



The Fourteenth Amendment's Guarantee of Birthright Citizenship

May 14, 2009

By Elizabeth Wydra, Chief Counsel, [Constitutional Accountability Center](#)

The opening sentence of the Fourteenth Amendment is both sweeping and clear: "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." As discussed in my recent [ACS Issue Brief](#), the words and history of this constitutional text establish that it provides automatic citizenship—"birthright citizenship"—to anyone born in this country regardless of race, color or status of one's parents or ancestors.

Despite the plain language of the Amendment and its powerful history, [opponents](#) of birthright citizenship continue to fight its meaning and purpose. Most of the efforts to narrow the meaning of birthright citizenship have been motivated by a desire to exclude from citizenship children born on U.S. soil to undocumented immigrants. Unfortunately, this anti-citizenship political movement shows no signs of slowing: in Congress, bills have been introduced each year for more than a decade to end automatic citizenship for persons born on U.S. soil to parents who are in the country illegally; in California, signatures are being gathered for a [ballot proposition](#) that would create a sub-class of U.S.-born citizens by issuing different birth certificates to children born in the United States to undocumented immigrant parents; and, in the 2008 presidential campaign, several Republican candidates expressed skepticism that the Constitution even guarantees birthright citizenship.

The anti-citizenship arguments are debunked in detail in my Issue Brief. But the fatal flaws in these arguments are not the most compelling reasons for rejecting them in favor of the broad and clear definition of citizenship intended by our Reconstruction Framers. Rather, the text, history and principles behind the Citizenship Clause demonstrate that the drafters of the Fourteenth Amendment created an elegantly simple and intentionally fixed rule of birthright citizenship that was intended to serve as a long-overdue fulfillment of the promise of inalienable freedom and liberty in the Declaration of Independence. Providing for birthright citizenship regardless of race, color or previous condition of servitude righted the [horrible wrong](#) of *Dred Scott v. Sandford*, in which the Supreme Court held that persons of African



descent born in the United States could not be citizens under the Constitution, and ensured that all native-born children, whether members of an unpopular minority or descendants of privileged ancestors, would have the inalienable right to citizenship and all its privileges and immunities.

The text of the ratified Citizenship Clause embodies the [jus soli](#) rule of citizenship, under which citizenship is acquired by right of the soil (contrasted with [jus sanguinis](#), according to which citizenship is granted according to bloodline.) This form of citizenship embodies the American rejection of aristocracy and privileged ancestry; under the Citizenship Clause, one's citizenship turns on an objective circumstance—place of birth—not familial status.

The Reconstruction Framers' intent to make citizenship dependent not on the favor of the majority or the favored status of a person's ancestors, but rather on neutral, fixed conditions is evident from congressional debates. In proposing the language that would ultimately be ratified as the Citizenship Clause, Senator Jacob Howard of Michigan explained that his [proposed addition](#) would declare "that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States."

Recognizing the sweep of this proposed language, both supporters and opponents of the Fourteenth Amendment understood the Citizenship Clause to grant birthright citizenship to children of aliens. In fact, this was a significant source of opposition: Senator Cowan lamented that the proposal would expand the number of Chinese in California and "Gypsies" in his home state of Pennsylvania by granting birthright citizenship to their children, even (as he put it) the children of those who owe no allegiance to the United States and routinely commit "trespass" within the country. No supporter of the Amendment rose to dispute Senator Cowan's view of the effect the proposed Amendment would have. To the contrary, Senator John Conness of California **defended** the proposed Citizenship Clause as sound policy, stating:

[With] respect to the children begotten of Chinese parents in California, ... it is proposed to declare that they shall be citizens I am in favor of doing so We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection before the law with others."

In sum, the Citizenship Clause was proposed, enacted and ratified with the understanding that it granted automatic birthright citizenship to children born in the United States to alien parents.

As a final note, it is worth mentioning that the expansive Citizenship Clause was not forged in some more enlightened era. As the remarks quoted above demonstrate, along with the grand statements supporting liberty and equality, ethnic stereotypes and racial hostility were also on full display in the debates over the Fourteenth Amendment. But our Reconstruction Framers wisely placed the conditions for automatic citizenship beyond the prejudices and politics of the day, **intending** to establish "a constitutional right that cannot be wrested from any

class of citizens, or from the citizens of any State by mere legislation." Today's anti-citizenship advocates are therefore not just flouting the Citizenship Clause's text and history when they seek to deny birthright citizenship to children born on U.S. soil to undocumented immigrant parents, they are also disregarding the Fourteenth Amendment's guiding principles and purposes.

