1984

Note, Alien Corporations and Federal Diversity Jurisdiction

Geoff Moulton

ALIEN CORPORATIONS AND FEDERAL DIVERSITY JURISDICTION

Prior to 1958, corporations had long been treated, for the purposes of diversity jurisdiction, as citizens only of their state, or country, of incorporation.[1] In July of that year Congress amended the federal diversity statute[2] and added section 1332(c), which provided that a corporation be treated as a citizen both of "any State by which it has been incorporated and of the State where it has its principal place of business."[3] In the years preceding 1958 several proposals to limit corporate use of diversity jurisdiction had been made.[4] The 1958 amendment, though among the most moderate of these

---

1. See, e.g., Steamship Co. v. Tugman, 106 U.S. 118, 121 (1882) (corporation chartered in a foreign country deemed a citizen of that country); Marshall v. Baltimore & O.R.R., 57 U.S. (16 How.) 314, 325-29 (1853) (corporation chartered in an American state deemed a citizen of that state). For sharply differing views of the propriety of treating corporations as citizens in diversity suits, compare McGovney, A Supreme Court Fiction: Corporations in the Diverse Citizenship Jurisdiction of the Federal Courts (pts. 1-3), 56 Harv. L. Rev. 853, 1090, 1225 (1943) (attacking the treatment of corporations as citizens), with Green, Corporations as Persons, Citizens, and Possessors of Liberty, 94 U. Pa. L. Rev. 202 (1946) (defending same). See infra notes 80-101 and accompanying text.

2. 28 U.S.C. § 1332 (1976).

3. Id. § 1332(c). Section 1332 provides in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—
>
> (1) citizens of different States;
>
> (2) citizens of a State and citizens or subjects of a foreign state;
>
> (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties . . .
>
> . . . .
>
> (c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business . . . .
>
> (d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

Id. § 1332.

4. These proposals ranged from treating a corporation as a citizen of any state in which it does business to limiting access to diversity jurisdiction to natural citizens. See 1 J. Moore, J. Lucas, H. Fink, D. Weckstein & J. Wicker, Moore's Federal Practice ¶ 0.77[1.-2], at 717.3-717.5 (2d ed. 1982) [hereinafter cited as Moore's Federal Practice].

The debate on the general contemporary utility of diversity jurisdiction continues. Those advocating abolition of diversity jurisdiction under 28 U.S.C. § 1332(a)(1)—suits between "citizens of different States"—include Judge Friendly, see H. Friendly, Federal Jurisdiction: A General View 139-52 (1973), and Chief Justice Burger, see Burger, Annual Report on the State of the Judiciary, 62 A.B.A. J. 443, 444 (1976). See also Currie, The Federal Courts and the American Law Institute (pt. 1), 36 U. Chi. L. Rev. 1, 6 (1968) (concluding that "the impossibility of drafting sensible and workable limits for diversity cases [may be] reason enough to abandon the jurisdiction"); Rowe, Abolishing Diversity Jurisdiction: Positive Side Effects and Potential for Further Reforms, 92 Harv. L. Rev. 963, 966 (1979) (focusing on the "additional effects of abolition—elimination or reduction of some of the most vexing problems in federal practice, demystified interpretations, and facilitation of reforms").

proposals, has been described as "probably the most far-reaching legislation affecting diversity jurisdiction since the original vesting act of 1789."[5] Twenty-five years later, federal courts remain divided on an important question of interpretation: how does the amendment affect the citizenship, for diversity purposes, of a corporation that is chartered in a foreign country but does much of its business in the United States?

