

Republican candidates attack the Fourteenth Amendment

By Patrick Martin
24 August 2015

In the wake of billionaire Donald Trump's call for the repeal of birthright citizenship, several other Republican presidential candidates have joined in demanding the abrogation of this fundamental right guaranteed by the Fourteenth Amendment to the US Constitution.

Trump has made immigration the central issue of his campaign for the Republican presidential nomination since he launched his bid on June 16 with a diatribe claiming that Mexico was exporting its drug dealers and rapists to the United States.

On August 16, Trump's campaign web site released the candidate's first—and so far only—platform statement, devoted entirely to immigration and including the demand for the repeal of birthright citizenship.

In the week that has passed, this demand has been embraced by seven of Trump's rivals for the Republican nomination: Wisconsin Governor Scott Walker, Louisiana Governor Bobby Jindal, South Carolina Senator Lindsey Graham, Texas Senator Ted Cruz, Kentucky Senator Rand Paul, retired neurosurgeon Ben Carson, and former Pennsylvania Senator Rick Santorum.

Former Florida Governor Jeb Bush, while disagreeing with Trump on the policy, echoed his language, using the racist term “anchor babies” to describe children born in the US to the parents of undocumented immigrants.

Fully half the Republican field has endorsed an action that would require a constitutional amendment to repeal or rewrite one of the most important guarantees of democratic rights in US history. The Fourteenth Amendment was one of three adopted in the wake of the American Civil War (1861-65). The Thirteenth Amendment abolished slavery.

The Fourteenth Amendment (1868) was adopted to ensure that the former slaves and their descendants would be citizens of the United States, with all the rights of citizens. The Fifteenth Amendment (1870) specifically guaranteed the former slaves the right to vote, although this was not carried out in practice until the passage of the Voting Rights Act nearly a century later.

The Fourteenth Amendment begins with what amounts to a direct repudiation of the 1857 *Dred Scott* decision, the notorious action of the Supreme Court that declared that in the view of the drafters of the Constitution, persons of African descent were “beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect.”

The language of the amendment, written only a decade after *Dred Scott* and only five years after the Emancipation Proclamation, has much wider application, however, than the status of the freed slaves and their children. It reads:

“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 phrase “subject to the jurisdiction thereof” exempts from the citizenship clause the children of foreign diplomats born in the United States, who cannot be arrested or otherwise subjected to US jurisdiction because of diplomatic immunity. All other

children born on US soil to foreign residents, regardless of the legal status of the parents, are entitled to US citizenship.

This was clear in the minds of those who debated in Congress the language of the Fourteenth Amendment as drafted by Senator Jacob M. Howard, a Republican of Michigan. A widely cited exchange from the Congressional Record, between Republican senators Edgar Cowan of Pennsylvania and Lyman Trumbull of Illinois, goes as follows:

Mr. Cowan: "I will ask whether it will not have the effect of naturalizing the children of Chinese and Gypsies born in this country?"

Mr. Trumbull: "Undoubtedly."

Cowan pressed the issue, seeking to distinguish on racial grounds between the children of European immigrants, such as the Germans who populated Pennsylvania, who he believed were entitled to citizenship, and the children of immigrants from Africa or Asia, who were not. Trumbull replied unequivocally:

Mr. Trumbull: "If the Senator from Pennsylvania will show me in the law any distinction made between the children of German parents and the children of Asiatic parents, I may be able to appreciate the point which he makes; but the law makes no such distinction; and the child of an Asiatic is just as much of a citizen as the child of a European."

The Supreme Court subsequently confirmed this interpretation of the Fourteenth Amendment in its 1898 decision in *United States v. Wong Kim Ark*, finding that the children of a Chinese immigrant, born on US soil, were indeed citizens.

This history should be clear even to a political ignoramus such as Donald Trump, who told Bill O'Reilly of Fox News that this century-old interpretation of the Fourteenth Amendment was itself unconstitutional. "It's not going to hold up in court, it's going to have to be tested," he claimed. "I don't think they have American citizenship, and if you speak to some very, very good lawyers—some would disagree. But many of them agree with me—you're going to find they do not have American citizenship. We have to start a process where we take back our country. Our country is going to hell."

(It is worth pointing out that Senator Harry Reid of Nevada, now the Democratic leader in the Senate, once supported the claim that it is possible to repeal

birthright citizenship without an amendment to the Constitution).

Trump made the demand for repeal of birthright citizenship the focal point of his rally Friday night in Mobile, Alabama, attended by some 20,000 people, the largest crowd for any Republican presidential candidate this year. He appeared alongside Senator Jeff Sessions, the leading anti-immigrant reactionary in the US Senate, who helped draft Trump's immigration platform.

Trump also expressed sympathy for the actions last week of two men in Boston who attacked a homeless Hispanic man, 58 years old, urinating on him and then beating him with a pole and their fists and breaking his nose because they believed him to be an undocumented immigrant. One of the two told the police, "Donald Trump was right, all these illegals need to be deported."

Of this incident, Trump declared: "I will say that people who are following me are very passionate. They love this country and they want this country to be great again. They are passionate." Only later, after public criticism, did Trump say, via Twitter, that he "would never condone violence."

Whatever the fate of the Trump campaign or his specific proposals on immigration, centered on the mass expulsion of 11 million immigrants, the very fact that his anti-immigrant demagoguery has received such a positive reception among sections of the Republican Party is a warning sign.

The 2016 election campaign is laying bare the deeply reactionary and anti-democratic character of the US ruling elite. To defend its profits and power, it is stepping up its assault on the democratic rights of working people and the historical principles laid down after the bloody Civil War against the slave power.

To contact the WSWWS and the
Socialist Equality Party visit:

<http://www.wsws.org>