



Birthright Lunacy

Separating Fact from Fiction in the 14th Amendment Debate

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Some conservatives in Congress, many of who were once leaders of immigration reform efforts, have recently begun to raise a radical notion of amending the U.S. Constitution to deny citizenship to the children of some immigrant parents.

The ugly and inflammatory language of “anchor babies” and “drop and leave” may play well on right-wing TV, but it does nothing to stop illegal immigration, and instead undermines American values while imposing significant legal and administrative burdens on every American. It’s time to debunk these false claims once and for all.

Myth: The Constitution’s citizenship provisions are vague and open to interpretation.

Fact: The text of the Constitution and a succession of Supreme Court decisions could not be more clear.

The Constitution is a foundational document, not a blog for political editors. The United States adopted the Fourteenth Amendment in 1868 to ensure due process and equal protection of the laws to all persons regardless of race, color, or ancestry. Birthright citizenship was enshrined in the first sentence of the amendment: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”

Legislative history shows that Congress intended to give citizenship upon birth to all children, including the children of immigrants. Only two classes of children were explicitly excluded: the children of diplomats and children of some Native American tribes who maintained quasi-sovereign status in 1868. Amendments to

the Constitution have historically sought to enhance civil rights. Yet an amendment repealing birthright citizenship would mark the first time the Constitution was amended to roll back fundamental rights. A movement in that direction cannot be justified by the political advancement of a handful of politicians.

The citizenship clause of the 14th Amendment has repeatedly withstood legal challenges. The U.S. Supreme Court ruled in landmark decisions in 1898 and 1982 that a person should not be denied citizenship because of his or her parents' noncitizenship status and that children have no control over their parents' conduct. And the Court again in 2004 accepted as settled legal fact that birth confers status.

Myth: Congress can easily modify birthright citizenship rules.

Fact: Restricting birthright citizenship can only be accomplished through constitutional amendment, an incredibly difficult and lengthy process.

The promise of easy fixes shouldn't fool anyone. The 14th Amendment cannot be changed through an act of Congress. An initiative to repeal birthright citizenship would have to run the complex constitutional-amendment gauntlet. That requires a two-thirds majority vote in both houses of Congress or a similar vote in two-thirds of the state legislatures. And that's just to propose the amendment. From there, either three-fourths of the state legislatures need to ratify it, or ratifying conventions in three-fourths of the states must approve it. Only 33 of the thousands of proposals to amend the Constitution over the years have mustered the 2/3 votes in House and Senate. And of those 33, only 27 were ratified. This process typically takes years, or two centuries in the case of the most recent successful constitutional amendment!

The framers deliberately did not give Congress the authority to establish citizenship requirements for those born on U.S. soil. It is clear that they wanted to enshrine citizenship through immutable, objective criteria—birth—rather than make it subject to political caprice. A constitutional amendment is the only way to restrict birthright citizenship, and we are likely to see cows fly before we see the 14th Amendment repealed.

Myth: Changes to the Constitution’s citizenship provisions would only affect undocumented immigrants.

Fact: All parents would have to prove their immigration status at the time of birth.

Do we really want the Department of Homeland Security in every hospital delivery room? If being born in the United States does not establish citizenship, then the federal government would have to implement systems for producing, adjudicating, and recording the legitimacy of parents’ documents upon the birth of a child. This would require the creation of a national registry of U.S. citizens and affect not only children of undocumented immigrants, but also the children of all American citizens.

Consider the facts: most Americans do not have government documents beyond a birth certificate that establish their U.S. citizenship. In fact, about 13 million, or 7 percent of U.S. citizens, lack proof of citizenship. Proving that U.S. citizenship is derived through one or both parents is difficult even for experienced immigration attorneys. The marital status of one’s parents at the time of birth or the gender of the U.S. citizen parent can affect the citizenship determination. And if children born to undocumented immigrants were denied U.S. citizenship, some children would have no citizenship or nationality, leaving them stateless and without legal status anywhere.

Myth: Changing times call for flexible citizenship rules.

Fact: The genius of the 14th Amendment is in the fundamental rights it confers at birth.

The United States is not a country club. The framers’ intent was to create an objective basis for establishing citizenship—not a subjective standard left to the whim of a majority. The United States has, for that reason, never struggled like other nations to integrate those born here. Creating a permanent subgroup of outcasts born in the United States who can never call it their country will weaken our nation’s social cohesion. Countries such as Germany that historically denied citizenship to children of immigrants born within their borders have struggled to integrate such populations, which consistently face limited social mobility. In fact, Germany has realized the shortcomings of their system and changed its birthright citizenship laws to be more like those of the United States and other European countries.

Myth: Eliminating birthright citizenship would halt illegal immigration.

Fact: Eliminating birthright citizenship would compound our immigration problems.

Blaming babies for our immigration woes is just the latest trick from the restrictionist grab bag. The proposal to upend the constitutional principle of birthright citizenship is a blatant distraction from the real problems afflicting our nation's dysfunctional immigration system. Ending birthright citizenship would not stop or even slow illegal immigration, and in fact would add to the undocumented population, as children, through no fault of their own, are born to parents without status. Members of Congress must move beyond election season stunts and display some actual leadership in solving the problems afflicting our broken immigration system.

Myth: Undocumented immigrants get immigration status and other benefits from their “anchor babies.”

Fact: It takes a minimum of 21 years for a citizen child to sponsor an undocumented parent.

The ugly term “anchor baby” derives from a fundamental fiction. There is no immigration-based self-interested incentive for immigrants to have babies in the United States. No immigration benefit can accrue to the parent of a child born on U.S. soil for at least 21 years, and more typically 31 years. A child has to turn 21 before he or she can sponsor anyone for permanent residence. But the parent will, in most cases, have to live outside the country for a 10-year period before becoming a permanent resident because of their unlawful status.

The draw of the United States is what it has been for every generation—the opportunity to improve one's life and the life of one's family. No one comes to the United States to have a child because they want to bootstrap the child's citizenship to their own.

Conclusion

Some parents who are not living in the United States may try to game the system and come just to give birth in the hopes of providing their child a shot at a brighter future. It is still wrong, but that is a selfless reason for coming to the United States, not the selfish reason suggested by the term “anchor baby.” We should directly address that type of gaming the system on the margins if possible, but it is hard to police—do we want to administer pregnancy tests to every tourist coming to the United States? And in any event, violent drug runners should be a bigger concern than pregnant mothers.

Calls to repeal birthright citizenship are at best misguided distractions, and at worst cynical political pandering. It’s the equivalent of killing a fly with a grenade launcher when a fly swatter would do just fine. The fact of the matter is that ending birthright citizenship would not fix our broken immigration system. It would only make matters worse.