kim Ark*, in which it was determined that Mr. Wong Kim Ark was a United States citizen by virtue of his birth here in the United States, the Supreme Court noted that at the time of Wong Kim Ark's birth, his parents, who themselves were subjects of the Emperor of China at the time of his birth, "... were engaged in business, and were never employed in any diplomatic or

---

<sup>33</sup> [https://en.wikipedia.org/wiki/Natural-born-citizen\\_clause](https://en.wikipedia.org/wiki/Natural-born-citizen_clause)

<sup>34</sup> [https://en.wikipedia.org/wiki/John\\_Jay](https://en.wikipedia.org/wiki/John_Jay)

<sup>35</sup> [https://en.wikipedia.org/wiki/John\\_Jay](https://en.wikipedia.org/wiki/John_Jay)

<sup>36</sup> During the Revolutionary War, John Jay had served as the sixth President of the Continental Congress (John Hancock having been the fourth). See: [https://en.wikipedia.org/wiki/President\\_of\\_the\\_Continental\\_Congress#List\\_of\\_presidents](https://en.wikipedia.org/wiki/President_of_the_Continental_Congress#List_of_presidents). In addition, he was one of the persons who negotiated the Treaty of Paris, in which Britain recognized the independence of the United States following the Revolutionary War, and in 1795 he negotiated the Jay Treaty, which averted yet another war with Britain. On top of all that, during retirement in the early 1800s he became an anti-slavery activist. See: [https://en.wikipedia.org/wiki/John\\_Jay](https://en.wikipedia.org/wiki/John_Jay).

<sup>37</sup> <http://www.nytimes.com/2008/07/11/us/politics/11mccain.html>

<sup>38</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#683>

<sup>39</sup> <http://www.state.gov/documents/organization/150546.pdf>

*official capacity* under the Emperor of China.” *Wong Kim Ark*, 169 U.S. at 652 (emphasis supplied).<sup>40</sup> And at the conclusion of the case the Court again said that the question at hand was simply this:

... whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, *and are not employed in any diplomatic or official capacity under the emperor of China*, becomes at the time of his birth a citizen of the United States. For the reasons above stated, this court is of [the] opinion that the question must be answered in the affirmative. *Wong Kim Ark*, 169 U.S. at 705 (emphasis supplied)<sup>41</sup>

This emphasizes the fact that the Court recognized that being in the service of a foreign power would cause a variation in the rule of international law which would otherwise obtain with respect to children born abroad to that person. Thus, both the history of international law as recognized by the United States at the time of the adoption of the Constitution as well as the governing precedent of the Supreme Court of the United States today would not operate in some unusual manner to exclude either the children born to diplomats such as John Jay or someone like Sen. McCain himself from being recognized as natural born citizens of the United States.

### **Conclusion**

WHEREFORE, your Objector respectfully asks this Honorable Election Board to grant your Objector’s motion and order that the name of Ted Cruz as a participant in the expression of the sentiment and will of the voters of the Republican Party with respect to Republican candidates for nomination to the Office of President of the United States BE NOT PRINTED on the OFFICIAL REPUBLICAN PRIMARY BALLOT for the General Primary Election to be held in the State of Illinois on March 15, 2016, and for such other and further relief as this Honorable Election Board may deem it meet to grant.

Respectfully submitted,

Lawrence J. Joyce, Esq.  
*In Pro Se*  
115 Seminole Pl NW  
Poplar Grove, IL 61065  
(815) 601-0191  
ljballot@gmail.com

---

<sup>40</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#652>

<sup>41</sup> <http://caselaw.findlaw.com/us-supreme-court/169/649.html#705>

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016.**

LAWRENCE J. JOYCE,	)	
Objector,	)	
	)	
v.	)	No. 16-SOEB-GP-526
	)	
TED CRUZ,	)	
Candidate.	)	

**CANDIDATE'S MOTION TO DISMISS OBJECTION**

NOW COMES the Candidate, Ted Cruz, through his attorney, Sharee S. Langenstein, who makes the following Motion to Dismiss the Objection filed in the above-captioned cause:

1. On January 4, 2016, Ted Cruz filed a Statement of Candidacy for the office of President of the United States, which contained his oath, signed before a Notary Public in the State of Illinois, swearing that he was qualified for office and requesting that his name be printed on the ballot for the March 15, 2016 General Primary Election. Attached to that Statement were Nominating Petitions containing approximately 5,000 signatures of registered voters in the State of Illinois.
2. On January 6, 2016, a document entitled "Verified Objector's Petition" was submitted to this Board by Lawrence J. Joyce of Poplar Grove, Illinois.
3. The Objection filed by Mr. Joyce cannot be considered a valid objection by this Board and should be DISMISSED.
4. The Illinois Election Code, at 10 ILCS 5/10-10 (West 2014) states the issues over which the Board has jurisdiction. They are: 1) whether or not the nomination

papers or petitions are in proper form; 2) whether or not they were filed within the time and other conditions set by law; 3) whether or not the papers are genuine; and 4) whether or not the nominating papers are valid.

“Under section 10-10 of the Election Code (10 ILCS 5/10-10 (West 2004)), an election board's scope of inquiry with respect to objections to nomination papers is limited to ascertaining whether *those papers* comply with the provisions of the Election Code governing such papers.” *Delgado v. Board of Election Commissioners.*, 865 N.E.2d 183, 224 Ill.2d 481, 309 Ill. Dec. 820 (2007) [emphasis added]. The Board lacks jurisdiction to hear the objector's petition because the objection does not raise any of the issues listed in Section 10-10. The objection is silent as to the form, filing date, authenticity, and validity of the Statement of Candidacy that was signed and sworn to before an Illinois notary public on January 3, 2016. The Statement of Candidacy is therefore valid. The objection is silent as to the form, filing date, authenticity, and validity of the nominating petitions attached to the Statement of Candidacy, so they, too, are valid. Because no objection was made that would vest this Board with jurisdiction over the matter pursuant to Section 10-10, by operation of Section 10-8, no valid objection was filed “within 5 business days after the last day for filing.” *See generally Greer v. Kadera*, 671 N.E. 2d 692, 173 Ill. 2d 398, 219 Ill. Dec. 525 (1996).

The Objector's petition makes no reference to the validity or authenticity of the Candidate's nomination papers as required by Section 10-10. The Objection must therefore be DISMISSED.

6. The purported objection is also insufficient to satisfy the requirements of Section 10-8. That section requires an objector to “fully state the nature of the

objections to the... nomination papers or petitions in question.” The vague allegations made by the Objector to the Candidate’s “petitions and papers” do not satisfy this requirement. The Candidate submitted a stack of documents that was several inches thick. It is incumbent upon an objector to specifically state the specific paper(s) and/or the specific signatures to which he objects and the specific reason as to why that paper or signature is inconsistent with the requirements of the Election Code. *Kopec v. Sims*, 07-EB-MUN-002, CBEC, January 19, 2007; *Thapedi v. Williams*, 08-EB-RGA-30, CBEC, December 11, 2007.

A mere reference to the “petitions and papers” of a candidate is insufficient to satisfy the requirements of Section 10-8 and the Objector’s petition must therefore be DISMISSED.

7. The Candidate asserts that the Objection should be dismissed simply for insufficient compliance with sections 10-8 and 10-10 of the Election Code. However, a brief assessment of the legal issue addressed by the Objector should lead this Board to conclude that it lacks jurisdiction to decide whether the petition has any legal merit.

The question of whether a candidate for President of the United States is eligible to take office is one within the purview of the Electoral College and the United States Congress, not this Board.

The United States Constitution provides that “Each State shall appoint, in such Manner as the Legislature thereof may direct,” electors for the President and Vice President.” U.S. Const. art. II, § 1, cl.2 The Constitution’s commitment to the Electoral College of the responsibility to select the President includes the authority to decide whether a presidential candidate is qualified for office, because the examination of a

candidate's qualifications is an integral component of the electors' decision-making process. If a State were to sit in judgment of a candidate's qualifications before the nation had voted, and before the Electoral College had cast its votes, such a judgment could inappropriately interfere with the Electoral College's constitutional authority to elect the President and to evaluate the qualifications of the candidates seeking that office.

The Constitution also provides that, after the Electoral College has voted, further review of a presidential candidate's eligibility for office rests with the U.S. Congress. Should a candidate elected by the Electoral College fail to satisfy the Constitution's eligibility requirements, the Twentieth Amendment explicitly grants Congress the responsibility for selecting a President. *See id.* Amend. XX, § 3 ("the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified").

Additionally, should no candidate receive a majority of the electoral votes, the Constitution commits to the U.S. House of Representatives the authority to select the President-- and, in so doing, to evaluate the candidates' qualifications. *See id.* Amend. XII. Indeed, both the House and the Senate have standing committees with jurisdiction to decide questions relating to presidential elections. *See* S. R. 25.1(n)(1)(5) (Senate Committee on Rules and Administration has jurisdiction over "proposed legislation, messages, petitions, memorials, and other matters relating to . . . Federal elections generally, including the election of the President, Vice President, and Members of the

Congress”); H. R. 10.1(k)(12) (House Committee on House Administration has jurisdiction over “Election of the President, Vice President, . . . ; credentials and qualifications; and Federal elections generally”).

By committing this political question exclusively to the Electoral College and to the Congress, the Constitution has guaranteed that neither the States nor the courts would reach conflicting decisions regarding whether a candidate satisfies the requirements of Article II, avoiding the inevitable turmoil that would ensue. The political question doctrine bars federal and state courts alike from deciding the issue; the Constitution has left it to the Electoral College to pass the first judgment on the qualifications of the candidate. Once the College has done so, Congress alone possesses authority to pass on the eligibility of the successful candidate. The courts (or administrative bodies) of individual States cannot decide the eligibility of a candidate President to hold that office.

Several courts have recognized the Constitution’s commitment of the question of whether a candidate meets Article II’s requirements to the voters, the electors, and ultimately the Congress. For example, in declining to reach the merits of a challenge to Senator John McCain’s eligibility for the office of President, the Court in *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008), ruled:

It is clear that mechanisms exist under the Twelfth Amendment and 3 U.S.C. § 15 for any challenge to any candidate to be ventilated when electoral votes are counted, and that the Twentieth Amendment provides guidance regarding how to proceed if a president elect shall have failed to qualify. Issues regarding qualifications for president are quintessentially suited to the foregoing process. Arguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to

ballots for allegedly unqualified candidates. Therefore, this order holds that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch, at least in the first instance.

Similarly, in *Grinols v. Electoral College*, No. 2:12-CV-02997, 2013 WL 2294885 (E.D. Cal. May 23, 2013), a challenge to President Obama's eligibility for the office of President, the Court concluded:

These various articles and amendments of the Constitution make clear that the Constitution assigns to Congress, and not to federal courts, the responsibility of determining whether a person is qualified to serve as President of the United States. As such, the question presented by Plaintiffs in this case—whether President Obama may legitimately run for office and serve as President—is a political question that the Court may not answer. Accordingly, this Court, like numerous other district courts that have dealt with this issue to date, declines to reach the merits of Plaintiffs' allegations because doing so would ignore the Constitutional limits imposed on the federal courts.

2013 WL 2294885, at \*6. See also *Bowhall v. Obama*, 2010 WL 4932747, (M.D. Ala. Nov. 30, 2010) ("Further, his claim that the President is a non-natural born citizen is not justiciable by this court."), *aff'd*, No. 10-15938-C (11th Cir. Apr. 4, 2011) (affirming district court's order ruling that the complaint was frivolous).

Likewise, the court in *Strunk v. New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 (N.Y. Sup. Ct. 2012), explained that "the exclusive means to resolve objections to the electors' selection of a President or a Vice President" is "by members of the Senate and House of Representatives" at the "meeting of the joint session of Congress" held to count Electoral College votes. *Id.* The Court recognized the dangers entailed by improper judicial interference in the political process:

If a state court were to involve itself in the eligibility of a candidate to hold the office of President, a determination reserved for the Electoral College and Congress, it may involve itself in national political matters for which it is institutionally ill-suited and interfere with the constitutional authority of

the Electoral College and Congress. Accordingly, the political question doctrine instructs this Court and other courts to refrain from superseding the judgments of the nation's voters and those federal government entities the Constitution designates as the proper forums to determine the eligibility of presidential candidates.

*Id.*

Illinois courts agree with these basic principles of Constitutional law, affirming that this Board lacks jurisdiction to decide the issues contained in the Objection: “[O]ur legislature did not intend the Electoral Board to entertain constitutional challenges” to nomination papers. *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1st Dist. 1972). “Administrative agencies such as the Election Board have no authority to declare a statute unconstitutional or even to question its validity.” *Delgado* at 865 N.E.2d 186.

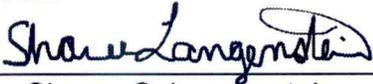
The United States Constitution commits the question of whether a candidate satisfies the qualifications of the Natural Born Citizen Clause to the U.S. Congress. Therefore the federal and state courts, as well as all other federal and state authorities, are barred from deciding the question.

Because this Board lacks jurisdiction to decide whether the Objector’s petition has any legal merit, the Objection should be DISMISSED.

WHEREFORE, the Candidate, Ted Cruz, respectfully requests a finding that the Objection filed to his candidacy is insufficient as a matter of law, that it be DISMISSED in its entirety, and that this Board enter an Order that the name Ted Cruz SHALL APPEAR on the ballot for the General Primary Election to be held on March 15, 2016.

Respectfully submitted,

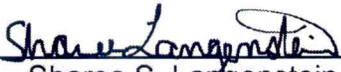
Ted Cruz

By   
Sharee S. Langenstein  
Attorney for Ted Cruz

The Law Office of Sharee S. Langenstein  
P.O. Box 141  
Murphysboro, IL 62966  
ShareeLangenstein@yahoo.com  
Phone or Fax: 855-694-8671

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on the following parties before 5:00 pm on January 22, 2016, to the email addresses listed below in accordance with the Rules of the Illinois State Board of Elections.

  
Sharee S. Langenstein

Lawrence Joyce  
ljballot@gmail.com

Jim Tenuto  
jtenuto@elections.il.gov

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO PETITIONS FOR CANDIDATES SEEKING  
TO OBTAIN AN EXPRESSION OF THE SENTIMENT AND WILL OF THE VOTERS OF  
THE REPUBLICAN PARTY FOR THE NOMINATION OF THE REPUBLICAN  
PARTY FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON AT THE MARCH 15, 2016 GENERAL PRIMARY ELECTION**

<b>Lawrence J. Joyce</b>	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	
	)	
<b>Ted Cruz</b>	)	
	)	
Respondent-Candidate.	)	

ORIGINAL ON FILE AT  
STATE BD OF ELECTIONS  
ORIGINAL TIME STAMPED  
AT 16 JA-6 PM 4:06  
*llm*

**VERIFIED OBJECTOR'S PETITION**

Now comes **Lawrence J. Joyce** (hereinafter referred to as "the Objector"), and states as follows:

1. **Lawrence J. Joyce** resides at 115 Seminole Pl NW, Poplar Grove, IL 61065 Boone County in the State of Illinois, in the 16<sup>th</sup> Congressional District thereof; that he is duly qualified, registered, and a legal voter at such address; that his interest in filing the following objections is that of a citizen desirous of seeing that the laws governing the filing of petitions for the purpose of seeking to obtain an expression of the sentiment and will of the voters of a political party with respect to candidates for nomination to the Office of President of the United States are properly complied with, and that only qualified candidates appear on the ballot for the expression of the sentiment and will of the voters of a political party with respect to said office in the General Primary Election.

2. Your Objector makes the following objections to the petitions and related ballot access papers accompanying said petitions of Ted Cruz (hereinafter referred to as the "Petitions and Papers"), who is seeking access to the ballot to participate in the expression of the sentiment and will of the voters of the Republican Party with respect to candidates for the nomination of the Republican Party to the Office of President of the United States, and files the same herewith, and states that the said Petitions and Papers are insufficient in law and in fact for the following reasons:

3. Your Objector states that according to Article II, § 1, Clause 5 of the Constitution of the United States of America, no person shall be eligible to the Office of President of the United States except a natural born citizen of the United States. In addition, said Petitions and Papers must be truthful and accurate in alleging the qualifications of the candidate, that they must be gathered and presented in the manner provided for in the Illinois Election Code, and that they must otherwise be executed in the form and manner required by law.

4. Your Objector states that Ted Cruz has publicly admitted that he was born in Canada.

5. Your Objector states that in light of the facts and the law, Ted Cruz is not a natural born citizen of the United States.

6. Your Objector states that the laws pertaining to the securing of ballot access require that certain requirements be met as established by law. Filings contrary to such requirements must be voided, being in violation of the statutes in such cases made and provided.

**The Petitions And Papers Do Not Comply With The Requirements Of Section 7-11 Of The Election Code Because Ted Cruz Does Not Meet The Natural Born Citizen Requirement Of Article II, § 1, Clause 5 Of The Constitution Of The United States Of America**

WHEREFORE, your Objector prays that the Petitions and Papers of Ted Cruz to participate in the expression of the sentiment and will of the voters of the Republican Party with respect to Republican candidates for nomination to the Office of President of the United States be declared by this Honorable Election Board to be insufficient and not in compliance with the laws of the State of Illinois and that the name of Ted Cruz be stricken and that this Honorable Election Board enter its decision declaring that the name of Ted Cruz as a participant in the expression of the sentiment and will of the voters of the Republican Party with respect to Republican candidates for nomination to the Office of President of the United States BE NOT PRINTED on the OFFICIAL REPUBLICAN PRIMARY BALLOT for the General Primary Election to be held on March 15, 2016.

  
Lawrence J. Joyce

Lawrence J. Joyce, Esq.  
*In Pro Se*  
115 Seminole Pl NW  
Poplar Grove, IL 61065  
(815) 601-0191  
ljballot@gmail.com



**Graham v Cruz**  
**16 SOEB GP 527**

**Candidate:** Ted Cruz

**Office:** President

**Party:** Republican

**Objector:** William K. Graham

**Attorney For Objector:** Pro Se

**Attorney For Candidate:** Sharee Langenstein

**Number of Signatures Required:** 3,000 – 5,000

**Number of Signatures Submitted:** Not at Issue

**Number of Signatures Objected to:** Not at Issue

**Basis of Objection:** The Candidate's Statement of Candidacy does not comply with the requirements of the Illinois Election Code because Ted Cruz, having been born in Canada, does not meet the natural born citizen requirement of Article II, Section 1, Clause 5 of the United States Constitution and, therefore, is not legally qualified to hold the office of United States President.

**Dispositive Motions:** Candidate's Motion to Dismiss Objection, Objector's Motion and Memorandum of Law Providing Legal Authority and Argument that the Objection Should be Sustained, Candidate's Response to Objector's Motion and Memorandum of Law, Objector's Reply to Candidate's Memorandum of Law

**Binder Check Necessary:** No

**Hearing Officer:** Jim Tenuto

**Hearing Officer Findings and Recommendations:** The Candidate's Motion to Dismiss raised three grounds for dismissal of the Objection: (1) the Objector does not fully state his interest in filing the Objection as required by Section 10-8 of the Election Code; (2) the Objector does not adequately state the relief sought; and (3) the Objection is insufficient as a matter of law because it fails to state the nature of the objection as required by Section 10-8 of the Election Code.

The Hearing Officer considered each ground for dismissal individually. With regard to the first, the Hearing Officer reviewed the pleadings and considered the arguments of the parties, and recommends the Board find that the Objector's statement that he is a resident and legal voter does not satisfy the interest requirement. Therefore, the Hearing Officer recommends that the Motion

to Dismiss on the ground that the Objector does not fully state his interest in filing the Objection as required by Section 10-8 of the Election Code be granted.

With regard to the second basis argued for dismissal, the Hearing Officer considered the pleadings and arguments of both parties, and recommends the Board find that the Objector's statement that protecting voters from an unqualified and illegal candidate does not satisfy Section 10-8's requirement to adequately state the relief sought. Therefore, the Hearing Officer recommends that the Motion to Dismiss on this ground be granted.

With regard to the third basis of the Motion to Dismiss, the Hearing Officer considered and rejected the Candidate's argument. The Hearing Officer recommends that the Board deny the Motion to Dismiss on the ground that the objections fails to adequately state the nature of the same as required by Section 10-8.

Finally, the Hearing Officer considered the question of whether a candidate born outside of the United States to a mother who was a United States citizen at the time of the candidate's birth is qualified to hold the office of the President of the United States. Having reviewed the Memoranda and argument of both Candidate and Objector on the matter, the Hearing Officer found that the Candidate is a "natural born citizen" by virtue of having been born in Canada to a United States citizen, thereby not causing the Candidate to have to take any steps or undergo a naturalization process to become a United States citizen, and is thereby qualified to hold the office of President of the United States.

In summary, the Hearing Officer recommends that the Board grant the Candidate's Motion to Dismiss and order that the name of Ted Cruz be certified to the primary ballot as a Candidate of the Republican Party to the Office of the President of the United States.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE STATE BOARD OF ELECTIONS  
SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
ESTABLISHED PARTY CANDIDATES SEEKING TO APPEAR  
ON THE BALLOT FOR THE MARCH 15, 2016  
GENERAL PRIMARY ELECTION**

In the Matter of:	)	
	)	
<b>William K. Graham,</b>	)	
Petitioner(s) – Objector(s),	)	
	)	
v.	)	<b>16 SOEB GP 527</b>
	)	
<b>Ted Cruz,</b>	)	
Respondent(s) – Candidate(s).	)	

**RECOMMENDATION OF THE HEARING OFFICER**

This matter coming before the Illinois State Board of Elections sitting as the duly constituted State Officers Electoral Board and the undersigned Hearing Officer, pursuant to Appointment and Notice, makes the following Findings and Recommendations.

**Objection**

An Objection was timely filed by William K. Graham alleging the Statement of Candidacy is invalid because Ted Cruz is not legally qualified to hold office as he is not a “natural born citizen.” The Objection states: “A natural born citizen is one who is born within the United States and on the day of their birth, had two U.S. Citizen parents.

**Issue**

The issue presented is whether a Candidate born outside the United States to a mother who was a United States citizen at the time of his birth is qualified to hold the Office of President of the United States.

### **Case Management Conference**

A Case Management Conference was held following the calling of the cases. Objector filed a *Pro Se* Appearance and was present in Chicago. Sharee S. Langenstein filed an Appearance on behalf of the Candidate and was present in the Springfield office of the State Board of Elections.

### **Background**

The Candidate timely filed his nomination petitions seeking the Office of President of the United States as a Candidate in the March 15, 2016, Republican Primary. An Objection was timely filed challenging the qualifications of the Candidate. The Objector contends being born outside the United States (Canada) to a mother who was a U.S. citizen at the time of his birth disqualifies Ted Cruz from holding the Office of President of the United States as he is not a natural born citizen.

At the Case Management Conference on January 20, 2016, the Candidate filed Candidate's Motion to Dismiss Objection. Therein, it is alleged the Objection should be dismissed for the following reasons:

1. Does not fully state the nature of the Objection;
2. Does not state the interest of the Objector; and
3. Contains no statement as to the relief sought.

On January 22, 2016, the Objector filed his Motion and Memorandum of Law Providing Legal Authority and Argument that the Objection Should be Sustained. Candidate's Response to Objector Graham's "Motion and Memorandum of Law" was filed on January 25, 2016.

The Objector filed a Reply to Candidate's Memorandum of Law – January 25, 2016, on January 26, 2016.

## Analysis

In order to address the qualifications of Ted Cruz for the Office of President of the United States, it is necessary to consider both the Objections and Candidate's Motion to Dismiss Objection. The issues are as follows:

1. Does the Objector fully state his interest?

Section 10-8 requires the Objector to fully state his interest in filing the Objection. The Candidate contends the Objector does not state his personal interest in filing the challenge. The Objector argues stating he is a resident and legal voter satisfies the interest requirement. I agree with the Candidate that the Objector has failed to satisfy the requirement of setting forth his interest in filing the Objection.

2. Does the Objector adequately state the relief sought?

The Candidate argues the Objector does not adequately request the relief sought from the Electoral Board. The Objector states protecting the voters from an unqualified and illegal Candidate satisfies the provision of Section 10-8 to indicate the requested relief. I agree with the Candidate that the Objector has failed to satisfy the requirement of Section 10-8 to adequately state the relief requested of the Electoral Board.

3. Is the Objection letter insufficient as a matter of law because it does not fully state the nature of the Objection to the nomination papers as required by Section 10-8?

The Candidate states the letter makes broad generalizations about the Candidate and the basis for the Objection. It is further alleged the Objection has no specific reference to any statute or case to provide a legal basis for the Objection. The Objector responds that alleging the Statement of Candidacy is invalid because the Candidate is not "legally qualified" to be President as Ted Cruz is not a natural born citizen sufficiently states the nature of the Objection. I disagree with the Candidate's assertion. It is clear the Objector is challenging the qualifications of the Candidate to hold the Office for which he has filed.

4. Eligibility of the Candidate

The Memorandum of Law in Support of the Eligibility of Ted Cruz to Serve as President of the United States attached to Candidate's Response to Objector's Graham's "Motion and Memorandum of Law" was filed on January 26, 2016. Therein, the Candidate addresses the merits of the central issue, to wit, whether Ted Cruz is eligible to hold the Office for which he has filed.

Article II of the United States Constitution 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 the President." U.S. Constitution, Art. II, in Section 1.

As set forth above, Ted Cruz was born in Canada to a mother who, at the time of his birth, was a U.S. citizen. Ted Cruz became a natural born citizen at the moment of his birth because it was not necessary to become a citizen through the naturalization process at some point after birth.

Further discussion on this issue is unnecessary.

### **Findings**

1. Ted Cruz was born in Canada and his mother was a U.S. citizen at the time of his birth.
2. The Candidate timely filed his nomination papers.
3. The Objector timely filed an Objection to Cruz's nominating petitions.
4. The Objector failed to adequately state his interest in filing his Objection.
5. The Objector failed to adequately state the relief requested of the Electoral Board in the Objection.
6. The Objector adequately states the nature of the Objection, to wit, the eligibility of Ted Cruz to hold the Office of President of the United States.
7. The Electoral Board has subject matter jurisdiction to decide if a person born in Canada to a mother who was a U.S. citizen at the time of birth is eligible to hold the Office of President of the United States.
8. The Candidate is a natural born citizen by virtue of being born in Canada to his mother who was a U.S. citizen at the time of his birth as the Candidate did not have to take any steps or go through a naturalization process at some point after birth.

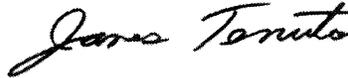
9. Candidate's Motion to Dismiss Objection should be GRANTED for the reasons set forth herein.

**RECOMMENDATION**

It is the Recommendation of the Hearing Officer that the State Officers Electoral Board GRANT the Candidate's Motion to Dismiss Objection and order that the name of Ted Cruz be printed on the ballot as a Candidate of the Republican Party to the Office of President of the United States to be voted upon at the March 15, 2016, General Primary Election.

DATED: January 28, 2016

Respectfully submitted,

A handwritten signature in black ink that reads "James Tenuto". The signature is written in a cursive, flowing style.

James Tenuto  
Hearing Officer

**BEFORE THE STATE BOARD OF ELECTIONS  
SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
ESTABLISHED PARTY CANDIDATES SEEKING TO APPEAR  
ON THE BALLOT FOR THE MARCH 15, 2016  
GENERAL PRIMARY ELECTION**

In the Matter of:

**William K. Graham,** )  
Petitioner(s) – Objector(s), )

v. ) **16 SOEB GP 527**

**Ted Cruz,** )  
Respondent(s) – Candidate(s). )

**NOTICE OF FILING**

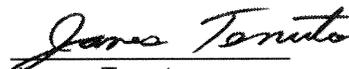
TO: William K. Graham, Objector Sharee S. Langenstein  
[billgrahamPE@aol.com](mailto:billgrahamPE@aol.com) [ShareeLangenstein@yahoo.com](mailto:ShareeLangenstein@yahoo.com)

cc: Ken Menzel, General Counsel  
Sue Klos, Springfield Legal Department  
Darlene Gervase, Administrative Assistant III

Please be advised that on January 28, 2016, I caused to be sent by email to the addresses set forth above the Recommendation of the Hearing Officer, a copy of which is attached.

This matter will appear on the Agenda of the State Officers Electoral Board on Monday, February 1, 2016 at 10:30 a.m. in the James R. Thompson Center, 100 West Randolph Street, Conference Room 14-100, Chicago, IL and via videoconference in the Board's principal office at 2329 South MacArthur Blvd., Springfield, IL 62708-4187. Please allow extra time to attend in the Chicago office. You must provide a government issued identification and pass through Illinois State Police security screening to access the 14<sup>th</sup> Floor of the Thompson Center.

DATED: January 28, 2016

  
James Tenuto  
Hearing Officer



*"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. As to this class there have been doubts, but never as to the first."*

This NBC definition was referred to but unchanged by a new Supreme Court in *US v Wong Kim Ark* in 1897. [The *Wong Kim Ark* case turned on citizenship status of a person born in the US to immigrant parents under the 14<sup>th</sup> Amendment] This 1875 NBC definition has never been changed by the Supreme Court.

3. The balance of the Candidate's Memorandum addresses opinions, decisions and articles do not reflect the Founder's intent nor applicable Supreme Court cases nor any IL case law. Such cases and opinions are inapplicable to this Objection or the Board's decision. However, the Founder's intent is newly raised by the Candidate so will be addressed herein.
  
4. The Candidate opines on the Founders intent without considering the Founders' concern for divided allegiance of the Commander in Chief. The Founder's intent is addressed in the Congressional Research Service's republished 2011 opinion on Qualifications for President and the "Natural Born" Citizenship Eligibility Requirement January 11, 2016. (7-5700 [www.crs.gov](http://www.crs.gov) R42097). This lengthy treatise discounts the Founder's concerns and the Minor NBC definition and suggests NBC can include any born citizen and persons born of a US citizen but outside the United States. However on Founder's intent it reports on the importance they placed on undivided allegiance as a national security issue for the new Nation:

*"The history of the Convention indicates that George Washington, the presiding officer, received a letter dated July 25, 1787, from John Jay, which appears to raise for the first time the issue of a requirement to be a "natural born" citizen of the United States as a requisite qualification to be President:*

*'Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural born Citizen.'*

*"There is no specific indication as to the precise role this letter and its "hint" actually played in the adoption by the Convention of the particular qualification of being a "natural born" citizen. However, no other expressions of this particular term are evident in Convention deliberations prior to the receipt of Jay's letter, and the September 4 draft of the Constitution reported from the Committee of Eleven to the delegates, at a time shortly after John Jay's letter had been acknowledged by Washington, contained for the first time such a qualification.*

*"The timing of Jay's letter, the acknowledgment of its receipt by Washington on September 2, and the first use of the term in the subsequent report of the Committee of Eleven, on September 4, 1787, may thus indicate more than a mere coincidence. If this were the case, then the concern over "foreigners," without sufficient allegiance to the United States, serving as President and Commander -in-Chief, would appear to be the **initial and principal motivating concern** of the framers, in a somewhat similar vein as their concerns over congressional citizenship qualifications.*

*"Such purpose of the 'natural born' citizen qualification was expressed by Justice Joseph Story in his historic treatise on the Constitution in 1833:*

*'It is indispensable, too, that the president should be a natural born citizen of the United States ... [T]he general propriety of the exclusion of foreigners, in common cases, will scarcely be doubted by any sound statesman. It cuts off all chances for ambitious foreigners, who might otherwise be intriguing for the office; and interposes a barrier against those corrupt interferences of foreign governments in executive elections, which have inflicted the most serious evils upon the elective monarchies of Europe.*

*'Ambitious foreigners' who may be 'intriguing for the office' of head of state, which had been the unfortunate experience in Europe, appeared to be a generalized and widespread concern at the time of the drafting of the Constitution, as was the concern over the possibility of allowing foreign royalty, monarchs, and their wealthy progeny, or **other relatives** to control the government of the new nation.'* "

This treatise suggests that the Founder's concern over foreigners without sufficient allegiance to the United States were their **initial and principal motivating concern**.

Justice Story added the concern **over relatives** influencing those with a divided allegiance. The Founders were trying to assure that **no divided allegiance** contaminant the Presidency. Unfortunately for Congress and the American people, the Mr. Maskell goes on for several dozen pages ignoring the Founder's clear intent to secure the nation.

Additional perspective on the Founders intent appears in the references cited on the attachment to the Objection. The first draft of the Constitution said the President must be a citizen and resident for 21 years; the final draft was based on Jay's hint:

*While the Committee on Detail originally proposed that the President must be merely a citizen as well as a resident for 21 years, the Committee of Eleven changed "citizen" to "natural born citizen" without recorded explanation. On September 4, 1787, about six weeks after Jay's letter and just two days after Washington wrote back to Jay, the "natural born citizen" requirement appeared in the draft of the Constitution. Here is the first style of the clause as presented by the Committee of Eleven:*

*(5) 'Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.'*

*Madison's notes of the Convention <http://www.nhccs.org/dfc-0904.txt> .*

*The proposal passed unanimously without debate which does not mean that the proposal was not discussed, for the convention meetings were conducted in secrecy. Another reason that there was no debate is probably that the definition that was used of a natural born citizen was of such universal acceptance that it satisfied all laws then know to the Framers." Attachment to Objection – M. Apuzzo (November 29, 2015)*

These narratives show the Founder's were very concerned about undivided allegiance for the Commander in Chief and that they rejected citizen or born citizen status for the President and Vice President. These were rejected because Founders felt the national security of the Country could be at risk if the Commander-in-Chief had a divided allegiance; none of them would accept a candidate for President who was an alien, citizen or born citizen.

It is incumbent upon the Board to assure citizens are protected from unqualified and illegal candidates. The objection does not ask the Board to offer an opinion or make a ruling regarding the definition of NBC. But the objection does seek the Board to inquire, under its own procedures (10 ILCS 5/1A-8(7)), if false representations were made in the candidate oath and certification that they are “legally qualified” to serve as President (i.e. NBC)

5. The Candidate relies on laws and regulations to establish that Candidate Cruz is a naturalized citizen and then uses verbal jujitsu to suggest someone ‘born a citizen’ is also a ‘natural born citizen’:

*“Founding-era sources, Congressional statements, historical precedent, case law, and the overwhelming weight of scholarly authority all command the same conclusion: a “natural born Citizen” is a person who was a U.S. citizen at birth, without the need for later naturalization. The fact that Senator Cruz satisfies this definition cannot be questioned. At the time of Senator Cruz’s birth, 8 U.S.C. § 1401(a)(7) provided that: “The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years at least five of which were after attaining the age of fourteen years. Senator Cruz fulfills these criteria. He was born outside the United States, and his mother was a U.S. citizen who was physically present in the U.S. for more than ten years, including at least five after attaining the age of 14. Accordingly, Senator Cruz was a United States citizen at the moment of his birth, and thus is a “natural born Citizen” eligible to serve as President of the United States.”*

The word ‘natural’ means outside the law of man; such as with the natural rights endowed to We the People by God. We established a government to secure these natural rights. A citizen does not attain NBC status by action of law or government. It is endowed naturally outside of man’s laws; it cannot be voided or awarded by action of law, as can any other citizenship status. A citizen or born citizen cannot be the same as a natural born citizen. No action of any of the three branches of government outside of a constitutional amendment can change the Founder’s intent for NBC to prevent the tyranny of a Commander in Chief with a divided allegiance.

