

Talking About Proposals to Change the 14th Amendment

January 4, 2011

Tomorrow morning, January 5th, a group of state lawmakers and political operatives from Georgia and a few other states will unveil a scheme to attack an important constitutional freedom: the American Citizenship Clause of the 14th Amendment to the Constitution. Passed after the Civil War, the Clause guarantees that children who are born in America are American citizens. But these operatives would eliminate that constitutional guarantee, in a misguided attempt to address immigration.

Those of us who stand behind the Constitution have to speak out against this wrongheaded effort, and remind the nation why the 14th Amendment matters so much to all Americans. What follows is The Opportunity Agenda's communications advice on this crucial issue:

KEY THEMES

- ▶ The American 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.
- ▶ They are a *Waste of Time*, since the proposed laws are clearly unconstitutional and there is no chance of amending 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 *Commonsense Immigration Reform*, which the vast majority of Americans support.

In addition, the term “birthright citizenship” seems likely to put off some persuadable audiences, because it may connote an immediate demand for rights by people who they perceive to be lawbreakers. Our preliminary recommendation is to describe the constitutional provision as “the American Citizenship Clause,” which “guarantees that kids who are born in America are American citizens” rather than repeating the phrase “birthright citizenship.”



Additional Principles

- ▶ *Lead with values.* This is a debate about what our country stands for and what it means to be an American. Facts are important, but they should be communicated within a values frame. Here, the relevant values relate to our constitutional freedoms and protections, and to the moral and practical instability that eroding them would cause.
- ▶ *Remind audiences that this is about all of us.* Frame the debate in terms of the 14th Amendment's importance to all of us and our nation as a whole, not just in terms of immigrants specifically. We all value the guarantee that our U.S.-born children will unquestionably be citizens of the United States of America.
- ▶ *Use the pro-immigrant “Core Narrative” themes* developed and used by leaders and groups around the country: **workable solutions**, **upholding our nation's values**, and **moving forward together**. **Workable solutions** speaks to Americans' desire for pragmatic and effective approaches, and their recognition that rash anti-immigrant proposals are unrealistic. **Upholding our nation's values** reconnects the immigration discussion to the kind of country we aspire to be. And **moving forward together** highlights the ways in which immigrants are already a part of us as a nation and add value to our economy and culture.
- ▶ *Remember that most Americans are unfamiliar with the content or history of the 14th Amendment.* We should not assume specific knowledge about the Amendment on the part of our audience, but can help shape their understanding of the provision and its importance.
- ▶ *Don't waste time “myth-busting,”* which research shows tends to reinforce the idea you're trying to combat. For example, don't get mired in the debate over whether immigrants come here to have children—state the facts, then pivot and return to your affirmative point.

Sample Talking Points

“It's a core constitutional protection that if my kids are born here, they are Americans. Destroying that principle would be a dangerous mistake that would threaten the freedom of all of us.”

“The 14th Amendment to the Constitution was and is crucial to making us one nation, indivisible. It's an important part of our history, and vital to our future.”

“We can't undermine who we are as a country and as a people for short-term political purposes. Instead of tampering with our Constitution, let's move forward with commonsense immigration reform that's languishing in Congress.”



“In addition to being wrong for America, this is not a realistic proposal. If passed, it would visit unimaginable difficulty on all 300 million of us who are American citizens. Today, when your kids are born here, you know, and everyone knows, that they are American citizens. But what if when your child was born you had to go through an application process, prove to federal, state, and local bureaucracy that you are a citizen, be entered in a database that is subject to error and delay? It would be expensive, burdensome, slow, inaccurate, and totally unacceptable to the American people.”

“The proposals are a distraction, with no possibility of taking effect. The state laws they’re proposing are clearly unconstitutional, and similar ones have been rejected by the U.S. Supreme Court. And as far as changing the Constitution is concerned, everyone agrees that there’s no possibility that two-thirds of both houses of Congress and three-fourths of the states will somehow agree to this divisive idea.”

“The members of Congress who’ve voiced support for this wrongheaded idea have been presented with far better clear and practical options for fixing our broken immigration system through commonsense immigration reform. We need smarter control of the border and a system for the 12 million undocumented immigrants who live here to pay all taxes, learn English, register, and begin an orderly path to citizenship. That’s what Congress should be focusing on.”

