

**Post-Hearing Statement of Rep. Zoe Lofgren
“Birthright Citizenship: Is it the Right Policy for America?”**

May 4, 2015

During the hearing on the topic of whether birthright citizenship is “the right policy for America,” several Members including myself raised concerns about disturbing comments on the issue of race made by one of the Majority’s witnesses. Professor Lino Graglia was twice found “not qualified” to serve as a federal judge by the American Bar Association and was dropped from consideration by President Ronald Reagan for a seat on the Fifth Circuit Court of Appeals in 1986 due, in part, to statements that he made in 1979 encouraging residents of Austin, Texas, to frustrate a court-ordered busing plan designed to desegregate Austin schools.¹ Professor Graglia reportedly also acknowledged at the time that he had referred to African-Americans by the derogatory term “pickaninnies.”²

In 1997, Professor Graglia reportedly expressed the view that African-American and Mexican-American students are “not academically competitive” with white students at the nation’s top universities.³ This, he said, “is the result primarily of cultural effects. They have a culture that seems not to encourage achievement. Failure is not looked upon with disgrace.”⁴ When questioned about this statement, Professor Graglia explained that he cited cultural factors in an effort to provide the “least controversial, the most congenial response. . . . It appears to be the case that somehow, some races see to it that their kids are more serious about school. They cut less and they study more.”⁵ Professor Graglia further stated that, “I don’t know that it’s good for whites to be with the lower classes. I’m afraid it may actually have deleterious effects on their views, because they will see people from situations of economic deprivation usually behave less attractively.”⁶

More recently, in 2012, Professor Graglia told a reporter for BBC Radio that African-Americans are not competitive in the college admissions process and score lower on the SAT because so many African-Americans are raised in single-parent households. He stated “I can hardly imagine a less beneficial or more deleterious experience than to be raised by a single parent, usually a female, uneducated, and without a lot of money.”⁷ The reporter, Gary Younge, then informed Professor Graglia that he was black and was raised in a single-parent family and that the professor seemed to be saying that Mr. Younge was “likely not as smart as a white person of the same age.”⁸ Professor Graglia responded by stating, “Well, from listening to you

¹ Tom Wicker, *In the Nation; Splendid for Starters*, N.Y. Times, May 6, 1986; Philip Shenon, *Conservative Law Professor Fades as Nominee for Bench*, N.Y. Times, Aug. 7, 1986.

² George E. Curry & Trevor W. Coleman, *Hijacking Justice*, *Emerge* (Oct. 1999).

³ Sam Howe Verhovek, *Texas Law Professor Prompts A Furor Over Race Comments*, N.Y. Times, Sept. 16, 1997.

⁴ *Id.*

⁵ *Id.*

⁶ Sue Anne Pressley, *Texas Students Protest Remarks on Minorities*, *Wash. Post*, Sept. 17, 1997.

⁷ Gary Younge, *Positively Flawed? Affirmative Action and the Future of America*, BBC Radio, Dec. 6, 2012.

⁸ *Id.*

and knowing what you are and what you've done, I'd say you're rather more smart. My guess would be that you are above usual smartness for whites, *to say nothing of blacks.*"⁹

Professor Graglia objected to the fact that my colleagues and I raised some of these statements during the hearing because he said they were irrelevant to the topic at hand. I requested unanimous consent to receive one additional minute to respond to his objections, but that request was denied by the Majority. Had I been granted time to respond to Professor Graglia I would have explained that his views on race were quite relevant given the history of the Fourteenth Amendment and the nature of the debate surrounding birthright citizenship today.

In the Declaration of Independence, our Founders wrote that "We hold these truths to be self-evident, that all men are created equal." That notion of equality is something that is profoundly American. Of course we have not always lived up to our ideals. Inequality in this country continues to plague us, but we recognize it as injustice and we work to achieve equal rights because that is what America is about. And, of course, when the Founders declared those words they themselves were not living up to our ideals.

That is why the ratification of the Fourteenth Amendment in 1868 marked such a turning point in the history of this country. Coming in the immediate aftermath of a bloody Civil War that tore this nation apart, the Fourteenth Amendment in many ways served to return us to our first principles: that all persons are entitled to equal protection and due process under the law.

