Citizen of the several States: Settled!

Author's Note:

This article will show that since the adoption of the Fourteenth Amendment, the Supreme Court has made clear that there are two citizens under the Constitution of the United States, a citizen of the United States and a citizen of the several States.

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The Fourteenth Amendment was passed by the 39th Congress on June 13, 1866. It was proclaimed in effect on July 28, 1868, by the then Secretary of State of the United States, William H. Steward.

The adoption of the Fourteenth Amendment affected Article IV, Section 2, Clause 1 of the Constitution of the United States. The Supreme Court of the United States gave notice of this in *Woodruff v. Parham* (75 U.S. 123) and *Hinson v. Lott* (75 U.S. 148), both decided November 8, 1868. In these cases, Justice Miller **[Footnote 1]** wrote in the Statement of the Case:

> "The case being thus:
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> The Constitution thus ordains: 'Congress shall have power to regulate commerce with foreign nations and among the several States.' 'No State shall levy any imposts or duties on imports or exports.' 'The citizens of each State shall be entitled to all the immunities and privileges of citizens OF the several States'." Statement of the Case, both cases, pages 123 and 148 respectively.

In these two cases, the Supreme Court made clear that there was a new citizen under the Constitution of the United States, a citizen of the several States. **[Footnote 2]** This was later reaffirmed in *Cole v. Cunningham*:

> "The intention of section 2, Article IV (of the Constitution), was to confer on the *citizens of the several States* a general citizenship." Cole v. Cunningham: 133 U.S. 107, 113-114 (1890).

Woodruff, on this point, was cited in *Guy v. Baltimore* (100 U.S. 434 (1879), at page 437) in the following manner:

> "In *Woodruff* v. *Parham* (8 Wall. 123), we had occasion to consider the constitutional validity of an ordinance of the city of Mobile under the provisions of which had been assessed, for municipal purposes, a tax upon sales in that city of certain goods and merchandise, the product of States other than Alabama. The ordinance, in its application to articles carried into Alabama from other States, was assailed as being inconsistent with the constitutional inhibition upon the States levying imposts or duties on imports or exports—with the power of Congress to regulate commerce with foreign nations and among the several States—and with that clause which declares that the citizens of each State shall be entitled to all the immunities and privileges of citizens OF the several States."

And, in the case of *I. M. Darnell & Son Company v. Memphis* (208 U.S. 113 (1908), at page 121) it states:

> "In *Guy v. Baltimore,* 100 U.S. 434 the invalidity was adjudged of a municipal ordinance of the City of Baltimore which established rates of wharfage to be charged on vessels resorting to or lying at, "landing, depositing, or transporting goods or articles other than the productions of this State, on any wharf or wharves belonging to said mayor and city council, or any public wharf in the said city other than the wharves belonging to or rented by the State." The principle **SETTLED** by earlier decisions, which were referred to (*Woodruff v. Parham*, 8 Wall. 123; *Hinson v. Lott*, 8 Wall. 148, and *Ward v. Maryland*, 12 Wall. 418), was reaffirmed, the court saying (pp. 439, 442):
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> > "In view of these and other decisions of this court, it must be regarded as settled that no State can, consistently with the federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States, more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to *citizens of the several States* be materially abridged and impaired." **[Footnote 3], [Footnote 4]**

Article IV, Section 2, Clause 1 had been modified by the Fourteenth Amendment. Before, it was the Comity Clause, now it was to be a Citizenship Clause.

The Supreme Court, in the *Slaughterhouse Cases*, decided that because of the Fourteenth Amendment, there were now two separate and distinct citizens under the Constitution of the United States (and not the Fourteenth Amendment), a citizen of the United States and a citizen of the several States. Justice Miller writes:

> "We do not conceal from ourselves the great responsibility which this duty devolves upon us.

No questions so far reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States and of the several States to each other, and to **the citizens of the states and of the United States**, have been before this court during the official life of any of its present members. We have given every opportunity for a full hearing at the bar; we have discussed it freely and compared views among ourselves; we have taken ample time for careful deliberation, and we now propose to announce the judgments which we have formed in the construction of those articles, so far as we have found them necessary to the decision of the cases before us, and beyond that we have neither the inclination nor the right to go." Slaughterhouse Cases: 83 U.S. 36, at page 67 (1873).

And:

"The next observation is more important in view of the arguments of counsel in the present case. It is, that the distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. . . .

It is quite clear, then, that there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.

We think this distinction and its explicit recognition in this Amendment of great weight in this argument, because the next paragraph of this same section (second clause of the first section), which is the one mainly relied on by the plaintiffs in error, **speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several states**. The argument, however, in favor of the plaintiffs, rests wholly on the assumption that the citizenship is the same and the privileges and immunities guaranteed by the clause are the same." Slaughterhouse Cases: 83 U.S. 36, at pages 73 thru 74.

