Attacking Women and Families: An Analysis of the Anti-immigrant Movement's Discriminatory Plans

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A group of conservative state law makers calling themselves the State Legislators for Legal Immigration (SLLI) convened a press conference on January 5, 2011 in Washington D.C. to unveil their plans to attack the 14th Amendment and to encourage Congress to do the same.

The National Coalition for Immigrant Women's Rights (NCIWR) condemns the SLLI's attack on young citizens and their mothers and is disheartened that these leaders are starting the new year on such a destructive path. Instead of unveiling proposals to address the critical issues that currently affect our country, like jobs, the economy, education, the federal deficit, solving our foreign relations issues, conservatives have decided to wage a new war of discrimination against women.

During the press conference, SLLI released two templates for states to use in their attacks, a draft bill and a "state compact." States were invited to adopt either template or to take on both measures simultaneously.

The very short draft bill would define who is and who is not a state citizen. Those born to immigrants without documentation will not be state citizens, a definition that SLLI encourages the federal government to also adopt.

The second document, the "state compact," is essentially a one page letter that says that a state agrees that the Constitution should be redefined. To give some perspective on the "state compact," any interstate agreement that might tend to alter the political power of the states affected, and thus encroach on or interfere with the supremacy of the United States, requires congressional approval. A compact can take place with as few as two states in agreement. State compacts are generally used to settle interstate conflicts, such as waste disposal or water rights issues, and are not a means to force federal or Constitutional change. A state compact cannot be used to change the meaning of the Constitution of the United States. SLLI, however, is promoting the compact as an easy way to circumvent the constitutional amendment process. In their press conference, they boasted that all that is needed to make this change is the signature of two or more states and the simple consent of Congress. Not even the president's signature would be required, the group proudly explained.

With these two documents, SLLI is directly attacking vulnerable populations and thereby undermining the 14th Amendment of the United States, the "most essential engine of equality and fairness" in our society. The 14th Amendment states that

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."

That amendment went through the rigorous Constitutional amendment process and was ratified by 3/4 of the states in 1868, shortly after the end of the Civil War. As a result of its demand for equality, the 14th Amendment overturned one of the worst Supreme Court rulings in our history, Dred Scott v. Sandford. In that case, the Court held that persons of African descent could not become a citizen of the United States. The 14th Amendment was not written narrowly to merely address Dred Scott's situation, as would have been easier to accomplish, but rather was drafted as a broad protection for all people born within our borders, with only very few exceptions. Those exceptions are created by the phrase "and subject to the jurisdiction thereof" in the 14th Amendment, a phrase that has faced painstaking review by the courts. Through a historical lens and eye towards the framer's intent, the courts have held that this exception applies to narrow classes of people such as children of Diplomats. SLLI now wants to extinguish that historical perspective and reinterpret the entire section so that they may exclude a class of citizens they do not like.

In our country's history, various forms of discrimination have been addressed using the 14th Amendment as a guide towards fairness and equality. Importantly, this exact question was already raised and put to rest at a time when bigotry against individuals of Asian descent ran rampant in the United States. In 1898, in a seminal case that affirmed the 14th Amendment's citizenship direction, the Supreme Court verified that the United States Constitution intends for jus soli citizenship, citizenship derived literally from the soil or from the location of birth. In that case, Wong Kim Ark, a laborer who was born in San Francisco California, was detained by officials who argued that he should be "returned to the country from whence he came."[1] The question for the Court was whether a child born in the United States to Chinese parents was a citizen if his parents were excluded from citizenship under the Chinese Exclusion Act. The answer was "yes." The Court also clarified that this rule of citizenship could not be limited by anything less than a Constitutional Amendment. Following this decision, Congressional approval of this interpretation was demonstrated by the fact that, unlike after the Dred Scott decision, there was no subsequent action to amend the Constitution. The Court interpreted the Constitution, and Congress agreed with its decision.

