

Natural (Native) Born Citizen Defined

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Author's Note:

A natural (native) born citizen is one who is born with the territory of a government (country) and subject to its jurisdiction. Under the Constitution of the United States; at Article II, Section 5, Clause 1; a natural born citizen is a person born in the United States of America; in a different state, before the adoption of the *Constitution of the United States* and under the *Articles of Confederation* or a person born in the United States of America, in an individual State, under the Constitution of the United States.

The Fourteenth Amendment created two citizens under the Constitution of the United States; a citizen of the several States, under Article IV, Section 2, Clause 1 and a citizen of the United States, under the first section of the Fourteenth Amendment. The proper question to be asked is if a citizen of the United States, after the adoption of the Fourteenth Amendment, can be considered a natural born citizen (native born citizen), under the *Constitution of the United States*, eligible to be President of the United States of America?

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Article II, Section 5, Clause 1 states:

"No person except a natural born Citizen, or a Citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the Office of President."

Pardoning the confusion of terms, a natural born Citizen was a native born citizen, born in the United States of America, under the *Articles of Confederation* or the United States of America, under the *Constitution of the United States*, while a Citizen of the United States at the time of the adoption of the Constitution, was a person who was naturalized under the laws then existing under the *Articles of Confederation*.

A native born citizen then was one who was born with the territory of a government (country) and subject to its jurisdiction. In this case, the United States of America, under the *Articles of Confederation* or the United States of America, under the *Constitution of the United States*.

This type of citizenship was based on *jus soli*, that is one who is born on the soil of the country of which he is a citizen.

Through the years following the adoption of the *Constitution of the United States*, a new class of citizens naturalized under the laws under the *Constitution of the United States* came into being. Being citizens of the United States, they were under the Constitution ineligible to be President of the United States of America. However, their offspring, that is their children were not in the same circumstances. As long as they were born in the United States of America, they could become President of the United States of America under the Constitution. This is because they were born to parents who were themselves citizens of the United States, even though they were ineligible to be President of the United States of America. [\[Footnote 1\]](#)

This type of citizenship was based on *jus sanguinis*, that is what his or her parents were, also known as right of blood.

So after the adoption of the Constitution of the United States, and the passing of the last citizen of the United States who was a citizen of the United States at the time of the adoption of the *Constitution of the United States*, the only citizens eligible to be President of the United States of America, were natural born citizens, that is native born citizens who citizenship was based on *jus soli* (soil) or *jus sanguinis* (blood).

The preamble to the *Constitution of the United States* proclaims:

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States OF AMERICA.”

“The People of the United States” were the people of the several States:

“... Looking at the Constitution itself we find that it was ordained and established by ‘the people of the United States,’ and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, and that had by Articles of Confederation and Perpetual Union, in which they took the name of ‘the United States OF AMERICA,’ entered in to a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.” Minor v. Happersett: 88 U.S. 162, 167 (1874).

The People of the several States, or “the people of the different States in this Union, (were) the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, . . . entitled to all privileges and immunities of free citizens in the several States.” Article IV, Articles of Confederation.

Under the *Articles of Confederation*, the people of the several States, being free inhabitants of a different State, became under the *Constitution of the United States*, the people of the United States, being citizens of an individual State; to wit:

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” Article IV Section 2 Clause 1 Constitution of the United States.

“The People of the United States” were too citizens of the United States:

“To determine, then, who were citizens of the United States before the adoption of the [14th] amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership. Looking at the Constitution itself we find that it was ordained and established by ‘the people of the United States.’ “ Minor v. Happersett: 88 U.S. 162, 167 (1874).

Therefore, the People of the United States, being citizens of an individual State, were also citizens of the United States. Or, in other words, a person born in the United States of America; in a different state, before the adoption of the *Constitution of the United States* and under the *Articles of Confederation*, became under the adoption of the *Constitution of the United States*, in the United States of America, a citizen of a State and also a citizen of the United States.

Thus, a natural (native) born citizen under Article II, Section 5, Clause 2 is now a person born in the United States of America, in an individual State.

