AFROYIM v. RUSK
SUPREME COURT OF THE UNITED STATES
387 U.S. 253
May 29, 1967
[5 – 4]

OPINION: Mr. Justice BLACK…Petitioner, born in Poland in 1893, immigrated 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.' 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 which grants American 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*.

Petitioner…urges us to reconsider [*Perez*]…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'. 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 foreign elections; involuntary expatriation is within the 'ample scope' of 'appropriate modes' Congress can adopt to effectuate its general regulatory power. 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,' the majority specifically rejected the 'notion that the power of Congress to terminate citizenship depends upon the citizen's assent.'

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. **<u>In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship</u>. 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…**

[I]n *Osborn v. Bank of the United States*, 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 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, any doubt 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…' <u>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</u>. 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.

<u>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</u>… The *Dred Scott* decision…had shortly before greatly disturbed many people about the status of Negro citizenship. But the Civil Rights Act of 1866 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 Amendment. 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…<u>We desired to put this question of citizenship and the rights of citizens…under the civil rights bill beyond the legislative power</u>…'

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 proposed, Congress specifically considered the subject of expatriation. Several bills were introduced to impose involuntary expatriation on citizens who committed certain acts. With little 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. 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.' He insisted that 'inasmuch as the act of expatriation depends almost entirely upon a question of intention on the part of the citizen, 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.' 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 belonging 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…It 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.'

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. The Act, as finally passed, merely recognized the 'right of expatriation' as an inherent right of all people.

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*. <u>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</u>. 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. The Court then held that Congress could not do anything to abridge or affect his citizenship conferred by the Fourteenth Amendment…**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 <u>Fourteenth Amendment</u> 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)…***Perez v. Brownell* is overruled. The judgment is reversed.

DISSENT: Mr. Justice HARLAN/CLARK/STEWART/WHITE…The Court today overrules *Perez*, and declares §401(e) unconstitutional by a remarkable process of circumlocution. First, the Court fails almost entirely to dispute the reasoning in *Perez*; it is essentially content with the conclusory and quite unsubstantial assertion that Congress is without 'any general power, express or implied,' to expatriate a citizen 'without his assent.'…I can find nothing in this extraordinary series of circumventions which permits, still less compels, the imposition of this constitutional constraint upon the authority of Congress. I must respectfully dissent…