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REPEALING BIRTHRIGHT CITIZENSHIP: HOW THE DOMINICAN REPUBLIC'S RECENT COURT DECISION REFLECTS AN INTERNATIONAL TREND

Natalie Sears*

I. INTRODUCTION

BIRTHRIGHT citizenship has historical roots dating back to original constitutions in almost every country around the world. Although the universal practice among countries enacting their constitutions was to adopt birthright citizenship for their citizens, this initial historical practice has long been abandoned. The more recent worldwide trend is constitutional amendments removing each country's automatic birthright citizenship provisions.

Most recently, the Dominican Republic's highest court issued a decision repealing the country's constitutional birthright citizenship provision while retroactively applying it to Dominicans of Haitian descent born to parents who never obtained official Dominican citizenship. This decision reflects the rest of the world's action in repealing birthright citizenship for all citizens born on each country's soil. But the Dominican Republic's decision is particularly troubling because it will likely render thousands of people completely stateless with citizenship neither in the Dominican Republic or Haiti.

In evaluating the worldwide trend of abandoning birthright citizenship, this comment seeks to identify differences among those countries adopting the trend and those flatly rejecting such a constitutional change. The United States is among the very few countries that have continuously rejected proposed constitutional amendments attempting to change the nation's birthright citizenship provisions. In contrast, New Zealand and Ireland are among those countries that have expressly repealed their birthright citizenship laws in favor of a stricter citizenship requirement.

As with any other worldwide legal trend, there are both benefits and disadvantages to repealing birthright citizenship. Although many countries have repealed this law, they have done so in different ways and with varying reasons justifying their decision.

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This comment analyzes the motivations for keeping or discarding constitutional birthright provisions in countries that disregard their constitutional birthright citizenship provisions and those that keep such laws in place. In addition, it will look at the repercussions countries experience once they have revoked such provisions, including the constitutional and human rights challenges to such action.

II. BACKGROUND

Birthright citizenship has been defined as “the citizenship granted to a person by virtue of the circumstances of his/her birth.”¹ A birthright citizenship may be obtained through one of two ways: (1) *jus soli* or (2) *jus sangunis.*² *Jus soli* is a “right by which nationality or citizenship can be recognized to any individual born in the territory of the related state.”³ *Jus sangunis* is a “social policy by which nationality or citizenship is not determined by place of birth, but by having an ancestor who is a national or citizen of the state.”⁴

In almost every country around the world, birthright citizenship was a clause found in each country’s constitution, guaranteeing citizenship to children born of immigrant parents, both those documented and undocumented.⁵ For example, the Citizenship Clause to the 14th Amendment found in the U.S. Constitution states that “[a]ll 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.”⁶

Historically, the purpose and effectiveness of such constitutional provisions have been greatly debated. Today, the United States and Canada are the only developed nations that have upheld their birthright citizenship provisions and continue to grant automatic citizenship to almost all children.⁷ In 2010, the Dominican Republic became the most recent nation to revoke its constitutional birthright citizenship provision, making the acquisition of citizenship now dependent upon one’s parents’ status.⁸ Prior to its removal, Article 11 of the 2002 Dominican Republic Constitution defined its nation’s citizens as “[a]ll persons born in the territory of the Republic, with the exception of the legitimate children of foreigners residing in the country for diplomatic representation or those who are in

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2. Id.
3. Id.
4. Id.
5. See e.g., U.S. CONST. amend. XIV, § 1.
6. Id.
transit."\(^9\)

When it removed the birthright citizenship provision from its constitution, the question arose as to whether the Dominican Republic would retroactively apply the change to Dominicans of Haitian descent born prior to 2010.\(^10\) Prior to 2010, the country's Constitution did not give "citizenship to children born to diplomats or parents 'in transit' for ten days or less."\(^11\) The September 2013 ruling by the Constitutional Court interprets and implements a new definition of "in transit," applying retroactively to revoke citizenship of children born in the Dominican Republic by parents, who were unauthorized migrants also born in the Dominican Republic since 1929.\(^12\)

This change will affect thousands of Dominican Republic residents who have lived in the Dominican Republic since birth. Because the repeal will be retroactively applied, it will effectively strip citizenship away from thousands of residents rendering them entirely stateless. Such Dominican Republic residents do not have citizenship in Haiti because they were born in the Dominican Republic; they are now left stateless because of the Constitutional Court’s ruling.

III. HISTORICAL BACKGROUND OF BIRTHRIGHT CITIZENSHIP AROUND THE WORLD

The history and reasoning behind so many countries initially granting birthright citizenship involves immigration policy and the fact that without birthright citizenship, many citizens will be left stateless. Today, out of the forty developed nations, the United States and Canada are the only ones that continue to grant citizenship to anyone born on their land.\(^13\) Among the most recent nations repealing birthright citizenship include the Dominican Republic in 2010,\(^14\) Australia in 2007, and New Zealand in 2005.\(^15\)

Some scholars argue birthright citizenship entices the practice of having "anchor babies," a term referring to children of foreign illegal immigrants that the families have in hopes of gaining citizenship for the entire family.\(^16\) But this theory used by conservatives attempting to eliminate birthright citizenship has its faults.\(^17\) Other scholars argue that common sense prohibits limiting the entry of undocumented immigrants on the
one hand while granting citizenship to the children of those same immigrants on the other.\textsuperscript{18}

Although many proposed solutions have been suggested, many countries have historically yielded to concerns fueled by the birthright citizenship debate by changing their immigration laws, particularly in the United States.\textsuperscript{19} Most recently, however, these concerns have been addressed by repealing the entirety of some countries' birthright citizenship laws, denying automatic citizenship to those children born in the country, regardless of their parents' citizenship status. Such action is no longer the minority decision for countries, but now portrays an international trend occurring throughout the world.

