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America Came Very Close to Bringing Back Dred Scott, and It's Not Over

The Movement Behind the Lost Cause Is Still Deciding Who Gets to Be American



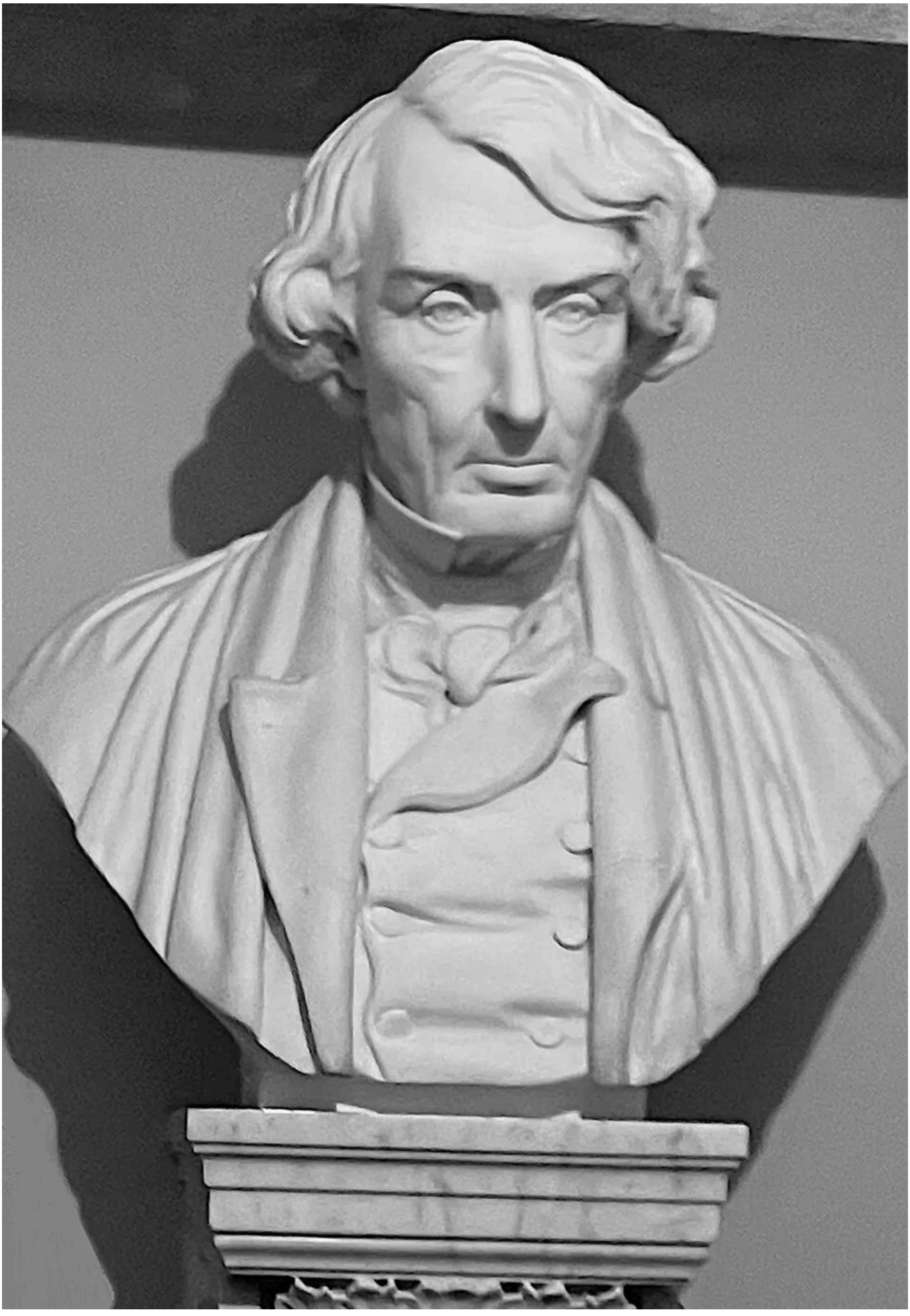
William Spivey Follow 10 min read · 1 day ago

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The 14th Amendment was written explicitly to destroy the logic of the Dred Scott decision, often cited as the worst Supreme Court decision in history. Dred Scott was an enslaved man who sued for his freedom in 1846, arguing that he had lived in free territory (Illinois and the Wisconsin Territory) and therefore should be legally free. His case wound through the courts for a decade before reaching the Supreme Court. On March 6, 1857, the Court issued its ruling in Dred Scott v. Sandford, written by Chief Justice Roger B. Taney. It became the most infamous opinion in the Court's history.





