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# Stopping the Practice of Citizenship for Sale

## Birth tourism in the United States and Canada

By Kevin Berghuis

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### Background

Citizenship for sale? Such an idea may seem ridiculous to most Americans. Nevertheless, this concept is not a mere abstract hypothetical, but rather a reality in the United States. As one of the only developed countries in the world to adopt *jus soli* — Latin for “right of soil” — the United States guarantees citizenship to every child born within its territory.<sup>1</sup>

Birthright citizenship has been a fixture in the United States for over a century. However, in modern times, the policy has been exploited and has evolved into a magnet for birth tourism: the practice of pregnant foreign mothers travelling to the United States with the sole intention of delivering their children on American soil in order to secure U.S. citizenship for their newborns.

As American citizens, birth tourism babies go on to possess one of the world’s most powerful passports, are eligible for federal education scholarships, and are guaranteed access to the U.S. job market. After turning 21, they are eligible to sponsor their foreign parents to become American citizens through chain migration.<sup>2</sup> Through birth tourism, any foreigner with enough resources to travel to the United States can deliver an American baby. This is nothing more than citizenship for sale.

### President Trump on Birthright Citizenship and Birth Tourism

Birth tourism undermines the significance of U.S. citizenship, and the president agrees. In October 2018, Trump announced he would tackle the issue by eliminating birthright citizenship through executive order.<sup>3</sup> Such intentions were never realized, but 10 months later, in August 2019, President Trump echoed the same idea to reporters, exclaiming birthright citizenship to be “ridiculous” and that he was “looking at [it] very seriously.”<sup>4</sup> Finally, in January 2020, rather than cancel birthright citizenship entirely, the White House acted to specifically curtail birth tourism by directing U.S. consulates to deny temporary visitor visas to pregnant women planning to deliver their children in the United States.<sup>5</sup>

This report examines the experiences of other developed nations and suggests ways to apply those nations’ practices in the United States to make progress on this issue. Key findings:

- Steven Camarota, the Center’s director of research, estimates that 20,000 to 26,000 children are possibly born in the United States through birth tourism each year.<sup>6</sup>
- Canada, the only other G7 country in addition to the United States that has birthright citizenship, also faces an immense birth tourism problem; a Canadian researcher has developed a more accurate methodology to obtain birth tourism figures by using hospital billing information.
- In Canada, 75 percent of births to foreign mothers occur in just 25 hospitals; between 2010 and 2018, the number of children born to foreign mothers soared by 202 percent.<sup>7</sup>

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- Many developed countries have eliminated birthright citizenship after evidence of birth tourism abuse, most recently Ireland and New Zealand.
- In addition to encouraging birth tourism, birthright citizenship in the United States entices illegal immigration; the Center estimates that, in 2014, around 297,000 children were born to illegal aliens, costing up to \$2.3 billion in Medicaid taxpayer funds.<sup>8</sup>
- The Citizenship Clause in the 14<sup>th</sup> Amendment makes ending birthright citizenship in the United States constitutionally difficult; however, numerous short-term policies can be immediately implemented to directly target and deter birth tourism.

## The Magnitude of the Problem in the United States

Birth tourism is a pressing issue, but the government has never collected data to assess the extent of the problem. That said, by using information from the American Community Survey (ACS) and the Centers for Disease Control (CDC), Steven Camarota, the Center's director of research, estimates that 20,000 to 26,000 birth tourists have children in the United States each year.<sup>9</sup>

While concrete statistics are unavailable, recent high-profile birth tourism incidents demonstrate the issue's prevalence. In January 2019, federal prosecutors charged 20 people in Southern California involved in operating several birth tourism companies that, together, allegedly brought over thousands of pregnant foreign women to the United States to give birth.<sup>10</sup> Agencies indicted included "YouWin USA" and "USA Happy Baby", whose services advertised the benefits of American life to Chinese nationals, coached pregnant women on how to lie to immigration officers about their travel intentions, and provided customers with housing — all for fees of up to \$100,000.

