

State Citizenship Is Alive And Well

Article by: Dan Goodman

Did the 14th Amendment do away with State Citizenship?

"The Fourteenth Amendment of the Constitution of the United States, ratified in 1868, creates or at least recognizes for the first time a citizenship of the United States, as distinct from that of the states." Black's Law Dictionary, 5th Edition, p. 591 [1979].

The answer is absolutely not.

In fact the leading and controlling case on State Citizenship and United States Citizenship is the Supreme Court case, *The Slaughter-House Cases* (16 Wallace 36: 21 L.Ed. 394 [1873]). In this case, the Supreme Court distinguishes between State Citizenship and United States Citizenship.

"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 of the individual." *The Slaughter-House Cases*: 83 U.S. 36, 74.

"The importance of the case can hardly be overestimated. By distinguishing between state citizenship and national citizenship and by emphasizing that the rights and privileges of federal citizenship do not include the protection of ordinary civil liberties such as freedom of speech and press, religion, etc., but only the privileges which one enjoys by virtue of his federal citizenship, the Court averted, for the time being at least, the revolution in our constitutional system apparently intended by the framers of the amendment and reserved to the states the responsibility for protecting civil rights generally." *Cases In Constitutional Law* by Robert F. Cushman, 5th Edition, pp. 250-251 (College Law Textbook) [1979].

"Citizenship is elaborated in two privileges and immunities clauses of the United States Constitution. . . . The *Slaughter-House Cases* [1873] 83 U.S. 36, 21 L.Ed. 394, emphasized the distinct character of federal and state citizenship. *Slaughter-House* held that privileges and immunities conferred by state citizenship were outside federal reach through the Fourteenth Amendment. . . . Federal citizenship was seen as including only such things as interstate travel and voting. While subsequent decisions have extended the meaning of citizenship in the Fourteenth Amendment, *Slaughter-House* is still controlling in that it precludes use of privileges and immunities language in protecting citizens by federal authority." *Constitutional Law Deskbook - Individual Rights*, by Chandler, Enslin, Renstrom; Second Edition, p. 634 (Lawyers Cooperative Publishing, 1993).

"The Fourteenth Amendment did not obliterate the distinction between national and state citizenship, but rather preserved it. *Slaughter-House Cases*." 103d Congress, 1st Session, Document 103-6: *The Constitution of the United States of America; Analysis And Interpretation: Annotations Of Cases Decided By The Supreme Court Of The United States To June 29, 1992*, p. 1566. 1

In addition, the Supreme Court in *The Slaughter-House Cases* concluded that there are two citizens under the Constitution of the United States:

"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, 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.

The language is, 'No State shall make or enforce any law which shall abridge the privileges or immunities of **citizens of the United States**.' *It is a little remarkable, if this clause was intended as a protection to the citizen of a State against the legislative power of his own State, that the word citizen of the State should be left out when it is so carefully used, and used in contradistinction to citizens of the United States, in the very sentence which precedes it.* It is too clear for argument that the change in phraseology was adopted understandingly and with a purpose.

Of the privileges and immunities of the **citizen of the United States**, and of the privileges and immunities of the **citizen of the State**, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the amendment." *The Slaughter-House Cases*: 83 U.S. 36, at 73-74.

"The expression, Citizen of a State, is carefully omitted here. In Article IV, Section 2, Clause 1, of the Constitution of the United States, it had been already provided that 'the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.' The rights of Citizens of the States [under Article IV, Section 2, Clause 1] and of citizens of the United States [under The Fourteenth Amendment] are each guarded by these different provisions. That these rights are separate and distinct, was held in the Slaughterhouse Cases, recently decided by the Supreme court. The rights of Citizens of the State, as such, are not under consideration in the Fourteenth Amendment. They stand as they did before the adoption of the Fourteenth Amendment, and are fully guaranteed by other provisions." United States v. Anthony: 24 Fed. Cas. 829, 830 (Case No. 14,459) [1873]. 2

"This provision [The Fourteenth Amendment] protects only those rights peculiar to being a citizen of the federal government; it does not protect those rights which relate to state citizenship. See *Slaughter-House Cases* 83 U.S. (16 Wall.) 36, 21 L.Ed. 394 (1873)." Jones v. Temmer: 829 F.Supp. 1226, 1232 [1993].

