

June 15, 2010

**ENDING BIRTHRIGHT CITIZENSHIP**  
*Unconstitutional, Impractical, Expensive, Complicated and  
Would Not Stop Illegal Immigration*

Anti-immigrant groups and legislators have persisted in their attempts to restrict or repeal birthright citizenship in State Houses and the U.S. Congress. Several bills have been introduced that would deny U.S. citizenship to children whose parents are in the U.S. illegally or on temporary visas. The Fourteenth Amendment to the Constitution - the cornerstone of American civil rights - affirms that, with very few exceptions, all persons born in the U.S. are U.S. citizens, regardless of the immigration status of their parents. Following the Civil War and the emancipation of the slaves, the Fourteenth Amendment restated the longstanding principle of birthright citizenship, which had been temporarily erased by the Supreme Court's "Dred Scott" decision which denied birthright citizenship to the U.S.-born children of slaves. The Supreme Court has consistently upheld birthright citizenship over the years. The following fact sheet is adapted from the Immigration Policy Center's [\*Made in America: Myths and Facts About Birthright Citizenship\*](#).

**What is birthright citizenship?**

- Birthright citizenship, or the principle of *jus soli*, means that any person born within the territory of the U.S. is a citizen, regardless of the citizenship of one's parents. There are some exceptions, such as for the children of foreign diplomats and invading armies.
- Birthright citizenship is enshrined in the Fourteenth Amendment to the Constitution which states 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."
- The legislative history clearly shows that Congress clearly intended to bestow birthright citizenship on the U.S.-born children of immigrants. While some debated the *wisdom* of the amendment and opposed extending birthright citizenship to the children of immigrants of other races, no Senator disputed the *meaning* of the amendment with respect to immigrant children.
- The Fourteenth Amendment restated the principle of *jus soli*, which had been established by four centuries of Anglo-American jurisprudence. Birthright citizenship was temporarily erased by the Supreme Court for U.S.-born children whose parents were slaves of African descent – the infamous "Dred Scott" decision of 1857.

**The Supreme Court has upheld birthright citizenship several times.**

- In 1898, the meaning of the citizenship clause was conclusively determined in *Wong Kim Ark*, when the Supreme Court rejected arguments that the son of a Chinese national – who was forbidden under the Chinese Exclusion Act from ever becoming U.S. citizens – should

be deprived of citizenship because of his parents' status. Subsequent decisions have upheld this standard.

- The Supreme Court has also held in *Plyler v. Doe* that undocumented children are “innocent” because they “can affect neither their parents’ conduct nor their own status”

### **Birthright citizenship is under attack by some people.**

- Some Members of Congress have introduced bills to eliminate birthright citizenship for the children of immigrants who are in the U.S. illegally or on temporary visas. The “Birthright Citizenship Act” (HR 1868), introduced by Rep. Nathan Deal (R-GA) has 91 cosponsors. A bill by Rep. Elton Gallegly (R-CA) would restrict birthright citizenship to the children “of a mother who is a citizen or legal permanent resident of the United States.”
- Some state legislators have introduced birthright citizenship bills, with the intention of advancing a national debate on the issue and pushing a legal challenge to the Supreme Court.

### **Eliminating birthright citizenship would impose a significant burden on all Americans who would no longer have an easy and inexpensive way to prove their citizenship.**

- If simply being born in the U.S. and having a U.S. birth certificate were not proof of citizenship, Americans would have to navigate complex laws to prove their citizenship. Other than a birth certificate, most Americans do not have government documents that establish U.S. citizenship.
- Some Americans would have to prove they derive U.S. citizenship through one or both of their parents – a process that can be difficult for even experienced immigration attorneys. In some cases, whether one’s parents were married or unmarried at the time of one’s birth makes a difference in determining citizenship. In some cases the gender of the U.S. citizen parent can affect the determination.
- All American parents—not just immigrants—would have to prove the citizenship of their children through a cumbersome process.

### **Eliminating birthright citizenship would not solve the problem of unauthorized immigration.**

- Since children born to undocumented immigrants would presumably be undocumented, the size of the undocumented populations would actually increase as a result of the new policy. While some children could acquire the citizenship of their parents, others would be left with no citizenship or nationality, leaving them stateless.

### **Eliminating birthright citizenship is a distraction that moves us away from fixing the real problems with our broken immigration system.**

- Immigrants come to the U.S. to work, to reunite with their families, or to flee persecution. Denying birthright citizenship will not discourage unauthorized immigrants from coming to the U.S., and it will not encourage those already here to leave.
- Comprehensive immigration reforms that solve the root causes of undocumented immigration are necessary to resolve our very real immigration problems.