Birth tourism itself is not illegal, but the agency affiliates were prosecuted on a myriad of charges including tax fraud, visa fraud, money laundering, and conspiracy. Some of the suspects were convicted, but more than half of them fled to China to evade punishment.<sup>11</sup> Similar birth tourism bureaus have been documented across the country in cities including New York<sup>12</sup> and Miami.<sup>13</sup>

## Canada Is the Only Other G7 Country with Birthright Citizenship

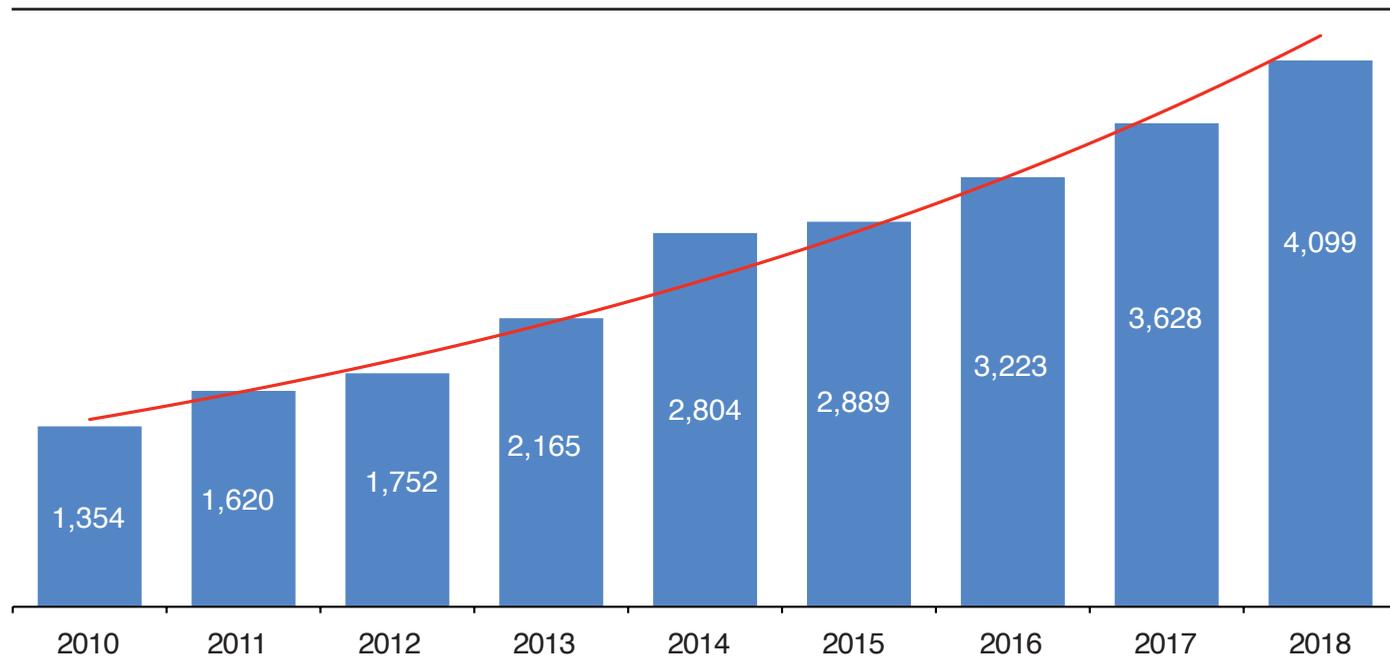
While egregious instances of birth tourism fraud in California highlight the issue's urgency, American birth tourism statistics are scarce. However, more accurate data from Canada — the only other G7 country to offer birthright citizenship — demonstrates that lenient birthright citizenship policies entice birth tourism fraud and abuse, wherever they exist.<sup>14</sup> The Canadian government's official statistics recording births to foreign mothers are quite meager: Between 2016 and 2018, Statistics Canada only recorded 313, 385, and 356 births, respectively.<sup>15</sup>

However, according to Andrew Griffith, a fellow at the Institute for Research on Public Policy, these numbers are severely flawed.<sup>16</sup> To calculate a more accurate number, he analyzed information from the national Discharge Abstract Database (DAB), which contains Canadian hospital financial and billing information, including services to foreign patients. Griffith believes hospital data to be more accurate since foreign mothers often provide their address in their native country to complete billing information. Contrarily, Statistics Canada uses birth certificate information to determine births to foreign mothers, where mothers often provide a temporary Canadian residence address, resulting in erroneous counting. The outcome is a vast disparity between the two datasets, with the more accurate information from the DAB being quite alarming.

