

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AJR 5 (Lee)
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Fiscal: No
Urgency: No
AWM

SUBJECT

Birthright citizenship

DIGEST

This resolution sets forth the Senate's opposition to Executive Order No. 14160, which purports to end birthright citizenship in the United States, affirms the Senate's commitment to birthright citizenship, and honors Wong Kim Ark's fight for legal recognition of birthright citizenship under the Fourteenth Amendment to the United States Constitution.

This resolution is sponsored by Chinese for Affirmative Action and is supported by over 60 organizations. The Committee has not received timely opposition to this resolution.

SUMMARY

Existing constitutional law:

- 1) Provides that the United States Congress has the power to establish a uniform rule of naturalization throughout the United States. (U.S. Const., art. I, § 8, cl. 4.)
- 2) Provides 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. (U.S. Const., 14th amend., § 1.)

This resolution:

- 1) Declares that:
 - a) On January 20, 2025, President Donald J. Trump unlawfully issued Executive Order No. 14160, entitled "Protecting the Meaning and Value of American Citizenship" (the "Executive Order"), that attempts to end birthright

- citizenship for children born to (1) a mother who is unlawfully present or who is lawfully present in the United States but on a temporary basis, and (2) a father who is neither a citizen nor a lawful permanent resident.
- b) Birthright citizenship was enshrined in the Citizenship Clause of the Fourteenth Amendment of the United States Constitution, ratified after the Civil War to repudiate the infamous decision of the United States Supreme Court in *Dred Scott v. Sandford* (1857) 60 U.S. 393 which held that Black Americans of African descent could never be United States citizens.
 - c) Birthright citizenship impacts every child born in California, regardless of race, color, sex, ability, class, parents' national origin, parents' immigration status, or any characteristic, because all persons born in the United States and subject to the jurisdiction thereof are citizens.
 - d) Birthright citizenship is especially important to California, where one in four residents is an immigrant and where about one-half of all children in California have at least one immigrant parent.
 - e) Denying birthright citizenship for children of certain immigrants would make hundreds of thousands of children ineligible for federal and state benefits and services such as CalWORKs and CalFresh, would damage their educational, economic, and health prospects, and would undermine community safety, political participation, and economy.
 - f) The unlawful Executive Order would block these children's access to United States passports, social security cards, free lunch programs, health care access, and federal student aid, and denying these fundamental needs jeopardizes the well-being of these children and harms the broader community, leading to devastating social, political, and economic consequences.
 - g) After the Executive Order was announced, California joined 17 states, the City and County of San Francisco, and the District of Columbia in suing to block the Executive Order on the grounds that the Executive Order violates the Fourteenth Amendment and Article I of the United States Constitution, the Immigration and Nationality Act of 1965, and the Administrative Procedure Act.
 - h) The Fourteenth Amendment's guarantee of birthright citizenship was affirmed over 125 years ago in the landmark United States Supreme Court decision *United States v. Wong Kim Ark* (1898) 169 U.S. 649 involving San Francisco-born Chinese American Wong Kim Ark.
 - i) Wong Kim Ark was born in 1873 at 751 Sacramento Street in Chinatown in the City and County of San Francisco to parents Wong Si Ping and Wee Lee, who owned a grocery store but were unable to naturalize as United States citizens due to prevailing anti-Chinese policies.
 - j) In 1895, Wong Kim Ark returned from visiting his family in China and, upon reentry, was denied admission on the false basis that he was not a citizen of the United States and ordered to be deported under the Chinese Exclusion Act of 1882.

