

Example of research paper on qualifying citizenship

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The 14th Amendment and the Protection of Civil Rights

QUALIFYING CITIZENSHIP

Abstract

The 14th Amendment, and its “ Citizenship Clause,” has been the means by which questions of citizenship are resolved. Over the past two years, a group of state lawmakers have sought a way to change the constitutional meaning of citizenship by circumventing the 14th Amendment without seeking to alter the Constitution itself. The attempt to create a dual birth certificate system is their attempt to identify and separate the American-born children of illegal aliens. In a violation of due process, this move to redefine what it means to be an American citizen is a legal matter, requiring the amending of the Constitution itself.

Keywords: 14th Amendment, Citizenship Clause, Constitution, illegal aliens, due process.

QUALIFYING CITIZENSHIP

Qualifying Citizenship: The 14th Amendment and the Protection of Civil Rights

The “ Citizenship Clause” of the 14th Amendment to the Constitution was crafted specifically to address an issue raised by one of the most famous Supreme Court cases in U. S. history. In *Dred Scott v. Sandford* (1857), the high court ruled that no black person could be considered a citizen of the United States. Eleven years later, after Civil War and emancipation, Congress

reversed that decision by passing into law the 14th Amendment, the first section of which put forth a new definition of citizenship: “ All persons, born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens” (Amendment XIV, Sct. 1, Clause 1). Literally, anyone born on U. S. soil was to be considered a fully enfranchised U. S. citizen. More than 150 years later, that definition and the flexibility and resiliency for which the Constitution is justifiably renowned are being stretched and challenged from a new source. Despite this challenge, the 14th Amendment continues to extend basic civil rights protections to another embattled class of citizen: the American-born children of illegal immigrants.

Immigration along America’s southern border has long been a high-profile issue at the national level, one with the power to sway the course of congressional and presidential elections. The combined resources of America’s law enforcement and immigration control services have been brought to bear in an attempt to bring illegal immigration under control, yet more discrete and subtle approaches have emerged. For example, immigrants have in recent years begun smuggling pregnant women across the border in hopes that giving birth on the American side will ensure U. S. citizenship for their offspring, based on the 14th Amendment’s Citizenship Clause (Lacey, 2011). However, a group of state lawmakers has proposed an “ Interstate Birth Certificate Compact” designed to withhold citizenship from what the group considers alien opportunists. Their proposed legislation, which amounts to little more than a legal loophole, is unconstitutional because it seeks constitutional changes without pursuing the due diligence of a constitutional amendment.

The group of legislators, which calls itself “ State Legislators for Legal Immigration,” set out in 2011 to redefine what it means to be an American without taking their case directly to Congress. The states represented in the coalition (Arizona, Georgia, Oklahoma, South Carolina and Pennsylvania) proposed to create two separate categories of birth certificates, one for children of valid citizens and one for offspring of illegal immigrants (Lacey, 2011). Many observers have insisted that this is a clear violation of both the letter and intent of the Constitution but, historically speaking, Americans have often sought to resolve perceived immigration problems through political and judicial channels. Indeed, there is a long judicial-legislative tradition in the United States of resolving problematic citizenship and immigration issues, including the Dred Scott case (and subsequent civil rights legislation), and the 1898 Supreme Court decision in the United States v. Wong Kim Ark, in which it was determined that citizenship applied to children born in the U. S. to Chinese immigrants.

The meaning of American citizenship has changed over time. Yet the creation of a separate category of citizenship, in this context, is a new concept. “ This is political theater, not a serious effort to create a legal test. It strikes me as unwise, un-American and unconstitutional,” said Gabriel Chin, law professor from the University of Arizona (Lacey, 2011). Other critics complain that the state coalition and like-minded groups are simply trying to manipulate the Constitution, to parse it as they see fit. In 1982, a move by Texas to prohibit children of illegal aliens from attending public schools was struck down by the Supreme Court (Plyler v. Doe), which ruled that the Equal Protection Clause of the 14th Amendment does not

permit any jurisdiction to deny any person the rights guaranteed to any person under the Constitution.

The court ruled that children, in this instance, fell under the definition of “persons.” Thus, the 14th Amendment served to regulate the debate over what constitutes a citizen.

Based on the plans of State Legislators for Legal Immigration, states would assume considerable leeway in determining citizenship. Critics contend that the repercussions of such an arrangement would transcend the realm of the purely constitutional, causing logistical and potentially costly administrative difficulties. “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” (NALEO, 2011). The move toward establishing a “separate” status for immigrant offspring has moved onto the federal level as well, with U. S. Senators Rand Paul (KY) and David Vitter (LA) having introduced legislation intended to alter the 14th Amendment.

Those seeking a reinterpretation of American citizenship have questioned whether the amendment’s creators were referring solely to African-Americans, or whether they intended that the law should allow children of illegal immigrants to be regarded as citizens (Rau, 2010). Since the 1898 Supreme Court ruling in *United States vs. Wong Kim Ark*, the 14th Amendment has been interpreted as meaning all children born in the United States (2010). The Supreme Court is the hoped-for ultimate destination for the coalition’s birth certificate compact (state) legislation. The group’s stated intention is to create an environment of challenge, in which lawsuits brought

before state courts could be “ fast-tracked” to the Supreme Court. Thus, the coalition and its supporters hope to follow legal precedent established by past challenges to the definition of citizenship.