It is important to note that foreign birth data from the DAB includes temporary residents, such as international students and corporate transferees, so the figures are slightly higher than those of actual birth tourists. Nevertheless, Canadian foreign birth rates have consistently increased since 2010, and birth tourism is a likely culprit behind the growing numbers. Between 2010 and 2018, the number of Canadians born annually to foreign mothers increased by an astounding 202 percent.

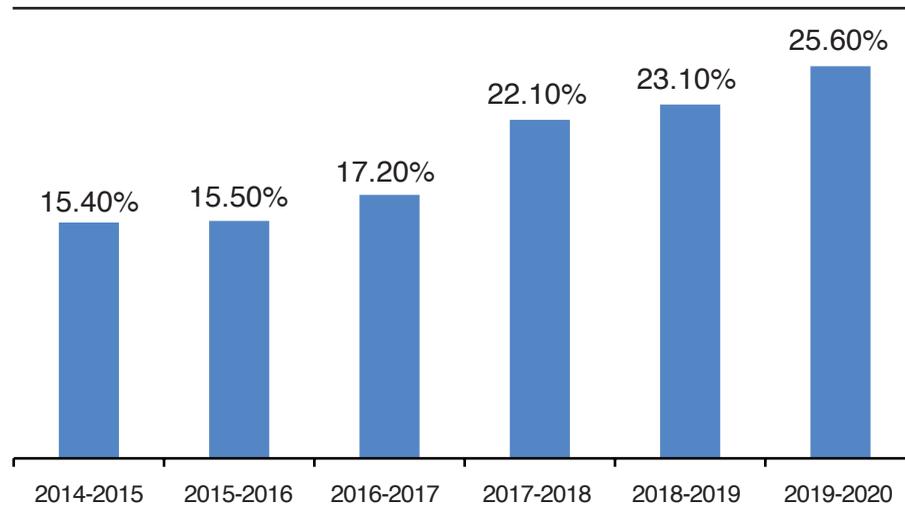
Further, Griffith identified that 75 percent of non-resident Canadian births occur in just 25 hospitals, with the most notable birth tourism hotspot at the Richmond Hospital in Richmond, British Columbia. There, in 2019, births to predominantly Chinese foreign mothers accounted for a staggering 25.6 percent of all hospital births.<sup>17</sup> Indeed, the foreign birth rate at the

Figure 1. Births to Foreign Mothers in Canada, Excluding Quebec, 2010–2018



Sources: Canadian Institute for Health Information, DAB, IRPP.

Figure 2. Proportion of Total Births Delivered by Foreigners, Richmond Hospital, British Columbia



Source: Vancouver Coastal Health.

Richmond Hospital has skyrocketed at an even quicker pace than in the rest of Canada. Between annual averages in 2010-2015 and 2016-2018, the hospital saw a 207 percent increase in non-resident births.<sup>18</sup>

Again, while raw Canadian foreign birth figures are higher than the number of actual birth tourists, the astonishing surge in non-resident births indicates that increasing birth tourism is believed to be facilitating this rise. Qualitative evidence from local healthcare workers corroborates this theory. According to Dr. Fiona Mattatall, a Calgary-based obstetrician and gynecologist, “[the data] mirrors what [physicians] see on the front lines,” and that the healthcare “system is not built to provide services [for] people [from] out of the country.”<sup>19</sup>

In Richmond, B.C., Canadian mothers have complained about being refused maternity services at certain hospitals due to wards operating at capacity.<sup>20</sup> According to a nurse at the Richmond Hospital who spoke under anonymity to the CBC, Canada's public broadcaster, "there are times when [Canadian residents] don't get the service they need," due to foreign overcrowding of maternity wards.<sup>21</sup>

## How Have Other Global Countries Addressed Birth Tourism?

Despite trends demonstrating foreign abuse of Canada's birthright citizenship laws and 64 percent of the public opposing *jus soli*, Canadian politicians are reluctant to promote policies that would curb birth tourism.<sup>22</sup> At the 2018 Canadian Conservative Party convention, members voted in a non-binding motion for the party to commit to ending birthright citizenship.<sup>23</sup> The position was never added to their official platform, however.<sup>24</sup>

Canada may lack the political will to thwart birth tourism, but other developed countries have addressed the issue much more proactively. Indeed, in 2004 and 2006, respectively, Ireland and New Zealand became the two most recent Western nations to abolish birthright citizenship after realizing its potential for abuse.