- k) The Chinese Consolidated Benevolent Association in San Francisco hired an attorney to fight Wong Kim Ark's unlawful detention and the case was ultimately decided by the United States Supreme Court on March 28, 1898, which held that the Fourteenth Amendment to the United States Constitution establishes birthright citizenship, with very few exceptions.
 - l) The Supreme Court's opinion in *United States v. Wong Kim Ark* (1898) 169 U.S. 649 extends birthright citizenship to all persons born in the United States, "including all children born of resident aliens," and excludes only children born to foreign sovereigns or their ministers; children born on foreign public ships; children born to enemies within and during a hostile occupation of our territory; and children of members of some sovereign Indian tribes.
 - m) Wong Kim Ark's legacy and historic fight for justice ensured the United States Constitution's guarantee of birthright citizenship and empowers every child born in California to achieve their full potential as Americans to grow up to become whatever they dream, including President of the United States.
 - n) The unlawful Executive Order condemns babies to a legal status of statelessness, which will limit their lifetime access to schools, jobs, and medical care and subject them to social isolation, travel restrictions, and exploitation.
 - o) The unlawful Executive Order is just one of President Trump's draconian attempts to scapegoat and instill fear among immigrants, divide immigrants based on arbitrary distinctions, and roll back constitutional rights.
 - p) All residents, regardless of their immigration status, deserve dignity, fair treatment and due process under the law, and the opportunity to thrive in the United States, and this belief serves as the foundation for state and local sanctuary laws in California, including the California's Values Act of 2017.
- 2) Resolves the following by the Assembly and Senate of the State of California:
- a) That the Legislature hereby opposes the unlawful Executive Order ending birthright citizenship as enshrined in the United States Constitution.
 - b) That the Legislature affirms its commitment to birthright citizenship and recognizes and honors Wong Kim Ark's fight to affirm the fundamental right of birthright citizenship under the Fourteenth Amendment of the United States Constitution.

COMMENTS

1. Author's comment

According to the author:

Birthright citizenship is rooted in our Constitution. It serves as a bedrock of our American values and has been upheld for over 150 years. The president's attempts to deny birthright citizenship is unconstitutional and undermines the core principles this country was founded upon. California is home to 10.6 million

immigrants, with their contributions imprinted in every corner of our society. As we commemorate the legacy of Wong Kim Ark, I'm proud to introduce a state resolution to affirm the legislature's commitment to birthright citizenship and honor Wong Kim Ark's fight for this constitutional right.

2. Background on the adoption of the Fourteenth Amendment

The United States Constitution, as adopted in 1789 and amended with its first 10 amendments in 1791, mentions United States "citizens" 7 times and explains the term never.¹ This omission enabled the United States Supreme Court, in the disgraceful *Dred Scott v. Sanford* opinion,² to hold that Black persons of African descent could never be U.S. citizens, even if they were born on U.S. soil, and even though many states had long extended citizenship rights to free Black persons.³ *Dred Scott* admitted that birthright citizenship was the rule for other Americans (i.e., white people), but held that granting the same to Black Americans of African descent was per se unconstitutional – so even if Congress had wanted to extend citizenship to those persons, *Dred Scott* prohibited it.⁴

After the Civil War, Congress enacted the Civil Rights Act of 1866, which extended citizenship to "all persons born in the United States and not subject to any foreign power."⁵ President Andrew Johnson vetoed the Act; his (stunningly racist) veto message questioned whether an act of Congress was sufficient to confer birthright citizenship on people to whom it had previously been denied under the Constitution.⁶ Congress successfully overrode his veto, but "serious concerns remained regarding whether Congress had power to pass the Act."⁷ Congress therefore began drafting what would become the Fourteenth Amendment, to protect birthright citizenship both from a legal challenge and from future legislatures.⁸

As ratified in 1868, the first sentence of the Fourteenth Amendment states: "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."⁹

¹ See U.S. Const., art I, §§ 1-3; art. II; art. III, § 2; art. IV, § 2; 11th amend;

² (1857) 60 U.S. 393.

³ *Id.* at pp. 404-406.

⁴ *Id.* at p. 406, 417.

