

National Foundation for American Policy

March 5, 2012

Contact: Stuart Anderson, 703-351-5042, press@nfap.com

New Research Finds Ending Birthright Citizenship Would Be Costly to Americans

Changing the 14th Amendment's Citizenship Clause Would Create New Bureaucracy, Cost New Parents \$1,200 to \$1,600 a Year and Foster a Two-Tier American Society

Arlington, Va. – There are many costs to Americans and American society of changing the Fourteenth Amendment's Citizenship Clause, according to a new report released by the National Foundation for American Policy (NFAP), an Arlington, Va.-based policy research group.

Based on current costs to verify the citizenship status of children born overseas to U.S. citizens, changing the Citizenship Clause of the Fourteenth Amendment will cost new parents in the United States approximately \$600 in government fees to prove the citizenship status of each baby and likely an additional \$600 to \$1,000 in legal fees. This represents a "tax" of \$1,200 to \$1,600 on each baby born in the United States, while at the same time doing little to deter illegal entry to the United States. Direct fees to the federal government would reach \$2.4 billion a year, based on current estimates.

The author of the report, Margaret Stock, is an immigration law and citizenship expert and Counsel to the Firm at the Anchorage office of Lane Powell PC. She is also a retired U.S. Army Reserve officer in the Military Police Corps. The report, "The Cost to America and Americans of Ending Birthright Citizenship," is available at www.nfap.com.

In recent years, calls to change the Fourteenth Amendment's Citizenship Clause, which guarantees U.S. citizenship to most American-born babies, have been a regular feature of the political landscape. A change to the Citizenship Clause superficially appeals to some who have not considered the cost and implications of verifying the immigration or citizenship status of every parent of every child born in the United States each year.

"The report illustrates that many times those proposing harsh measures to deal with illegal immigration have not thought through the consequences of their proposals," said Stuart

Anderson, executive director, National Foundation for American Policy, and former head of policy and counselor to the Commissioner of the INS (August 2001 to January 2003).

According to the report, the costs of changing the Citizenship Clause include:

- **Creating a two-tier American caste system that will result in a significant decrease in the population of younger U.S. citizens.** The change would create a large class of unauthorized and stateless children who are born and raised in the United States but who have no strong ties to any other nation. The change would increase the undocumented population significantly. The Migration Policy Institute (MPI) has estimated that America would lose somewhere between 4.7 million and 13.5 million future citizens by the year 2050 if the Citizenship Clause is changed to deny U.S. citizenship to the children of unauthorized immigrants. Instead, those children would be born here but would lack legal status and have no right to stay in the United States.
- **Increasing the shadow economy.** The major demographic issues should be obvious: Even a change restricted only to the children of unauthorized immigrants will cause the U.S. to lose a large cohort of U.S. citizens in the youngest demographic groups. While some of these birthright undocumented immigrants will possibly qualify to immigrate legally through one channel or another eventually, and a smaller group of those will eventually earn U.S. citizenship through naturalization channels, most will be ineligible for any legal immigration status and will likely enter the shadow economy.
- **Reducing the tax base, including contributions to Social Security, and reducing the military recruiting base.** Because individuals pay a “wage penalty” for lacking legal status, creating unauthorized residents in the place of U.S. citizens will reduce the amount of taxes collected in a time of already large deficits.
- **More, not less government and bureaucracy.** Any change to the current bright-line rule will inevitably add more complexity and bureaucracy to the lives of all Americans. The current rule is easy to administer, but any new rule will require major changes to the way Americans document their lives to the government. Under the current interpretation of the Clause, the status of one’s parents is not taken into account in citizenship determinations, except in cases where diplomats with diplomatic immunity have children in the United States. Thus, a change to the Clause will necessarily require the creation of a new system to manage and administer the new rules; this system will necessarily apply to all Americans who have children in the United States, as well as unauthorized immigrant parents.
- **Added cost to American parents.** While proponents of change have not agreed on any one new rule, they do agree that any new rule should create different classes of American-born babies, based on the status of the babies’ parents at the time of the birth. Creating two classes of babies will necessarily be more expensive to administer than the current system. The parents’ status will have to be verified by a government official, who will then determine whether a newborn is a U.S. citizen (or not). After making the determination, the official will then issue different documents to the two different groups of children, resulting in a two-tier caste system for babies born in America. Distinguishing between the babies in each category will necessarily require more bureaucracy than what exists today.
- **Creation of a centralized citizenship authority and National ID card.** Changing the Citizenship Clause will not be a mere matter of changing the Fourteenth Amendment itself, but will also at a minimum require each state to establish a system for verifying claims to U.S. citizenship; more logically, a change to the Citizenship Clause will lead to the creation of a central and authoritative Federal citizenship records system that will

register all U.S. citizens—and ultimately, this would likely in turn lead to a National Identification card.

