

Consideration on **Citizenship**

“...there is a citizenship of the United States and citizenship of a state...”

Tashiro v. Jordan, 201 Cal. 236 (1927)

Correct.

“We have in our political system a Government of the United States and a government of each of the several states. Each is distinct from the other and each has citizens of its own...”

U.S. v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588

Correct. I am a citizen of Michigan and a citizen of the U.S. Each form of citizenship carries its own responsibilities and protections and rights.

"State Citizenship is a vested substantial property right, and the State has no power to divest or impair these rights."

Favot v. Kingsbury, (1929) 98 Cal. App. 284, 276 P. 1083.

US v. GAYLE, No. 02-1095 (2d Cir. January 07, 2005)

Correct. Why would anybody disagree with this ruling?

Foreign convictions cannot constitute predicate offenses under U.S.C. section 922(g)(1).

“The citizenship of a native-born citizens may not be lost or taken away by his own acts. United States v. Wong Kim Ark, 169 U.S. 640, 42, L. ed. 890, 1S Sup. Ct. Rep. 456

Correct. Can not be taken away from him but he can renounce his own citizenship.

“The 14th Amendment did not alter the status of free white persons, as previously existing.”

Virginia v. Rivers, 100 U.S. 313, 25 L. ed. 667, 3 Am. Crim. Rep. 524; United States v. Wong Kim Ark, 169 U.S. 640, 42, L. ed. 890, 1S Sup. Ct. Rep. 456

Correct if one assumes that the state citizen already had the protections and rights of the U.S. Constitution prior to the 14th Amendment passage.

“We have in our political system a government of the United States and a government of each of the several states. Each one of these governments is distinct from the others, and each has citizens of its own who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a state, but his rights of citizenship under one of these governments will be different from those he has under the other.”

U.S. v. Cruikshank, 92 U.S. 542 (1875)

Each line of this ruling is correct. He has rights guaranteed under the state Constitution and the federal Constitution and they may not be exactly the same. The U.S. Constitution has more explicit guarantees than does most state Constitutions.

“The 14th Amendment creates and defines citizenship of the United States. It had long been contended, and had been held by many learned authorities, and had never been judicially decided

to the contrary, that there was no such thing as a citizen of the United States, except by first becoming a citizen of some state.”

United States v. Anthony (1874), 24 Fed. Cas. 829 (No. 14,459), 830.

Correct. One cannot become a citizen of the U.S. without first being a state citizen.

“Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state. Crosse v. Bd. Of Supvr,s of Elections, 221 A.2d. 431 (1966)

Correct. One can be a state citizen and renounce his U.S. citizenship, but then loses the protection against a direct tax without “apportionment”. The question then becomes: Can the U.S. government impose a direct tax without “apportionment” on a non-U.S. citizen living in the United States? Well, if they can impose such tax on a non-resident alien or a resident alien, I would have to conclude that they can impose that tax on a state citizen who no longer has the protections of the U.S. Constitution. There is a regulation that does, indeed, say that anyone who renounces his U.S. citizenship, is also liable for the income tax (peon tax).

“Thus, the dual character of our citizenship is made plainly apparent. That is to say, a citizen of the United States is ipso facto and at the same time a citizen of the state in which he resides. And while the Fourteenth Amendment does not create a national citizenship, it has the effect of making that citizenship “paramount and dominant” instead of “derivative and dependant” upon state citizenship.”

COLGATE v. HARVEY, Tax Commissioner of Vermont, 296 U.S. 404, 427, 80 L.Ed 299 (1935)

Correct, because the 14th Amendment did not create U.S. citizenship since it already was in existence.

“This position is that the privileges and immunities clause protects all citizens against abridgment by states of rights of national citizenship as distinct from the fundamental or natural rights inherent in state citizenship.”

Madden v. Kentucky, 309 U.S. 83 (1940) 84 L.Ed. 590, at 591

Correct. Rights under the U.S. citizenship cannot be abridged by any state government since those rights are guaranteed by the 14th Amendment and the U.S. Constitution.

It is a fundamental Right to be a state Citizen...”Citizenship of the United States does not entitle citizens to privileges and immunities of citizen of state, since privileges and immunities of one are not the same as the other.”

K. Tashiro v. Jordan, 256 P. 545 (1927)

Foreigners do not have a fundamental right to U.S. citizenship, they must be granted citizenship by the federal government.

“The purpose of the Fourteenth Amendment to the Constitution of the United States was to confer the status of citizenship upon the numerous class of persons domiciled within the limits of

the United States who could not be brought within the operation of the naturalization laws because native born, and whose birth, through native, had at the same time left them without the status of citizenship. Such persons were not white persons, but in the main were of African blood, who had been held in slavery in this country, or having themselves never been held in slavery, were the native-born descendants of slaves.”

