Victory Report: Birthright Citizenship

How Decades of Conservative Scholarship Forced a Supreme Court Confrontation

Executive Summary

For most of the twentieth century, the argument that birthright citizenship does not automatically extend to all persons born on American soil regardless of their parents' immigration status was treated as a legal and political nonstarter, too far outside the mainstream to merit serious engagement.

> ***By April 1, 2026, President Trump was sitting in the gallery at oral argument in Trump v. Barbara, watching the Supreme Court take up the question directly.***

The birthright citizenship story follows a blueprint that is replicable: a heterodox legal position, developed over decades by a small group of serious scholars, institutionalized through fellowships and debates, injected into the political bloodstream by a presidential campaign, and ultimately forced onto the Supreme Court's docket by executive action.

On June 30, 2026, the Supreme Court ruled against the administration in *Trump v. Barbara*. However, the loss at the Court does not diminish the case study's central lesson: a constitutional argument dismissed for decades as a fringe legal theory forced a Supreme Court confrontation, produced four dissents on the merits of the constitutional question, and remains ripe for future litigation.

The Claremont Institute was the institutional home of the birthright citizenship challenge. Spearheading the scholarship and political maneuvering on the issue were senior fellows and board members John Eastman, Ed Erler, Thomas West, and Michael Anton. Critically, Claremont developed a replicable model that can be applied to other constitutional questions:

- Identify a constitutional question where the conventional understanding relies on administrative and congressional missteps rather than careful engagement with original meaning.
- Build a body of serious peer-reviewed scholarship recovering the original understanding.
- Institutionalize the argument through fellowships and events that train a generation of practitioners.
- Introduce the argument to academics and the legal profession through structured debates.
- Finally, manufacture the political moment that forces the question into public consciousness and onto the Supreme Court's docket.

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