A. THE MOST RECENT COUNTRY TO REPEAL: DOMINICAN REPUBLIC

The Dominican Republic implemented its original Constitution in 1929 and with it, automatically granted citizenship to every person born in its country.\textsuperscript{20} But its Constitution has always excluded from birthright citizenship those children born to diplomats residing in the Dominican Republic and those "in transit."\textsuperscript{21}

Article 11 of the 1999 Dominican Republic Constitution stated that "Dominicans are: All persons born in the territory of the Republic with the exception of the legitimate children of foreigners resident in the country in diplomatic representation or in transit."\textsuperscript{22} "In transit" was legally interpreted to mean a "period of less than ten days."\textsuperscript{23} Therefore, those born to temporary or permanent residents within the Dominican Republic were constitutionally guaranteed Dominican Republic citizenship.\textsuperscript{24} This right existed for seventy-five years until 2004, when a new law narrowed the definition of "in transit."\textsuperscript{25} But even before its new law, the Dominican Republic began limiting migrant workers', particularly of Haitian descent, ability of obtaining proof of Dominican citizenship, a process required to perform tasks such as opening a bank account and getting married.\textsuperscript{26}

On January 26, 2010, the Dominican government rewrote its Constitution, requiring citizens to prove that at least one of their parents has Dominican nationality in order to remain a legal Dominican citizen.\textsuperscript{27} Not

\begin{footnotesize}
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\item \textsuperscript{18} Rachel E. Rosenbloom, Policing the Borders of Birthright Citizenship: Some Thoughts on the New (and Old) Restrictionism, 51 WASHBURN L.J. 311, 314 (2012).
\item \textsuperscript{19} Id. at 313.
\item \textsuperscript{20} Ceara-Hatton, supra note 9.
\item \textsuperscript{21} OPEN SOCIETY INSTITUTE, DOMINICANS OF HAITIAN DESCENT AND THE COMPROMISED RIGHT TO NATIONALITY 3 (Oct. 2010), available at http://www.crin.org/docs/DR%20Compromised%20Right%20to%20Nationality%20_IACHR%20report.pdf.
\item \textsuperscript{22} Id. at n.3.
\item \textsuperscript{23} Id. at 3.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id. at 4.
\item \textsuperscript{27} Prosperity Raymond, Love thy neighbour? Not when it comes to the Dominican Republic and Haiti, POVERTY MATTERS BLOG (Aug. 13, 2014, 2:00 EDT), http://
\end{itemize}
\end{footnotesize}
only did this constitutional amendment revoke many citizens’ rights to work and participate in society, it rendered a large amount of Haitians and their children living in the Dominican Republic completely stateless.28

1. Constitutional Court Ruling Renders Many Haitian Dominican Republicans Stateless

The most recent and drastic change to the Dominican Republic’s birthright citizenship provision came in 2013, when its Constitutional Court reinterpreted the common definition of “in transit” and effectively revoked citizenship from all Haitians living in the Dominican Republic born to migrants who were not Dominican Republic citizens.29 The Court’s decision cannot be appealed and it applies retroactively, to those born since 1929, the year its Constitution came into effect.30

The Dominican Republic has since received numerous complaints and allegations of discrimination, but it continues to strongly hold to its court’s ruling. The nation even rejected a human rights report written by the Inter-American Commission on Human Rights claiming that the Dominican Republic’s decision is discriminatory against Haitian citizens and effectively revokes 200,000 people’s citizenship.31 The government responded, stating “[t]he government is acting in accordance with our constitution, and as such, it will follow the court’s ruling.”32

2. A Potential Human Rights Crisis

The Dominican Republic Constitutional Court’s ruling has the potential to be disastrous for Haitians living in the Dominican Republic. In addition to immediately revoking citizenship from those without birth certificates issued by its government, the Dominican Republic will also be analyzing birth certificates of more than 16,000 people to determine whether their ancestors obtained proper Dominican Republic citizenship.33 Many have challenged this ruling on the basis that it is in conflict with Article 15 of the Universal Declaration of Human Rights that states, “no one shall be arbitrarily deprived of his or her nationality.”34
The court’s decision is the finale to its history of narrowing its Constitution’s birthright citizenship provisions. The 2010 constitutional amendment resulted in the review of many Haitians’ birth certificates, but the 2013 decision is predicted to affect even more.

A huge concern exists in regard to how the Dominican Republic plans to carry out its recent ruling. Some worry that the government plans to conduct raids or summary expulsions, but such actions will leave many Haitians living in the Dominican Republic with nowhere to go. But regardless of how they enforce it, thousands of Dominican Republic citizens are now stateless.

Whether the Dominican Republic government forcefully removes the class of people now without Dominican Republic citizenship or continues to check up on those of Haitian descent, so long as the Constitutional Court’s ruling remains in effect, these citizens are essentially homeless. Many Dominican Republican residents who now do not qualify for citizenship will not have any better luck if they are deported to Haiti. The majority of them do not hold citizenship in Haiti, have no familial connection to the country, and likely do not speak Creole, the official language of Haiti.

In addition, these same Haitians will have difficulty obtaining citizenship in Haiti because it is hard to comply with the government’s requirements for proving Haitian descent. In order to obtain Haitian citizenship, you are required to provide extensive paperwork. But this may prove difficult for those Dominican Republic residents whose parents were born in Haiti, but immigrated to the Dominican Republic. It is very likely that those parents have not kept all of their paperwork through decades and even more likely that they did not care to hold onto it after their children were granted birthright citizenship in the Dominican Republic.

An even worse situation could arise when many Haitian children become stateless and risk becoming victims of human trafficking. Due to lack of citizenship, these children face being forced to beg on the streets. Stemming from this issue, the Dominican Republic made its first forced labor conviction in 2012. This ruling will make such children even more vulnerable to these kinds of exploitation.

36. Id.
37. Id.
38. Id.
40. Id.
41. Id.
42. Id.
All of the above situations could follow from the Dominican Republic Constitutional Court's decision to repeal birthright citizenship and retroactively apply it to residents born to undocumented Haitian migrants. This action may seem discriminatory, unfair, and unconstitutional, but both the Government and Court have held that the ruling will stand—no matter what.

3. Proposed Solutions for Stateless Dominican Republic Residents

Concern regarding the Dominican Republic Constitutional Court's ruling and its effect on mostly Haitian residents has spread around the world. The U.S. Congress issued a resolution addressing the concerns that the country's decision is in direct conflict with Article 15 of the Universal Declaration of the Human Rights.\textsuperscript{43} The U.S. Ambassador to the Organization of American States (OAS) stated its plans to pursue a "multilateral approach to promptly address the potential crisis in the Dominican Republic as a result of that nation's Constitutional Court ruling on September 23, 2013, that could render hundreds of thousands of Dominican-born persons stateless."\textsuperscript{44} The Resolution does not specifically describe its proposed plans, but does specify its plans to consult with other OAS member states, governments of Caribbean nations, President of the Permanent Council and the Inter-American Commission.\textsuperscript{45}

The governments of Haiti and the Dominican Republic have scheduled meetings to discuss the immigration issue, but following the one held on January 7, 2014, the Dominican Republic stated its intention in affirming, not negotiating, its Constitutional Court's ruling.\textsuperscript{46} Therefore, it looks as though any changes to the Dominican Republic's ruling will come from outside the country.