Ellen R. Van Valkenburg v. Albert Brown, 43 CAL. 43 (1872)

California Government Code Sec 242: “Noncitizens; Persons in the State not its citizens are either: (a) Citizens of other States; or (b) Aliens. (Stats. 1943, c. 134, p. 901, §242)

People of a state are entitled to all rights which formerly belonged to the king by his prerogative. Lansing v. Smith, 21 D. 89.

“Powers denied are not to be implied; they are to be obtained, if at all, from and in the same manner provided by, those who originally granted the enumerated powers, but who at the same time denied powers.”

Barron v. Baltimore, 7 Peters 243; Fairbanks v. United States, 181 U.S. 283;

“a constitutional right to remain a citizen...unless he voluntarily relinquishes that citizenship. Id. At 268, 87 S.Ct. at 1668.

“An alien has no right to raise the questions whether a statute is violative of Const. U.S. art. 4. § 2, declaring that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states.” 139 Cal. 532 In re Johnson’s Estate. S. F.3018, 3019 Supreme Court of California 1903)

Carlisle v. United States, 83 U.S. 147, 154 (1873),

'The rights of sovereignty extend to all persons and things not privileged, that are within the territory. They extend to all strangers resident therein; not only to those who are naturalized, and to those who are domiciled therein, having taken up their abode with the intention of permanent residence, but also to those whose residence is transitory. All strangers are under the protection of the sovereign while they are within his territory and owe a temporary allegiance in return for that protection.' "

In Leiberg v. Vitangeli, 70 Ohio App. 479, 47 N.E. 2d 235, 238-39 (1942)

"These constitutional provisions employ the word 'person,' that is, anyone whom we have permitted to peaceably reside within our borders may resort to our courts for redress of an injury done him in his land, goods, person or reputation. The real party plaintiff for whom the nominal plaintiff sues is not shown to have entered our land in an unlawful manner. We said to her, you may enter and reside with us and be equally protected by our laws so long as you conform thereto. You may own property and our laws will protect your title.

"We, as a people, have said to those of foreign birth that these constitutional guaranties shall assure you of our good faith. They are the written surety to you of our proud boast that the United States is the haven of refuge of the oppressed of all mankind."

UNITED STATES v. MINKER, 350 U.S. 179 (1956)

It provides for canceling a certificate of naturalization on the ground that it was procured "by concealment of a material fact or by willful misrepresentation." 340 (a). Suit may be brought by the United States Attorney in the District Court "upon affidavit showing good cause." Id.

Therefore, the U.S. citizens [citizens of the District of Columbia] residing in one of the states of the union, are classified as property and franchises of the federal government as an "individual entity"

Wheeling Steel Corp. v. Fox, 298 U.S. 193, 80 L.Ed. 1143, 56 S.Ct. 773.

30 U.S.C.A. § 24 § 24. Proof of citizenship: Proof of citizenship, under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of Title 43, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

Proof of birth within the United States is sufficient to establish the citizenship of a locator in the absence of a showing of subjection to a foreign power.

Thompson v. Spray, Cal.1887, 14 P. 182, 72 Cal. 528.

State naturalization laws are superseded and annulled by an Act of Congress on the subject, as the jurisdiction of Congress upon the subject is exclusive. Collet v. Collet, Pa.1792, 2 U.S. 294, 2 Dall. 294, 1 L.Ed. 387. See, also, Matthew v. Rae, C.C.Dist.Col.1829, 3 Cranch, C.C., 699, 16 Fed.Cas. No. 9,284.

It is not in the power of a state to denationalize a foreign subject who has not complied with the federal naturalization laws, and constitute him a citizen of the United States or of a state, so as to deprive the federal courts of jurisdiction over a controversy between him and a citizen of a state, conferred upon them by Art. III, sec. 2, and the Acts of Congress. City of Minneapolis v. Reum, C.C.A.8 (Minn.) 1893, 56 F. 576, 6 C.C.A. 31.

A state cannot make the subject of a foreign government a citizen of the United States. Lanz v. Randall, C.C.Minn.1876, 14 F.Cas. 1131, 24 Pitts.L.J. 68, No. 8080. See, also, Minneapolis v. Reum, C.C.A.Minn.1893, 56 F. 576.

Status of citizenship of United States is privilege, and Congress is free to attach any preconditions to its attainment that it deems fit and proper. In re Thanner, D.C.Colo.1966, 253 F.Supp. 283. See, also, Boyd v. Nebraska, Neb.1892, 12 S.Ct. 375, 143 U.S. 162, 36 L.Ed. 103; Application of Bernasconi, D.C.Cal.1953, 113 F.Supp. 71; In re Martinez, D.C.Pa.1947, 73 F.Supp. 101; U.S. v. Morelli, D.C.Cal.1943, 55 F.Supp. 181; In re De Mayo, D.C.Mo.1938, 26 F.Supp. 696; State v. Boyd, 1892, 51 N.W. 602, 31 Neb. 682.

Aside from limitation of Amend. 14, Congress has no general power, express or implied, to take away an American citizen's citizenship without his consent. *Afroyim v. Rusk*, U.S.N.Y.1967, 87 S.Ct. 1660, 387 U.S. 253, 18 L.Ed.2d 757.