After the adoption of the Constitution, then, one born in the United States of America; in an individual State, was a citizen of a State, first, and then a citizen of the United States. A person naturalized under the laws of the United States, under the *Constitution of the United States*, however, was a citizen of the United States, first, and then a citizen of a State he or she was domiciled in. Gassies v. Baloon: 31 U.S. (6 Peters) 761 (1832).

Therefore, a natural (native) born citizen was a citizen of a State, first, and then a citizen of the United States, entitled under Article IV, Section 2, Clause 1 of the Constitution to “privileges and immunities of citizens in the several States.” A naturalized citizen was a citizen of the United States, first, and then a citizen of a State, entitled under Article IV, Section 2, Clause 1 of the Constitution to “privileges and immunities of citizens in the several States.” The only difference between them, before the 14th Amendment, was that a natural (native) born citizen could be President of the United States of America whereas a naturalized citizen could not be President of the United States of America.

Did the Fourteenth Amendment change this?

In the *Slaughterhouse Cases*, (83 U.S. 36) the Supreme court held that citizenship of a State was to be separate and distinct from citizenship of the United States. This was done because the Fourteenth Amendment does not apply to those who were born before it was adopted, that is before July 28, 1868 (note that the relevant section states: “All persons born in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside” and does not state: “All persons born in the United States AFTER THE ADOPTION OF THIS CONSTITUTION, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”).

Because the Fourteenth Amendment does not apply to those who were born before July, 28,

1868, the *Slaughterhouse* court held that because of the Fourteenth Amendment there were now two citizens under the Constitution of the United States (and not the Fourteenth Amendment), a citizen of the United States, under the Fourteenth Amendment and a citizen of the several States, under Article IV, Section 2, Clause 1. The *Slaughterhouse* court states that Article IV Section 2 Clause 1 is to be read as "The Citizens of each State shall be entitled to all Privileges and Immunities OF (and not IN) the several states." (83 U.S. 36, at page 75) [\[Footnote 2\]](#). In addition, at page 74, the Court states:

"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, (first section, second clause) [\[Footnote 3\]](#) 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.*"

That there are citizens of the several States 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 thru 114 (1890).

So the Fourteenth Amendment created two citizens under the Constitution of the United States; a citizen of the several States, under Article IV, Section 2, Clause 1 and a citizen of the United States, under the first section of the Fourteenth Amendment.

A citizen of the United States is no longer a citizen of the Union; that is, the United States of America, but now is a citizen of the United States (Fourteenth Amendment), that is a citizen of the territories and possessions of the United States, including the District of Columbia as well as federal enclaves [\[Footnote 4\]](#), [\[Footnote 5\]](#), whereas a citizen of the several States is a citizen of the Union; that is, the United States of America. [\[Footnote 6\]](#) The proper question to be asked is if a citizen of the United States, after the adoption of the Fourteenth Amendment, can be considered a native born citizen (natural born citizen) eligible to be President of the United States of America?

A naturalized citizen, after the adoption of the Fourteenth Amendment, is still a citizen of the United States. However, being a naturalized citizen still makes one ineligible to be President of the United States of America. The problem now is their offspring. If they are born in the United States and not the United States of America, they are now a citizen of the United States and not a citizen of the several States. If they are born in the United States of America, in an individual State of the Union, then they would be a citizen of a State and a citizen of the several States of the Union, but not a citizen of the United States.

Before the Fourteenth Amendment, Presidents of the United States of America were born in the United States of America, in an individual State of the Union. After the Fourteenth Amendment, Presidents of the United States of America were and are born in the United States

of America, in an individual State of the Union, but claim to be a citizen of the United States. In the case of Barack Obama, however, being born in Hawaii could make him a citizen of the United States in the territory of Hawaii rather than the State of Hawaii.

Footnotes:

[1] Article II, Section 1, Clause 1 of the Constitution of the United States reads:

“The executive Power shall be vested in a President of the United States *of America.*”

[2] In Maxwell v. Dow (176 U.S. 581 (1900), at page 588), 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.’

