



Written by [Kelly Holt](#) on August 16, 2010

Constitutionality of Anchor Babies Questioned

On August 12, Devin Dwyer of ABC News wrote that eight percent of U.S. births are to illegal immigrants, each child becoming a U.S. citizen at birth, by virtue of our federal government's application of the 14th Amendment, while one or both of the parents remains undocumented. He referenced a report by the Pew Hispanic Center, one of seven projects of the Pew Research Center, a Washington-based think tank that provides information on trends and issues shaping the U.S. and the world.



The report was an analysis of U.S. Census Bureau data. Pew estimated that 340,000 of the 4.3 million U.S. newborns in 2008 belonged to illegal parents, and reported that four million U.S.-born citizen children of illegal immigrant parents currently live here.

So far the Pew report is the most comprehensive, non-partisan research on the subject, as there have been few reliable estimates of illegal immigrants' births in the U.S. One can assume the number has grown, as the 2008 information is well, two years old, and that a great many illegal immigrants and their babies were not counted. All of this adds important information to the current debate about birthright citizenship.

Critics have expressed concern over the estimated 10.8 million-strong illegal population, and its offspring — who would be able to sponsor parents and relatives for legal residency. Hence the appellation "anchor babies." Early this month Senator Lindsey Graham (R-S.C.) said, "Birthright citizenship I think is a mistake. We should change our Constitution and say if you come here illegally and you have a child, that child's not automatically a citizen." Or, for us grammar geeks: Illegal immigrants should not be able to enter the U.S. illegally and expect automatic citizenship for their children who are born here.

Senate Minority Leader Mitch McConnell, and Arizona Senators Jon Kyl and John McCain have joined Graham by wanting at least to explore the issue. Some have reservations about changing the Constitution, and suggest hearings. According to Dwyer's article, McCain said, "Congressional hearings are always warranted when members of Congress raise the issue of amending our Constitution. I believe that the Constitution is a strong, complete and carefully crafted document that has successfully governed our nation for centuries and any proposal to amend the Constitution should receive extensive and thoughtful consideration." For once, McCain is partially right. No defender of the Constitution most of the time, his analysis that the Constitution is "strong and complete" is appropriate. The failure comes in modern knowledge and understanding of the document and its constraints on government. And in the history surrounding the 14th Amendment.

Discourse about the issue has caused some to say that revising the 14th Amendment is nothing but



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political pandering. On one end of argument are those who claim the amendment intends that every child born here be guaranteed citizenship. The 14th reads this way: "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 argument, therefore, centers around these anchor babies, and whether or not the 14th guarantees birthright citizenship or not. (See: [Senators Call for Hearings on 14th Amendment Citizenship Clause](#) and [Anchor Babies and the Illegal 14th](#)).

In fact, Dwyer continued with this: "The Supreme Court has only addressed the issue once, clarifying in 1898 that citizenship does apply to U.S.-born children of legal immigrants who have yet to become citizens." Others would say the Supreme Court doesn't even have a dog in this fight, and is not supposed to be interpreting the Constitution anyway, but that might be too much to hope for.

Interestingly, according to ABC news, the U.S. is one of a few remaining countries to grant citizenship to all children born on its soil. Among countries that have revised their birthright laws are the United Kingdom, Ireland, India and Australia. These no longer grant automatic citizenship to all children born on their soils. One of the basic laws of being human is that we have a right to set boundaries in all our relationships, and this is no different. All of our statute law protects those boundaries, so it's reasonable to ask why this boundary is disregarded.

Photo: An immigrant from Michoacan, Mexico, holds her two-month-old daughter in a waiting room at a hospital in Salinas, Calif.: AP Images



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