Also:

"Fortunately we are not without judicial construction of this clause of the Constitution (that is, Article IV, Section 2, Clause 1). The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the circuit court for the district of Pennsylvania in 1823. 4 Wash C. C. 371.

> 'The inquiry,' he says, 'is, what are **the privileges and immunities of citizens of the several States**? . . .'

This definition of the **privileges and immunities of citizens of the states** is adopted in the main by this court in the recent case of *Ward v. Maryland*. . . .

Having shown that **the privileges and immunities relied on in the argument are those which belong to citizens of the states** as such, and that they are left to the state governments for

> security and protection, and not by this article placed under the special care of the Federal government, we may hold ourselves excused from defining **the privileges and immunities of citizens of the United States** which no state can abridge, until some case involving those privileges may make it necessary to do so." Slaughterhouse Cases: 83 U.S. 36, at pages 75 thru 76, 78 thru 79. **[Footnote 5], [Footnote 6]**

It is to be observed that the terms "citizens of the states" and "citizens of the several states" are used interchangeably by the *Slaughterhouse* court. And they are employed in contradistinction to the term "citizens of the United States."

A federal case decided after *Woodruff* and before the *Slaughterhouse Cases* removes any doubt that there are two separate and distinct citizens under the Constitution of the United States. In *The Insurance Company v. The City of New Orleans* (1 5th. Jud. Cir. 85, 1870) at pages 86 through 88, Judge Woods examines if a corporation is a citizen of the several States, under Article IV, Section 2, Clause 1 of the Constitution of the United States or if it is a citizen of the United States under the first section of the Fourteenth Amendment. He writes:

> "The first question presented for adjudication is: Admitting the tax to be unequal, is the ordinance providing for its levy and enforcement in violation of the 1st section of the 14th amendment to the constitution of the United States, especially the last clause of the section? The section reads as follows: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'
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> The complainant, to be entitled to the protection of this constitutional provision, must be either a citizen of the United States or a person in the sense in which that term is used in this section.
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> It has been repeatedly held, by the supreme court of the United States, that corporations were not *citizens of the several States* in such sense as to bring them within the protection of that clause in the constitution of the United States (section 2, article IV), which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states;' *Bunk of Augusta v. Earle,* 13 Peters, 586; *Paul v. Virginia,* 8 Wallace, 177. **[Footnote 7]**
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> Are corporations citizens of the United States within the meaning of the constitutional provision now under consideration? It is claimed in argument that, before the adoption of the 14th amendment, to be a citizen of the United States, it was necessary to become a citizen of one of the states, but that since the 14th amendment this is reversed, and that citizenship in a state is the result and consequence of the condition of citizenship of the United States.

> Admitting this view to be correct, we do not see its bearing upon the question in issue. Who are citizens of the United States, within the meaning of the 14th amendment, we think is clearly settled by the terms of the amendment itself. 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.' No words could make it clearer that citizens of the United States, within the meaning of this article, must be natural, and not artificial persons; for a corporation cannot be said to be born, nor can it be naturalized. I am clear, therefore, that a corporate body is not a citizen of the United States as that term is used in the 14th amendment."

Therefore, since the adoption of the Fourteenth Amendment, there are now two separate and distinct citizens under the Constitution of the United States, a citizen of the United States and a citizen of the several States. There is also in any state of the Union now, two state citizens, a citizen of the United States (under the Fourteenth Amendment) and a citizen of the several States (under Article IV, Section 2, Clause 1).

Footnotes:

1. It is to be noted that Justice Miller, who wrote the majority opinions in these two cases, wrote the majority opinions in the *Slaughterhouse Cases* (83 U.S. 36) and *Bradwell v. State of Illinois* (83 U.S. 130).

2. Campbell v. Morris: 3 Harr. & McH., 535 Md. (1797) (Before the 14th Amendment):

"The object of the convention in introducing this clause into the constitution, was to invest the citizens of the different states with the general rights of citizenship; that they should not be foreigners, but citizens. To go thus far was essentially necessary to the very existence of a federate government, and in reality was no more than had been provided for by the first confederation in the fourth article. . . .

The expressions, however, of the fourth article convey no such idea. It does not declare that 'the citizens of each state shall be entitled to all privileges and immunities of the citizens OF the several states.' Had such been the language of the constitution, it might, with more plausibility, have been contended that this act of assembly was in violation of it; but such are not the expressions of the article; it only says that 'The citizens of the several states shall be entitled to all privileges and immunities of citizens IN the several states.' Thereby designing to give them the rights of citizenship, and not to put all the citizens of the United States upon a level." To see case: http://press-pubs.uchicago.edu/founders/documents/a4_2_1s10.html