B. The Headstrong Country: The United States of America

Similar to the Dominican Republic, the United States has a constitutional provision guaranteeing citizenship to all people born within its jurisdiction. The Citizenship Clause within the 14th Amendment of the U.S. Constitution states that, "[a]ll 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."\textsuperscript{47} But, unlike the Dominican Republic, the United States has not repealed or narrowed its constitutional birthright citizenship provision. Instead, the U.S. Supreme Court has explicitly held that the Citizenship Clause applies to all those who are born on U.S. territory.

\textsuperscript{43} H.R. Res. 443, 113th Cong. (2013).
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{47} U.S. CONST. amend. XIV, § 1.
born in the United States with only three exceptions.\textsuperscript{48} The three exceptions stated by the court include "(1) children born to parents who were foreign diplomats, (2) members of foreign invading armies, or (3) Native Americans subject to tribal authority."\textsuperscript{49} Although the U.S. Congress and Supreme Court have not changed their unwavering enforcement of the Citizenship Clause compared to other countries that eventually overturned their birthright laws, there has been more debate as to interpretation of the Clause, as well as attempts to overturn its application for immigration purposes.

1. Confronting the Controversy Surrounding the U.S. Constitution's Citizenship Clause

When the U.S. Constitution was ratified, it did not explicitly state exactly how U.S. citizenship could be obtained.\textsuperscript{50} Some scholars took this ambiguity as the Framers' intention and indication that the country continues the English tradition of \textit{jus soli}, which holds that "everyone born within a nation's jurisdiction is automatically a citizen."\textsuperscript{51} This principle holds true today, although many wish to adopt the world trend of repealing the Citizenship Clause of the 14th Amendment in order to improve immigration policy.

The U.S. Supreme Court adopted its current understanding of the scope of the 14th Amendment's Citizenship Clause with its decision in \textit{Wong Kim Ark}.\textsuperscript{52} Initially, many opponents to birthright citizenship argued that the scope of the clause did not extend to children born of non-American citizens because they were not "subject to the jurisdiction of the United States."\textsuperscript{53}

In \textit{United States v. Wong Kim Ark}, the Supreme Court rejected defendant's argument arguing that Wong Kim Ark was not entitled to U.S. citizenship under the Citizenship Clause of the 14th Amendment "because, as the child of Chinese immigrants, he was a subject of the emperor of China, and not 'subject to the jurisdiction' of the United States."\textsuperscript{54} The Supreme Court therefore broadened the 14th Amendment's scope of application and effectively held that children of illegal immigrants born on American soil are indeed granted automatic citizenship upon birth.

Other scholars have argued that birthright citizenship entices the practice of so-called "anchor babies" and unauthorized immigration.\textsuperscript{55} Pro-

\textsuperscript{48} See United States v. Wong Kim Ark, 169 U.S. 649, 663 (1898).
\textsuperscript{49} Rosenbloom, \textit{supra} note 18, at 316.
\textsuperscript{50} Hartry, \textit{supra} note 16, at 64.
\textsuperscript{51} \textit{Id}.
\textsuperscript{52} See \textit{Wong Kim Ark}, 18 S.Ct. at 456.
\textsuperscript{53} Rosenbloom, \textit{supra} note 18, at 314-15.
\textsuperscript{54} \textit{Id}. at 315-16 (quoting U.S. Const. amend. XIV, § 1).
ponents of birthright citizenship, however, argue immigrants come to the United States to work and join family members—not to give birth—and point out that there is no evidence to support the anchor-baby myth.\(^{56}\) In addition, simply because one's child is a U.S. citizen does not ensure the parent's status if those parents are illegal immigrants living in the United States.\(^{57}\) Every year, the United States deports thousands of parents whose children have U.S. citizenship due to being born in the country.\(^{58}\)

Even further, some argue that repealing birthright citizenship in the United States, and other countries as well, will only result in increased undocumented immigrants.\(^{59}\) Because children born to undocumented immigrants would presumably also be undocumented, the size of the illegal immigrant community would only increase in size if birthright citizenship were repealed.\(^{60}\)

According to a study by the Migration Policy Institute, "if citizenship were denied to every child with at least one unauthorized parent, the unauthorized population in the [United States] would reach 24 million by 2050."\(^{61}\) As evidenced by the current situation in the Dominican Republic, many children would be left with no citizenship or nationality, effectively leaving them stateless. This would result in an "underclass of unauthorized immigrants who, through no fault of their own, would be forced to live in the margins of U.S. society, would not have access to health care and basic services, would be vulnerable to exploitation and abuse, and would be at constant risk of deportation."\(^{62}\)

Other opponents argue immigration statistics, which show rapidly increasing numbers of children born in the United States by unauthorized immigrants. A recent report by the Pew Hispanic Center reported that 340,000 of the 4.3 million babies born in the United States in 2008 were the children of unauthorized immigrants.\(^{63}\) But, legal scholars argue that this number is misleading because the report does not differentiate between those children born to parents who are both undocumented, thus targeting the real justification for repealing birthright citizenship, and those born to parents where only one is undocumented.\(^{64}\)

2. Proposed Legislative Amendments to Limit and Alter the Supreme Court's Ruling in United States v. Wong Kim Ark

Although the Supreme Court explicitly defined the scope of the Citizenship Clause and enforced granting citizenship to all children born in the United States, even those born to illegal immigrants, opposition has

\(^{56}\) Id.
\(^{57}\) Id.
\(^{58}\) Id.
\(^{59}\) Id.
\(^{60}\) Id.
\(^{61}\) Id.
\(^{62}\) Id.
\(^{63}\) Hartry, supra note 16, at 61.
\(^{64}\) Id.
only continued to grow. Despite the harsh repercussions that result when other countries repealed their birthright citizenship laws, many people, including the U.S. government officials, continue to advocate for this provision's removal from the U.S. Constitution.

In 2005, Republican Representative Nathan Deal of Georgia introduced the Citizenship Reform Act of 2005. Deal's proposed Act sought to "deny automatic citizenship at birth to children born in the United States to parents who are not citizens or permanent residents," including those born "out of wedlock" to mothers who are not current citizens or permanent residents. In 2011, the U.S. House of Representatives proposed two additional bills seeking to change the 14th Amendment's applicability. The first proposed bill was the Loophole Elimination and Verification Enforcement Act (LEAVE), which sought to "remove the incentives and loopholes that encourage aliens to come to the United States to live and work, provide additional resources to local law enforcement and Federal border and immigration officers, and for other purposes." The House of Representatives intended to achieve this goal by amending the Immigration and Naturalization Act (INA) to limit birthright citizenship to children born "of parents, one of whom is—(1) a citizen or national of the United States; (2) an alien lawfully admitted for permanent residence in the United States whose residence is in the United States; or (3) an alien performing active service in the Armed Forces." The second proposed bill was the Citizenship Act of 2011, which contained identical language to that of the LEAVE Act.