The Candidate's admission that he attained citizenship status by naturalization is sufficient for each Board member to determine that the Candidate's submittal was fraudulent in take steps within their authority to reject the State of Candidacy.

6. Therefore, the objector, William K. Graham, respectfully requests that the Motion to Dismiss be found invalid and insufficient as a matter of law and that the Motion be denied in its entirety. While the rules and procedures of the Board are important, the Motion to the Dismiss abuses such rules to seek to prevent the Board from discharging its solemn duties on behalf of the citizens of Illinois. The objector asks the Board to set aside legal nuances intended to shelter the Board from its responsibilities. This is especially important given the expedited schedule parties were informed of on January 20, 2016.
7. The objector affirms the prayer for relief of the original objection, that the Board validate the petition by verifying the legal qualification of the candidate as a Natural Born Citizen pursuant to the US Constitution. This can be done by merely contrasting the legal qualification of natural born citizen ("*born in a country of parents who were its citizens.*") with the public record regarding birth status of the petitioner (born in Canada of Cuban and US citizen parents). Or the Board may invoke any of its other several authorities.

Respectfully Submitted

By William K. Graham 1/26/16

William K. Graham, pro se

William K. Graham  
3s351 Juniper Lane  
Glen Ellyn, IL 60137 7417

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016.**

WILLIAM K. GRAHAM, Objector,	)	
	)	
v.	)	No. 16-SOEB-GP-527
	)	
TED CRUZ, Candidate.	)	

**MEMORANDUM OF LAW IN SUPPORT OF THE ELIGIBILITY OF TED CRUZ TO  
SERVE AS PRESIDENT OF THE UNITED STATES**

The Candidate, Ted Cruz, through his attorney, Sharee S. Langenstein, offers the following Memorandum of Law in support of his eligibility to become President of the United States.

**I. Introduction.**

Article II of the U.S. Constitution states that “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.” U.S. Const. art. II, § 1, cl. 4.

The Constitution does not define the phrase “natural born Citizen,” but its meaning is easily ascertainable. Every judicial decision and virtually every constitutional authority agree that a “natural born Citizen” is anyone who was a citizen at the moment they were “born,” as opposed to becoming a citizen through the naturalization process at some point after their birth. See, e.g., Paul Clement & Neal Katyal, *On the Meaning of “Natural Born Citizen”*, 128 Harv. L. Rev. F. 161, 161 (Mar. 11, 2015) (“All the sources routinely used to interpret the Constitution confirm that the phrase ‘natural born

Citizen' has a specific meaning: namely, someone who was a U.S. citizen at birth with no need to go through a naturalization proceeding at some later time."); Laurence H. Tribe & Theodore B. Olson, *Presidents and Citizenship* (March 19, 2008), reprinted in 2 Pub. L. Misc. 509 (2012) ("The U.S. Supreme Court gives meaning to terms that are not expressly defined in the Constitution by looking to the context in which those terms are used; to statutes enacted by the First Congress; and to the common law at the time of the Founding. These sources all confirm that the phrase "natural born" includes . . . birth abroad to parents who were citizens.") (citations omitted).

**II. Every Reliable Source From the Time of the Writing of the U.S. Constitution Confirms That a Person Who Was a U.S. Citizen at Birth, Like Senator Cruz, is a "Natural Born Citizen" Eligible to Serve as President.**

"The constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that." *United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1897) (quoting *Minor v. Happersett*, 88 U.S. 162, 167 (1875)). For example, "[t]he interpretation of the constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history." *Id.* at 655 (quoting *Smith v. Alabama*, 124 U.S. 465, 478 (1888)). The Court also looks to enactments "passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument," as "contemporaneous and weighty evidence of its true meaning." *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888).

This makes sense. The first United States Congress was convened just three years after the drafting of the Constitution, so its enactments are strong indicators of

what particular terms meant to the Framers at the time the Constitution was written.

See, e.g., *Bowsher v. Synar*, 478 U.S. 714, 723 (1986) (the views of the First Congress provide “contemporaneous and weighty evidence of the Constitution’s meaning”) (internal quotation marks omitted).

Similarly, British law at the time of the Founding of the United States also provides essential context for determining the meaning of terms used by the Framers of the Constitution. The Constitution’s authors were, after all, raised in the British legal tradition. See, e.g., *Ex parte Grossman*, 267 U.S. 87, 109-09 (1925) (“The language of the Constitution cannot be interpreted safely except by reference to the common law and to the British institutions as they were when the instrument was framed and adopted.”); *Ex parte William Wells*, 18 How. (59 U.S.) 307, 311 (1855) (“We must then give the word the same meaning as prevailed here and in England at the time it found a place in the constitution.”)

With respect to the phrase “natural born Citizen,” the First Congress and British law at the time of the founding are in agreement; a person who is a citizen at birth is a “natural born” citizen. In 1790, the first Congress enacted legislation explicitly providing that “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*.” Naturalization Act of 1790, ch. 3, 1 Stat. 104, 104 (emphasis added). Considering that the First Congress includes eight of the eleven members of the committee that proposed the Natural Born Citizen Clause to the Constitutional Convention, the definition within the Naturalization Act is particularly compelling. None of them objected to the 1790 statute. See *Clement & Katyal, supra* at 163.

Similarly, British law dating back to the 1350s, and in force at the time of founding, made clear that children born outside the British Empire to a subject of the Crown were themselves subjects of the Crown at birth, emphasizing that those children were accordingly “*natural-born Subjects . . . to all Intents, Constructions, and Purposes whatsoever.*” British Nationality Act, 1730, 4 Geo. 2, c. 21 (emphasis added). As the Supreme Court has observed: “Mr. Dicey, in his careful and thoughtful Digest of the Law of England with Reference to the Conflict of Laws, published in 1896, states the following propositions, his principal rules being printed below in italics: . . . ‘Natural-born British subject’ means a British subject who has become a British subject at the moment of his birth.” *United States v. Wong Kim Ark*, 169 U.S. 649, 657 (1897) (emphasis in original). British law further recognized that “[i]t is competent to any country to confer by general or special legislation the privileges of nationality upon those who are born out of its own territory . . . Great Britain considers and treats such persons as natural-born subjects.” *Id.* at 671-72 (emphasis added).

The original understanding of “natural born Citizen,” i.e., anyone who was a citizen of the United States at the moment of their birth, also comports with the Framers’ purpose in adopting this requirement in the Constitution. The Framers included the Natural Born Citizen Clause in response to a 1787 letter from John Jay to George Washington, in which Jay suggested that the Constitution prohibit “Foreigners” from attaining the position of Commander in Chief. See Letter from John Jay to George Washington (July 25, 1787), in 3 *The Records of the Federal Convention of 1787* 61 (Max Farrand ed., 1911) (“[W]hether it would not be wise & seasonable to provide a . . . strong check to the admission of Foreigners into the administration of our national Government; and to

declare expressly that the Command in chief of the [A]merican army shall not be given to, nor devolve on, any but a natural *born* citizen.”).

The Framers in no way intended to exclude a U.S. citizen at birth from holding the office of President, simply because of where he or she happened to be born. After all, that individual is not a “foreigner,” but rather a U.S. citizen from birth. Indeed, John Jay himself would certainly not have held such a view, considering that, when he wrote this letter to Washington, he was serving abroad as the Secretary of Foreign Affairs and had already fathered three children abroad. Surely Jay did not believe his own children were “foreigners,” constitutionally ineligible to hold the office of President.

Moreover, note what the text of the Constitution does *not* say. The Constitution also requires that a person have “been fourteen Years a *resident* within the United States” to serve as President. Nowhere does the Constitution say that a person must be “born” “within the United States.” Indeed, many members of the Framing era used the term “native” citizen during the debates over the Constitution. See 2 M. Farrand, *The Records of the Federal Convention of 1787*, at 236, 243 (rev. ed. 1937); see also *The Federalist No. 52*, at 326 (J. Madison) (C. Rossiter ed. 1961). They did not limit Presidential eligibility to “native” U.S.-born Americans.

Though the meaning of “natural born citizen” has never been decided by the United States Supreme Court, Justice Clarence Thomas has stated (and no other justice disagreed) that “children born abroad to U.S. parents, subject to some exceptions, are natural-born citizens who do not need to go through the naturalization process.” *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2110 (2015) (Thomas, J., concurring in part and dissenting in part). Indeed, Justice Thomas explicitly invoked the successor to

the statute that conferred citizenship at birth on Senator Cruz in his description of “natural-born citizens.” See *id.* (citing 8 U.S.C. § 1401(g)).

All of these sources comport with the common understanding of the term “natural” or “natural born.” Not surprisingly, then, numerous dictionary definitions of these terms also reflect this interpretation.<sup>1</sup> Similarly, numerous legal dictionaries define “natural born” to mean born with “allegiance” to, that is, born a citizen of, a particular nation.<sup>2</sup>

### **III. Historical Precedent Confirms That Persons Born U.S. Citizens are “Natural Born” Citizens.**

American history and practice, as evidenced by previous candidates for President who were born outside the United States, confirms the original understanding of the term “natural born Citizen.”

---

<sup>1</sup> See, e.g., 7 Oxford English Dictionary 38 (1961) (defining “natural born” as “having a specified position or character by birth; used esp. with subject”); The Compact Edition of the Oxford English Dictionary 1899 (1971) (defining “natural-born” as “Having a specified position of character by birth; used esp. with subject”—“1701 Act 7 Anne x. 5 § 3 The Children of all natural-born Subjects, born out of the Ligeance of her Majesty . . . shall be deemed . . . to be natural-born Subjects of this Kingdom.”—“1833 Penny Cycl. I. 338/2 It is not true that every person, born out of the dominion of the crown, is therefore an alien; nor is a person born within them necessarily a natural-born subject.”); *id.* (defining “natural” as “Having a certain relative status by birth; natural-born”); Webster’s New International Dictionary 1439 (1923) (defining “natural-born” as “Having a (certain) status or character by birth; as, natural-born citizens; a natural-born coward”); *id.* (defining “natural” as “Of, from, or by, birth; natural-born; as, a natural fool; a natural athlete or musician; existing or characteristic from birth; innate; inborn; as, natural instincts or talents.”)

<sup>2</sup> Note, for example, Black’s Law Dictionary. See Black’s Law Dictionary (1st ed. 1891) (defining “natural-born subject” as “born within the dominions, or rather within the allegiance, of the king”); Black’s Law Dictionary (2nd ed. 1910) (same); Black’s Law Dictionary (3rd ed. 1933) (same); Black’s Law Dictionary (4th ed. 1941) (same); Black’s Law Dictionary (5th ed. 1979) (same); see also Black’s Law Dictionary (6th ed. 1990) (defining “natural born citizen” for the first time to include “those born of citizens temporarily residing abroad”). Other legal dictionaries from the Founding era reflect the same meaning. See, e.g., Thomas Walter Williams, A Compendious and Comprehensive Law Dictionary (1816) (defining “Natural Born Subjects” as “born within the dominions of the crown of England; that is, within the ligeance, or, as it is generally called, the allegiance of the king”); James Whishaw, A New Law Dictionary (1829) (same); Henry James Holthouse, A New Law Dictionary (1847) (Henry Penington ed., Am. ed.) (defining “Natural Born Subjects” as “Those who are born within the dominions, or rather within the allegiance of the King of England”); Alexander M. Burrill, A New Law Dictionary and Glossary (1850) (defining “Natural-Born Subjects” as “Such persons as are born within the dominions of the crown of England, that is, within the ligeance, or, as it is generally called, the allegiance of the king”).

In 2008, for example, Senator and presidential-candidate John McCain was considered a natural born citizen due to his birth to U.S. citizen parents, notwithstanding the fact that he was born in the Panama Canal Zone. Indeed, the United States Senate unanimously passed a resolution confirming that Senator McCain was a natural born citizen, due to his birth to U.S. citizen parents. See S. Res. 511, 110th Cong. (2008) (“previous presidential candidates were born outside of the United States of America and were understood to be eligible to be President,” consistent with “the purpose and intent of the ‘natural born Citizen’ clause of the Constitution of the United States, as evidenced by the First Congress’s own statute defining the term ‘natural born Citizen’”).

Courts uniformly concluded that Senator McCain was eligible to serve as President on account of his birth to citizen parents. See, e.g., *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1146 (N.D. Cal. 2008) (finding it “highly probable . . . that Senator McCain is a natural born citizen” due to his birth to at least one U.S. citizen parent, before dismissing case for lack of standing); *Hollander v. McCain*, 566 F. Supp. 2d 63, 66 & n.3 (D. N.H. 2008) (noting that “the weight of the commentary falls heavily on the side of eligibility” for persons born outside the U.S. to at least one U.S. citizen parent, before dismissing case for lack of standing); *Ankeny v. Governor of State of Indiana*, 916 N.E.2d 678, 685 n.10 (Ind. Ct. App. 2009) (concluding that “Plaintiffs do not cite any authority or develop any cogent legal argument for the proposition that a person must actually be born within one of the fifty States in order to qualify as a natural born citizen”).

Senator McCain is but one example. Governor George Romney, born in Mexico to U.S. citizen parents, was also understood to be a natural born citizen when he ran for

President in 1968. See, e.g., Clement & Katyal, *supra* at 164; see also S. Res. 511, 110th Cong. (2008) (“previous presidential candidates were born outside the United States of America and were understood to be eligible to be President”); Eustace Seligman, *A Brief for Governor Romney’s Eligibility for President*, 113 Cong. Rec. 35019, 35020 (1967) (“It is well settled that the term ‘natural born’ citizen (or subject) included not only all those born within the territorial limits of England or of the Colonies but likewise all those who were citizens at birth, wherever their birthplaces might be.”); *Id.* at 35021 (“It follows from the preceding that Governor Romney, who was a citizen of the United States from his birth by virtue of his parentage, is a natural-born citizen and therefore is eligible under the constitution to be elected to the office of President of the United States.”).

Unsurprisingly, then, the Congressional Research Service (“CRS”), a non-partisan agency within the Library of Congress that provides legal and policy analysis to members of Congress, has also come to the same conclusion. In 2011, the CRS issued a report concluding that the “weight of legal and historical authority indicates that the term ‘natural born’ citizen would mean a person who is entitled to U.S. citizenship ‘by birth’ or ‘at birth,’” including “by being born abroad to U.S. citizen-parent.” Jack Maskell, *Qualifications for President and the “Natural Born” Citizenship Eligibility Requirement* (Congressional Research Service, Report No. 7-5700, Nov. 14, 2011), available at <http://www.fas.org/sgp/crs/misc/R42097.pdf>; *Id.* at 50 (“The weight of more recent federal cases, as well as the majority of scholarship on the subject, also indicates that the term ‘natural born citizen’ would most likely include, as well as native born citizens, those born abroad to U.S. citizen-parents, at least one of whom had previously resided

in the United States, or those born abroad to one U.S. citizen parent who, prior to the birth, had met the requirements of federal law for physical presence in the country.”).

Founding-era sources, Congressional statements, historical precedent, case law, and the overwhelming weight of scholarly authority all command the same conclusion: a “natural born Citizen” is a person who was a U.S. citizen at birth, without the need for later naturalization.

The fact that Senator Cruz satisfies this definition cannot be questioned. At the time of Senator Cruz’s birth, 8 U.S.C. § 1401(a)(7) provided that: “The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.”<sup>3</sup>

Senator Cruz fulfills these criteria. He was born outside the United States, and his mother was a U.S. citizen who was physically present in the U.S. for more than ten years, including at least five after attaining the age of 14. Accordingly, Senator Cruz was a United States citizen at the moment of his birth, and thus is a “natural born Citizen” eligible to serve as President of the United States.

---

<sup>3</sup> Today, the relevant law is codified at 8 U.S.C. § 1401(g) (2012): “The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.”

WHEREFORE, the Candidate, Ted Cruz, respectfully requests a finding that the Objection filed to his candidacy be OVERRULED and that this Board enter an Order that the name Ted Cruz SHALL APPEAR on the ballot for the General Primary Election to be held on March 15, 2016.

Respectfully submitted,

Ted Cruz

By 

Sharee S. Langenstein  
Attorney for Ted Cruz

Sharee S. Langenstein, esq.  
The Law Office of Sharee S. Langenstein  
P.O. Box 141  
Murphysboro, IL 62966  
ShareeLangenstein@yahoo.com  
Phone or Fax: 855-694-8671

Prerak Shah, esq.  
Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue  
Dallas, TX 75201-6912  
Phone: 214-698-3193  
Fax: 214-571-2944  
[PShah@gibsondunn.com](mailto:PShah@gibsondunn.com)  
[www.gibsondunn.com](http://www.gibsondunn.com)

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on the following parties before 5:00 pm on January 25, 2016, to the email addresses listed below in accordance with the Rules of the Illinois State Board of Elections.

William Graham  
[billgrahampe@aol.com](mailto:billgrahampe@aol.com)

Jim Tenuto  
[jtenuto@elections.il.gov](mailto:jtenuto@elections.il.gov)

  
Sharee S. Langenstein

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES TO BE  
VOTED UPON WITHIN THE STATE OF ILLINOIS AT THE GENERAL PRIMARY  
ELECTION TO BE HELD ON MARCH 15, 2016.**

<b>WILLIAM K. GRAHAM,</b>	)	
<b>Objector,</b>	)	
	)	
<b>v.</b>	)	<b>No. 16-SOEB-GP-527</b>
	)	
<b>TED CRUZ,</b>	)	
<b>Candidate.</b>	)	

**CANDIDATE’S RESPONSE TO OBJECTOR GRAHAM’S “MOTION AND  
MEMORANDUM OF LAW”**

NOW COMES the Candidate, Ted Cruz, through his attorney, Sharee S. Langenstein, who makes the following Response to the “Motion” filed on January 22, 2016, in the above-captioned case:

1. On January 4, 2016, Ted Cruz filed a Statement of Candidacy for the office of President of the United States, which contained his oath, signed before a Notary Public in the State of Illinois, swearing that he was qualified for office and requesting that his name be printed on the ballot for the March 15, 2016 General Primary Election. Attached to that Statement were Nominating Petitions containing approximately 5,000 signatures of registered voters in the State of Illinois.

2. On January 8, 2016, a letter was submitted to this Board purporting to be written and signed by William K. Graham of Glen Ellyn, Illinois. Said letter states “Please consider this objection to the candidacy statement of Ted Cruz, candidate for the Republican nomination for the office of President of the United States.”

3. On January 22, two documents were filed in this case. One was the Candidate's Motion to Dismiss, and the second was a "Motion" filed by the objector, purportedly in support of his initial Objection.

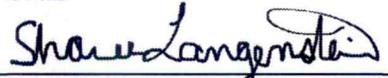
4. The arguments made by the Candidate in his Motion to Dismiss are herein incorporated by reference.

5. The Candidate maintains that his Motion to Dismiss should be granted by this Board and that no other substantive arguments are necessary. However, should this Board find against the Candidate on the jurisdictional issue, the Candidate maintains his eligibility to serve as President of the United States. A Memorandum of Law regarding the substantive issue is attached hereto and is incorporated herein.

WHEREFORE, the Candidate, Ted Cruz, respectfully requests a finding that the Objection filed to his candidacy be OVERRULED and that this Board enter an Order that the name Ted Cruz SHALL APPEAR on the ballot for the General Primary Election to be held on March 15, 2016.

Respectfully submitted,

Ted Cruz

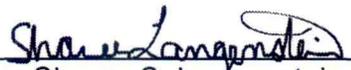
By   
Sharee S. Langenstein  
Attorney for Ted Cruz

Sharee S. Langenstein, esq.  
The Law Office of Sharee S. Langenstein  
P.O. Box 141  
Murphysboro, IL 62966  
ShareeLangenstein@yahoo.com  
Phone or Fax: 855-694-8671

Prerak Shah, esq.  
Gibson, Dunn & Crutcher LLP  
2100 McKinney Avenue  
Dallas, TX 75201-6912  
Phone: 214-698-3193  
Fax: 214-571-2944  
[PShah@gibsondunn.com](mailto:PShah@gibsondunn.com)  
[www.gibsondunn.com](http://www.gibsondunn.com)

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served on the following parties before 5:00 pm on January 25, 2016, to the email addresses listed below in accordance with the Rules of the Illinois State Board of Elections.

  
Sharee S. Langenstein

William Graham  
[billgrahampe@aol.com](mailto:billgrahampe@aol.com)

Jim Tenuto  
[jtenuto@elections.il.gov](mailto:jtenuto@elections.il.gov)



2. The nature of the objection to the nomination papers is provided in the objection and attachment. This nature includes the allegation that the nominee's Statement of Candidacy is not in conformance to the Act, in particular that it includes an invalid oath and certification that the nominee is "legally qualified" to serve as President, because Mr. Cruz is not a natural born citizen. The nature of the objection is further described in statement that under the Act, it is incumbent upon the Board to assure citizens are protected from unqualified and illegal candidates. The objection does not ask the Board to offer an opinion or make a ruling regarding the definition of natural born citizen. But the objection does seek the Board to inquire, under its own procedures (10 ILCS 5/1A-8(7)), if false representations were made in the candidate oath and certification that they are "legally qualified" to serve as President (i.e. natural born citizen)

The Supreme Court of the United States addressed this legal qualification in *Minor v. Happersett* (1875), in which a unanimous Court held:

*"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. As to this class there have been doubts, but never as to the first."*

The legal opinion attached to the objection (M. Apuzzo, 11/29/15) provides additional case law defining what "legally qualified" means with respect to natural born citizen; but the Board need not consider this added information. The *Minor* unanimous opinion, which "*was never doubted*", nor has since been doubted by the Supreme Court, is sufficient for the purposes of the Board, any candidate, and any citizen to understand what the Founders intended and what the Constitution means

with respect to 'natural born citizen', and in distinguishing this status from that of 'citizen'. The Supreme Court remains the highest court of the land and the final authority on the meaning of the US Constitution. The Board neither has the duty, nor authority to deliberate on the definition of natural born citizen. But each Board member, pursuant to their solemn oath to support the Constitution, as they "*faithfully discharge their duties*", has no discretion but to accept the United States Constitution and the Supreme Court's Minor ruling that natural born citizen means "*born in a country of parents who were its citizens.*"

The Constitution and the standing opinions by the Supreme Court clarifying the Founders intent, are the only sources on Presidential legal qualifications available to those Illinois public officers (i.e. Election Board Members) who have been administered the oath to support the Constitution:

*"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of \_\_\_ to the best of my ability."* (IL Const., Art XIII, Section 3)

3. The interest of the objector is provided in the objection. The objector is a resident and registered legal voter in Milton Township and DuPage County, IL. The Board has the ability to verify the legal voting status of this objector. Under regulation 10 ILCS 5/10-8, this is considered sufficient to show interest:

***"Any legal voter of the political subdivision or district in which the candidate or public question is to be voted on, or any legal voter in the State in the case of a proposed amendment to Article IV of the Constitution or an advisory public question to be submitted to the voters of the entire State, having objections to any certificate of nomination or nomination papers or petitions filed, shall file an objector's petition together with 2 copies thereof in the principal office or the permanent branch office of the State Board of Elections, or in the office of the election authority or local election official with whom the certificate of nomination, nomination papers or petitions are on file."***

These conditions were met under this objection. Disallowing “any legal voter” of the State to file an objection to papers filed in a Presidential general primary would violate this regulation and could be subject to judicial review. The objector is a legal voter who has no interest in the matter other than supporting the Constitution and upholding Illinois laws and regulations; these being the same interests as the Board and all Illinois voters.

4. Relief requested is documented in the Objection.

*“The objection is made because it is incumbent on the Board to assure that the citizens are protected from unqualified and illegal candidates, on which their vote is wasted. By failing to assure candidate are qualified the Board disenfranchises voters.”*

The objection asks the Board to protect the voters from an unqualified and illegal candidate, and to prevent disenfranchisement of voters. The Board has several duties and authorities that it may consider to provide relief to protect the voters.

*The electoral board:*

- a. shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are **in proper form**, (10 ILCS 5/10-10)*
- b. in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are **valid** (10 ILCS 5/10-10)*
- c. Review and inspect procedures and records relating to conduct of elections and registration as deemed necessary, and to report violations of election laws to the appropriate State's Attorney or the Attorney General (10 ILCS 5/1A-8)*
- d. may consider whether knowing false certifications/statements need to be referred for investigation of perjury (720 ILCS 5/32-2)*

5. Therefore, the objector, William K. Graham, respectfully requests that the Motion to Dismiss be found invalid and insufficient as a matter of law and that the Motion be denied in its entirety. While the rules and procedures of the Board are important, the Motion to the Dismiss abuses such rules to seek to prevent the Board from

discharging its solemn duties on behalf of the citizens of Illinois. The objector asks the Board to set aside legal nuances intended to shelter the Board from its responsibilities. This is especially important given the expedited schedule parties were informed of on January 20, 2016.

6. Objector notes for the Board to consider that the Motion to Dismiss does not address the substance of the objection, namely that the Candidate is not 'legally qualified' to serve as President and has filed with the board under oath a false certification. If the Board denies the Candidates motion to dismiss, please consider denying the request of the Candidate contained therein, be placed on the primary ballot. Alternatively, the objector affirms the prayer for relief of the original objection, that the Board validate the petition by verifying the legal qualification of the candidate as a Natural Born Citizen pursuant to the US Constitution. This can be done by merely contrasting the legal qualification of natural born citizen ("*born in a country of parents who were its citizens.*") with the public record regarding birth status of the petitioner (born in Canada of Cuban and US citizen parents). Or the Board may invoke any of its other several authorities.

Respectfully Submitted

By 

William K. Graham, pro se

William K. Graham  
3s351 Juniper Lane  
Glen Ellyn, IL 60137 7417

William K. Graham  
3s351 Juniper Lane  
Glen Ellyn, IL 60137  
January 7, 2016

630-730-0060  
billgrahamPE@aol.com

State Board of Elections  
P.O. Box 4187  
Springfield, IL 62708

Subject: Objection to Candidate Statement of Candidacy – Ted Cruz

Dear Members of the State Board of Elections:

Please consider this objection to the candidacy statement of Ted Cruz, candidate for the Republican nomination for the office of President of the United States. The Statement of Candidacy is not in conformance with the provisions of the Act and is not valid for the following reason. Candidate is required under IL law to certify that he or she is "legally qualified" to hold such office. However, Mr. Cruz does not meet the qualification to serve in this office because he is not a natural born citizen.

*(10 ILCS 5/10-8) (from Ch. 46, par. 10-8) Sec. 10-8. Certificates of nomination and nomination papers, and petitions to submit public questions to a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing within 5 business days after the last day for filing the certificate of nomination or nomination papers or petition for a public question,*

*"I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office" Statement of Candidacy, form to be certified, notarized, and submitted.*

The US Constitution says a legal qualification to serve as President, or Vice President, is that a candidate must be a natural born citizen. Illinois election law echoes this requirement. See the Exhibit A for a legal opinion on the intent of the Founding Fathers in set this higher level of qualification over that of the US Citizen requirement for other office holders. A natural born citizen is one who is born within the United States and on the day of their birth, had two U S Citizen parents. Other scenarios present the risk of a Commander-in-Chief with a divided allegiance, which the Founders were trying to prevent.

Ted Cruz's biography on the US Senate web page says he was born in Canada to a Cuban father and US Citizen mother. He recently renounced his Canadian citizenship. Mr. Cruz appears to be a U S Citizen. US law can confer US Citizenship to the children of US citizen parents; but no law can confer natural born citizen status, which exists outside law and regulation.

This objection is made because it is incumbent on the State Board to assure that the citizens are protected from unqualified and illegal candidates, on which their vote is wasted. By failing to assure candidates are qualified the Board disenfranchises voters.

Sincerely,

  
William K. Graham, Registered Voter  
Milton Township, DuPage County

ORIGINAL ON FILE AT  
STATE BD OF ELECTIONS  
ORIGINAL TIME STAMPED  
AT 1/8/16 2:40 PM

Attachment: Exhibit A – Legal Opinion regarding Natural Born Citizen

BMD

**Sunday, November 29, 2015**

**A Citizen is One Thing, But a Natural Born Citizen is Another**

A Citizen is One Thing, But a Natural Born Citizen is Another

By Mario Apuzzo, Esq.

November 29, 2015



Understanding that a citizen of the United States ("citizen") is one thing, but that a natural born citizen of the United States ("natural born citizen") is another is the key to understanding what a natural born citizen is. To avoid constitutional error, it is critical that these two classes of citizens not be conflated, confounded, and confused. There are different ways by which one can become a citizen. But none of that does or should change what a natural born citizen is. Why is it important that we understand the constitutional distinction between a citizen and a natural born citizen and give the correct meaning to a natural born citizen? It is important because the Framers looked to the natural born citizen clause, apart from the Electoral College, through its requirement of absolute allegiance and love of country, as a means to provide for the safety and national security of the republic. They looked to the natural born citizen clause as a way to keep monarchical and foreign influence out of the singular and powerful civil Office of President and military Office of Commander in Chief of the Military. The Framers saw such monarchical and foreign influence as an insidious way to destroy what they had so greatly sacrificed to build.

The historical record is replete with examples showing how the Framers sought to keep monarchical and foreign influence out of the Office of President and Commander in Chief of the Military. For sake of brevity, I shall focus on this one example. Alexander Hamilton gave a speech to the Convention on June 18, 1787. He read to Convention his Propositions for A Constitution of Government. See Works of Alexander Hamilton (page 393); 3 Max Farrand, The Records of the Federal Convention of 1787, at 617 (1911) (Farrand). This speech contained a sketch of a plan which has become known as the English Plan. This plan can be read here, [http://avalon.law.yale.edu/18th\\_century/debates\\_618.asp](http://avalon.law.yale.edu/18th_century/debates_618.asp). James Madison informed us in his Convention notes that "[i]t meant only to give a more correct view of his ideas, and to suggest the amendment which he should probably propose to the plan of Mr. R. in the proper stages of its future discussion. Although this plan was not formally before the Convention in any way, several of the delegates made copies . . . Farrand, at 617. Hamilton proposed in his Propositions that the "supreme executive authority of the United States to be vested in a Governor. . ." and that he also be the "commander-in-chief. . ." In this initial sketch, Hamilton did not include any eligibility requirements for the supreme executive authority who he would call the President

rather than Governor in his later draft of the Constitution. In his speech to the Convention, Hamilton advocated an executive for life. The reason that he gave for such a life position was the following: "The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great, that he was placed above the danger of being corrupted, from abroad-and at the same time was both sufficiently independent and sufficiently controlled, to answer the purpose of the institution at home, one of the weak sides of Republics was their being liable to foreign influence & corruption. Men of little character, acquiring great power become easily the tools of intermeddling Neighbours." Id. Here we can see that Hamilton was very concerned with the harm that could be done to the nation by an executive who was corrupted by foreign influence and intrigue.

This "sketch of a plan of government" was not formally presented to the Convention, but delegates, including James Madison, had various copies of this plan. Farrand, at 617. This plan does not include Hamilton's "born a citizen" language which he included in his later draft of a constitution.

On July 25, 1787, about five weeks later, John Jay wrote a letter to then-General Washington, who was acting as president of the Constitutional Convention, stating: "Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the american army shall not be given to, nor devolve on, any but a natural born Citizen." ("born" underlined in the original). <http://rs6.loc.gov/cgi-bin/query/?ammem/hlaw:@field%28DOCID+@lit%28fr00379%29%29>

John Jay reminded General George Washington of the importance of remanding back to the original concerns of the people and offered his presentation, to which George Washington offered, verbatim, to the convention. Alexander Heard and Michael Nelson, Presidential Selection 123 (Duke University Press 1987) via Google Books.

Jay demanded that there be a "strong check" on foreign influence infiltrating the national government in general and the Office of Commander in Chief of the Military specifically. A "natural born subject," as defined by the English common law, which permitted dual and conflicting allegiance at birth, would not have provided that strong check on foreign influence for which Jay was looking.

On September 2, 1787, George Washington wrote a letter to John Jay the last line of which read: "I thank you for the hints contained in your letter." 4 Documentary History of the Constitution of the United States of America 1786-1870, p. 269 (1905). While the Committee on Detail originally proposed that the President must be merely a citizen as well as a resident for 21 years, the Committee of Eleven changed "citizen" to "natural born citizen" without recorded explanation. On September 4, 1787, about six weeks after Jay's letter and just two days after Washington wrote back to Jay, the "natural born citizen" requirement appeared in the draft of the Constitution. Here is the first style of the clause as presented by the Committee of Eleven: (5) Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.

Madison's notes of the Convention <http://www.ahces.org/dhc-0904.txt>. The proposal passed unanimously without debate which does not mean that the proposal was not discussed, for the convention meetings were conducted in secrecy. Another reason that there was no debate is probably that the definition that was used of a natural born citizen was of such universal acceptance that it satisfied all laws then know to the Framers. At the close of the Convention, Hamilton gave to Madison another document which does contain in Article IX provision for the election of a President and the "born a citizen" language for



society defined its members based on its own historical development and positive laws. As we saw, Minor added that being a citizen under the Constitution did nothing more than "convey[] the idea of membership of a nation, and nothing more."

Again, without mentioning the English common law or Blackstone, but rather expressing concepts of natural law and the law of nations, Minor then explained who the original "citizens" were during the Founding of the free and independent states and then the United States as a nation:

To determine, then, who were citizens of the United States before the adoption of the amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership.

Looking at the Constitution itself we find that it was ordained and established by "the people of the United States," <https://www.blogger.com/null> and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, <https://www.blogger.com/null> and that had by Articles of Confederation and Perpetual Union, in which they took the name of "the United States of America," entered into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever. <sup>[6]</sup>

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen -- a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.

Id. at 166-67.