"In regard to that amendment [The Fourteenth Amendment] counsel for the plaintiff in this court truly says that there are certain privileges and immunities which belong to a citizen of the United States as such; otherwise it would be nonsense for the Fourteenth Amendment to prohibit a State from abridging them, and he proceeds to argue that admission to the bar of a State of a person who possesses the requisite learning and character is one of those which a State may not deny. In this latter proposition we are not able to concur with counsel. We agree with him that there are privileges and immunities belonging to citizens of the United States, in that relation and character, and that it is these and these alone which a State is forbidden to abridge. But the right to admission to practice in the courts of a State is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State, or in any case, to depend on citizenship at all. *Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State.* But, on whatever basis this right may be placed, so far as it can have any relation to citizenship at all, it would seem that, as to the courts of a State, it would relate to citizenship of the State, and as to Federal courts, it would relate to citizenship of the United States.

The opinion just delivered in the Slaughter-House Cases renders elaborate argument in the present case unnecessary; for, unless we are wholly and radically mistaken in the principles on which those cases are decided, the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license.

It is unnecessary to repeat the argument on which the judgment in those cases is founded. It is sufficient to say they are conclusive of the present case." Bradwell v. State of Illinois: 83 U.S 130, at 138-139 [1873] 3

Therefore, State citizenship and United States citizenship are provided for in the Constitution of the United States. A citizen of a state is to be found at Article IV, Section 2, Clause 1 of the Constitution of the United States whereas a citizen of the United States is located at the Fourteenth Amendment.

1 "... [U]ndoubtedly in a purely technical and abstract sense citizenship of one of the states may not include citizenship of the United States." United States v. Northwestern Express, Stage & Transportation Company: 164 U.S. 686, 688 [1897] get case

2 "Appellant does not invoke the commerce clause, and is neither a citizen of a state nor of the United States within the protection of the privileges and immunities clauses of Article IV, Section 2 of the Constitution and the Fourteenth Amendment. Paul v. Virginia, 8 Wall. (US) 168, 177, 19 L ed 357, 359; Pembina Consol. Silver Mining & Milling Co. v. Pennsylvania, 125 U.S. 181, 187, 31 L ed 650, 653, 8 S.Ct. 737, 740, 2 Inters Com Rep 24; Selover, B. & Co. v. Walsh, 226 U.S. 112, 126, 57 L ed 146, 152, 33 S.Ct. 69, 72." Asbury Hospital v. Cass County N.D.: 326 U.S. 207, 210-211 [1945] get case

3 This case was decided one day after *The Slaughter-House Cases* (Slaughter-House, April 14, 1873; Bradwell, April 15, 1873). This is a practice of the Supreme Court of taking a legal principle decided the day before and changing its status. The status of the legal principle before was that of stare decisis or settled, its new status is that of being well settled.

© Copyright 2005 Daniel Joseph Goodman

Questions? Comments! xGoodmanx@excite.com Dan Goodman, known as J.D. Goodman or "J.D." is a legal researcher. Other articles authored by "J.D." relating to the area of law are, How Well Do You The Constitution and Is The Bill Of Rights Necessary?.

Like doing your own legal research. I invite you to try my website, The Legal Connection, at <http://www.angelfire.com/nb/thelegalconn/index.htm>.

This article is written to provide accurate and authoritative information in regard to the subject matter covered. It is written with the understanding that the author is not engaged in rendering legal, accounting, or, other professional

service. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

The author, therefore, disclaims any responsibility for any liability or loss incurred as a consequence of the use and application, either directly or indirectly of any information presented herein.