SUPREME COURT OF THE UNITED STATES

No. 456.—October Term, 1966.

Beys Afroyim, Petitioner, v. Dean Rusk, Secretary of State.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 29, 1967.]

Mr. Justice Black delivered the opinion of the Court.

Petitioner, born in Poland in 1893, emigrated to this country in 1912 and became a naturalized American citizen in 1926. He went to Israel in 1950, and in 1951 he voluntarily voted in an election for the Israeli Knesset, the legislative body of Israel. In 1960, when he applied for renewal of his United States passport, the Department of State refused to grant it on the sole ground that he had lost his American citizenship by virtue of § 401 (e) of the Nationality Act of 1940 which provides that a United States citizen shall "lose" his citizenship if he votes "in a political election in a foreign state."[1] Petitioner then brought this declaratory judgment action in federal district court alleging that § 401 (e) violates both the Due Process Clause of the Fifth Amendment and § 1, cl. 1, of the Fourteenth Amendment[2] which grants American

[1] 54 Stat. 1137, as amended, 58 Stat. 746, 8 U. S. C. § 801:

"A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

. . . . .

"(e) Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory."

This provision was re-enacted as § 349 (a)(5) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 267–268, 8 U. S. C. § 1481 (a)(5).

[2] "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States . . . ."

citizenship to persons like petitioner. Because neither the Fourteenth Amendment nor any other provision of the Constitution expressly grants Congress the power to take away that citizenship once it has been acquired, petitioner contended that the only way he could lose his citizenship was by his own voluntary renunciation of it. Since the Government took the position that § 401 (e) empowers it to terminate citizenship without the citizen's voluntary renunciation, petitioner argued that this section is prohibited by the Constitution. The District Court and the Court of Appeals, rejecting this argument, held that Congress has constitutional authority forcibly to take away citizenship for voting in a foreign country based on its implied power to regulate foreign affairs. Consequently, petitioner was held to have lost his American citizenship regardless of his intention not to give it up. This is precisely what this Court held in *Perez* v. *Brownell*, 356 U. S. 44.

Petitioner, relying on the same contentions about voluntary renunciation of citizenship which this Court rejected in upholding § 401 (e) in *Perez*, urges us to reconsider that case, adopt the view of the minority there, and overrule it. That case, decided by a 5–4 vote 10 years ago, has been a source of controversy and confusion ever since, as was emphatically recognized in the opinions of all the judges who participated in this case below.[3] Moreover, in the other cases decided with [4] and since [5] *Perez*, this Court has consistently invalidated on a case-by-case basis various other statutory sections providing for involuntary expatriation. It has done so on

[3] 250 F. Supp. 686; 361 F. 2d 102, 105.

[4] *Trop* v. *Dulles*, 356 U. S. 86; *Nishikawa* v. *Dulles*, 356 U. S. 129.

[5] *Kennedy* v. *Mendoza-Martinez*, 372 U. S. 144; *Schneider* v. *Rusk*, 377 U. S. 163. In his concurring opinion in *Mendoza-Martinez*, MR. JUSTICE BRENNAN expressed "felt doubts of the correctness of *Perez* . . . ." 372 U. S., at 187.

various grounds and has refused to hold that citizens can be expatriated without their voluntary renunciation of citizenship. These cases, as well as many commentators,[6] have cast great doubt upon the soundness of *Perez*. Under these circumstances, we granted certiorari to reconsider it, 385 U. S. 917. In view of the many recent opinions and dissents comprehensively discussing all the issues involved,[7] we deem it unnecessary to treat this subject at great length.

The fundamental issue before this Court here, as it was in *Perez*, is whether Congress can consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up. The majority in *Perez* held that Congress could do this because withdrawal of citizenship is "reasonably calculated to effect the end that is within the power of Congress to achieve." 356 U. S., at 60. That conclusion was reached by this chain of reasoning: Congress has an implied power to deal with foreign affairs as an indispensable attribute of sovereignty; this implied power, plus the Necessary and Proper Clause, empowers Congress to regulate voting by American citizens in for-

[6] See, *e. g.*, Agata, Involuntary Expatriation and Schneider v. Rusk, 27 U. Pitt. L. Rev. 1 (1965); Hurst, Can Congress Take Away Citizenship?, 29 Rocky Mt. L. Rev. 62 (1956); Kurland, Foreword: "Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government," 78 Harv. L. Rev. 143, 169–175; Comment, 56 Mich. L. Rev. 1142 (1958); Note, Forfeiture of Citizenship Through Congressional Enactment, 21 U. Cin. L. Rev. 59 (1952); 40 Cornell L. Q. 365 (1955); 25 U. So. Cal. L. Rev. 196 (1952). But see, *e. g.*, Comment, The Expatriation Act of 1954, 64 Yale L. J. 1164 (1955).