Having examined the concept of who were the original citizens, now we have to consider who the natural born citizens were. Minor said that "additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization." Id. at 167. It is in telling us about those addition to the citizens that Minor then told us how the Framers defined a natural born citizen. The Framers had one and only one definition of a natural born citizen. How do we know that? The unanimous U.S. Supreme Court in Minor informs us. There it held:

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 <sup>[1]</sup>parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words "all children" are certainly as comprehensive, when used in this connection, as "all persons," and if females are included in the last they must be in the first. That they are included in the last is not denied. In fact the whole argument of the plaintiffs proceeds upon that idea.

Id. at 167-68.

The Court explained that neither the original nor amended Constitution (the Fourteenth Amendment) defined a natural born citizen. It said that we had to look outside the Constitution

for a definition of the clause. It held that the definition of a natural born citizen existed at common law the nomenclature with which they were familiar. Explaining what that common law provided, it said that "all children" born in a country to "parents" who were its citizens were "natives, or natural-born citizens," and that all the rest of the people were "aliens or foreigners," who would need a naturalization Act of Congress in order to become a citizen of the United States. Here we can see that like when it defined citizens, the Court did not rely upon the English common law and Blackstone, who explained that any child born in the King's dominion and under his jurisdiction, regardless of the citizenship of the child's parents, was a natural-born subject. Rather, Minor's definition of "natives, or natural born citizens" was a paraphrase of the definition of those terms provided by Emer de Vattel who in his *The Law of Nations*, Section 212 (1758) (1797) explained: "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." So, Minor looked to the law of nations and not to the English common law for the Framers' definition of a natural born citizen. Chief Justice John Marshall in *The Venus*, 12 U.S. 253, 289 (1814) (Marshall, C.J., concurring) and Justice Daniel in *Dred Scott v. Sandford*, 60 U.S. 393, 476 (1857) (Daniel, J., concurring), had done the same, citing and quoting the law of nations and Vattel at Section 212 and not the English common law and Blackstone. Hence, when Minor said that a natural born citizen was defined "at common-law," it was not referring to the English common law. Rather, it was referring to American national common law which incorporated the citizenship principles of the law of nations.

Minor explained that if one was a natural born citizen, there was no doubt that one was a citizen. Hence, accepting that Virginia Minor was a natural born citizen, it held that she was a citizen. After the Court defined the natural born citizens and told us that anyone who was a natural born citizen was without any doubt a citizen, the Court raised the question *vis a vis* whether there could be other "citizens" by birth "within the jurisdiction." This question regarding other "citizens" did not involve the "natural born citizens," who the Court had just defined through an all-inclusive and all-exclusive definition (the Court said that under that common law all the people who did not meet that definition were "aliens or foreigners"). So the Court did not raise any question of whether there could be other birth circumstances that could serve as the basis for making one a natural born citizen. These other children were different from those that were natural born citizens because unlike them, they were born to alien parents. In fact, the Court even referred to these children as belonging to another "class." The Court said that "some authorities" included these other children as "citizens" also. The Court, however, said that "there have been doubts" whether they were citizens. So, not only did the Court explain that those children could not be natural born citizens, it also said that it was doubtful whether they were even just citizens. The Court was referring to *The Slaughter House Cases*, 83 U.S. 36 (1873) which stated that children born in the United States to alien parents were not citizens of the United States under the Fourteenth Amendment. In the end, the Court explained that it was not necessary for it to solve the doubts involving whether the children of that other class were citizens. For sure, it was not necessary because Virginia Minor was born in the country to parents who were its citizens which made her a natural born citizen. Knowing that Virginia Minor was born in the country to parents who were citizens, which made her a natural born citizen, provided the Court with sufficient information for it to decide the question of whether Virginia Minor was a citizen.

The Court finally held that "all children born of citizen parents within the jurisdiction are themselves citizens," meaning that all children who were natural born citizens were citizens. Accepting both that rule to be true and that Virginia Minor satisfied that rule was sufficient for the Court to hold that she was a citizen. It simply was not necessary for the Court to explore any other avenues by which Virginia Minor could be a citizen. Indeed, she was a natural born citizen

which without any doubt ipso facto made her a citizen and that is all she had to be in order for her to have standing to make her Fourteenth Amendment argument that as a citizen of the United States, she had a privilege or immunity that created a constitutional right to vote which the State of Missouri could not abridge by making or enforcing any law against her. The Court in the end held that citizenship did not constitutionally give one the right to vote and so Missouri could through its laws decide that it would not allow women to vote. But the Court's ultimate holding regarding a woman's right to vote has absolutely no bearing on the court's *ratio decidendi* that it applied to defining the citizens and the natural born citizens, an analysis which makes its definition of a natural born citizen binding precedent.

So Minor confirmed the Framers' definition of a natural born citizen. It also left open the question of whether a child born in the United States to alien parents could be a citizen of the United States under the Fourteenth Amendment. Again, the Court demonstrated that there was only one way to become a natural born citizen which was to be born in the country to parents who were its citizens. But it also explained that there were different avenues by which one could become a citizen. It explained that one way was for a person to satisfy the naturalization Acts of Congress. Another way was to satisfy the requirements of the Fourteenth Amendment which it chose not to analyze and left to be done another day.

The majority of the United States Supreme Court in *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898) answered in 1898 the Fourteenth Amendment question regarding birth in the United States to alien parents which Minor left open in 1875. It is the seminal case for interpreting and applying the Fourteenth Amendment's citizenship clause, which establishes thereunder who may be a "citizen" of the United States from the moment of birth, to persons who are born in the United States, but who do not satisfy Minor's common law definition of a natural born citizen. Wong Kim Ark thoroughly analyzed the question of who was included as a citizen of the United States under the Fourteenth Amendment and it showed that people like Wong, born in the United States to alien parents who were legally domiciled and permanently residing in the United States and neither foreign diplomats nor military invaders, were citizens of the United States from the moment of birth by virtue of the Fourteenth Amendment, but they could not be natural born citizens by virtue of the common law which Minor explained defined a natural born citizen. Wong Kim Ark explained that "[t]he Constitution of the United States, as originally adopted, uses the words 'citizen of the United States,' and 'natural-born citizen of the United States,' and that '[t]he Constitution nowhere defines the meaning of these words, either by way of inclusion or of exclusion, except insofar as this is done by the affirmative declaration that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof,' are citizens of the United States.'" *Id.* at 654. Hence, Wong Kim Ark also confirmed that the Fourteenth Amendment did not define a natural born citizen. The Court then explained that "[i]n this as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. *Minor v. Happersett*, 21 Wall. 162; *Ex parte Wilson*, 114 U.S. 417, 422; *Boyd v. United States*, 116 U.S. 616, 624, 625; *Smith v. Alabama*, 124 U.S. 465. The language of the Constitution, as has been well said, could not be understood without reference to the common law. *Kent Com.* 336; *Bradley, J.*, in *Moore v. United States*, 91 U.S. 270, 274." *Id.* at 654. Hence, Wong Kim Ark, like Minor, explained that the Court could use the common law to interpret the Constitution, Article II in Minor and the Fourteenth Amendment in Wong Kim Ark.

While it acknowledged Minor's definition of a natural born citizen and the common law it relied upon to arrive at that definition, in rendering its decision it did not rely upon American national common law, but rather on colonial English common law. It did not rely on the former because it was not defining an Article II natural born citizen, but rather a different clause of the Constitution, as amended, the Fourteenth Amendment. In fact, Wong Kim Ark said that it was not constrained by any rule of "international law" or the municipal laws of any foreign nation in

interpreting the Fourteenth Amendment. Rather, it resorted to looking to and using colonial English common law as an aid to construing the Fourteenth Amendment's "subject to the jurisdiction thereof" clause. It found that under the English common law, a child born in the King's dominion to alien parents who were neither foreign diplomats nor military invaders were born subject to his jurisdiction and entitled to his protection, and therefore English natural-born subjects. It found that this rule had been continued in the new free and independent states after the Declaration of Independence and the adoption of the Constitution, by the states selectively adopting the English common law through their constitutions and reception statutes. By the force of that state practice, it ruled by analogy that a child born in the United States to alien parents who were permanently domiciled and resident in the United States and neither foreign diplomats nor military invaders was born in the United States and "subject to the jurisdiction thereof." Hence, that child was a "citizen" of the United States from the moment of birth by virtue of the Fourteenth Amendment. Relying on the English common law's exceptions to being born in the King's dominion and within the jurisdiction of the King, it also explained that any child born in the United States to foreign diplomats or military invaders would not be born subject to its jurisdiction and therefore not a citizen of the United States under the Fourteenth Amendment.

So Wong Kim Ark resolved the question of the meaning of the Fourteenth Amendment's "subject to the jurisdiction thereof" clause, as applied to children born in the United States to alien parents, by resort to the colonial English common law, which under its notion of broad allegiance, treated non-diplomatic and friendly aliens present in the King's dominions as his subjects. It used the colonial English common law to interpret the meaning of the Fourteenth Amendment's "subject to the jurisdiction thereof" clause, not the meaning of an Article II natural born citizen. In conducting its jurisdiction analysis, it did not reinterpret the natural born citizen clause under the English common law, for Minor had already demonstrated that its definition was to be found in American common law. In fact, no U.S. Supreme Court that ever provided the definition of a natural born citizen relied upon any jurisdiction analysis when defining a natural born citizen. Actually, Wong Kim Ark recognized that a natural born citizen was a different type of citizen than a citizen of the United States at birth under the Fourteenth Amendment. "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." *Emer de Vattel*, *The Law of Nations*, Section 212 (1758) (1797). "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." *Minor* 88 U.S. at 167. "The child of an alien, if born in the country, is as much a citizen as the natural born child of a citizen, and by operation of the same principle." *Wong Kim Ark*, 169 U.S. at 665 (citing and quoting *Horace Binney*, "Alienigenae of the United States," 22, note (2<sup>nd</sup> ed. Philadelphia, December 1, 1853)). As we can see, both Vattel and Minor said a natural born citizen was a child born in the country to parents who were its citizens. Justice Gray in *Wong Kim Ark* agreed.

Another crucial point needs to be addressed. What did Vattel and Minor mean when they said "children" and "parents" as in all "children" born in the country to citizen "parents" were natural born citizens? Under the law of nations and at common law, children meant legitimate children. Hence, using the term children suggested that the father and mother were married or at least that the child was legitimated at some point. Under the law of nations and at common law, "parents" could only mean father and mother. In fact, Vattel throughout *The Law of Nations*, when referring to parents, spoke about a child's father and mother. Under the common law doctrine of coverture, a wife upon marriage (*femes covert*) became one with her husband. She acquired the

citizenship and allegiance of her husband, whether her husband was a citizen or an alien. At the Founding and until the passage of the Cable Act in 1922 (ch. 411, 42 Stat. 1021), there was no such thing as a husband having one citizenship and the wife having another. This father and mother interpretation of Vattel has been confirmed by our U.S. Supreme Court which has always interpreted Vattel's "parents" to mean both father and mother. In their concurring opinions, Chief Justice John Marshall in *The Venus* (1814) and Justice Daniel in *Dred Scott* did just that. Minor provided a scenario where the child's parents were both either citizens or both aliens. The same occurred in *Wong Kim Ark*, where the Court explained that a child born in the country to an alien parent is as much a "citizen" as the natural born child born in the country to a citizen parent. This statement can only have sense if both parents are either aliens or citizens. So, both Minor and *Wong Kim Ark* provided scenarios wherein the child's parents are both either citizens or both aliens. See also *Lynch v. Clarke*, 1 Sandf. Ch. 583, 3 NY Leg. Obs. 236 (1844) (confirms the same scenario when it said: "it is insisted that the national rule is that of the public law, by which a child follows the *status* of its parents (emphasis in the original);" "Suppose a person should be elected President who was native born, but of alien parents . . ."; and "every person born within the dominions and allegiance of the United States, whatever were the situation of his parents"); *Ankeny v. Governor of the State of Indiana*, 916 N.E.2d 678 (Ind. Cl.App. 2009) (stating in footnote 12 "that the Court in *Minor* contemplates only scenarios where both parents are either citizens or aliens, rather in the case of President Obama, whose mother was a U.S. citizen and father was a citizen of the United Kingdom"). This reasoning followed from our nation adopting the common law doctrine of coverture that the wife acquired the citizenship of her husband. Hence, the word "parents" in both Vattel's and Minor's definition of a natural born citizen could not mean that one parent had one citizenship and another had a different one; it could only mean father and mother who had the same citizenship at the time of the child's birth. This law of nations and common law rule regarding parents having the same nationality is reflected in the 1961 Convention on the Reduction of Statelessness. Article 2 provides: "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State." in effect providing that a foundling is to be treated and considered as though she satisfies the definition of a natural born citizen under the law of nations. Hence, the common public understanding of "parents" at the time the Constitution was adopted and ratified was that parents meant father and mother, with the spouses acquiring the citizenship of the husband, and children meant legitimate children of those parents. So, at the time of the adoption and ratification of the Constitution, legitimate children were born either to two citizen parents or to two alien parents. Under the ancient maxim *partus sequitur patrem* (children follow the condition of their parents), those children inherited the citizenship and allegiance of their parents.

Finally, other convincing evidence demonstrating that the Framers defined a natural born citizen as a child born in the country to citizen parents are the Naturalization Acts of 1790, 1795, 1802, and 1804. The only children Congress did not seek to reach with its naturalization powers in these Acts were children born in the United States to U.S. citizen parents. There was no constitutional basis for Congress to do that, for these children were the natural born citizens. What is also most telling is that in these naturalization Acts, Congress treated children born in the United States to alien parents as aliens and in need of naturalization. This Congressional naturalization rule was not changed until after the U.S. Supreme Court in *Wong Kim Ark* held that children born in the United States to qualifying alien parents were citizens of the United States from the moment of birth.

What this historical and legal evidence (not meant to be exhaustive) shows is that there is only one definition of a natural born citizen. That definition is a child born in a country to parents (father and mother) who were its citizens at the time of the child's birth. But there can be

different definitions of a citizen. Those other definitions exist under the Fourteenth Amendment, naturalization Acts of Congress, and treaties, all positive laws. We can argue, for whatever reasons, about what those other definitions of being a citizen should be under those particular positive laws. But whatever we agree or disagree on with respect to a citizen under those laws, none of that changes or can change the Framers' original common law definition of a natural born citizen which under the Constitution is a child born or reputed born in the United States to parents, meaning a married father and mother, who were U.S. citizens at the time of the child's birth. The Framers adopted this definition of a natural born citizen into the Constitution. As such, it is the supreme law of the land and cannot be changed unless done so by a duly ratified constitutional amendment.

Even if today we were to relax the requirement of parents having to be married due to Fourteenth Amendment equal protection requirements, we would still be left with the requirement that the father and mother be both U.S. citizens at the time of the birth of their child in the United States. Finally, the Cable Act of 1922, which for the first time gave to women the right to have a separate citizenship and allegiance from that of their husbands, did no more than that; it did not nor could it amend the definition of a natural born citizen which required that both parents be U.S. citizens at the time of their child's birth in the United States.

For sure, the United States would never deny its protection to a natural born citizen, for no other foreign nation can make any legitimate claim based on its sovereign authority to that person's citizenship and allegiance based on either *jus sanguinis* or *jus soli*, for under the American national common law's definition of a natural born citizen, i.e., a child born in a country to parents who were its citizens at the time of the child's birth, both right of blood and right of soil merge into the child at the moment of birth to create a unity of citizenship and allegiance in the child at the time of birth. Hence, that child is born with allegiance only to the United States and to no other nation. Simply stated, all the nations of the world recognize that person to be only a citizen of the United States and of no other nation. The Framers commanded that future Presidents and Commanders be born with sole allegiance to the United States. In contrast, citizens at birth under the Fourteenth Amendment and naturalization Acts of Congress, who do not meet the definition of a natural born citizen, while born with allegiance to the United States, are also born with citizenship and allegiance to some foreign nation, under the Fourteenth Amendment, citizenship in and allegiance to the foreign nation of one or both alien parents, and under a naturalization Act of Congress, citizenship in and allegiance to the foreign nation in which born and/or of an alien parent. These citizens "at birth" are made citizens at birth only by operation of law, the Fourteenth Amendment or Act of Congress, and not by universal principle of natural law and the law of nations, recognized and adopted by American national common law.

It is treason upon the Constitution and the Framers' command that for the sake of the national security of the republic, for persons born after the adoption of the Constitution, no person except a natural born citizen is to be eligible to be President and Commander in Chief of the Military, to interpret the natural born citizen clause out of the Constitution and replace it with how we may today define under the positive laws of the Fourteenth Amendment or naturalization Acts of Congress a citizen of the United States at birth, a person who, if not also a natural born citizen, is not born with sole allegiance to the United States.

With these principles to guide us, we can only conclude that *de facto* President Barack Obama, Senator Ted Cruz, Senator Marco Rubio, and Governor Bobby Jindal are all not natural born citizens. None of them were born in the United States to parents who were both U.S. citizens at the time of their children's birth.

Obama, assuming he was born in the United States, is a citizen of the United States at birth, but only by virtue of the Fourteenth Amendment. He is not and cannot be a natural born citizen

under the common law because while he was presumably born in the United States to a U.S. citizen mother, he was born to a non-U.S. citizen father.

Cruz was born in Canada, presumably to a U.S. citizen mother and a non-U.S. citizen father. He can be a citizen of the United States at birth, but only by virtue of a naturalization Act of Congress (section 301(a)(7) of the Immigration and Nationality Act of 1952). He is not and cannot be a natural born citizen under the common law because, while he was born to a U.S. citizen mother, he was not born in the United States and he was born to a non-U.S. citizen father.

Rubio and Jindal were born in the United States to two non-U.S. citizen parents. They are both citizens of the United States at birth, but only by virtue of the Fourteenth Amendment. They are not and cannot be natural born citizens under the common law because, while they were born in the United States, they were born to two non-U.S. citizen parents.

Endnote 1: The concept of "positive law" has existed since the beginning of ordered legal systems. Positive law includes constitutions, statutes, case law, and any other law adopted by whatever sovereign has power to make law at any given moment in time. It has been said by many political and legal philosophers throughout the ages that positive law has its origin in what man perceives to be natural law and God's law, or what Thomas Jefferson in The Declaration of Independence called "the Laws of Nature and of Nature's God," meaning the laws of nature and the laws of nature's God.

Mario Apuzzo, Esq.

November 29, 2015

<http://puzo1.blogspot.com>

###

Copyright © 2015

Mario Apuzzo, Esq.

All Rights Reserved

Posted by Mario Apuzzo, Esq. at 11:01 PM 34 comments  links to this post

Labels: Barack Obama, Bobby Jindal, de facto president, Marco Rubio, Mario Apuzzo, Minor v. Happersett, natural born citizen, Ted Cruz, The Law of Nations, U.S. v. Wong Kim Ark, Yeate

**Graham v Rubio  
16 SOEB GP 528**

**Candidate:** Marco Rubio

**Office:** President

**Party:** Republican

**Objector:** William K. Graham

**Attorney For Objector:** Pro Se

**Attorney For Candidate:** Laura Jacksack

**Number of Signatures Required:** 3,000 – 5,000

**Number of Signatures Submitted:**

**Number of Signatures Objected to:**

**Basis of Objection:** The Candidate's Statement of Candidacy does not comply with the requirements of the Election Code because Marco Rubio, having been born to parents who were not U.S. citizens, does not meet the "natural born citizen" requirement of Article II, Section 1, Clause 5 of the United States Constitution and, therefore, is not legally qualified to hold the office of United States President.

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss

**Binder Check Necessary:** No

**Hearing Officer:** Jim Tenuto

**Hearing Officer Findings and Recommendations:** The Candidate's Motion to Dismiss alleges that the Objection is defective for the following reasons: (1) the Objection fails to state the Objector's interest and what relief is requested of the Board, both as required by Section 10-8 of the Election Code; (2) the Objection is outside the Board's subject matter jurisdiction; (3) the Candidate, as a matter of law, is a natural born citizen; and (4) Illinois law and public policy favor ballot access.

The Hearing Officer considered each argument for dismissal individually. With regard to the first, the Hearing Officer reviewed the pleadings and considered the arguments of the parties, and recommends the Board find that the Objector's statement that he is a resident and registered legal voter does not satisfy the interest requirement, and, further, that the Objector's assertion that protecting the voters from an unqualified and illegal candidate does not satisfy the requirement to

fully state the relief requested. Therefore, the Hearing Officer recommends that the Motion to Dismiss on these grounds be granted.

With regard to the second basis argued for dismissal, the Hearing Officer noted that the Objector alleges that the Statement of Candidacy is invalid because the Candidate is not legally qualified to hold the office of President, and in so doing, concluded that the Board is acting within the scope of its authority in reviewing the adequacy of the Candidate's Statement of Candidacy.

With regard to the third basis of the Motion to Dismiss, the Hearing Officer notes that it is undisputed that the Candidate was born in the United States of parents who were not U. S citizens at the time of Candidate's birth. After consideration of both parties' fully-briefed arguments, the Hearing Officer concluded that upon his birth in the United States, the Candidate became a citizen by operation of law. The Hearing Officer accordingly recommends that the Board grant the Motion to Dismiss, as the Objector's objection fails as a matter of law.

In summary, the Hearing Officer recommends that the Board grant the Candidate's Motion to Strike and Dismiss the Objector's Petition and order that the name of Marco Rubio be certified to the primary ballot as a Candidate of the Republican Party to the Office of the President of the United States.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE STATE BOARD OF ELECTIONS  
SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
ESTABLISHED PARTY CANDIDATES SEEKING TO APPEAR  
ON THE BALLOT FOR THE MARCH 15, 2016  
GENERAL PRIMARY ELECTION**

In the Matter of:	)	
	)	
<b>William K. Graham,</b>	)	
Petitioner(s) – Objector(s),	)	
	)	
v.	)	<b>16 SOEB GP 528</b>
	)	
<b>Marco Rubio,</b>	)	
Respondent(s) – Candidate(s).	)	

**RECOMMENDATION OF THE HEARING OFFICER**

This matter coming before the Illinois State Board of Elections sitting as the duly constituted State Officers Electoral Board and the undersigned Hearing Officer, pursuant to Appointment and Notice, makes the following Findings and Recommendations.

**Objection**

An Objection was timely filed by William K. Graham. It is alleged the Statement of Candidacy is not valid as the Candidate is not “legally qualified” under Illinois law to hold office because he is not a natural born citizen.

**Issue**

The issue presented is whether a Candidate born in the United States to parents who were not United States’ citizens at the time of his birth is qualified to hold the Office of President of the United States.

### **Case Management Conference**

A Case Management Conference was held following the calling of the cases. Objector filed a *Pro Se* Appearance. Laura Jacksack filed an Appearance on behalf of the Candidate.

### **Background**

The Candidate timely filed nomination petitions seeking the Office of President of the United States as a Candidate in the March 15, 2016, Republican Primary.

An Objection was timely filed challenging the qualifications of the Candidate. The Objector contends that being born in the United States to parents who were not United States citizens at the time of his birth results in the Candidate not being a natural born citizen and disqualifies Marco Rubio from holding the Office of President of the United States.

At the Case Management Conference on January 20, 2016, the Candidate filed a Motion to Strike and Dismiss Objector's Petition. Thereon, the Candidate alleges the Objection is defective for the following reasons:

1. Fails to state the Objector's interest and what relief is requested of the Electoral Board;
2. The Objection is outside the Board's subject matter jurisdiction;
3. The Candidate, as a matter of law, is a natural born citizen; and
4. Ballot access principles.

On January 22, 2016, the Objector filed a Motion and Memorandum of Law Providing Legal Authority and Argument that the Objection Should be Sustained. Candidate's Memorandum of Law and Reply was filed on January 25, 2016.

## Analysis

A cursory review of the pleadings highlights the issues raised.

1. Whether or Not the Objector Stated His Interest and the Relief Requested of the Electoral Board:

Section 10-8 of the Election Code sets forth the requirements for an Objection. It is not disputed that the Objection contains the Objector's name and address as well as the nature of the Objections.

The Objector contends stating he is a resident and registered legal voter is sufficient to satisfy the interest requirement. Furthermore, Objector argues that protecting the voters from an unqualified and illegal Candidate satisfies the requirement to state the requested relief.

I agree with the Candidate's assertion that the Objector fails to satisfy the requirement of setting forth his interest in filing the Objection and fails to adequately state the requested relief.

2. The Objection is Outside the Board's Subject Matter Jurisdiction.

The Candidate states determining whether a Candidate is a natural born citizen according to the United States Constitution is outside the scope of the Electoral Board's statutory power. I respectfully disagree. The Objector specifically alleges that the Statement of Candidacy is invalid because the Candidate is not legally qualified to hold office. The issue is whether or not the Candidate is eligible to hold the office of President of the United States.

The Electoral Board is acting within the scope of its authority in reviewing the adequacy of the Statement of Candidacy. Furthermore, in making its determination, the Electoral Board has subject matter jurisdiction to determine if a person born in the United States to parents who were not United States citizens at the time of his birth, is eligible to hold the Office of President of the United States.

3. The Objection Fails as a Matter of Law.

It is not disputed the Candidate was born in the United States to parents who were not born in the United States and were not U.S. Citizens at the time of his birth. At the time of his birth, Marco Rubio became a U.S. citizen

by virtue of his birth on U.S. soil without taking any steps to be considered a natural born citizen.

There is no support for the contention of the Objector that “natural born citizen” refers only to those persons born in the United States to parents who are both U.S. citizens.

Objector suggests that *Minor v. Happersett*, 88 U.S. 162 (1875), supports the argument that “natural born citizens means born here of two citizen parents.” This reliance is misplaced. In *Minor*, the Court stated “there was no need to address the issue of whether citizens included children born within the jurisdiction without reference to the citizenship of their parents as that issue was not before before the Court.” (Id. At 178). This dicta is cited by the Objector to support his contention that the Candidate is not qualified because he is not a natural born citizen.

4. Ballot Access.

Illinois law and public policy favor an interpretation of the law that allows ballot access. Based on the reasoning set forth above, it is not necessary to address the issue of ballot access.

### **Findings**

1. Marco Rubio was born in the United States to parents who legally immigrated to the U.S. from Cuba and were not U.S. citizens at the time of his birth.
2. The Candidate’s nomination petitions were timely filed.
3. The Objector timely filed an Objection to Marco Rubio’s nominating petitions.
4. The Objector has failed to state his interest in filing the Objection and failed to specify the relief requested of the Electoral Board.
5. The Electoral Board has subject matter jurisdiction to decide if a person born in the United States to parents who were not U.S. citizens at the time of his birth is eligible to hold the Office of President of the United States.

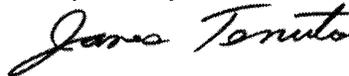
6. The Candidate is a natural born citizen by virtue of being born in the United States to parents who were not U.S. citizens at the time of his birth as the Candidate did not have to take any steps to become a naturalized citizen.
7. Candidate's Motion to Strike and Dismiss Objector's Petition should be granted for the reasons set forth herein.

### RECOMMENDATION

It is the Recommendation of the Hearing Officer that the State Officers Electoral Board GRANT the Motion to Strike and Dismiss Objector's Petition and Order that the name of Marco Rubio be printed on the ballot as a Candidate of the Republican Party for the Office of President of the United States to be voted upon at the March 15, 2016, General Primary Election.

DATED: January 28, 2016

Respectfully submitted,



James Tenuto  
Hearing Officer

**BEFORE THE STATE BOARD OF ELECTIONS  
SITTING AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD  
FOR THE HEARING AND PASSING UPON OBJECTIONS TO  
ESTABLISHED PARTY CANDIDATES SEEKING TO APPEAR  
ON THE BALLOT FOR THE MARCH 15, 2016  
GENERAL PRIMARY ELECTION**

In the Matter of:

**William K. Graham,** )  
Petitioner(s) – Objector(s), )

v. ) **16 SOEB GP 528**

**Marco Rubio,** )  
Respondent(s) – Candidate(s). )

**NOTICE OF FILING**

TO: William K. Graham, Objector  
[billgrahamPE@aol.com](mailto:billgrahamPE@aol.com)

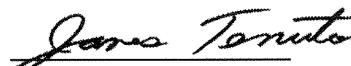
Laura Jacksack  
[laurajacksack@gmail.com](mailto:laurajacksack@gmail.com)

cc: Ken Menzel, General Counsel  
Sue Klos, Springfield Legal Department  
Darlene Gervase, Administrative Assistant III

Please be advised that on January 28, 2016, I caused to be sent by email to the addresses set forth above the Recommendation of the Hearing Officer, a copy of which is attached.

This matter will appear on the Agenda of the State Officers Electoral Board on Monday, February 1, 2016 at 10:30 a.m. in the James R. Thompson Center, 100 West Randolph Street, Conference Room 14-100, Chicago, IL and via videoconference in the Board's principal office at 2329 South MacArthur Blvd., Springfield, IL 62708-4187. Please allow extra time to attend in the Chicago office. You must provide a government issued identification and pass through Illinois State Police security screening to access the 14<sup>th</sup> Floor of the Thompson Center.

DATED: January 28, 2016

  
James Tenuto  
Hearing Officer



*"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. As to this class there have been doubts, but never as to the first."*

This NBC definition was referred to but unchanged by a new Supreme Court in *US v Wong Kim Ark* in 1897. [The *Wong Kim Ark* case turned on citizenship status of a person born in the US to immigrant parents under the 14<sup>th</sup> Amendment] This 1875 NBC definition has never been changed by the Supreme Court. The Candidate suggests the *Minor* opinion is dicta and may not be relied on, but it was accepted and not modified by Justice Gray in 1897.

3. The balance of the Candidate's Memorandum addresses opinions, decisions and articles that do not reflect the Founder's intent nor applicable Supreme Court cases nor any Illinois case law. Such cases and opinions are inapplicable to this Objection or the Board's decision on validity. However, the Founder's intent is newly raised by the Candidate so will be addressed herein.
4. The Candidate rejects the gravity of *Minor* (1875) in documenting the Founder's intent for elevating the qualifications for President be a natural born citizen and suggests that *Wong Kim Ark* (1897) controls in this case. The following is intended to rebut that argument and is adapted from the Attachment to the Objection. *Minor* remains the sole Supreme Court opinion that defines NBC and the *Wong Kim Ark* opinion by Justice Gray endorsed *Minor*'s view of NBC, while invoking English Common law to rule under the 14<sup>th</sup> Amendment that those born here of alien parents could be citizens, if not NBC. The key is the person needs to be subject to the jurisdiction of the USA at birth and not subject to the jurisdiction of some other Country.

*The majority opinion of the Supreme Court in Wong Kim Ark 169 U.S. 649 (1898) analyzed the question of who was included as a citizen of the United States under the 14th Amendment. It held that a person born in the United States to alien parents, who were legally domiciled and permanently residing in the United States, and neither foreign diplomats nor military invaders, were citizens of the United States from the moment of birth by virtue of the 14th Amendment, but they could not be natural born citizens by virtue of the common law which Minor explained defined a natural born citizen. Wong Kim Ark acknowledged Minor's definition of a natural born citizen and the common law it relied upon to arrive at that definition.*

*In addressing those that were not natural born citizens, it used colonial English common law in construing the 14th Amendment's "subject to the jurisdiction thereof" clause. It found that under the English common law, a child born in the King's dominion to alien parents who were neither foreign diplomats nor military invaders were born subject to his jurisdiction and entitled to his protection, and therefore English natural-born subjects. It found that this rule had been continued in the new free and independent states after the Declaration of Independence and the adoption of the Constitution, by the states selectively adopting the English common law through their constitutions and reception statutes. By the force of that state practice, it ruled by analogy that a child born in the United States to alien parents who were permanently domiciled and resident in the United States and neither foreign diplomats nor military invaders was born in the United States and "subject to the jurisdiction thereof." Hence, that child was a "citizen" of the United States from the moment of birth by virtue of the 14th Amendment.*

*Wong Kim Ark resolved the question of the meaning of the 14th Amendment's "subject to the jurisdiction thereof" by using colonial English common law but did not apply this to the meaning of an Article II natural born citizen. In conducting its jurisdiction analysis, it did not reinterpret the natural born citizen clause under the English common law; for Minor had already demonstrated that its definition was to be found in American common law. In fact, no U.S. Supreme Court that ever provided the definition of a natural born citizen relied upon any jurisdiction analysis when defining a natural born citizen. (abridged from Attachment to Objection, M Apuzzo 11-29-2015)*

5. The Candidate states "**Further, historical practice confirms** that term natural-born citizen refers to those persons born in the United States without regard to the citizenship status of their parents" (p6). Because historical practice include events at the writing of the Constitution, Objector seeks to rebut this new allegation. The Candidate's filings do not address the key issue of the Founders' concern for divided allegiance of the Commander in Chief. The Founder's intent is addressed in the Congressional Research Service's republished 2011 opinion on Qualifications for

President and the "Natural Born" Citizenship Eligibility Requirement, J Maskell, January 11, 2016. (7-5700 www.crs.gov R42097). This lengthy treatise discounts the Founder's concerns and the Minor NBC definition and suggests NBC can include any born citizen and persons born of a US citizen but outside the United States. However on Founder's intent it reports on the importance they placed on undivided allegiance as a national security issue for the new Nation:

*"The history of the Convention indicates that George Washington, the presiding officer, received a letter dated July 25, 1787, from John Jay, which appears to raise for the first time the issue of a requirement to be a "natural born" citizen of the United States as a requisite qualification to be President:*

*'Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural born Citizen.'*

*"There is no specific indication as to the precise role this letter and its "hint" actually played in the adoption by the Convention of the particular qualification of being a "natural born" citizen. However, no other expressions of this particular term are evident in Convention deliberations prior to the receipt of Jay's letter, and the September 4 draft of the Constitution reported from the Committee of Eleven to the delegates, at a time shortly after John Jay's letter had been acknowledged by Washington, contained for the first time such a qualification.*

*"The timing of Jay's letter, the acknowledgment of its receipt by Washington on September 2, and the first use of the term in the subsequent report of the Committee of Eleven, on September 4, 1787, may thus indicate more than a mere coincidence. If this were the case, then the concern over "foreigners," without sufficient allegiance to the United States, serving as President and Commander-in-Chief, **would appear to be the initial and principal motivating concern of the framers**, in a somewhat similar vein as their concerns over congressional citizenship qualifications.*

*"Such purpose of the 'natural born' citizen qualification was expressed by Justice Joseph Story in his historic treatise on the Constitution in 1833:*

*'It is indispensable, too, that the president should be a natural born citizen of the United States ... [T]he general propriety of the exclusion of foreigners, in common cases, will scarcely be doubted by any sound statesman. It cuts off all chances for ambitious foreigners, who might otherwise be intriguing for the office; and interposes a barrier against those corrupt interferences of foreign governments in*

*executive elections, which have inflicted the most serious evils upon the elective monarchies of Europe.*

*'Ambitious foreigners' who may be 'intriguing for the office' of head of state, which had been the unfortunate experience in Europe, appeared to be a generalized and widespread concern at the time of the drafting of the Constitution, as was the concern over the possibility of allowing foreign royalty, monarchs, and their wealthy progeny, or **other relatives to control the government of the new nation.**' "[p 5,6, J Maskell, CRS, 1-11-16]*

Mr. Maskell reports that the Founder's concern over foreigners without sufficient allegiance to the United States were their **initial and principal motivating concern**. Justice Story added the concern **over relatives** influencing those with a divided allegiance. The Founders appeared to be trying to assure that **no divided allegiance** contaminant the Presidency. Unfortunately for Congress and the American people, the Mr. Maskell goes on for several dozen pages ignoring the Founder's clear intent and suggesting that those with divided allegiance can be considered natural born citizens.