⁵ Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (codified as amended at 42 U.S.C. §§ 1981-1982 (2000)). The Civil Rights Act of 1866 also excluded from birthright citizenship "Indians not taxed," which refers to members of sovereign Indian tribes; Congress extended birthright citizenship to all Indigenous persons born in the United States in the Indian Citizenship Act of 1924. (See Pub. L. 68-175 (Jun. 2, 2024) 43 Stat. 253.)

⁶ Lash, *The Origins of the Privileges or Immunities Clause, Part III: Andrew Johnson and the Constitutional Referendum of 1866* (Jun. 2013) 101 Geo. L.J. 1275, 1290-1293.

⁷ *Id.* at p. 1296.

⁸ *Ibid.*

⁹ U.S. Const. 14th amend, § 1. California's governor in 1868, Harry Haight, was so incensed that he refused to transmit the Fourteenth Amendment to the Legislature for ratification. (National Parks

3. The Wong Kim Ark decision affirms that the Fourteenth Amendment extends birthright citizenship to nearly all persons born in the U.S.

The post-Reconstruction era was a period fraught with white supremacist panics. Despite the ratification of the Equal Protection Clause – also part of the Fourteenth Amendment¹⁰ – race-based discrimination remained the norm. The Supreme Court endorsed so-called “separate but equal” laws which, in reality, openly favored white people.¹¹ Southern states passed laws that targeted virtually every aspect of Black life, making it nearly impossible for a Black person to exist in public without being at risk of arrest.¹² In the 1870s and 1880s, the federal government ramped up its policy of removing Indigenous persons from their lands and imposed new policies to force Indigenous persons to adapt to “white” culture.¹³ And anti-Asian sentiment – which was already rampant in California prior to the Civil War¹⁴ – reached new heights.

In 1882, Congress passed the Chinese Exclusion Act of 1882, which suspended virtually all immigration from China for 10 years and prohibited Chinese immigrants from becoming United States citizens.¹⁵ In 1892, Congress passed the Geary Act – authored by California Representative Thomas J. Geary – which renewed the immigration prohibition for another 10 years and added restrictions on Chinese immigrants already living in the United States.¹⁶ It was during the Geary Act era that Wong Kim Ark, a native-born Californian, took on the federal government and won.

Wong Kim Ark was born in San Francisco in 1873.¹⁷ His parents had immigrated to the United States from China, where they ran a store, and returned to China in 1890.¹⁸ That

Service, *A History of American Indians in California: 1849-1879* (Nov. 17, 2004), https://www.nps.gov/parkhistory/online_books/5views/5views1c.htm). California did not ratify the Fourteenth Amendment until 1959. (Constitution Annotated, Intro.6.4 Civil War Amendments, https://constitution.congress.gov/browse/essay/intro.6-4/ALDE_00000388/.) All links in this analysis are current as of June 19, 2024.

¹⁰ U.S. Const., 14th amend., § 1.

¹¹ *Plessy v. Ferguson* (1896) 163 U.S. 537, 544 (“The object of the “Fourteenth Amendment” was undoubtedly to enforce the absolute equality of the two races before the law, but, in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality”).

¹² Blackmon, *Slavery by Another Name* (2008) p. 53. Although these laws generally did not expressly name African Americans, “it was widely understood that these provisions would rarely if ever be enforced on whites”; and while many of the laws were struck down in court, “new statutes embracing the same strictures on black life quickly appeared to replace them.” (*Ibid.*)

¹³ Dunbar-Ortiz, *An Indigenous Peoples’ History of the United States* (2015) pp. 157-158.

¹⁴ In 1858, the California Legislature passed a law that made it illegal for any person “of the Chinese or Mongolian races” to enter the state (though the law was declared void in 1862). (Ch. 313, Stats. 1858; *Lin Sing v. Washburn* (1862) 20 Cal. 534 (noting that exclusion law was declared unconstitutional and void in an unpublished decision).)

¹⁵ See Pub. L. 47-126 (May 6, 1882) 22 Stat. 58, Ch. 126 (47th Cong., 1st Sess.).

