

# Republican Perspective

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## Birthright Citizenship - a Primer

*"If those who wrote and ratified the 14th Amendment had imagined laws restricting immigration - and had anticipated huge waves of illegal immigration - is it reasonable to presume they would have wanted to provide the reward of citizenship to the children of the violators of those laws? Surely not." George Will*

Immigration has been a topic in the Republican Presidential debates along with birthright citizenship. Donald Trump has said that he is for ending birthright citizenship which set off alarm bells within the Republican establishment.

Birthright citizenship allows children of illegal aliens born within the geographical jurisdiction of the United States entitlement to American citizenship. The U.S. has been permitting this since a Supreme Court decision in 1898 (*U.S. v Wong Kim Ark*) where it decided that the 14th Amendment is consistent with the English common law rule that a person's citizenship is determined by the place of his birth.

Trump's view is that the U.S. 14th Amendment has been construed too generously. The Amendment states: "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."

While the Republican establishment panders for Latino votes, several legal scholars support Trump's argument. One is Edward J. Erlar, a senior fellow of the Claremont Institute and Professor of Political Science at California State University, San Bernardino. Professor Erlar states that Congress has ample constitutional power to define who is within the "jurisdiction of the United States" and therefore eligible for citizenship. He further outlines that a correct understanding of the intent of the framers of the 14th Amendment and legislation, passed by Congress in the late 19th century and in 1923 extending citizenship to American Indians, provides this proof.

Senator Jacob Howard of Michigan was the author of the citizenship clause in the 14th Amendment and had to defend it against the charge that it would make Indians citizens. Senator Howard assured skeptics that "Indians born within the limits of the United States, and who maintain their tribal relations, are not, in the sense of this amendment, born subject to the jurisdiction of the the United States." Senator Trumbull, chairman of the Senate Judiciary Committee, argued to opponents that "subject to the jurisdiction thereof" simply meant "not owing allegiance to anybody else." He concluded that Indians were not "subject to the jurisdiction" of the U.S. because they owed allegiance, if only partial, to their tribes.

Professor Erler adds: “Jurisdiction understood as allegiance, Senator Howard explained, excludes not only Indians but “persons born in the United States who are foreigners, aliens, [or] who belong to the families of ambassadors or foreign ministers.” Thus, “subject to the jurisdiction” does not simply mean, as is commonly thought today, subject to American laws or courts. It means owing exclusive political allegiance to the U.S.

It should be noted that the Supreme Court has never opined that children of *illegal aliens* born in the U.S. are automatically given birthright citizenship. The court ruled in *U.S. v Wong Kim Ark* that a child born in the U.S. of *legal aliens* was entitled to birthright citizenship under the 14th Amendment.

This “perspective” is not to agree or disagree with Donald Trump’s view. It is intended to provide the reader with some historical information on the meaning of birthright citizenship under the 14th Amendment and that legal scholars continue to differ today. Further, it may show that Mr. Trump is not the crazy uncle coming down from the attic. The U.S. is an anomaly when it comes to countries that grant citizenship to a child born of illegal alien parents. France, Germany, Greece, Italy, Portugal, Spain and the U.K. do not automatically give citizenship to children born to illegal alien parents. Canada is the only other developed nation to offer birthright citizenship.

Jorge Ramos, the Univision’s anchor reporter that jumped ahead of others at a Trump news conference, proudly states that he votes in both Mexico and the U.S. Is it reasonable to ask when it comes to U.S. foreign policy towards Mexico, where is his allegiance? Does he support a change in Mexican immigration law to permit birthright citizenship?