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What the Supreme Court Held

Taney's opinion made three sweeping claims:

1. Black people — enslaved or free — could never be citizens of the United States.

Taney declared that people of African descent:

> *"had no rights which the white man was bound to respect."*

This meant:

- They could not sue in federal court.
- They had no constitutional protections.
- They were permanently outside the political community.

2. Congress had no power to ban slavery in the territories.

The Court struck down the Missouri Compromise, which had limited slavery's expansion for 37 years.

This meant:

- Slavery could spread into any western territory.

- The federal government was powerless to stop it.
- Pro-slavery forces gained a constitutional weapon.

3. Slaveholders' property rights were constitutionally protected everywhere.

Taney argued that enslaved people were property, and taking them into free territory did not change their status.

This meant:

- Freedom was not portable.
- Slaveholders could bring enslaved people anywhere in the nation.
- The legal logic of slavery became national, not regional.

Why It Was Considered One of the Worst Decisions in Supreme Court History

1. It attempted to nationalize slavery permanently.

By declaring Congress powerless to restrict slavery, the Court tried to lock the institution into the Constitution itself. It was a judicial attempt to settle the slavery debate in favor of the slaveholding South.

2. It erased Black people from the Constitution.

Taney's opinion didn't just deny citizenship — it denied personhood. It declared that Black Americans had no claim to rights, liberty, or legal protection. This was not merely cruel; it was a constitutional endorsement of white supremacy.

3. It destroyed decades of political compromise.

The Missouri Compromise, the Compromise of 1850, and popular sovereignty were all rendered meaningless. The ruling inflamed sectional tensions and made civil war far more likely.

4. It delegitimized the Supreme Court.

Northern newspapers called the Court a "slave power conspiracy." Abraham Lincoln built his political rise on opposition to the decision. The Court's reputation collapsed.

5. It was legally incoherent.

Taney's reasoning contradicted:

- historical evidence (free Black citizens had voted in early America),
- constitutional structure,
- and basic logic.

Even moderate legal scholars at the time called it a judicial disaster.

6. It was morally catastrophic.

The Court used constitutional language to justify racial hierarchy, human bondage, and the denial of basic humanity. It is one of the few Supreme Court decisions universally condemned across ideological lines today unless you consider Clarence Thomas, Samuel Alito, and Brett Kavanaugh.

How It Was Overturned

The decision stood for 11 years, until Reconstruction produced two amendments that destroyed its logic:

13th Amendment (1865)

Abolished slavery.

14th Amendment (1868)

Established birthright citizenship, guaranteeing that:

> *"All persons born or naturalized in the United States… are citizens."*

This Amendment was written specifically to overturn Dred Scott.

I. The Executive Order: A Direct Challenge to the 14th Amendment

On the first day of his second term in office, Donald Trump signed an executive order declaring that children born in the United States to undocumented immigrants would no longer receive automatic citizenship. It was the most direct attack on the 14th Amendment in modern history.



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The order claimed that the phrase “subject to the jurisdiction thereof” excluded the children of undocumented parents — a theory long rejected by courts, historians, and the framers of the Amendment themselves. Trump’s legal team argued that the federal government had the authority to reinterpret the Citizenship Clause without Congress and without a constitutional Amendment.

The order was immediately challenged. Civil-rights groups, immigration advocates, and constitutional scholars filed suit within hours. The lead plaintiff was Barbara, a U.S.-born teenager whose citizenship would have been stripped under the order. Her case became the vehicle for the constitutional showdown.