The Fourteenth Amendment also served as a forceful rejection of the Supreme Court's decision 11 years earlier in the *Dred Scott* case. In *Dred Scott*, the Supreme Court held that neither freed slaves nor their descendants could ever become citizens. The Fourteenth Amendment begins with a clear statement that "All persons born . . . in the United States, and subject to the jurisdiction thereof, are citizens of the United States." As Cristina Rodríguez, professor of law at the Yale Law School, explains: "The Citizenship Clause, read in historical and textual context, represents our constitutional reset button. It places all people, regardless of ancestry, on equal terms at birth, with a legal status that cannot be denied them."¹⁰

The issue of race remains relevant for today's debate on this issue. Opponents of birthright citizenship regularly raise the specter of "anchor babies" and "terror babies,"¹¹ and complain that people "cross the border" into order "to drop a child."¹² Because it is impossible to have a discussion about the meaning of the Fourteenth Amendment and the Citizenship Clause without discussing the issue of race, it is relevant that one of the witnesses called to testify at the hearing has on many occasions in the past made comments that call into question his judgment on the subject.

Professor Graglia also unfairly attacked my colleague, Congresswoman Sheila Jackson Lee, who posed a series of questions based upon an argument contained in the law review article

⁹ *Id.* (emphasis added).

¹⁰ Rodríguez, Cristina M., *The Citizenship Clause, Original Meaning, and the Egalitarian Unity of the Fourteenth Amendment*, (2009), Faculty Scholarship Series, Paper 4335, available at http://digitalcommons.law.yale.edu/fss_papers/4335.

¹¹ *Pregnant Women are Being Sent to U.S. to Have Terrorist Babies, Congressman Says*, FoxNews.com, June 28, 2010, at <http://www.foxnews.com/politics/2010/06/28/texas-rep-warns-pregnant-women-sent-terrorist-babies/>.

¹² Andy Barr, *Graham Eyes "Birthright Citizenship,"* Politico, July 29, 2010.

that the witness had appended to his own testimony. On page 10 of that article, Professor Graglia wrote:

Whatever the merits of *Wong Kim Ark* as to the children of legal resident aliens and however broad some of its language, it does not authoritatively settle the question of birthright citizenship for children of *illegal* resident aliens. In fact, the Court's adoption of the English common law rule for citizenship could be said to argue *against* birthright citizenship for the children of illegal aliens. Even that rule, the Court noted, denied birthright citizenship to "children of alien enemies, born during and within their hostile occupation" of a country. The Court recognized that even a rule based on soil and physical presence could not rationally be applied to grant birthright citizenship to persons whose presence in a country was not only without the government's consent but in violation of its law. This also would seem to preclude the grant of birthright citizenship to the children of illegal aliens. The same, it should be added, is true of children born of legally admitted aliens who have overstayed their visa period or otherwise violated its restrictions.¹³

It appeared from this article that the witness was drawing an analogy between children born to undocumented immigrants in the country and children born to invading armies during an occupation. Because Professor Graglia's written and oral statements to the Subcommittee omitted this argument by analogy, the Congresswoman's questions were intended to determine whether the witness continued to hold this belief and, if so, how he would defend it.

I was disappointed that the Majority chose to call as a witness someone whose prior statements and actions, as described in press reports and as reflected in his own words, appear to reflect prejudices against African-Americans and Latinos. The Fourteenth Amendment, forged after the Civil War that ended slavery for African-Americans, is forever tied to the legacy of slavery and racism in America. But the drafters of the Amendment ensured that its scope would extend far beyond that racist legacy to ban future caste systems and breathe life into the promise of equality at the heart of this Nation. To refuse to confront this history in the discussion of repealing or altering the Fourteenth Amendment reflects either willful blindness or overwhelming ignorance.

¹³ Lino A. Graglia, *Birthright Citizenship for Children of Illegal Aliens: An Irrational Public Policy*, Tex. Rev. of L. & Pol., Fall 2009, 10 (quoting *United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1898)).