This Note attempts to answer that question. The Note begins by drawing the three possible interpretations of section 1332(c)'s effect on alien corporations from the cases that have considered the question. Next, the Note examines the statutory language and the specific intent of the enacting Congress and finds both to be inconclusive guides to the proper interpretation of the statute. After considering section 1332(c) in light of the purposes of the 1958 amendment and diversity jurisdiction generally, however, the Note finds application of the provision to the alien corporation with its principal place of business in an American state plainly preferable to nonapplication. The Note then concludes that the special concerns of alienage jurisdiction strongly support an interpretation of section 1332(c) that vests the alien corporation with single, domestic citizenship, and that this interpretation is not inconsistent with the relevant policy of clear statement. Finally, the suggested interpretation is measured against the limits of article III "citizenship" and found acceptable.

I. The Effect of Section 1332(c) on Alien Corporations: Possible Interpretations

Section 1332(c) provides that for both original and removal diversity jurisdiction, "a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."[6] For domestic corporations, courts and commentators are in general agreement about the effect of section 1332(c). The provision is understood to create dual citizenship for any corporation whose principal place of business is in a state other than its state of incorporation.[7] As a result, in a suit

---

For arguments supporting retention of diversity jurisdiction, see, e.g., Frank, The Case for Diversity Jurisdiction, 16 Harv. J. on Legis. 403 (1979); Marsh, Diversity Jurisdiction: Scapegoat of Overcrowded Federal Courts, 48 Brooklyn L. Rev. 197 (1982); Wright, The Federal Courts and the Nature and Quality of State Law, 13 Wayne L. Rev. 317 (1967).

5. Moore & Weckstein, Corporations and Diversity of Citizenship Jurisdiction: A Supreme Court Fiction Revisited, 77 Harv. L. Rev. 1426, 1431 (1964).

6. 28 U.S.C. § 1332(c) (1976). This Note does not discuss separately the effect of § 1332(c) on removal diversity jurisdiction. The issues and problems are substantially the same as those involved in original diversity jurisdiction. See 1 Moore's Federal Practice, supra note 4, ¶ 0.161[1].

7. See 13 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure: Jurisdiction § 3624, at 777 (1975); 1 Moore's Federal Practice, supra note 4, ¶ 0.77[2.-1], at 717.40.

Of course, if a corporation has its principal place of business in its state of incorporation, it has just one citizenship. For a discussion of the problems surrounding the interprctation of "principal place of business," see infra note 60.

involving a corporation that is chartered in state *A* but has its principal place of business in state *B*, diversity is lacking if the opposing party is a citizen of either state *A* or state *B*.[8]

Courts have been unable to agree, however, on precisely what effect, if any, section 1332(c) ought to have on diversity suits involving corporations that are chartered in foreign countries but have their principal place of business in the United States. In the typical case—a suit between a citizen of state *A* and an alien corporation with its principal place of business in state *A*—the court need decide only whether section 1332(c) applies. Diversity of citizenship is lacking if the provision does apply, and is present if it does not.[9] No additional jurisdictional questions remain. In some cases, however—those involving suits between an alien and an alien corporation with its principal place of business in the United States—a simple holding that section 1332(c) applies to alien corporations is not sufficient to determine whether diversity exists. The court must also decide whether section 1332(c) creates dual or single citizenship for the alien corporation. If section 1332(c) creates dual citizenship, then aliens are present on both sides of the controversy, and diversity is lacking.[10] If, on the other hand, the alien corporation is considered a citizen only of its principal place of business, then diversity exists under section 1332(a)(2).[11]

A. *Suits Between a Citizen of State* A *and an Alien Corporation with its Principal Place of Business in State* A*: Does Section 1332(c) Apply?*

No consensus exists among courts as to whether section 1332(c) applies to alien corporations. The position taken in the first cases to consider the question was that section 1332(c) applies only to domestic corporations[12] and that

---

8. 1 Moore's Federal Practice, supra note 4, ¶ 0.77[2.-1], at 714.41, 717.40 & n.2 (collecting cases).

9. If the provision does apply, the alien corporation with its principal place of business in state *A* is deemed a citizen of state *A*, defeating diversity in the suit against another citizen of state *A*. If the provision does not apply, however, the alien corporation remains a citizen only of its chartering country, see Steamship Co. v. Tugman, 106 U.S. 118, 121 (1882), and diversity is maintained in the suit against a citizen of state *A*.

