

February 22, 2025

The Honorable Jacky Rosen  
United States Senate  
Washington, D.C. 20510

Dear Senator Rosen:

I am writing on behalf of First Focus Campaign for Children, a bipartisan advocacy organization dedicated to making children a greater priority in federal policy and budget decisions, to express our strong support for S. 646, which prohibits the use of federal funds to carry out the President Trump's unconstitutional Executive Order 14160 to gut the Fourteenth Amendment's birthright citizenship clause.

We firmly believe Trump's Executive Order (EO) is not only unconstitutional, but that it would prove to impose significant harm to babies, children, families, and the very fabric of our nation.

### **Constitutional and Legal Precedent**

The principle of birthright citizenship is enshrined in the Fourteenth Amendment of the U.S. Constitution. Upon the inclusion of the Citizenship Clause, the United States has operated under the premise that every baby has an equal right to belong and engage in the "pursuit of happiness."

This constitutional provision, ratified in 1868, was a direct response to the infamous *Dred Scott v. Sandford* (1857) decision, which denied citizenship to all Black people due to their race.<sup>1</sup>

As constitutional law scholar Garrett Epps explains:

*After the crime of slavery, the Framers of the Fourteenth Amendment wanted to create a new nation in which there would be no sub-humans, no inferior caste that could be sold onto plantations or herded into camps. The citizenship clause is a key part of the structure they built.*<sup>2</sup>

By ensuring citizenship at birth, the Fourteenth Amendment sought to eliminate citizenship being determined by race, sex, caste, ethnicity, country of origin, or immigration status of their

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<sup>1</sup> Supreme Court of the United States (1857). *Dred Scott v. Sandford*. 60 U.S. 19 How 393.

<sup>2</sup> Epps, G. (2015, Sep. 1). *The Problems with Challenging Birthright Citizenship*. Retrieved from The Atlantic at <https://www.theatlantic.com/politics/archive/2015/09/the-program-with-challenging-birthright-citizenship-403147/>.

parents and to avoid the creation of a stateless underclass.<sup>3</sup> Instead, the Fourteenth Amendment sought to uphold the fundamental values of equality and due process – beginning with all babies born in the country.<sup>4</sup>

For over a century, the Supreme Court has repeatedly upheld this interpretation of birthright citizenship. In *United States v. Wong Kim Ark* (1898), the Court affirmed that the Fourteenth Amendment grants citizenship to all children born on U.S. soil, regardless of their parents' nationality.<sup>5</sup>

This decision has served as a cornerstone of American jurisprudence, and any attempt to gut this constitutional right by proclamation runs counter to both constitutional text and legal precedent. Furthermore, in *Plyler v. Doe* (1982), the Supreme Court reinforced the principle that the Fourteenth Amendment applies to all persons within U.S. borders, not merely citizens, rejecting attempts to discriminate against children based on their parents' immigration status.<sup>6</sup>

S. 646 rightfully prohibits federal spending on unconstitutional actions, as the framers of the Fourteenth Amendment explicitly rejected arguments to restrict citizenship based on parentage.

As Sen. Jacob Howard, one of the architects of the amendment, stated in 1866:

*This amendment will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers.*<sup>7</sup>

The historical record is clear: the only individuals excluded from birthright citizenship are those born to foreign diplomats and enemy army occupiers, not immigrants residing in the U.S. Columnist George Will adds:

*Congress controls naturalization policies, but the Constitution, by the citizenship clause, puts birthright citizenship above the vicissitudes of politics.*<sup>8</sup>

## **Harmful Impact on Babies and Children**

Beyond the Executive Order's constitutional defects, his EO poses grave risks to children, particularly babies. It challenges a fundamental question of who we are as a country and how we treat our youngest and most vulnerable residents – our children at their most formative stages.

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<sup>3</sup> Frost, A. (2021). 'By Accident of Birth': The Battle over Birthright Citizenship After *United States v. Wong Kim Ark*. *Yale Journal of Law & the Humanities*. 32(1). 38-76.

<sup>4</sup> The exception being the children of foreign diplomats, who are not "subject to the jurisdiction" of the United States.

<sup>5</sup> Supreme Court of the United States (1898). *United States v. Wong Kim Ark*. 169 U.S. 649.

<sup>6</sup> Supreme Court of the United States (1982). *Plyler v. Doe*. 457 U.S. 202.

<sup>7</sup> Epps, G. (2010). The Citizenship Clause: A 'Legislative History.' *American University Law Review*. 60(2). 331-388.

<sup>8</sup> Will, G.F. (2024, Aug. 23). Memo to Trump: Birthright citizenship is a constitutional right. *Period*. Retrieved from Washington Post at <https://www.washingtonpost.com/opinions/2024/08/23/trump-birthright-citizenship-constitutional>.