[7] See *Perez* v. *Brownell*, *supra*, at 62 (dissenting opinion of THE CHIEF JUSTICE), 79 (dissenting opinion of MR. JUSTICE DOUGLAS); *Trop* v. *Dulles*, *supra*, at 91–93 (part I of opinion of Court); *Nishikawa* v. *Dulles*, *supra*, at 138 (concurring opinion of MR. JUSTICE BLACK).

eign elections; involuntary expatriation is within the "ample scope" of "appropriate modes" Congress can adopt to effectuate its general regulatory power. *Id.*, at 57–60. Then, upon summarily concluding that "there is nothing . . . in the Fourteenth Amendment to warrant drawing from it a restriction upon the power otherwise possessed by Congress to withdraw citizenship," *id.*, at 58, n. 3, the majority specifically rejected the "notion that the power of Congress to terminate citizenship depends upon the citizen's assent," *id.*, at 61.

First we reject the idea expressed in *Perez* that, aside from the Fourteenth Amendment, Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent. This power cannot, as *Perez* indicated, be sustained as an implied attribute of sovereignty possessed by all nations. Other nations are governed by their own constitutions, if any, and we can draw no support from theirs. In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones. The Constitution, of course, grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power. And even before the adoption of the Fourteenth Amendment, views were expressed in Congress and by this Court that under the Constitution the Government was granted no power, even under its express power to pass a uniform rule of naturalization, to determine what conduct should and should not result in the loss of citizenship. On three occasions, in 1795, 1797, and 1818, Congress considered and rejected proposals to enact laws which would describe cer-

tain conduct as resulting in expatriation.[8] On each occasion Congress was considering bills that were concerned with recognizing the right of voluntary expatriation and with providing some means of exercising that right. In 1795 and 1797, many members of Congress still adhered to the English doctrine of perpetual allegiance and doubted whether a citizen could even voluntarily renounce his citizenship.[9] By 1818, however, almost no one doubted the existence of the right of voluntary expatriation, but several judicial decisions had indicated that the right could not be exercised by the citizen without the consent of the Federal Government in the form of enabling legislation.[10] Therefore, a bill was introduced to provide that a person could voluntarily relinquish his citizenship by declaring such relinquishment in writing before a district court and then departing from the country.[11] The opponents of the bill argued that Congress had no constitutional authority, either express or implied, either under the Naturalization Clause or the Necessary and Proper Clause, to provide that a certain act would constitute expatriation.[12] They pointed to a proposed Thirteenth

[8] For a history of the early American view of the right of expatriation, including these congressional proposals, see generally Roche, The Early Development of United States Citizenship (1949); Tsiang, Expatriation in America Prior to 1907 (1942); Dutcher, The Right of Expatriation, 11 Am. L. Rev. 447 (1877); Roche, The Loss of American Nationality—The Development of Statutory Expatriation, 99 U. Pa. L. Rev. 25 (1950); Slaymaker, The Right of the American Citizen to Expatriate, 37 Am. L. Rev. 191 (1903).

[9] 4 Annals of Cong. 1005, 1027–1030 (1793–1795); 7 Annals of Cong. 349 *et seq.* (1797–1798).

[10] See, *e. g.*, *Talbot* v. *Jansen*, 3 Dall. 133.

[11] 31 Annals of Cong. 495 (1817–1818).

[12] *Id.*, at 1036–1037, 1058. Although some of the opponents, believing that citizenship was derived from the States, argued that any power to prescribe the mode for its relinquishment rested in the States, they were careful to point out that "the absence of all

Amendment, subsequently not ratified, which would have provided that a person would lose his citizenship by accepting an office or emolument from a foreign government.[15] Congressman Anderson of Kentucky argued:

> "The introduction of this article declares the opinion . . . that Congress could not declare the acts which should amount to a renunciation of citizenship; otherwise there would have been no necessity for this last resort. When it was settled that Congress could not declare that the acceptance of a pension or office from a foreign Emperor amounted to a disfranchisement of the citizen, it must surely be conceded that they could not declare that any other act did. The cases to which their powers before this amendment confessedly did not extend, are very strong, and induce a belief that Congress could not in any case declare the acts which should cause 'a person to cease to be a citizen.' The want of power in a case like this, where the individual has given the strongest evidence of attachment to a foreign potentate and an entire renunciation of the feelings and principles of an American citizen, certainly establishes the absence of all power to pass a bill like the present one. Although the intention with which it was introduced, and the title of the bill declare that it is to insure and foster the right of the citizen, the direct and inevitable effect of the bill, is an assumption of power by Congress to declare that certain acts when committed shall amount to a renunciation of citizenship." 31 Annals of Congress 1038–1039 (1817–1818).