10. See, e.g., Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303 (1809); IIT v. Vencap, Ltd., 519 F.2d 1001, 1015 (2d Cir. 1975); 13 C. Wright, A. Miller & E. Cooper, supra note 7, § 3604, at 607–10.

11. Federal district courts have jurisdiction over suits between "citizens of a State and citizens or subjects of a foreign state." 28 U.S.C. § 1332(a)(2) (1976).

12. See, e.g., Tsakonites v. Transpacific Carriers Corp., 246 F. Supp. 634, 641 (S.D.N.Y. 1965), aff'd on other grounds, 368 F.2d 426 (2d Cir. 1966), cert. denied, 386 U.S. 1007 (1967); Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563, 567 (S.D.N.Y. 1964); Eisenberg v. Commercial Union Assurance Co., 189 F. Supp. 500, 502 (S.D.N.Y. 1960).

This position has been followed in several recent cases as well. See, e.g., Clarkson Co. v. Shaheen, 544 F.2d 624, 628 n.5 (2d Cir. 1976) (dictum); Birmingham Fire Ins. Co. v. KOA Fire & Marine Ins. Co., No. 81-6717 (S.D.N.Y. July, 26 1983) (available on LEXIS, Genfed library, Dist file); Salomon Englander y Cia v. Israel Discount Bank, Ltd., 494 F. Supp. 914, 918 (S.D.N.Y.

alien corporations thus remain citizens only of their country of incorporation.[13] *Eisenberg v. Commercial Union Assurance Co.*,[14] decided in 1960, is the leading case. In *Eisenberg*, the plaintiff was a citizen of New York; the defendant was a British corporation with its principal place of business within the United States in New York.[15] The defendant moved to dismiss for lack of diversity, claiming that under section 1332(c) it, like the plaintiff, was a citizen of New York. Focusing on the statutory language,[16] the court rejected the defendant's argument and ruled that section 1332(c) was not intended to apply to alien corporations.[17] As a result, the requisite diversity existed between the defendant—still deemed a citizen only of Great Britain—and the New York plaintiff.[18]

A number of recent cases, however, have rejected the *Eisenberg* rule and held that section 1332(c) does apply to alien corporations.[19] *Jerguson v. Blue Dot Investment, Inc.*,[20] for example, involved a suit by Florida citizens against a corporation chartered in Panama with its principal—and only—place of

---

1980); Corporacion Venezolana de Fomento v. Vintero Sales Corp., 477 F. Supp. 615, 618 (S.D.N.Y. 1979), aff'd in part, rev'd in part, 629 F.2d 786 (2d Cir. 1980), cert. denied, 449 U.S. 1080 (1981).

13. In other words, these cases hold that section 1332(c) left unchanged the rule of Steamship Co. v. Tugman, 106 U.S. 118 (1882). See supra note 1 and accompanying text.

14. 189 F. Supp. 500 (S.D.N.Y. 1960).

15. Id. at 501. The defendant's worldwide principal place of business was in London, however, which raised the additional question whether "principal place of business" in § 1332(c) means worldwide principal place of business or principal place of business in the United States. See infra notes 17, 60.

16. For a discussion of arguments based on the language of § 1332(c), see infra notes 29–37 and accompanying text.

17. 189 F. Supp. at 502. The court went on to say that even if § 1332(c) were to apply to alien corporations, the defendant still would not be deemed a citizen of New York. The court argued that the statute must be read to refer to a corporation's worldwide principal place of business (which in this case was not an American state), not to its principal place of business within the United States. On this point *Eisenberg* certainly is correct. See infra note 60 for a discussion of the appropriate scale on which to determine a corporation's principal place of business.