¹⁶ Pub. L. 52-60 (May 5, 1892) 27 Stat. 25 (52d Cong., 1st Sess.).

¹⁷ *United States v. Wong Kim Ark* (1898) 169 U.S. 649, 652.

same year, Wong visited China and was allowed to reenter the U.S. without incident, “upon the sole ground that he was a native-born citizen of the United States.”¹⁹ But in 1895, when he returned from another trip, he “was denied such permission, upon the sole ground that he was not a citizen of the United States.”²⁰ Wong, with the help of the Chinese Consolidated Benevolent Association (known as the “Six Companies”), fought back: while Wong remained stuck on a ship in the San Francisco Bay, the Six Companies filed a writ of habeas corpus on his behalf.²¹ The case went all the way to the United States Supreme Court.

United States v. Wong Kim Ark affirmed that the Fourteenth Amendment extended birthright citizenship to virtually every person born in the United States.²² According to the Court, the Fourteenth Amendment’s citizenship clause “affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens,”²³ with exceptions for “children born of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single added exception of children of members of the Indian tribes owing direct allegiance to their several tribes.”²⁴ But for those exceptions, the Fourteenth Amendment, “in clear words and in manifest intent, includes the children born within the territory of the United States of all other persons, of whatever race or color, domiciled within the United States.”²⁵ Even if, at the time a person is born, their parent’s presence in the United States was “but local and temporary,” their parent’s presence was “ ‘strong enough to make a natural subject, for, if he hath issue here, that issue is a natural born-subject.’ ”²⁶

Wong Kim Ark also noted that, despite *Dred Scott*’s holding to the contrary, it was undisputed that “all children, born within the United States, of foreign parents holding no diplomatic office, became citizens at the time of their birth” “until more than 50 years after the adoption of the constitution.”²⁷ In other words, birthright citizenship was assumed to be the law of the land until it became disadvantageous for white supremacist enslavers.

¹⁸ National Archives at San Francisco, Departure Statement of Wong Kim Ark, 1894, <https://www.archives.gov/san-francisco/highlights/wong-kim-ark>; Stanford University Libraries, Wong Kim Ark, <https://exhibits.stanford.edu/riseup/feature/wong-kim-ark>; *Wong Kim Ark*, *supra*, 169 U.S. at p. 652.

¹⁹ *Wong Kim Ark*, 169 U.S. at p. 653.

²⁰ *Ibid.*

²¹ *Ibid.*; Stanford University, *Wong Kim Ark*, *supra*.

²² *Wong Kim Ark*, 169 U.S. at p. 693.

²³ *Ibid.*

²⁴ *Ibid.* As noted above in footnote 5, members of sovereign Indian tribes became U.S. citizens automatically at birth beginning in 1924.

²⁵ *Wong Kim Ark*, 169 U.S. at p. 693.

²⁶ *Ibid.*

²⁷ *Id.* at p. 463.

4. The President's Executive Order 14160 purports to undo birthright citizenship

On January 20, 2025, President Donald Trump signed Executive Order 14160, entitled "Protecting the Meaning and Value of Citizenship."²⁸ The Order notes that the Fourteenth Amendment "has always excluded from birthright citizenship persons who were born in the United States but not 'subject to the jurisdiction thereof,' " but then goes on to advance an interpretation of the Fourteenth Amendment never before recognized by any branch of the United States government.²⁹ Specifically, the order asserts the novel theory that:

Among the categories of individuals born in the United States and not subject to the jurisdiction thereof, the privilege of United States citizenship does not automatically extend to persons born in the United States: (1) when that person's mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person's birth, or (2) when that person's mother's presence in the United States at the time of said person's birth was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father was not a United States citizen or lawful permanent resident at the time of said person's birth.³⁰

The Order goes on to announce that it is the policy of the United States that no department or agency should issue documents recognizing U.S. citizenship for persons born within the United States, after 30 days from the date of the order, under the circumstances identified above.³¹

