The Phyllis Schlafly Report

SCOTUS Can Limit Birthright Citizenship

By John and Andy Schlafly

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When the first oral argument before the Supreme Court on a Trump policy is held on Thursday, May 15, all eyes will be on the divided nine Justices. Trump has asked the high court to rein in the power of district court judges to issue nationwide or universal injunctions against the president's policies.

Over 100 temporary or preliminary injunctions have been issued by district judges, most of whom were appointed by Democratic Presidents Biden, Obama, or Clinton. The underlying substantive dispute is over the claim to birthright citizenship by which foreigners who give birth here then assert citizenship based on the location of the childbirth.

Our Founders would be dismayed by the theory that merely being born on U.S. soil is enough to automatically qualify for citizenship. Christians know that Jesus and his 12 Apostles were born in the Roman Empire, yet none was a Roman citizen.

Only Paul among the early Christian disciples was a Roman citizen, which he inherited from his parents who were citizens. Others earned or acquired citizenship, but no one became a Roman citizen merely by being born in the empire.

Within hours of Trump becoming president, he issued an Executive Order entitled "Protecting the Meaning and Value of American Citizenship" which clarifies that American citizenship is not bestowed on people simply because they may have been born on American soil. "The Fourteenth Amendment has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof,'" Trump stated.

Trump's brilliant executive order clarifies that children born to a mother unlawfully present in the United States and to a father who was not an American citizen or lawful permanent resident are not entitled to American citizenship. Perhaps those children can become citizens one day as other foreigners can, but merely being born here does not entitle a child to citizenship here.

Likewise, when a child's mother's presence in the United States was lawful but merely temporary, and the father was not an American citizen or a lawful permanent resident, then

childbirth does not bestow American citizenship. This executive order took effect for anyone born 30 days after it was entered on January 20, 2025.

There has been a cottage industry of bringing pregnant Chinese mothers to California for them to give birth in a hospital here, go back to China and then claim American citizenship when their children grow up. This racket needs to stop, and the Supreme Court could end it as Trump has commanded with one of his first executive orders.

Children born to foreign diplomats in the United States are not eligible to be American citizens. Citizenship is what defines a country and its future, and must be carefully limited to those who personally or through their families have a long commitment to our values and way of life.

American Indians were not automatically citizens for nearly the first 140 years of our country, because they had not assimilated into American communities but retained loyalties to their tribes. The same is true for many of the illegal aliens brought in by Biden, Obama, and Clinton.

Children born to American parents are American citizens if they are born in the United States, and can claim citizenship here if they were born while in another country. Children born to lawful permanent residents of the United States are American citizens because they are born subject to the jurisdiction of the United States, as the Supreme Court held in 1898.

Persons temporarily present (such as tourists, workers, students, and diplomats) and persons unlawfully present (who could be removed without notice) are expected to go back home. Their children, though born here, retain the citizenship of their parents' country of origin.

The Supreme Court is divided on the issue of birthright citizenship, and it may try to duck the issue for now. Instead it may confine itself to the procedural question presented: "Whether the Supreme Court should stay the district courts' nationwide preliminary injunctions on the Trump administration's Jan. 20 executive order ending birthright citizenship except as to the individual plaintiffs and identified members of the organizational plaintiffs or states."

Several justices, including Thomas and Gorsuch, have expressed strong opposition to nationwide injunctions that extend beyond the plaintiffs in a case. But it is unclear whether they can muster a majority of the Court to end this practice that is being used frequently by liberals now against many aspects of Trump's agenda.

Limiting the scope of the injunctions against Trump's birthright citizenship executive order to only the plaintiffs in the lawsuits would enable his order to go into effect against

everyone else. That would mean the “Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security shall take all appropriate measures to ensure that the regulations and policies of their respective departments” implement this order.

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