



Trump targets U.S. birthright citizenship ahead of elections

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October 30, 2018

WASHINGTON (Reuters) - President Donald Trump on Tuesday revived his support for the legally questionable theory that citizenship is not automatically conferred on children born in the United States of illegal immigrants, in a bid to reshape immigration policies with crucial congressional elections a week away.

Seeking to shore up support for fellow Republicans, Trump told the Axios news website he would issue an executive order on the subject, a unilateral move without congressional approval that would require a radical new interpretation of existing law and almost certainly be challenged in the courts.

Under the U.S. Constitution's 14th Amendment, enacted in the wake of the U.S. Civil War to ensure that blacks previously subject to slavery had full citizenship rights, citizenship is granted to "all persons born or naturalized in the United States."

It has been routinely interpreted over the years to confer citizenship to people born in the United States whose parents are illegal immigrants.

Trump, who has made rhetoric against illegal immigrants a central plank of his presidency, originally spoke out against birthright citizenship when he first started running for president in 2015.

LEGAL ARGUMENT

The legal argument espoused by conservative activists for excluding children of illegal immigrants would likely be based around the language in the 14th Amendment that says people born in the United States are citizens if they are "subject to the jurisdiction" of the United States.

Activists seeking to limit immigration, including Michael Anton, who wrote an article on the subject for the Washington Post in July, argue that illegal immigrants are not under the jurisdiction of the United States and therefore their children born on U.S. soil should not be U.S. citizens.

Most legal scholars say the jurisdiction language denies citizenship only to those who are not bound by U.S. law, such as the children of foreign diplomats.

Ilya Shapiro, a lawyer with the libertarian Cato Institute, said that although there is a debate in academic circles among conservatives on whether Congress could legislate on the issue without running afoul of the 14th Amendment, “it’s not something that can be done by executive action alone.”

Information packs are distributed by the U.S. Citizenship and Immigration Services following a citizenship ceremony at the John F. Kennedy Presidential Library in Boston, Massachusetts, U.S., July 18, 2018. REUTERS/Brian Snyder

One Republican member of Congress, frequent Trump ally Senator Lindsey Graham said he would move forward to introduce legislation “along the same lines” as Trump’s order.

At least since 2005, Republicans in the U.S. Congress have regularly offered legislation ending birthright citizenship for children born in the United States if their parents were in the United States illegally. But the legislation has never advanced, even when the House of Representatives or Senate was under Republican control.

Neither Graham nor Trump gave any details about the latest plan. The White House did not respond to a request for comment.

Vice President Mike Pence said the plan may not be unconstitutional, telling Politico in an interview that while “we all cherish” the 14th amendment, the U.S. Supreme Court has not weighed in on the issue entirely.

Trump weighing birthright citizenship plan: Pence

“But 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,” Pence said.

The Supreme Court has not ruled specifically on the issue of whether illegal immigrants can be denied birthright citizenship.

In 1898, however, in the case of a man born in San Francisco to Chinese immigrants who lived permanently in the United States, the court ruled that the government could not deny him citizenship.

Saikrishna Prakash, a conservative legal scholar at the University of Virginia, said Trump faces long legal odds to ending citizenship as a birthright.

“We’re a nation of immigrants so if I were to bet I would think the president is going to lose,” he said.