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power from the State Legislatures would not vest it in us." *Id.*, at 1039.

[15] The amendment had been proposed by the 11th Cong., 2d Sess. See The Constitution of the United States of America, S. Doc. No. 39, 88th Cong., 1st Sess., 77–78 (1964).

Congressman Pindall of Virginia rejected the notion, later accepted by the majority in *Perez*, that the nature of sovereignty gives Congress a right to expatriate citizens:

> "[A]llegiance imports an obligation on the citizen or subject, the correlative right to which resides in the sovereign power; allegiance in this country is not due to Congress, but to the people, with whom the sovereign power is found; it is, therefore, by the people only that any alteration can be made of the existing institutions with respect to allegiance." *Id.*, at 1045.

Although he recognized that the bill merely sought to provide a means of voluntary expatriation, Congressman Lowndes of South Carolina argued:

> "But, if the Constitution had intended to give to Congress so delicate a power, it would have been expressly granted. That it was a delicate power and ought not to be loosely inferred, . . . appeared in a strong light, when it was said, and could not be denied, that to determine the manner in which a citizen may relinquish his right of citizenship, is equivalent to determining how he shall be divested of that right. The effect of assuming the exercise of these powers will be, that by acts of Congress a man may not only be released from all the liabilities, but from all the privileges of a citizen. If you pass this bill, . . . you have only one step further to go, and say that such and such acts shall be considered as presumption of the intention of the citizen to expatriate, and thus take from him the privileges of a citizen. . . . [Q]uestions affecting the right of the citizen were questions to be regulated, not by the laws of the General or State Governments, but by Constitutional provisions. If there was anything

> essential to our notion of a Constitution, . . . it was this: that while the employment of the physical force of the country is in the hands of the Legislature, those rules which determine what constitutes the rights of the citizen, shall be a matter of Constitutional provision." *Id.*, at 1050–1051.[14]

The bill was finally defeated.[15] It is in this setting that six years later, in *Osborn* v. *Bank of the United States*, 9 Wheat. 738, 827, this Court, speaking through Chief Justice Marshall, declared in what appears to be a mature and well-considered dictum that Congress, once a person becomes a citizen, cannot deprive him of that status:

> "[The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual."

Although these legislative and judicial statements may be regarded as inconclusive and must be considered in the historical context in which they were made,[15] any doubt

[14] *Id.*, at 1071. It is interesting to note that the proponents of the bill, such as Congressman Cobb of Georgia, considered it to be "the simple declaration of the manner in which a voluntary act, in the exercise of a natural right, may be performed" and denied that it created or could lead to the creation of "a presumption of relinquishment of the right of citizenship." *Id.*, at 1068.

[15] The dissenting opinion here points to the fact that a Civil War Congress passed two Acts designed to deprive military deserters to the Southern side of the rights of citizenship. Measures of this kind passed in those days of emotional stress and hostility are by no means the most reliable criteria for determining what the Constitution means.

as to whether prior to the passage of the Fourteenth Amendment Congress had the power to deprive a person against his will of citizenship once obtained should have been removed by the unequivocal terms of the Amendment itself. It provides its own constitutional rule in language calculated completely to control the status of citizenship: "All persons born or naturalized in the United States . . . are citizens of the United States . . . ." There is no indication in these words of a fleeting citizenship, good at the moment it is acquired but subject to destruction by the Government at any time. Rather the Amendment can most reasonably be read as defining a citizenship which a citizen keeps unless he voluntarily relinquishes it. Once acquired, this Fourteenth Amendment citizenship was not to be shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit.

