



Written by [Joe Wolverton, II, J.D.](#) on August 22, 2011

American Bar Association: Don't Touch 14th Amendment's Citizenship Clause

Given that over half of the 535 members of the Congress (House of Representatives and Senate) are attorneys, the opinion of the ABA is persuasive. Add to that statistic the fact that the organization, founded in 1878, has for decades set the standards for the practice of law to which all attorneys must "voluntarily" conform and its ability to influence legislation and legislators in compounded.

The particular [resolution](#) (one of many passed at the confab) is number 303 and reads as follows:



RESOLVED, That the American Bar Association urges Congress to reject any resolution proposing an amendment to the United States Constitution that would alter, in any way, the grant of United States citizenship under the Fourteenth Amendment to any persons born in the United States (including territories, possessions, and commonwealths).

FURTHER RESOLVED, That the American Bar Association urges Congress and state legislative bodies to reject any proposal that seeks to alter the right to United States citizenship under the Citizenship Clause of the Fourteenth Amendment to the United States Constitution through the enactment of legislation or adoption of an interstate compact.

FURTHER RESOLVED, That the American Bar Association urges Congress, all state, territorial and local legislative bodies and governmental entities to reject any proposal that seeks to impose limits, based upon the citizenship or immigration status of one or both parents at the time of the person's birth, on the right of any person born in the United States (including its territories, possessions, and commonwealths) to claim or prove United States citizenship under the Citizenship Clause of the Fourteenth Amendment to the United States Constitution.

The resolution was proposed by the ABA's Commission on Hispanic Legal Rights and Responsibilities. This committee was established by the ABA's immediate past President Stephen N. Zack (pictured above), the organization's first Hispanic-American president. Zack immigrated from Cuba as a child and thus is intimately concerned with all matters relating to the treatment received by his fellow immigrants.

The chairman of the Commission, Cesar L. Alvarez, informed reporters that Resolution 303 was brought to the table after "hundreds of public hearings throughout the states to listen to and understand the specific issues facing the Hispanic population."

At the heart of the ABA's restatement of its position on the matter of the 14th Amendment is the future legal status of so-called "anchor babies." The anchor in "anchor babies" refers to the purported ability of children born in the United States to illegal immigrant parents to sponsor those parents in their request for permanent residency here. According to the argument, as citizens of the United States,



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those children have the right to sponsor the immigration efforts of family members seeking legal immigration status. The lawful ability of American citizens to serve as sponsors to would-be immigrants is not in question. What is in question, however, is whether children born within the sovereign borders of the United States should be endowed with the full panoply of privileges and immunities of which citizens are possessed.

With the prickly politics of illegal immigration making such curious bedfellows, the quest for an answer to the question of who is and is not a citizen continues by referring to the Constitution, in particular the 14th Amendment. The juicy marrow in the bone of contention that is the legal status of illegal immigrants' children is the so-called "citizenship clause" of the 14th Amendment, which reads: "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."

The principal argument advanced by those who oppose the instant and irrevocable bestowal of citizenship upon the children of those illegally living or working in the United States is that the U.S. Constitution does not grant citizenship at birth to a child simply because he was born within the borders of the United States. Those advocating this interpretation of the 14th Amendment insist that it is the allegiance (complete jurisdiction) of the child's parents at the time of birth that governs the issue of the child's citizenship, not his geographical location at the time of birth.

The first prong of the inquiry is the meaning of the key phrase, "subject to the jurisdiction thereof" as used in the text of the 14th Amendment. The clause in its context reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside."

Any reading of the plain language of the statute coupled with the pertinent legislative commentary reveals that a child born to persons illegally present in the United States cannot be thought to benefit from the boon of citizenship when their parents are by very definition aliens to the "extent and quality" of that most desirable status. Can the fountain of liberty send forth the sweet water of citizenship at the same place as the bitter water of unlawful entry? The explications of the legislators from whose pens flowed the "citizenship clause" and whose voices sounded in approval thereof serve to disarm the proponents of citizenship for anchor babies. The Supreme Court haughtily has disregarded the declared intent of the framers of the 14th Amendment and misconstrued the keystone "subject to the jurisdiction thereof" clause, thereby creating a right and a class of citizens by judicial fiat. The notion of the Constitution as a document of specified and limited enumerated powers is foreign to the Court and has been for over a century. Rather than to the serendipity of birthplace alone, citizenship rightly defined depends upon the undivided and lawful allegiance of the child's parents. May a child legally inherit property from his parents that his parents do not own? While that child indisputably may work and attain that property by his own effort, his parents may not bequeath such to him, for it is not lawfully within their power to dispose.

For the last word we turn to a man whose opinion is widely considered the first word on the Constitution — James Madison:

When we are considering the advantages that may result from an easy mode of naturalization, we ought also to consider the cautions necessary to guard against abuse. It is no doubt very desirable that we should hold out as many inducements as possible for the worthy part of mankind to come and settle amongst us, and throw their fortunes into a common lot with ours.



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But why is this desirable? Not merely to swell the catalogue of people. No, sir; it is to increase the wealth and strength of the community; and those who acquire the rights of citizenship, without adding to the strength or wealth of the community are not the people we are in want of.

The reason for the ABA's decision to opine on an issue that has been percolating for months was provided by Commissioner Alvarez: "There is a concerted effort in certain parts of this country to target Hispanics, to discriminate against Hispanics, that is unprecedented in this country." No ethnic group should ever be the target of any law. However, all Americans regardless of national origin would benefit from a concerted effort to encourage our elected officials to read and understand the citizenship clause of the 14th Amendment and apply it properly.

Photo of Stephen N. Zack: AP Images

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