The lawsuit was titled:

Trump v. Barbara

And it quickly became the most consequential citizenship case since United States v. Wong Kim Ark in 1898.

II. What Trump's Order Tried to Do

The executive order attempted to:

- End birthright citizenship for millions of U.S.-born children
- Redefine citizenship by ancestry rather than geography
- Create a new class of stateless American-born noncitizens
- Reverse 150+ years of constitutional interpretation
- Achieve through executive power what Congress had never passed

It was, in effect, an attempt to resurrect the logic of Dred Scott, the idea that the government could decide who belonged based on lineage, not birth.

Multiple federal courts immediately blocked the order, but the administration appealed every injunction. The case was fast-tracked to the Supreme Court.

III. The Supreme Court Takes the Case: Trump v. Barbara

When the Court agreed to hear Trump v. Barbara, the stakes were unmistakable:

- Would the Court uphold the 14th Amendment's guarantee of birthright citizenship?

- Or would it allow the executive branch to redefine who counts as an American?

The courtroom arguments were intense. Trump's lawyers argued that undocumented immigrants were not "subject to the jurisdiction" of the United States, and therefore their children were not citizens. Barbara's lawyers argued that the 14th Amendment was written precisely to prevent this kind of exclusion, and to ensure that citizenship could not be denied based on ancestry, race, or parentage.

The case drew massive protests, including the one shown in the cover photo, featuring crowds outside the Supreme Court holding signs defending the 14th Amendment.

IV. The Decision: June 30, 2026

On June 30, 2026, the Supreme Court issued its ruling.

The Court reaffirmed birthright citizenship in a 6–3 decision.

The majority held that:

- The 14th Amendment's text is clear.
- Anyone born on U.S. soil is a citizen.
- The executive branch cannot override the Constitution.
- The phrase "subject to the jurisdiction thereof" includes undocumented immigrants.
- The order violated both constitutional text and historical intent.

The Court cited Reconstruction debates, the framers' explicit rejection of ancestry-based citizenship, and the precedent of Wong Kim Ark. The ruling struck down Trump's executive order in full.

V. Why the Decision Was So Close — and Why It's Not the End

Although the majority preserved birthright citizenship, the margin was a seemingly one-sided 6–3 vote against the Trump administration. Yet those wanting to end birthright citizenship likely couldn't have gotten a single vote a decade ago. Even Thomas would have been ashamed.

The dissenting justices endorsed the administration's reinterpretation, arguing that Congress, or even the executive, could redefine citizenship without amending the Constitution. Their opinion echoed the same logic that once animated Dred Scott: that citizenship is not a universal right but a status the government can restrict.

The movement to end birthright citizenship may have lost this round. But it gained three votes in the Supreme Court, and supporters have already begun searching for future justices who will finish the job.

Just as the anti-Roe movement spent decades building toward a single moment, the anti-birthright movement is patient, organized, and ideologically committed. They will return.

I. The Political Figures Who Championed Ending It

1. Donald Trump

Trump was the most visible and aggressive advocate. He repeatedly claimed birthright citizenship was a "magnet" for undocumented immigration and

signed the executive order that triggered Trump v. Barbara.

2. Stephen Miller

Trump's senior adviser and architect of the administration's immigration agenda. Miller pushed internally for ending birthright citizenship as early as 2017 and drafted the legal theory behind the executive order.



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3. Members of Congress aligned with restrictionist immigration policy

A small but vocal group of Republican lawmakers supported ending birthright citizenship, including:

- Rep. Steve King (R-IA) — introduced multiple bills to reinterpret the 14th Amendment.
- Sen. Lindsey Graham (R-SC) — publicly called birthright citizenship "a mistake."
- Sen. Tom Cotton (R-AR) — supported narrowing citizenship eligibility.
- Sen. Josh Hawley (R-MO) — endorsed reconsidering the 14th Amendment's scope.

These lawmakers framed the issue as immigration control rather than constitutional revision. They need to be identified and voted out.

4. State-level politicians in restrictionist states

Some governors and attorneys general in conservative states signaled support for ending birthright citizenship, often through amicus briefs or public statements.