18. In cases like *Eisenberg* "diversity" jurisdiction is predicated on 28 U.S.C. § 1332(a)(2) (1976), which grants subject matter jurisdiction to federal courts in suits between "citizens of a State and citizens or subjects of a foreign state." Cases covered by § 1332(a)(2) fall under the general heading of diversity, and courts and commentators regularly refer to them as diversity cases. See, e.g., C. Wright, The Law of Federal Courts 127 n.1 (4th ed. 1983). These cases are sometimes referred to as "alienage" cases, however, to distinguish them from suits "between citizens of different States" covered by 28 U.S.C. § 1332(a)(1) (1976). See, e.g., C. Wright, supra, at 127 n.1. This Note follows the general practice and speaks in terms of "diversity" except when concerns peculiar to alienage jurisdiction arise.

19. The first reported case to apply § 1332(c) to an alien corporation was Southeast Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1007 (N.D. Ill. 1973). See also Jerguson v. Blue Dot Inv., Inc., 659 F.2d 31, 35 (5th Cir. Unit B 1981), cert. denied, 456 U.S. 946 (1982); Trans World Hosp. Supplies Ltd. v. Hospital Corp. of Am., 542 F. Supp. 869, 879 (M.D. Tenn. 1982); Bergen Shipping Co. v. Japan Marine Servs., Ltd., 386 F. Supp. 430, 433 (S.D.N.Y. 1974).

20. 659 F.2d 31 (5th Cir. Unit B 1981), cert. denied, 456 U.S. 946 (1982).

business in Florida. The district court granted defendant's motion to dismiss for want of diversity. The Fifth Circuit affirmed, arguing that the purpose underlying the enactment of section 1332(c) applied with equal force to alien and domestic corporations.[21] The Panamanian defendant was deemed a citizen of Florida and the suit was dismissed.

B. *Suits Between an Alien and an Alien Corporation with its Principal Place of Business in the United States: If Section 1332(c) Applies, Does it Create Dual or Single Citizenship?*

Most of the reported cases involving section 1332(c) and alien corporations have been suits between an alien corporation and a citizen of the state in which the alien corporation has its principal place of business.[22] In such cases the applicability of subsection (c) is the only jurisdictional issue. Several cases, however, have involved disputes between an alien and an alien corporation with its principal place of business in an American state. These cases raise the additional issue of whether section 1332(c), if applied to alien corporations, creates dual or single citizenship. Here, too, the courts are divided, with neither side offering reasoned analysis to support its position.

Several courts have assumed that if section 1332(c) applies to alien corporations it creates dual citizenship, just as it does for domestic corporations. In *Corporacion Venezolana de Fomento v. Vintero Sales Corp.*,[23] for example, a suit between a Venezuelan corporation and a Swiss corporation with its principal place of business in New York, the Second Circuit announced that it "need not reach the issue of whether [section] 1332(c) applies to alien corporations . . . because it is enough in this case to hold that, even assuming such dual citizenship, the fact that alien parties were present on *both* sides would destroy complete diversity."[24]

Other courts have assumed that section 1332(c) creates only single, domestic citizenship for the alien corporation whose principal place of business is in an American state. In *Bergen Shipping Co. v. Japan Marine Services, Ltd.*,[25] for example, a suit between a Japanese corporation and a Liberian corporation with its principal place of business in New York, the court held that it had diversity as well as admiralty jurisdiction. Reviewing the language and purpose of section 1332(c), the court felt "compelled to conclude that a corporation, be it alien or otherwise, with its principal place of business in a State should be deemed a citizen of that State."[26] The court assumed that

---

21. Id. at 35.

22. See infra note 52.

23. 629 F.2d 786 (2d Cir. 1980), cert. denied, 449 U.S. 1080 (1981).

24. Id. at 790; see also Hercules Inc. v. Dynamic Export Corp., 71 F.R.D. 101, 107 (S.D.N.Y. 1976) ("The statute creates [for both alien and domestic corporations] a principal [sic] of dual citizenship, not one of alternative citizenship.").

25. 386 F. Supp. 430 (S.D.N.Y. 1974).