“These lawmakers are clearly out of touch with what real Americans are dealing with around the country. Instead of hawking this unworkable distraction, they should be working to create jobs and fix the economy.”

“If these political operatives have their way, your birth certificate will no longer be proof that you are an American. And your kids will have to prove their grandparents’ citizenship and your citizenship, just to prove their own citizenship, through some new bureaucracy that will have to be set up. That’s not the country that we are, and it’s not what Americans want.”

Public Opinion

A sample of public opinion findings on this subject shows a public that leans against citizenship based on birth in the U.S. for the children of undocumented immigrants, but largely opposes amending our Constitution to eliminate that practice. In addition, few Americans are familiar with the text or history of the 14th Amendment.

- ▶ A June 2010 Pew Research poll found that only 41% of Americans favor changing the Constitution so that the parents must be legal residents of the United States in order for their newborn child to be a citizen, while 58% favor leaving the Constitution as it is.



- ▶ When asked specifically whether the Constitution should be changed so children of illegal immigrants are not automatically granted citizenship, Americans overall are split. According to a May 2010 NBC News/MSNBC/Telemundo poll, 49% think the U.S. should continue to grant automatic citizenship, while 46% say the laws should change. An August 2010 Quinnipiac poll shows support for change of the Constitution to be marginally greater by 48% to 45%. Support for leaving the Constitution as is dramatically higher among Latinos (79%, NBC News May 2010).
- ▶ When asked their views on changing the Constitution generally (not specific to birthright citizenship), in a Rasmussen poll released in July 2010, 62% of Americans said the Constitution should be left alone, while 24% believed minor changes are needed and only 7% saw a need for major changes.
- ▶ Outside the context of amending the Constitution, however, birthright citizenship receives less support. In a June 2010 Rasmussen poll, 58% of U.S. voters surveyed said a child born to an “illegal immigrant” in the U.S. should not automatically become a citizen of the U.S., while 33% said that the child should automatically become a U.S. citizen. In terms of party affiliation, 52% of Democrats support birthright citizenship when the question is asked this way, while 76% of Republicans and 60% of independents oppose it.
- ▶ The 14th Amendment itself is not well understood by Americans. In a 2005 survey conducted by a civil rights organization, only 10% of Americans were able to name a right guaranteed by the 14th Amendment. Most named equal opportunity, while fewer said due process and a handful mentioned federal authority over the states. Citizenship based on birth in the U.S. was not mentioned by a significant number of respondents.

Additional Facts and Resources

- ▶ The 14th Amendment to the Constitution was adopted in 1868, out of the blood and devastation of the Civil War, in which over 600,000 Americans died. It was part of the “Reconstruction Amendments”—passed between 1865 and 1870—which also include the 13th, (abolishing slavery) and the 15th (recognizing the right to vote regardless of “race, color, or previous condition of servitude”).
- ▶ Section 1 of the 14th Amendment provides 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. 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.”

- ▶ Although the 14th Amendment and its citizenship clause were directed primarily at ensuring the citizenship of formerly enslaved African Americans (overturning the Supreme Court’s 1857 decision to the contrary in *Dred Scott v. Sandford*), there is no question that the Framers of the 14th Amendment considered and intended to include the U.S. born children of immigrants not lawfully in the U.S. The question was debated, and delegates who sought to exclude those children (primarily the children of Chinese immigrants) from U.S. citizenship lost the debate.
- ▶ The United States Supreme Court, in the 1898 case of *United States v. Wong Kim Ark*, held that the U.S.-born children of immigrants who were themselves ineligible to become U.S. citizens (in this case because of the Chinese Exclusion Act) were automatically citizens of the United States under the 14th Amendment.
- ▶ The phrase “subject to the jurisdiction thereof” in the clause excludes from automatic citizenship U.S.-born children of diplomats of foreign countries, who generally have immunity from our laws, and children born to enemy forces engaged in hostile occupation of the country’s territory.
- ▶ The Immigration Policy Center has assembled a large body of [resources and materials](#) on the 14th Amendment citizenship debate.
- ▶ An op-ed using many of the talking points appeared in *The Hill’s Congress Blog* in August: <http://thehill.com/blogs/congress-blog/civil-rights/113355-repealing-the-14th-amendment-is-wrong-for-america>.
- ▶ The Congressional Research Service produced a 2010 report on the history and meaning of the American Citizenship Clause: <http://www.fas.org/sgp/crs/misc/RL33079.pdf>.