Also, in *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.”

http://press-pubs.uchicago.edu/founders/documents/a4_2_1s10.html

[3] “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.”

[4] “The intercourse of this country with foreign nations and its policy in regard to them, are placed by the Constitution of the United States in the hands of the government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the government is in amity and friendship. This principle is universally acknowledged by the laws of nations. It lies at the foundation of all government, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement to promote or encourage revolt or hostilities against the territories of a country with which our government is pledged by treaty to be at peace, without a breach of his duty as a citizen and the breach of the faith pledged to the foreign nation.” Kennett v. Chambers: 55 U.S. 38, 49 thru 50 (1852). (Before the 14th Amendment)

(*Note*: So one born in an individual State of the Union; before the 14th Amendment, was a citizen of that State, and with regards to other countries, under the law of nations, was a citizen of the United States.)

[5] “To determine, then, who were citizens of the United States before the adoption of the [14th] amendment it is necessary to ascertain what persons originally associated themselves together to form the nation, and what were afterwards admitted to membership. Looking at the Constitution itself we find that it was ordained and established by 'the people of the United States,' and then going further back, we find that these were the people of the several States that had before dissolved the political bands which connected them with Great Britain, and assumed a separate and equal station among the powers of the earth, and that had by Articles of Confederation and Perpetual Union, in which they took the name of 'the United States of America,' entered in to a firm league of friendship with each other for their common defence, the security of their liberties and their mutual and general welfare, binding themselves to assist each other against all force offered to or attack made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Whoever, then, was one of the people of either of these States when the Constitution of the United States was adopted, became ipso facto a citizen - a member of the nation created by its adoption. He was one the persons associating together to form the nation, and was, consequently, one of its original citizens. As to this there has never been a doubt. Disputes have arisen as to whether or not certain persons or certain classes of persons were part of the people at the time, but never as to their citizenship if they were.” Minor v. Happersett: 88 U.S. 162, 167 (1874).

(*Note*: The Fourteenth Amendment, Section 1, Clause 1 states: “All persons born in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside” and does not state: “All persons born in the United States OF AMERICA, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

[6] "Beyond question, a state may, through judicial proceedings take possession of the assets of an insolvent foreign corporation within its limits, and distribute such assets or their proceeds among creditors according to their respective rights. But may it exclude citizens of other states from such distribution until the claims of its own citizens shall have been first satisfied? In the administration of the property of an insolvent foreign corporation by the courts of the state in which it is doing business, will the Constitution of the United States permit discrimination against individual creditors of such corporations because of their being citizens of other states, and not citizens of the state in which such administration occurs?

We hold such discrimination against citizens of other states to be repugnant to the second section of the fourth article of the Constitution of the United States, although, generally speaking, the state has the power to prescribe the conditions upon which foreign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to **citizens of the several states** by the supreme law of the land. Indeed, all the powers possessed by a state must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States.

We must not be understood as saying that a citizen of one state is entitled to enjoy in another state every privilege that may be given in the latter to its own citizens. There are privileges that may be accorded by a state to its own people in which citizens of other states may not participate except in conformity to such reasonable regulations as may be established by the state. For instance, a state cannot forbid citizens of other states from suing in its courts, that right being enjoyed by its own people; but it may require a nonresident, although a citizen of another state, to give bond for costs, although such bond be not required of a resident. Such a regulation of the internal affairs of a state cannot reasonably be characterized as hostile to the fundamental rights of citizens of other states. So, a state may, by rule uniform in its operation as to **citizens of the several states**, require residence within its limits for a given time before a citizen of another state who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by citizens of each state of the privileges and immunities secured by the Constitution to **citizens of the several states**. The Constitution forbids only such legislation affecting citizens of the respective states as will substantially or practically put a citizen of one state in a condition of alienage when he is within or when he removes to another state, or when asserting in another state the rights that commonly appertain to those who are part of the political community known as **the people of the United States**, by and for whom the government of the Union was ordained and established. Blake v. McClung: 172 US. 239, 247-248, 254-255, 256-257 (1898).