5. Executive Order 14160 has been declared unconstitutional by several courts

California, along with 18 other states, the City and County of San Francisco, and the District of Columbia, sued to enjoin Executive Order 14160 the next day.³² Judge Leo T. Sorokin consolidated the case with another injunction action brought by a noncitizen pregnant mother and immigration rights groups and granted both motions, staying enforcement of the Order nationwide.³³ Judge Sorokin's order notes that *Wong Kim Ark* plainly extends birthright citizenship to all persons born here with only a handful of "narrow exceptions," none of which is consistent with the Executive Order.³⁴ The order also points out that "Congress incorporated the language of the [Fourteenth

²⁸ Exec. Order No. 14160 (Jan. 20, 2025) 90 Fed. Reg. 8449.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² See City Attorney of San Francisco, Press Release: San Francisco City Attorney and Attorneys General file suit to protect birthright citizenship (Jan. 21, 2025), <https://www.sfcityattorney.org/2025/01/21/san-francisco-city-attorney-and-attorneys-general-file-suit-to-protect-birthright-citizenship/>.

³³ *Doe v. Trump* (D.Mass., Feb. 13, 2025) – F. Supp.3d –, 2025 WL 485070, 2.

³⁴ *Id.* at pp. 8-11.

Amendment's] Citizenship Clause into provisions of the [Immigration and Naturalization Act] passed more than forty years after *Wong Kim Ark*" was decided.³⁵ Additionally, according to Judge Sorokin, the Executive Order's interpretation of the "subject to the jurisdiction thereof" exception in the Fourteenth Amendment does not "find support in the text itself or the cases construing and applying it," and "would prevent the Citizenship Clause from reaching groups of persons to whom even [the Administration] concede[s] it must apply."³⁶

The United States Court of Appeals for the First Circuit denied the Trump Administration's request for a stay of the injunction pending their appeal of Judge Sorokin's order.³⁷ At least three other federal district courts have also enjoined Executive Order 14160 on the basis that it is unconstitutional.³⁸ The Trump Administration has, so far, sought review only on the question of whether a district court can enter a nationwide injunction, and not on the merits of whether Executive Order 14160 is lawful.³⁹ The Supreme Court consolidated three of the matters and heard argument on the question of the courts' authority on May 15, 2025.⁴⁰ As of the time of publication of this analysis, the Court has not issued an opinion in these cases. Executive Order 14160 remains enjoined pending the Court's decision.

6. This resolution declares the Legislature's opposition to Executive Order 14160 and affirms the importance of birthright citizenship

This resolution expresses the Legislature's opposition to Executive Order 14160. The resolution sets forth California's unique interest in this issue: California has more immigrants than any other state.⁴¹ Over one-fourth of California's population was born

³⁵ *Id.* at p. 10.

³⁶ *Id.* at p. 11.

³⁷ *New Jersey v. Trump* (1st Cir. 2025) 131 F.4th 27, 33.

³⁸ See *New Hampshire Indonesian Community Support v. Trump* (D.N.H. Feb. 11, 2025) – F.Supp.3d –, 2025 WL 457609 (granting motion for preliminary injunction filed by several nonprofit groups); *State v. Trump* (W.D. Wash. Feb. 6, 2025) – F.Supp.3d –, 2025 WL 415165 (granting motion for preliminary injunction filed by Washington, Arizona, Illinois, and Oregon), *emergency mot. for partial stay denied in Washington v. Trump* (9th Cir. Feb. 19, 2025) 2025 WL 553485; *CASA, Inc. v. Trump* (D. Md. Feb. 5, 2020) – F.Supp.3d –, 2025 WL 408636 (granting motion for preliminary injunction filed by CASA, Inc. and Asylum Seeker Advocacy Project), *motion for stay pending appeal denied in CASA, Inc. v. Trump* (4th Cir. Feb. 28, 2025) 2025 WL 654902.

