



Written by [Steve Byas](#) on October 31, 2018

Lindsey Graham to Introduce Bill to Eliminate Birthright Citizenship

"I plan to introduce legislation along the same lines as the proposed executive order from [the] president," promised Senator Lindsey Graham (R-S.C.; shown) on Tuesday.

President Donald Trump provoked an outpouring of opposition this week to his proposal to issue an executive order ending the concept of "birthright citizenship" — the stance that just because someone is born on U.S. soil, that person is automatically a citizen, at birth, of the United States.



Graham praised Trump's effort to eliminate birthright citizenship. "Finally, a president willing to take on this absurd policy of birthright citizenship," Graham tweeted. "I've always supported comprehensive immigration reform — and at the same time — the elimination of birthright citizenship." Graham added that birthright citizenship "is a magnet for illegal immigration," and "needs to come to an end."

Trump had vowed early in his presidential bid, in 2015, that he would take on the interpretation of the 14th Amendment that any person who happens to be born on U.S. soil is a citizen of the United States.

Unfortunately, even House Speaker Paul Ryan took issue with Trump's call to end the practice by executive order. Vice President Mike Pence, however, appeared to support Trump, taking issue with those who argue that any change in the concept of birthright citizenship would require a constitutional amendment, noting that "the Supreme Court of the United States has never ruled on whether or not the language of the 14th Amendment subject to the jurisdiction thereof applies specifically to people who are in the country illegally."

It is certainly a very important issue, considering that it is estimated that as many as 400,000 children are born every year in the U.S. to illegal aliens. This makes them "natural born citizens" of the United States, according to a fairly recent interpretation of the 14th Amendment. Then, when these "citizens" reach their 21st birthday, they can petition for legal status for their parents.

This is why these babies born on U.S. soil to parents who are in the country illegally are often dubbed "anchor babies." An anchor baby provides his or her parents a cornucopia of welfare benefits.

But, can President Trump end the practice with an executive order? Interestingly, almost none of those arguing that Trump cannot do so have defended then-President Barack Obama's issuance of an executive order to implement DACA.

For that matter, if the 14th Amendment actually does state — as poor a public policy as that is — that any child born on U.S. soil is a citizen at birth, can even Congress do anything about it, as Senator Graham has suggested?



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The 14th Amendment's language seems quite clear that only children born to parents who have no other citizenship can be a U.S. citizen. For example, when Senator Marco Rubio's parents came from Cuba, they began the legal process to become naturalized citizens of the United States. During that time period, little Marco was born on U.S. soil, to parents who were subject to the jurisdiction of the United States. Therefore, it is logical to presume that Rubio was a citizen of the United States, at birth.

"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" (emphasis added), reads the 14th Amendment. The phrase "and subject to the jurisdiction thereof," has, of course, been ignored by those promoting the concept of open borders. Yet, the words have some meaning, or otherwise the authors of the 14th Amendment would not have included them. They would have been redundant under the spurious interpretation that any child born on U.S. soil is a citizen at birth.

The purpose of the 14th Amendment was to make it clear that former slaves, regarded as non-citizens under the Supreme Court decision *Scott v. Sanford* of 1857, were citizens of the United States. In almost all cases, the former slaves did not have an acknowledged parent who was a U.S. citizen, and could not obtain citizenship that way. Without this necessity to establish the citizenship status of former slaves, the 14th Amendment would not have even been considered. Its clear purpose was to confer citizenship on former slaves, not children of illegal aliens.



A cursory reading of the statements by the principal authors of the 14th Amendment makes it so clear that even a law school professor or a federal judge should be able to understand it — the amendment was not intended to make citizens out of illegal aliens.

In 1982, Justice William Brennan (one of the most liberal judges to ever sit on the Supreme Court) added a footnote in the case of *Pylar v. Doe* that he saw "no plausible distinction" that could be made "between resident aliens whose entry into the United States was lawful, and resident aliens whose entry was unlawful."

In other words, that was the opinion of one member of the Supreme Court — in a footnote. The Court has never ruled on the relevance of the words "subject to the jurisdiction thereof." A footnote by one liberal judge hardly constitutes a precedent.

As a practical matter, it would probably be best for Congress to enact legislation supporting the president's interpretation. And, if someone does not like it, they can always challenge that interpretation. It would be difficult, from the clear wording of the 14th Amendment, how any person, much less a judge of the Supreme Court, could come to any other conclusion.

Photo of Sen. Lindsey Graham: Gage Skidmore



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