

STATE OF NEW JERSEY
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

IN THE MATTER OF PRIMARY : OAL DOCKET NO.
ELECTIONS PETITION FOR : AGENCY DOCKET NO.
NOMINATION OF SENATOR TED :
CRUZ FOR PRESIDENT OF THE :
UNITED STATES :
_____ :

**EXCEPTIONS OF OBJECTOR VICTOR POWERS, DONNA WARD, AND BRUCE STOM
TO ALJ JEFF MASIN'S INITIAL DECISION**

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Exceptions to the Decision of ALJ Masin's Initial Decision

Objectors accept that part of ALJ Masin's decision in which he finds that objectors have standing and that their objection does not present a political question and is therefore justiciable. Objectors reject that part of his decision dealing with the definition of an Article II natural born citizen and whether Senator Ted Cruz meets that definition.

ALJ Masin has neither considered nor addressed the historical and legal evidence that objectors provided in their two briefs to the court. He does not address any of the arguments that they made in these briefs. Rather, ALJ Masin relies upon some law professors and commentators and their articles for his decision, without actually analyzing the relevant historical and legal sources cited within those articles. What these professors and commentators do in their articles is tell us the meaning of a natural born citizen is not clear and therefore tell us what it *ought* mean. But the historical and legal sources tell us what the meaning was and if these writers want to change that meaning, then they should advocate for a constitutional amendment rather than provide some revisionist definition of the clause which then they ask us to adopt as the meaning of the clause. ALJ Masin fails to realize this, rejects the original definition of an Article II natural

born citizen, and rather just adopts their revisionist definition of a natural born citizen.

ALJ Masin concludes that one who obtains citizenship through inheritance, i.e., through jus sanguinis, is not a naturalized citizen. Opinion p. 8. This is contrary to the decisions of our U.S. Supreme Court. One needing a naturalization Act of Congress to be a citizen is not nor can one be a natural born citizen. See Minor v. Happersett, 88 U.S. 162, 167-68 (1875); U.S. v. Wong Kim Ark, 169 U.S. 649, 665 (1898); United States v. Perkins, 17 Fed. Supp. 177 (D.D.C. 1936); Schaufus v. Attorney General, 45 Fed. Supp. 61 (1942); Zimmer v. Acheson, 191 Fed.2d 209 (10th Cir. 1951); Montana v. Kennedy, 366 U.S. 308 (1961); Rogers v. Bellei, 401 U.S. 815 (1971); and Miller v. Albright, 523 U.S. 420 (1998) (explaining that children born out of the United States by inheritance of citizenship from U.S. citizen parents could be citizens of the United States only through a naturalization Act of Congress, and that without such Act, such children would be aliens). These cases also prove that the common law that defined U.S. citizenship never did incorporate English naturalization statutes as providing some different meaning to that common law, a meaning to suggest that a person born out of the United States to one or two U.S. citizen parents could ever be a natural born

citizen rather than a naturalized citizen of the United States. AJL totally ignores these binding precedents of our U.S. Supreme Court and adopts a revisionist definition of a natural born citizen in the place of their teachings. The decisions of the U.S. Supreme Court are binding upon ALJ Masin, but he does not feel as though he is bound by them.

There is no historical or legal evidence that the Framers relied upon the naturalization Acts of Parliament for their definition of a natural born citizen. ALJ Masin does not present any such evidence. He acknowledges that Charles Gordon admits that such "evidence is slender," but that does not stop him from placing his reliance upon the English naturalization Acts. All the historical and legal sources that objectors cited in their briefs show the contrary, sources which ALJ does not comment upon or analyze.

ALJ Masin confuses the fact that English common law and statutes may have been adopted by the states with whether those same laws were adopted by the Framers as national laws. There is no evidence that they did and he does not produce any. His reliance upon some state court decision telling us what the common law of those states was is misplaced, for the common law of the colonies or states never became the common law of the

United States. It is a national rule that defined U.S. citizenship, not a state rule.

ALJ Masin provides mostly his own conjecture on what John Jay meant by his famous letter to George Washington dated July 1787. He assigns to John Jay some corrupt motive, to make his own children born out of the United States natural born citizens. There would not have been any such corrupt motive on the part of Jay, for as we can see from the following quote, all of his surviving children would have been under Article II either natural born citizens or grandfathered as citizens of the United States and thus eligible to be President: "The happy marriage of John and Sarah Jay produced six children: Peter Augustus, born in Elizabeth, New Jersey, in 1776; Susan, born and died in Madrid after only a few weeks of life, in 1780; Maria, born in Madrid in 1782; Ann, born in Paris in 1783, William and Sarah Louisa, born in NYC in 1789 and 1792 respectively."

http://www.columbia.edu/cu/lweb/conferences/2004/john_jay/pdf/No_rth.pdf .