UNITED STATES CODE ANNOTATED CONSTITUTION OF THE UNITED STATES
ARTICLE III--THE JUDICIARY

Current through P.L. 106-73, approved 10-19-1999

Section 2, Clause 1. Jurisdiction of Courts

Consent of the parties cannot confer subject matter jurisdiction on federal court, nor can party ever waive its right to challenge the subject matter jurisdiction of the court. *United Indus. Workers, Service, Transp., Professional Government of North America of Seafarers' Intern. Union of North America, Atlantic, Gulf, Lakes and Inland Waters Dist. AFL-CIO, (Local No. 16) on Behalf of Bouton v. Government of Virgin Islands*, C.A.3 (Virgin Islands) 1993, 987 F.2d 162.

Federal jurisdiction cannot be conferred upon court by consent of parties, nor may its absence be waived.

Commonwealth Land Title Ins. Co. v. U.S., D.Conn.1991, 759 F.Supp. 87.

United States district court has only limited jurisdiction, depending upon either the existence of a federal question or diverse citizenship of the parties, and where such elements of jurisdiction are wanting district court cannot proceed, even with the consent of the parties. *Wolkstein v. Port of New York Authority*, D.C.N.J.1959, 178 F.Supp. 209.

Mackenzie v Hare, 239 U.S. 299; The right and the condition of its exercise being thus defined, it is said that the authority of Congress is limited to giving its consent. This is variously declared and emphasized. "No act of the legislature," plaintiff says, "can denationalize a citizen without his concurrence," citing *Burkett v. McCarty*, 73 Kentucky (10 Bush), 758. "And the sovereign cannot discharge a subject from his allegiance against his consent except by disfranchisement as a punishment for crime," citing *Ainslie v. Martin*, 9 Massachusetts, 454. "The Constitution does not authorize Congress to enlarge or abridge the rights of citizens," citing *Osborn v. Bank of United States*, 9 Wheat. 737. "The power of naturalization vested in Congress by the Constitution is a power to confer citizenship, not a power to take it away. . . .The Fourteenth Amendment, while it leaves the power where it was before, in Congress, to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth declared by the Constitution to constitute a complete right of citizenship," citing *United States v. Wong Kim Ark*, 169 U.S. at p. 703.

BARRETT v. STEUBENVILLE CITY SCH., No. 03-4373 (6th Cir. Nov 15, 2004)

Parents have a constitutionally protected liberty interest in raising and directing the education of their children and a state employer cannot condition employment upon the waiver of that right. <http://caselaw.lp.findlaw.com/data2/circs/6th/034373p.pdf>

A citizen of the United States is a citizen of the federal government.

Kitchens v. Steele, 112 F.Supp 383

9th Circuit, KANTER v. WARNER-LAMBERT CO., Case Number: 99-16604

For diversity jurisdiction, party seeking removal must allege state citizenship of each of the defendants, not merely conclude that none are citizens of plaintiff's state, and alleging residency or parties rather than citizenship is fatal to the removal.

Steigleder v. McQuesten, 198 U.S. 143. Residence and Citizenship are wholly different things within the meaning of the Constitution and the laws defining and regulating the jurisdiction of the circuit courts of the United States; and a mere averment of residence in a particular State is not an averment of Citizenship in that state for the purposes of jurisdiction.

US v Minker. referencing the Immigration and Nationality Act of 1952.

The 1952 Act in 235 (a) retained the substance of this language in 16. But the word "alien" was changed to "person," and additional language extended the subpoena power to "any matter which is material and relevant to the enforcement of this Act and the administration of the Service."

[Not meant to be exhaustive.]

Compiled by Charles F. (Chuck) Conces, R.I.P. March 29, 2008.

United States v. Charles Conces

2006 TNT 83-58, No. 1:05-CV-739 (U.S.D.C. W.D. Mich. 4/24/2006)

http://www.justice.gov/tax/Conces_FiledComplaint.pdf

Default Judgment Order

<http://www.docstoc.com/docs/703681/Conces-Order-Default-Judg>

The 9th circuit court made a clear statement concerning the authority of unpublished Treasury Decisions in United States vs. Saunders, 951 F.2d 1065:

"The Act requires the publication only of the following items in the Federal Register: (1) Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof; (2) documents or classes of documents that the President may determine from time to time have general applicability and legal effect; and (3) documents or classes of documents that may be required so to be published by Act of Congress.

44 U.S.C. § 1505(a). The TDOs are not Presidential proclamations or documents cited for publication by the President or by an Act of Congress. Nor are they orders having "general applicability and legal effect." Rather, the TDOs fall squarely within section 1505(a)'s express exception for orders "effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof." The TDOs had no legal impact on, or significance for, the general public. They simply effected a shifting of responsibilities wholly internal to the Treasury Department."

<http://irwinschiff.homestead.com/USvSaunders.html>