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Birthright citizenship change would have wide effects

by **Daniel González and Dan Nowicki** - Mar. 20, 2011 12:00 AM
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It might not happen this year, or even the next, but supporters of restricting birthright citizenship for the children of illegal immigrants are not giving up on their drive to force a reinterpretation of the 14th Amendment.

Backers of the idea, which they believe will discourage illegal immigrants from coming to the U.S., hit a major setback Thursday when the Arizona Senate rejected two birthright citizenship bills.

Birthright legislation controversy

The issue took a backseat, as it has in a handful of other states, to budget chaos and continuing economic anxiety. But supporters say it will remain part of a larger strategy to turn up the heat on undocumented immigrants so they will leave on their own - or not come in the first place.

Whether limiting citizenship would work the way proponents say is a matter of debate, but like other immigration-control tactics, the change would likely have far-reaching implications.

Supporters argue that illegal immigrants would be less likely to come to this country if their children didn't automatically receive citizenship.

But experts counter that it is unlikely that limiting birthright citizenship would curb illegal immigration. Most illegal immigrants come for jobs, not to have children that might one day, years in the future, help them win legal status in the United States, as critics of birthright citizenship contend. Many European countries, for example, lack birthright citizenship but still attract thousands of illegal immigrants every year.

Even if limits on birthright citizenship did slow the flow of illegal immigrants into the United States, the restrictions still would lead to a larger - not smaller - illegal-immigrant population because they would turn the hundreds of thousands of children born to undocumented parents every year into illegal residents themselves, demographers say.

If lawmakers are able to one day force a reinterpretation of the 14th Amendment, which now is recognized as granting citizenship to nearly everyone born in the United States, parents would for the first time in history have to prove their own citizenship before their children could be deemed citizens. Governments would have to verify the citizenship of parents, a process that likely would be costly, politicians say. Even the nation's military readiness could be affected

because without legal status, the children of illegal immigrants would no longer be eligible to enlist in the armed forces.

"If you take all those factors combined, what it does is it's a real challenge to the nation's historic identity and historical genius," said Don Kerwin, vice president of programs at the Migration Policy Institute, a nonpartisan think tank in Washington, D.C. "A lot of the criticism of immigrants comes from people who feel the U.S. is an exceptional country. Yet precisely what makes us exceptional - the values embedded in the 14th Amendment and our identity as a nation of immigrants - is challenged by this."

Legal interpretation

Supporters of the move to restrict birthright citizenship say the longstanding practice of granting automatic citizenship to nearly every child born on U.S. soil regardless of the parents' status is a powerful lure for illegal immigrants. End it, they believe, and illegal immigrants would be less likely to come to the United States because their children would no longer provide a path to public benefits or legal status for themselves in the future.

Republicans lawmakers leading the charge have zeroed in on a phrase in the 14th Amendment, claiming the passage that says "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" has been misinterpreted. The amendment was ratified in 1868 to reverse the U.S. Supreme Court's Dred Scott decision stating that slaves could not be citizens.

Critics want the Supreme Court to rule that the children of illegal immigrants are not entitled to automatic citizenship because, they argue, undocumented parents are not subject to the jurisdiction of the U.S.

Lawmakers in at least seven states - Arizona, Indiana, Mississippi, Montana, Oklahoma, South Dakota and Texas - have introduced birthright-citizenship bills. But as in Arizona, the South Dakota and Mississippi bills have died, according to the Leadership Conference on Civil and Human Rights, which is tracking the legislation.

"All you need is one state to pass it to trigger the lawsuit that gets to the Supreme Court," said state Rep. John Kavanagh, R-Fountain Hills, sponsor of the House version of the bill. "So the concept itself may move forward even though there weren't the votes in the Arizona Senate."

Legislation also has been introduced in Congress, though it is not expected to pass.

"Arizona, obviously, has been out front on the other aspect of this, SB 1070, and maybe it doesn't want to be out front on this one," said John Eastman, the former dean of Chapman University School of Law in California, who believes that the 14th Amendment was never meant to bestow birthright citizenship to the children of illegal immigrants and who testified in support of the Arizona legislation.

Nearly 60 percent of Americans oppose changing the Constitution to deny citizenship to the children of illegal immigrants, according to a February poll by the nonpartisan Pew Research Center in Washington, D.C.

But lawmakers say they are pressing ahead to do what they can to battle illegal immigration and the costs associated with it.

"What we are trying to do is remove the incentive for people to come here illegally," said state Sen. Ron Gould, R-Lake Havasu City, who sponsored the Senate version of Arizona's version of the bill.

He said limiting birthright citizenship would save taxpayers money because the U.S.-born children of illegal immigrants would no longer be considered citizens and therefore would no longer qualify for public benefits.

"It's an economic burden on the taxpayers of Arizona," he said.

Supporters are regrouping and considering other options, such as trying to put the question on a statewide ballot through the initiative process.

Curb or increase?

But limiting citizenship likely would do little to deter illegal immigration, say immigrant advocates, because they come to the United States for jobs, not to have babies.

Carlos Garcia, an organizer with Puente, a Phoenix-based group that advocates for immigrants, said illegal immigrants often remain in the country because they want to provide a better life for their children. He believes birthright-citizenship bills are mainly intended to increase fear among illegal immigrants in hopes of driving them away.

On the contrary, limiting birthright citizenship actually would increase the number of illegal immigrants, demographers say.

Jon Feere, the legal policy analyst at the Center for Immigration Studies, a think tank in Washington, D.C., that favors stricter controls on immigration, said 300,000 to 400,000 children are born each year to the millions of illegal immigrants already living in the United States. Under the birthright-citizenship proposals, those children would contribute to the nation's undocumented population, he said.