ALJ Masin glosses over the significant change made by the Naturalization Act of 1795 in removing the language from the Naturalization Act of 1790, "shall be considered as natural born citizens" and replacing it with "shall considered as citizens of

the United States.” He dismissed this elephant in the room by simply saying that the Third Congress did not tell us why they made the change. He ignores that the Third Congress made the change knowing that Article II, Section 1, Clause 5 provides that after the adoption of the Constitution, only a natural born citizen (not sufficient to be a “citizen of the United States”) was eligible to be President. ALJ Masin ignores this critical fact which dooms Cruz’s argument that he is a natural born citizen under the early naturalization Acts.

At page 21 ALJ Masin says that the Framers knew that the English law that they were so steeped in had treated children born out of the country to citizen parents as natural born subjects. But yet the Third Congress removed “natural born citizen” and replaced it with “citizen of the United States.” Why would the Third Congress have done that if they meant to be guided by English naturalization statutes which called those children “natural-born subjects?” The only answer is that the Framers and Third Congress rejected being guided by both English common and statutory law.

ALJ Masin at page 21 quotes Michael Ramsey thus:

As a result, it is extremely important that under the U.S. Constitution Congress has “Power . . . To establish an uniform Rule of Naturalization.” The most obvious marker for the scope of this power is parliament’s power of naturalization. In modern American discourse,

"naturalization" is often understood as the power to extend U.S. citizenship to foreign citizens on an individualized basis. That, however, was not a full description of the power as understood in the eighteenth century (although it included that power). In addition to individualized grants of citizenship, "naturalization" in English law referred to statutes that made categories of persons English citizens. That is, "naturalization" meant a process that made someone a citizen who was not a citizen under common law. This is indeed the origin of the word: a person who was a citizen under common law was a "natural" citizen; a person made a citizen by statute was made as if they were a natural citizen - hence, naturalized. Crucially, all of the eighteenth-century statutes that declared a class of persons to be "natural born" subjects were called acts of naturalization. As a result, there is no doubt that parliament's power of naturalization included the power to declare categories of natural born subjects beyond the traditional common law. Somewhat confusingly, in terms of modern usage, these persons were *both* "natural born" and "naturalized."

[Ramsey, supra, at 33-34]. But this quote proves that any person who was not a citizen under the common law and who was made a citizen was naturalized by a statute. This quote proves that naturalization did not only exist for individual persons who became citizens after birth, but also to entire classes persons who acquired citizens at birth by way of that very statute. ALJ Masin fails to realize that this information is contrary to his conclusion.

At page 22, ALJ cites to Emer de Vattel. But that is all he does. He give absolutely no discussion or analysis of Vattel

and his definition of a natural born citizen in Sections 212 to 217 of The Law of Nations.

ALJ Masin does not discuss the unanimous U.S. Supreme Court decision of Minor v. Happersett (1875). He would rather rely upon the dissent in Wong Kim Ark rather than what the unanimous U.S. Supreme Court said in Minor.

ALJ Masin does not discuss U.S. v. Wong Kim Ark and its explanation that only those born in the country do not need naturalization by any Act of Congress.

ALJ Masin adopts Judge Pellegrini's definition of a natural born citizen as being any person who is a citizen of the United States "at birth." But he does not explain what Judge Pellegrini meant by "by birth." Did he mean at the moment of birth or did he mean by birth circumstances alone. Judge Pellegrini did not provide any analysis in this regard. A natural born citizen can only fall under the latter which does not include Ted Cruz, because he was not a citizen of the United State by his birth circumstances alone. Rather, Cruz became a citizen of the United States "at birth" only because Congress permitted by naturalization statute. So, being a citizen of the United States "at birth" is not sufficient to be a natural born citizen, for Congress also naturalizes persons to be citizens of the United States "at birth." Rather, it is necessary. What is both

necessary and sufficient is that one be born in the country to parents who were its citizens. Minor (paraphrasing Vattel, Section 212 of The Law of Nations (1758) (1797)).

Finally, ALJ Masin's equal protection argument is not necessary. The point is if a person is born out of the territory and jurisdiction of the United States, the person needs a naturalization Act of Congress to be a citizen of the United States. The fact that Congress makes that person a citizen of the United States "at birth" does not change the simple fact that Congress still naturalized that person. That reality exists whether the person is born to a U.S. citizen father, U.S. citizen mother, or both. Hence, equal protection analysis, while it has an attraction although not relevant, cannot convert one who is a naturalized citizen into one who is a natural born citizen. The person remains a naturalized citizen of the United States.

CONCLUSION

We have demonstrated that Congress naturalized Ted Cruz with a naturalization Act. Ted Cruz is at best a naturalized "citizen" of the United States "at birth." He is not nor can he be a "natural born citizen" of the United States. The New Jersey Secretary of State should therefore accept ALJ decision on standing and political question and reject that part that

defines a natural born citizen and which finds Ted Cruz a natural born citizen under that definition. Rather, she should find, based on all the historical and legal evidence provided by objectors in their briefs, that Ted Cruz is not a natural born citizen and keep his name off the New Jersey primary election ballot.

Respectfully submitted,
s/Mario Apuzzo

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