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BIRTHRIGHT CITIZENSHIP: TRUMP IS FORCING THE ISSUE



By Steve Bakke  November 5, 2018

In 2015 Trump created a controversy by promising to eliminate “birthright citizenship.” Here’s the issue: “Do children born in the U.S. to illegal immigrants automatically gain U.S. citizenship?” Most say “yes,” but the courts haven’t fully clarified the issue for children of illegal immigrants.

Some basics:

- The 14th Amendment provided citizenship to freed slaves.
- The debate involves differing opinions about the meaning of the phrase “subject to the jurisdiction [of the U.S.],” from the “Citizenship Clause” in the 14th Amendment.
- Statements made by legislators of the time (1860s) cast doubt that birthright citizenship is relevant to the amendment.
- Intervening court decisions have dealt with narrowly defined issues generally having little to do with situations involving children of illegal immigrants.
- It’s perhaps relevant that Native Americans, although born here, didn’t gain citizenship until 1924 because they owed no allegiance to the U.S.

“Birthright” isn’t “settled law.” It’s best described as a “conventional understanding,” without benefit of legal precedent. Let’s thank the President for forcing this issue by announcing his intention to eliminate birthright citizenship by Executive Order. If he issues the order, there will be a challenge, and the Supreme Court will eventually rule. The law will then be settled.