

# Talking about the American Citizenship Clause of the 14<sup>th</sup> Amendment

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## Overview

- ▶ Adopted in 1868 and part of the “Reconstruction Amendments,” 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.”
- ▶ Several debates—including discussions at the time of the clause’s writing and adoption, and the subsequent 1898 *United States v. Wong Kim Ark* Supreme Court case—have ended with the U.S. upholding citizenship rights of U.S.-born children of unlawfully present immigrants. The phrase “subject to the jurisdiction thereof” excludes U.S.-born children of diplomats of foreign countries and children of hostile invaders.

## Public Opinion

- ▶ As of 2010, when much of the most recent polling was conducted, the public was split on ending or preserving citizenship based on birth in the U.S. for children of undocumented immigrants, but generally opposed to amending the Constitution to eliminate that practice.
- ▶ Few Americans are familiar with the text or history of the 14th Amendment.

## Ideas for Talking About the 14<sup>th</sup> Amendment: Key Values and Themes

- ▶ This is about all of us and protecting our rights. We all value the guarantee that our U.S.-born children will unquestionably be citizens.
- ▶ These proposals are unworkable and divisive. They would place huge burdens on American citizens and create a giant new bureaucracy.
- ▶ The real solution is commonsense change to our immigration policies, something the vast majority of Americans support.

- ▶ Note: The phrase “American citizenship clause” is likely more persuadable than the term “birthright citizenship,” which may put off some persuadable audiences because it could connote an immediate demand for rights by people who they perceive to be lawbreakers. Our 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: a commonsense approach, upholding our nation’s values, and moving forward together. “Commonsense approach” appeals 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.
- ▶ *Understand the gender dynamics of this conversation.* Immigrant women are often invisible in public discourse about immigration policy. Discussions of the 14<sup>th</sup> Amendment are inherently about women and their decisions, but do not center on women as whole people. In the same way that the term “anchor babies” is deeply problematic in its suggestion that the natural process of creating a family is being used as a legal scheme to gain citizenship, the erasure of women from the conversation is problematic as they become merely vessels in this scheme, and not fully-formed humans. To counter this problem, highlight how, and provide examples of, women are leaders and contributors in a range of contexts and environments: family, work, community, business. It’s important to populate the discourse with these stories while also taking on conversations about the 14<sup>th</sup> Amendment.
- ▶ *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 freedom for 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."

"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, all through some new bureaucracy that will have to be set up. That's not the kind of country we are, and it's not what Americans want."