

It's Time to Revisit the 14th Amendment

Why an Incorrect Interpretation Compounds our Nation's Immigration Crisis

By FRED ELBEL

Any baby born in the United States is currently granted automatic citizenship, no matter whether their family line delineates 100 years of citizenship or instead reflects illegal entry into the country 10 days ago. It is presumed that *birthright citizenship* is a right enumerated in the 14th Amendment to the U.S. Constitution. This premise is based upon an incorrect interpretation of the Amendment and unfortunately has resulted in even more strengthening of the magnet that draws huge numbers of illegal aliens into the U.S. It is believed by a few that a Constitutional Amendment would be required to rectify this gross misinterpretation, but in fact, the 14th Amendment grants Congress the full authority to enforce the Amendment simply by enacting long overdue legislation.

Original Intent

The 14th Amendment was passed by the Reconstruction Congress in 1868, after the end of the Civil War. Section One, the *Citizenship Clause*, states that:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United

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States and of the State wherein they reside...

The primary purpose of the 14th Amendment was to guarantee inalienable rights and citizenship to native-born Black Americans, while ensuring that individual states could not deny citizenship.

The phrase "*subject to the jurisdiction thereof*" is crucial in forming a correct interpretation of the Amendment—that is, to mean *completely* subject. The phrase was intended to exclude American-born persons from automatic citizenship whose allegiance to the United States was incomplete. Specifically, the native country of an illegal alien who is unlawfully in the United States has a claim of allegiance—an illegal alien mother is subject to the jurisdiction of her native country, as is her baby. Thus, *completeness* of their allegiance to the United States is impaired, which therefore precludes automatic citizenship. After all, one does not transfer allegiance to a country by sneaking into it in blatant violation of its immigration laws.

In 1866, Sen. Jacob Howard succinctly spelled out this intent of the 14th Amendment by stating:

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. This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons. It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States...

This understanding was reaffirmed by Senator Edward Cowan, who stated:

[A foreigner in the United States] has a right to the protection of the laws; but he is not a citizen in the ordinary acceptance of the word...

The United States did not limit immigration in 1868 when the 14th Amendment was ratified. There were at that time no illegal aliens and the issue of granting citizenship to children of illegal aliens was not of concern. Granting automatic citizenship to children of illegal alien mothers is a recent and totally inadvertent and unforeseen result of the amendment and the Reconstructionist period during which it was ratified.

How Many?

One study concludes that 287,000 and 363,000 children are born to illegal aliens each year. This figure is based on the crude birth rate of the total foreign-born population (33 births per 1000) and official estimates of the size of the illegal alien population—between 8.7 and 11 million. Yet the Bear Stearns investment firm and others (including the author) have concluded that the actual number of illegal aliens in the United States could be as high as 20 million. Using this higher number would roughly *double the* above estimate to *approximately 574,000 to 726,000 children born to illegal aliens each year—an undeniably significant number*. Births to illegal alien mothers are adding more to the U.S. population each year than did immigration from all sources in an average year prior to 1965.

One of the more far-reaching consequences of the current misinterpretation of the 14th Amendment is that under the 1965 Immigration Act, “anchor babies” born to illegal alien mothers can act as an anchor that eventually can pull in the illegal alien mother and a host of other relatives into permanent U.S. residency. The resulting impact on U.S. population will be especially significant.

Apportionment

Another consequence of the current misinterpretation of the 14th Amendment relates to representative democracy in the U.S.

The decennial U.S. Census has been used since

1790 as the basis for the United States representative form of government. As a result of growing population, the number of House members eventually quadrupled in size. Therefore, in 1911, the number of Representatives was fixed at 435.

Section Two of the 14th Amendment addresses apportionment, stating that:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State....

In 1964, the Supreme Court in *Wesberry v. Sanders* mandated that states apportion congressional district boundaries based strictly according to population.



