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Anti-immigrant birthright initiative unconstitutional

Our view: Arizona ballot measure to bar citizenship for children born in U.S. to illegal entrants is a waste of time, money

A ballot initiative in Arizona, designed to deny U.S. citizenship to the children of illegal immigrants, is just the latest in a series of punitive, shortsighted measures meant to punish a certain group of people.

Thankfully, the measure, titled the Birthright Citizenship Alignment Act, is blatantly unconstitutional and would likely not have any impact on any families in Arizona.

Since the 14th Amendment of the Constitution was ratified in 1868, anyone born on American soil has been entitled to U.S. citizenship.

The first clause of the amendment 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 amendment was upheld by the U.S. Supreme Court in the 1898 case *United States v. Wong Kim Ark*. The court ruled 6-2 that a man born in the United States to Chinese parents was indeed a U.S. citizen.

Two years ago, U.S. Rep. Nathan Deal, R-Ga., tried to add to an immigration bill a provision that would have revoked birthright citizenship to the children of illegal immigrants. The Republican leadership showed wisdom in not allowing the proposed amendment to reach the House floor for a vote.

Since then, however, the debate over immigration has become more heated. It's shameful, but hardly a surprise, that xenophobic or racist activists keep coming up with measures that would deny to children of illegal immigrants basic rights and privileges.

It's also not surprising that state Rep. Russell Pearce, R-Mesa, had a hand in the ballot initiative, filed last week by Della Montgomery. Pearce has been the force behind many anti-immigrant proposals in the Legislature the past few years.

Pearce told The Associated Press this week that he is not involved with the initiative effort, but that he spoke twice by phone with Montgomery to review the wording of her proposal.

"I helped tweak it a little bit," Pearce told the AP. "What she gave me looked pretty good."

That Pearce would consider the initiative "pretty good" only illustrates how little he knows about the law, and the extent to which his politics are shaped by an intransigent ideology.

As the U.S. Constitution makes clear, this is not an issue for the states.

If birthright citizenship is to be challenged, it has to be at the federal level, meaning that Congress would have to pass a law or the Constitution would have to be amended.

"States shouldn't be involved in this," said Andy Silverman, a professor of immigration law at the James E. Rogers College of Law at the University of Arizona.

"The initiative is clearly in violation of the Constitution, federal law and the way these laws have been

interpreted by the federal courts."

Such jurisdictional niceties have never dissuaded Pearce, however.

A common and ridiculous argument put forth by people who want to end birthright citizenship is that illegal immigrants are coming to the United States to have babies.

Most illegal immigrants come to the United States in search of jobs and a better way of life. Because they cross the border illegally does not mean they stop being human — or having babies.

A baby born to an illegal immigrant has as much potential to be a great American as those born to U.S. citizens. The only difference between most U.S. citizens and foreigners is that the Americans were lucky enough to be born on U.S. soil.

Supporters of the Birthright Citizenship Alignment Act must gather 153,365 valid voter signatures by July 3 to get the measure on the 2008 ballot. If passed, it will simply absorb time, energy and state funds before it is nullified in federal court.

We urge voters to ignore petitions for this measure, so that it disappears quietly.

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