

Leading Republicans call for partial repeal of 14th Amendment

Behind the attack on US citizenship rights

Tom Carter
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A constituency within the political establishment has been consolidating in recent months for a repeal of the citizenship clause of the 14th Amendment to the US Constitution, which provides that every person born in the US is guaranteed citizenship. This reactionary proposal, ostensibly to combat “illegal” immigration, has broad and far-reaching consequences for democratic rights in the US.

Various proposals for overturning the citizenship clause of the 14th Amendment have been festering in extreme right-wing circles for decades. Republican Congressman Elton Gallegly of California claims to have supported legislation to that effect for 20 years, having introduced a bill along similar lines in 1991. Nevertheless, this latest proposal, in the form of a constitutional amendment, has found significant support among top figures in the US political establishment and the media.

Over the past week, leading Republican senators have publicly given consideration to introducing a constitutional amendment that would repeal the citizenship clause, including John McCain of Arizona, the 2008 Republican presidential candidate, Lindsey Graham of South Carolina, John Cornyn of Texas, Jon Kyl of Arizona, and Jeff Sessions, the highest-ranking Republican on the Senate Judiciary Committee.

Mitch McConnell, the Republican leader in the Senate, indicated that he supported holding hearings on whether the 14th Amendment citizenship right should be abolished.

The campaign to abolish the citizenship clause has been accompanied by an accelerating xenophobic campaign against immigrants and their children. “People come here to have babies,” Lindsey Graham declared on National Public Radio. “They come here to drop a child—it’s called drop and leave. To have a child in America, they cross the border, they go to an emergency room, have a child and that child is automatically an American citizen.”

John Cornyn appeared on CBS to say, “The question is, if both parents are here illegally, should there be a reward for their illegal behavior?” Here the birth of a child is treated as a criminal act, with both the parents and the child to be punished for the offense.

Right-wing media commentators in the US are taking it a step further, sparing no effort to cultivate ignorance and racial hatred in the population. Various television and radio shows throughout the week featured discussions on the “problem” of “anchor babies”—the slur for children of undocumented immigrants.

Bill O’Reilly declared on his Tuesday Fox News program, “I think public opinion knows it’s a ruse, knows that this is a ruse for people to sneak in here, get their kid to be an American citizen so they can stay.”

On Friday, Fox News reported falsely that “most of the violent crime that we are seeing comes out of the illegal immigration community.” In fact, undocumented workers and their families account for only 3 or 4 percent of the total US population, and there is no evidence suggesting a higher incidence of violent crime among them.

The response of the Democrats has been cowardly and tepid. While declining to endorse a constitutional amendment, leading Democrats provided assurances that they remain “tough on illegal immigration.” Democratic Senator Russ Feingold of Wisconsin, who chairs the Senate subcommittee that would introduce a constitutional amendment, stated, “We can and should address the problem of illegal immigration head-on without amending the Constitution.”

A number of media commentators have pointed out that a constitutional amendment is unlikely to pass in the near future because it requires a two-thirds vote of both houses of Congress and passage by the legislatures of three-fourths of the states. Some opponents of the citizenship clause argue that it is possible to reach the same result by means of a Supreme Court decision adopting a new interpretation of the 14th Amendment.

Whatever steps are ultimately taken, the fact that overturning the citizenship clause is being openly discussed at top levels in Washington and in the media should serve as a warning to the working class.

In every country, hatred of immigrants has long been promoted to divide the working class along national and ethnic lines and to provide a base for right-wing policies. In the US, it is the cornerstone of a growing quasi-fascistic element in the political establishment that has the increasing support of major sections of the media.

The assault on the 14th Amendment, however, is not only an attack on undocumented workers and their children, it is an attack on the right of citizenship itself, with broad implications for the democratic rights of the entire population.

The significance of the 14th Amendment

The 14th Amendment was ratified in 1868 in the aftermath of an extraordinary series of historical events. The Republican Party was founded in 1854 when opponents of slavery split from the Whig party after a long series of unsatisfactory compromises.