These bills sought to amend section 301 of the INA, rather than the Citizenship Clause of the 14th Amendment, in order to change the classes of people given citizenship upon birth in the United States. The organizations supporting these bills included the American Resistance Foundation and the John Birch Society. But those opposing the bill included local and international organizations such as, Arab American Institute, Asian American Justice Center, America's Voice, American Immigration Lawyers Association, and American Civil Liberties Union. The bill was introduced on January 4, 2011, but never passed the House of Representatives. This fairly recent attempt at overturning the United States' exercise of birthright citizenship has been one of many. Other approaches have been recommended by scholars, along with the reasoning as to why

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66. Id. (quoting, H.R. 698 109th Cong. § 1 (2005)). "Out of wedlock" specifically includes "common law marriages." Id. at n.18.
68. Id.
69. Id.
70. Id. at 73.
73. Id.
74. Id.
they believe the United States should join the international trend of overturning automatic citizenship to any person born on its soil.

3. Pragmatic Recommendations and Reasoning Behind Scholars Advocating for the Repealing of Birthright Citizenship

After the U.S. Supreme Court’s decision in *United States v. Wong Kim Ark* in 1884, opposition to birthright citizenship, especially the granting of citizenship to illegal immigrants, slowed down.75 In 1985, however, Peter Schuck and Rogers Smith published *Citizenship Without Consent*, a book arguing that children born to undocumented immigrants in the United States should not be given citizenship without the express consent of Congress.76 This book has widely been accepted as the argument that inspired the modern-day movement to limit birthright citizenship.77 The so-called “restrictionist” movement argues that the practice of birthright citizenship undermines state and federal policies concerning immigrants.78

Some legal scholars argue that immigration policies should be based on the consent principle, a concept similar to that argued in *Citizenship Without Consent*.79 This debate argues that the concept of *jus soli* is not appropriate for citizenship in a republic because citizenship should be based on consent, not just automatic classification.80 Opponents to birthright citizenship have also made a textual argument, claiming that the Supreme Court’s ruling in *United States v. Wong Kim Ark* was incorrect.81

These textual scholars claim that “jurisdiction,” as stated in the Citizenship Clause of the U.S. Constitution, should not be interpreted as territorial jurisdiction, but rather “political jurisdiction, which invokes the principle of consent.”82 Following the reasoning of such a consent principle, children of undocumented immigrants and temporary foreigners would not become U.S. citizens because their parents do not have the United States’ permission to enter or permanent citizenship to reside here.83 But those defending birthright citizenship and the common-law concept of *jus soli* argue that no person has control over the geography where their birth takes place and to punish a child for their parent’s immigrant status is to punish them for the parents’ own behavior.84

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75. Rosenbloom, *supra* note 18, at 312.
77. Rosenbloom, *supra* note 18, at 311.
78. *Id.* at 312.
82. *Id.*
83. *Id.*
84. *Id.*
In addition, scholars have questioned birthplace’s arbitrariness. Legal scholars question, “why should the law deny citizenship to an infant carried across the Rio Grande at the age of one month (or one day) while granting it to a child born only days after her mother entered the United States.” Others worry about creating a caste of second-class people within our society that could develop without birthright citizenship.

The biggest proposed change in the United States is the same one seen most around the world. As evidenced by the legislative proposals, opponents of birthright citizenship mostly seek to limit the benefits of birthright citizenship to children who have at least one parent with U.S. citizenship or permanent residence in the country. This recommendation follows suit with other countries around the world, such as New Zealand, Australia, and Ireland, which have made changes seeking to control immigration while responding to “popular nativist sentiment against non-white immigrants,” an action seen clearly by the Dominican Republic’s recent action.

C. REPEALING COUNTRIES: NEW ZEALAND AND IRELAND

Unlike the United States, New Zealand, and Ireland have amended their constitutions to repeal birthright citizenship within their countries for children born to two undocumented aliens. The Center for Immigration Studies reports that out of 194 countries, only thirty continue to grant automatic birthright citizenship.

1. Initial Constitutional Implementations and Subsequent Amendments Abolishing Birthright Citizenship

New Zealand’s citizenship was created in 1948 and along with it, guaranteed any children born on New Zealand territory automatic citizenship. Prior to New Zealand’s citizenship enactment, those born in New Zealand were British subjects. The Citizenship Act of 1977 replaced the 1948 provision and changed the requirements for acquiring New Zealand citizenship. It provided that a person is a New Zealand citizen by birth if:

85. See, e.g., Eisgruber, supra note 80, at 59.
86. Id.
87. See, e.g., id.
88. Ngai, supra note 66, at 2530.
(a) the person was born in New Zealand on or after 1 January 1949 and before 1 January 2006; or (b) the person was born in New Zealand on or after 1 January 2006, and at the time of the person’s birth at least one of the person’s parents was—(i) a New Zealand citizen; or (ii) entitled in terms of the Immigration Act 2009 to be in New Zealand indefinitely . . . .

The Act also provided for automatic New Zealand citizenship for those people born in New Zealand on or after January 1, 1978, that would be stateless if they were not entitled to New Zealand citizenship. New Zealand adopted new legislation entitled Citizenship Amendment Act 2005, but retained the key language mentioned above.

New Zealand’s shift away from birthright citizenship has been argued as a response to the perceived problem alleged within the United States (“anchor babies”). This concept has been brought up in numerous countries’ debates when arguing against birthright citizenship, but was not a central issue to the Dominican Republic’s decision to change its laws. In New Zealand, some scholars also believe the 2005 amendment was a direct response to cases preceding the Ding and Ye case, which was eventually decided by their Supreme Court in 2009. In that case, the New Zealand Supreme Court held that “the interests of citizen children was a relevant principle in the decision whether or not to deport their foreign overstayer parents, and could mean that the deportation would not be lawful.”

