



Written by [Joe Wolverton, II, J.D.](#) on January 28, 2011

Senators Vitter and Paul Seek Closing of Anchor Baby “Loophole”

Sen. David Vitter, R-La., and Sen. Rand Paul, R-Ken., are co-authoring a resolution to deny citizenship to anyone born in the United States “unless at least one parent is a legal citizen, legal immigrant, active member of the Armed Forces or a naturalized legal citizen.” According to a statement jointly released by the pair of lawmakers.



For too long, our nation has seen an influx of illegal aliens entering our country at an escalating rate, and chain migration is a major contributor to this rapid increase – which is only compounded when the children of illegal aliens born in the U.S. are granted automatic citizenship.

Closing this loophole will not prevent them from becoming citizens, but will ensure that they have to go through the same process as anyone else who wants to become an American citizen.

Citizenship is a privilege, and only those who respect our immigration laws should be allowed to enjoy its benefits. This legislation makes it necessary that everyone follow the rules, and goes through same process to become a U.S. citizen.

For years, the halls of Congress have resounded with calls from several key GOP legislators for hearings into the 14th Amendment’s supposed grant of citizenship to children born in the United States whose parents are illegal aliens. The subject of the inelegantly nicknamed “anchor babies” is seen as a crucial battle in the wider war against the invasion of the United States by millions of illegal aliens.

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, 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. This is the crux of the current controversy.

Along with scores of their colleagues, particularly among those freshmen whose successful campaigns were backed by the Tea Party, Vitter and Paul assert that the 14th Amendment does not automatically endow birthright citizenship to the children of illegal aliens, neither in its plain language nor in its intent. The measure they are proposing will clarify that under the 14th Amendment a person born in the United States to illegal aliens does not automatically gain citizenship.

Senator Vitter is not new to the battle against the invasion of illegal immigrants. According to official



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records, apart from this 14th Amendment legislation, Vitter introduced a package of nearly 40 bills on the first day that senators were permitted to do so in the 112th Congress.

Several state legislators across the country have introduced bills similar to that offered by Senators Vitter and Paul. In Arizona, for example, state Senator Ron Gould (R) and state Representative John Kavanagh (R) [plan to introduce](#) bills in their respective houses that will grant citizenship only to those children of parents with at least one parent who “has no allegiance to a foreign country.”

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.

In an article on the subject published on the [Huffington Post](#), it was posited that:

Because states administer birth certificates, state legislators claim they have the right to change how citizenship is defined under the Fourteenth Amendment. This could, however, create a patchwork system of citizenship criteria.

In truth, a “patchwork system” of laws is precisely the way issues will be solved and be solved most effectively. States are more capable than the national government of identifying and rectifying problems that affect them directly, particularly the continued physical and fiscal well being of its citizens. This is the arrangement anticipated by our Founding Fathers in establishing our federal system of government — that is to say, a government comprised of a national government endowed with an enumerated slate of limited powers, and state governments empowered by the people themselves to carry out other governmental functions not delegated to the national government.

Furthermore, one need only look to the legislative history of the passage of the 14th Amendment to discover the original intent of the framers of that law.

During the vituperative debates that embroiled the Senate in those historic days following the Civil War, Senator Howard insisted that the qualifying phrase “subject to the jurisdiction thereof” be inserted into Section 1 of the 14th Amendment being considered by his colleagues. In the speech with which he proposed the alteration, Howard declared:

This amendment which I have offered is simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural law and national law a citizen of the United States. This will not, of course, include persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons.

How could a person “born in the United States” be simultaneously a citizen and a “foreigner” or “alien” if the mere fact of nativity settled the question of citizenship?

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



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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. 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.

Photo: Sen. David Vitter, R-La.



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