

## CONCURRENCE IN SENATE AMENDMENTS

CSA1 Bill Id:AJR 59 Author:(Lee, et al.)

As Amended Ver:June 10, 2025

Majority vote

### SUMMARY

Opposes the unlawful executive order ending birthright citizenship and affirms the Legislature's commitment to birthright citizenship and recognizes and honors Wong Kim Ark's right to affirm birthright citizenship under the Fourteenth Amendment.

#### *Major Provisions*

- 1) Resolves, on behalf of the Assembly and the Senate of the State of California, jointly, the following:
  - a) The Legislature hereby opposes the unlawful Executive Order ending birthright citizenship as enshrined in the United States Constitution;
  - b) 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;
  - c) The Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the secretary of State, to the Secretary of the Treasury, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution

#### **Senate Amendments**

- 1) *Clarifies that Dred Scott v. Sanford (1857) 60 U.S. 393 held that Black Americans of African descent could never be United States citizens.*
- 2) *Clarifies that United States v. Wong Kim Ark (1898) 169 U.S. 649 held that the Fourteenth Amendment to the United States Constitution establishes birthright citizenship, with very few exceptions.*
- 3) *Finds that 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 here 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.*

### COMMENTS

The concept of birthright citizenship finds deep roots in American history and reaches back to the English common law. As far back as 1608, English courts have observed the practice of birthright citizenship. The concept was enshrined in law in the United States with the passage of

the Fourteenth Amendment. Today, any child born on U.S. soil, whether in the country itself or one of its territories, is a citizen of the United States unless their parents are diplomats.

On January 20, 2025, the President issued Executive Order Number 14160 titled "Protecting the Meaning and Value of American Citizenship." It ordered, despite long-standing precedent to the contrary, that a child born in the United States whose mother was either undocumented or was in the U.S. with temporary lawful status (such as a tourist visa) and whose father was a noncitizen without lawful permanent residency would not be a citizen at birth. In effect the order limits citizenship conferred at birth to children with at least one parent who is either a citizen or a lawful permanent resident. In issuing this directive, the order relies on the argument 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.'" The order does not explicitly argue how children born in the U.S. born to noncitizen parents are *not* subject to the jurisdiction of the United States. This resolution seeks to state the Legislature's opposition to the President's Executive Order and reaffirm the body's commitment to birthright citizenship and the longstanding precedent set by *Wong Kim Ark*.

*United States v. Wong Kim Ark*. About 30 years after its ratification, the citizenship clause of the Fourteenth Amendment underwent a significant stress-test. Born in San Francisco in 1873 to Chinese-citizen parents who were U.S. residents, Wong Kim Ark lived his entire life in California as a United States citizen. In 1894, in the context of the Chinese Exclusion Act and general anti-Asian sentiment across the country, Wong Kim Ark travelled to China. Upon his return, he was denied entry into the country on the grounds that he was not a U.S. citizen. In the case before the Supreme Court, the attorney for the government argued that as Wong Kim Ark's parents were Chinese citizens, they were not "subject to the jurisdiction of the United States," and thus their child was not a citizen at birth.

After reviewing the various legislative acts leading up to the Fourteenth Amendment, the Court determined that "it is beyond doubt that, before the enactment of the Civil Rights Act of 1866 or the adoption of the Constitutional Amendment, all white persons, at least, born within the sovereignty of the United States, whether children or citizens or of foreigners, excepting only children of ambassadors or public ministers of a foreign government, were native-born citizens of the United States." (*United States v. Wong Kim Ark* (1898) 169 U.S. 649, 674 – 675.)

The Court also explored the potential absurd outcome of the argument that a child born to noncitizen parents is *not* subject to the jurisdiction of the United States simply by virtue of their parents' citizenship to another country. To grant every noncitizen an exemption from being under this country's jurisdiction "would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation[.]" (*Id.* at 688.) Put more simply, hundreds of thousands of people from all over the world come to the United States to visit and to stay. To exclude all those who are not citizens from the jurisdiction of the country's laws would erode the vitality of the laws themselves. The exemption for diplomats arises from the nature of their assignment – namely to represent their country as its agent.

The Court ultimately ruled against the government, stating that the "Fourteenth Amendment 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, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers[.]" (*Id.* at 693.) Certainly the Court could revise their approach to

the question at issue, but as of this day the longstanding jurisprudence established by *United States v. Wong Kim Ark* remains the law of the land.

### **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.

### **Arguments in Support**

This measure is sponsored by Chinese for Affirmative Action. It is further supported by many civil rights advocacy organizations, affinity organizations, and labor unions. In support of the measure, the sponsors submit:

Birthright citizenship is guaranteed by the Fourteenth Amendment of the U.S. Constitution, which says that "all persons" born in the United States are automatically citizens, with the exception of children whose parents are foreign diplomats. Over 125 years ago, Wong Kim Ark and the Chinese Consolidated Benevolent Association of San Francisco, also known as the "Six Companies," fought to ensure that every child born in the United States, regardless of race, color, sex, ability, class, parents' national origin, parents' immigration status, are automatically considered U.S. citizens through the U.S. Constitution.

Ending birthright citizenship for children of immigrants would have devastating consequences in California. The state stands to lose tens of millions of dollars per year in federal funding it would have received if not for the termination of birthright citizenship. Experts estimate that the order would lead to the wrongful denial of citizenship to approximately 150,000 U.S. born citizens every year, including 24,500 children born annually in California; by 2050, the population of undocumented individuals in the U.S. will more than double. Tens of thousands of babies would find themselves stateless without access to important social programs like CalFresh and CalWORKS, school lunch, and student financial aid. These children will grow up without passports, social security cards, access to jobs, and the right to vote. This would perpetuate racial inequality, make them vulnerable to exploitation, and lead to widespread economic, social, and political marginalization.

Trump's efforts to end birthright citizenship is just one of the many ways his administration has used xenophobic rhetoric and cruel executive actions to wreak havoc on immigrant communities and fuel racial profiling and anti-immigrant harm. The executive order is in opposition to California's values of inclusivity and history of multiracial democracy. Denying basic rights and services to U.S. citizen children based on their parents' immigration status is unconstitutional and creates an undue hardship, perpetuates inequality, and contravenes our nation's values of fairness and justice. We urge our state leaders to send a strong message in affirming birthright citizenship to ensure immigrants know they are welcome and belong in California.

### **Arguments in Opposition**

None on file

## **FISCAL COMMENTS**

None

## **VOTES:**

### **ASM JUDICIARY: 9-0-3**

**YES:** Kalra, Bauer-Kahan, Bryan, Connolly, Harabedian, Pacheco, Papan, Stefani, Zbur

**ABS, ABST OR NV:** Dixon, Macedo, Sanchez

### **ASSEMBLY FLOOR: 61-1-17**

**YES:** Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

**NO:** DeMaio

**ABS, ABST OR NV:** Castillo, Chen, Davies, Dixon, Ellis, Flora, Gallagher, Jeff Gonzalez, Hadwick, Hoover, Lackey, Macedo, Papan, Patterson, Sanchez, Ta, Tangipa

## **UPDATED**

VERSION: June 10, 2025

CONSULTANT: Manuela Boucher / JUD. / (916) 319-2334

FN: 0001164