Additional perspective on the Founders intent appears in the references cited on the attachment to the Objection. The first draft of the Constitution said the President must be a citizen and resident for 21 years; the final draft was based on Jay's hint:

*While the Committee on Detail originally proposed that the President must be merely a citizen as well as a resident for 21 years, the Committee of Eleven changed "citizen" to "natural born citizen" without recorded explanation. On September 4, 1787, about six weeks after Jay's letter and just two days after Washington wrote back to Jay, the "natural born citizen" requirement appeared in the draft of the Constitution. Here is the first style of the clause as presented by the Committee of Eleven:*

*(5) 'Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.'*

*Madison's notes of the Convention <http://www.nhccs.org/dfc-0904.txt> .*

*The proposal passed unanimously without debate which does not mean that the proposal was not discussed, for the convention meetings were conducted in secrecy. Another reason that there was no debate is probably that the definition*

*that was used of a natural born citizen was of such universal acceptance that it satisfied all laws then know to the Framers.” [Attachment to Objection – M. Apuzzo (November 29, 2015)]*

These narratives show the Founders were very concerned to avoid a divided allegiance for the Commander in Chief and that they rejected citizen or born citizen status for the President and Vice President. These were rejected because Founders felt the national security of the Country could be at risk if the Commander-in-Chief had a divided allegiance; none of them would accept a candidate for President who was an alien, citizen or born citizen. It is incumbent upon the Board to assure citizens are protected from unqualified and illegal candidates. The objection does not ask the Board to offer an opinion or make a ruling regarding the definition of NBC. But the objection does seek the Board to inquire, under its own procedures (10 ILCS 5/1A-8(7)), if false representations were made in the candidate oath and certification that they are “legally qualified” to serve as President (i.e. NBC)

6. The Candidate relies on laws and regulations to establish that Candidate Rubio is a citizen naturalized under the 14<sup>th</sup> Amendment and then ignores the Founder’s National Security intent and a unanimous Supreme Court definition of NBC to hold that someone ‘born a citizen’ (naturalized) is also a ‘natural born citizen’; this is clearly contrary to the Constitution.

The word ‘natural’ means outside the law of man; such as with the natural rights endowed to We the People by God. We established a government to secure these natural rights. A citizen does not attain NBC status by action of law or government. It is endowed naturally outside of man’s laws; it cannot be voided or awarded by action of law, as can any other citizenship status. A citizen or born citizen cannot be the same as a natural born citizen. No action of any of the three branches of government outside of a constitutional amendment can change the Founder’s intent for NBC to prevent the tyranny of a Commander in Chief with a divided allegiance.

**The Candidate's admission that he attained citizenship status by naturalization is sufficient for each Board member to determine that the Candidate's submittal was fraudulent in take steps within their authority to reject the State of Candidacy.**

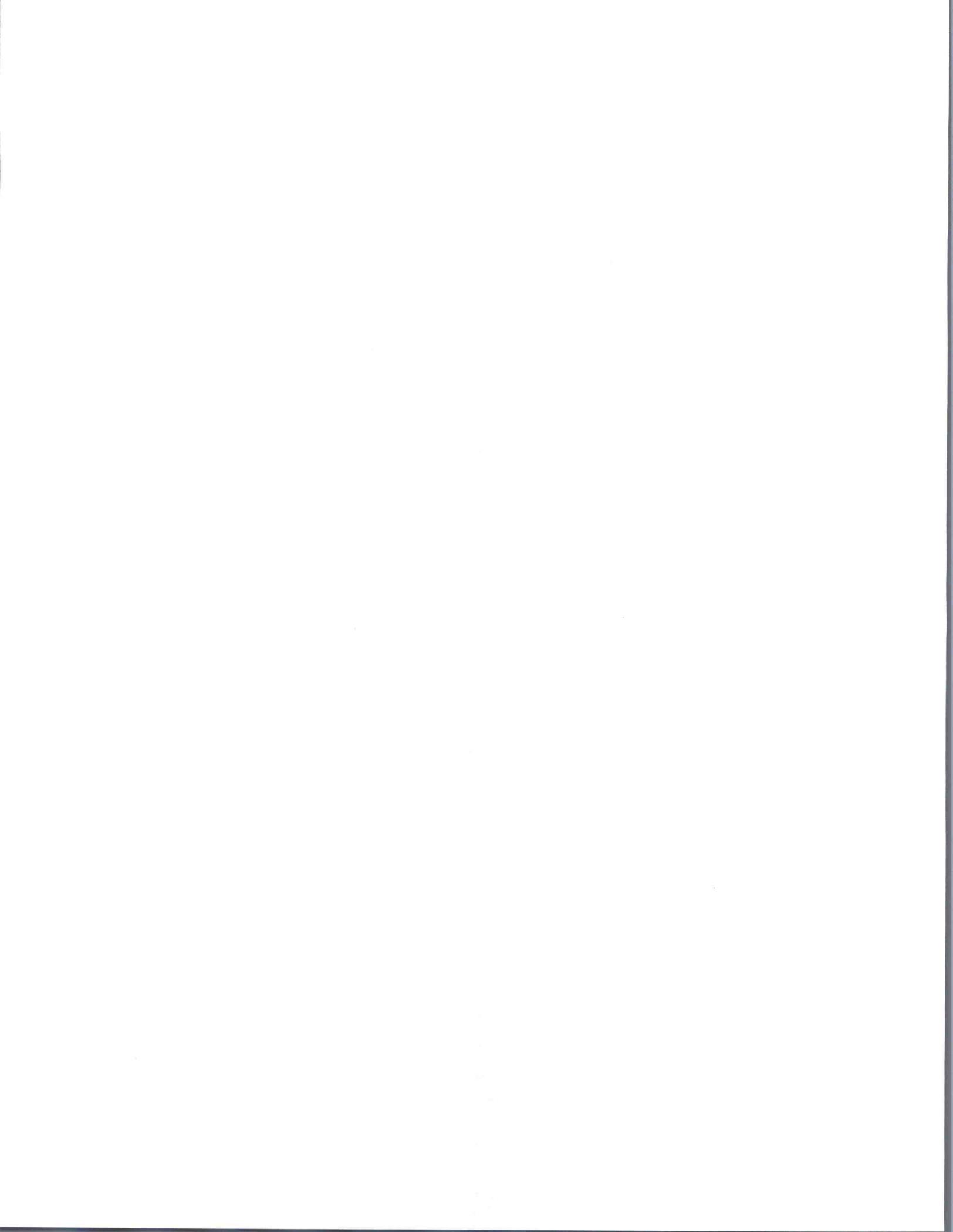
7. Therefore, the objector, William K. Graham, respectfully requests that the Motion to Dismiss be found invalid and insufficient as a matter of law and that the Motion be denied in its entirety. While the rules and procedures of the Board are important, the Motion to the Dismiss abuses such rules to seek to prevent the Board from discharging its solemn duties on behalf of the citizens of Illinois. The objector asks the Board to set aside legal nuances intended to shelter the Board from its responsibilities. This is especially important given the expedited schedule parties were informed of on January 20, 2016.
  
8. The objector affirms the prayer for relief of the original objection, that the Board validate the petition by verifying the legal qualification of the candidate as a Natural Born Citizen pursuant to the US Constitution. This can be done by merely contrasting the legal qualification of natural born citizen ("*born in a country of parents who were its citizens.*") with the public record regarding birth status of the petitioner (born in Florida of Cuban parents). Or the Board may invoke any of its other several authorities.

Respectfully Submitted

By  1/26/16

William K. Graham, pro se

William K. Graham  
3s351 Juniper Lane  
Glen Ellyn, IL 60137 7417



**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF  
PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE  
MARCH 15, 2016 GENERAL PRIMARY ELECTION**

<b>WILLIAM K. GRAHAM,</b>	)	
	)	
<b>Petitioner-Objector,</b>	)	
	)	
<b>vs.</b>	)	<b>16 SOEB GP 528</b>
	)	
<b>MARCO RUBIO,</b>	)	
	)	
<b>Respondent-Candidate.</b>	)	

**CANDIDATE’S MERMORANDUM OF LAW AND REPLY**

NOW COMES the Respondent-Candidate, MARCO RUBIO ("Candidate"), who by and through counsel, respectfully submits this Memorandum of Law, responding to the Objector’s “Motion and Memorandum of Law Providing Legal Authority and Argument that the Objection Should be Sustained.” To the extent that the Objector’s pleading was a Response to the Candidate’s previously filed Motion to Strike and Dismiss the Objector’s Petition, this pleading serves as a Reply. The Candidate hereby states as follows:

**I. The Objector Neither States His Interest In Filing An Objection Nor States What Relief Is Requested Of The Electoral Board.**

The Candidate hereby incorporates by reference all legal authority and argument as stated in his Motion to Strike and Dismiss Objector’s Petition in its entirety, as if restated here.

Additionally, in Reply, the Candidate further adds:

In his Memorandum of Law/Response, the Objector notably cites from the portion of § 10-8 with which he did comply and not the portion with which he did not comply. The Candidate does not dispute that the Objector is a registered voter in Illinois, or that the Objector

timely filed an objection. The Candidate does point out that the Objector did not state his interest or what relief he requests of the Electoral Board. The Objector argues that the information he provided in his objection – including that he is a registered voter – “implies” the other required elements. However, the Election Code does not provide for fulfilling the required elements by implication. The Election Code requires the Objector to *state* (1) his interest and (2) what relief is requested of the electoral board. 10 ILCS 5/10-8.

**II. The Electoral Board’s Powers Are Limited By Statute; This Objection Is Outside The Board’s Subject Matter Jurisdiction.**

The Candidate hereby incorporates by reference all legal authority and argument as stated in his Motion to Strike and Dismiss Objector’s Petition in its entirety, as if restated here.

**III. The Objector’s Stated Objection Also Substantively Fails As A Matter Of Law; Marco Rubio Is A Natural Born Citizen Of The United States.**

The Candidate hereby incorporates by reference all legal authority and argument as stated in his Motion to Strike and Dismiss Objector’s Petition in its entirety, as if restated here. Additionally, in Reply to the Objector’s Argument, the Candidate further adds:

**Marco Rubio Is A Natural-Born Citizen.**

Marco Rubio is a natural-born citizen of the United States and he satisfies the other qualifications to serve as President of the United States. *See* U.S. Const. art. II, § 1, cl. 5. The Candidate was born in the United States to parents who legally immigrated from Cuba to the United States. He is therefore a natural-born citizen. *See, e.g., United States v. Wong Kim Ark*, 169 U.S. 649, 662 (1898) (“All persons born in the allegiance of the King are natural-born subjects, *and all persons born in the allegiance of the United States are natural-born citizens.* Birth and allegiance go together. *Such is the rule of the common law, and it is common law of this country, as well as of England.*”) (emphasis added); *see* Mot. to Strike and Dismiss at 5-19.

The Objector, however, wants this Board to rely instead on dicta contained in a Supreme Court decision issued 23 years *earlier* than *Wong Kim Ark*; a decision that did not conduct any analysis of British common law, did not analyze the Natural-Born Citizen Clause, and had nothing to do with who constituted a citizen. Instead, *Minor v. Happersett*, 88 U.S. 162 (1875) held that the Fourteenth Amendment and the Privileges and Immunities Clause do not guarantee female citizens the right to vote. Objector's reliance on *Minor*, is, to say the least, misplaced. The Supreme Court's conclusion in *Minor* was essentially made irrelevant by the Nineteenth Amendment, which amended the U.S. Constitution and guaranteed women the right to vote.

In addition, it is legally incorrect to conclude that *Minor* controls here. As the Eleventh Circuit Court of Appeals succinctly stated:

[I]f the facts of a gravely wounded Supreme Court decision do not line up with the facts of the case before us...we are free to apply the reasoning in later Supreme Court decisions to the case at hand. We are not obligated to extend even by a micron a Supreme Court decision which that Court itself has discredited.

*Jefferson County v. Acker*, 210 F.3d 1317, 1320-21 (11th Cir. 2000).

**A. The *Minor v. Happersett* Court Held That Under The Fourteenth Amendment Women—Who Were Citizens Of The United States—Did Not Have The Right To Vote.**

The broader issue presented in *Minor* was whether under the Fourteenth Amendment of the Constitution does a female citizen of the United States and the State of Missouri have the right to be a Missouri voter where Missouri limited the right of suffrage to men. *See id.* at 165. The more specific issue that the Court was required to answer was whether citizenship and the right to vote were coextensive and thus, whether the right to vote is guaranteed under the Constitution's Privileges and Immunities Clause *See id.* at 170. After surveying the constitutions and laws of States during the founding period which limited the right to vote to men, the Court

concluded that the Fourteenth Amendment and the Privileges and Immunities Clause did not guarantee female citizens the right to vote. *See id.* at 178.

**B. The *Minor* Court’s Brief One Paragraph Discussion Of The Term Natural-Born Citizen Is Admittedly Non-Comprehensive And Is Dicta.**

The Court began its analysis stating that under the Fourteenth Amendment there was no doubt that women are citizens for women are persons born in the United States. *See id.* at 165. But then the Court declared that the Fourteenth Amendment was unnecessary to give citizenship to women. *See id.* The Court then briefly raised the question of who were citizens before the adoption of the Fourteenth Amendment while expressly admitting that it did not purport to resolve the question. *See id.* at 166 and 168.

The Court, unremarkably, stated that those persons who were one of the people in the States when the Constitution was adopted were citizens of the United States. Additions to the rank of citizenship in the United States were limited to—echoing Blackstone’s distilling of English common-law—to those born in the United States and by naturalization. *See id.* at 167. The fact that persons may become citizens by birth or naturalization is “[a]pparent from the Constitution itself, for it provides that no person except a natural-born citizen...shall be eligible to the office of President” and that Congress has the power to establish naturalization statutes. *Id.* at 167.

Then, the Court, in one paragraph, briefly discussed the term natural-born citizen. Without referencing the English common law, the Court said that at common law, a person who was born “[i]n *a* country to parents who were its citizens became themselves, upon their birth, citizens also....Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been

doubts, but never as to the first.” *See id* (emphasis added). The Court expressly admitted that it did not need to address or resolve these “doubts.” *See id.* at 168.

*First*, the presence of the article ‘a’ indicates that the Court was speaking generically, as opposed to the United States specifically. This contrast is especially apparent when compared to the previous paragraph when the Court specifically addressed U.S. law. Furthermore, there is no mention of the British common-law, or which common-law the Supreme Court was referring to. As was discussed in the Motion to Strike and Dismiss, Vattel’s writings indicate that most countries took the position that a child is a citizen so long as the child’s parents are citizens. *See* Mot. to Strike and Dismiss at 18-19. Thus, it appears that the *Minor* Court, like Vattel, was merely making a general statement of general legal principles and not a statement specific to the laws of the United States. Thus, the Court’s general and unsupported contentions are not entirely clear.

*Second*, the Court even acknowledged that its brief commentary on the term natural-born citizen was not comprehensive. *See Minor*, 88 U.S. at 168 (“*For the purposes of this case* it is not necessary to solve these doubts. It is sufficient *for everything we have now to consider* that all children born of citizen parents within the jurisdiction are themselves citizens”) (emphasis added); *compare with* Christina S. Lohman, *Presidential Eligibility: the Meaning of the Natural-Born Citizen Clause*, 36 Gonz. L. Rev. 349, 357 (2000) (noting that the Supreme Court in *Wong Kim Ark*, “[e]xhaustively examine[ed] the British common law, the source by which the constitutional Framers apparently derived the ‘natural-born’ terminology.”). Thus, the Court did not determine the entire universe of who were natural-born citizens under the United States Constitution. *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 19 (1968).

*Third*, the Court's brief and admittedly non-comprehensive paragraph concerning the term natural-born citizen was unnecessary to the determination of whether the Fourteenth Amendment guaranteed women the right to vote. This is especially true since there was no question as to whether Ms. Minor was a citizen. *See Minor*, 88 U.S. at 165; *see also id.* at 170. The Objector's characterization of *Minor*'s brief, general, and non-comprehensive discussion of the term natural-born citizen as holding is wrong. *See* Graham Memorandum at 4-5 (describing *Minor*'s discussion of the Natural-Born Citizen Clause as holding and ruling). The *Minor* court's mention here amounted to brief and admittedly non-comprehensive dicta.

Twenty-three years later, however, the Supreme Court in *Wong Kim Ark*, resolved those doubts after exhaustively examining the meaning of the term natural-born subject under British common-law; the meaning of natural-born citizen during the colonial and founding period; and the meaning of natural-born citizen during the nineteenth century. *See* Mot. to Strike and Dismiss at 5-12. The Court's analysis concluded that those persons born in the United States were natural-born citizens, regardless of the citizenship of the child's parents. *See, e.g., Wong Kim Ark*, 169 U.S. at 662; *see also James v. City of Boise*, No. 15-493, slip op. at 1-2 (U.S. Jan. 25, 2016) ("It is this Court's responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law.") (alteration in the original)..

Modern courts have applied this reasoning in its decisions holding, for example, that President Obama is a natural-born citizen. *See id.* at 13; *see also Diaz-Salazar v. Immigration & Naturalization Serv.*, 700 F.2d 1156, 1160 (7th Cir. 1983) (stating summarily that children born in the U.S. to non-citizen parents are natural-born citizens.). Further, historical practice confirms that term natural-born citizen refers to those persons born in the United States without regard to

the citizenship status of their parents. *See id.* at 14. To hold otherwise would mean that at least six presidents, including Presidents Andrew Jackson, James Buchanan, Chester Arthur, Woodrow Wilson, Herbert Hoover, and Barack Obama, were not eligible to serve as President. *See id.*

**IV. In Illinois, The Overriding Interest Is In Ballot Access.**

Illinois law and public policy favor ballot access. While the provisions of the Election Code are designed to protect the integrity of the electoral process, it is a fundamental principle that “access to a place on the ballot is a substantial right not lightly to be denied.” *Welch v. Johnson*, 147 Ill.2d 40, 588 N.E.2d 1119, 1126 (Ill. 1992). The Objector seeks to deny ballot access to the Candidate and thus deny the voters of Illinois a choice to vote for him for President of the United States in the Republican Primary at the General Primary Election to be held on March 15, 2016. This Board should overrule the Objection.

WHEREFORE, Respondent-Candidate Marco Rubio prays this Honorable Electoral Board overrule the Objector’s Objection.

Respectfully submitted,

Marco Rubio  
Respondent-Candidate

By: /s/ Laura Jacksack  
One of his attorneys

Laura Jacksack  
Jacksack Law Offices  
325 W. Fullerton Pkwy Ste 203  
Chicago, IL 60614  
Telephone: 773.569.5855  
Facsimile: 773.304.3101  
Cell: 773.472.0399  
ljacksack@jacksacklawoffices.com

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF  
PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE  
MARCH 15, 2016 GENERAL PRIMARY ELECTION**

<b>WILLIAM K. GRAHAM,</b>	)	
	)	
<b>Petitioner-Objector,</b>	)	
	)	
<b>vs.</b>	)	<b>16 SOEB GP 528</b>
	)	
<b>MARCO RUBIO,</b>	)	
	)	
<b>Respondent-Candidate.</b>	)	

**NOTICE OF FILING AND SERVICE**

To: William K. Graham, Objector, by email to [billgrahampe@aol.com](mailto:billgrahampe@aol.com)  
State Board of Elections by email to Jim Tenuto at [jtenuto@elections.il.gov](mailto:jtenuto@elections.il.gov)  
and Ken Menzel at [kmenzel@elections.il.gov](mailto:kmenzel@elections.il.gov)

Please take notice that on January 25, 2016, prior to 5:00 p.m., the undersigned e-mailed to the individuals listed above the Candidate's Memorandum of Law, a copy of which is attached hereto and herewith served upon you.

          /s/ Laura Jacksack            
Laura Jacksack

***Proof of Service***

The undersigned attorney certified she served copies of this Notice and the attached pleading on the above persons by e-mail to them at the above email addresses prior to 5:00 p.m. on January 25, 2016.

          /s/ Laura Jacksack            
Laura Jacksack

Laura Jacksack  
Jacksack Law Offices  
325 W. Fullerton Pkwy Ste 203  
Chicago, IL 60614  
Telephone: 773.472.0399  
Facsimile: 773.304.3101  
[ljacksack@jacksacklawoffices.com](mailto:ljacksack@jacksacklawoffices.com)



2. The interest of the objector is provided in the objection. The objector is a resident and registered legal voter in Milton Township and DuPage County, IL. The Board has the ability to verify the legal voting status of this objector. Under regulation 10 ILCS 5/10-8, this is considered sufficient to show interest:

***“Any legal voter of the political subdivision or district in which the candidate or public question is to be voted on, or any legal voter in the State in the case of a proposed amendment to Article IV of the Constitution or an advisory public question to be submitted to the voters of the entire State, having objections to any certificate of nomination or nomination papers or petitions filed, shall file an objector's petition together with 2 copies thereof in the principal office or the permanent branch office of the State Board of Elections, or in the office of the election authority or local election official with whom the certificate of nomination, nomination papers or petitions are on file.”***

These conditions were met under this objection. The any legal voter implies a necessary interest of an objector. Disallowing “any legal voter” of the State to file an objection to papers filed in a Presidential general primary would violate this regulation and could be subject to judicial review. The objector, a legal voter, has no interest in the matter other than supporting the Constitution and upholding Illinois laws and regulations; these being the same interests as the Board and all Illinois legal voters.

3. Relief requested is documented in the Objection.

*“The objection is made because it is incumbent on the Board to assure that the citizens are protected from unqualified and illegal candidates, on which their vote is wasted. By failing to assure candidate are qualified the Board disenfranchises voters.”*

The objection asks the Board to protect the voters from an unqualified and illegal candidate, and to prevent disenfranchisement of voters. This motion does not amend this requested relief. While this request for relief is clear, the Board has

several duties and authorities in law and regulation that it may invoke to provide such relief to protect the voters.

*The electoral board:*

- a. *shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are **in proper form**, (10 ILCS 5/10-10)*
  - b. *in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are **valid** (10 ILCS 5/10-10)*
  - c. *Review and inspect procedures and records relating to conduct of elections and registration as deemed necessary, and to report violations of election laws to the appropriate State's Attorney or the Attorney General (10 ILCS 5/1A-8)*
  - d. *may consider whether knowing false certifications/statements need to be referred for investigation of perjury (720 ILCS 5/32-2)*
4. The objection is not outside the subject matter jurisdiction of the Board. The Electoral Board has the power and duty to consider the issue whether submittals are **valid**. The Board shall *in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are **valid** (10 ILCS 5/10-10)*. Board rules allow it to administer oaths and affirmations, examine witnesses, rule on offers of proof, receive evidence, affidavits and oral testimony and issue subpoenas. These powers enable to Board to seek to verify the validity of information and certifications submitted and conformance to rules and regulations. Under IL law, the Board is the only State agency authorized to address issues such as candidate legal qualification. For the Presidential primary legal qualification includes citizenship (natural born citizen), age (35) and residency (14 years).

The objection does not ask the Board to offer an opinion or make a ruling regarding the definition of natural born citizen. But the objection does seek the Board to inquire, under its own procedures (10 ILCS 5/1A-8(7)), if false representations were made in the candidate oath and certification that they are "legally qualified" to serve as President (i.e. natural born citizen). This inquiry would be similar for any element of qualification, age, residency or citizenship.

The Supreme Court of the United States addressed this legal qualification in *Minor v. Happersett* (1875), in which a unanimous Court held:

*“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. As to this class there have been doubts, but never as to the first.”*

5. The legal opinion attached to the objection (M. Apuzzo, 11/29/15) provides additional case law defining what “legally qualified” means with respect to natural born citizen; but the Board need not consider this added information. The *Minor* unanimous opinion, which “*was never doubted*”, nor has since been doubted by the Supreme Court, is sufficient for the purposes of the Board, any candidate, and any citizen to understand what the Founders intended and what the Constitution means with respect to ‘natural born citizen’, and in distinguishing this status from that of ‘citizen’. The Supreme Court remains the highest court of the land and the final authority on the meaning of the US Constitution. The Board neither has the duty, nor authority to deliberate on the legal definition of natural born citizen. But each Board member, pursuant to their solemn oath to support the Constitution, as they “*faithfully discharge their duties*”, has no discretion but to accept the US Constitution and the Supreme Court’s *Minor* ruling that natural born citizen means “*born in a country of parents who were its citizens.*”

The US Constitution and the standing opinions by the Supreme Court clarifying the Founders intent, are the only sources on Presidential legal qualifications available to those Illinois public officers (i.e. Election Board Members) who have been administered the oath to support the Constitution:

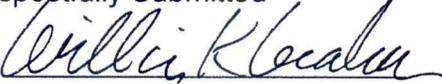
*"I do solemnly swear (affirm) that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of \_\_\_ to the best of my ability."* (IL Const., Art XIII, Section 3)

6. Motion to Dismiss suggests the Objection fails as a matter of law (Paragraph III) and offers the opinion that a person born in the United States of two non-citizen parents meets the Constitutional definition of natural born citizen. This is at variance with Minor. Motion to Dismiss does not refer to the one and only Supreme Court opinion, a unanimous decision, which defines what the Constitutional qualification of natural born citizen means (Minor, 1875). This is sufficient for the Board to disregard pages 5-20 of the Motion to Dismiss. Under an oath to support the Constitution, a Board member need not be concerned with this argument to the extent it is not pursuant to Supreme Court rulings on the meaning of Natural Born Citizen. Minor (1875) is the only opinion that defines natural born citizen. Other cases, opinions and publications cited in the motion to dismiss do not subvert or amend in any way the Minor definition, which remains the law of the land. The Board may rely on the Constitution and the unanimous opinion of Minor to know without any doubt that natural born citizen means born here of two citizen parents. A Board member can rely on Minor to make a ruling regarding the Illinois Election Law Requirement that each candidate certify that they are legally qualified to serve in the office they seek. The oath to support the Constitution means that a Board member need not consider inapplicable case law, legal opinions, publications or legal testimony or witnesses regarding the legal qualification for President, but merely the Constitution and the unanimous Minor ruling.
7. Ballot Access is claimed an overriding interest and a substantial right not lightly denied. (Paragraph IV). In considering this sound principle, the Board may consider to what extent disenfranchisement, false swearing, perjury, election fraud and the oath to the Constitution in this case become offsetting concerns which should not be overridden.

**No. 16 SOEB GP 528**

8. Therefore, the objector, William K. Graham, respectfully requests that the Motion to Dismiss be found invalid and insufficient as a matter of law and that the Motion be denied in its entirety. While the rules and procedures of the Board are important, the Motion to the Dismiss abuses such rules to seek to prevent the Board from discharging its solemn duties on behalf of the citizens of Illinois. The objector asks the Board to set aside legal nuances intended to shelter the Board from its responsibilities. This is especially important given the expedited schedule parties were informed of on January 20, 2016.
9. The candidate has filed with the Board under oath a false certification. If the Board denies the Candidate's motion to dismiss, please consider denying the request contained therein of the Candidate to be placed on the primary ballot. Alternatively, the objector affirms the prayer for relief of the original objection, that the Board validate the petition by verifying the legal qualification of the candidate as a Natural Born Citizen pursuant to the US Constitution. This can be done by merely contrasting the legal qualification of natural born citizen ("*born in a country of parents who were its citizens.*") with the public record regarding birth status of the petitioner (born in the United States of Cuban parents). Or the Board may invoke any of its other several authorities.

Respectfully Submitted

By 

William K. Graham, pro se

William K. Graham  
3s351 Juniper Lane  
Glen Ellyn, IL

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE REPUBLICAN NOMINATION FOR THE OFFICE OF  
PRESIDENT OF THE UNITED STATES TO BE VOTED UPON AT THE  
MARCH 15, 2016 GENERAL PRIMARY ELECTION**

<b>WILLIAM K. GRAHAM,</b>	)	
	)	
<b>Petitioner-Objector,</b>	)	
	)	
<b>vs.</b>	)	<i>Case No. 16 SOEB GP 528</i>
	)	
<b>MARCO RUBIO,</b>	)	
	)	
<b>Respondent-Candidate.</b>	)	

**MOTION TO STRIKE AND DISMISS OBJECTOR'S PETITION**

NOW COMES, the Respondent-Candidate, MARCO RUBIO ("Candidate"), who by and through counsel, respectfully submits this Motion to Strike and Dismiss the Objector's legally insufficient Objection, and states as follow:

**INTRODUCTION**

On January 4, 2016, the Candidate filed his nomination papers ("Nomination Papers") with the Illinois State Board of Elections to be a candidate for the Republican nomination for the office of President of the United States, to be voted upon at the General Primary Election to be held on March 15, 2016.

The Objector herein timely filed an objection ("Objection"), alleging that the Candidate's Statement of Candidacy is not in conformance with the Illinois Election Code because, while the Candidate swore (or affirmed) that he is legally qualified to hold the office of President of the United States, the Objector believes that the Candidate's parents were not U.S. citizens at the

time the Candidate was born in Florida, which the Objector believes makes the Candidate not a natural born citizen, and thereby not legally eligible for the office he seeks.

For the reasons that follow, the Objector's Objection should be stricken and dismissed in its entirety.

**I. The Objector Neither States His Interest In Filing An Objection Nor States What Relief Is Requested Of The Electoral Board.**

The Illinois Election Code sets forth the requirements for an objector's petition, requiring that the objector's petition state (1) the objector's name and residence address, (2) the nature of the objections, (3) the interest of the objector, and (4) what relief is requested of the electoral board. 10 ILCS 5/10-8. Here, the Objector is missing two of the four required elements.

Compliance with the provisions of Section 10-8 is mandatory. *Pochie v. Cook County Officers Electoral Board*, 682 N.E.2d 258, 289 Ill.App.3d 585, 224 Ill.Dec. 697, (1<sup>st</sup> Dist. 1997). While substantial compliance sometimes can be enough to satisfy a mandatory provision of the Election Code, where the degree of precision is not specified in the statutory provision, here there is no compliance at all. See *Morton v. State Officers Electoral Bd.*, 726 N.E.2d, 201, 311 Ill. App.3d 982, 244 Ill.Dec. 605 (4<sup>th</sup> Dist. 2000).(Objector's stating his name as "Perry Smith" substantially complied with § 10-8, even though registered to vote as "Perry S. Smith, Jr."). Where neither an objector's interest nor the relief requested is stated, the objection fails as a matter of law. *Yanez v. Martinez*, 86-EB-ALD-7, Chicago Electoral Board Decision, February 3, 1986.(Motion to dismiss objection granted where objector neither stated his interest nor stated what relief was requested as required by § 10-8). See also *Rossi v. Oberg*, 87-EB-ALD-74, Chicago Electoral Board Decision, January 7, 1987.(Motion to dismiss objection granted where no proper prayer for relief stated in objection as required by § 10-8).

The Objector here specified no interest he might have, nor did he state what relief he requests from the electoral board, if any. The Objector notably did not ask the Electoral Board to sustain his objection, or to order that the Candidate's name not appear on the ballot. In fact, the Objector makes no specific request that the Electoral Board take any specific action.

Once filed, objections to nomination papers cannot be amended. *Siegel v. Lake County Officers Electoral Bd.*, 895 N.E.2d 69, 385 Ill.App.3d 452, 324 Ill.Dec. 69 (2<sup>nd</sup> Dist. 2008). Therefore, the Objector cannot now amend his objection to add the lacking elements of (1) his interest and (2) what relief is requested from the electoral board.

In failing to state either any interest he may have or the relief requested of the electoral board, the Objector has failed to set forth a prima facie case under § 10-8 of the Election Code. The Objection fails as a matter of law and should be dismissed.

**II. The Electoral Board's Powers Are Limited By Statute; This Objection Is Outside The Board's Subject Matter Jurisdiction.**

Even if the Objection had been properly pled, this matter is outside the Electoral Board's subject matter jurisdiction. The powers of an electoral board are specifically limited by statute. *Goodman v. Ward*, 241 Ill.2d 398 (2011). Section 10-10 of the Election Code provides, in pertinent part:

The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, and whether or not they are the genuine certificate of nomination or nomination papers or petitions which they purport to be, and whether or not in the case of the certificate of nomination in question it represents accurately the decision of the caucus or convention issuing it, and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained and the decision of a majority of the electoral board shall be final subject to judicial review as provided in Section 10-10.1.  
10 ILCS 5/10-10.

Interpreting this section, the First District has held that an electoral board's scope of inquiry is limited to the sole issue of whether a challenged nominating petition complies with the provisions of the Election Code pertaining thereto. *Wiseman v. Elward*, 5 Ill.App.3d 249, 283 N.E.2d 282 (1<sup>st</sup> Dist. 1972); *Nader v. Ill. State Bd. Of Elections*, 354 Ill.App.3d 335, 819 N.E.2d 1148 (1<sup>st</sup> Dist. 2004). The evaluation of whether a candidate is a natural born citizen according to the United States Constitution is outside the Electoral Board's statutory power – thus outside its subject matter jurisdiction – and the Objection must be dismissed.