Such a holding worried birthright citizenship opponents because it could lead to enticement of pregnant foreign immigrants having their children in New Zealand to gain citizenship for the entire family. But in reality, children’s birthright citizenship rights do not come from their foreign parents’ rights to remain in the certain country. In addition, the true meaning, in contrast to the public opinion, of the Ding and Ye case is that “in truly exceptional cases such as lack of medical services or education or civil war in parents’ home countries the ‘constructive deportation’ of children along with their parents might be inappropriate, and the proper course could be to allow the parents to remain.”

Ireland was the last country in Europe to implement birthright citizenship in its country. But Ireland repealed its birthright citizenship pro-

94. Id. § 6(1)(a)-(b).
95. Id. § 6(3)(a).
98. Id. at 654 (citing Willie Ye, Candy Ye and Tim Ye v. Minister of Immigration and Yueying Ding, and Alan Qiu and Stanley Qiu v Minister of Immigration, He Qin Qiu and Ziao Yun Qui [2009] NZSC 76).
99. Id.
100. Id. at 655.
101. Id. at 661 (quoting Willie Ye, Candy Ye and Tim Ye v. Minister of Immigration and Yueying Ding, and Alan Qiu and Stanley Qiu v Minister of Immigration, He Qin Qiu and Ziao Yun Qui [2009] NZSC 76).
102. Notes and Citations, supra note 92.
vision through its Irish Nationality and Citizenship Act 2004.103 In section 6A, the Act specifies:

(1) [a] person born in the island of Ireland shall not be entitled to be an Irish citizen unless a parent of that person has, during the period of 4 years immediately preceding the person's birth, been resident in the island of Ireland for a period of not less than 3 years or periods the aggregate of which is not less than 3 years. (2) This section does not apply to (b) a person born in the island of Ireland to parents at least one of whom was at the time of the person's birth an Irish citizen or entitled to be an Irish citizen.104

Following Ireland's constitutional amendment removing birthright citizenship, the Irish Government introduced an administrative scheme called the Irish Born Child (IBC) '05 scheme.105 The IBC scheme allowed a small number of foreign national parents, whose children were given Irish citizenship automatically upon birth, to apply for permanent residence in Ireland.106 The majority of those applications were granted.107 The Irish Government introduced the IBC '05 scheme to assess residency applications for migrant parents with citizen children.108 The Minister for Justice, Equality, and Law Reform spoke of the IBC '05 scheme in stating that "residence would only be granted to those parents who could show that they have 'not been involved in criminal activity' and were 'willing to commit themselves to becoming economically viable.'"109 The majority of these Ireland residence applications continue to be granted, although a few are denied, leaving constitutional rights' protection issues to arise.110

2. How New Zealand and Ireland Stand Apart from the Dominican Republic

New Zealand and Ireland's amendments are different than the Dominican Republic's recent court decision for multiple reasons. New Zealand's enactment of Citizenship Amendment Act 2005 provided for the **jus sanguinis** principle, similar to the Dominican Republic's enactment, when it stated that in order to become a New Zealand citizen, one of your parents must also be a New Zealand citizen.111 But New Zealand's Citizenship Amendment Act has a safe harbor provision for those born in New Zealand whose parents are not New Zealand citizens.112

103. Id.
106. Id.
107. Id.
108. Id. at 46.
109. Id. (quoting the Minister for Justice, Equality and Law Reform).
110. Id. at 47.
112. Id. § 6(3).
Section 3(a) of the Citizenship Amendment Act 2005 provides that "[d]espite subsections (1) and (2), (a) every person born in New Zealand on or after 1 January 1978 is a New Zealand citizen by birth if the person would otherwise be stateless."\textsuperscript{113} In contrast, not only does the Dominican Republic's decision fail to include such a provision, it is taking deliberate steps to ensure that many people will indeed become stateless through its analysis of thousands of birth certificates. Through this process, the Dominican Republic will seek out those residents who will be most susceptible to becoming stateless—children and adults without Dominican Republic citizen parents.

Ireland's Irish Nationality and Citizenship Act 2004 also repealed birthright citizenship and replaced the \textit{jus soli} principle with \textit{jus sanguinis}.\textsuperscript{114} Its language is very similar to the act implemented in New Zealand, but it does not include a safe harbor provision for those citizens deemed stateless after the Act's application.\textsuperscript{115} Instead, the Irish Government adopted an administrative scheme to fix family units that may be broken as a result of the Irish Nationality and Citizenship Act 2004. The IBC '05 scheme aims to prevent separation of undocumented parents from their citizen children by accepting applications from the parents and granting them temporary residence, thus allowing the parents and children to remain together.\textsuperscript{116} The Dominican Republic Constitutional Court's ruling does not discuss options for similarly situated parents, but instead stands firm in its decision to deport all such residents. The Dominican Republic Government has expressed its direct support for the court's ruling. Its government has conducted meetings with Haiti, which will likely face an influx of immigration as a result of the Constitutional Court's ruling, but has repeatedly stated that it has no intention of even negotiating or discussing the immigration issue with its neighboring country.\textsuperscript{117} During the first and second meeting with Haiti, the Dominican Republic refused to put the immigration issue and its consequences on the agenda.\textsuperscript{118}

The most important and controversial distinction between the Dominican Republic Constitutional Court's decision and the acts repealing birthright citizenship in Ireland and New Zealand is the Dominican Republic's retroactive application of their decision, resulting in deportation of thousands of Dominicans of Haitian origin.\textsuperscript{119} The government has issued neither plans nor solutions for children and adults who face deportation due to ancestors having no official Dominican Republic citizenship.

\textsuperscript{113} Id.
\textsuperscript{114} See Irish Nationality and Citizenship Act 2004 (Act No. 38/2004) sec. 4 (Ir.).
\textsuperscript{115} Id.
\textsuperscript{116} Mullally, supra note 106, at 44.
\textsuperscript{118} Id.
\textsuperscript{119} See id.
IV. THE WORLDWIDE TREND OF ABANDONING JUS SOLI

A. COUNTRIES’ REPEALING BIRTHRIGHT CITIZENSHIP—FAIR OR DISCRIMINATORILY RESTRICTING FOREIGN IMMIGRATION?

Since its September 2013 ruling, the Dominican Republic has faced backlash for its allegedly "fundamentally racist and inhumane decision."\textsuperscript{120} Its Constitutional Court’s ruling has been especially challenged by human rights groups and advocates, who question why the Dominican Republic, a country which is signatory to a variety of international and regional human rights conventions, would support such a holding.\textsuperscript{121}