II. The Organizations and Advocacy Groups Behind the Movement

1. The Heritage Foundation

Produced policy papers arguing that birthright citizenship was not constitutionally required and should be ended through legislation or

executive action.

2. Federation for American Immigration Reform (FAIR)

A restrictionist group founded by John Tanton. FAIR has long advocated ending birthright citizenship, framing it as a way to reduce undocumented immigration.

3. Center for Immigration Studies (CIS)

Another Tanton-network organization. CIS published reports claiming birthright citizenship incentivizes "birth tourism," despite limited evidence.

4. NumbersUSA

Advocates for reducing immigration levels and supported efforts to reinterpret the 14th Amendment.

5. Certain legal scholars aligned with originalist reinterpretation

A small group of conservative legal theorists argued that "subject to the jurisdiction thereof" excludes children of undocumented immigrants. This view is outside mainstream constitutional scholarship but provided intellectual cover for the movement.

III. The Broader Ideological Coalition

1. Anti-immigration activists

Individuals who believe immigration, especially non-European immigration, threatens American culture or demographics. They should call themselves "Americans for a Whiter America!"

2. Nativist and nationalist groups

Some groups framed birthright citizenship as a threat to "national identity," often using racially coded language. Their clear motivation is racism. While America is discouraging the entry of people of color, they are inviting white South Africans by the thousands.

3. Segments of the far-right media ecosystem

Commentators on certain cable networks, talk radio, and online platforms amplified claims about "anchor babies" and "birth tourism."

4. Online communities aligned with demographic replacement theories

These groups argued that birthright citizenship accelerates non-white population growth, a racially motivated argument that mirrors European far-right rhetoric. Will America have its own Brexit?

IV. The Underlying Motives (Stated and Unstated)

1. Immigration restriction

The public-facing argument: Ending birthright citizenship would reduce undocumented immigration.

2. Demographic anxiety

The less-public argument: Some supporters feared that birthright citizenship contributed to long-term demographic change, particularly growth in Latino and Asian American populations.

3. Political advantage

Some believed ending birthright citizenship would reduce future voters likely to support Democrats, a claim often stated quietly.

4. Ideological alignment with ancestry-based citizenship

Ending jus soli would move the U.S. toward jus sanguinis, a model that historically favors the existing majority population.

5. A desire to reinterpret Reconstruction

Some legal theorists opposed the 14th Amendment's egalitarian legacy and saw birthright citizenship as an overreach of federal power.

V. Who Opposed Ending Birthright Citizenship

The opposition included:

- Civil-rights organizations
- Constitutional scholars
- Immigration advocates
- Religious groups
- Business coalitions
- Military leaders (concerned about statelessness)
- Most Americans across party lines

