

The Citizenship Clause of the 14th Amendment

Section 1 of the 14th Amendment

“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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The citizenship clause found in the 14th Amendment ensures that any person born in the United States is a U.S. citizen regardless of the immigration status of their parents. It is a pillar of American civil rights. Changing the constitutional definition of citizenship would impose significant financial and administrative burdens on our nation’s families and the federal, state and local governments.

Background on the 14th Amendment

The protection provided by the constitutional definition of citizenship came in the aftermath of the Civil War and in direct response to the U.S. Supreme Court decision in *Dred Scott v. Sanford*, which sought to deny full citizenship to African Americans. The 14th Amendment was adopted to overrule this decision and to put citizenship above the preferences and prejudices of any politician or era, and to ensure due process and equal protection of the law regardless of race, color or ancestry.

The Supreme Court has upheld constitutional citizenship on several occasions. Constitutional citizenship enshrined in the 14th Amendment was intended not only to resolve the status of African Americans and their descendants, but also to apply to members of all racial groups and immigrants. In 1898, in the case of *United States v. Wong Kim Ark*, the court ruled that the son of a Chinese national, ineligible for citizenship, should not be denied citizenship because of the parent’s lack of legal status. Many years later, the 1982 ruling on *Plyler v. Doe* held that undocumented children are covered by this equal protection clause. These court rulings provide a clear indication that citizenship extends to the children of non-citizens.

Changing the constitutional definition of citizenship would have dire consequences for all Americans. Since birth in the United States would no longer be enough to prove a child’s citizenship, all people in the United States, whether citizens or not, would have to prove their status before they can receive a standard birth certificate for their baby. This process would impose significant costs on all levels of government at a time when we can least afford it.

Efforts to Undermine the Constitution

In early January 2011, a group of state legislators from Arizona, Pennsylvania, Georgia, Oklahoma, and South Carolina announced their intention to introduce bills in state legislatures throughout the country to deny Americans a fundamental protection of the 14th Amendment—universal citizenship. The legislation and the compact are designed to create a legal argument that the entire concept of citizenship should not be looked at solely on the basis of federal sovereignty but rather be viewed on a state by state basis. The proposed legislation would create a distinct “state citizenship” with requirements that differ from those set forth in the Constitution. If the legislation were to pass many babies born in the United States would be denied standard birth certificates unless at least one parent is a legal citizen, legal immigrant, active member of the Armed Forces or a naturalized legal citizen.

The following is a sampling of the states that have introduced legislation that would undermine the Constitution to redefine how citizenship is conferred:

Arizona

SB1308, SB1309, HB2561, HB2562 sponsors Sen. Ron Gould and Rep. John Kavanagh. HB2561/SB1308 would require at least one parent to be a U.S. citizen or legal resident in order for citizenship to be conferred to their child. HB 2562/SB 1309 would require Arizona to create separate birth certificates depending on the parent’s legal status. In addition, it would allow Arizona to enter into a compact with other states to redefine citizenship. Status: Senate third reading failed. Legislature has adjourned.

Indiana

HB1413 sponsor Rep. Eric Koch. HB 1413 calls for the creation of an interstate compact requiring member states to implement new guidelines for issuing birth certificates. Requires a child to be designated a "natural born" U.S. citizen at birth, at least one of his or her parents must be a U.S. citizen or legal permanent resident here. The "natural born" designation would be noted on the child's birth certificate. Status: Introduced

Mississippi

SB2704 sponsor Sen. Joey Fillingane. SB 2704 would define citizenship at birth in Mississippi only if at least one parent is a citizen, national or legal permanent resident. Status: Died in Senate Judiciary Committee. Legislature has adjourned.

Montana

HB392 sponsor Representative James Knox's. HB392 would change the requirements for citizenship by

requiring at least one parent be a legal citizen of the U.S. and would not accept children born of parents with dual citizenship excluding most Native American tribes. Status: Tabled in Committee.

Oklahoma

HB2084 sponsor Rep. Randy Terrill. HB2084 would change the requirements for citizenship by requiring at least one parent to be a citizen of the U.S., or a legal permanent resident. Status: Referred to Judiciary Committee.

Pennsylvania

HB857 sponsor Rep. Metcalfe. HB857 would change the requirements for citizenship in the commonwealth. Status: Referred to the Judiciary Committee.

South Dakota

HB1199 sponsor Rep. Manny Steele. HB1199 would allow South Dakota to enter into a compact with other states to redefine citizenship by requiring at least one parent to be a citizen, national or legal immigrant. Status: Deferred to the 41st legislative day. Legislature has adjourned.

Texas

HB292 sponsor Rep. Leo Berman. HB292 would require the issuance of a “temporary report of alien birth” if the child is born to “a person who is not a citizen or national of the United States.” Citizenship would be granted based on parent’s immigration status. Status: Referred to State Affairs Committee.

At the federal level, U.S. Senators David Vitter (LA) and Rand Paul (KY) introduced legislation aimed at amending the Fourteenth Amendment, and in the House of Representatives, U.S. Representative Steve King (IA) introduced similar legislation.

The attacks on the 14th Amendment being mounted today are not new. Prior to passage of the 14th Amendment, some objected to extending citizenship to the native born children of various immigrant groups, but these objections were soundly rejected. To define citizenship by bloodlines or lineage runs contrary to our nation's most basic values of justice and equality. If enacted, the bills are unlikely to survive legal scrutiny since the Constitution can only be changed by amendment, not by state or federal statute.

Key Themes to Protect Constitutional Citizenship

- ✓ The Citizenship Clause is a *Key Constitutional Freedom that Protects us All* and should not be tampered with.
- ✓ These proposals are *Unworkable and Divisive*: if enacted, they would place huge burdens on American citizens and create a giant new bureaucracy.
- ✓ These proposals are a *Distraction* from real issues facing the state, the proposals are clearly unconstitutional and it is impossible to amend the Constitution in this way.
- ✓ Their proponents have the *Wrong Priorities*; elected leaders should be working full-time to create jobs and fix the economy.
- ✓ The real solution to the immigration issue is *Balanced Immigration Reform*, which the vast majority of Americans support.

Tip:

Discussions about upholding birthright citizenship should be framed as a constitutional issue rather than an immigration issue. While it is true that the intended targets are undocumented immigrant and their children, the broader issue at state is the attack on a fundamental pillar of U.S. civil rights, ensured by the Constitution.