26. Id. at 433.

section 1332(c) *created* diversity in the case before it,[27] a result that can logically be reached only if the statute is read as vesting the nominally alien corporation with only a single citizenship.[28]

In sum, the cases provide three plausible interpretations of section 1332(c)'s effect on the citizenship of alien corporations maintaining their principal place of business in the United States. The provision may be interpreted as having no effect on such corporations. It may be interpreted as vesting the alien corporation with dual citizenship—that of its country of incorporation and that of the American state in which it maintains its principal place of business. Finally, it may be interpreted as vesting the corporation with a single, domestic citizenship—that of its principal place of business.

II. CHOOSING THE CORRECT INTERPRETATION

The courts that have interpreted section 1332(c) as not applicable to alien corporations have chiefly relied on the "plain meaning" of the statutory language and the lack of specific congressional intent to include alien corporations in subsection (c). However, the language can as easily be read to support application of the provision to alien corporations, and there is no indication in the legislative history that Congress intended to exclude such corporations. Thus, both statutory language and specific intent are inconclusive guides to the proper interpretation of the provision. Adequate guidance can be found,

---

27. See id. at 434; see also Salomon Englander y Cia v. Israel Discount Bank, Ltd., 494 F. Supp. 914 (S.D.N.Y. 1980). Despite reference to "dual citizenship," the court in *Salomon Englander* apparently believed that the corporation's foreign citizenship would have no effect. Because § 1332 thus would create diversity in some situations, the court declined to apply the provision to alien corporations. Id. at 917.

28. Consider, however, the unusual approach taken in Trans World Hosp. Supplies Ltd. v. Hospital Corp. of Am., 542 F. Supp. 869 (M.D. Tenn. 1982), which involved a suit by a British corporation against, among others, a Cayman Islands corporation whose principal place of business was in Tennessee. There the court reached the same result as *Bergen*, but first stated that "an alien corporation would technically possess dual citizenship under section 1332(c)." Id. at 872 n.3. It then held that diversity existed by considering only the defendant's Tennessee citizenship, principally out of a concern that fairness required providing the "totally alien" plaintiff a federal forum. Id. at 878 n.8.

From a policy standpoint, the decision in *Trans World Hospital* has much to commend it. See infra notes 66-69 and accompanying text. The court's reasoning, however, is analytically unsound. If § 1332(c) in fact bestows dual citizenship on alien corporations then that dual citizenship would appear to be indistinguishable from the domestic variety—courts and parties could not disregard the place-of-incorporation citizenship in either case. Under § 1332(c), *X Corp.*, a domestic corporation chartered in state *A* with its principal place of business in state *B*, has dual citizenship—it is deemed a citizen of *both* state *A* *and* state *B*. Congress intended that the state *A* citizenship destroy complete diversity in a suit brought by a state *A* citizen, even though *X Corp.* is also a state *B* citizen and essentially a state *B* enterprise. Similarly, if *Z Corp.*, an alien corporation chartered in Panama with its principal place of business in state *B*, has dual citizenship, it would by definition be deemed a citizen of *both* Panama *and* state *B*. A consistent interpretation of the meaning of dual citizenship would require that an alien not be able to sue *Z Corp.* in diversity, even though *Z Corp.* is essentially a state *B* enterprise.

however, in the purposes of the 1958 amendment and of diversity jurisdiction generally. Those purposes strongly suggest that section 1332(c) be read to apply to alien corporations but not to create dual citizenship. In other words, an alien corporation with its principal place of business in state *A* should be treated as a citizen only of state *A*, thus defeating diversity in suits between it and citizens of state *A* but creating diversity in suits against aliens.

