

THE DAILY CALLER

Yes, Ted Cruz can be president

Posted By [Ilya Shapiro](#)

As we head into a potential government shutdown over the funding of Obamacare, the iconoclastic junior senator from Texas — love him or hate him — continues to stride across the national stage. With his presidential aspirations as big as everything in his home state, by now many know what has never been a secret: Ted Cruz was born in Canada.

(Full disclosure: I'm Canadian myself, with a green card. Also, Cruz has been a friend since his days representing Texas before the Supreme Court.)

But does that mean that Cruz's presidential ambitions are gummed up with maple syrup or stuck in snowdrifts altogether different from those plaguing the Iowa caucuses? Are the birthers now hoist on their own petards, having been unable to find any proof that President Obama was born outside the United States but forcing their comrade-in-boots to disqualify himself by releasing his Alberta birth certificate?

No, actually, and it's not even that complicated; you just have to look up the right law. It boils down to whether Cruz is a "natural born citizen" of the United States, the only class of people constitutionally eligible for the presidency. (The Founding Fathers didn't want their newly independent nation to be taken over by foreigners on the sly.)

What's a "natural born citizen"? The Constitution doesn't say, but the Framers' understanding, combined with statutes enacted by the First Congress, indicate that the phrase means both birth abroad to American parents — in a manner regulated by federal law — and birth within the nation's territory regardless of parental citizenship. The Supreme Court has confirmed that definition on multiple occasions in various contexts.

There's no ideological debate here: Harvard law professor Laurence Tribe and former solicitor general Ted Olson — who were on opposite sides in *Bush v. Gore* among other cases — co-authored a memorandum in March 2008 detailing the above legal explanation in the context of John McCain's eligibility. Recall that McCain — lately one of Cruz's chief antagonists — was born to U.S. citizen parents serving on a military base in the Panama Canal Zone.

In other words, anyone who is a citizen at birth — as opposed to someone who becomes a citizen later ("naturalizes") or who isn't a citizen at all — can be president.

So the one remaining question is whether Ted Cruz was a citizen at birth. That's an easy one. The Nationality Act of 1940 outlines which children become "nationals and citizens of the United States at birth." In addition to those who are born in the United States or born outside the country to parents who were both citizens — or, interestingly, found in the United States without parents and no proof of birth elsewhere — citizenship goes to babies born to one American parent who has spent a certain number of years here.

That single-parent requirement has been amended several times, but under the law in effect between 1952 and 1986 — Cruz was born in 1970 — someone must have a citizen parent who resided in the United States for at least 10 years, including five after the age of 14, in order to be considered a natural-born citizen. Cruz's mother, Eleanor Darragh, was born in Delaware,

lived most of her life in the United States, and gave birth to little Rafael Edward Cruz in her 30s. *Q.E.D.*

So why all the brouhaha about where Obama was born, given that there's no dispute that his mother, Ann Dunham, was a citizen? Because his mother was 18 when she gave birth to the future president in 1961 and so couldn't have met the 5-year-post-age-14 residency requirement. Had Obama been born a year later, it wouldn't have mattered whether that birth took place in Hawaii, Kenya, Indonesia, or anywhere else. (For those born since 1986, by the way, the single citizen parent must have only resided here for five years, at least two of which must be after the age of 14.)

In short, it may be politically advantageous for Ted Cruz to renounce his Canadian citizenship before making a run at the White House, but his eligibility for that office shouldn't be in doubt. As Tribe and Olson said about McCain — and could've said about Obama, or the Mexico-born George Romney, or the Arizona-territory-born Barry Goldwater — Cruz "is certainly not the hypothetical 'foreigner' who John Jay and George Washington were concerned might usurp the role of Commander in Chief."

Ilya Shapiro is a senior fellow in constitutional studies and editor-in-chief of the Cato Supreme Court Review. Like most immigrants, he does a job Americans won't: defending the Constitution.