Long before the Dominican Republic’s ruling in September 2013, the Inter-American Court of Human Rights concluded in 2005 that the government of the Dominican Republic violated international, regional, and constitutional law, when it refused to grant citizenship and education to Dominican-born children of Haitian descent.\textsuperscript{122} The ruling found that the Dominican Republic had defined people “in transit” as temporary visiting foreigners, tourists, foreign army members, or as temporary workers.\textsuperscript{123} The Court used such interpretation to reason that Dominican-born people of Haitian descent, particularly those who have resided in the Dominican Republic for many years, do not fit into the constitutional definition of “in transit.”\textsuperscript{124} In that case, the Inter-American Court required the Dominican Government to provide nationality cards to the plaintiffs in that particular case and any other children in that country vulnerable to the same situation.\textsuperscript{125}

When comparing the repealing of birthright citizenship in the Dominican Republic against countries like New Zealand, Ireland, and the United States, the different motivating factors behind the legislative acts are apparent. Historically, the United States applied the English principle of \textit{jus soli} for reasons other than human rights and immigration. Since the Citizenship Clause’s inception, the United States used that amendment to entice recruitment from Britain during the Industrial Revolution.\textsuperscript{126} Ironically enough, Britain was actually the first country to disregard its own tradition of \textit{jus soli} and established six forms of British nationality with its British Nationality Act 1981.\textsuperscript{127}

B. IS REPEALING BIRTHRIGHT CITIZENSHIP WORTH THE RISK?

Although the United States and Canada are the only developed countries that have maintained their birthright citizenship, a majority of countries have faced serious hurdles after implementing stricter citizenship

\textsuperscript{120.} Id.
\textsuperscript{121.} Id.
\textsuperscript{122.} Id.
\textsuperscript{123.} Id.
\textsuperscript{124.} Id.
\textsuperscript{125.} Id.
\textsuperscript{126.} Sawyer, supra note 98, at 657.
\textsuperscript{127.} Id. at 658.
requirements. Many nations face practical difficulties, such as paper trails and finding records for citizens, while others face deportation difficulties in trying to enforce their new rules. An issue arises then as to whether repealing birthright citizenship actually benefits anyone, including the implementing country itself.

Because of the difficulties that arise upon transitioning from a *jus soli* to *jus sanguinis*, many true citizens may not be able to give their children the same rights as they hold within the country that their family resides. As a result, true citizens will lose the opportunity to remain in a place where they rightfully belong. In addition, because of deportation and enforcement issues, countries may not be able to even implement the new laws they so desire. The result of these obstacles could be the exact opposite aim of countries that repeal their birthright laws. Rather than maintain true citizenship among their society, they could inadvertently decrease rightful citizenship while maintaining the undocumented population they had all along.

Many countries have faced difficulties in implementing the repeal of birthright citizenship because of practical challenges, such as deportation efforts and paper records. In Britain, the first country to repeal its birthright citizenship laws, citizens and the country’s recordkeeping authorities have faced large hurdles to trace their ancestor’s backgrounds. Britain’s reliance on a *jus sanguinis* system depends entirely upon a child’s parents’ ability to timely supply the necessary documents; without them, their child will not gain the citizenship that they have.

In New Zealand, the implementation of *jus sanguinis* will require official records of parents’ status for children born after 2005, the year their repeal was implemented. But New Zealand’s citizens will not face near as much difficulty obtaining paper records as the Dominican Republic, which has chosen to retroactively apply its new law to citizens born in the country since its inception, 1929. In practice, some Dominican Republican citizens will need to track down proof of their grandparents’ citizenship in order to remain in the country.

Many scholars have also argued the economic benefits to retaining birthright citizenship in a country. Although many opponents to birthright citizenship claim that illegal immigrants take jobs for less money, thereby decreasing our employment and financial opportunities, many professionals have argued just the opposite. U.S. citizens now pay up to $1,600 to verify citizenship in certain instances, and if birthright citizenship is repealed, parents will have to fork over this money each time they

128. *Id.* at 660.
129. *Id.*
130. *Id.*
have a child to prove its citizenship.\textsuperscript{132} The repealing of birthright citizenship will also require an entirely new agency tasked with verifying citizenship of every baby born in the United States, which would cost taxpayers much more than the small fee citizens pay today for a birth certificate. In addition, if children’s citizenship is not given upon birth, the Migration Policy Institute estimates that 100,000 to 300,000 children each year will live in the United States with the inability to participate in benefitting the U.S.’ society.\textsuperscript{133}

C. CAN A COURT DECIDE WHICH IS MORE IMPORTANT—MAINTAINING FAMILY LIFE VERSUS IMMIGRATION DISPUTES?

Within every jurisdiction discussed in this comment, there is a fundamental right and emphasis to preserving family units and the safety of children. It follows then, that it may seem contradictory to repeal birthright citizenship laws when each and every country mentioned knows the consequences of such legislative action. On one end of the spectrum, the countries, especially within their courts, are emphasizing the importance of family units, while their legislatures are overhauling their legal citizenship governance. The Dominican Republic Constitutional Court’s ruling is the only judicial decision that (1) expressly overturned birthright citizenship and, more astonishingly, (2) plans to retroactively apply its own holding.

In the United States, the Supreme Court decided that the Citizenship Clause of the 14th Amendment was to be applied broadly—even extending it to grant automatic U.S. citizenship to children of illegal immigrants.\textsuperscript{134} But since the decision, opponents have shed light on potential problems with this provision and legislators have attempted to provide solutions.

In Ireland, a string of cases posed this important question to the courts and they responded—reiterating both the importance a family unit has in society and, unintentionally, reminding us of how such a public policy is in direct conflict with repealing birthright citizenship. In Osheku v. Ireland, the court examined the right to family life, which it deemed constitutionally fundamental.\textsuperscript{135} The court described restrictions on Ireland’s regulations in situations of necessity caused by furthering the rights of children and migrant times.\textsuperscript{136}

In Fajujonu v. Minister for Justice, the Irish Supreme Court held that a child, who was a citizen of Ireland, had a “constitutional right to the ‘company, care and parentage of their parents within a family unit,’” stating that only a “grave and substantial reason associated with the common

\begin{itemize}
\item \textsuperscript{132} ld.
\item \textsuperscript{133} ld.
\item \textsuperscript{134} ld.
\item \textsuperscript{135} Mullally, supra note 106, at 44.
\item \textsuperscript{136} ld.
\end{itemize}
good” would potentially be justification enough to impose upon this right.137 The concurring opinion was even stronger in holding against deportation of parents of citizen children.138 Judge Walsh noted that Ireland cannot proceed with deportation proceedings against a parent of a citizen child simply by reason of a “family’s limited financial resources.”139 But this statement was contradicted by subsequent court findings that poverty and employment situations are actually factors that heavily weigh in favor of deporting migrant parents, even though their child may remain in Ireland with his/her citizenship.140

D. WHAT ABOUT LOOKING AT WHAT THE CITIZENS WANT?

Most of the challenges and amendments to a country’s birthright citizenship laws come at the hands of governments, courts, and legislatures. Without regarding what the actual citizens of the country desire, governments decide to take, or not take, action that affects thousands of lives today and even more down the road. But those countries that have polled their citizens to determine the kind of support a repeal of birthright citizenship would have, find that their own citizens are strongly in favor of such legislative action.