A. *Statutory Language and Specific Intent*

1. *Statutory Language.*—In the leading case to hold that section 1332(c) does not apply to alien corporations, *Eisenberg v. Commercial Union Assurance Co.*,[29] the court rested its decision on the language of subsection (c). It first noted, correctly, that section 1332 as a whole differentiates between foreign states and states of the United States by the use of an uppercase "S" for the latter.[30] Thus, the first clause of subsection (c), dealing with the place of incorporation, refers only to domestic corporations.[31] The court then argued that the next clause of subsection (c), which deals with principal-place-of-business citizenship, has the same subject as the first clause, and therefore that it too must refer only to domestic corporations.[32] Thus, the court concluded, "[u]nless a corporation is incorporated by a State of the United States it will not be deemed a citizen of the State where it has its principal place of business."[33]

As subsequent courts have noted, however, the reasoning of the court in *Eisenberg* is not persuasive.[34] While the statute itself makes clear that Congress intended the word "State" in section 1332(c) to encompass only American states,[35] and that the first clause of section 1332(c) therefore has no application to alien corporations, it does not necessarily follow that the principal-place-of-business clause of section 1332(c) is likewise inapplicable to alien corporations.

The statute provides two sources of corporate citizenship: incorporation in an American state and location of the principal place of business in an

---

29. 189 F. Supp. 500 (S.D.N.Y. 1960), discussed supra notes 14–18 and accompanying text.

30. 189 F. Supp. at 502 ("It is to be noted that the statute differentiates between States of the United States and foreign states by the use of a capital S for the word when applied to a State of the United States.").

Subsection (d) of section 1332 seems to resolve any doubt on this point. It provides: "The word 'States', as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico." 28 U.S.C. § 1332(d) (1976). No mention of foreign states is made here.

31. *Eisenberg*, 189 F. Supp. at 502.

32. Id.

33. Id. Other courts have relied in part on *Eisenberg*'s capitalization approach. See, e.g., Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563 (S.D.N.Y. 1964).

34. See, e.g., Jerguson v. Blue Dot Inv., Inc., 659 F.2d 31, 35 (5th Cir. Unit B 1981), cert. denied, 456 U.S. 946 (1982); Southeast Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1007 (N.D. Ill. 1973).

35. See supra note 30 and accompanying text.

American state. The applicability of one source need not depend on the applicability of the other. The second clause of section 1332(c) is inapplicable to domestic corporations when their principal place of business is outside the United States,[36] yet the first clause continues to apply. Similarly, though the state-of-incorporation clause of subsection (c) is inapplicable to alien corporations, no principle of logic or statutory construction compels a finding that the principal-place-of-business clause is inapplicable as well. The language of subsection (c) provides no ready answer to the question of whether it ought to be read to apply to alien corporations.

Nor, assuming that section 1332(c) does apply to alien corporations, does the statutory language resolve the question of its effect on a suit between an alien and an alien corporation with its principal place of business in an American state. The language is consistent both with an interpretation that grants dual citizenship and one that does not.[37]

2. *Specific Intent.* — Specific congressional intent is likewise inconclusive. Congress, in adopting section 1332(c), focused its attention on domestic corporations.[38] Nothing in the legislative history indicates direct consideration of whether the statute ought to apply to alien corporations doing the bulk of their business in the United States.[39] Nor, however, is there any indication of

---

36. Assuming that a corporation's principal place of business is to be evaluated on a worldwide scale, see infra note 60, a domestic corporation might have its principal place of business in a foreign country. In that case the second clause of section 1332(c), because it refers only to American "States," see supra note 30, is inapplicable. The principal place of business of such a corporation is irrelevant for jurisdictional purposes.

Similarly, if a domestic corporation's principal place of business is in its state of incorporation, then the second clause of subsection (c), if not inapplicable, is at least redundant. See Southeast Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1007 (N.D. Ill. 1973) ("Since it makes no sense at all for a corporation to be twice a citizen of the same state, there must be read in at the end of the section, 'if the State of its principal place of business is different from the State of its incorporation.'").

