

In Defense of Professor Ilan Wurman

by [Joseph DeMaio](#), ©2026

(Jul. 31, 2026) — Professor who? ... you may ask.

SUMMARY OF THE ARGUMENT

This brief explains the common law of birthright subjectship and its application to unlawfully present aliens and temporary sojourners. It further explains the connection between the common-law rule and the jurisdictional language of the Fourteenth Amendment. It makes four principal points.

First, mere birth on the sovereign's soil has never been the rule for birthright subjectship or citizenship. Rather, the rule has always been birth in the realm to *parents under the sovereign's protection*, in exchange for which the parents owed the sovereign allegiance. "Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country, *while the parents are resident there*

https://www.supremecourt.gov/DocketPDF/25/25-365/392842/20260127175852031_Trump%20v%20Barbara%20-%20Wurman%20Amicus%20Brief%20-%20FINAL.pdf

Pay attention, faithful *P&E* readers, as the following will give you a better understanding of the intellectual goo that presently passes for "viewpoint tolerance" and "academic integrity" on many of the Republic's university and college campuses, especially in the law "schools" at these institutions of higher learning. The term "schools" is in quotes, as they are more likely better characterized as "inculcation centers" or "correct-thought ministries" than classical "schools."

Professor Ilan Wurman is the Julius E. Davis Professor of Law at the University of Minnesota Law School. He is also the scholar who filed a superb *amicus curiae* [brief](#) in support of the President's Executive Order 14160 in the recently decided "birthright citizenship" case, [Trump v. Barbara](#).

While at the end of the day, a majority of the Court did not adopt Professor Wurman's arguments, Justice Thomas cited his *amicus* brief in support of his dissenting opinion. As noted by your humble servant [here](#), the *amicus* brief is a persuasive and scholarly work arguing in support of the conclusion (shared, by the way, by your servant) that the Framers of the 14th Amendment **never** intended that the offspring of parents who were in the country illegally or without authority would be entitled, at birth, to automatic U.S. "birthright citizenship."

Indeed, the problematic collateral result of the majority opinion in *Barbara* is the creation of a “*sub silentio*” threat to the “natural born Citizen” (“nbC”) Eligibility Clause of the Constitution, addressed [here](#). Had the *Barbara* majority adopted the President’s argument, bolstered by Professor Wurman’s *amicus* scholarship, the problem would have been averted. But that is now “water under the bridge.”

Following the release of the decision, most leftist law school academics were pleased. One notable exception was Professor John Pfaff of Fordham University Law School. While welcoming the SCOTUS majority decision, he foolishly and bluntly criticized Professor Wurman for having the temerity at all to argue that President Trump might have been right and for having the nerve to file an *amicus* brief in the case to the same effect.

While there may be debatable reasons for amending the nbC restriction, **not** included among those is effectuating its elimination through imprecise language, accident or oversight. Under the *Barbara* majority opinion, the potential for the neutering or inadvertent outright elimination of the existing nbC requirement is enabled. And if you doubt that, just read the dissenting opinions of Justices Thomas and Alito.

Following the release of the decision, Pfaff detonated in an online post at BlueSky.com (now missing and potentially deleted), calling for Professor Wurman to be ostracized and banished from academic collegiality.

Constitutional law attorney Jonathan Turley captured some of Pfaff’s more colorful anti-Wurman diatribes before they disappeared [here](#). Read the entire Turley article to get a better picture of Pfaff’s intellectual “gravitas.”

For example, Pfaff asserts that Professor Wurman and “lawprofs” like him who dare to veer away from “approved” or “settled” dogma are “parasitic” and must be stomped out because, purportedly, “[t]here *MUST* be repercussions for the lawprofs who advanced such untenable arguments. Their behavior is — and I mean this literally, not dehumanizingly — parasitic. They exploit norms of collegiality and presumptions of integrity to advance trash. Which undermines the work of ALL of us.” **Really?**

Pfaff then doubles down: “If there are no costs to that [*i.e.*, expressing disapproved viewpoints] — and only the upside to fancy dinners funded by antidemocratic oligarchs and the ‘nonpartisan institutions’ they have endowed — then we can only reward this behavior. ***Everyone involved in this canard should be frozen out of academic life until they recant.*** (Emphasis added)

“Until they recant?” **Seriously?** Are we now on the doorstep of repeating the French Revolution? Professor Wurman fires back, sardonically: “Ah yes, time to push for that traditional tool of academic thought and freedom – the recantation.”

Professor Pfaff’s attack on Professor Wurman is — for lack of more colloquial and earthy descriptors — intellectual goo. Moreover, his suggestion that Professor Wurman must repent via recantation of his views is contrary to any understanding of either the First Amendment or academic freedom. Accordingly, the Fordham Law professor’s suggestion is both misguided and shameful.