Ireland changed its law after a pregnant Chinese temporary foreign worker in the UK, which ended birthright citizenship in 1981, travelled to Belfast to deliver a child, who gained EU citizenship.<sup>25</sup> After the European Court of Justice ruled in 2004 that the UK could not deny the mother British permanent residency due to her daughter's EU citizenship, Irish politicians acted to end birthright citizenship that same year.<sup>26</sup>

Comparably, in New Zealand, after a Chinese visa-overstaying couple's deportation order was nullified by the New Zealand Supreme Court, which ruled that separating the parents from their New Zealander children was unlawful, the legislature swiftly acted to end *jus soli* to prevent similar future situations.<sup>27</sup>

## The Fiscal Risks and Consequences of Birth Tourism

Canadian statistics confirm that birth tourism is not a phenomenon confined to the United States. In certain developed countries, it arises as a negative consequence of birthright citizenship. In turn, most modern countries have simply ended *jus soli*. As mentioned, the United States and Canada are the only two remaining G7 nations to feature birthright citizenship policies.

Uniquely in the United States, birth tourism is not the only problem that stems from birthright citizenship. Birthright citizenship also exacerbates America's illegal immigration problem by serving as an enticement for aliens to illegally migrate to America and give birth to U.S. citizens. The Center for Immigration Studies estimates that, in 2014, roughly 297,000 children were born to illegal aliens in the United States, costing up to \$2.4 billion annually in Medicaid taxpayer dollars.<sup>28</sup> This enormous cost is the result of the many illegal aliens who arrive at emergency rooms indigent and uninsured.

Incidentally, compassionate U.S. hospital policies also, ironically, have the propensity to be abused by wealthy birth tourists. According to an indictment against YouWin USA, one of the prosecuted Chinese birth tourism bureaus operating in California, foreign mothers paying tens of thousands of dollars for their services would often arrive at the hospital in labor claiming to be poor and incapable of affording childbirth services.<sup>29</sup> In one case, a couple only paid a discounted \$4,080 for a bill that exceeded \$28,000, despite having more than \$225,000 in a U.S. bank account that was used to make purchases at luxury retailers including Louis Vuitton and Rolex.

Again, Canada mirrors the United States in facing similar payment problems among birth tourists. While Canadians receive health insurance through socialized taxpayer-funded healthcare, foreign nationals are expected to pay for the services they incur. That said, they do not always comply. In September 2012, after facing severe birthing complications, Yan Xia, a Chinese national, delivered a healthy baby; however, she fled the country without paying her CA\$312,595 medical bill.<sup>30</sup> As of 2018, the sum had yet to be paid, and due to interest, the amount owed had ballooned to CA\$1.2 million — in other words, she flagrantly abused Canada's taxpayer-funded health care to deliver a "million-dollar baby".

Similarly, a Freedom of Information request in British Columbia revealed that the province had yet to receive CA\$693,869.20 in unpaid medical bills from non-resident births in the 2014-2015 fiscal year alone.<sup>31</sup> Given that foreign births have soared since then, it is likely this annual sum is simultaneously increasing as well.

# Birthright Citizenship and the 14<sup>th</sup> Amendment

Due to birthright citizenship policies that enable birth tourism, both the United States and Canada also face immense fiscal burdens. With this information, the critical question remains: What can be done in the United States to stop this egregious practice?

Other developed countries have acted quickly to undo birthright citizenship completely. For example, in the previously mentioned examples of Ireland and New Zealand, both countries now require that children born have at least one citizen or permanent resident parent to receive citizenship.<sup>32</sup> Such action is not as simple in the United States due to *jus soli* existing as the current interpretation of the 14<sup>th</sup> Amendment's Citizenship Clause, which reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States."<sup>33</sup> Because this clause has been understood to enshrine birthright citizenship in U.S. immigration law for over a century, influential legal organizations like the ACLU believe that birthright citizenship cannot be ended without revising the Constitution.<sup>34</sup>

Some legal scholars disagree. According to Hans von Spakovsky of the Heritage Foundation, "jurisdiction" was originally intended to denote allegiance owed to the United States and not any other country — political jurisdiction.<sup>35</sup> He argues that since birth tourists and illegal aliens do not exist under the political jurisdiction of the United States, their children are not guaranteed U.S. citizenship.