In 1861, hostilities exploded into a bloody four-year Civil War, in which 3 million men fought and 640,000 died to prevent the secession of a Southern confederation of slave states. The Emancipation Proclamation, issued by President Abraham Lincoln in the midst of the war, freed vast numbers of slaves in the Southern states. In April 1865, Lincoln was assassinated in Washington. The 13th Amendment, adopted in December 1865 under the leadership of the victorious Republican Party, officially abolished slavery and involuntary servitude throughout the US.

The 14th Amendment, drafted in 1866, contains many of the most significant of the US constitutional protections, including the rights to equal protection under the law, due process, and citizenship. The amendment was designed primarily to permanently break up the Southern slavocracy by providing full citizenship and democratic rights to the freed slaves. For definite reasons, the word “equal” appears in the 14th Amendment for the first time in the US Constitution and nowhere else.

The 14th Amendment effected a significant change in US constitutional law. Subsequent Supreme Court cases interpreted the 14th Amendment to apply the protections of the Bill of Rights to the states, which they formerly did not. The 14th Amendment also provided the legal rationale during the civil rights movement of the 1950s and 1960s to desegregate the South and strike down the discriminatory Jim Crow laws. The rights to privacy, marriage and abortion have their source in the 14th Amendment’s due process clause.

It comes as no surprise that for political reactionaries the 14th Amendment has always been a sore spot.

The history of the 14th Amendment has been largely distorted in the media. On July 30, for example, the *Wall Street Journal* reported uncritically the claim of Arizona State Senator Russell Pearce that “when it was ratified in 1868, the amendment had to do with African-Americans; it had nothing to do with aliens.” This claim has become a recurring theme on television and radio shows in which the proposed amendment is being discussed.

The Senate record of 1866, when the amendment was drafted, is replete with acknowledgments by individual senators that the amendment would apply to the children of non-citizen immigrants. In fact, the issue was hotly debated.

For example, Senator Edgar Cowan of Pennsylvania opposed the amendment on the Senate floor on the grounds that children of Asian immigrants would become citizens by virtue of the citizenship clause, and that Asians would “pour in their millions upon our Pacific coast in a very short time.”

Senator John Conness of California rejected this position, stating, “We are entirely ready to accept the provision proposed in this constitutional amendment, that the children born here of Mongolian parents shall be declared by the Constitution of the United States to be entitled to civil rights and to equal protection

before the law with others.”

Section 1 of the 14th Amendment reads, in full, “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. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The citizenship clause is itself significant because it places American citizenship on a substantially democratic basis. Under the 14th Amendment, every person born in the US has a constitutional right to citizenship. Citizenship cannot be made contingent on race, religion, political affiliation or allegiance, national origin, or heritage. Citizenship is irrevocable. Citizenship and all of the consequent rights and privileges cannot be taken away by the government. Finally, the 14th Amendment ensures there is only one class of citizen. Southern states were prevented by the citizenship clause from creating separate classes of citizenship based on race.

The right to citizenship is a right on which many other rights depend. For example, in the recent case of *Hamdi v. Rumsfeld* (2004), the US Supreme Court held that a US citizen has a right to habeas corpus, or judicial review of detention, that cannot be overridden by the president’s designation of a person as an “unlawful enemy combatant.” However, in subsequent cases, the Supreme Court found that a non-citizen could be denied the same right.

If citizenship can be revoked and a non-citizen can be denied constitutional protections, then the entire system of democratic rights can be bypassed and a class of persons with no rights can be created. This is what is behind Democratic Senator Joseph Lieberman’s proposal in May of this year for a “citizenship-stripping” law. This proposed law would empower the State Department to revoke a person’s citizenship if the person were found to have engaged in “terrorist activities” or other acts of “disloyalty.” A number of prominent Democrats have signaled support for such a law, including Charles Schumer of New York.

Responding to the campaign to abolish the 14th Amendment citizenship clause, the *Atlantic* magazine remarked, “The question, then, is how, and what requirement would replace US birth.” So far, no specific proposals have been made publicly. However, the magazine reported that an unnamed Senate aide had indicated the proposed amendment “would specify that Congress has the power to delineate citizenship requirements.”



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