For example, prior to Ireland’s decision to amend its birthright citizenship provision, but following its landmark Zhu and Chen case, Ireland held a referendum on whether their country’s constitution should be amended to address the birthright citizenship issue.141 The country found that 79 percent of people voted in favor of the change and the country amended its constitution accordingly.142

E. WHERE DOES THIS LEAVE UNDOCUMENTED IMMIGRANTS?

With the repeal of a country’s constitutional birthright citizenship provision comes multiple consequences—both intended and unintended. One of the intended consequences many of the nations discussed within this comment seek to achieve is a reduction in the number of children born to undocumented immigrants.143 Many countries abandon the pure jus soli principal to prevent foreigners attempting to abuse the birthright citizenship provisions in hopes of outsmarting that country’s immigration laws.144

The consequence of such decision-making results in yet another important decision to be made. Parents must decide between giving their children born in a country the benefits of that country without having their parents around and removing them from the country in which they re-

137. Id.
138. Id. 44-45.
139. Id. at 45.
140. Id.
141. Sawyer, supra note 98, at 659-60.
142. Id. at 660.
143. See id. at 654.
144. Id. at 655.
For those undocumented immigrant parents whose children are born in a country where birthright citizenship still exists, the choice can be easy.

Even after they repeal birthright citizenship laws, most countries do not retroactively apply the change to those born prior to the amendment's enactment. Therefore, children born to undocumented immigrants in a country whose birthright citizenship laws are valid upon their birth will remain citizens forever while their parents face deportation. As a result, it places undocumented immigrants in the same place as before—living in a country as an undocumented, illegal immigrant. Legal scholars support this theory and believe that countries repealing birthright citizenship have not seen a decrease in illegal immigration, and argue that the United States should not follow the international trend in repealing its own constitutional birthright citizenship provision.146

One legal scholar has argued that the trend in repealing birthright citizenship is not as strong as many countries suggest. In fact, thirty countries in the Western Hemisphere continue to grant birthright citizenship to children born on their soil—even to those born of illegal immigrants.147 But the majority of the world’s sovereign nations no longer provide birthright citizenship to children of undocumented immigrants.148 The question remains as to why the Americas are so different than the rest of the world, which chooses to repeal their birthright citizenship laws. One scholar argues "it may be that the granting of fundamental citizenship rights by virtue of being born in the territory of a sovereign nation developed precisely because the history of modern nation-building and independence in the Americas is a history of immigration."149 As a result, when a country repeals its constitutional birthright citizenship laws, it would "fundamentally violate the conservative value of 'American exceptionalism.'"150

Other scholars support the argument that statistics prove repealing a country's constitutional birthright citizenship laws would result in undue burdens on undocumented immigrants and go against the grain of established law common to every country around the world.151 According to one report, 340,000 children were born to at least one undocumented parent in the United States in 2008.152 This number remains throughout

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145. Id. at 664.
147. Id. at 138.
148. Id.
149. Id.
150. Id. at 141.
152. Id. at 5.
other nations but is particularly high in the United States, where repealing birthright citizenship would result in questioning citizenship of each of those children. Such a task would be burdensome for both children and the U.S. Government.\textsuperscript{153} For those countries repealing their birthright citizenship laws, their governments will have to ask questions regarding the legal status of these children. Such questions include:

- Would they be born undocumented?
- Would they come under immediate investigation and be placed in immigration proceedings?
- Would their parents and families be investigated if these children do not establish qualifying lineage?
- Would fearful women be less likely to deliver their babies at a hospital, raising an entirely new set of maternal health issues?\textsuperscript{154}

These issues have now run over into legislative action that could indirectly affect the health and well-being of undocumented immigrants by preventing them from seeking medical attention. For example, in Arizona, the legislature recently declined to pass a bill forcing hospitals and emergency rooms to check the immigration status of their patients.\textsuperscript{155}

The repealing of birthright citizenship and such legislative action would essentially create a Big Brother in every hospital delivery room waiting for a child's birth.\textsuperscript{156}

V. TO REPEAL OR NOT TO REPEAL?

As a hotly debated current issue, the decision of whether to repeal birthright citizenship will continue to be addressed by countries around the world. After evaluating a few countries that have implemented a repeal, one that has repeatedly chosen not to, and one that is making history by applying their repeal retroactively, it is obvious that there is no clear-cut answer to this issue.

But when evaluating the implementation and difficulties faced by countries amending its constitutional rights, the biggest question to ask is whether repealing will result in the aims intended by countries or whether it will result in unintended undesirable consequences. If history does repeat itself, the resulting effect is that the disadvantages in repealing birthright citizenship far outweigh its benefits to a country.

A. BENEFITS

Proponents of repealing the birthright citizenship provisions in constitutions around the world have consistently noted that such a change would decrease incentives for illegal immigrants and the practice of having "anchor babies." This is evident in countries like the Dominican Re-

\textsuperscript{153} See id. at 3-4.
\textsuperscript{154} Id. at 6.
\textsuperscript{155} Id.
\textsuperscript{156} Id. at 4.
public, which repealed and now retroactively applies its constitutional amendment removing the grant of birthright citizenship to children born on Dominican Republic soil. It is also evident in the United States, where a bill introduced on January 3, 2013, seeks to stop children born in the United States from obtaining U.S. citizenship if born to undocumented parents.157

Representative Steve King was responsible for introducing the bill that "would clarify those classes of individuals born in the United States who are nationals and citizens of the United States at birth."158 In proposing the bill, King argued that the U.S. Supreme Court has erred in continuing to hold that anyone born in the United States is entitled to automatic citizenship pursuant to the Citizenship Clause of the 14th Amendment.159 King argues that the framers could not have possibly considered illegal immigrants' children when they wrote the 14th Amendment because the United States did not have immigration law at that time.160

Although many proponents of repealing birthright citizenship genuinely believe such a decision will reduce the amount of illegal immigration, the facts tell a different story. Those countries that have implemented an amendment removing their birthright citizenship provisions have not seen a dramatic reduction in illegal immigration. But this might be due to a number of factors, such as lack of enforcement of the new amendment or lack of the government's ability to keep track of those undocumented immigrants entering and leaving the country.