In fact, courts around the country have repeatedly found that they lacked jurisdiction over similar claims. See e.g. *Berg v. Obama*, 586 F.3d 234 (3<sup>rd</sup> Cir. 2009); *Drake v. Obama*, 664 F.3d 774 (9<sup>th</sup> Cir. 2011); *Bondurant v. Follette*, E.D. Wisc. 2013 (13-cv-1093, October 8, 2013); *Jordan v. Reed*, No. 12-2-01763-5, 2012 WL 4739216 (Wash. Super. Ct. Aug. 29, 2012) (dismissing for failure to join indispensable party, lack of subject matter jurisdiction, and lack of statutory authority for secretary to investigate). A state court in New York explored what it found was the proper procedure for such a challenge in *Strunk v New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 (N.Y. Sup. Ct. 2012) (finding plaintiff lacked standing, plaintiff failed to state a claim, and the court lacked subject matter jurisdiction). The court held that “the exclusive means to resolve objections to the electors' selection of a President or a Vice President” is by the raising of objections “by members of the Senate and House of Representatives” at the “meeting of the joint session of Congress” held to count Electoral College votes. *Id.* The New York court continued:

If a state court were to involve itself in the eligibility of a candidate to hold the office of President, a determination reserved for the Electoral College and Congress, it may involve itself in national political matters for which it is institutionally ill-suited and interfere with the constitutional authority of the Electoral College and Congress. Accordingly, the political question doctrine instructs this Court and other courts to refrain from superseding the judgments of

the nation's voters and those federal government entities the Constitution designates as the proper forums to determine the eligibility of presidential candidates.

*Id.*

In addition to the role of the Electoral College, and the aforementioned joint session of Congress, the U.S. Constitution contains two other provisions that reinforce the role of the Legislative Branch in determining the eligibility of the President and Vice President. If no candidate receives a majority of electoral votes, the Twelfth Amendment vests the House of Representatives with the authority to select the President, which necessarily involves an evaluation of qualifications. U.S. Const., amend. XXII. Furthermore, the Twentieth Amendment authorizes Congress to “provide by law for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.” U.S. Const., amend. XX, § 3. In short, the U.S. Constitution provides multiple avenues for the consideration of a presidential candidate’s qualifications; none of those avenues involve the Electoral Board, and the objection should be dismissed for lack of subject matter jurisdiction.

**III. The Objector’s Stated Objection Also Substantively Fails As A Matter Of Law; Marco Rubio Is A Natural Born Citizen Of The United States.**

Even if the Electoral Board had subject matter jurisdiction over the objection, the objection substantively fails as a matter of law. It is undisputed that the Candidate was born in the United States. The Objector argues that the term “natural born citizen,” a constitutional term of art with a lengthy history, refers only to those persons born in the United States to parents who are both U.S. citizens. This argument has no basis in the common law of England, the common law of England as adopted in the United States, or the subsequent constitutional law of the

United States. To adopt the Objector's view would mean that at least six Presidents of the United States were not natural born citizens and were therefore ineligible for that office.

The Candidate is a natural-born United States citizen, 44 years of age, who has resided in the United States far in excess of the Constitutionally-required fourteen years. The Candidate satisfies all of the eligibility requirements set forth at Article II, § 1, cl. 5, of the United States Constitution, and is eligible to be the President of the United States.

Under the common law of England at the time of the American founding, U.S. Supreme Court precedent, and U.S. historical practice, anyone born in the United States, regardless of ancestry and immigration status of the parents, is a "natural born citizen" under the Constitution. It is undisputed that the Candidate was born in the United States to immigrant parents. Under the United States Constitution, the Candidate is a natural born citizen who is eligible to serve as President of the United States.

**A. Centuries Of Precedent Demonstrate That Marco Rubio Is A Natural-Born Citizen And Is Eligible To Be President.**

The Constitution declares that "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." U.S. Const. Art. II, § 1. The term "natural-born citizen" is not defined in the Constitution. See *United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898). Therefore, to interpret the meaning of the phrase, courts routinely look to English common-law at the time of the founding. See *Smith v. Alabama*, 124 U.S. 465, 478 (1888) ("The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history."); see also *Ex parte Grossman*, 267 U.S. 87, 108-09 (1925) ("The language of the Constitution cannot be interpreted safely except by reference to the common law and to British

institutions as they were when the instrument was framed and adopted.”). As is widely-recognized, “[t]he statesmen and lawyers of the Convention who submitted it to the ratification of the Conventions of the thirteen States, were born and brought up in the atmosphere of the common law, and thought and spoke in its vocabulary.” *Ex parte Grossman*, 267 U.S. at 109 (emphasis added).

**1. The Common Law of England Interpreted Natural-Born Subject To Mean All Persons Born In England Regardless of Their Parents’ Citizenship.**

The great British legal scholar, William Blackstone, divided subjects of the British crown into two categories, those who were natural-born subjects and those who were aliens. Natural-born subjects were all of those persons “born within the dominions of the Crown of England.” 1 William Blackstone, *Commentaries* 354 (1765). As Blackstone explains, all persons born within the dominions of the Crown have “natural allegiance” to the Crown and that allegiance is established at birth because the infant cannot protect himself and requires the protection of the Crown. *Id.* “Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered, by any change of time, place, or circumstance, nor by any thing but the united concurrence of the legislature.” *Id.*

This “debt of gratitude” owed to the Crown by every natural-born subject cannot be forfeited, even if the subject moves outside the dominion of the Crown. Blackstone explains that a natural-born subject may move outside the dominion of the Crown, and swear allegiance to another king, but this “entanglement” does not and cannot “[u]nloose those bands, by which he is connected to his natural prince.” The allegiance of a natural-born subject is perpetual. *See id.* at 357. Blackstone, in no unequivocal terms, explains the English common law of the time: “The children of aliens, born here in England, are, generally speaking, natural-born subjects, and entitled to all the privileges of such.” *Id.* at 361.

By contrast, a foreign-born alien only became an English subject through “naturalization,” which required an “act of parliament.” *Id.* at 362. This process gives the person all of the rights of citizenship the same as a natural-born subject, except that only a natural-born subject can serve in parliament or on the privy council. *Id.* at 362.

The U.S. Supreme Court has recognized that English common law understood a natural-born subject to include “[e]very person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country....” See *Wong Kim Ark*, 169 U.S. at 657; see also *id.* (“[A]ny person who (whatever the nationality of his parents) is born within the British dominions is a natural-born British subject.”); *id.* at 658 (“[T]herefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign State, or of an alien enemy in hostile occupation of the place where the child was born.”).

The sole exceptions to the natural-born subject rule of English common law apply to children born to foreign diplomats or enemy parents during an occupation of British lands. *Id.* Thus the term “natural-born subject” at British common law meant a “British subject who has become a British subject at the moment of his birth.” *Id.*

Thus, it is indisputable that the British common law, which courts routinely use for guidance on this topic and with which founders of the United States were intimately familiar, understood a “natural-born subject” to be a person who is born within the British dominions, regardless of the parents’ citizenship, and subject only to the two exceptions noted above. See Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 6 (1968).

## **2. The Constitutional Convention Added This Section To Protect Against Ambitious Foreigners.**

While participating in the constitutional convention, John Jay wrote a letter to George Washington stating the following:

Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the American army shall not be given to nor devolve on, any but a natural born citizen.

Christina S. Lohman, *Presidential Eligibility: the Meaning of the Natural-Born Citizen Clause*, 36 Gonz. L. Rev. 349, 352 (2000). John Jay's motivation for this letter seems to stem from a suspicion that the Convention was considering Baron Von Steuben for President or that the Convention was considering to establish a monarchy with a foreign ruler. *Id.* There is no mention that the clause was meant to prevent the children of immigrants, born in the United States, from becoming President. The natural-born citizen clause was adopted, in its original formulation without debate. *Id.* at 353.

Later, Justice Story confirmed the understanding that the purpose of the natural-born citizen requirement was to prevent ambitious foreigners from vying for the office of the President as well as preventing foreign governments from interfering with U.S. presidential elections. Neal Katyal & Paul Clement *On the Meaning of "Natural Born Citizen"* 128 Harv. L. Rev. F. 161, 163 (2015) (citing 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1473, at 333 (1833)). Justice Story never suggested that the clause prevented the children of immigrants born in the United States from becoming President.<sup>1</sup>

---

<sup>1</sup> In fact, at the time Justice Story wrote his *Commentaries on the Constitution*, Andrew Jackson – the son of Irish immigrants to the United States born two years after their arrival – was serving as President of the United States.

**3. The U.S. Supreme Court Adopted The British Common Law View That All Persons Born In The United States Are Natural-Born Citizens.**

The Supreme Court in *Wong Kim Ark* conducted an extensive and thorough review of the common law of England and U.S. case law to determine the meaning of the term “natural-born citizen.” Although *Wong Kim Ark* was decided on Fourteenth Amendment grounds, the Supreme Court “[e]xhaustively examine[s] the British common law, the source by which the constitutional Framers apparently derived the ‘natural-born’ terminology.” See Christina S. Lohman, *Presidential Eligibility: the Meaning of the Natural-Born Citizen Clause*, 36 Gonz. L. Rev. 349, 357 (2000). The Court analyzed English common law to ascertain whether Wong Kim Ark, a man born in the United States to Chinese immigrant parents, was a U.S. citizen by birth. *Id.* at 360.

**a. The Term Natural Born Citizen And Its Meaning During The Colonial Period Through The Founding Period.**

As noted in *Wong Kim Ark*, Justice Marshall’s 1804 opinion in the *Charming Betsey*, 2 Cranch, 64, 119, assumed that citizenship could be obtained by birth or naturalization, and that all persons born in the United States were United States citizens. See *Wong Kim Ark*, 169 U.S. at 658-59. Subsequently, in *Inglis v. Sailors’ Snug Harbor*, (1830) 3 Pet. 99, the Supreme Court addressed the citizenship of a man born in New York City around 1776. *Wong Kim Ark*, 169 U.S. at 659. The Court recognized that it was universally acknowledged that all persons born in the Colonies of the United States, while under the rule of the British Crown, were considered natural-born subjects of Great Britain. *Wong Kim Ark*, 169 U.S. at 659. The Court also noted that Justice Story, in his *Inglis* opinion, held that “[n]othing is better settled at the common law than the doctrine that the children, even of aliens, born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto, are

subjects by birth.” *Wong Kim Ark*, 169 U.S. at 660 (quoting *Inglis v. Sailors’ Snug Harbor*, (1830) 3 Pet. 164)).

Thus, through the mid-nineteenth century, there was no question that persons born in the United States to foreign parents (who were not diplomats or hostile, occupying enemies) were citizens of the United States by virtue of their birth. See *Wong Kim Ark*, 169 U.S. at 664 (citing *Lynch v. Clarke*, 1844 N.Y. Misc. LEXIS 1 \*43 (N.Y. Ch. 1844) a case in which the Supreme Court ruled that a woman born in the United States to British parents temporarily visiting the United States was a citizen at birth.). The *Lynch* court said:

And the constitution itself contains a direct recognition of the subsisting common law principle, in the section which defines the qualification of the President. “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,” The only standard which then existed, of a natural born citizen, was the rule of the common law, and no different standard has been adopted since. Suppose a person should be elected President who was native born, but of alien parents, could there be any reasonable doubt that he was eligible under the constitution? I think not. The position would be decisive in his favor that by the role of the common law, in force when the constitution was adopted, he is a citizen.

*Lynch*, 1844 N.Y. Misc. LEXIS 1 \*43.

b. **The Meaning Of The Term Natural Born Citizen And Its Meaning During The Middle Of The Nineteenth Century.**

In the infamous case of *Dred Scott v. Sanford*, Justice Curtis, who dissented from the Court’s judgment, interpreted the Natural-Born Citizen clause to mean that citizenship is acquired at birth, a concept with which the founding fathers were intimately familiar. See *Wong Kim Ark*, 169 U.S. at 660 (quoting *Scott v. Sandford*, 60 U.S. 393, 576 (1857) (Curtis, J., dissenting)).

Nine years later, Justice Swayne similarly concluded that all persons born in the United States are natural born citizens. *Wong Kim Ark*, 169 U.S. at 662. Justice Swayne explained that

this view was the common law of England as well as the common law of the United States. *See id.*

The Fourteenth Amendment's guarantee of citizenship to all persons born in the United States was not intended to create a new rule; rather, it was intended to remove any doubt that *all* persons born in the United States, regardless of race, ancestry, previous servitude, etc., were citizens of the United States. *See id.* at 676.

The common law view of "natural born citizen," as reflected in the Fourteenth Amendment, was codified by statute in 1866. The Supreme Court later noted that this "first statutory recognition and concomitant formal definition of the citizenship status of the native born" read: "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." *Rogers v. Bellei*, 401 U.S. 815, 829 (1971). During the debate surrounding the Civil Rights Act of 1866, Senators Trumbull and Cowan engaged in a colloquy over the meaning of 'All persons born in the United States'. *See id.* at 697. This discussion centered on whether the children of German or Chinese citizens born in the United States satisfied the statutory definition. Senator Trumbull's response was "Undoubtedly." *See Wong Kim Ark*, 169 U.S. at 697. Senator Johnson understood the amendment to mean that "[a]ll persons born in the United States, and not subject to a foreign power, shall, *by virtue of birth*, be citizens." *See id.* This legislative history confirms that the English common law, including the historic limitations of *jus soli*,<sup>2</sup> namely that those persons born in England but who were foreign diplomats or foreign enemies were not citizens, was now

---

<sup>2</sup> The term *jus soli* is Latin for 'right of the soil' is the doctrine of citizenship that says "[a] child's citizenship is determined by the place of birth. This is the U.S. rule as affirmed by the Fourteenth Amendment." Black's Law Dictionary 880 (8th ed. 2004). By contrast, *jus sanguinis*, is Latin for 'right of blood' and is the doctrine of citizenship where a "[c]hild's citizenship is determined by the parent's citizenship. Most nations follow this rule." *Id.*

codified in federal law. Thus, the Court explained that “[t]he fundamental rule of citizenship by birth within the dominion of the United States, *notwithstanding alienage of parents*, has been affirmed, in well considered opinions of the executive departments of the Government, since the adoption of the Fourteenth Amendment of the Constitution.” *Id.* at 688 (emphasis added). The phrase “not subject to any foreign power” was not intended to deny, for the first time in American history, citizenship to those children born in the United States to foreign parents but rather to simply reflect the well-known exceptions to the *jus soli* doctrine. *See id.* at 688.

This extensive background informed the Supreme Court in *Wong Kim Ark*. In 1873, Wong Kim Ark was born in San Francisco, California to Chinese citizens who were domiciled in San Francisco. *United States v. Wong Kim Ark*, 169 U.S. at 652. Seventeen years later, Wong Kim Ark and his family departed for China. *See id.* at 653 During this visit, Wong Kim Ark intended to return to the United States. *See id.* He visited China again in 1894 and, upon his return to the United States, the customs officer denied him entry stating that Wong Kim Ark was not a citizen of the United States. *See id.* The question presented to the Court was “[w]hether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, *becomes at the time of his birth a citizen of the United States...*” *Id.* (emphasis added). The Court answered the question in the affirmative. The Court concluded that Wong Kim Ark was a U.S. citizen by birth in the United States. *See id.* at 704.

The Court further affirmed that “[t]he fundamental rule of citizenship by birth within the dominion of the United States, *notwithstanding alienage of parents*, has been affirmed, in well considered opinions of the executive departments of the Government, since the adoption of the

Fourteenth Amendment of the Constitution.” *Id.* at 688 (emphasis added). The Supreme Court held that all persons born in the United States, even to foreign parents, are natural born citizens of the United States. *Id.* at 674-75. In very clear language, the Court explained:

To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treated as citizens of the United States.

*Id.* at 694.

c. **Modern Jurisprudence Concerning The Natural Born Citizen Clause.**

*First*, The U.S Supreme Court has adopted Blackstone’s dichotomy of citizenship, namely, citizenship is obtained either by birth or by naturalization. For those who are born in the United States, they are, at once, citizens of the United States and do not require naturalization. *See Miller v. Albright* 523 U.S. 420, 423-424 (1998); *see also Wong Kim Ark*, 169 U.S. at 702 (“[T]wo sources of citizenship and two only: birth and naturalization.”).

*Second*, courts throughout the United States have recently considered challenges to Barack Obama’s eligibility to serve as President of the United States. Courts that have addressed the merits of these cases have routinely rejected these challenges and granted Motions to Dismiss citing President Obama’s birthplace in the United States as dispositive reasoning for the dismissal. *See, e.g., Tisdale v. Obama*, No. 12-036, 2012 U.S. Dist. LEXIS 181036 \*2-3 (E.D. Va. Jan. 20, 2012) (granting motion to dismiss claim that presidential candidates Barack Obama, Mitt Romney, and Ron Paul were ineligible to appear on the ballot because each candidate had one parent who was not a U.S. citizen and holding that “It is well settled that those born in the United States are considered natural born citizens.” citing *Wong Kim Ark*, 169 U.S. at 702 (“Every person born in the United States and subject to the jurisdiction thereof, becomes at once

a citizen of the United States.")); *Hollander v. McCain*, 566 F. Supp. 2d 63, 66 (D.N.H. 2008) ("Those born 'in the United States, and subject to the jurisdiction thereof,' U.S. Const., amend. XIV, have been considered American citizens under American law in effect since the time of the founding.") (citing *Wong Kim Ark*, 169 U.S. at 674-75)); see also *Strunk v. New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 (N.Y. Sup. Ct. 2012).

**4. Historical Practice In The United States Confirms This View Because Six Presidents Were Born In The United States To At Least One Parent Who Was Not A Citizen.**

Finally, the Candidate's status as a candidate for President who is a natural born child of immigrant parents is not unusual. Both parents of President Andrew Jackson were Irish immigrants. The fathers of Presidents James Buchanan and Chester Arthur were Irish immigrants. The mothers of Presidents Woodrow Wilson and Herbert Hoover were immigrants from England and Canada respectively. President Obama, a man born in the United States to an American mother and a father from Kenya, is also a natural-born citizen. See, e.g., *Strunk v New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 \*41 (N.Y. Sup. Ct. 2012). The Objector now joins the list of recent persons seeking to reverse centuries of precedent.

The Objector's contention that both parents must be citizens of the United States in order for their children, born in the United States, to be "natural-born citizens" is wrong as a matter of historical practice and settled law. If the Objector is correct, then at least six of our Presidents have been ineligible for that office.

The argument that the Candidate was naturalized at birth is as incongruous as it is wrong. (Graham Objection). One is either a citizen at birth or one is a naturalized citizen. There is no

third option of naturalization at birth. *See Miller*, 523 U.S. at 423-424; *see also Wong Kim Ark*, 169 U.S. at 702 (“[T]wo sources of citizenship and two only: birth and naturalization.”).

Finally, the Candidate was in fact born in the United States, as the Objector concedes. (Graham Objection). This concession should end this matter as the Candidate is, by longstanding understanding, law and practice, a natural born citizen of the United States.

**B. The Objector Wishes To Reverse The British Common Law And The Constitutional Convention And Redefine Natural-Born Citizen In A Manner That Would Have Excluded At Least Six Presidents Of The United States.**

Under the centuries old common-law understanding, a natural-born citizen is one who is born in the United States regardless of their parents’ ancestry. The Objector wishes to displace this view and substitute his own conclusion that a person born in the United States to non-citizen parents is not a natural born citizen. He supports his conclusion with a series of premises, all of which are wrong.

*First*, the Objector contends that persons born in the United States to foreign parents have “a divided allegiance” to dual nationalities. “Other scenarios present the risk of a Commander-in-Chief with a divided allegiance, which the Founders were trying to prevent.” (Graham Objection). The Objector’s Objection relies on a blog article, entitled “A Citizen is One Thing, But a Natural Born Citizen is Another,” by Mario Apuzzo, Esq., November 29, 2015, attached to his Objection as Exhibit A, hereinafter referred to as the “Article”). “Natural law,” according that erroneous Article, dictates that the Candidate’s parents, and apparently the Candidate, still owe allegiance to Cuba, even after immigrating to the United States in search of the American Dream for themselves.

However, as the Supreme Court has consistently held for nearly 120 years, allegiance and birth are equated, but allegiance and the blood of one’s ancestors are not. *See Wong Kim Ark*,

169 U.S at 662 (“Birth and allegiance go together. Such is the rule of the common law, and it is common law of this country, as well as of England.”). Therefore, the assertion by the Objector that the Candidate’s status as a natural born citizen is somehow in question solely based on his parents’ citizenship at the time of his birth – despite the Candidate’s birth in the United States – is at odds with centuries of jurisprudence surrounding these issues.

*Second*, the Article on which the Objector relies contends that there is a difference between the Fourteenth Amendment’s clause (stating that all persons born in the United States and subject to its jurisdiction are citizens of the United States) and the Natural-Born Citizens Clause which, according to the Objector, applies only to persons born in the United States to U.S. citizen parents. (Graham Objection). Under this logic, the Article contends that the Candidate was conferred citizenship by the Fourteenth Amendment (Article at p.6), apparently a naturalized citizen like Mr. Afroyim in *Afroyim v. Rusk*, 387 U.S. 253.

The Article’s contention that the Candidate is a naturalized citizen apparently like under the holding of *Afroyim v. Rusk* is inapposite. That case involved a petitioner who was born in Poland, immigrated to the United States, and several years later, traveled to Israel and voted in Israeli elections. *Afroyim v. Rusk*, 387 U.S. 253, 254 (1967). When the petitioner applied to renew his U.S. Passport, his application was denied because, by statute, he lost his citizenship by voting in a foreign election. *Id.* The Court held that the statute stripping the petitioner of his U.S. citizenship was unconstitutional because under the Fourteenth Amendment, a person who is born or naturalized in the United States is a citizen of the United States. *Id.* at 266-268. *Afroyim* does not hold that a person born in the United States to non-citizen parents is a naturalized citizen as opposed to a citizen by birth, therefore the Objector incorrectly relies on its holding to further his spurious contention.

Further, there is no support for the view that any distinction exists between those persons born in the United States for the purposes of the Fourteenth Amendment and those who are “natural-born citizens” for purposes of Article II, § 1 of the U.S. Constitution. As set forth above, the common law of England, and then of the United States, established that “natural-born subject” (and “natural-born citizen”) referred to the *jus soli* doctrine of citizenship whereby a person born in the United States is a citizen of the United States regardless of the citizenship of the parents. *See, e.g., Wong Kim Ark*, 169 U.S. at 688. The Fourteenth Amendment crystalized the United States adoption of the *jus soli* doctrine of citizenship. *See Charles Gordon, Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 17 (1968).

The Fourteenth Amendment’s purpose was not to create a new method of obtaining citizenship. Rather, the Fourteenth Amendment’s purpose was to protect and guarantee *existing* citizenship rights which had been wrongly denied in the *Dred Scott* decision. *See id.* at 14; *see also Wong Kim Ark*, 169 U.S. at 688 (“This sentence of the Fourteenth Amendment is declaratory of existing rights, and affirmative of existing law...”). There is nothing in law, therefore, that distinguishes between a natural-born citizen for purposes of Article II of the Constitution, and a person born in the United States who is a “citizen” for purposes of the Fourteenth Amendment.

*Third*, the Article contends that the naturalization acts of 1790, 1795, and 1802, would have withheld citizenship from the Candidate until his parents became citizens. (Article at p.5). This contention is also incorrect. The Naturalization Act of 1790 concerned three categories of naturalization, of which none apply to the Candidate’s circumstances of being born in the United States to immigrant parents. Instead, the Act concerned the naturalization of qualified immigrants; the derivative naturalization of minor children of those immigrants; and the children

of U.S. citizens born abroad. See Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. at 8. The Naturalization Act of 1790 did *not* address persons born in the United States to immigrant parents. The common law already addressed that subject. See, e.g., *Wong Kim Ark*, 169 U.S. at 688. The amendments in 1795 and 1802 also were directed at the issue of the citizenship of children born abroad to U.S. citizens. See Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. at 11-13. There is simply nothing in these statutes that overrides the common law doctrine of *jus soli*, the doctrine the Fourteenth Amendment adopted to confirm existing rights of citizenship. See *id.* at 14 and 17; *Wong Kim Ark*, 169 U.S. at 688.

*Fourth*, the Article contends that the law of nations (*i.e.*, international law) is a part of the law of the United States and that the law of nations at the time of the founding seemed to say that citizenship was *jus sanguinis*, or that citizenship passed from the father to the child. (Article. at page 4). This view was, according to the Article, adopted by the Supreme Court. In fact, all questions on international law aside, the Supreme Court rejected the Article's contention long ago. As Justice Story noted in *Inglis v. Sailors' Snug Harbor* "[e]ach government had a right to decide for itself who should be admitted or deemed citizens." See *Wong Kim Ark*, 169 U.S. at 661. The Supreme Court in *Wong Kim Ark* also stated that Justice Story "[c]ertainly did not mean to suggest that, independently of treaty, there was any principle of international law which could defeat the operation of the established rule of citizenship by birth within the United States." *Id.* at 660. Thus, any argument that international law held that citizenship passed from father to child is irrelevant.

The Article is not the first to rely on Vattel's treatise on the Law of Nations for the proposition that certain natural-born citizens are not, in fact, natural-born U.S. citizens. Justice

Daniel quoted Vattel in his concurring opinion in *Scott v. Sanford*, 60 U.S. at 476-77, and wrote that because of Vattel's unexceptional views, a slave could not be a citizen, and the emancipation of a slave could not transform a slave into a citizen. *Id.* at 477. The dissent in *Wong Kim Ark* also relied on this passage from Vattel. In any event, Vattel himself acknowledged that the British common law rule of *jus soli* was a separate and distinct legal doctrine adopted by England as well as other countries. Vattel, *The Law of Nations*, § 214.<sup>3</sup> In short, Vattel's treatise on this point has never been adopted by the Supreme Court in past matters.

Finally, the Objector's claims, in reliance on the Article, are premised on a view of citizenship known as *jus sanguinis*, in which citizenship passes by blood from parents to child. Like England before it, the United States has clearly adopted the *jus soli* view of citizenship. Blackstone noted that *jus sanguinis* was the French view of citizenship, and contrasted it to the English view. 1 William Blackstone *Commentaries* 361 ("The children of aliens, born here in England, are, generally speaking, natural-born subjects, and entitled to all the privileges of such. In which the constitution of France differs from ours; for there, by their *jus albinatus*, if a child be born of foreign parents, it is an alien.") Without question, the United States has always adhered to the English common law of *jus soli* citizenship. Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 10, 16-17 (1968) (noting that the Fourteenth Amendment adopted the common law precept of *jus soli*). This Board cannot reverse centuries of precedent in a manner that would please only the Objector and, in the process, declare at least six Presidents of the United States to have been ineligible to serve.

---

<sup>3</sup> Available at [http://www.loc.gov/rr/frd/Military\\_Law/Lieber\\_Collection/pdf/DeVattel\\_LawOfNations.pdf](http://www.loc.gov/rr/frd/Military_Law/Lieber_Collection/pdf/DeVattel_LawOfNations.pdf)

This Board should dismiss the Objector's Objection. The Objector's contentions are incorrect as basic matters of law; and entertaining the Objector's argument would jeopardize centuries of precedent and deem at least six former presidents ineligible for office. Marco Rubio is a natural born citizen of the United States and he is eligible to be President of the United States. The Objector's Objection fails as a matter of law and should be dismissed.

**IV. In Illinois, The Overriding Interest Is In Ballot Access.**

Illinois law and public policy favor ballot access. While the provisions of the Election Code are designed to protect the integrity of the electoral process, it is a fundamental principle that "access to a place on the ballot is a substantial right not lightly to be denied." *Welch v. Johnson*, 147 Ill.2d 40, 588 N.E.2d 1119, 1126 (Ill. 1992). The Objector seeks to deny ballot access to the Candidate and thus deny the voters of Illinois a choice to vote for him for President of the United States in the Republican Primary at the General Primary Election to be held on March 15, 2016. Given the legal insufficiency of the Objector's objection, this Board should strike and dismiss the Objection in its entirety.

WHEREFORE, Respondent-Candidate Marco Rubio prays this Honorable Electoral Board strike and dismiss the Objector's Objection.

Respectfully submitted,

Marco Rubio  
Respondent-Candidate

By:   
One of his attorneys

Laura Jacksack  
Jacksack Law Offices  
325 W. Fullerton Pkwy Ste 203  
Chicago, IL 60614  
Telephone: 773.472.0399  
Facsimile: 773.304.3101  
ljacksack@jacksacklawoffices.com

William K. Graham  
3s351 Juniper Lane  
Glen Ellyn, IL 60137  
January 7, 2016

630-730-0060  
billgrahamPE@aol.com

State Board of Elections  
P.O. Box 4187  
Springfield, IL 62708

Subject: Objection to Candidate Statement of Candidacy – Marco Rubio

Dear Members of the State Board of Elections:

Please consider this objection to the candidacy statement of Marco Rubio, candidate for the Republican nomination for the office of President of the United States. The Statement of Candidacy is not in conformance with the provisions of the Act and is not valid for the following reason. Candidate is required under IL law to certify that he or she is "legally qualified" to hold such office. However, Mr. Rubio does not meet the qualification to serve in this office because he is not a natural born citizen.

*(10 ILCS 5/10-8) (from Ch. 46, par. 10-8) Sec. 10-8. Certificates of nomination and nomination papers, and petitions to submit public questions to a referendum, being filed as required by this Code, and being in apparent conformity with the provisions of this Act, shall be deemed to be valid unless objection thereto is duly made in writing within 5 business days after the last day for filing the certificate of nomination or nomination papers or petition for a public question,*

*"I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office"* Statement of Candidacy, form to be certified, notarized, and submitted.

The US Constitution says a legal qualification to serve as President, or Vice President, is that a candidate must be a natural born citizen. Illinois election law echoes this requirement. See the Exhibit A for a legal opinion on the intent of the Founding Fathers in set this higher level of qualification over that of the US Citizen requirement for other office holders. A natural born citizen is one who is born within the United States and on the day of their birth, had two U S Citizen parents. Other scenarios present the risk of a Commander-in-Chief with a divided allegiance, which the Founders were trying to prevent.

Marco Rubio's biography on the US Senate web page says his parents came to Florida from Cuba in 1956. Mr. Rubio has admitted his parents were not US Citizens when he was born. Mr. Rubio appears to be a U S Citizen. US law can confer US Citizenship for a birth within the United States; but no law can confer natural born citizen status, which exists outside law and regulation.

This objection is made because it is incumbent on the State Board to assure that the citizens are protected from unqualified and illegal candidates, on which their vote is wasted. By failing to assure candidates are qualified the Board disenfranchises voters.

Sincerely,

  
William K. Graham, Registered Voter  
Milton Township, DuPage County

ORIGINAL ON FILE AT  
STATE BD OF ELECTIONS  
ORIGINAL TIME STAMPED  
AT 1/8/16 2:40 PM

Attachment: Exhibit A – Legal Opinion regarding Natural Born Citizen

BMD

**Sunday, November 29, 2015**

**A Citizen is One Thing, But a Natural Born Citizen is Another**

**A Citizen is One Thing, But a Natural Born Citizen is Another**

By Mario Apuzzo, Esq.

November 29, 2015



Understanding that a citizen of the United States ("citizen") is one thing, but that a natural born citizen of the United States ("natural born citizen") is another is the key to understanding what a natural born citizen is. To avoid constitutional error, it is critical that these two classes of citizens not be conflated, confounded, and confused. There are different ways by which one can become a citizen. But none of that does or should change what a natural born citizen is. Why is it important that we understand the constitutional distinction between a citizen and a natural born citizen and give the correct meaning to a natural born citizen? It is important because the Framers looked to the natural born citizen clause, apart from the Electoral College, through its requirement of absolute allegiance and love of country, as a means to provide for the safety and national security of the republic. They looked to the natural born citizen clause as a way to keep monarchical and foreign influence out of the singular and powerful civil Office of President and military Office of Commander in Chief of the Military. The Framers saw such monarchical and foreign influence as an insidious way to destroy what they had so greatly sacrificed to build.

The historical record is replete with examples showing how the Framers sought to keep monarchical and foreign influence out of the Office of President and Commander in Chief of the Military. For sake of brevity, I shall focus on this one example. Alexander Hamilton gave a speech to the Convention on June 18, 1787. He read to Convention his Propositions for A Constitution of Government. See *Works of Alexander Hamilton* (page 393); 3 Max Farrand, *The Records of the Federal Convention of 1787*, at 617 (1911) (Farrand). This speech contained a sketch of a plan which has become known as the English Plan. This plan can be read here, [http://avalon.law.yale.edu/18th\\_century/debates\\_618.asp](http://avalon.law.yale.edu/18th_century/debates_618.asp). James Madison informed us in his Convention notes that "[i]t meant only to give a more correct view of his ideas, and to suggest the amendment which he should probably propose to the plan of Mr. R. in the proper stages of its future discussion. Although this plan was not formally before the Convention in any way, several of the delegates made copies . . . Farrand, at 617. Hamilton proposed in his Propositions that the "supreme executive authority of the United States to be vested in a Governor . . ." and that he also be the "commander-in-chief. . ." In this initial sketch, Hamilton did not include any eligibility requirements for the supreme executive authority who he would call the President

rather than Governor in his later draft of the Constitution. In his speech to the Convention, Hamilton advocated an executive for life. The reason that he gave for such a life position was the following: "The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great, that he was placed above the danger of being corrupted from abroad-and at the same time was both sufficiently independent and sufficiently controuled, to answer the purpose of the institution at home. one of the weak sides of Republics was their being liable to foreign influence & corruption. Men of little character, acquiring great power become easily the tools of intermeddling Neibours." Id. Here we can see that Hamilton was very concerned with the harm that could be done to the nation by an executive who was corrupted by foreign influence and intrigue.

This "sketch of a plan of government" was not formally presented to the Convention, but delegates, including James Madison, had various copies of this plan. Farrand, at 617. This plan does not include Hamilton's "born a citizen" language which he included in his later draft of a constitution.

On July 25, 1787, about five weeks later, John Jay wrote a letter to then-General Washington, who was acting as president of the Constitutional Convention, stating: "Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in chief of the american army shall not be given to, nor devolve on, any but a natural born Citizen" ("born" underlined in the original). <http://rs6.lbc.gov/cgi-bin/quer/vf?p=mainem/hlaw:@file%28DOCID-I-@iv%28f00379%29%29>

John Jay reminded General George Washington of the importance of remanding back to the original concerns of the people and offered his presentation, to which George Washington offered, verbatim, to the convention. Alexander Heard and Michael Nelson, *Presidential Selection 123* (Duke University Press 1987) via Google Books. Jay demanded that there be a "strong check" on foreign influence: infiltrating the national government in general and the Office of Commander in Chief of the Military specifically. A "natural born subject," as defined by the English common law, which permitted dual and conflicting allegiance at birth, would not have provided that strong check on foreign influence for which Jay was looking.

