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Conservative U.S. State Legislators Seek to Eliminate Birthright Citizenship from Children of Undocumented Immigrants

by Carlos Navarro

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The recent US congressional election not only reduced the chances that comprehensive immigration reform will be approved in the near future ([SourceMex, Nov. 10, 2010](#)), but now there are efforts in some US states and the US Congress to make existing laws more restrictive for undocumented immigrants. The latest controversy stems from a campaign launched by conservative state legislators from five states to eliminate the right of automatic citizenship for children of undocumented immigrants. The right to US citizenship for anyone born on US soil is spelled out in the 14th Amendment of the US Constitution.

The 14th amendment, adopted in 1868, reversed the court's infamous Dred Scott v. Sandford decision in 1857 that stipulated that people of African descent could never be considered US citizens. The amendment said citizenship applied to "all persons born or naturalized in the United States, and subject to the jurisdiction thereof."

In 1898, the Supreme Court applied the amendment to immigrants in the *United States v. Wong Kim Ark* case. The court's ruling affirmed the right of citizenship to a child born in the US to Chinese immigrants.

The proposal to eliminate citizenship birthright could potentially affect hundreds of thousands of children. A study released by the Pew Hispanic Center in August 2010 found that more than 340,000 children were born to undocumented immigrants in 2008.

Proponents of the plans seek to avoid the complex process of changing the 14th Amendment but would change language related to how the law is interpreted and applied at the state level. They hope that these changes would lead to legal action that would eventually bring the matter before the Supreme Court.

The state legislators from Pennsylvania, Oklahoma, South Carolina, Arizona, and Georgia, who have formed a coalition known as State Legislators for Legal Immigration (SLLI), presented their plan at a press conference in Washington on Jan. 5, coinciding with the opening session of the federal Congress. They were accompanied by Kansas Secretary of State-elect Kris Kobach, who is also a law professor at the University of Missouri-Kansas City.

Kobach, a constitutional lawyer, has consulted with several states on restrictive immigration legislation, including the infamous SB 1070 in Arizona. That legislation would have required law-enforcement officials in the state to stop anyone suspected of being an undocumented immigrant ([SourceMex, April 28, 2010](#)). A federal judge struck down most of the provisions of SB 1070 ([SourceMex, July 21, 2010](#)).

Separate birth certificates proposed

The state legislators said their intention is not to immediately seek changes to the 14th Amendment. Rather, they want states to assert their authority to define citizenship within their borders using a clause from the 14th Amendment.

Under a plan proposed by the lawmakers, states would reserve the right to issue two types of birth certificates, one to children with at least one parent who is a US citizen and another for children of parents who are both undocumented immigrants.

The theory is that, since that current law gives the federal government the exclusive right to determine who is a citizen, the two-tiered birth certificate would spark several lawsuits that could eventually bring the matter before the Supreme Court. Once the matter reaches the high court, they are confident that they would prevail, said the SLLI members.

A handful of groups—including the National Council of La Raza (NCLR), the National Association for the Advancement of Colored People (NAACP), and the Leadership Conference on Human and Civil Rights—have already said they would challenge the two-tiered birth-certificate system.

"You'd end up creating a two-caste system in the United States of citizens and noncitizens, [the latter of whom] would be easily exploitable," says Brent Wilkes, national executive director of the League of United Latin American Citizens (LULAC) in Washington. "It would be like old Europe or India, where you're born into a family that determines what your caste is."

"This is political theater, not a serious effort to create a legal test," Gabriel J. Chin, a law professor at the University of Arizona, told *The New York Times*. "It strikes me as unwise, un-American, and unconstitutional." Chin's grandfather immigrated to the US from China at a time when ethnic Chinese were excluded from the country.

In Mexico, the government has yet to make an official statement regarding the birthright proposals. But former federal deputy José Jacques Medina, who served in the Chamber of Deputies in 2006-2009, is pushing for the Congress to draft a statement condemning the "xenophobic, supremacist" campaign to reverse birthright citizenship.

Still, the SLLI contends that efforts to discourage illegal immigration are necessary because states are spending billions of dollars on services to undocumented immigrants. At its press conference, the group proposed draft legislation covering birth certificates, which it hopes would serve as a model for all state legislatures.

"The purpose of this model legislation is to restore the original intent of the 14th Amendment, which is currently being misapplied and is encouraging illegal aliens to cross and cost American taxpayers US\$113 billion annually, or nearly US\$1,117 yearly per individual taxpayer," said Daryl Metcalfe (R-PA), who founded the SLLI.

Metcalfe and other proponents of reforming birthright citizenship also contend that undocumented immigrants are using their US-born children as "anchor babies," to make it easier to obtain US residence. But US-born children cannot sponsor their parents for residency until they are 21. This leaves them vulnerable to deportation until that time.

Federal birthright legislation also proposed

Metcalf said the SLLI held the press conference in Washington to urge the US Congress to tighten immigration laws. "We are here to send a very public message to Congress," said Metcalfe. "We want to bring an end to the illegal alien invasion that is having such a negative impact on our states."

The SLLI has several allies in the US Congress, including Rep. Steve King (R-IA), who is pushing a federal plan to eliminate birthright citizenship for children whose parents are both undocumented immigrants.

It is uncertain whether such legislation would gain support in Congress given the possible violation of the 14th Amendment. Still, others have raised the issue before, including Rep. Duncan Hunter (R-CA), who suggested during a speech in April 2010 that US-born children of undocumented immigrants should be deported along with their parents.

Nevertheless, some opponents of the measure are worried that birthright legislation could pass in the House this year.

"I would have said a year ago that Republicans would not embrace anything so drastic," said Rep. Charlie Gonzalez (D-TX), chair of the Congressional Hispanic Caucus. "But anything is possible now."

The plans have also drawn outrage from some Latino Republicans, who see the proposal as counterproductive to the party's efforts to expand support among Latino populations in the US. "Rather than attacking babies born in the United States and the Constitution, we demand they target our suffering economy," said Deedee Garcia Blase, a spokeswoman for Somos Republicans, an organization of Latino Republicans in Texas and Arizona.

In a letter to House Speaker John Boehner (R-OH) and Majority Leader Eric Cantor (R-VA), Somos Republicans also criticized House Judiciary Committee Chair Lamar Smith (R-TX) for his anti-immigrant rhetoric.

"Representatives Smith and King have engaged in an ill-advised platform and rhetoric that has been perceived as insensitive with their inflammatory 'immigration statements,' and this has caused an exodus of Hispanic voters to the Democratic Party," the letter read.

The concerns from the Latino Republicans seem to have found some sympathetic ears in the House Republican leadership, which denied King's request to chair the House immigration subcommittee.

But critics point out that the subcommittee will be chaired by Rep. Elton Galley (R-CA), who holds similar positions on immigration as King, including the view that undocumented immigrants are taking jobs from US citizens, driving up health care costs, and contributing to an increase in crime. Galley also supports eliminating birthright citizenship for undocumented immigrants. The difference, say critics, is that Galley has taken a more low-key approach about his positions than King.

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