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On Repeal or Modification of the Citizenship Clause

In order to answer whether or not the 14th Amendment's Citizenship Clause should be repealed or modified, we must examine whether the Citizenship Clause serves a legitimately useful constitutional purpose and whether it has constitutionally antithetical implications. By examining these conditions, it should become clear whether considerations of repeal or modification of the clause are warranted.

Does the Fourteenth Amendment's Citizenship Clause serve a legitimately useful constitutional purpose? To answer this question, the early historical context of the Fourteenth Amendment should be examined. In *Dred Scott v. Sandford* (1856), the court argued [slaves and descendants of slaves] are not included, and were not intended to be included, under the word 'citizens' in the Constitution" (*Dred Scott v. Sandford*, 60 U. S. 404 (1856)). It was in this holding that the nation was confronted with this colossal question of citizenship: who should count as a United States citizen under the law?

A war was fought to answer this question, culminating in the States' ratification of the Fourteenth Amendment and subsequent detailing of the terms of national citizenship. In the *Slaughterhouse Cases* (1873), Chief Justice Miller asserts, "[the Fourteenth Amendment] overturns the *Dred Scott* decision by making all persons born within the United States and subject to its jurisdiction citizens of the United States" (*Slaughterhouse Cases*, 83 U.S. 73 (1873)). In defining the necessary conditions of national citizenship and overturning the *Dred Scott* decision, the Citizenship Clause

certainly serves a legitimate constitutional purpose and so satisfies our first condition with a resounding affirmation.

Next, we must answer whether the Citizenship Clause permits circumstances antithetical to the spirit of the constitution. To properly do this, one ought to primarily examine both legal precedent and historical context. One case dealing with birthright citizenship, *U.S. v. Wong Kim Ark* (1898), helps to elucidate the precedent surrounding the issue. It is worth remarking upon an additional case, *Elk v. Wilkins* (1884), which is sometimes cited in arguments relating conditions of allegiance and political jurisdiction to birthright citizenship. In *U.S. v. Wong Kim Ark* (1898), Justice Gray distinguishes that “*Elk v. Wilkins* concerned only members of the Indian tribes within the United States” and “had no tendency to deny citizenship to children born in the United States of foreign parents of Caucasian, African or Mongolian descent not in the diplomatic service of a foreign country,” (*U.S. v. Wong Kim Ark*, 169 US 682 (1898)). Thus, the question of intent of birthright citizenship cannot be sufficiently gleaned this particular case and it will not primarily be considered in light of *U.S. v. Wong Kim Ark* (1898).

In *Wong Kim Ark*, the court is faced with the question:

“Whether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicil and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States by virtue of

the first clause of the Fourteenth Amendment of the Constitution,” (*U.S. v. Wong Kim Ark*, 169 US 653 (1898)).

The court holds, based on these conditions, that Wong Kim Ark is a citizen by the Fourteenth Amendment. Justice Gray asserts, “[the words ‘citizen of the United States’ and ‘natural born citizen of the United States’] must be interpreted in the light of the common law, the principles and history of which were familiarly known to the framers of the Constitution” (*U.S. v. Wong Kim Ark*, 654 US 169 (1898)). According to Gray, the Fourteenth Amendment “contemplates two forms of citizenship, and two only...birth and naturalization,” (*U.S. v. Wong Kim Ark*, 702 US 169 (1898)). Regarding these forms, Gray states, “citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law” but “citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution” (*U.S. v. Wong Kim Ark*, 702 US 169 (1898)). Justice Gray, here, clarifies two fundamental implications of the Citizenship Clause: (1) Congress possesses the power to establish a rule of naturalization and (2) birthright citizenship is to be dictated primarily by common law principles.

Based on these two implications, the Citizenship Clause, as a product of common law principles, is not antithetical to the intentions of the Framers and accords with the spirit of the Constitution. To deny this basic conception of birthright citizenship found in *Wong Kim Ark* would be to find issue with fundamental principles on which the Constitution was written. It follows that if the Citizenship Clause serves a legitimately useful Constitutional purpose and if it is in accordance with the spirit of the Constitution then the Citizenship Clause should not be subject to repeal or modification by Congress.

We're left with the lingering question: what should we do in the face of behemoth policy questions facing our nation if not to repeal or modify the Fourteenth Amendment? The proper way to address issues related to birthright and naturalized citizenship is by enacting comprehensive immigration policy and creating improvements to the efficiency of the naturalization process. In terms of utilizing our representation in Congress, we should insist that our representatives immediately work together to address massive and urgent immigration issues, including the impacts of the expiration of the Deferred Action for Childhood Arrival (DACA) program. To retain our fundamental national values in regards to immigration policy, we must remember that we are a nation built by the contributions of immigrants, a land that promotes family unity, and a land of opportunity for those who hope to contribute to and live the American dream. It is imperative that we let our democracy work according to our Constitution and not turn our backs on it when faced with difficult policymaking challenges.

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Bibliography

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U.S. Constitution. Amend. XIV, Sec. 1.