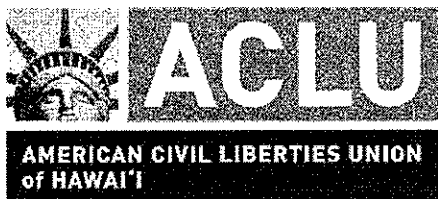


SCR 63



Committee: Committee on Public Safety, Government Operations and Military Affairs
Hearing Date/Time: Thursday, March 31, 2011, 2:50 p.m.
Place: Conference Room 224
Re: Testimony of the ACLU of Hawaii in Strong Support of S.C.R. 63

Dear Chair Espero and Members of the Committee on Public Safety, Government Operations and Military Affairs:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in strong support of S.C.R. 63. The 14th Amendment to the U.S. Constitution provides that, with few discrete exceptions, people born in the United States are citizens of this country, irrespective of race, ethnicity, or national origin of their parents. The Amendment was ratified to rectify one of the most infamous U.S. Supreme Court rulings in our nation’s history – the *Dred Scott v. Sandford*¹ decision of 1857, in which the Court held that no individuals of African descent, including slaves and free persons, could ever become U.S. citizens.

In response to *Dred Scott*, Congress passed and the states ratified the 14th Amendment. Its very first sentence states unambiguously: “*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.*”

The intent of these powerful words was to put citizenship above the politics and prejudices of any given era, a goal that is as important today as it was at the time of the 14th Amendment’s ratification.

Citizenship under the 14th Amendment includes those born in the United States to parents who are not U.S. citizens. This was clearly established over 100 years ago by the U.S. Supreme Court. In the landmark 1898 decision of *United States v. Wong Kim Ark*,² the Court held that a person born in San Francisco to Chinese parents – who, at the time, were not permitted to naturalize as U.S. citizens – nonetheless became a U.S. citizen at the time of his birth by virtue of the 14th Amendment. As the Court explained, “[t]o hold that the fourteenth amendment of the constitution excludes from citizenship the children born in the United States of *citizens or subjects of other countries*, would be to deny citizenship to thousands of persons of English,

¹ 60 U.S. 393 (1857).

² 169 U.S. 649 (1898).

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Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States.”³

Some have suggested that the 14th Amendment’s phrase, “and subject to the jurisdiction thereof,” is open to reinterpretation. It’s not. Over 100 years ago, the Supreme Court explained that this phrase simply meant that the children born to foreign diplomats or hostile forces are not automatically U.S. citizens.⁴ The Supreme Court has subsequently affirmed the understanding that non-citizens, including undocumented immigrants, are subject to the jurisdiction of the United States under the 14th Amendment.⁵

The attacks on the 14th Amendment that are being mounted today aren’t new. Even prior to its passage, some people objected to extending citizenship to the native born children of various immigrant groups considered undesirable based on then-prevailing prejudices, but these objections were soundly rejected – in the late 19th century when Chinese Americans came under attack, and during World War II when some sought to strip Japanese Americans of their citizenship. Today’s targets for scapegoating are Latinos and Hispanic-Americans.

The right to citizenship at birth is enshrined in our Constitution and cannot be repealed without a constitutional amendment.⁶ Although citizenship at birth has been firmly established in our Constitution for over 150 years, some lawmakers have introduced bills in Congress to deny citizenship to the U.S.-born children of undocumented immigrants. Almost universally, legal scholars and historians have repudiated the notion that politicians can deny citizenship to children born in the United States through simple legislation. Similarly, no judicial court has endorsed this misguided theory.

The current attempt by a handful of lawmakers to revive this debate at the state level is likewise without any legal foundation. These lawmakers are attempting to recycle failed ideas, such as denying birth certificates to babies born in their states whose parents cannot sufficiently prove

³ *Id.* at 694.

⁴ *Id.* at 682. The Court found that these few discrete exceptions to U.S. born citizenship are rooted in the Common Law, dating back centuries. The Common Law provided that all children born in the territory of the sovereign were citizens except for those born to foreign diplomats or hostile occupying forces. *Id.* In addition, at the time, many Native Americans born on U.S. soil were also excluded from U.S. citizenship because of their tribal affiliations. The Indian Citizenship Act of 1924 later granted full U.S. citizenship to the country’s indigenous peoples. 8 U.S.C., Sec. 1401(b).

⁵ See, e.g., *Plyler v. Doe*, 457 U.S. 202, 211, 243 (1982).

⁶ Article V of the U.S. Constitution provides two ways to propose constitutional amendments: (1) amendments may be proposed either by the Congress, by two thirds votes of the House and the Senate; or (2) by a convention called by Congress in response to applications from the legislatures of two-thirds (34) or more of the states. Amendments must be ratified by three-quarters (38) or more of the states. The Congress can choose to refer proposed amendments either to state legislatures, or to special conventions called in the states to consider ratification.

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their citizenship or immigration status to the satisfaction of local government employees. But no form of repackaging or coordinated legislative proposals can make these unconstitutional proposals constitutional.

The story of our country is that children of non-citizens become U.S. citizens by virtue of their birth in the U.S.⁷ This is what makes our country great. We are a nation founded and created based on principles of equality, fairness and opportunity. In the U.S., every child – regardless of her background – is born with the same rights as every other U.S. citizen.

The alternative is fundamentally unjust and un-American: to create a permanent racial sub-caste and undermine the promise engraved on the front of the United States Supreme Court Building – “equal justice under law.” From the time of our nation’s founding, citizenship has been conferred on all those born on U.S. soil, without regard to characteristics such as bloodline or lineage, with the tragic exceptions of the *Dred Scott* decision – denying citizenship to those of African descent – and the historical denial of citizenship to certain Native Americans.⁸ The framers of the 14th Amendment codified this objective principle of citizenship at birth and ensured that race, ethnicity, or ancestry could never again be used by politicians or judges to decide who among those born in our country are worthy of citizenship.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,

Laurie A. Temple
Staff Attorney
ACLU of Hawaii

⁷ See fn. 4, above.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 24, 2011 7:47 PM
To: PGM Testimony
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for SCR63 on 3/31/2011 2:50:00 PM

Testimony for PGM 3/31/2011 2:50:00 PM SCR63

Conference room: 224
Testifier position: comments only
Testifier will be present: No
Submitted by: gregory swartz
Organization: Individual
Address:
Phone:
E-mail: swartzg001@hawaii.rr.com
Submitted on: 3/24/2011

Comments:

Interestingly, the following story was just published in the LA Times – 'Birthing tourism' center in San Gabriel shut down.

Pregnant women came from China to three identical townhouses to receive care before and after giving birth to U.S. citizens at local hospitals."