On September 2, 1787, George Washington wrote a letter to John Jay the last line of which read: "I thank you for the hints contained in your letter." 4 *Documentary History of the Constitution of the United States of America 1786-1870*, p. 269 (1905). While the Committee on Detail originally proposed that the President must be merely a citizen as well as a resident for 21 years, the Committee of Eleven changed "citizen" to "natural born citizen" without recorded explanation. On September 4, 1787, about six weeks after Jay's letter and just two days after Washington wrote back to Jay, the "natural born citizen" requirement appeared in the draft of the Constitution. Here is the first style of the clause as presented by the Committee of Eleven: (5) Sect. 2. No person except a natural born citizen or a Citizen of the U. S. at the time of the adoption of this Constitution shall be eligible to the office of President; nor shall any person be elected to that office, who shall be under the age of thirty five years, and who has not been in the whole, at least fourteen years a resident within the U. S.

Madison's notes of the Convention <http://www.ahncs.org/dhc-0904.txt>. The proposal passed unanimously without debate which does not mean that the proposal was not discussed, for the convention meetings were conducted in secrecy. Another reason that there was no debate is probably that the definition that was used of a natural born citizen was of such universal acceptance that it satisfied all laws then know to the Framers. At the close of the Convention, Hamilton gave to Madison another document which does contain in Article IX provision for the election of a President and the "born a citizen" language for

eligibility. Ferrand wrote that Hamilton gave this "paper" to Madison at the end of the Convention and that Hamilton "would have wished to be proposed by the Convention: He had stated the principles of it in the course of the deliberations." p. 619. Ferrand also wrote that Hamilton's paper "was not submitted to the Convention and has no further value than attaches to the personal opinions of Hamilton." p. 619. This draft of the Constitution is not to be confused with his sketch of a plan of government (the British Plan) which he read to the Convention on June 18, 1787.

Elliott's Debates has additional information on this proposed constitution. He explains:

No. 5.

*Copy of a Paper communicated to James Madison by Col. Hamilton, about the close of the Convention in Philadelphia, 1787, which, he said, delineated the Constitution which he would have wished to be proposed by the Convention. He had stated the principles of it in the course of the deliberations.*

Note.—The caption, as well as the copy of the following paper, is in the hand-writing of Mr. Madison, and the whole manuscript, and the paper on which it is written, corresponds with the debates in the Convention with which it was preserved. The document was placed in Mr. Madison's hands for preservation by Col. Hamilton, who regarded it as a permanent evidence of his opinion on the subject. But as he did not express his intention, at the time, that the original should be kept, Mr. Madison returned it, informing him that he had retained a copy. It appears, however, from a communication of the Rev. Dr. Masson to Dr. Eustis, (see letter of Col. Hamilton, Madison, 28th April, 1819,) that the original remained among the papers left by Col. Hamilton. In a letter to Mr. Pickering, dated Sept. 16 1803, (see Pitkin's History, Vol. 2, p. 259—60) Col. Hamilton was under the erroneous impression that this paper limited the duration of the presidential term to three years. This instance of the fallibility of Col. Hamilton's memory, as well as his erroneous distribution of the numbers of the "Federalists" among the different writers for that work, it has been the lot of Mr. Madison to rectify; and it became incumbent, in the present instance, from the contents of the plan having been seen by others, (previously as well it subsequently to the publication of Col. Hamilton's letter,) that it, also, should be published.

Elliott's Debates: Volume 5 Appendix to the Debates of the Federal Convention, Note 5. <http://teachingamericanhistory.org/nomination/elliott/vol5/appendix/>  
This subsequent draft of a constitution provided that the President be either at that time a citizen of one of the States or be "born a citizen of the United States." Article IX Sec. 1 in Appendix F of the Hamilton Plan of 1787 read: "No person shall be eligible to the office of President of the United States unless he be now a citizen of one of the States, or hereafter be born a citizen of the United States."

Hamilton gave his paper to Madison before the convention came to an end which we know occurred on September 17, 1787, the date the delegates signed the Constitution. Hamilton served on committees that drafted convention rules and provided for writing style. We can reasonably assume that since the document was in the hands of these two influential Founders and Framers, they would have discussed Hamilton's presidential citizenship proposal with others making decisions at that time. While we do not know exactly what happened during the convention regarding Hamilton's "now a citizen of one of the States" and "born a citizen of the United States" concept, we do know that they were both rejected and "natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution[]" was accepted. We can see that the Framers did not accept merely being a citizen of the United States at birth. Rather, they demanded that future presidents be natural born citizens. Hamilton did provide his paper containing the "born a citizen" language to James Madison. Additionally, he most likely also discussed his paper with other Convention delegates, even if he did not submit his paper to the Convention. Ferrand stated that Hamilton "had stated the principles of it in the course of the deliberations" of the Convention. Id. at 619. It is hard to

accept that Hamilton would have gone through all that effort to draft that proposed constitution and not share its principles with the Convention delegates prior to the end of the Convention. Hence, enough delegates probably knew about Hamilton's "born a citizen," but no one made any suggestion that the Constitution read "born a citizen" rather than "natural born citizen."

What is critical to understand about the Hamilton "born a citizen" language is that it shows that he did not request that the President be a "natural born citizen." So he knew that the definition of the clause was a child born in the country to citizen parents. By advocating born a citizen, anyone who was made a citizen from the moment of birth by positive law [Endnote 1] such as an Act of Congress would have been eligible to be President. This would have included children born out of the United States to U.S. citizen parents and even children born in the United States to alien parents who should by positive law be made citizens from the moment of birth. But the Convention adopted "natural born citizen" and not "born a citizen," which means that the delegates wanted a more stringent standard than just born a citizen. So then how did the Framers define a natural born citizen?

To understand who the natural born citizen are, we must first understand who the citizens are. Our U.S. Supreme Court has many times looked to the principles of the English common law and William Blackstone to understand what the Framers meant by various terms and phrases that they used in the Constitution. But Blackstone did not define either a citizen or a natural born citizen. "The constitution uses the words 'citizen' and 'natural born citizens'; but neither that instrument nor any act of congress has attempted to define their meaning. British jurisprudence, whence so much of our own is drawn, throws little light upon the subject. . . . Blackstone and Tomlins contain nothing upon the subject." United States v. Rhodes, 27 F. Cas. 785, 788 (Cir. C. Ky 1866) (Justice Noah H. Swayne). In fact, Minor v. Happersett, 88 U.S. 162 (1875) did not look to the English common law to define a citizen. Minor explained who the citizens were in a general way thus:

Before its adoption the Constitution of the United States did not in terms prescribe who should be citizens of the United States or of the several States, yet there were necessarily such citizens without such provision. There cannot be a nation without a people. The very idea of a political community, such as a nation is, implies an [2]66] association of persons for the promotion of their general welfare. Each one of the persons associated becomes a member of the nation formed by the association. He owes it allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance.

For convenience it has been found necessary to give a name to this membership. The object is to designate by a title the person and the relation he bears to the nation. For this purpose the words "subject," "inhabitant," and "citizen" have been used, and the choice between them is sometimes made to depend upon the form of the government. Citizen is now more commonly employed, however, and as it has been considered better suited to the description of one living under a republican government, it was adopted by nearly all of the States upon their separation from Great Britain, and was afterwards adopted in the Articles of Confederation and in the Constitution of the United States. When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more.

Id. at 165-66.

The Founders and Framers were greatly influenced by natural law and the law of nations. Their favorite writer on the law of nations was Emer de Vattel, and his treatise, The Law of Nations (1758) was constantly in their hands in the early years of the republic. Vattel did not define the citizens, simply saying in Section 212 of his treatise that they "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." We can understand why Vattel would not have defined the citizens other than to say that they were the members of a civil and political society, for each

society defined its members based on its own historical development and positive laws. As we saw, Minor added that being a citizen under the Constitution did nothing more than "convey[] the idea of membership of a nation, and nothing more."

Again, without mentioning the English common law or Blackstone, but rather expressing concepts of natural law and the law of nations, Minor then explained who the original "citizens" were during the Founding of the free and independent states and then the United States as a nation:

To determine, then, who were citizens of the United States before the adoption of the amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership.

Looking at the Constitution itself we find that it was ordained and established by "the people of the United States." <https://www.blogger.com/nuil> and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth. <https://www.blogger.com/nuil> and that had by Articles of Confederation and Perpetual Union, in which they took the name of "the United States of America," entered into a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever. [\[5\]](#)

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen - a member of the nation created by its adoption. He was one of the persons associating together to form the nation, and was,

consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.

[Id.](#) at 166-67.

Having examined the concept of who were the original citizens, now we have to consider who the natural born citizens were. Minor said that "additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization." [Id.](#) at 167. It is in telling us about those additions to the citizens that Minor then told us how the Framers defined a natural born citizen. The Framers had one and only one definition of a natural born citizen. How do we know that? The unanimous U.S. Supreme Court in Minor informs us. There it held:

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 [\[168\]](#) parents. As to this class there have been doubts, but never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens. The words "all children" are certainly as comprehensive, when used in this connection, as "all persons," and if females are included in the last they must be in the first. That they are included in the last is not denied. In fact the whole argument of the plaintiffs proceeds upon that idea.

[Id.](#) at 167-68.

The Court explained that neither the original nor amended Constitution (the Fourteenth Amendment) defined a natural born citizen. It said that we had to look outside the Constitution

for a definition of the clause. It held that the definition of a natural born citizen existed at common law the nomenclature with which they were familiar. Explaining what that common law provided, it said that "all children" born in a country to "parents" who were its citizens "natives, or natural-born citizens," and that all the rest of the people were "aliens or foreigners," who would need a naturalization Act of Congress in order to become a citizen of the United States. Here we can see that like when it defined citizens, the Court did not rely upon the English common law and Blackstone, who explained that any child born in the King's dominion and under his jurisdiction, regardless of the citizenship of the child's parents, was a natural-born subject. Rather, Minor's definition of "natives, or natural born citizens" was a paraphrase of the definition of those terms provided by Emer de Vattel who in his *The Law of Nations*, Section 212 (1758) (1797) explained: "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." So, Minor looked to the law of nations and not to the English common law for the Framers' definition of a natural born citizen. Chief Justice John Marshall in *The Venus*, 12 U.S. 253, 289 (1814) (Marshall, C.J., concurring), had done the same, citing and quoting the law of nations and 476 (1857) (Daniel, J., concurring), had done the same, citing and quoting the law of nations and Vattel at Section 212 and not the English common law and Blackstone. Hence, when Minor said that a natural born citizen was defined "at common-law," it was not referring to the English common law. Rather, it was referring to American national common law which incorporated the citizenship principles of the law of nations.

Minor explained that if one was a natural born citizen, there was no doubt that one was a citizen. Hence, accepting that Virginia Minor was a natural born citizen, it held that she was a citizen. After the Court defined the natural born citizens and told us that anyone who was a natural born citizen was without any doubt a citizen, the Court raised the question *sua sponte* whether there could be other "citizens" by birth "within the jurisdiction." This question regarding other "citizens" did not involve the "natural born citizens," who the Court had just defined through an all-inclusive and all-exclusive definition (the Court said that under that common law all the people who did not meet that definition were "aliens or foreigners"). So the Court did not raise any question of whether there could be other birth circumstances that could serve as the basis for making one a natural born citizen. These other children were different from those that were natural born citizens because unlike them, they were born to alien parents. In fact, the Court even referred to these children as belonging to another "class." The Court said that "some authorities" included these other children as "citizens" also. The Court, however, said that "there have been doubts" whether they were citizens. So, not only did the Court explain that those children could not be natural born citizens, it also said that it was doubtful whether they were even just citizens. The Court was referring to *The Slaughter House Cases*, 83 U.S. 36 (1873) which stated that children born in the United States to alien parents were not citizens of the United States under the Fourteenth Amendment. In the end, the Court explained that it was not necessary for it to solve the doubts involving whether the children of that other class were citizens. For sure, it was not necessary because Virginia Minor was born in the country to parents who were its citizens which made her a natural born citizen. Knowing that Virginia Minor was born in the country to parents who were citizens, which made her a natural born citizen, provided the Court with sufficient information for it to decide the question of whether Virginia Minor was a citizen.

The Court finally held that "all children born of citizen parents within the jurisdiction are themselves citizens," meaning that all children who were natural born citizens were citizens. Accepting both that rule to be true and that Virginia Minor satisfied that rule was sufficient for the Court to hold that she was a citizen. It simply was not necessary for the Court to explore any other avenues by which Virginia Minor could be a citizen. Indeed, she was a natural born citizen

which without any doubt ipso facto made her a citizen and that is all she had to be in order for her to have standing to make her Fourteenth Amendment argument that as a citizen of the United States, she had a privilege or immunity that created a constitutional right to vote which the State of Missouri could not abridge by making or enforcing any law against her. The Court in the end held that citizenship did not constitutionally give one the right to vote and so Missouri could through its laws decide that it would not allow women to vote. But the Court's ultimate holding regarding a woman's right to vote has absolutely no bearing on the court's *ratio decidendi* that it applied to defining the citizens and the natural born citizens, an analysis which makes its definition of a natural born citizen binding precedent.

So Minor confirmed the Framers' definition of a natural born citizen. It also left open the question of whether a child born in the United States to alien parents could be a citizen of the United States under the Fourteenth Amendment. Again, the Court demonstrated that there was only one way to become a natural born citizen which was to be born in the country to parents who were its citizens. But it also explained that there were different avenues by which one could become a citizen. It explained that one way was for a person to satisfy the naturalization Acts of Congress. Another way was to satisfy the requirements of the Fourteenth Amendment which it chose not to analyze and left to be done another day.

The majority of the United States Supreme Court in *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898) answered in 1898 the Fourteenth Amendment question regarding birth in the United States to alien parents which Minor left open in 1875. It is the seminal case for interpreting and applying the Fourteenth Amendment's citizenship clause, which establishes thereunder who may be a "citizen" of the United States from the moment of birth, to persons who are born in the United States, but who do not satisfy Minor's common law definition of a natural born citizen. Wong Kim Ark thoroughly analyzed the question of who was included as a citizen of the United States under the Fourteenth Amendment and it showed that people like Wong, born in the United States to alien parents who were legally domiciled and permanently residing in the United States and neither foreign diplomats nor military invaders, were citizens of the United States from the moment of birth by virtue of the Fourteenth Amendment, but they could not be natural born citizens by virtue of the common law which Minor explained defined a natural born citizen.

Wong Kim Ark explained that "[t]he Constitution of the United States, as originally adopted, uses the words 'citizen of the United States,' and 'natural-born citizen of the United States' and that '[t]he Constitution nowhere defines the meaning of these words, either by way of inclusion or of exclusion; except insofar as this is done by the affirmative declaration that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.'" Id. at 654. Hence, Wong Kim Ark also confirmed that the Fourteenth

Amendment did not define a natural born citizen. The Court then explained that "[i]n this as in other respects, it must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution. *Minor v. Happersett*, 21 Wall. 162; *Ex parte Wilson*, 114 U.S. 417, 422; *Boyd v. United States*, 116 U.S. 616, 624, 625; *Smith v. Alabama*, 124 U.S. 463. The language of the Constitution, as has been well said, could not be understood without reference to the common law. Kent Com. 336; Bradley, J., in *Moore v. United States*, 91 U.S. 270, 274." Id. at 654. Hence, Wong Kim Ark, like Minor, explained that the Court could use the common law to interpret the Constitution, Article II in Minor and the Fourteenth Amendment in Wong Kim Ark.

While it acknowledged Minor's definition of a natural born citizen and the common law it relied upon to arrive at that definition, in rendering its decision it did not rely upon American national common law, but rather on colonial English common law. It did not rely on the former because it was not defining an Article II natural born citizen, but rather a different clause of the Constitution, as amended, the Fourteenth Amendment. In fact, Wong Kim Ark said that it was not constrained by any rule of "international law" or the municipal laws of any foreign nation in

interpreting the Fourteenth Amendment. Rather, it resorted to looking to and using colonial English common law as an aid to construing the Fourteenth Amendment's "subject to the jurisdiction thereof" clause. It found that under the English common law, a child born in the King's dominion to alien parents who were neither foreign diplomats nor military invaders were born subject to his jurisdiction and entitled to his protection, and therefore English natural-born subjects. It found that this rule had been continued in the new free and independent states after the Declaration of Independence and the adoption of the Constitution, by the states selectively adopting the English common law through their constitutions and reception statutes. By the force of that state practice, it ruled by analogy that a child born in the United States to alien parents who were permanently domiciled and resident in the United States and neither foreign diplomats nor military invaders was born in the United States and "subject to the jurisdiction thereof." Hence, that child was a "citizen" of the United States from the moment of birth by virtue of the Fourteenth Amendment. Relying on the English common law's exceptions to being born in the King's dominion and within the jurisdiction of the King, it also explained that any child born in the United States to foreign diplomats or military invaders would not be born subject to its jurisdiction and therefore not a citizen of the United States under the Fourteenth Amendment.

So Wong Kim Ark resolved the question of the meaning of the Fourteenth Amendment's "subject to the jurisdiction thereof" clause, as applied to children born in the United States to alien parents, by resort to the colonial English common law, which under its notion of broad allegiance, treated non-diplomatic and friendly aliens present in the King's dominions as his subjects. It used the colonial English common law to interpret the meaning of the Fourteenth Amendment's "subject to the jurisdiction thereof" clause, not the meaning of an Article II natural born citizen. In conducting its jurisdiction analysis, it did not reinterpret the natural born citizen clause under the English common law. In fact, no U.S. Supreme Court that ever provided the definition of a natural born citizen relied upon any jurisdiction analysis when defining a natural born citizen. Actually, Wong Kim Ark recognized that a natural born citizen was a different type of citizen than a citizen of the United States at birth under the Fourteenth Amendment. "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." Emer de Vattel, *The Law of Nations*, Section 212 (1758) (1797). "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." Minor 88 U.S. at 167. "The child of an alien, if born in the country, is as much a citizen as the natural born child of a citizen, and by operation of the same principle." Wong Kim Ark, 169 U.S. at 665 (citing and quoting Horace Binney, "Alienigenae of the United States," 22, note (2<sup>nd</sup> ed. Philadelphia, December 1, 1853)). As we can see, both Vattel and Minor said a natural born citizen was a child born in the country to parents who were its citizens. Justice Gray in Wong Kim Ark agreed.

Another crucial point needs to be addressed. What did Vattel and Minor mean when they said "children" and "parents" as in all "children" born in the country to citizen "parents" were natural born citizens? Under the law of nations and at common law, children meant legitimate children. Hence, using the term children suggested that the father and mother were married or at least that the child was legitimated at some point. Under the law of nations and at common law, "parents" could only mean father and mother. In fact, Vattel throughout *The Law of Nations*, when referring to parents, spoke about a child's father and mother. Under the common law doctrine of coverture, a wife upon marriage (*femes covert*) became one with her husband. She acquired the

citizenship and allegiance of her husband, whether her husband was a citizen or an alien. At the Founding and until the passage of the Cable Act in 1922 (Ch. 411, 42 Stat. 1021), there was no such thing as a husband having one citizenship and the wife having another: This father and mother interpretation of Vattel has been confirmed by our U.S. Supreme Court which has always interpreted Vattel's "parents" to mean both father and mother. In their concurring opinions, Chief Justice John Marshall in *The Venus* (1814) and Justice Daniel in *Dred Scott* did just that. Minor provided a scenario where the child's parents were both either citizens or both aliens. The same occurred in Wong Kim Ark, where the Court explained that a child born in the country to an alien parent is as much a "citizen" as the natural born child born in the country to a citizen parent. This statement can only have sense if both parents are either aliens or citizens. So, both Minor and Wong Kim Ark provided scenarios wherein the child's parents are both either citizens or both aliens. See also *Lynch v. Clark*, 1 Sandf. Ch. 583, 3 NY Leg. Obs. 236 (1844) (confirms the same scenario when it said: "it is insisted that the national rule is that of the public law, by which a child follows the status of its parents (emphasis in the original):" "Suppose a person should be elected President who was native born, but of alien parents . . . and "every person born within the dominions and allegiance of the United States, whatever were the situation of his parents"; *Ankeny v. Governor of the State of Indiana*, 916 N.E.2d 678 (Ind. Ct. App. 2009) (stating in footnote 12 "that the Court in *Minor* contemplates only scenarios where both parents are either citizens or aliens, rather in the case of President Obama, whose mother was a U.S. citizen and father was a citizen of the United Kingdom"). This reasoning followed from our nation adopting the common law doctrine of coverture that the wife acquired the citizenship of her husband. Hence, the word "parents" in both Vattel's and Minor's definition of a natural born citizen could not mean that one parent had one citizenship and another had a different one; it could only mean father and mother who had the same citizenship at the time of the child's birth. This law of nations and common law rule regarding parents having the same nationality is reflected in the 1961 Convention on the Reduction of Statelessness. Article 2 provides: "A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State," in effect providing that a foundling is to be treated and considered as though she satisfies the definition of a natural born citizen under the law of nations. Hence, the common public understanding of "parents" at the time the Constitution was adopted and ratified was that parents meant father and mother, with the spouses acquiring the citizenship of the husband, and children meant legitimate children of those parents. So, at the time of the adoption and ratification of the Constitution, legitimate children were born either to two citizen parents or to two alien parents. Under the ancient maxim *parvus sequitur patrem* (children follow the condition of their parents), those children inherited the citizenship and allegiance of their parents. Finally, other convincing evidence demonstrating that the Framers defined a natural born citizen as a child born in the country to citizen parents are the Naturalization Acts of 1790, 1795, 1802, and 1804. The only children Congress did not seek to reach with its naturalization powers in these Acts were children born in the United States to U.S. citizen parents. There was no constitutional basis for Congress to do that, for these children were the natural born citizens. What is also most telling is that in these naturalization Acts, Congress treated children born in the United States to alien parents as aliens and in need of naturalization. This Congressional naturalization rule was not changed until after the U.S. Supreme Court in *Wong Kim Ark* held that children born in the United States to qualifying alien parents were citizens of the United States from the moment of birth. What this historical and legal evidence (not meant to be exhaustive) shows is that there is only one definition of a natural born citizen. That definition is a child born in a county to parents (father and mother) who were its citizens at the time of the child's birth. But there can be

different definitions of a citizen. Those other definitions exist under the Fourteenth Amendment, naturalization Acts of Congress, and treaties, all positive laws. We can argue, for whatever reasons, about what those other definitions of being a citizen should be under those particular positive laws. But whatever we agree or disagree on with respect to a citizen under those laws, none of that changes or can change the Framers' original common law definition of a natural born citizen which under the Constitution is a child born or reputed born in the United States to parents, meaning a married father and mother, who were U.S. citizens at the time of the child's birth. The Framers adopted this definition of a natural born citizen into the Constitution. As such, it is the supreme law of the land and cannot be changed unless done so by a duly ratified constitutional amendment.

Even if today we were to relax the requirement of parents having to be married due to Fourteenth Amendment equal protection requirements, we would still be left with the requirement that the father and mother be both U.S. citizens at the time of the birth of their child in the United States. Finally, the Cable Act of 1922, which for the first time gave to women the right to have a separate citizenship and allegiance from that of their husbands, did no more than that; it did not nor could it amend the definition of a natural born citizen which required that both parents be U.S. citizens at the time of their child's birth in the United States.

For sure, the United States would never deny its protection to a natural born citizen, for no other foreign nation can make any legitimate claim based on its sovereign authority to that person's citizenship and allegiance based on either *jus sanguinis* or *jus soli*, for under the American national common law's definition of a natural born citizen, i.e., a child born in a country to parents who were its citizens at the time of the child's birth, both right of blood and right of soil merge into the child at the moment of birth to create a unity of citizenship and allegiance in the child at the time of birth. Hence, that child is born with allegiance only to the United States and to no other nation. Simply stated, all the nations of the world recognize that person to be only a citizen of the United States and of no other nation. The Framers commanded that future Presidents and Commanders be born with sole allegiance to the United States. In contrast, citizens at birth under the Fourteenth Amendment and naturalization Acts of Congress, who do not meet the definition of a natural born citizen, while born with allegiance to the United States, are also born with citizenship and allegiance to some foreign nation, under the Fourteenth Amendment, citizenship in and allegiance to the foreign nation of one or both alien parents, and under a naturalization Act of Congress, citizenship in and allegiance to the foreign nation in which born and/or of an alien parent. These citizens "at birth" are made citizens at birth only by operation of law, the Fourteenth Amendment or Act of Congress, and not by universal principle of natural law and the law of nations, recognized and adopted by American national common law.

It is treason upon the Constitution and the Framers' command that for the sake of the national security of the republic, for persons born after the adoption of the Constitution, no person except a natural born citizen is to be eligible to be President and Commander in Chief of the Military, to interpret the natural born citizen clause out of the Constitution and replace it with how we may today define under the positive laws of the Fourteenth Amendment or naturalization Acts of Congress a citizen of the United States at birth, a person who, if not also a natural born citizen, is not born with sole allegiance to the United States. With these principles to guide us, we can only conclude that de facto President Barack Obama, Senator Ted Cruz, Senator Marco Rubio, and Governor Bobby Jindal are all not natural born citizens. None of them were born in the United States to parents who were both U.S. citizens at the time of their children's birth. Obama, assuming he was born in the United States, is a citizen of the United States at birth, but only by virtue of the Fourteenth Amendment. He is not and cannot be a natural born citizen

under the common law because while he was presumably born in the United States to a U.S. citizen mother, he was born to a non-U.S. citizen father.

Cruz was born in Canada, presumably to a U.S. citizen mother and a non-U.S. citizen father. He can be a citizen of the United States at birth, but only by virtue of a naturalization Act of Congress (section 301(a)(7) of the Immigration and Nationality Act of 1952). He is not and cannot be a natural born citizen under the common law because, while he was born to a U.S. citizen mother, he was not born in the United States and he was born to a non-U.S. citizen father.

Rubio and Jindal were born in the United States to two non-U.S. citizen parents. They are both citizens of the United States at birth, but only by virtue of the Fourteenth Amendment. They are not and cannot be natural born citizens under the common law because, while they were born in the United States, they were born to two non-U.S. citizen parents.

**Endnote 1:** The concept of "positive law" has existed since the beginning of ordered legal systems. Positive law includes constitutions, statutes, case law, and any other law adopted by whatever sovereign has power to make law at any given moment in time. It has been said by many political and legal philosophers throughout the ages that positive law has its origin in what man perceives to be natural law and God's law, or what Thomas Jefferson in The Declaration of Independence called "the Laws of Nature and of Nature's God," meaning the laws of nature and the laws of nature's God.

Mario Apuzzo, Esq.

November 29, 2015

<http://puzo1.blogspot.com>

###

Copyright © 2015

Mario Apuzzo, Esq.

All Rights Reserved

Posted by Mario Apuzzo, Esq. at 11:01 PM 24 comments  links to this post

Labels: Barack Obama, Bobby Jindal, de facto resident, Marco Rubio, Mario Apuzzo, Minor v. Happersett, natural born citizen, Ted Cruz, The Law of Nations, U.S. v. Wong Kim Ark, Yale

**Davis v Clinton**  
**16 SOEB GP 533**

**Candidate:** Hillary Clinton

**Office:** President

**Party:** Democratic

**Objector:** Brant Davis

**Attorney For Objector:** Anish Parikh

**Attorney For Candidate:** Michael Kreloff

**Number of Signatures Required:** 3,000 – 5,000

**Number of Signatures Submitted:** 4,949 (as determined by Hearing Officer)

**Number of Signatures Objected to:** 2,119 (as determined by Hearing Officer)

**Basis of Objection:** 1. The Candidate's nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including "Signer Not Registered," "Signer Not Registered at Address Shown," "Illegible Address," "Missing or Incomplete Address," "Blank Line," "Signer Signed Petition More than Once" and "Illegible Signature." 2. The circulators' affidavits contain various deficiencies that render several petition sheets invalid in their entirety. 3. The notarizations on several petition sheets are legally insufficient so that the sheets are invalid in their entirety.

**Dispositive Motions:** Candidate's Motion to Strike and Dismiss the Objector's Petition, Objector's Response to Candidate's Motion to Strike and Dismiss, Candidate's Reply to Objector's Response

**Binder Check Necessary:** No

**Hearing Officer:** Phil Krasny

**Hearing Officer Findings and Recommendations:** Prior to hearing Candidate's Motion to Strike and Dismiss, the parties and Board staff submitted their respective counts of signatures and objections to the Hearing Officer, who advised the parties that he would take the lowest number of signatures claimed to be submitted and subtract from that the highest number of objections claimed to arrive at the net number (2,830), which would be considered to be the number of uncontested signatures. Accordingly, if, as a matter of law, 171 objections were stricken, the Candidate's petition would exceed the 3,000 signature threshold, in which case no record exam would be necessary.

Hearing was held on the Motion to Dismiss on January 27, 2016. The Objector sought to invalidate 19 sheets containing 185 signatures for failure to include the county where they were executed and/or notarized, 5 sheets containing 50 signatures for the notary's failure to include the year in which he/she signed the sheet, and 7 sheets containing 65 signatures because the notary failed to affix an official stamp and/or because the notary's signature was illegible. The Candidate sought to have these objections stricken. Reviewing well-settled case law, the Hearing Examiner concluded that scrivener-type notary issues are generally resolved in favor of a candidate, absent evidence of a pattern of fraud. No such pattern was found by the Hearing Examiner, and the Hearing Examiner recommends that these objections (to 300 signatures) be stricken.

The Objector further sought to strike 331 signatures on the basis of "illegibility" along with other unspecified defects. The Candidate sought to have these objections stricken. The Hearing Examiner considered Appendix E of the Electoral Board Rules of Procedure, which provides that illegibility is not a proper objection per se and merely provides the record examiner with instructions as to how to proceed with either a "signature not genuine" or "signer not registered at address" objection in conjunction with an illegible signature. Accordingly, the Hearing Officer recommends that the 331 objections entitled "illegible registrant name" be stricken as an improper basis for objection.

Accordingly, the Hearing Officer recommends that: (1) the Candidate's Motion to Strike paragraphs 3, 7, 8 and 16 of the Objector's petition be granted; (2) the Board find that the Candidate needed 3000 valid signatures to be on the ballot, and after striking the noted paragraphs and corresponding objections, the Candidate had in excess of 3,000 unchallenged signatures; (3) that proceeding with a records examination is unnecessary; and (4) that the Board order that the Candidate's name be certified to the primary ballot for the Democratic Party nomination for President of the United States.

**Recommendation of the General Counsel:** The General Counsel concurs in the Hearing Officer's recommendation.

**BEFORE THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD**

BRYANT DAVIS )  
 )  
 Objector, )  
 )  
 Vs. )  
 )  
 HILLARY CLINTON ) No. 2016-S0EB 533  
 )  
 Candidate. )  
 )

**FINDINGS AND RECOMMENDATIONS**

**PROCEDURAL HISTORY**

The Candidate seeks the Democratic Party nomination for the office of President of the United States. To be placed on the primary ballot for that office, the Candidate must submit nominating petitions containing 3000 valid signatures.

The Objector filed an objection to the nominating petitions alleging legal and factual deficiencies in the submitted nominating petitions.

On December 20, 2015, the Electoral Board appointed Philip Krasny as the hearing officer to conduct a hearing on the objections to the nominating petitions and present recommendations to the Electoral Board.

An initial case management conference was held on December 20, 2015, which was attended by the Objector's attorney, Anish Parikah. The Candidate was represented by Michael Kreoff. At the case management conference, the parties were given time to file motions.

The Candidate filed a Motion to Strike and Dismiss. The Objector filed a Response. The Candidate filed a Reply. A hearing on the motion was held on January

27, 2016.

Prior to the onset of the hearing, the Electoral Board, and the parties, provided your Hearing Officer with the following number of signatures submitted by the Candidate and the number of Objections filed by the Objector; to wit:

	Electoral Board	Candidate	Objector
# of sigs submitted:	4,954	4,967	4,949
# of Objections:	2,106	2,119	2,040

In order to determine whether granting the Candidate's motion, in whole or part, would result in striking a sufficient number objections, thereby elevating the Candidate above the 3,000 signature threshold eliminating the need for a record exam, your Hearing Officer advise the parties that he was taking the lowest number of signatures claimed to be submitted (4,949) and subtracting the highest number of objections claimed (2,119). The net number, 2,830, would be considered the number of uncontested signatures. Accordingly, if your Hearing Officer was to rule, as a matter of law, that 171 objections should be stricken, then, the Candidate would exceed the 3,000 vote threshold and no record exam would be necessary.

#### **MOTION TO STRIKE AND DISMISS**

In his motion, the Candidate posits that paragraphs 3, 7, and 8, of the Objection must be struck, since they pertain to insignificant deficiencies regarding the notarization of the circulator's signature on specified sheets. Additionally, the Candidate contends that paragraph 16 of the Objection, which seeks to invalidate 331 voter's signature because "illegibility" is an invalid objection and must be struck.

An inspection of paragraphs 3, 7, and 8 of the Objection reveals various alleged

deficiencies pertaining to the sufficiency of the notarization of the circulator's signature. Specifically, paragraph 3 of the Objection seeks to strike pages 169, 207, 209, 212, 217, 289, 310, 333, 343, 344, 346, 363, 399, 408, 418, 473, 476, 490, and 492, containing 185 signatures, because the sheets failed to include the county where they were executed and/or notarized.

Likewise, an inspection of paragraph 7 reveals that the Objector seeks to strike sheets 124, 349, 350, 375, and 385, which contain 50 signatures, since the notary failed to include the year in which he/she signed the sheet. Similarly, in paragraph 8, the Objector seeks to strike sheets 42, 52, 62, 72, 83, 134, and 144, which contain 65 signatures<sup>1</sup>, because the notary failed to affix an official stamp and/or because the notary's signature is illegible.

In his Response, the Objector argues that 10 ILCS 5/7-10 5/10-4 requires that the circulator's statement appearing at the bottom of each nominating petition sheet "shall be sworn to before some officer authorized to administer oaths in this State". The Objector submits that the paragraph requiring that nominating petitions be notarized is not necessarily impracticable or unduly burdensome on the right to access to the ballot. *Bowe v. City of Chicago Electoral Board*, 81 Ill.App.146, 401 N.E.2d 1270 (1980), rev. on other grounds, 79 Ill.2d 469, 404 N.E.2d 180 (1980). The Objector posits that the Election Code requirement that the person who circulated nominating petitions personally appear before a notary public to validate the petition has been held to be mandatory and not directory. Thus, a violation of that section invalidates the petition

---

<sup>1</sup> Sheets 42, 52, 62, 72, 83, 134, and 144 actually contain 70 signatures, but 5 of the signatures are also challenged for being illegible. Accordingly, to prevent double counting of objections, your Hearing Officer reduced the number from 70 to 65.

sheet.

