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Trump Right: 14th Amendment Did Not Guarantee Birthright Citizenship

President Trump told reporters on the White House's South Lawn on Wednesday that he is looking "very seriously" into ending the practice of declaring anyone who happens to be born on U.S. soil a U.S. citizen. Trump's announcement provoked immediate and predictable outrage from across the political Establishment, just as it did eight months ago, when Trump first broached the subject.



Trump ridiculed the idea of granting citizenship automatically to every baby born in America, whether the child's parents are here legally or illegally, saying, "We're looking at that very seriously, birthright citizenship, where you have a baby on our land, you walk over the border, have a baby — congratulations, the baby is now a U.S. citizen. It's frankly ridiculous."

When Trump addressed the issue last October, he suggested that he could end birthright citizenship simply by executive order. He justified such an action by arguing that "birthright citizenship" was not part of the Constitution, and predicted the question would eventually be settled by the Supreme Court. The 14th Amendment reads, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

It is not surprising that Democrats have almost unanimously fallen in line with the interpretation that this language confers citizenship on any person who just happens to be born on U.S. soil, but many establishment Republican politicians and opinion organs also insist the 14th Amendment makes all person born in the U.S. citizens at birth.

For example, John Yoo, a law professor at Cal-Berkeley, felt strongly enough about the subject to pen an essay to argue against Trump's position. Yoo served in the administration of President George W. Bush. "According to the best reading of its text, structure and history, anyone born on American territory, no matter their national origin, ethnicity or station in life, is an American citizen," Yoo wrote.

Paul Ryan, who was the speaker of the house when Trump first raised the issue, demonstrated his own solidly establishment credentials in disputing Trump. "As a conservative, I'm a believer in following the plain text of the Constitution. And I think in this case the 14th Amendment's pretty clear."

The *Wall Street Journal*, often regarded as something of a Republican newspaper, joined Ryan and Yoo in denouncing Trump's position. The paper's editorial board concluded that Trump's "birth citizenship gambit" was wrong on both "immigration law and politics." The *Wall Street Journal*, while conservative on some issues, is largely the mouthpiece of corporate America, which likes the cheap labor provided by



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desperate immigrants.

While a few nations do allow automatic citizenship to any person born on their soil, the overwhelming majority of nations do not.

But, on the constitutional question — and the political question — who is right, Trump or his critics?

How anyone could argue that making a citizen out of a person simply because that person was born in the United States, even if he or she and the baby's parents were in the country illegally, is good politics, is illogical. The reality is that the vast majority of persons born in America without either parent having any legal permission to be here, grow up to vote more liberal policies. Considering that these babies turn out to vote Democrat a significant majority of the time, this makes the support of a Republican leader like Ryan quite curious.

Despite the politics, is law professor Yoo correct in his assertion that anyone born on American soil “no matter ... is an American citizen?”

Hardly. The 14th Amendment was actually designed to make citizens of the former slaves freed by the 13th Amendment in 1865, and thus guarantee that they would enjoy all the rights of American citizenship. The phrase “and subject to the jurisdiction thereof” has, of course, been ignored by those promoting the concept of open borders. Clearly, the framers of the 14th Amendment intended that only children “born subject to the jurisdiction thereof” that is, the jurisdiction of the United States, are considered natural-born citizens. This would, by the clear wording of the amendment, not include the children of illegal aliens or “birth tourists,” because they are still under the jurisdiction of foreign governments.

Senator Jacob Merritt Howard of Michigan, an author of the 14th Amendment, said during the discussions over the effects of the amendment, “This will not, of course, include persons born in the United States who are foreigners.”

In other words, those who are born in the United States “under the jurisdiction thereof” would only include those whose parents are American citizens themselves, or those whose parents have placed themselves under U.S. jurisdiction — legal residents, such as those who have entered the country legally, as legal immigrants, in the process of becoming American citizens, or at least permanent legal residents.

Such clear language is ignored by those, such as Professor Yoo, who want to flood the country with illegal aliens. Not surprisingly, while working for President Bush, Yoo actually argued that presidents can go to war on their own without any authorization whatsoever from Congress, despite the clear wording of the Constitution that only *Congress* has the power to declare war.

Once again, Trump is correct and his detractors are wrong.

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Steve Byas is a university instructor of history and government and author of the book, History's Greatest Libels. He can be contacted at byassteve@yahoo.com



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