The U.S. Supreme Court has only ever discretely ruled that children of legal permanent residents are American citizens by *jus soli*, in the 1898 case of *U.S. v. Wong Kim Ark*. Further, the Court has never indicated whether children of birth tourists, illegal aliens, and temporary U.S. visitors are guaranteed American citizenship.<sup>36</sup> Regardless of whether terminating birthright citizenship is constitutional, a presidential attempt to end it — as Trump expressed intent in doing — would likely incite nationwide controversy and face lengthy litigation that could take years to settle. In other words, fully ending birthright citizenship may not be realistic in the short term.

## How to Curb Birth Tourism Without Touching the Constitution

Thankfully, birth tourism is a symptom of birthright citizenship that can be addressed without engaging in an arduous constitutional battle. Earlier this year, the Trump administration ordered U.S. consulates to halt the issuance of tourist visas to pregnant women; this action was a positive start, but much more can be done to detect, deter, and minimize the problem of birth tourism, including the following:

1. Designate an inter-agency taskforce to develop and implement a concrete methodology to accurately record birth tourism statistics. Documenting scale and other characteristics of the problem, including the nationalities of those who engage in birth tourism, with concrete numbers, is essential to developing solutions. The taskforce should also consult with local medical workers in known birth tourism epicenters, such as Miami, to understand birth tourism impacts on frontline operations.
2. Create a taskforce, perhaps within the Department of Health and Human Services, to study the rates at which illegal aliens are giving birth in U.S. hospitals, and the taxpayer costs associated with such health services. If a nationwide program is too difficult to complete, identify 10 to 25 large hospitals in metropolitan areas and analyze illegal alien birth trends in a manner that respects patients' rights.
3. Expand visitor visa restrictions to pregnant foreign mothers by including a discrete question about pregnancy and intent to give birth on visa applications and grant CBP officers at major airports the prerogative to administer pregnancy tests for suspected birth tourism travelers on a discretionary basis.
4. Urge Congress to enact a law that allows for the imposition of penalties on birth tourists and empowers authorities to crack down on it. Similarly, state governments might be encouraged to use their authorities, such as zoning, licensing, healthcare service, and child care regulations, to penalize, shut down, or discourage the practice.

5. Enact U.S. travel bans for parents found to have engaged in birth tourism. For example, those found guilty of intentionally having a child in the United States should be barred from re-entering the country for at least 10 years to deter birth tourism — similar to the punishment for illegal immigration.
6. Explore authorizing or directing hospitals to impose an upfront deposit from foreign mothers on non-immigrant visas seeking access to maternity care in the United States, as is done in certain Canadian hospitals. The deposit aims to reduce medical payment avoidance, as well as deter potential birth tourists who lack the financial means to pay the full cost of maternity care.

## Conclusion

Birth tourism undermines the value of American citizenship; the government can enact several concrete measures to mitigate this abusive practice. Revising the nature of birthright citizenship is a complex constitutional issue that could take years to implement. In the meantime, pursuing clear shorter-term objectives to directly address birth tourism offers a more pragmatic approach to curtailing the phenomenon of citizenship for sale.