In responding to the Candidate's argument that paragraph 16 of the objection must be struck for failing to inform the candidate of a valid ground for objection to 331 voter's signatures, the Objector contends that "the Objector's Petition is clear as to what the objections raised by Objector are. If signatures are not legible and if a proper review of those signatures, at the very least, is not had, then a given candidate would be able to submit multiple signatures which cannot be recognized or deciphered, which would once again jeopardize the electoral process and the petition sheets requirements. Candidate cannot claim that she is not reasonably apprised of the objections she is called upon to defend. By doing so, Candidate attempts to circumvent the objection process and ensure that her signatures are not even reviewed".

## **DISCUSSION**

### **Notary Issues**

10 ILCS 5/7-10 (West 2008) requires that a petition circulator provide a signed, sworn statement certifying, inter alia, "that the signatures on that sheet of the petition were signed in his or her presence and certifying that the signatures are genuine \*\*\* and certifying that to the best of his or her knowledge and belief the persons so signing were at the time of signing the petitions qualified voters of the political party for which a nomination is sought." The statute further provided that "[s]uch statement shall be sworn to before some officer authorized to administer oaths in this State."

The statutory requirement that circulators of petitions sign a statement before an officer authorized to administer oaths has been held to be a substantial and valid requirement that relates to the integrity of the political process. *Williams v. Butler*, 35 Ill. App. 3d 532, 341 N.E.2d 394

(4th Dist.1976). These sworn statements must aver that the persons signing are the persons who actually circulated the petitions, that the signatures were signed in their presence, and that the signatures collected are genuine. Such authentication provides a significant safeguard against fraud by subjecting the circulator to the penalty of a perjury prosecution.

If it can be shown that a petition circulator had not personally appeared before the notary public who acknowledged his signature, the petition is invalid. *Williams v. Butler*, supra; *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 404 N.E.2d 180 (1980). For example, in *Dunham v. Naperville Township Officers Electoral Board*, 265 Ill. App. 3d 719, 640 N.E.2d 314 (2d Dist. 1994), a notary improperly authenticated sheets previously signed outside her presence, and then inserted false dates. Later, she falsely authenticated other sheets in a similar manner, including some allegedly circulated by an individual claiming to have been one of the circulators of the first set. The court upheld striking of the sheets. Additionally, signatures placed on a sheet after a candidate has notarized the petition are void. In re Educational Officers Electoral Board of Community Unit School District No. 200, No. 97-1 (DuPage Cty. Electoral Board 1997).

That being said, courts and electoral boards hesitate to remove candidates for purely technical defects in the notarization process or in the jurat, a trend which follows a well-established line of cases holding that harmless omissions, inadvertent acts, and grammatical/clerical errors in authentications will not defeat an otherwise valid instrument. See, e.g., *Mason v. Brock*, 12 Ill. App. 273, 279 (1850); *Stout v. Slattery*, 12 Ill. 162 (1850). See also *Levine v. Simms-Johnson*, No. 96-EB-WC-31 (Chicago Electoral Board 1996).

In *Cintuc, Inc. v. Kozubowski*, 230 Ill. App. 3d 969, 596 N.E.2d 101 (1992), it was held that inserting the name of the notary rather than the name of the circulator in the jurat did not render the petition invalid. The court reasoned that the jurat is not an affidavit, but serves as

evidence of the fact that the affidavit was properly sworn to by the affiant. Moreover, the affiant was otherwise identified in the pages.

The Cook County Circuit Court has upheld an electoral board decision to allow signatures where the notary was unaware that his commission had expired. *Gilbert v. Electoral Board*, No. 80 CO 74 (Cook Cty.Cir. 1980). Further, *Hamill v. Young*, No. 89-COEB-NWRD-03, rev'd, No. 90 CO 20 (Cook Cty.Cir. 1990), held that it is not the duty of those who go before notaries to ensure that their commissions have not expired, even where the commission expired 13 years prior. (See also, *Frost v. County Officers Electoral Board*, 285 Ill. App. 3d 286, 673 N.E.2d 443 (1st Dist. 1996), where the court held that the candidates oath taken before a notary public commissioned outside the state of Illinois is legally sufficient to satisfy requirements under Section 7-10 of the Election Code).

In *Shipley v. Stephenson County Electoral Board*, 130 Ill. App. 3d 900, 474 N.E.2d 905, 906 (2nd Dist. 1985), the court considered whether the Electoral Board and the circuit court erred in finding the petitions invalid because several of the notaries were without authority to notarize the petitions since, at the time they notarized the circulators' affidavits, the notaries were no longer living in the county where they received their notary commissions.

On appeal, the Candidate/Plaintiff argued that even if the notaries were without "de jure" authority to administer the oath on the petitions, they were nevertheless "de facto" officers with "de facto" authority to administer the oaths. The Electoral Board, on the other hand, argued that section 10 of the Illinois Notary Public Act is mandatory and thus that the "de facto" officer doctrine does not apply in the instant case.

The appellate court agreed with the with the Plaintiff's position, and accordingly reversed the decisions of the Electoral Board and the circuit court.

In reversing the Electoral Board decision, the court concluded that

To adopt the Board's position would be to require the public to investigate the underlying authority of notary publics whenever papers are executed before them. Such a result would require the public to determine not only the requirements of the Illinois Notary Public Act, but also whether those requirements have been met by the notary before whom they appear. We also note that the Illinois Notary Public Act contains no statement rendering void any acts performed by or before a notary public who has moved from the county in which he was appointed. Further, we do not believe the legislature intended such a result, at least in the absence of any evidence of fraud or corruption in the oath-taking process.

Thus, notary questions are often resolved in favor of the candidate, unless a pattern of fraud is evident. E.g., *Fitzgerald v. Brandt*, No. 92-EB-WC-63 (Chicago Electoral Board 1993) (signature sheets); *Maltbia v. Muhammad*, No. 92-EB-ALD-137 (Chicago Electoral Board 1995) (unknowing use of defective notary not fatal). In the absence of fraud or corruption, circulators' oaths taken before persons whom the circulators believed were authorized to administer oaths is valid.

In reviewing paragraph 3, Objector seeks to invalidate 19 sheets containing 185 signatures because they failed to include the county where they were executed and/or notarized. Likewise, paragraph 7 seeks to invalidate 5 sheets containing 50 signatures, since the notary failed to include the year in which he/she signed the sheet. Based upon the aforementioned case law analysis, it is your Hearing Officer's recommendation that those objections be struck, since, as a matter of law, they are nothing more than scrivener's errors.

As regards paragraph 8, which seeks to seeks to invalidate 7 sheets containing 65 signatures gathered in Macon County because the notary failed to affix an official stamp or and because the notary's signature is illegible, a review of the signature reveals that the circulator's signature was verified by Stephen Bean, the Macon County Clerk. Accordingly, it is your Hearing Officer's recommendation that those objections be struck as well.

### **Sufficiency Of The Illegibility Objection.**

In the Appendix to his Objection petition, the Objector lists 276 sheets and line numbers and states:

The following 276 page numbers and line numbers, denoted as (page#) (line#) have an illegible registrant name, along with other defects, that render them incapable of verifying the alleged registrants

He also lists 55 sheets and line numbers and states

The following 55 page numbers and line numbers, denoted as (page#) (line#) have an illegible registrant name, along with other defects, that render them incapable of verifying the alleged registrants.

The issue here is whether seeking to strike 331 signatures because of “illegibility” along with unspecified defects constitutes a valid basis for an objection.

As regards “illegibility”, Appendix E of the Electoral Board Rules of Procedure states that:

#### **E. Signature is Not Legible**

If the records examiner determines that a signature is not legible, the examiner shall check the address opposite the illegible signature. If none of the signatures of voters listed at that address match, the objection will be sustained. **The basis of the objection however, must be that the petition signer is not registered at the address shown on the petition. If the basis of the objection is that the signature is not genuine, the objection will be overruled for the reason that it is impossible to determine genuineness of the signature without a comparison to the signature on the voter registration card. (emphasis added)**

Thus, under Rule E, illegibility is not a proper objection per se; rather, it merely provides the record examiner with instructions as to how he/she is to proceed if the Objector makes an objection that 1) signature is not genuine or 2) that the petition signer is not registered at the address shown.

The practical application of the objector failing to identify the exact objection rule is obvious; for in the event an Electoral Board record examiner reviews an exception entitled,

“illegible registrant’s name”, what is he/she suppose to do? Should he/she consider the objection as not residing at the address shown and check the address opposite the illegible signature. Or should he/she consider the illegible signature as not genuine and overrule the objection for the reason that it is impossible to determine genuineness of the signature without a comparison to the signature on the voter registration card. Either result requires the record examiner to guess at the basis of the objection, which is fundamentally unfair to the entire process. Accordingly, it is your Hearing Officer’s recommendation that the 331 objections set forth in the Objector’s Appendix, entitled “illegible registrant name” be struck as an improper basis for an objection.

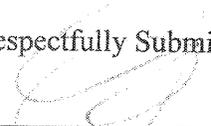
**Summary of Findings and Recommendations**

It is your Hearing Officer’s recommendation that:

- 1) The Candidate’s motion to strike paragraphs 3, 7, 8 and 16 of the Objector’s petition be granted;
- 2) That after striking the paragraphs and corresponding objections, the number of unchallenged Candidate signatures is in excess of 3,000;
- 3) That proceeding with a records examination is unnecessary.

Accordingly, it is recommended that since the Candidate has submitted a sufficient number of signatures, her name should appear on the primary ballot for the Democratic nomination for President of the United States.

Respectfully Submitted,

  
Philip Krasny  
Hearing Officer

1/27/16

BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS SITTING AS THE  
STATE OFFICERS ELECTORAL BOARD

**BRANT DAVIS,** )  
 )  
 Objector, )  
 )  
 v. ) **16-SOEB GP 533**  
 )  
**HILLARY CLINTON,** )  
 )  
 Candidate. )

**CANDIDATE CLINTON’S REPLY IN SUPPORT  
OF MOTION TO STRIKE AND DISMISS**

NOW COMES **HILLARY CLINTON** (Candidate”), by her attorney,  
**Michael Kreloff**, and replies in support of her motion to strike and dismiss the Objection  
filed by Brant Davis (“Objector”) on the following grounds:

**Striking Par. 3 of Objection--Notary’s Error in not Inserting County .**

1. Candidate moved to strike paragraph 3 of the Objections, in which Objector incorrectly alleged that the failure of certain notaries to insert the county of notarization in the jurat was somehow fatal to the entire 19 sheets and 185 signatures contained within. Candidate maintained that such a minor and/or technical variance was not material error, citing to *Wohadlo* and to CLE Election Law Guide at sec. 1.81.
2. Objector chose to ignore the line of cases cited, instead arguing without citation that failure of the notary to insert the county in the jurat “raises questions as to whether the circulators properly appeared before a notary.” Objector’s Response at par. 4.
3. Objector’s response cannot avoid dismissal of these objections. Objector has the burden of establishing that he has asserted objections that meet the legal standards for

disqualifying a signed and notarized petition; he cannot maintain an objection based on vague and unsupported “questions” about the propriety of the petitions. If Objector *truly* had “questions” as to whether the circulators appeared before their notaries, then that was the allegation he ought to have made, as spurious as it would have been. Objector instead attacked these pages only on the grounds that these specific nineteen pages were unacceptable because of a notary’s technical failure to insert the county of venue, an error that has no bearing upon whether a notarized document is or is not valid. As stated in Candidate’s Motion, an Illinois notary is empowered to notarize documents in any of the state’s 102 counties.

4. Objector may not now amend his Objection to allege non-appearance before a notary. There is no factual basis for such an allegation, and the deadline to make such an allegation has passed. True, failure of a petition circulator to actually appear before a notary does impact the integrity of the election process and, if *alleged* and proven, is a fatal defect. But that didn’t happen; *nor was it ever alleged*. Courts have generally excused clerical errors in notarial jurats where the affiant is otherwise correctly identified. The statutory requirement that Objector relies upon is met with substantial compliance, which unquestionably existed. See *Akin v. Smith*, 2013 IL App (1<sup>st</sup>) 130441 at pars. 7-13.

**Striking Pars. 6 & 8 of Objections—Notary’s Error Regarding Dates of Notarization & Use of Stamp.**

5. In her motion, Candidate moved to strike pars. 6 and 8 of the Objection, because a notary’s incomplete dating of a document or failure to stamp the document does not result in invalidation of the petition sheet.

6. At par. 6 of Objector's Response, Objector argues that Candidate had no right to rely upon the procedural rules of this Board, and she ought to have alleged estoppel if she sought to rely thereon. This is a fundamental misunderstanding of due process. Candidate cited to *Briscoe v. Kusper* (Motion at par. 3), where the Court made clear that, once a Board interprets a statute, it cannot reinterpret that law more restrictively without first giving due process notice to electoral participants through a prior published rule. See *Anderson v. Schneider*, 67 Ill.2d 165, 176-78, 365 N.E.2d 900 (1977) (candidate had no reason to believe an electoral board would, without prior warning, more narrowly interpret a statute; thus due process is denied that candidate).

7. Indeed, as argued in Candidate's Motion at pars. 9 & 11, the practice of accepting notarized petitions despite technical deviations is the common practice of electoral boards and courts in Illinois.

8. Trying to ignore Candidate's many cited precedents (Motion at pars. 9 & 12), Objector cites to *Vancura v. Katris*, 238 Ill.2d 352 (2010) and *Cunningham v. Schaefflein*, 969 N.E.2d 861 (1<sup>st</sup> Dist. 2012). Both of those cases concerned the practice of false notarizations because the signer did not sign while appearing before the notary. As *Akin* notes, the non-material deviations here (lack of stamp, incomplete dates, or lack of county in commencing jurat) are a far cry from a false (non-appearance) notarization. See also, *Solomon v. Scholefield*, 2015 IL App (1<sup>st</sup>) 150685, at pars. 27-32.

**Striking Par. 16, Because Legibility is Not a Statutory Requirement for Signers.**

9. As to paragraph 16 of the Objection, Objector's argument that Candidate was reasonably apprised of the objections to defend--signature illegibility—misses the point and cannot sustain these objections. See Objector's Response at 15-16.

10. As explained in Candidate's motion, there is no requirement in the Election Code that a person's signature be "legible", and for good reason. Not only is legibility completely subjective, many people's authentic signatures are not "legible".

11. To allow for a new category of Objections ("Illegibility") would permit objectors an entirely subjective reason to challenge, leading to the ability to evade "shotgun" dismissal. Objector bears the burden of providing an informative basis for challenging these signatures as either "not registered" or "not genuine". Objector has done neither. Candidate is thus left with insufficient information to respond to the Objection. Is Objector arguing that the name is of a voter who is not registered? Or that the signature is a forgery? Objector doesn't bother to tell her. This is a violation of the clear command of our Code that Objector must "state fully" what the alleged defect is. With sufficient information, Candidate could dispute Objector's objection by looking to the voter file or by looking to find the voter at the voter's residence. Candidate cannot read Objector's mind to establish if a signature is truly illegible to Objector. For example, the first "illegible" name is at sheet 3, line 2. Any viewer can see several facts: 1) the signer lives at 8225 S. Ellis, Chicago; 2) the signer's first name appears to begin with an "M"; and 3) the signer's surname appears to be "McKnight". Objector could check for voters at that address and object if none had an "M" in their names. But at least take on the same burden every other honest Objector does in Illinois---look in the voter file. The next

“illegibility” Objection is to sheet 5, line 5. Any viewer can see: 1) The signer’s name is “S. L. Purvis”; 2) the voter lives at 6366 Fitzgerald Road, in Rockford, Winnebago County. The Objector should look up people named “Purvis” at that address to see if the handwriting matches and if the voter is registered at the address shown. But to allow a subjective “catch-all” of “illegibility” would permit any name to be challenged, with no investigation. Next is sheet 7, line 3, showing: the signer’s name is Gina Drinkwater; and she lives at 6551 S. University, Chicago. Next is sheet 7, line 9, where the name is likely Joseph Teutier, with a certain address of 5416 S. Harper, Chicago. Next is sheet 8, line 2, which appears to be Elodia Herrera, 3854 W. 70<sup>th</sup> Place, Chicago. Next is sheet 19, line 2, a person named Clavijo, at 5236 N. Virginia. Objector, were he doing his job, would be looking up these entries by name or by address and doing at least the minimal investigation demanded of Objectors. Instead, this Objector simply says “unreadable”.<sup>1</sup>

### CONCLUSION

Accordingly, given the most substantial number of petition signatures to which no objection was made (Candidate counted 2,848 or more unobjected to signatures), if this motion to strike is granted in whole or in certain parts, and 3,000 signatures are recognized as valid, the entire Objection should be denied and the Candidate’s name must be placed upon the ballot.

---

<sup>1</sup> By examining these first six names objected to as “illegible”, Candidate does not claim all of them will be determined to be properly signed by a registered voter after the voter file is searched. But it ought not be the Candidate’s responsibility (or the State Board staff’s responsibility) to figure out, in the first instance, why these names were objected to. What is certain is that all six had very legible names, partial names and/or addresses. And what is certain is that Objector never bothered to look up these names and addresses in the voter file. “Illegibility” is too vague to provide due process notice to Candidate.

**WHEREFORE**, Candidate prays that the Objection filed in this case be stricken and dismissed and that an Order be entered placing the name of **HILLARY CLINTON** as a candidate for nomination by the Democratic Party for the office of President of the United States be printed on the official ballot at the Primary Election to be held on March 15, 2016.

/s/Michael Kreloff  
MICHAEL KRELOFF  
Attorney for Candidate

Michael Kreloff  
Attorney at Law  
1926 Waukegan, Suite 310  
Glenview, IL. 60025  
847.525-1139 (c)  
847.486.0230 (f)  
capitolaction@yahoo.com

BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS SITTING AS THE  
STATE OFFICERS ELECTORAL BOARD

**BRANT DAVIS,** )  
 )  
 Objector, )  
 )  
 v. ) **16-SOEB GP 533**  
 )  
**HILLARY CLINTON,** )  
 )  
 Candidate. )

**NOTICE OF FILING**

State Officers Electoral Board

Rosaura Rodriguez  
rrodriguez@elections.il.gov

Ken Menzel, General Counsel  
Kmenzel@elections.il.gov

Anish Parikh, Esq.  
anish@plgfirm.com

Philip Krasny, Esq.  
philipkrasny@yahoo.com

PLEASE TAKE NOTICE that on January 26, 2016, I served the foregoing Notice of Filing and attached Reply Concerning Candidate's Motion to Strike and Dismiss via E-mail to the above named persons.

/s/Michael Kreloff  
Michael Kreloff

**PROOF OF SERVICE**

I, Michael Kreloff, an attorney, certified that I served the referenced documents upon the persons listed above by e-mailing a copy prior to 5:00 p.m. on January 26, 2016.

/s/Michael Kreloff  
Michael Kreloff

Michael Kreloff, Attorney at Law  
1926 Waukegan Rd., Suite 310  
Glenview, IL 60025  
847.525.1139 (c)  
847.486.0230 (f)  
capitlaction@yahoo.com  
ARDC # 1529560

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF UNITED STATES PRESIDENT**

<b>BRANT DAVIS,</b>	)	
	)	
<b>Objector,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 16 SOEB GP 533</b>
	)	
<b>HILLARY RODHAM CLINTON,</b>	)	
	)	
<b>Candidate.</b>	)	

**OBJECTOR’S RESPONSE TO MOTION TO STRIKE OBJECTOR’S PETITION**

NOW COMES the Objector, **BRANT DAVIS** (“Objector”), and as his Response to Candidate Hillary Rodham Clinton’s (“Candidate”) Motion to Strike Objector’s Petition, he states as follows:

1. Candidate first contends that Paragraph 3 of the Objector’s Petition should be stricken because a notary’s failure to insert the name of a county does not invalidate otherwise valid signatures. Unfortunately for Candidate, the objection goes directly to the core of the electoral process candidates must utilize in ensuring that petition signatures are valid and that circulators are doing their circulations correctly and in accordance with the law.

2. The circulator's statement appearing at the bottom of each nominating petition sheet "shall be sworn to before some officer authorized to administer oaths in this State". 10 ILCS 5/7-10 5/10-4; see also 10 ILCS 5/8-8. This paragraph requiring that nominating petitions be notarized is not necessarily impracticable or unduly burdensome on the right to access to the ballot. *Bowe v. City of Chicago Electoral Board*, 81 Ill.App.146, 401 N.E.2d 1270 (1980), rev. on other grounds, 79 Ill.2d 469, 404 N.E.2d 180 (1980). The requirement in the Election Code that the person who circulated nominating petitions personally appear before a notary public to

validate the petition has been held to be mandatory and not directory. Thus, a violation of that section invalidates the petition sheet. *Id.*

3. In this case, Candidate chose to require her notaries to properly notarize her petition sheets, specifically with regards to the Circulator's Affidavit.

4. Additionally, it is paramount to the electoral process that Candidate's circulators properly swear to the circulator's affidavit to ensure that they are in compliance with the Election Code. A failure to include the county of the notary raises questions as to whether the circulators properly appeared before a notary to have the petition sheets notarized.

5. Since the proper notarization of the petition sheets is a mandatory requirement of the Election Code, while it may seem small to Candidate, Candidate's Motion to Strike with regards to Paragraph 3 must be denied and the matter must proceed to a hearing on this objection to, at the very least, verify that Candidate properly complied with the Election Code.

6. Finally, Candidate's reliance on this Board's own rules and regulations fails. Had Candidate indeed relied on the information published by this Board, Candidate had the opportunity to allege estoppel; however, Candidate here has failed to do so. Additionally, reliance on this Board's publications or publications by any election authority may not stand, especially where a legal disclaimer appears at the outset of the publication.

7. Next, Candidate contends that Paragraphs 7 and 8 must be stricken under "Board rules" because the absence of a stamp or a date is a mere technicality.

8. There is no question that the Illinois Notary Public Act requires that a "notarial act must be evidenced by a certificate signed and dated by the notary public." 5 ILCS 312/6-103. Further, "at the time of notarization, a notary public shall officially sign every notary

certificate and *affix the rubber stamp clearly* and legibly using black ink, so that it is capable of photographic reproduction." 5 ILCS 312/3-102 (emphasis added).

9. The above requirements are mandatory by the Illinois Notary Public Act and if any of the items set forth in the Notary Public Act are not complied with, then the notarization cannot be found to be valid.

10. Here, the Candidate downplays the absence of a stamp and a date. In fact, it is these items that are most important for the notarization process. If the notarization is not properly done, then how can a given circulator be said to have properly sworn to the affidavit?

11. Next, the Illinois Supreme Court in *Vancura v. Katris*, 238 Ill.2d 352 (2010) noted that an Illinois notary public "gives his or her personal seal and signature when completing a notarial act, and in so doing he or she assumes personal liability for the accuracy of his or her notarization." *Vancura*, 238 Ill.2d at 381. This liability serves to provide incentive to notaries to perform their acts carefully, and in accordance with the law. This safeguard is destroyed, however, if a document may be notarized without the requirement of a date or a stamp.

12. The Illinois Appellate Court for the First District in *Cunningham v. Schaefflein*, 969 N.E.2d 861 (1st Dist. 2012) found that the proper notarization of the circulator's affidavit serves as a primary safeguard of the integrity of the petition collection process. In *Cunningham*, one of the candidate's advisors devised a system to save volunteer time in which a notary notarized several petitions for circulators who were not present before her. Because that notary's improper notarization practice provided no guarantee that the petition sheets at issue were gathered as required by the Election Code, every petition sheet notarized by that notary was invalidated.

13. Similarly, in the case at bar, the notary in question failed to affix a seal. In fact, it is this affixation that makes the notary requirement unique to the necessity of having only licensed notaries administer oaths. Additionally, the failure to include a date or any part thereof jeopardizes the electoral process once again, especially given the filing requirements and constraints in the Election Code. For these reasons alone, the Motion to Strike must be denied and this matter must continue to a hearing.

14. Finally, Candidate alleges that certain objections must be stricken based on an alleged failure to apprise Candidate of the objection.

15. The Objector's Petition is clear as to what the objections raised by Objector are. If signatures are not legible and if a proper review of those signatures, at the very least, is not had, then a given candidate would be able to submit multiple signatures which cannot be recognized or deciphered, which would once again jeopardize the electoral process and the petition sheets requirements.

16. Candidate cannot claim that she is not reasonably apprised of the objections she is called upon to defend. By doing so, Candidate attempts to circumvent the objection process and ensure that her signatures are not even reviewed.

17. To ensure proper compliance with the Election Code and to ensure all candidates fulfill the mandatory requirements therein, a records examination must take place at the very least.

WHEREFORE, Objector, **BRANT DAVIS**, prays that the Candidate's Motion to Strike be denied and that this matter proceed to hearing on the objections outlined in the Objector's Petition.

Respectfully submitted,  
BRANT DAVIS

*/s/ Anish Parikh* \_\_\_\_\_

One of his attorneys

Parikh Law Group, LLC  
Attorneys for Objector  
150 S. Wacker Drive, Suite 2600  
Chicago, Illinois 60606  
312-725-3476  
[anish@plgfirm.com](mailto:anish@plgfirm.com)

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF UNITED STATES PRESIDENT**

<b>BRANT DAVIS,</b>	)	
	)	
<b>Objector,</b>	)	
	)	
<b>vs.</b>	)	<b>Case No. 16 SOEB GP 533</b>
	)	
<b>HILLARY RODHAM CLINTON,</b>	)	
	)	
<b>Candidate.</b>	)	

**NOTICE OF FILING**

TO: Ken Menzel, General Counsel - [Kmenzel@elections.il.gov](mailto:Kmenzel@elections.il.gov)  
Philip Krasny, Esq. - [philipkrasny@yahoo.com](mailto:philipkrasny@yahoo.com)  
Rosaura Rodriguez - [rrodriguez@elections.il.gov](mailto:rrodriguez@elections.il.gov)  
Micheal Kreloff - [capitolaction@yahoo.com](mailto:capitolaction@yahoo.com)

PLEASE TAKE NOTICE that on January 25, 2016, we caused to be filed with the Illinois State Board of Election Objector's Response to Candidate's Motion to Strike.

*/s/ Anish Parikh*

**PROOF OF SERVICE**

I, Anish Parikh, an attorney, certify that I served the referenced documents upon the persons listed above by e-mailing a copy prior to 5:00 p.m. on January, 25, 2016.

*/s/ Anish Parikh*

BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS SITTING AS THE  
STATE OFFICERS ELECTORAL BOARD

<b>BRANT DAVIS,</b>	)	
	)	
Objector,	)	
	)	
v.	)	<b>16-SOEB GP 533</b>
	)	
<b>HILLARY CLINTON,</b>	)	
	)	
Candidate.	)	

**CANDIDATE CLINTON'S MOTION TO STRIKE AND DISMISS**

NOW COMES **HILLARY CLINTON** (Candidate”), by her attorney, **Michael Kreloff**, her attorneys, and moves to strike and dismiss the Objection filed by Brant Davis (“Objector”) on the following grounds:

1. State law requires Candidate to submit 3,000 valid signatures to obtain a place on the ballot. As explained below, Candidate easily meets this requirement. Objector failed to provide a page-by-page Appendix categorizing, by page and allegation, the signatures objected to (for example, page 212, attacked in paragraph 4 of the Objection, is also attacked in paragraph 3 of the Objection, causing double-counting of objections). Still, Objector has made no objection to about 2,864 signature lines. Having conceded those lines, Objector must win over 90% of the lines he *did* challenge, a most improbable feat. Moreover, because a number of the sheets and lines were challenged for legally insufficient reasons (and therefore dismissible on a motion to strike), the “high hurdle” becomes legally insurmountable.

2. For the following reasons, paragraphs 3, 7, 8, and 16 of the Objection must be struck, as not well-founded as a matter of law. Indeed, just striking the Objections in

paragraph 3 will leave the Candidate in excess of 3,000 valid signatures, and, therefore, Candidate is entitled to an Order dismissing the entire Objection.<sup>1</sup>

### **General Law of Petition Objections**

3. To comply with statute and to protect the due process rights of the Candidate (and her supporters), objections to nomination papers must “state fully” the nature of the objections being made. 10 ILCS 5/10-8; Chicago Board Index<sup>2</sup> at 5, citing *Lockette v. Reed* 11-EB-ALD-017, CBEC, January 7, 2011; *Bryant v. Sherman*, 11-EB-ALD-228, January 11, 2011, aff’d, Circuit Court of Cook County, No. 11 COEL 00027. Once the filing deadline to file an Objection has expired, no amendments to an Objection are permitted. Therefore, no alterations are now permitted to the five Objection sheets titled “Appendix”. Chicago Board Index at 9-10, citing *Ligas v. Martinez*, 95-EB-ALD-134, CBEC, January 17, 1995. Accord, *Molina v. Gunderson*, 07-EB-ALD- 166, CBEC, January 9, 2007. Once it is established that the Candidate has in excess of the number of signatures required, an Objection case should be terminated without further proceedings,

---

<sup>1</sup> This motion in no way concedes that the other Objections are well-founded. Indeed, a mere cursory examination of the other Objections reveals a multitude of faults and inconsistencies that legally compromise the veracity of the Objections. For example, at page 162, line 7, voter Richard J. Durbin of Springfield, in Sangamon County, is objected to (in par. 14) for an illegible name of county, even though Bonnie Ettinger, also of Springfield, also in Sangamon County (page 162, line 8) was apparently legible to Objector. The address of the circulator of page 212 (36709 Lake Street, Ingleside, Lake County, IL) is attacked in par. 4 for inadequate address, but was not attacked on line 1, where he signed the same petition, with the same, complete address. Within par. 14, Objector attacks all 10 lines of page 302 for “improperly omitted County name” when it is patently clear that nine of the signers disclosed residency in Grundy County, and one in Will County.

<sup>2</sup> References will be made to Index of Electoral Board Decisions, Board of Election Commissioners for the City of Chicago, November 2015. (<http://app.chicagoelections.com/documents/general/Index-Of-Electoral-Board-Decisions-2015-11-23.pdf> (“Chicago Board Index at \_\_\_\_\_”); and to Election Law 2012 (Ill. Inst. For CLE 2012 (Delort) (“CLE Guide at \_\_\_\_\_”).

and an Order that the Candidate's name should appear on the ballot is appropriate. Finally, due process requires that, for the Board to apply any interpretation of statute more exacting than past practice, the interpretation can be applied only if the Board had issued a prior, published regulation to that effect. *Briscoe v. Kusper*, 435 F.2d 1046 (7<sup>th</sup> Cir. 1970).

**Paragraph 3 of the Objection, Attacking Nineteen Petition Pages, Must Be Struck and Those 185 Signatures Should Be Counted, Because A Notary's Failure To Insert the Name of The County in the Jurat Certification Does Not Invalidate Otherwise Valid Signature Pages.**

4. At paragraph 3 of the Objection, 19 sheets containing 185 signatures, are objected to for the sole reason that the notary's jurat, while showing that the notarization occurred in Illinois, did not indicate in which particular county the notarization took place.

5. As stated at CLE Guide at 1-78 [sec. 1.81], removal of candidates for purely technical defects in the notarization process or in the jurat is frowned on by both courts and electoral boards. Harmless omissions, inadvertent acts, or clerical errors in authentications will not defeat an otherwise valid instrument. In fact, the identical objection raised by the Objector, an omission of the precise county of notarization, is an insufficient objection to warrant striking a petition page. *Wohadlo v. Ross*, No. 11-EB-ALD-094.

([http://app.chicagoelections.com/documents/Electoral-Board/document\\_3334.PDF](http://app.chicagoelections.com/documents/Electoral-Board/document_3334.PDF))

6. Under the Illinois Notary Public Act, an Illinois notary is authorized to notarize documents within the State of Illinois and while sitting in any one of its 102 counties. CITE. 5 ILCS 312/3-105. Each and every one of Candidate's petition sheets indicates that the notarization was performed within the State Of Illinois, and is, thereby, valid,

regardless of the county in which it was performed. Importantly, Objector makes no claim that anything untoward occurring in the notarization process.

7. The Board's own Rules of Procedure (at p. A-16) II.F. "Sheet Not Notarized", make clear that technical variances in procedures utilized by the notary, absent fraud, do not invalidate petition pages.

8. Candidate is entitled to have paragraph 3 of the Objection struck and approximately 190 signatures restored to her total filing. On this basis alone, the Objection should be promptly dismissed and an Order should be entered that Candidate's name must appear on the ballot.

**Paragraphs 7 and 8 of the Objections Must Be Struck Under Board Rules, As They Merely Allege a Partially Missing Date of Notarization or a Missing Notary Stamp.**

9. Objector targets five petition pages (in par. 7 of Objection) solely because the notary only listed the month and day of notarization, but failed to include year of notarization. It is clear under existing precedent that this is an insufficient ground on which to invalidate signatures. As thoroughly explained in Chicago Board Index at 66:

The failure to place a date in the notarial jurat constitutes an insufficient basis to invalidate the nominating papers. *Hendon v. Davis*, 02-EB-SS-10, CBEC, January 31, 2002; *Ley v. Williams III*, 14-EBCON-06, CBEC, January 6, 2014. The failure of the notary public to place the year of attestation upon the petition sheet is merely a technical violation of Section 10-4 of the Election Code and the petition sheets upon which said error occurred are in substantial compliance with Section 10-4. *Curtis v. Parker*, 83-EB-ALD-94, CBEC, January 24, 1983. Even assuming that there was no date at all in the jurat, this would not be sufficient justification for invalidating the petition sheet. *Cottrell v. Pearson*, 99-EB-ALD-157, CBEC, February 2, 1999, See, e.g., *Young v. Cook County Officers Electoral Board*, 90 CO 20, Cir. Ct. Cook. Co., January 24, 1990.

Notarial jurat of the circulator's affidavit is not lacking in proper form merely because it does not indicate a date on which the circulator appeared before the notary public. *Lenzen v. Orozco*, 01-EB-ALD- 04, CBEC, January 23, 2001.

10. Thus paragraph 7 of the Objection must be struck and approximately 50 signatures restored to the Candidate's total filing.

11. In paragraph 8 of the Objection, Objector complains that there is no notarial stamp for Matthew Flamm (despite Notary Flamm's stamp clearly showing on p. 83), and no stamp and illegible signature for 6 sheets notarized by the Honorable Steven Bean, Clerk of Macon County.