Stripping away or denying citizenship to children born in the United States would create a new underclass of stateless individuals who are defenseless – depriving them of fundamental rights, including access to education, health care, nutrition, and economic opportunity.<sup>9</sup> These stateless children, who are innocent of having committed any crime,<sup>10</sup> would be subjected to barriers in obtaining identification documents, employment, and even basic protections under the law.

Consequently, the President’s EO violates fundamental legal tenets of fairness and due process.

For example, if a parent was caught speeding on a highway, our legal system would never consider subjecting that person’s baby to fines, defensive driving classes, or community service as punishment.

As Justice William J. Brennan explains:

*Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.*<sup>11</sup>

Justice Lewis F. Powell adds:

*[V]isiting...condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the...child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility and wrongdoing. Obviously, no child is responsible for his birth and penalizing the...child is an ineffectual – as well as unjust – way of deterring the parent.*<sup>12</sup>

Justice Powell was ruling against denying babies and children benefits because they were born out of wedlock – a situation beyond their control – as being “illogical and unjust.” Denying babies and children U.S. citizenship to punish their parents for being undocumented is similarly “illogical and unjust.”<sup>13</sup> Unfortunately, that is what the President’s EO does. The solution is not to single out and punish babies, who did nothing wrong, including Secretary of State Marco

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<sup>9</sup> Cervantes, W. (2015, Sep.). Birthright Citizenship: A Fundamental Right for America’s Children. Retrieved from First Focus on Children at <https://firstfocus.org/resource/birthright-citizenship-a-fundamental-right-for-americas-children/>; Stock, M.D. (2012, Winter). Is Birthright Citizenship Good for America? Cato Journal. 32(1). 139-157; Lesley, B. (2023, Oct. 17). From Cradle to Limbo: The Immediate and Long-term Dangers of Repeating Birthright Citizenship for Children. Retrieved from Substack at <https://brucelesley.substack.com/p/from-cradle-to-limbo-the-immediate>.

<sup>10</sup> Price, P.J. (2013). Stateless in the United States: Current Reality and a Future Prediction. Vanderbilt Journal of Transnational Law. 46. 443-514. Price writes, “These children will not have chosen their situation, nor will they have violated any U.S.-immigration laws.”

<sup>11</sup> Supreme Court of the United States (1982). Plyler v. Doe. 457 U.S. 202. See also, Epps, G. (2010).

<sup>12</sup> Supreme Court of the United States (1972). Weber v. Aetna Casualty and Surety Co. 406 U.S. 164.

<sup>13</sup> *Ibid.*; See also, Eisgruber, C.L. (1997, Apr.). Birthright Citizenship and the Constitution. New York University Law Review. 72. 54-95; Dowd, N.E. (2020). Children’s Equality Rights: Every Child’s Right to Develop to their Full Capacity. Cardozo Law Review. 41. 1367-1440.

Rubio, Second Lady Usha Vance, or Vivek Ramaswamy, who would have been deemed stateless at birth if Trump's EO had been in place.

Unfortunately, Trump's EO would also significantly increase the number of undocumented residents in this country and subject these young, innocent victims to disabling and crushing penalties that leave them vulnerable to exploitation, poverty, discrimination, and marginalization, potentially for life.<sup>14</sup>

Furthermore, his EO would place enormous burdens on every single baby – ***all 3.6 million of them annually*** – and their parents with new, undue bureaucracy, paperwork, and legal barriers to determine lineage and citizenship. New bureaucratic rules, regulations, and forms would need to be created to establish answers to a raft of complex legal questions that would be opened up by your legislation. Examples of these questions include:

- *Determining the citizenship status – citizen, legal immigrant, or undocumented – of parent(s) at the moment of a child's birth;*
- *The paternity and citizenship status of an unwed father;*
- *Disputes over the paternity status of a baby;*
- *The status of a baby given up for adoption;*
- *The status of a baby who was conceived via in vitro fertilization (IVF) or intrauterine insemination (IUI);*
- *Determinations in cases of birth via surrogacy;*
- *The determination of a baby's status with same-sex parents;*
- *The establishment of a new bureaucracy or agency to make such determinations;*
- *The appeals rights available to a baby or child, including legal representation;*
- *The citizenship of a child whose parents failed to apply for citizenship for the child or a child who cannot obtain needed documentation due to death, natural disaster, foster care status, etc.;*
- *The eligibility status of children for programs like Medicaid, WIC, SNAP, or the Child Tax Credit, who would be in limbo awaiting a citizenship determination; or,*
- *The plight and future of babies and children who would be denied citizenship status, and thereby, might be subjected to deportation or become stateless.*<sup>15</sup>

Every child born in this country would need to have an application submitted on their behalf to a government agency with an enormous bureaucracy to implement the rules and regulations that would be needed for this new system. The government agency's new bureaucracy would be required to create and interpret this unprecedented system of citizenship verification at birth and undoubtedly would include delays, errors, and a period of limbo.