Since the number of U.S. House seats is fixed at 435, reapportionment means that if a given state gains a House district, another state must lose one. If illegal alien non-citizens are counted in the decennial Census upon which districts are apportioned, then states with larger

illegal alien populations are likely to end up with more districts and therefore more representation in the House. This effectively dilutes the votes of citizens in states having relatively low populations of illegal aliens. Similarly, congressional districts in those states with proportionately higher numbers of illegal aliens end up representing a large illegal alien, non-citizen, *non-enfranchised* population.

Illegal immigration has the same effect on presidential elections because the Electoral College is based on the size of Congressional delegations. In fact, the presence of all foreign-born persons in 2000 (naturalized citizens, non-citizens, and illegal aliens) redistributed 16 seats, up from 12 seats in 1990.

The Supreme Court

The Supreme Court has never ruled that each and every person born in the U.S. be granted citizenship. In fact, the Supreme Court appropriately con-

firmed a restricted interpretation of citizenship in the so-called “Slaughter-House cases” that were decided over a century ago. In the 1884 *Elk v. Wilkins* case, the phrase “subject to its jurisdiction” was interpreted to exclude “children of ministers, consuls, and citizens of foreign states born within the United States.” In *Elk*, the American Indian claimant was considered not an American citizen because the law required him to be “not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction and owing them direct and immediate allegiance.”

In 1889, the Supreme Court, in *Wong Kim Ark*, once again, in a ruling based strictly on the 14th Amendment, concluded that the status of the parents was crucial in determining the citizenship of the child. The current misinterpretation of the 14th Amendment is based in part upon the presumption that the *Wong Kim Ark* ruling encompassed illegal aliens. In fact it did *not* address the children of illegal aliens and non-immigrant aliens, but rather determined an allegiance for *legal immigrant* parents based on the meaning of the word *domicil(e)*. Since it is inconceivable that illegal alien parents could have a *legal* domicile in the United States, the ruling clearly could not extend birthright citizenship to children of illegal alien parents.

In these cases, the Court affirmed that the status of the parents determines the citizenship of the child. To qualify children for birthright citizenship, based on the 14th Amendment, parents must owe “direct and immediate allegiance” to the U.S. and be “completely subject” to its jurisdiction. In other words, they must be United States citizens.

Legislation

Granting birthright citizenship to the children of illegal aliens whose first act in coming to the US is to break our laws, cheapens the meaning of our Constitution and denigrates the principle of the rule

of law upon which our country was founded.

Although a few experts believe that a Constitutional amendment would be necessary to remedy the misinterpretation, most concur that Congressional action would be sufficient and is urgently warranted. The 14th Amendment itself stipulates that Congress has the power to enforce its provisions by enactment of legislation. Furthermore, the power to enforce a law is necessarily accompanied by the authority to interpret that law. Such an act of Congress stating its interpretation of the 14th Amendment—as not including the offspring of illegal aliens—is long overdue.

Some in Congress have realized the need to act. Rep. Howard Stump (R-AZ) introduced H.R. 190 in 2001 to deny citizenship to children of illegal alien mothers. In 2003 H.R. 1567 was introduced by Rep. Nathan Deal (R-GA) to amend the Immigration and Nationality Act to deny birthright citizenship to children born in the United States to parents who are not U.S. citizens or permanent resident aliens. H.J. Res. 44 was introduced by Rep. Mark Foley (R-FL) to amend the U.S. Constitution to provide that no one born in the U.S. will be granted automatic U.S. citizenship unless a parent is a U.S. citizen or has been lawfully admitted for permanent residence at the time of the birth. Unfortunately, none of these bills survived.

On April 19, 2007 Representative Nathan Deal (R-GA) introduced H.R. 1940, *The Birthright Citizenship Act of 2007*. H.R. 1940 would end the process of granting automatic birthright citizenship to the babies born in the United States to illegal aliens. This bill is assuredly deserving of the full support of the sovereign American People and their elected public servants.

For more information

For more information, discussion, a list of references and resources, please see this new website: <http://www.14thAmendment.US> . ■