- **Additional bureaucratic costs.** New verification systems—including the existing employment verification system, the REAL ID system, Secure Communities, and the new E-Verify system—have cost the American taxpayer billions of dollars. There is no reason to believe that a change to the Citizenship Clause requiring the verification of parents' immigration status would be any less expensive than other verification systems. The estimated cost to U.S. employers of operating the E-Verify system will be at least \$2.7 billion per year or more. It is conceivable that similar costs estimates would emerge in segments of the federal bureaucracy needed to respond to requests for verification involving four million babies every year.

The report notes that current U.S. immigration law does not provide any lawful immigration status—other than U.S. citizenship—to babies born in the U.S. who are not diplomats' children. The Citizenship Clause of the Fourteenth Amendment to the United States Constitution states that “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.” Ratified after the end of the Civil War in repudiation of the infamous U.S. Supreme Court decision in *Dred Scott v. Sandford*, the Clause is a simple, bright-line rule that has been a familiar feature of the U.S. Constitution for more than a hundred years. Proponents of a change to the Clause seek to move from a simple, bright-line, inclusive rule to a more complex one that would deny U.S. citizenship at birth to hundreds of thousands of American-born babies. These children would have no legal status unless Congress concurrently enacts comprehensive immigration reform to provide them with legal immigration status.

According to the study, the proper way to change the Citizenship Clause is through a Constitutional Amendment. It is unlikely that Congress can use its Section 5 power to reinterpret the meaning of the Citizenship Clause, anymore than Congress can use its Article I, section 1 powers to “reinterpret” the First or Second Amendments.

“Countries that have changed their citizenship laws have not found that the change led to a significant drop in illegal migration,” the report notes. As the Migration Policy Institute study explained, a change to the Citizenship Clause will cause a substantial increase in the population of unauthorized immigrants. Although proponents of a change to the Citizenship Clause often argue that changing the Clause will deter undocumented immigrants from coming to the United States and having babies here, thereby reducing undocumented migration, evidence from other countries suggests that a change to the birthright citizenship rule will not be a deterrent to unauthorized migration.

“Most illegal migration to the United States is driven by economic factors (jobs), or a desire to reunite with family members, not the attraction of birthright citizenship,” explains Margaret Stock. Unauthorized parents mostly don’t benefit from their child’s U.S. citizenship; a birthright citizen can’t sponsor his or her parents for lawful immigration status until the citizen is 21 years old and has a middle-class income; if the parent entered the U.S. unlawfully, the parent must depart the United States to obtain an immigration visa, and the parent’s departure triggers a 10-year bar from the U.S.—a bar that cannot be waived just because someone has a U.S. citizen child. Some parents of U.S.-born children can be granted “cancellation of removal” by an immigration judge—but such grants are subject to a strict nationwide quota of 4,000 per year, and the parent must show “exceptional and extremely unusual hardship” to the U.S. citizen child, a standard that few can meet.

“The proposed change will impose burdensome bureaucratic costs on all newborns and their parents at a time when many Americans favor less government, not more,” notes Stock. This proposal threatens to become the latest in a long line of expensive verification systems that fail a basic cost-benefit analysis and threaten to drown Americans in bureaucracy at every stage of their lives. The perceived benefits of a change in the Clause—a reduction in illegal migration and deterring “birth tourism”—could be achieved in a much less costly manner through enactment of sensible immigration reforms, the study concludes. A Constitutional Amendment to change the Citizenship Clause is unnecessary and threatens to undermine fundamental principles of American equality.

A grant from the Carnegie Corporation of New York funded the research for the NFAP paper. The contents of the report are solely the responsibility of the author and the National Foundation for American Policy.

About the National Foundation for American Policy

Established in the Fall 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, former U.S. Senator and Energy Secretary Spencer Abraham and other prominent individuals. Over the past 24 months, NFAP’s research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization’s reports can be found at www.nfap.com.

2111 Wilson Blvd., Suite 700, Arlington, VA 22201
phone: (703) 351-5042 fax: (703) 351-9292 www.nfap.com