"We would see up to 400,000 illegal-immigrant children added every year," Feere said.

An August study published by the Migration Policy Institute showed that if the 14th Amendment were limited and births to parents were to continue at that pace, the undocumented population in the United States would rise from 11 million today to 16 million by 2050. For purposes of the study, Jennifer Van Hook, a demographer at Pennsylvania State University, assumed that that

nation's illegal-immigrant population grew only by births - that no immigrants crossed borders illegally or overstayed visas, which they do by the thousands every year.

Her research shows that if birthright citizenship is limited to babies with at least one parent who is a legal resident, the number of undocumented children in the U.S. would double from 2 percent of the total population today to 4 percent in 2050.

In contrast, if birthright citizenship is left as is, Van Hook projects that the share of undocumented children in the U.S. would decrease from 2.1 percent of the population today to less than 1 percent by 2050 because the birthrate would be fueled by children born to U.S.-citizen Latinos.

Even Kavanagh concedes that most illegal immigrants come for jobs and that denying citizenship to babies with undocumented parents would lead to an increase in the number of illegal immigrants in the United States.

But he believes the overall illegal-immigrant population would decrease if limiting birthright citizenship were combined with other enforcement measures.

"Birthright citizenship in and of itself would not solve the problem," Kavanagh said. "It's just one solution of many. It would have to be enacted collectively."

Net savings or loss?

Limiting birthright citizenship could create costs and challenges for the government at various levels while potentially saving money in other areas.

At some level - local, state, federal or even at the hospital - someone would have to determine whether a newborn's parents were legally in the United States before the infant could be processed for a Social Security number.

Regardless of how the process worked, it would require governments to spend money creating and running an agency to verify the citizenship of parents at a time when the public is calling for less government spending and bureaucracy, said Margaret Stock, a retired Army Reserves lieutenant colonel and immigration attorney specializing in military cases.

She is concerned too that limiting birthright citizenship could hurt the nation's armed services because immigrants, and the children of immigrants, have a higher propensity to join the military than other citizens, she said.

Denying citizenship to the children of illegal immigrants could save taxpayers some money.

According to the Pew Hispanic Center, the children of undocumented immigrants are more likely to live in poverty and lack health insurance than children of U.S. citizens. As citizens, many of those children qualify for public benefits.

By denying them citizenship, those children would not be eligible for most public-assistance programs, so some of the costs to taxpayers would be less, Van Hook said.

In the long run, however, without citizenship, those children would not be able to work legally and would probably earn less money, pay less in taxes and cost the public in other ways such as emergency medical care, she said.

Limiting citizenship also could challenge immigration-enforcement officials, who would be faced with the possibility of trying to deport large numbers of children born in the U.S. as well as their illegal-immigrant parents.

On one hand, deporting people born in the United States would most likely be unpopular with the public, Feere said. On the other, deporting their parents would be easier because their U.S.-born children, no longer citizens, could not be used as an excuse for allowing them to remain in the country.

"It's a very difficult issue," Feere said. "It's unfortunate that the children are in the middle of all this."

Immigration and Customs Enforcement frequently removes illegal immigrants with U.S. citizen children. The parents are given the option of taking their children with them or leaving them with relatives in the U.S. as long as the relatives are legal immigrants or U.S. citizens.

In some cases, undocumented parents facing removal from the U.S. argue in front of an immigration judge that their deportation would cause "extreme and exceptionally unusual hardship" on their U.S. citizen children. But those cases are hard to win, said Gerald Burns, a Chandler immigration lawyer and president of the Arizona chapter of the Arizona Immigration Lawyers Association.

Underclass created?

Some civil-rights advocates are concerned that ending birthright citizenship would create a two-tiered class system in the United States, with an underclass that Van Hook's research shows could be nearly twice the size of Arizona's current population in 40 years.

"It's a modern-day caste system with potentially millions of natural-born Americans being treated as somehow less than entitled to the equal protection of the laws that our nation has really struggled hard to guarantee," said Wade Henderson, president of the Leadership Conference on Civil and Human Rights, an advocacy group based in Washington, D.C.

He and other civil-rights advocates have said that denying citizenship to the children of illegal immigrants would set the United States back 143 years, to when the country denied citizenship to descendants of slaves.

But supporters of birthright-citizenship reform dismiss that argument, saying any underclass would be a consequence of the United States' failure to confront and fix its border and interior-enforcement problems.

"It's certainly not a function of the birthright-citizenship issue - it's a function of us not doing anything with illegal immigration," Eastman said.

A survey by Feere found that 145 countries, including all European countries, do not have birthright citizenship.

Thirty countries have birthright citizenship, including the United States, Canada, and Mexico, as well as most countries in Central and South America, according to Feere's survey.

In the past 30 years, several countries have ended birthright citizenship, including the United Kingdom, Australia, India, Malta and Ireland, Feere said.

"Increased illegal immigration is the main motivating factor in most countries," Feere said.

Others say that granting citizenship to all children born in the U.S. regardless of their parents' status helps immigrants integrate faster here. Germany recently made it easier for children of immigrants to become citizens because of long-standing problems with immigrants not integrating, including higher rates of poverty and crime, said Angela Marie Kelley, vice president for immigration policy and advocacy at the Center for American Progress, a left-leaning think tank in Washington, D.C.

"That's been one of the secret ingredients to our success," Kelley said. "You take that out of the equation, and it feels like you would be taking us back in time to a very dark and ugly period in our nation's history when we had a segment of society that we treated differently and that we deemed less than."