B. DISADVANTAGES

The one potential advantage of repealing birthright citizenship—reducing incentives for illegal immigrants to have children born in a particular country—is far outweighed by those disadvantages expected in and seen following a country's constitutional amendment. The first disadvantage expected by countries contemplating the removal of their constitutional birthright citizenship provision is the regulation of and burden in keeping track of paper records for citizens born within the country.161 This disadvantage is one that affects both the government and citizens seeking to obtain citizenship for themselves and their children. From the perspective of the government, officials will need extensive record-keeping systems to keep track of parents of unborn children who will seek citizenship for those children in the future.

158. Id.
159. Id.
160. Id.
161. See Culliton-Gonzalez, supra note 147, at 150-52 (discussing the impact a repeal or amendment of the U.S. Constitution's Citizenship Clause would have on immigrants, particularly affecting Latinos due to their large prevalence among the undocumented immigrants, children of immigrants, and immigration enforcement officers).
An additional issue arises as to how new children will obtain U.S. citizenship upon their birth. For example, will immigration officers have to be positioned in every hospital so that they can oversee the issuance of all birth certificates? This situation is extremely burdensome for government staff to maintain and would likely impose a large burden upon new parents in forcing them to remember to bring stacks of paperwork to the delivery room.

In addition to the burden imposed upon a country's government after repealing its birthright citizenship laws, residents of that country seeking to obtain citizenship for their children will also face large obstacles in attempting to do so. The burden of keeping track of paperwork required to prove citizenship will be one obvious hurdle, but an additional barrier is based mostly upon social rights. The National Foundation for American Policy has argued that among the costs of changing the Citizenship Clause of the 14th Amendment include "creating a two-tier American caste system that will result in a significant decrease in the population of younger U.S. citizens." 162

The National Foundation for American Policy has also argued such a change would greatly increase the undocumented population. 163 This would come as a result of repealing birthright citizenship because stateless children would reside in the country where they were born without ties to any one nation. 164 The Migration Policy Institute estimated that in the United States alone, its population would decline by an amount somewhere between 4.7 million and 13.5 million by 2050 if the United States repealed its constitutional birthright citizenship provision and did not grant automatic citizenship to those children born to illegal immigrants. 165 As a result, these stateless children would have no legal status in any country and would require deportation from the country he/she was born in. 166

Because of the rise in undocumented illegal immigrants, a country's economic and immigration conditions may also be affected for the worse. 167 Simply by stating a child born in a country to undocumented parents is also undocumented and without citizenship does not simultaneously guarantee that the same child will also immediately leave the country where they illegally reside. It is very likely that the children will remain residing in the country where they were born—especially if their family also lives there.

As a result, this resident will be undocumented and fail to contribute to


163. Id.

164. Id.

165. Id.

166. Id.

167. See id. at 2.
a country's economic structure in any form whatsoever.168 On the contrary, if that same child had been granted citizenship upon birth, he/she would have still remained in the same country and partaken in the benefits and rights of society that keep a country's government operating. For example, this child would be eligible to enroll in school and find a job that enables him/her to pay taxes and make beneficial contributions to a country's society.169

C. The Bottom Line

Proponents of birthright citizenship believe that a bright-line rule prohibiting babies from being granted automatic citizenship would benefit the immigration policies and reduce the number of those undocumented immigrants from remaining in their country and prevent the practice of so-called "anchor babies."170 But considering the advantages and disadvantages countries have seen implementing such an amendment proves that any change to a country's birthright citizenship laws is a mistake.

The United States has a longstanding history and constitutional right in granting birthright citizenship. To amend that would reverse decades of legislative and judicial history. Ireland and New Zealand had the same case law and constitutional birthright citizenship provision, but they still decided to repeal. The most troublesome of all is the Dominican Republic Constitutional Court's ruling. The takeaway from such a worldwide trend is that each country must evaluate its own immigration policy and citizenry to determine if repealing birthright citizenship is a decision that would help, not hurt, its economic and societal landscape.

VI. CONCLUSION

Those countries considering the repeal of their constitutional birthright citizenship laws must undertake extensive analysis prior to doing so.

A. Don't Reinvent the Wheel

First, it would benefit countries to evaluate comparable countries that have taken the step to remove their birthright citizenship provisions. This way, one country may determine the consequences of enacting such a constitutional change prior to making the wrong decision. Although no analysis or country will be perfect or come out with the exact same results, it is a much better option than to proceed with repealing without any further consideration. For example, the United States and Canada are the only last two developed nations to not have repealed their constitutional birthright provisions. If either decides to proceed with repealing its laws, it would be extremely beneficial to evaluate other similarly de-

168. See id. at 1.
169. See id. at 12-13.
170. Id. at 18.
developed nations to determine expectations and consequences of such a change.

B. **But Do Watch Out for Human Rights Violations and Constitutional Challenges to a Repeal’s Validity**

The Dominican Republic Constitutional Court’s ruling has already faced domestic and international attention for the blatant discriminatory nature and language contained within it. Multiple human rights advocate groups have expressed serious concern over the way that the Dominican Republic Government will attempt to enforce the ruling and its complete loyalty to its highest court’s ruling.

The Dominican Republic Constitutional Court’s decision cannot be appealed and its government has maintained full support for this erroneous decision. One mistake the Dominican Republic made when repealing its birthright citizenship laws was failing to look at other countries that have done so. Its ruling will be applied retroactively to all residents living in the Dominican Republic whose parents were undocumented immigrants. This decision will leave them stateless and at risk for deportation or even worse.

The Dominican Republic is not the only country that faces or would face a constitutional challenge after implementing a repeal of its constitutional birthright citizenship laws. Some scholars argue that Haiti’s ruling is not a constitutional or discriminatory human rights violation because it only seeks to prevent what it always has—citizenship to undocumented immigrants. These scholars argue that by retroactively applying its recent decision, it will only be enforcing the law it created years ago—that undocumented immigrants shall not remain in the Dominican Republic.

Regardless of the country or its specific constitutional language or even its immigrant makeup, the fact remains that repealing birthright citizenship in a country with a longstanding history of granting such citizenship causes turmoil. Countries hoping to implement such a change must be extremely cautious in both implementation and reform so as to avoid constitutional and human rights challenges.
Updates