³⁹ See *Trump v. CASA, Inc.*, Case No. 25-1153, Application for Partial Stay, Dkt. No. 1, available at http://www.supremecourt.gov/DocketPDF/24/24A884/352051/20250313135341225_Trump%20v.%20CASA%20Inc%20application.pdf.

⁴⁰ See *Trump v. Washington*, Case No. 25-807, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24a885.html>; *Trump v. CASA, Inc.*, Case No. 25-1153, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24a884.html>;

Trump v. New Jersey, Case No. 25-1170, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24a886.html>.

⁴¹ Mejia, Peerz, & Johnson, Fact Sheet: Immigrants in California, Public Policy Institute of California (Jan. 2025), <https://www.ppic.org/publication/immigrants-in-california/>.

outside of the United States, and nearly half of all Californians—45 percent—have at least one immigrant parent.⁴² As a result, attacks on birthright citizenship could disproportionately harm California’s children, leaving them stateless and without access to education, benefits, and the privileges and immunities of citizenship.

This resolution also recognizes the importance and durability of the *Wong Kim Ark* decision and the importance of birthright citizenship. Additionally, the resolution highlights the life and bravery of Wong Kim Ark himself.

Finally, this resolution condemns Executive Order 14160 as part of President Trump’s overall anti-immigrant, anti-constitution agenda. The resolution affirms the Legislature’s commitment to birthright citizenship and states that all residents, regardless of their immigration status, deserve dignity, fair treatment and due process under the law, and the opportunity to thrive in the United States.

This resolution is substantially similar to SR 32 (Wahab, 2025), which this Committee passed with a vote of 11-0.

SUPPORT

Chinese for Affirmative Action (sponsor)
AAPI Equity Alliance
Alianza
Alliance for Girls
American Community Media
API Equity-LA
AROC Action
ASATA Power
Asian Americans Advancing Justice Southern California
Asian Americans and Pacific Islanders for Civil Empowerment
Asian Law Caucus
Asian Pacific Islander Council of San Francisco
Asian Youth Center
CAIR California
California Community Foundation
California Faculty Association
California Immigrant Policy Center
Cambodia Town Inc.
Catalyst California
Chinese Culture Center of San Francisco
Chinese Progressive Association
CHIRLA
CRLA Foundation

⁴² *Ibid.*

Empowering Pacific Islander Communities
Equal Justice Society
Filipino Migrant Center
Food Empowerment Project
Foundation for Filipina Women's Network
GRACE - End Child Poverty CA
HEAL Food Alliance
Hmong Innovating Politics
Immigrant Legal Resource Center
Immigrants Rising
Inclusive Action
Japanese American Citizens League
Khmer Girls In Action
La Raza Community Center Resource Center
Little Tokyo Service Center
Mixteco/Indigena Community Organizing Project
National Asian Pacific American Families Allied for Substance Awareness and Harm
Reduction
National Pacific Islander Education Network
Nihonmachi Street Fair, Inc.
Pacific Asian Counseling Services
Pacifica Housing 4 All
Pacifica Peace People
Pacifica Progressive Alliance
Pacifica Social Justice
Pacoima Beautiful
PODER
Prevention Institute
San Francisco Japantown Task Force
San Francisco Senior and Disability Action
Search to Involve Pilipino Americans
SEIU California
South Asian Network
South Asian Resource Action Center
Southeast Asian Community Center
Stop AAPI Hate
Thai CDC
The Sikh Coalition
The Transgender District
United Parents and Students
Western Center on Law and Poverty

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: SR 32 (Wahab, 2025) is substantially similar to this resolution and declares the Legislature's opposition to Executive Order 14160. SR 32 is pending on the Senate Floor.

Prior legislation: None known.

PRIOR VOTES:

Assembly Floor (Ayes 61, Noes 1)
Assembly Judiciary Committee (Ayes 9, Noes 0)