SLLI's new declaration, that all of this history was wrong, is born out of an intense discriminatory sentiment towards a group of people, just as it was in the time of Wong Kim Ark. This time, however, the hatred is directed towards working class women and specifically Latinas. Just as we recognized over 100 years ago, this type of directed aggression is intolerable in our country. Furthermore, any discriminatory action taken against one group cannot be excused because it undoubtedly affects every other vulnerable group and the integrity of our country's morals as a whole.

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[1] *U.S. v. Wong Kim Ark*, 169 U.S. 649, 650 (1898).

SLLI has failed entirely to recognize immigrants as family and community members that add to our economic stability and increase our collective ingenuity. Indeed, during their press conference there was a wholesale silence towards the reality that with very few exceptions, every great leader of this country was the child of immigrant decedents and that immigrants have strengthened and built this country with their own hands and minds. Instead, SLLI described immigration as a "lawless destructive anarchy of invasion" and called immigration the "Achilles heel of our society." They described immigrants as the sole cause of the United States crime, gangs, drugs, prostitution, and even horse gambling for full effect.

These attacks are aggressive jabs at vulnerable populations. There is no real leadership towards a meaningful policy. During the press conference, when asked how the group foresees implementation of the theory, Daryl Metcalfe, the group's leader, responded that "[he] didn't even foresee this room full of people today." Metcalfe's revelation that the group had no clear understanding of the magnitude of what they were proposing was quickly brushed aside as another spokesperson took the podium and explained that their focus has been on instigating litigation and not on implementation. He then attempted to mislead the group in assuring that implementation will be as simple as "filling out a little bit more information" at the hospital, and that it could be accomplished by simply "checking a box on a form" that states that the parent is a citizen.

In reality, implementation of this theory of the Constitution will be an expensive bureaucratic nightmare for states and the federal government. Every person born in the United States will be forced to prove who their parents are and then provide proof of their parents' citizenship. There will need to be a process in place for appealing decisions and a process for children that cannot prove paternity. Because another provision of the proposed bill states that each child must prove that at least one of their parents "owes no allegiance to any foreign sovereignty," a process will need to be added to classify children from parents with dual citizenship. The group then eluded that hospitals should make the first determination of citizenship based on the documentation the parents bring to the delivery room and the information will be transferred to the state bureaucrats to make a final decision.

As it stands, under all accounts, children born to immigrants in the United States are citizens of the United States. They deserve protection from ruthless and discriminatory attacks. Furthermore, SLLI's attacks against women using xenophobic and derogatory terms, as well as outright lies, is patently un-American. Women are not "exploiting" their children so they themselves may obtain citizenship. A child must be 21 years old to even petition for a parent's status change. Painting the picture that a baby can somehow confer citizenship is entirely wrong and an unacceptable lie meant to demonize women. The attacks and lies used against women and children are unacceptable and the NCIWR condemns their use in political debates. The fact that they are directed primarily towards women from Latina American countries also reeks of racial hatred, throwing us back to the days of the Chinese exclusionary period of our history.

Luckily, the Constitution brilliantly and objectively defines who is a citizen of the United States, prohibiting the consideration of non-relevant factors such as race or gender to be considered. Any lawmaker that uses derogatory and provocative terms like “alien invader,” or “anchor babies” to describe immigrant mothers and their children should be ashamed at their own lack of understanding of American values. Furthermore, attacking women’s reproductive choices by making baseless accusations about her choice of when and where to have a child is simply another form of sexism that cannot be tolerated.

Organizations such as the MALDEF and the ACLU have pledged to fight these actions in court. The case, however, will be so clear cut that scholars believe it will have difficulty even reaching the Supreme Court after it is undoubtedly decided in MALDEF and ACLU’s favor in a lower court.

Conservative lawmakers must not be allowed to attack women and their children using baseless academic theories of the Constitution. This is not a divisive issue between advocate groups, nor is this a question of party politics. Groups from all races, genders, political parties, and religions stand united in extinguishing these attacks and NCIWR is embedded in this fight and determined to stop hateful messages against women and their children.