



By: James Oliphant

For U.S. conservatives, the battle over birthright citizenship may just be getting started



Despite a seemingly conclusive U.S. Supreme Court ruling, the battle over who gets to be an American citizen is far from over.

In one of its final decisions of the term, the court reaffirmed the principle of **birthright citizenship** – that anyone born on U.S. soil is a citizen regardless of how they got there.

Conservatives, led by President Trump, have long sought to narrow that basic tenet, seeking to strip such status from children of migrants who entered the country illegally.

The decision was billed as 6-3, with six justices agreeing with civil rights advocates that Trump's 2025 executive order directing federal agencies to deny citizenship documents to babies born to undocumented immigrants or to parents holding temporary visas was illegal.

The order, which was never enforced, could have exposed hundreds of thousands of children to the threat of deportation.

A roadmap for a right-wing congress

But the winning margin was closer than it looked. While one justice, Brett Kavanaugh, appointed to the high court in 2018 by Trump, sided with the majority, he gave conservatives newfound hope that their goals are achievable.

Five justices, with Chief Justice John Roberts writing the opinion, held that Trump's order violated the U.S. Constitution. Kavanaugh was unwilling to go that far. Instead, he penned a separate opinion arguing that the order only ran afoul of current immigration law.

In the U.S., it's far easier to change a law than to amend the Constitution

That was the jurisprudential version of waving a red cape in front of a bull. In the U.S., it's far easier to change a law than to amend the

Constitution. All you have to do is line up enough votes in Congress and have a president willing to sign the bill.

Even as advocates and Democrats expressed relief at the court's decision, lawyers at the left-leaning **Brennan Center for Justice** in New York sounded the alarm, calling Kavanaugh's separate opinion "ominous."

"What should have been a unanimous decision had the narrowest possible majority," wrote Thomas Wolf and Samuel Briedbart for the news site MS Now. Kavanaugh, they said, had "offered a roadmap for a right-wing Congress to complete Trump's failed job."

Trump's lasting legacy on the issue

Congressional Republicans aren't there – yet. But as the Republican Party continues to trend more toward Trump's MAGA worldview, it isn't difficult to imagine a scenario in which Trump and lawmakers on the Hill find themselves aligned.

Should the party emerge from the midterms with its grip on the U.S. House and Senate intact, there could well be a renewed push by the White House to rewrite the applicable statute.

Some Republicans in Congress say that won't do the trick in the wake of the court's ruling and that a constitutional amendment is, in fact, needed – a much more arduous process.

Trump lost in court, but he won the debate inside his coalition

Trump, who campaigned on the issue, is not surrendering. "Congress should start TODAY to work on ending expensive and unfair to our Country, Birthright Citizenship," he posted on social media after the decision.

Public support within the party is growing for such action, according to Republican pollster

Sarah Longwell.

Writing for the political site The Bulwark, Longwell said focus **groups** she has conducted have shown growing concern among Republican voters that immigrants are coming to the U.S. to have children who will receive the benefits of citizenship.

“That is likely to be Trump’s lasting legacy on this issue,” she wrote. “He lost in court, but he won the debate inside his coalition.”

The litmus test for potential high court nominees

Awaiting the next legal challenge are the three arch-conservatives on the court who voted to uphold Trump’s order – Samuel Alito, Neil Gorsuch, and Clarence Thomas.

While they, like Roberts, grounded their opinion in constitutional precedent, it isn’t a far stretch to envision them adopting Kavanaugh’s position if Congress acts.

Alito, the son of an Italian immigrant who has proven to be a reliable vote in support of Trump’s agenda, wrote his own dissent that lamented the rise of “birth tourists” and urged Congress to revise the standards for citizenship. He called the current rule “medieval.”

The conservative jurist who has most recently faced the wrath of Trump and his camp is Amy Coney Barrett, another justice nominated by the president. MAGA world assailed her for not going along with what Trump wanted and for siding with Roberts and the three liberals on the court.

While the court is notoriously stable for a 21st-century body, it has seen major upheaval in recent years. Barrett, just 54, will likely be on the bench for decades to come.

That may not be true, however, for Roberts, a more traditional conservative who has been the chief for more than 20 years and has

presided over a court that has moved dramatically rightward during his tenure. The shift has increasingly made him a defender of the institutional status quo to preserve what he views as judicial continuity.

Vance told Fox News that the court’s decision left current protections “hanging by a thread”

Roberts’ unwillingness to discard precedent has at times made him the object of Trump’s derision (much like Jerome Powell at the Fed) and he has demonstrated a willingness to buck his own conservative cadre in favor of a less disruptive outcome in a given case.

At 71, how much fight does Roberts have left in him? Will he tire of standing in the way of what his fellow conservatives on the court see as a legal revolution?

The court’s history suggests justices stay on until they can no longer function effectively, but there have been some, such as David Souter, who have simply said “enough” and walked away to, ostensibly, a more blissful existence.

If Trump is succeeded by either of his current acolytes – Vice President JD Vance or Secretary of State Marco Rubio, to name two – it isn’t conjecture to suggest that the litmus test he might choose for his potential high court and appeals court nominees will be their stance on birthright citizenship.

Vance told Fox News that the court’s decision left current protections “hanging by a thread.”

(Alternatively, if a Democrat is elected in 2028, speculation would instantly arise about the potential departures of Alito, 76, and Clarence Thomas, 78, which would give the new president an opportunity to rebalance the ideological makeup of the court – assuming both or either are still serving.)

Vast authority over U.S.

immigration policy

And even as Trump lost in the high court on birthright citizenship, the conservative majority reasserted that the president has vast authority over U.S. immigration policy in a group of cases, including one that upheld the administration ending special protective status for [Haitian and Syrian refugees](#).



Trump has more power than ever to keep migrants from entering the country – a secondary means to reduce the number of children born to them

That means Trump has more power than ever to keep migrants from entering the country – a secondary means to reduce the number of children born to them.

The court last week also did away with limits on the amount of money [political parties](#) can spend in coordination with a candidate, a move that will allow parties to bolster the campaigns of favored congressional office-seekers with torrents of cash.

It would not be a reach to see that new funding stream be dedicated to some candidates in the future who support Trump on birthright citizenship.

Liberal commentators have urged Democrats to remain vigilant, likening the issue to abortion rights. American women enjoyed constitutional protection for the procedure for 50 years and not long ago, that view was considered settled law.

That was, of course, before the court's conservatives revoked the right four years

ago.

Birthright citizenship is even more of a time-honored American principle, one that dates back to the ratification of the Constitution's 14th Amendment in 1868. But as this court has repeatedly demonstrated, history rarely stands in its way.