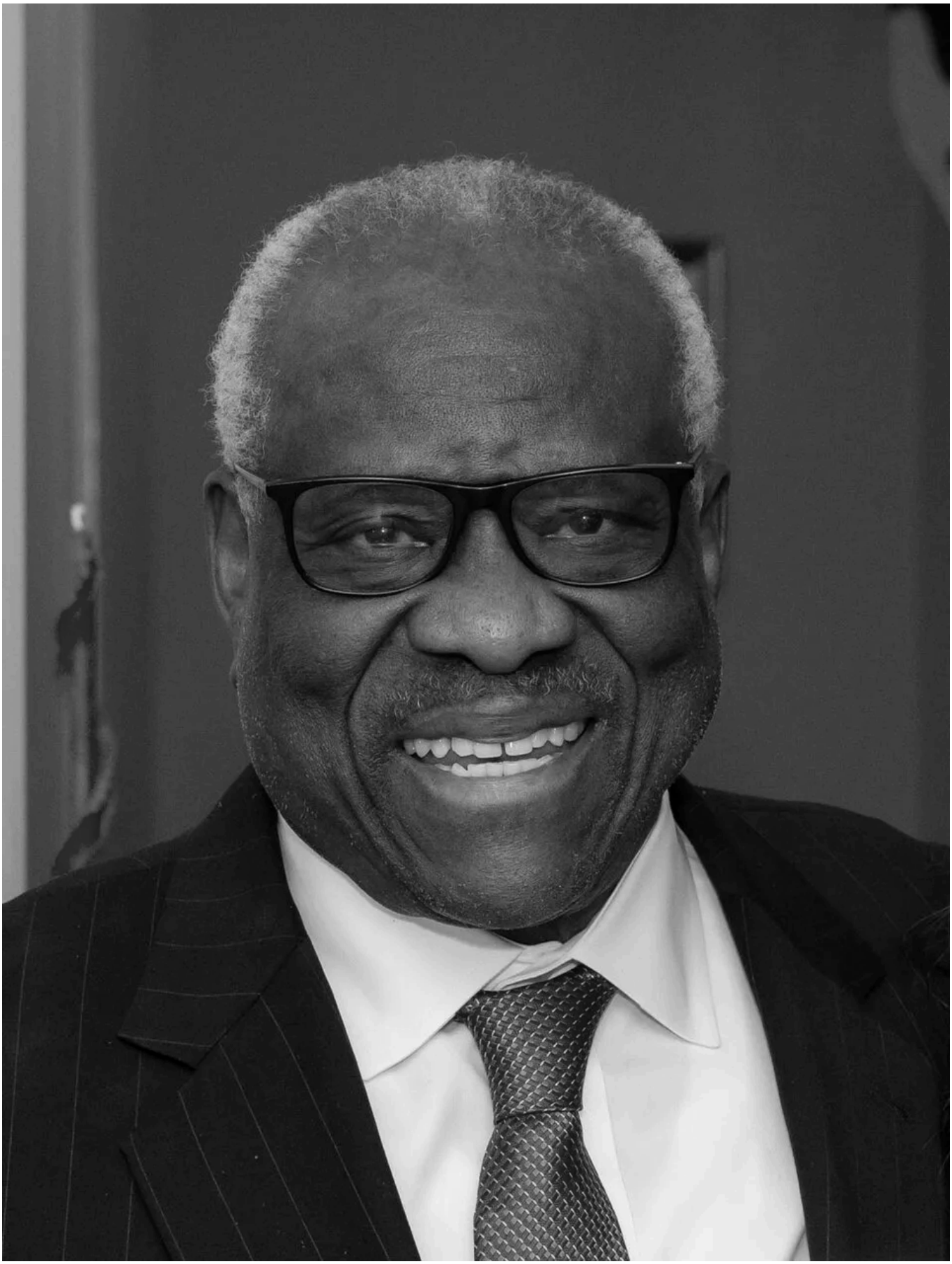
Conclusion

Birthright citizenship survived Trump v. Barbara, but only by three votes, a margin narrow enough to reveal just how fragile the 14th Amendment has become. The executive order was struck down, the Citizenship Clause held,

and millions of Americans born on this soil kept the protection the Reconstruction framers wrote to ensure that no future Congress, president, or court could decide who counted as American. But the movement that tried to end it is not finished. It is regrouping.

The coalition behind the challenge is the same one that has spent more than a century defending the Lost Cause, sanitizing the Confederacy, and insisting that equality is something America can retract when politically useful. They are patient. They are disciplined. They are ideologically committed. And they have already begun searching for the next Court, the next vacancy, the next election, the next moment when the balance tips just enough for them to try again. The litmus test used to be abortion; it will now be birthright citizenship.

The lesson of June 30, 2026 is not that the danger has passed. It is that the danger is persistent. The forces that tried to narrow the 14th Amendment are the same forces that once tried to erase it. They lost this round, but they are relentless, and they have history on their side, not the history that actually happened, but the one they have spent generations mythologizing.



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The fight over birthright citizenship is not over. It is part of a much older struggle over who belongs in the constitutional order and who gets to inherit the promises written after the Civil War. More battles are coming. And if the past is any guide, the people who want to end birthright citizenship will return — again and again, until they find a Court willing to finish what the Lost Cause began. In a perfect world, the primary dissent, authored by Clarence Thomas, would live in the same infamy as the Roger B. Taney decision. Unfortunately, we don't live in that world.

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