It is true that the chief interest of the people in giving permanence and security to citizenship in the Fourteenth Amendment was the desire to protect Negroes. The *Dred Scott* decision, 19 How. 393, had shortly before greatly disturbed many people about the status of Negro citizenship. But the Civil Rights Act of 1866, 14 Stat. 27, had already attempted to confer citizenship on all persons born or naturalized in the United States. Nevertheless, when the Fourteenth Amendment passed the House without containing any definition of citizenship, the sponsors of the Amendment in the Senate insisted on inserting a constitutional definition and grant of citizenship. They expressed fears that the citizenship so recently conferred on Negroes by the Civil Rights Act could be just as easily taken away from them by subsequent Congresses, and it was to provide an insuperable obstacle against every governmental effort to strip Negroes of their newly acquired citizenship that the first clause was added to the Fourteenth Amend-

ment.[16] Senator Howard, who sponsored the Amendment in the Senate, thus explained the purpose of the clause:

> "It settles the great question of citizenship and removes all doubt as to what persons are or are not citizens of the United States. . . . We desired to put this question of citizenship and the rights of citizens . . . under the civil rights bill beyond the legislative power . . . ." Cong. Globe, 39th Cong., 1st Sess., 2890, 2896 (1866).

This undeniable purpose of the Fourteenth Amendment to make citizenship of Negroes permanent and secure would be frustrated by holding that the Government can rob a citizen of his citizenship without his consent by simply proceeding to act under an implied general power to regulate foreign affairs or some other power generally granted. Though the framers of the Amendment were not particularly concerned with the problem of expatriation, it seems undeniable from the language they used that they wanted to put citizenship beyond the power of any governmental unit to destroy. In 1868, two years after the Fourteenth Amendment had been adopted, Congress specifically considered the subject of expatriation. Several bills were introduced to impose involuntary expatriation on citizens who committed certain acts.[17] With little

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[16] Cong. Globe, 39th Cong., 1st Sess., 2768–2769, 2869, 2890 *et seq.* (1866). See generally, Flack, Adoption of the Fourteenth Amendment 88–94 (1908).

[17] Representative Jenckes of Rhode Island introduced an amendment that would expatriate those citizens who became naturalized by a foreign government, performed public duties for a foreign government, or took up domicile in a foreign country without intent to return. Cong. Globe, 40th Cong., 2d Sess., 968, 1129, 2311 (1868). Although he characterized his proposal as covering "cases where citizens may voluntarily renounce their allegiance to this country," *id.*,

discussion, these proposals were defeated. Other bills, like the one proposed but defeated in 1818, provided merely a means by which the citizen could himself voluntarily renounce his citizenship.[18] Representative Van Trump of Ohio, who proposed such a bill, vehemently denied in supporting it that his measure would make the Government "a party to the act dissolving the tie between the citizen and his country . . . where the statute simply prescribes the manner in which the citizen shall proceed to perpetuate the evidence of his intention, or election, to renounce his citizenship by expatriation." Cong. Globe, 40th Cong., 2d Sess., 1804 (1868). He insisted that "inasmuch as the act of expatriation depends almost entirely upon a question of intention on the part of the citizen," *id.*, at 1801, "the true question is, that not only the right of expatriation, but the whole power of its exercise, rests solely and exclusively in the will of the individual," *id.*, at 1804.[19] In strongest of terms, not contradicted by any during the debates, he concluded:

> "To enforce expatriation or exile against a citizen without his consent is not a power anywhere belong-

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at 1159, it was opposed by Representative Chanler of New York who said, "So long as a citizen does not expressly dissolve his allegiance and does not swear allegiance to another country, his citizenship remains in *statu quo*, unaltered and unimpaired." *Id.*, at 1016.

[18] Proposals of Representatives Pruyn of New York (*id.*, at 1130) and Van Trump of Ohio (*id.*, at 1801, 2311).

[19] While Van Trump disagreed with the 1818 opponents as to whether Congress had power to prescribe a means of voluntary renunciation of citizenship, he wholeheartedly agreed with their premise that the right of expatriation belongs to the citizen, not to the Government, and that the Constitution forbids the Government from being party to the act of expatriation. Van Trump simply thought that the opponents of the 1818 proposal failed to recognize that their mutual premise would not be violated by an

> ing to this Government. No conservative-minded statesman, no intelligent legislator, no sound lawyer has ever maintained any such power in any branch of the Government. The lawless precedents created in the delirium of war. . . . of sending men by force into exile, as a punishment for political opinion, were violations of this great law . . . of the Constitution. . . . The men who debated the question in 1818 failed to see the true distinction. . . . They failed to comprehend that it is not the Government, but that it is the individual, who has the right and the only power of expatriation. . . . [I]t belongs and appertains to the citizen and not to the Government; and it is the evidence of his election to exercise his right, and not the power to control either the election or the right itself, which is the legitimate subject matter of legislation. There has been, and there can be, no legislation under our Constitution to control in any manner the right itself." *Ibid.*

But even Van Trump's proposal, which went no further than to provide a means of evidencing a citizen's intent to renounce his citizenship, was defeated.[20] The Act,

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Act which merely prescribed "how . . . [the rights of citizenship] might be relinquished at the option of the person in whom they were vested." Cong. Globe, 40th Cong., 2d Sess., 1804 (1868).