12. However, failure of the notary to properly affix his seal to a petition sheet is deemed to be a technical violation that does not invalidate the petition sheet where a notary actually signed the notary portion of the petition sheets. *Griffin v. Hazard*, 04-EB-WC-24, January 20, 2004; *Linchecky v. Rundle* ,97-EB-ALD-001, CBEC, January 14, 1997; *Sistrunk v. Tillman*, 91-EB-ALD-155, CBEC, January 8, 1991; *Washington v. Williams*, 92-EB-REP-31, CBEC, February 10, 1992; *Maltbia v. Perry*, 92-EB-WC-64; January 22, 1992; *Sistrunk v. Tillman*, 91-EB-ALD-155, CBEC, January 8, 1991. Chicago Board Index at 65.

13. Thus, paragraph 8 of the Objection must also be struck as a matter of law. Striking paragraph 8 of the Objection, candidate Clinton is entitled to have 70 signatures restored to her total.

**Paragraph 16 of the Objection Must Be Struck For Failing to Inform the Candidate of a Valid Ground for Objection to 331 Voter's Signatures. Legibility Is Not a Requirement Under the Election Code.**

14. Due process entitles the Candidate to be informed exactly why a signature is attacked, to-wit: unregistered, out-of-district, forgery, etc. Paragraph 16, which takes issue with the legibility of signatures, fails to allege any legally recognized defect reason for objecting to a signature. For example, the Objector could have alleged forgery (signer signed not in own proper person), and, in response, the Candidate would have been able to review signatures or obtain voter affidavits. Objector could have alleged non-registration, which would have permitted the Candidate an opportunity to review voter file records. Statute requires the signers to be registered voters and to sign in their own proper persons. 10 ILCS 5/7-10. But the statute does not require that voters sign legibly. Objector had the responsibility to make a good faith effort to inform Candidate that the signature was believed to be of a non-registered person or not a genuine signature (or both). But to inform Candidate that the signer has bad handwriting is not in compliance with statute.

15. The Board's Rules of Procedure envision this specificity requirement at App. 12 (Rule E), noting that Objector must give a basis of "not registered" or "not genuine" for signatures believed illegible. Objector failed to do so. This failure violates the statutory requirement that each objection must "state fully" the nature of the objection. 10 ILCS 5/10-8.

16. Striking paragraph 16 of the Objection restores 331 (276 + 55) signatures to Candidate's total.

**CONCLUSION**

Objector has conceded Candidate Clinton has 2,864 valid signatures. The striking of any of these paragraphs, totaling 137 signatures, gives the Candidate the right to appear upon the Democratic Party ballot, without the Board expending needless time and monies to conduct an unnecessary records examination.

**WHEREFORE**, Candidate prays that the Objection filed in this case be stricken and dismissed and that an Order be entered placing the name of **HILLARY CLINTON** as a candidate for nomination by the Democratic Party for the office of President of the United States be printed on the official ballot at the Primary Election to be held on March 15, 2016.

/s/Michael Kreloff  
MICHAEL KRELOFF  
Attorney for Candidate

Michael Kreloff  
Attorney at Law  
1926 Waukegan, Suite 310  
Glenview, IL. 60025  
847.525-1139 (c)  
847.486.0230 (f)  
capitolaction@yahoo.com

ARDC #1529560

BEFORE THE ILLINOIS STATE BOARD OF ELECTIONS SITTING AS THE  
STATE OFFICERS ELECTORAL BOARD

**BRANT DAVIS,** )  
 )  
 Objector, )  
 )  
 v. ) **16-SOEB GP 533**  
 )  
**HILLARY CLINTON,** )  
 )  
 Candidate. )

**NOTICE OF FILING**

TO: State Officers Electoral Board Rosaura Rodriguez  
 rrodriguez@elections.il.gov  
 Ken Menzel, General Counsel  
 kmenzel@elections.il.gov Anish Parikh, Esq.  
 anish@plgfirm.com  
 Philip Krasny, Esq.  
 philipkrasny@yahoo.com

PLEASE TAKE NOTICE that on January 22, 2016, I, Michael Kreloff, an attorney, served the foregoing Notice of Filing and attached Motion to Strike and Dismiss via E-mail to the above named persons.

/s/Michael Kreloff  
Michael Kreloff

**PROOF OF SERVICE**

I, Michael Kreloff, an attorney, certify that I served the referenced documents upon the persons listed above by e-mailing a copy prior to 5:00 p.m. on January, 22, 2016.

/s/ Michael Kreloff  
Michael Kreloff

Michael Kreloff, Attorney at Law  
1926 Waukegan Rd., Suite 310  
Glenview, IL 60025  
847.525.1139 (c)  
847-486-0230 (f)  
capitolaction@yahoo.com  
ARDC #1529560

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING  
AND PASSING UPON OBJECTIONS TO THE NOMINATION PAPERS FOR  
CANDIDATES FOR THE OFFICE OF UNITED STATES PRESIDENT**

**BRANT DAVIS,** )  
 )  
 **Objector,** )  
 )  
 vs. )  
 )  
 **HILLARY RODHAM CLINTON,** )  
 )  
 **Candidate.** )

Case No.

~~ORIGINAL ON FILE AT~~ ) *OR*  
~~STATE BD OF ELECTIONS~~  
~~ORIGINAL TIME STAMPED~~  
AT 438 pm on 1-13-16 ) *JT*

~~ORIGINAL ON FILE AT~~  
~~STATE BD OF ELECTIONS~~  
~~ORIGINAL TIME STAMPED~~  
AT 438 pm on 1-13-16 ) *JT*

**VERIFIED OBJECTOR'S PETITION**

NOW COMES the Objector, **BRANT DAVIS** ("Objector"), and states that Objector resides at 1635 West Beach, Unit 2, in the City of Chicago, Cook County, Illinois 60622, and that he is a registered, qualified, legal voter of the State of Illinois, and his interest in filing this objection is that of citizen desirous of seeing that the Laws of the State of Illinois governing the filing of such petitions for nomination are fully and properly complied with and that only those petitions which do properly comply therewith have their names printed upon the ballot to be voted upon at the General Primary Election to be held March 15, 2016 (the "Election"). In support thereof, Objector makes the following objections:

1. Candidate Hillary Rodham Clinton's ("Candidate") Petition for Nomination ("Petition") must include at least 3,000 valid signatures of legal voters in order for her name to appear on the ballot for the Election.
2. The Petition contains sheets and signatures which do not comply with the requirements of the law and, as a result, those sheets and signatures must not be counted towards the minimum signature requirement for Candidate.

3. The Petition contains certain sheets which are invalid in their entirety because the Circulator's Affidavit was not properly "sworn to before some officer authorized to administer oaths in this State." Specifically, the Circulator's Affidavits on these sheets fail to identify the county in which the affidavit was executed and/or notarized. The specific sheets which are invalid under this paragraph are as follows: 169, 207, 209, 212, 217, 289, 310, 333, 343, 344, 346, 363, 399, 408, 418, 473, 476, 490, and 492.

4. Page 212 of the Petition is invalid because the Circulator did not identify the Circulator's "street address or rural route number, as the case may be, as well as the county, city, village or town, and state."

5. Pages 216, 357, and 489 of the Petition are invalid and fail to satisfy the requirements of the Election Code because the address specified for the Circulator on each page does not appear to correspond to a residence.

6. Pages 6, 40, 53, 117, 247, 291, 340 and 440 of the Petition are invalid because the Circulator's name, signature, and street address are illegible, making it unreasonably difficult or impossible to identify and locate the Circulator from the face of the document.

7. The Petition contains petition sheets which are invalid because they were not properly "sworn to before some officer authorized to administer oaths in this State." The oaths and/or notarizations on these pages are legally insufficient and invalid because each fails to specify the complete date on which the document was notarized. The petition sheets which are invalid under this paragraph are as follows: 124, 349, 350, 375, and 385.

8. The Petition contains petition sheets which are invalid because they were not properly "sworn to before some officer authorized to administer oaths in this State." The oaths and/or notarizations on these pages are legally insufficient and invalid because the notary failed

to affix an official stamp or seal and because the notary's signature is illegible. The Petition sheets which must be invalidated under this paragraph are as follows: 42, 52, 62, 72, 83, 134, 144.

9. The Petition contains individual signatures which must be invalidated because they contain illegible addresses and other defects which render them invalid. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading "The following 206 page numbers and line numbers, denoted as (page#)/(line#), have an illegible address, along with other defects, that render them incapable of verifying the alleged registrants."

10. The Petition contains individual signatures which must be invalidated because they fail to contain complete addresses for signers which render those signatures invalid. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading "The following 221 page numbers and line numbers, denoted as (page#)/(line#) have insufficient information in the printed address, along with other defects, that do not match a particular alleged registrant."

11. The Petition contains signature lines which were left blank. These lines are contained in the attached Appendix under the heading "The following 41 page numbers and line numbers, denoted as (page#)/(line#) were left blank."

12. The Petition contains individual signatures which must be invalidated because they contain an illegible city or other defects which render those signatures invalid. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading "The following 71 page numbers and line numbers, denoted as

(page#)/(line#) have an illegible city name along with other defects, that render them incapable of verifying the alleged registrants.”

13. The Petition contains individual signatures which must be invalidated because they fail to contain complete addresses for signers which render those signatures invalid. Specifically, the signatures objected to in this paragraph do not contain a city for the signer. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 16 page numbers and line numbers, denoted as (page#)/(line#) improperly omitted city name.”

14. The Petition contains individual signatures which must be invalidated because they fail to include a county or the county is illegible. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 22 page numbers and line numbers, denoted as (page#)/(line#) #) have an illegible County name along with other defects, that render them out of compliance with applicable law” and “The following 28 page numbers and line numbers, denoted as (page#)/(line#) improperly omitted County name.”

15. The Petition contains individual signatures which were executed multiple times. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 4 page numbers and line numbers, denoted as (page#)/(line#) were duplicated elsewhere in the petition.”

16. The Petition contains individual signatures which must be invalidated because they are entirely illegible. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 276 page numbers and line numbers, denoted as (page#)/(line#) have an illegible registrant name, along with other

defects, that render them incapable of verifying the alleged registrants” and “The following 55 page numbers and line numbers, denoted as (page#)/(line#) have an illegible registrant name, along with other defects, that render them incapable of verifying the alleged registrants.”

17. The Petition contains individual signatures which must be invalidated because they list a post office box as the address as the alleged signer. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 5 page numbers and line numbers, denoted as (page#)/(line#) impermissibly list a post office box as the address of the alleged registrant.”

18. The Petition contains individual signatures of people whose registered address is other than that listed on the Petition. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 308 page numbers and line numbers, denoted as (page#)/(line#), impermissibly includes an individual whose registered address is other than that listed on the nominating form.”

19. The Petition contains signatures of individuals who are not registered voters. These signatures along with their individual sheet and line numbers are contained in the attached Appendix under the heading “The following 308 page numbers and line numbers, denoted as (page#)/(line#), impermissibly includes an individual whose registered address is other than that listed on the nominating form.”

20. The minimum number of signatures required for the Petition is 3,000. Based on the above signatures which must be stricken from the Petition, the Petition falls below the minimum signature requirement and thus must not appear on the ballot for the Election.

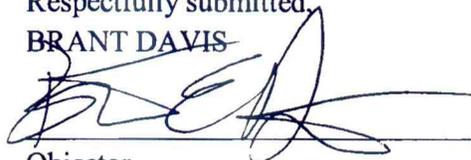
21. The Appendix is incorporated herein and the objections made therein are hereby

made a part of this Verified Objectors' Petition. Each specific objection is identified by sheet number and line number.

WHEREFORE, Objector, **BRANT DAVIS**, prays that the objections outlined herein be sustained, that the **PETITION FOR NOMINATION** be declared invalid under the applicable laws, and that the name of Candidate not appear on the ballot for the General Primary Election to be held on March 15, 2016.

Respectfully submitted,

**BRANT DAVIS**



---

Objector

**OBJECTOR VERIFICATION**

STATE OF ILLINOIS        )  
                                      ) SS.  
COUNTY OF COOK        )

The undersigned, BRANT DAVIS, upon oath deposes and says that he is one of the Objectors identified in the above Verified Objectors' Petition, that he has reviewed the allegations contained in said Petition and is familiar with the matters alleged therein and that such allegations are true and correct to the best of his knowledge.

  
\_\_\_\_\_  
Objector Brant Davis

Subscribed and Sworn to before me  
this 13<sup>th</sup> day of January, 2016.



  
\_\_\_\_\_  
NOTARY PUBLIC

## APPENDIX

The following 206 page numbers and line numbers, denoted as (page#)/(line#), have an illegible address, along with other defects, that render them incapable of verifying the alleged registrants.

8/1, 11/10, 14/10, 15/5, 15/9, 15/10, 24/1, 24/4, 24/10, 27/10, 31/6, 34/8, 34/10, 36/8, 38/5, 39/2, 41/9, 42/2, 47/9, 51/1, 51/3, 51/8, 52/5, 59/2, 61/1, 61/8, 62/8, 63/5, 63/7, 65/5, 66/1, 67/2, 67/3, 67/4, 67/6, 67/7, 67/8, 73/3, 73/7, 73/8, 74/9, 75/1, 75/2, 75/3, 75/5, 75/6, 75/7, 75/8, 75/10, 77/8, 77/9, 77/10, 78/7, 84/1, 84/2, 88/1, 91/4, 92/2, 95/5, 95/6, 97/4, 97/9, 103/1, 106/7, 106/8, 109/8, 112/6, 112/8, 113/1, 113/4, 113/5, 113/9, 113/10, 118/8, 119/9, 141/4, 143/3, 143/6, 148/1, 151/10, 161/2, 162/5, 163/5, 165/2, 166/1, 181/6, 183/4, 184/7, 185/1, 185/3, 185/10, 186/4, 186/10, 187/5, 190/5, 190/6, 191/2, 213/8, 227/1, 227/2, 237/2, 237/9, 242/8, 245/4, 246/8, 248/4, 253/9, 254/9, 256/3, 256/8, 259/9, 266/2, 278/10, 280/5, 284/7, 290/5, 290/7, 292/1, 292/2, 292/10, 293/10, 296/5, 297/9, 298/5, 300/4, 308/7, 337/4, 339/7, 341/1, 341/5, 341/10, 345/8, 345/10, 348/3, 370/2, 371/8, 372/10, 379/9, 388/1, 389/4, 391/5, 391/6, 392/4, 392/5, 392/10, 393/5, 393/6, 393/7, 393/8, 397/1, 397/2, 397/7, 404/6, 406/4, 406/8, 409/9, 417/3, 417/7, 426/4, 431/3, 431/7, 431/10, 432/9, 433/5, 441/5, 441/6, 442/10, 447/2, 448/9, 449/4, 451/2, 451/6, 451/8, 458/8, 459/10, 460/2, 460/4, 461/6, 461/9, 461/10, 462/3, 462/9, 462/10, 464/3, 465/5, 470/5, 470/6, 470/9, 475/10, 478/7, 479/1, 479/4, 480/7, 482/2, 482/7, 482/9, 483/3, 483/5, 484/10, 485/6, 485/7, 486/4, 488/3, 491/10, 496/4, 498/7

The following 221 page numbers and line numbers, denoted as (page#)/(line#) have insufficient information in the printed address, along with other defects, that do not match a particular alleged registrant.

3/1, 3/9, 4/1, 4/5, 4/6, 5/4, 7/8, 11/2, 17/4, 31/1, 33/1, 34/9, 37/8, 45/1, 48/3, 48/4, 48/5, 48/6, 58/2, 59/1, 59/3, 59/4, 60/1, 60/2, 60/3, 68/9, 85/3, 85/5, 85/9, 85/10, 90/1, 90/2, 90/4, 90/6, 90/7, 91/2, 91/7, 91/10, 92/7, 96/4, 97/8, 101/4, 101/5, 101/6, 101/7, 101/8, 101/9, 101/10, 104/4, 110/7, 111/1, 111/2, 111/3, 111/4, 112/4, 142/3, 142/8, 148/9, 155/6, 155/7, 155/10, 165/4, 165/8, 168/1, 168/2, 168/3, 168/4, 168/5, 168/6, 170/6, 170/7, 170/8, 170/9, 170/10, 171/8, 175/1, 175/4, 175/5, 175/6, 175/7, 175/8, 175/9, 175/10, 176/7, 180/3, 180/5, 180/6, 185/2, 185/6, 188/4, 188/5, 188/6, 195/7, 195/8, 198/3, 198/4, 198/6, 200/3, 200/4, 200/5, 200/6, 200/7, 200/8, 200/9, 200/10, 201/9, 201/10, 205/6, 218/7, 221/1, 221/2, 221/6, 221/8, 221/9, 221/10, 245/1, 245/5, 246/4, 246/5, 246/9, 248/2, 256/1, 256/2, 256/5, 256/9, 258/6, 271/8, 294/3, 295/4, 319/8, 319/9, 339/1, 351/1, 351/2, 352/1, 354/4, 354/7, 356/5, 356/7, 358/4, 359/3, 359/10, 366/7, 366/10, 369/1, 369/5, 372/3, 372/4, 372/5, 372/6, 372/7, 372/9, 377/8, 397/3, 397/4, 397/5, 397/6, 417/1, 429/1, 429/2, 429/3, 429/4, 429/5, 429/6, 429/7, 429/9, 434/6, 434/8, 434/9, 438/3, 438/4, 438/5, 438/6, 438/7, 438/8, 438/9, 438/10, 451/1, 454/2, 454/7, 456/1, 456/6, 456/7, 456/8, 456/9, 456/10, 457/3, 457/5, 458/9, 458/10, 461/1, 461/5, 461/7, 461/8, 465/1, 465/2, 465/8, 465/9, 467/1, 467/2, 467/3, 467/4, 467/5, 467/6, 467/7, 469/2, 472/1, 472/7, 472/8, 474/1, 474/2, 474/4, 474/7, 474/8, 475/5, 475/7, 475/8, 478/4, 478/9, 478/10, 488/6

The following 41 page numbers and line numbers, denoted as (page#)/(line#) were left blank.

33/3, 33/7, 65/3, 95/10, 123/8, 152/8, 152/9, 153/7, 154/1, 155/8, 156/5, 156/6, 156/7, 157/4, 157/6, 181/9, 184/2, 190/3, 230/3, 319/10, 332/10, 335/10, 355/9, 362/3, 410/6, 410/7, 410/8, 410/9, 410/10, 420/4, 420/5, 420/6, 420/7, 420/8, 420/9, 420/10, 430/6, 430/7, 430/8, 430/9, 430/10

The following 71 page numbers and line numbers, denoted as (page#)/(line#) have an illegible city name along with other defects, that render them incapable of verifying the alleged registrants.

22/1, 22/9, 24/2, 24/3, 24/5, 25/3, 25/4, 41/8, 41/10, 43/10, 47/4, 56/3, 56/9, 64/1, 64/7, 64/8, 66/2, 76/7, 122/10, 142/6, 143/10, 162/1, 162/2, 163/3, 166/2, 192/1, 268/5, 269/1, 269/2, 269/3, 269/4, 269/5, 269/6, 269/7, 269/8, 269/9, 269/10, 293/2, 296/4, 308/3, 331/5, 374/3, 386/1, 386/10, 389/5, 392/2, 392/3, 392/6, 392/7, 398/2, 398/6, 405/5, 405/6, 417/10, 430/2, 436/10, 447/3, 455/2, 455/5, 455/10, 466/4, 466/6, 468/6, 468/7, 477/7, 477/9, 483/1, 483/2, 483/6, 483/7, 494/8

The following 16 page numbers and line numbers, denoted as (page#)/(line#) improperly omitted city name.

1/7, 33/2, 132/3, 180/9, 234/1, 234/2, 234/3, 234/4, 234/5, 234/6, 234/7, 234/8, 234/9, 234/10, 362/1, 367/8, 435/8, 494/10, 496/9

The following 22 page numbers and line numbers, denoted as (page#)/(line#) #) have an illegible County name along with other defects, that render them out of compliance with applicable law.

24/6, 24/7, 24/8, 42/8, 42/10, 82/6, 162/7, 162/8, 162/9, 162/10, 164/3, 183/6, 455/6, 466/10, 477/1, 477/2, 480/8, 483/9, 483/10, 495/1, 495/2, 495/4

The following 28 page numbers and line numbers, denoted as (page#)/(line#) improperly omitted County name.

9/6, 9/7, 9/8, 9/9, 9/10, 260/5, 271/3, 274/6, 301/1, 301/2, 301/3, 301/4, 302/1, 302/2, 302/3, 302/4, 302/5, 302/6, 302/7, 302/8, 302/9, 302/10, 318/10, 380/1, 382/10, 423/10, 436/6, 192/2

The following 4 page numbers and line numbers, denoted as (page#)/(line#) were duplicated elsewhere in the petition.

29/4, 29/7, 57/10, 259/5

The following 276 page numbers and line numbers, denoted as (page#)/(line#) have an illegible registrant name, along with other defects, that render them incapable of verifying the alleged registrants.

3/2, 5/5, 7/3, 7/9, 8/2, 10/2, 10/3, 10/7, 10/8, 11/3, 11/7, 11/9, 12/3, 12/8, 13/8, 14/4, 14/6, 14/9, 15/7, 16/8, 17/1, 17/5, 17/7, 18/2, 19/7, 19/8, 20/7, 23/5, 23/10, 28/4, 29/8, 30/3, 30/8, 31/10, 38/9, 39/1, 39/3, 39/8, 41/1, 42/3, 43/9, 44/6, 44/8, 45/2, 47/3, 51/2, 51/6, 52/2, 56/8, 57/3, 57/6, 61/3, 61/4, 62/9, 62/10, 66/7, 69/4, 69/6, 69/8, 69/9, 71/10, 72/9, 74/2, 75/9, 76/1, 76/10, 77/6, 79/4, 80/5, 80/6, 81/10, 87/3, 87/4, 87/5, 87/6, 87/7, 87/8, 87/9, 87/10, 88/3, 90/5, 90/8, 90/9, 90/10, 92/1, 93/1, 93/2, 93/7, 94/1, 94/2, 94/4, 94/5, 94/9, 97/1, 99/2, 99/9, 101/1, 103/2, 104/1, 104/6, 104/7, 104/8, 104/10, 105/1, 105/3, 105/9, 105/10, 106/1, 106/2, 106/9, 106/10, 107/7, 108/7, 109/7, 109/9, 109/10, 113/3, 113/8, 114/5, 115/6, 118/5, 118/10, 119/2, 119/6, 119/7, 130/1, 140/2, 141/10, 142/2, 142/9, 143/7, 143/9, 144/7, 145/4, 145/9, 152/10, 162/3, 163/7, 163/9, 163/10, 164/5, 165/7, 165/10, 167/5, 167/7, 167/9, 167/10, 170/4, 181/4, 181/8, 181/10, 183/5, 184/4, 186/8, 187/9, 188/1, 188/2, 188/3, 188/8, 188/9, 189/3, 189/7, 190/2, 190/9, 194/8, 205/10, 210/1, 213/9, 223/1, 224/1, 224/2, 224/7, 224/10, 225/4, 225/9, 228/6, 231/1, 233/9, 235/1, 235/2, 235/7, 235/9, 235/10, 236/10, 237/5, 239/4, 245/2, 245/3, 245/6, 245/8, 246/3, 246/10, 248/8, 253/10, 254/1, 254/10, 258/8, 259/7, 265/4, 265/8, 266/8, 268/8, 268/9, 268/10, 284/1, 290/1, 293/6, 293/7, 293/8, 293/9, 294/2, 300/8, 315/2, 325/3, 325/8, 341/3, 342/5, 342/6, 345/6, 345/9, 347/2, 347/5, 347/6, 348/4, 348/10, 367/6, 370/6, 383/4, 387/1, 387/6, 387/8, 388/2, 388/6, 389/10, 392/8, 393/4, 394/3, 394/10, 395/10, 396/7, 397/8, 403/7, 405/3, 405/9, 406/6, 409/7, 416/10, 424/10, 431/5, 431/8, 433/8, 439/9, 442/4, 442/5, 449/2, 452/6, 452/8, 454/8, 457/2, 458/3, 460/1, 461/2, 461/3, 461/4, 462/4, 465/6, 470/3, 472/2, 475/1, 479/8, 480/1, 481/9, 482/10, 483/4, 486/2, 493/4

The following 55 page numbers and line numbers, denoted as (page#)/(line#) have an illegible registrant name, along with other defects, that render them incapable of verifying the alleged registrants.

108/8, 21/2, 49/6, 55/6, 84/10, 85/8, 89/8, 89/9, 90/3, 97/6, 97/10, 100/1, 113/7, 130/3, 130/4, 148/2, 148/10, 151/6, 151/9, 156/4, 160/7, 163/6, 163/8, 186/6, 190/7, 190/8, 192/9, 195/6, 195/9, 203/2, 228/1, 248/10, 256/6, 266/5, 276/2, 276/4, 306/6, 329/4, 341/2, 355/3, 355/4, 360/5, 365/9, 367/9, 377/1, 377/2, 379/1, 396/10, 409/3, 409/5, 424/9, 432/8, 443/10, 493/10, 495/7

The following 5 page numbers and line numbers, denoted as (page#)/(line#) impermissibly list a post office box as the address of the alleged registrant.

64/4, 206/7, 206/8, 222/10, 241/5

The following 358 page numbers and line numbers, denoted as (page#)/(line#), impermissibly includes an individual whose registered address is other than that listed on the nominating form.

2/2, 3/6, 3/10, 4/8, 5/9, 5/10, 7/4, 7/6, 7/10, 8/3, 10/1, 12/9, 12/10, 13/5, 13/6, 14/2, 14/7, 14/8, 15/3, 15/4, 17/6, 17/8, 22/10, 23/7, 23/8, 24/9, 27/1, 27/7, 27/8, 27/9, 28/3, 28/7, 29/10, 30/2, 33/9, 37/3, 38/7, 39/10, 41/4, 42/5, 43/4, 46/3, 46/5, 52/7, 56/10, 61/5, 61/9, 62/5, 63/8, 63/9, 65/2, 66/4, 66/5, 66/8, 66/9, 67/10, 68/5, 69/5, 70/3, 70/4, 70/8, 71/1, 71/6, 71/7, 71/9, 72/6, 72/7, 72/8, 73/6, 74/8, 75/4, 76/8, 76/9, 80/9, 81/7, 82/1, 82/4, 82/8, 85/6, 86/6, 89/4, 96/5, 97/5, 98/2, 98/8, 99/1, 99/5, 99/8, 101/2, 102/7, 104/5, 105/4, 106/3, 106/4, 107/2, 107/5, 108/4, 108/10, 118/7, 125/9, 128/7, 142/1, 142/10, 145/7, 146/5, 146/10, 147/5, 147/6, 151/7, 154/2, 154/3, 154/6, 155/1, 156/3, 160/3, 160/9, 171/7, 172/1, 172/2, 172/7, 173/8, 173/9, 174/9, 176/1, 176/5, 177/6, 177/7, 178/6, 178/8, 183/10, 184/9, 185/8, 190/1, 192/10, 196/7, 202/2, 204/5, 204/8, 204/9, 214/5, 215/6, 215/9, 219/1, 219/5, 220/1, 220/10, 221/3, 221/4, 221/7, 226/10, 228/9, 230/4, 230/5, 230/6, 231/3, 231/4, 231/5, 231/10, 232/1, 232/4, 232/6, 233/5, 236/5, 237/1, 237/4, 238/1, 238/3, 238/8, 239/3, 239/5, 240/10, 248/1, 250/8, 255/7, 255/8, 257/8, 257/10, 258/1, 260/7, 261/6, 262/2, 262/3, 262/7, 264/5, 264/10, 266/4, 267/3, 268/3, 270/6, 270/9, 271/5, 271/9, 271/10, 278/2, 285/4, 287/3, 287/7, 293/4, 295/5, 296/3, 297/4, 297/5, 298/1, 298/3, 298/6, 299/7, 299/8, 304/7, 306/3, 306/4, 307/1, 309/1, 316/2, 319/7, 321/3, 322/3, 322/6, 322/8, 324/8, 324/9, 327/7, 327/8, 328/2, 328/7, 329/2, 329/3, 329/9, 329/10, 332/1, 335/1, 335/6, 338/2, 338/6, 338/7, 338/9, 338/10, 339/6, 339/9, 341/4, 352/6, 354/10, 356/9, 358/1, 358/8, 358/9, 362/5, 362/9, 362/10, 364/2, 365/3, 366/4, 366/6, 367/4, 374/2, 376/3, 382/2, 382/8, 387/2, 387/10, 389/2, 391/9, 391/10, 392/1, 395/1, 395/8, 397/9, 398/1, 401/3, 401/6, 401/9, 402/5, 402/10, 403/10, 406/3, 411/10, 412/1, 413/9, 415/3, 416/9, 419/10, 420/2, 421/6, 422/1, 422/2, 422/7, 423/6, 423/8, 424/1, 424/2, 425/3, 426/3, 426/6, 427/9, 427/10, 429/10, 436/9, 437/8, 444/7, 444/8, 446/2, 446/5, 446/7, 446/10, 451/9, 451/10, 452/4, 453/8, 454/1, 455/1, 459/4, 459/5, 459/6, 459/9, 464/4, 464/5, 464/9, 466/1, 466/2, 466/7, 466/9, 470/2, 470/7, 470/8, 470/10, 471/4, 472/9, 474/3, 474/5, 474/6, 474/9, 475/9, 477/5, 477/10, 478/1, 478/2, 478/5, 480/3, 480/5, 480/9, 482/3, 482/4, 482/6, 484/9, 487/9, 491/3, 491/5, 491/6, 493/1, 493/3, 493/5, 494/2, 494/3, 495/5, 495/6, 496/3, 496/6, 497/1, 498/8

The following 404 page numbers and line numbers, denoted as (page#)/(line#), impermissibly includes an individual who does not appear to be a registered voter.

1/10, 3/5, 10/9, 13/4, 14/3, 15/1, 15/2, 19/6, 21/4, 22/8, 25/5, 25/10, 26/6, 26/9, 29/6, 29/9, 30/1, 30/4, 32/1, 32/8, 32/9, 33/4, 33/5, 35/10, 39/9, 42/6, 42/9, 43/3, 45/5, 45/6, 45/7, 45/9, 45/10, 46/1, 46/2, 46/4, 46/10, 47/6, 47/7, 48/2, 48/7, 48/8, 48/9, 50/6, 50/10, 51/7, 52/1, 52/9, 55/1, 55/5, 55/9, 58/6, 58/7, 58/9, 58/10, 59/6, 59/7, 60/7, 71/2, 82/2, 82/5, 84/4, 84/8, 85/1, 85/4, 88/6, 88/10, 89/7, 91/5, 92/10, 93/10, 94/6, 94/10, 95/1, 95/9, 96/9, 96/10, 98/4, 98/5, 98/9, 99/10, 100/10, 102/8, 103/10, 106/5, 106/6, 107/1, 108/1, 108/5, 108/9, 110/5, 110/9, 111/10, 112/2, 113/2, 113/6, 114/10, 115/10, 118/9, 119/4, 121/6, 121/7, 121/8, 121/10, 122/3, 122/5, 122/6, 122/8, 122/9, 123/10, 126/3, 126/4, 127/3, 127/7, 127/8, 127/10, 128/4, 128/9, 128/10, 129/3, 129/6, 129/7, 130/2, 141/9, 142/4, 142/5, 143/1, 147/4, 147/9, 148/3, 148/5, 148/8, 149/1, 150/1, 150/7, 150/9, 150/10, 153/4, 153/10, 156/1, 156/8, 156/10, 157/9, 157/10, 158/1, 158/7, 158/8,

158/9, 158/10, 160/1, 161/6, 164/9, 165/1, 165/3, 165/9, 167/8, 168/8, 171/3, 171/4, 171/5,  
173/4, 175/3, 176/4, 178/5, 180/4, 180/8, 181/3, 184/3, 184/5, 184/10, 187/2, 191/1, 191/7,  
194/5, 194/10, 195/1, 195/2, 195/10, 196/1, 196/2, 196/4, 196/5, 196/6, 196/8, 196/9, 198/2,  
198/7, 200/1, 201/2, 201/3, 201/4, 201/5, 201/6, 201/7, 201/8, 202/10, 203/1, 203/3, 203/4,  
203/5, 203/7, 205/3, 205/4, 205/5, 205/7, 206/1, 206/2, 206/3, 206/4, 206/6, 206/9, 210/3, 210/6,  
210/7, 211/1, 211/2, 211/3, 211/6, 211/10, 213/6, 215/4, 218/8, 222/2, 222/3, 222/6, 222/8,  
222/9, 223/7, 223/8, 223/9, 223/10, 224/3, 224/4, 224/8, 225/3, 225/10, 226/1, 226/5, 226/8,  
226/9, 229/5, 230/10, 242/2, 244/9, 252/3, 254/8, 256/7, 256/10, 258/3, 258/4, 260/6, 263/7,  
266/9, 268/2, 272/8, 274/9, 276/9, 276/10, 277/5, 281/6, 287/2, 287/10, 288/8, 292/7, 293/3,  
294/1, 294/7, 294/10, 295/7, 298/2, 298/8, 298/9, 298/10, 299/6, 299/9, 300/5, 300/6, 300/7,  
301/5, 301/6, 301/8, 301/9, 301/10, 306/5, 308/2, 308/6, 308/9, 309/4, 309/6, 311/2, 312/1,  
312/2, 312/4, 314/2, 314/8, 315/10, 316/1, 316/5, 317/1, 318/1, 318/2, 319/1, 319/2, 319/3,  
319/4, 320/10, 321/4, 322/2, 323/2, 324/4, 325/2, 326/8, 327/5, 327/10, 328/9, 336/5, 338/4,  
338/5, 341/7, 342/4, 347/8, 347/10, 351/5, 354/2, 354/8, 360/2, 360/3, 364/4, 364/8, 369/3,  
369/8, 370/3, 370/4, 370/7, 370/8, 371/3, 371/4, 371/5, 372/2, 373/3, 373/4, 373/9, 374/6, 374/9,  
376/8, 377/9, 379/2, 382/1, 382/3, 382/7, 394/6, 394/7, 402/1, 402/2, 402/4, 403/8, 404/2, 404/8,  
406/7, 410/2, 410/3, 412/4, 413/2, 413/5, 416/1, 416/2, 416/8, 417/2, 417/9, 420/1, 424/3, 424/7,  
425/1, 426/9, 428/1, 428/3, 428/4, 430/3, 431/6, 434/2, 436/3, 437/1, 437/2, 437/3, 439/1, 439/2,  
441/4, 443/4, 445/6, 446/1, 446/9, 447/7, 449/6, 451/3, 454/10, 480/4, 491/1, 491/4, 494/1,  
494/7, 495/9, 495/10, 496/1, 498/9