3. The same result was reach in the case of New York v. Roberts (171 U.S. 658 (1898), at pages 671 thru 672) it states:

> "The case of *Guy v. Baltimore,* 100 U.S. 434, 439,443, is much in point. That case involved the validity of certain ordinances of the Mayor and Council of Baltimore based upon on an act of the General Assembly of Maryland authorizing the Mayor and City Council of Baltimore to regulate, establish, charge, and collect, to the use of the said mayor and city council, such rate of wharfage as they deemed reasonable,"of and from all vessels resorting to or lying at, landing, depositing, or transporting goods or articles other than the productions of this State, on any wharf or wharves belonging to said mayor and city council, or any public wharf in the said city, other than the wharves belonging to or rented by the State."
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> This court, after referring to the previous cases of *Woodruff v. Parham, Hinson v. Lott,* and *Ward v. Maryland,* said:
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> > 'In view of these and other decisions of this Court, it must be regarded as **SETTLED** that no state can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other states, more onerous public burdens or taxes than it imposes upon the like products of its own territory. If this were not so, it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several states could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to *citizens of the several States* be materially abridged and impaired." (*dissenting opinion*, Justice Harlan and Justice Brown)

4. In accord, Chalker v. Birmingham & Northwestern Railroad Company (249 U.S. 522 (1919), at pages 526 thru 527):

"With this conclusion we are unable to agree. Accepting the construction placed upon it by the Supreme Court, we think the quoted section does discriminate between citizens of Tennessee and those of other states by imposing a higher charge on the latter than it does on the former, contrary to § 2, Art. IV, of the federal Constitution: 'The citizens of each state shall be entitled to all privileges and immunities of citizens in the several States.'

The power of a state to make reasonable and natural classifications for purposes of taxation is clear and not questioned, but neither under form of classification nor otherwise can any State enforce taxing laws which in their practical operation materially abridge or impair the equality of commercial privileges secured by the federal Constitution to *citizens of the several States*.

'Excise taxes, it is everywhere conceded, may be imposed by the States, if not in any sense discriminating; but it should not be forgotten that the people of the several States live under one

common Constitution, which was ordained to establish justice, and which, with the laws of Congress, and the treaties made by the proper authority, is the supreme law of the land; and that that supreme law requires equality of burden, and forbids discrimination in State taxation when the power is applied to the citizens of the other States. Inequality of burden, as well as the want of uniformity in commercial regulations, was one of the grievances of the citizens under the Confederation, and the new Constitution was adopted, among other things, to remedy those defects in the prior system.' *Ward v. Maryland*, 12 Wall. 418, 431; *Guy v. Baltimore*, 100 U.S. 434, 439; *Blake v. McClung*, 172 U.S. 239, 254; *Darnell & Son Co. v. Memphis*, 208 U.S. 113, 121."

5. In Maxwell v. Dow (176 U.S. 581 (1900), at pages 588 thru 589), there is the following:

"A provision corresponding to this [Justice Miller (*Slaughterhouse Cases*)] found in the Constitution of the United States in section 2 of the fourth article, wherein it is provided that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States.' What those privileges were is not defined in the Constitution, but the justice said there could be but little question that the purpose of both those provisions was the same, and that the privileges and immunities intended were the same in each. He then referred to the case of *Corfield v. Coryell,* decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823, 4 Washington C.C. 371, where the question of the meaning of this clause in the Constitution was raised. Answering the question what were the **privileges and immunities of citizens of the several States**, Mr. Justice Washington said in that case:

> 'We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature *fundamental;* which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union from the time of their becoming free, independent and sovereign. What these fundamental principles are it would be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; . . . The enjoyment of life and liberty with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole.' "

6. "These words 'privileges and immunities,' are found in Article 4, Sec. 2, declaring that the 'citizens of each state shall be entitled to all the privileges and immunities of citizens OF the several states,' and in *Corfield v. Coryell*, Justice Washington gives them a definition frequently quoted in textbooks and decisions, and it has been highly extolled as approvable. He said that such privileges and immunities could be "all comprehended under the following general heads: Protection by the government, enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject, nevertheless, to

such restraints as the government, may prescribe for the general good." A Treatise on the Rights and Privileges Guaranteed by the Fourteenth Amendment to the Constitution of the United States; Henry Brannon (Judge of the Supreme Court of West Virginia); W. H. Anderson & Company; 1901; page 68. (http://books.google.com/books?id=1-A9AAAAIAAJ&printsec=titlepage&source=gbs_summary_r&cad=0)

7. Paul v. State of Virginia: 75 U.S. 168, at page 178 (1868) (After *Woodruff*)

> "But in no case which has come under our observation, either in the State or Federal courts, has a corporation been considered a citizen within the meaning of that provision of the Constitution which declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens OF the several States."

See also, *Ducat v. Chicago*: 77 U.S. 410, (1869)

Readings:

Dan Goodman, "The Effects of the Fourteenth Amendment on the Constitution of the United States"

(http://www.jdsupra.com/post/documentViewer.aspx?fid=fbd578ce-7cda-4fd7-a865-41ceb0839556)

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