[20] *Id.*, at 2317. Representative Banks of Massachusetts, the Chairman of the House Committee on Foreign Affairs which drafted the bill eventually enacted into law, explained why Congress refrained from providing a means of expatriation:

"It is a subject which, in our opinion, ought not to be legislated upon. . . . [T]his comes within the scope of natural rights which no Government has the right to control and which no Government can confer. And wherever this subject is alluded to in the Constitution— . . . it is in the declaration that Congress shall have no power whatever to legislate upon these matters." *Id.*, at 2316.

as finally passed, merely recognized the "right of expatriation" as an inherent right of all people.[21]

The entire legislative history of the 1868 Act makes it abundantly clear that there was a strong feeling in the Congress that the only way the citizenship it conferred could be lost was by the voluntary renunciation or abandonment by the citizen himself. And this was the unequivocal statement of the Court in the case of *United States* v. *Wong Kim Ark*, 169 U. S. 649. The issues in that case were whether a person born in the United States to Chinese aliens was a citizen of the United States and whether, nevertheless, he could be excluded under the Chinese Exclusion Act. The Court first held that within the terms of the Fourteenth Amendment, Wong Kim Ark was a citizen of the United States, and then pointed out that though he might "renounce this citizenship, and become a citizen of . . . any other country," he had never done so. *Id.*, at 704–705. The Court then held [22] that Congress could not do anything to abridge or affect his citizenship conferred by the Fourteenth Amendment. Quoting Chief Justice Marshall's well-considered and oft-repeated dictum in *Osborn* to the effect that Congress under the power of naturalization has "a power to confer citizenship, not a power to take it away," the Court said:

> "Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, *a fortiori* no act . . . of Congress . . .

[21] 15 Stat. 223, R. S. § 1999.

[22] Some have referred to this part of the decision as a holding, see, *e. g.*, Hurst, *supra*, 29 Rocky Mt. L. Rev., at 78–79; Comment, 56 Mich. L. Rev., at 1153–1154; while others have referred to it as *obiter dictum*, see, *e. g.*, Roche, *supra*, 99 U. Pa. L. Rev., at 26–27. Whichever it was, the statement was evidently the result of serious consideration and is entitled to great weight.

> can affect citizenship acquired as a birthright, by virtue of the Constitution itself . . . . 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 sufficient and complete right to citizenship." *Id.*, at 703.

To uphold Congress' power to take away a man's citizenship because he voted in a foreign election in violation of § 401 (e) would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of," and "take . . . away" citizenship. Because the Fourteenth Amendment prevents Congress from doing any of these things, we agree with the Chief Justice's dissent in the *Perez* case that the Government is without power to rob a citizen of his citizenship under § 401 (e).[25]

Because the legislative history of the Fourteenth Amendment and the expatriation proposals which preceded and followed it, like most other legislative history, contains many statements from which conflicting inferences can be drawn, our holding might be unwarranted if it rested entirely or principally upon that legislative history. But it does not. Our holding we think is the only one that can stand in view of the language and the purpose of the Fourteenth Amendment, and our construction of that Amendment, we believe, comports more nearly than *Perez* with the principles of liberty and equal justice to all that the entire Fourteenth Amendment was adopted to guarantee. Citizenship is no light trifle

[25] Of course, as THE CHIEF JUSTICE said in his dissent, 356 U. S., at 66, naturalization unlawfully procurred can be set aside. See, *e. g., Knauer* v. *United States*, 328 U. S. 654; *Baumgartner* v. *United States*, 322 U. S. 665; *Schneiderman* v. *United States*, 320 U. S. 118.

to be jeopardized any moment Congress decides to do so under the name of one of its general or implied grants of power. In some instances, loss of citizenship can mean that a man is left without the protection of citizenship in any country in the world—as a man without a country. Citizenship in this Nation is a part of a cooperative affair. Its citizenry is the country and the country is its citizenry. The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship.

Perez v. *Brownell* is overruled. The judgment is

Reversed.