Other critics of the coalition’s initiative point to the egalitarian nature of the Constitution, indeed to the philosophical underpinnings of the United States itself. The framers of the Constitution and the authors of its amendments sought to avoid the kind of class, or caste, systems that typified the autocratic political systems then common in Europe and other parts of the world. In “ Birthright Citizenship: The Fourteenth Amendment’s Continuing Protection Against an American Caste System,” Nicole Newman writes that the mere idea of America’s borders being overrun strikes at a deep-seated psychological fear of invasion by foreign hordes, and feeds into the perceived need for a “ nuanced” definition of citizenship (2008). Allowed to run rampant, such fears give free rein and political clout to politicians who seek to promote the issue. Newman contends that the 9/11 terrorist attacks played powerfully into those fears and helped clear the way for a xenophobia that the “ birth certificate” coalition seems to have leveraged.

Simply playing on such fears, however, is not enough. There must be a legitimate, legal challenge to the 14th Amendment on constitutional grounds. As Newman points out, the traditional interpretation of the 14th Amendment and its Citizenship Clause are based on a *jus soli* basis of citizenship, meaning citizenship by right of soil, or national territory (2008). It is this assertion that opponents of the amendment’s traditional interpretation are inclined to cite, arguing instead that what is needed is a reinterpretation of the phrase “ subject to the jurisdiction thereof” and the

exclusion of children born to any individual who is present in the United States under illegal circumstances (Newman, 2008). This course of action requires a legislative act, which is the course of action the state-led coalition hopes to force.

But there are unavoidable problems with the coalition's efforts to get around the 14th Amendment. The most obvious difficulty is with due process.

Permitting a state-level initiative

certificates (Stock, p. 1058). In terms of due process, it would seem that the compact has scant legal ground on which to stand. Engendering a litigious environment in order to force the Supreme Court to rule on jus soli grounds seems an obvious and self-serving gambit, though it may indeed be the only means to promote the issue beyond the normal boundaries of constitutional modus operandi.

Another problem lies in the language of the proposed compact itself, which is vague and undefined. In it, "the term 'allegiance' is used (as well as) 'compact,' but no definition of the term is given. Under federal law, a person who owes 'personal allegiance' to the United States is a U. S. national; but the (compact) implies some different, unstated meaning" (Stock, p. 1060). The compact fails to define exactly what it means by "allegiance," which can have several different meanings under the law. More specifically, there is nothing that states objectively that allegiance requires residence (p. 1060). There also appears to be a vague usage (in reference to the 14th Amendment) of the phrase "subject to the jurisdiction," which presupposes that individuals are subject to U. S. (federal) civil and criminal law (p. 1060-

61).

Thus, the 14th Amendment's provision of civil rights rides on the difference between federal and state citizenship, and that one does not necessarily presuppose the other in terms of nationality. " Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but (he need only) be born or naturalized in the United States to be a citizen of the Union" (Abernathy and Perry, p. 22). " Getting around" this condition requires fundamental change at the constitutional level; in other words, a revision of the 14th Amendment. But the coalition of state legislators has adopted a piecemeal approach Illegal immigrants who are clever enough to utilize the Citizenship Clause of the 14th Amendment would most certainly be astute enough to successfully " work" the system should the interstate birth certificate compact gain official status. One essential weakness of the compact is that the federal government would have the power to override it in questions of jurisdiction (Stock, p. 1064). " Bound by the Supreme Court and the Citizenship Clause, the U. S. Department of State would not recognize any distinction in the birth certificates" (p. 1064). As such, a child born in the U. S., regardless of the state in question, could still use a " qualified" birth certificate to apply for a U. S. passport and, with it and proof of citizenship, apply for a " full" birth certificate; failing that, the applicant would have grounds to sue on discriminatory and declaratory grounds (p. 1064-65).

In an even more ironic twist, a state may even find itself guilty of violating its

own constitution, which in many cases prohibit state legislators from taking any action that discriminates on the basis of citizenship (Stock, p. 1065). In such a case, a citizen would have substantial grounds to seek relief at both the state and federal levels, based on language in the 14th Amendment and precedent established by the U. S. Supreme Court. These scenarios became distinctly possible in the absence of any changes to the Constitution itself, a course which the coalition elected not to pursue. Arizona, the ostensible leader of the coalition, found itself in this position, but in a further irony the compact did not even pass muster among legislators in Arizona, a state that lies at “ ground zero” of the immigration controversy.

The compact emerged from committee with the backing of 10 key Arizona state senators only to be voted down in the senate. The bill’s imprecise language led to questions about the meaning of allegiance, a point that Phoenix-area Representative Adam Driggs, a Republican, brought under close scrutiny. Driggs and other skeptical state legislators virtually lined up with questions and concerns about the judicial implications of the bill’s language, the logistics involved in its administration and its cost (ABC15.com, 2011). A “ compact” bill was also introduced in Oklahoma, another of the states with representatives in the coalition, but it too failed to pass the state legislature. Other states have tried to pass similar initiatives, but to no avail.

The 14th Amendment as it exists today provides sufficiently clear direction on the issue of citizenship: an unfocused, ad hoc challenge to its authority stands little chance of success. The State Legislators for Legal Immigration’s intent to institute a two-tiered citizenship system foundered on its own

imprecision and unfocused legal grounding. Civil rights for all natural-born American citizens is a fundamental right that has evolved through epic social struggles and legal challenges over the course of 200 years. Due process must be observed by any movement that seeks to change the meaning of constitutionally endowed civil liberties, the most basic of which is the definition of what it means to be an American. And it is due process that the multi-state immigration coalition tried unsuccessfully to subvert. Ultimately, two centuries of constitutional process and tradition carried the day and protected the civil rights of people born within the boundaries of the United States.

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