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<sup>14</sup> Green, C. (2023, May 11). Invisibility: Bringing Statelessness to the Forefront of U.S. Political Advocacy. Retrieved from University of San Francisco. Master's thesis: <https://repository.usfca.edu/thes/1472>.

<sup>15</sup> Lesley, B. (2024, Nov. 15). In Harm's Way: The Consequences of Denying Birthright Citizenship for America's Children and Our Future. Retrieved from First Focus on Children at <https://firstfocus.org/wp-content/uploads/2024/11/Birthright-Citizenship-Issue-Brief.pdf>.

As seen in other countries that have attempted to restrict birthright citizenship, bureaucratic errors have led to thousands of people being arbitrarily rendered stateless, unable to obtain documentation, subject to systemic discrimination, and wrongful detainment and deportation. The cost of implementing and enforcing such a policy in the United States would be enormous, adding strain to already overburdened administrative and judicial systems in this country, which should be focused on addressing crimes and other legal disputes rather than creating a new system focused on imposing harm on babies and children.

### **Economic and Social Consequences**

Beyond the immediate harm to affected children, restricting birthright citizenship would have long-term negative effects on the U.S. economy. Immigrant communities, including their U.S.-born children, play a crucial role in driving economic growth. The proposed EO 14160 would create generations of disenfranchised individuals, limiting their ability to fully participate in society and reducing their economic mobility and contributions to society.

At a time when our nation's population is rapidly aging and will need a strong, robust younger generation to ensure a continued thriving economy and funding to pay for programs like Social Security and Medicare for older generations, it makes little to no sense to cut the number of younger U.S. citizens and to create significant impediments and barriers to the potential well-being and success of millions of children over time.<sup>16</sup>

Furthermore, such policies risk harming America's global standing. The U.S. has long been a beacon of hope and opportunity, attracting individuals from around the world who seek a better life for their children. This bill sends a dangerous message that America is abandoning its founding ideals and embracing exclusionary policies reminiscent of nativist movements that history has repeatedly judged harshly.

Instead of attacking birthright citizenship, Congress should focus on policies that strengthen families, uphold constitutional principles, and support the well-being of all children born in the United States, regardless of their parents' race, sex, ethnicity, income, disability, or immigration status.

And maybe most of all, the American people support birthright citizenship. A CBS News/YouGov Poll on January 15-17, 2015, found that voters wish to “keep birthright citizenship in place as it is” rather than changing it by an overwhelming 71-29% margin.<sup>17</sup>

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<sup>16</sup> Stock, M. (2012, Mar.). The Cost to Americans and America of Ending Birthright Citizenship. Retrieved from National Foundation for American Policy; Van Jook, J. & Fix, M. (2010, Sep.). The Demographic Impacts of Repealing Birthright Citizenship. Retrieved from Migration Policy Institute; Myers, D. (2017, Oct. 1). The New Importance of Children in America. Retrieved from Lucile Packard Foundation for Children's Health at <https://lpfch.org/resource/the-new-importance-of-children-in-america/>.

<sup>17</sup> CBS News/You Gov Poll (2015, Jan. 15-17). Retrieved at [https://d3nk13psvxxpe9.cloudfront.net/documents/cbsnews\\_20250119\\_1.pdf](https://d3nk13psvxxpe9.cloudfront.net/documents/cbsnews_20250119_1.pdf).

For all of the reasons cited above, First Focus Campaign for Children supports S. 646 to block President Trump's attempt to abolish the Constitution's citizenship clause and birthright by executive fiat.

Thank you for your attention and consideration.

Sincerely



Bruce Lesley  
President

xc:

The Honorable Richard Durbin  
Ranking Member, Senate Judiciary Committee  
Washington, D.C. 20510

The Honorable Patty Murray  
Ranking Member, Senate Appropriations  
Washington, D.C. 20510

The Honorable Brian Schatz  
United States Senate  
Washington, D.C. 20510

The Honorable Alex Padilla  
United States Senate  
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The Honorable Chris Van Hollen  
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The Honorable Richard Blumenthal  
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The Honorable Catherine Cortez Masto  
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The Honorable Jeanne Shaheen  
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The Honorable Cory Booker  
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The Honorable Peter Welch  
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