# End Notes

- <sup>1</sup> [“Chapter 3 - United States Citizens at Birth \(INA 301 and 309\)”](#), U.S. Citizenship and Immigration Services, accessed July 13, 2020.
- <sup>2</sup> [“Family Immigration”](#), U.S. State Department, accessed July 13, 2020.
- <sup>3</sup> William Cummings and David Jackson, [“President Trump says he plans to end birthright citizenship with an executive order”](#), USA Today, October 30, 2018.
- <sup>4</sup> [“Trump says he is seriously looking at ending birthright citizenship – video”](#), The Guardian, August 21, 2019.
- <sup>5</sup> Zolan Kanno-Youngs, [“Trump Moves to Block Visas for Pregnant Women on ‘Birth Tourism’”](#), The New York Times, January 23, 2020.
- <sup>6</sup> Steven A. Camarota, [“A Revised Estimate of Birth Tourism”](#), Center for Immigration Studies, March 13, 2020.
- <sup>7</sup> Andrew Griffith, [“Hospital stats show birth tourism rising in major cities”](#), Institute for Research on Public Policy, November 22, 2018.
- <sup>8</sup> Steven A. Camarota, Karen Zeigler, and Jason Richwine, [“Births to Legal and Illegal Immigrants in the U.S.”](#), Center for Immigration Studies, October 9, 2018.
- <sup>9</sup> Camarota, [“A Revised Estimate of Birth Tourism”](#).
- <sup>10</sup> [“Prosecutors: Businesses Serviced Chinese Officials In Largest-Ever ‘Birth Tourism’ Scheme”](#), CBS Los Angeles, January 31, 2019.
- <sup>11</sup> [“Fugitive Chinese national sentenced to more than 3 years in prison for his role in large-scale birth tourism and immigration fraud”](#), U.S. Immigration and Customs Enforcement, June 30, 2020.
- <sup>12</sup> Pei-Sze Cheng, [“Lure of Citizenship Spawns ‘Birth Tourism’ in NYC”](#), NBC New York, May 3, 2011.
- <sup>13</sup> Iuliia Stashevskaya, [“Mother Russia: South Florida sees a boom in ‘birth tourism’”](#), Associated Press, March 22, 2019.
- <sup>14</sup> [“Is ‘birth tourism’ a problem in Canada? Doctors on frontline of debate”](#), CTV News, August 10, 2016.
- <sup>15</sup> [“Live births, by place of residence of mother”](#), Statistics Canada, accessed July 13, 2020.
- <sup>16</sup> Griffith, [“Hospital stats show birth tourism rising in major cities”](#).
- <sup>17</sup> Graeme Wood, [“Richmond Hospital set to see over 500 possible ‘birth tourists’ in one year”](#), Richmond News, January 22, 2020.
- <sup>18</sup> Griffith, [“Hospital stats show birth tourism rising in major cities”](#).
- <sup>19</sup> Avis Favaro and Ryan Flanagan, [“Birth tourism rising fast in Canada; up 13 per cent in one year”](#), CTV News, September 16, 2019.
- <sup>20</sup> Graeme Wood, [“Birth tourism rates smash earlier records in Richmond”](#), Richmond News, January 13, 2015.
- <sup>21</sup> Annie Burns-Pieper and Lisa Mayor, [“All about the money: How women travelling to Canada to give birth could strain the health-care system”](#), CBC, January 4, 2020.

- <sup>22</sup> Ashley Wadhvani, [“64% of Canadians do not support current laws that support ‘birth tourism’: poll”](#), The Abbotsford News, March 14, 2019.
- <sup>23</sup> Eric Stober, [“Conservatives vote to end policy that allows ‘birth tourism’ in Canada”](#), Global News, August 26, 2018.
- <sup>24</sup> Graeme Wood, [“Liberals silent, Conservatives backtrack on birth tourism fix”](#), Vancouver News, October 18, 2019.
- <sup>25</sup> Denis Stauton, [“Chinese mother and Irish baby ‘entitled to live in EU’”](#), The Irish Times, May 19, 2004.
- <sup>26</sup> Yasmeen Serhan and Uri Friedman, [“America Isn’t the ‘Only Country’ With Birthright Citizenship”](#), The Atlantic, October 31, 2018.
- <sup>27</sup> Caroline Sawyer, [“The Loss of Birthright Citizenship in New Zealand”](#), Victoria University of Wellington Law Review, pp. 654-655, November 2013.
- <sup>28</sup> Camarota, Zeigler, and Richwine, [“Births to Legal and Illegal Immigrants in the U.S.”](#).
- <sup>29</sup> Brittney Mejia and Joel Rubin, [“Travel agents charged with bringing pregnant Chinese women to give birth on U.S. soil”](#), Los Angeles Times, January 31, 2019.
- <sup>30</sup> Ian Young, [“Canadian hospital sues mother of million-dollar baby, amid growing concern over Chinese birth tourism”](#), South China Morning Post, June 13, 2018.
- <sup>31</sup> [“B.C. investigators say they are aware of 26 ‘baby houses’ as birth tourism from China booms”](#), National Post, July 28, 2016.
- <sup>32</sup> [“Birthright Citizenship Around the World”](#), Library of Congress, February 28, 2019.
- <sup>33</sup> U.S. Constitution, Amendment XIV, § 1.
- <sup>34</sup> [“Citizenship at Birth Under the 14<sup>th</sup> Amendment”](#), ACLU, undated.
- <sup>35</sup> Hans A. von Spakovsky, [“Trump is Right — Ending Birthright Citizenship is Constitutional”](#), Heritage Foundation, November 2, 2018.
- <sup>36</sup> *Ibid.*