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Eighteen “Pro-Life” States Demand the Freedom to Persecute American Babies

BY MARK JOSEPH STERN

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The 18 AGs, all Republicans, urged a federal court to uphold Donald Trump’s assault against birthright citizenship. Photo illustration by Slate. Photos by Kevin Dietsch/Getty Images and Getty Images Plus.

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A coalition of state attorneys general filed a remarkable brief on Monday overflowing with spite toward the one group that apparently has not suffered enough yet from the chaotic moves of the new presidential administration: infants. The 18 AGs, all Republicans, urged a

federal court to uphold Donald Trump's assault against birthright citizenship on the grounds that their states are injured by immigrant mothers and their babies. The federal government, they argued, should deny American citizenship from these American babies so that states no longer have to provide them and their mothers with health care. Their goal, according to the brief, is to persecute these children so severely that other pregnant immigrants are too fearful to give birth in the United States. Curiously, every one of these attorneys general purports to be "pro-life" and has claimed a desire to see more babies born within their states. It now seems that they only desire the *right* type of babies, and are eager to denaturalize and deport the rest to countries where they may not even hold citizenship.

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Monday's amicus brief was spearheaded by Iowa Attorney General Brenna Bird and joined by the Republican AGs of 17 other states: Alabama, Arkansas, Florida, Idaho, Indiana, Kansas, Louisiana, Missouri, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Utah, and Wyoming. The coalition weighed in to support Trump's executive order purporting to end birthright citizenship for the children of undocumented people and visa holders, including those who've lived here for years. A federal judge has already blocked the order nationwide, calling it "blatantly unconstitutional."

That is, of course, correct: The 14th Amendment guarantees that virtually all children born on U.S. soil acquire automatic citizenship, including the offspring of immigrants, no matter their legal status. The Supreme Court settled this question in 1898 and has never retreated from its position. The overwhelming weight of history demonstrates that the federal government has no power to deny citizenship to a child born within its borders because their parents did not yet have green cards. Indeed, when drafting the 14th Amendment, Congress considered whether birthright citizenship should extend to the children of immigrants—and decisively concluded that it should.

Neither the Trump administration nor these attorneys general have a sound legal argument

to the contrary. Instead, they cite a coterie of nonexperts who've attempted to subvert birthright citizenship through bogus history and cynical wordplay. They claim, falsely, that the guarantee encompasses only those whose parents hold full "allegiance" to the United States. Much of the states' brief simply rehashes these losing arguments, substituting xenophobic rhetoric for persuasive analysis.

But this pseudo-legal theory is really just window dressing for the AGs' deeper grievance: an undisguised contempt for pregnant immigrants and their babies. They claim that birthright citizenship "creates incentives" that lead undocumented immigrants to give birth within their states. And "the costs surrounding these births" allegedly inflict serious "harms." The attorneys general complain that states must help cover the medical cost of childbirth for pregnant undocumented immigrants "and their children." Their brief gripes that "public hospital districts" are forced to serve these "aliens" and their newborns, creating a "fiscal drain" on the state. And it protests that these newborns—*who are U.S. citizens*—require "perinatal coverage" to be kept alive after birth, the cost of which may be shared by the state. Presumably, if Trump and the AGs prevail, these states will no longer need to bear these burdens and the mooching newborns can be denied such excessive "perinatal coverage." (The brief puts forth some inflated costs calculated by the Center for Immigration Studies, a rabidly nativist organization deemed a hate group by the Southern Poverty Law Center; in reality, all forms of immigration help grow states' economies.)

But birth costs and perinatal care aren't where the alleged "harm" ends. Immigrants, the brief warns, understand that if their babies are U.S. citizens, they will have "access to health care and other vital benefits during their childhood." This support structure provides "a foundation for them to build successful lives as fully integrated Americans." And that, apparently, is unacceptable. "These babies likely would have been born in a different country but for the incentive of American citizenship," they declare. "But as American citizens, these children may, for example, participate in state welfare programs," "receive state health care," and get a "public education." Once these American children grow out of infancy, the attorneys general would, it seems, prefer to deny them these benefits by revoking their citizenship and deporting them instead. (Their brief ignores the fact that Trump's order applies to the children of lawful visa holders, too, but would seemingly subject them to the same fate as the offspring of undocumented parents.)

The moral calculus at the heart of this logic is horrific. Under the Constitution, all American citizens receive equal protection; the government may not subvert our rights because of some arbitrary factor over which we have no control, like our parentage. That promise is, in fact, at the heart of the 14th Amendment itself, enacted after the Civil War to establish

equal citizenship for all. Everyone agrees that states are legally obligated to provide health care and education to children born of American citizens. Why should children born to noncitizens be denied these privileges? It is not their fault that their parents were immigrants. They are equally American as you and myself—unless, of course, Trump and the AGs somehow win in court despite the extensive precedent against them.

The guarantee of birthright citizenship ensures that such children are *not* punished for the alleged sins of their parents, operating as a great equalizer: Here, every citizen has the same freedoms, no matter the circumstances under which they came into the world. Monday's brief, however, reveals that many Republican AGs reject this principle: They want to divide the citizenry into two classes—true citizens, who were born to American parents, and interlopers, who were not. These states hold a grudge against the latter group and resent the fact that they must treat these children with equal dignity.

Their solution to this alleged problem is to back Trump's assault on the 14th Amendment, securing new freedom to divvy up their residents by parentage and discriminate against those born to the *wrong* people. These attorneys general want the courts to uphold Trump's executive order so that they may begin denying the benefits of citizenship to an entire class of children. They seek to cut off this group's access to health care and education, paving the way for their deportation to a country they have never even visited, and where they may not hold citizenship. That's the inescapable conclusion of their argument.

Again, what's especially striking about this unvarnished cruelty is that every one of the attorneys general behind Monday's brief claims to be pro-life, and professed a profound concern for the well-being of mothers and their babies. When defending Iowa's six-week abortion ban in 2023, Attorney General Bird—lead author of the brief—shared her state's sincere interest “in protecting human life at all stages of development.” Many of the AGs who signed on recently urged the Supreme Court to overturn *Roe v. Wade*, insisting that the decision limited their ability to “protect” pregnant women and their “unborn children.” Moreover, three of them have previously asserted that they are harmed by the availability of medication abortion because it is “depressing expected birth rates for teenaged mothers” in their states. These AGs are, in short, arguing that they are harmed when (adult) immigrants give birth, and also harmed when (teenage) Americans *do not* give birth.

It should be no surprise that the attorneys general who signed on to Monday's brief have such a shallow commitment to ostensible pro-life principles; after all, their states have some of the highest rates of maternal and infant mortality in the country, and they have resisted efforts to expand health care for new mothers and babies. This hypocrisy is less

disconcerting than the xenophobic animus that drives it. These AGs would upend the nation's constitutional order to create an underclass of babies who could be deprived of basic rights and privileges for their entire lives, from infancy onward. This is the rationale of nativists constructing a herrenvolk, and it is utterly repugnant to Constitution's conception of equal citizenship. ■



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