37. Under the dual-citizenship interpretation, *Z Corp.*, an alien corporation with its principal place of business in state *A* becomes a citizen of state *A*, but also retains the foreign citizenship it holds under the rule of Steamship Co. v. Tugman, 106 U.S. 118 (1882). Under the single-citizenship interpretation, when § 1332(c) applies, as it does to *Z Corp.*, the rule of *Tugman* is displaced and *Z Corp.* becomes a citizen only of state *A*; when § 1332(c) does not apply—when an alien corporation maintains its worldwide principal place of business *outside* the United States—the *Tugman* rule applies and the corporation is treated as a citizen of its chartering country.

38. See, for example, the characterization in the Senate Report of the evil to be remedied:

> This fiction of stamping a corporation a citizen of the State of its incorporation has given rise to the evil whereby a local institution, engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the Federal courts simply because it has obtained a corporate charter from another State.

S. Rep. No. 1830, 85th Cong., 2d Sess. 4 (1958), reprinted in 1958 U.S. Code Cong. & Ad. News 3099, 3101-02 [hereinafter cited as Senate Report].

39. The lack of specific intent is uncontroverted in the cases. See, e.g., Jerguson v. Blue Dot Inv., Inc., 659 F.2d 31, 32 (5th Cir. Unit B 1981), cert. denied, 456 U.S. 946 (1982); Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563, 566 (S.D.N.Y. 1965).

Of course, since Congress did not consider § 1332(c)'s applicability to alien corporations, it also did not consider the statute's effect on alien-versus-alien suits.

specific intent to exclude alien corporations.[40] While this lack of specific direction has been cited to support leaving the question to congressional resolution,[41] the better view is one that recognizes the proper role of the judiciary in difficult cases of statutory interpretation. That function, in the words of Professors Hart and Sacks, "is to decide what meaning ought to be given to the directions of the statute in the respects relevant to the case before it."[42] Courts should make that decision not by abdication but rather by analyzing the possible meanings of a statute in light of congressional purpose.

B. *The Purposes of Diversity Jurisdiction and the 1958 Amendment*

Congress enacted subsection (c) of section 1332 in 1958 as part of legislation designed principally to reduce the amount of litigation in federal courts.[43] Section 1332(c) had an additional, more specific purpose: correcting alleged abuses of diversity jurisdiction that grew out of the Supreme Court's treatment of corporations as citizens of their state of incorporation.[44] In particular, Congress had in mind the following scenario. *X Corp.* and *Y Corp.* both do most of their business in New York. *X Corp.* is incorporated in New York, while *Y Corp.* is incorporated in Delaware. As a result of the rule of corporate citizenship enunciated in *Marshall v. Baltimore & Ohio Railroad*,[45] *Y Corp.* had the advantage over *X Corp.* of being able to choose between state and federal courts when litigating against citizens of New York.[46] Congress consid-

---

40. Although examples of the "evil to be remedied" in the legislative history generally refer to corporations chartered in a "State" (read state of the United States), see, e.g., material quoted supra note 38, they do not attribute any significance to the domestic character of those corporations. See, e.g., Jurisdiction of Federal Courts Concerning Diversity of Citizenship: Hearing on H.R. 2516 and H.R. 4497 Before Subcomm. No. 3 of the House Comm. on the Judiciary, 85th Cong., 1st Sess. 29 (1957) (testimony of Hon. Albert B. Maris) ("It was recognized that there may be an abuse in this field due to the presumption I have mentioned, this fiction of stamping a corporation as a citizen of the State of its incorporation; a fiction which is particularly unreal in the case of a corporation which is doing wholly local business in a State other than that of its incorporation.").

41. See Salomon Englander y Cia v. Israel Discount Bank, Ltd., 494 F. Supp. 914, 917 (S.D.N.Y. 1980); Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563, 566-67 (S.D.N.Y. 1964); 1 Moore's Federal Practice, supra note 4, ¶ 0.75[3].

42. H. Hart & A. Sacks, The Legal Process 1410 (tent. ed. 1958).

43. See Senate Report, supra note 38, at 2-3, reprinted in 1958 U.S. Code Cong. & Ad. News at 3100-01; H.R. Rep. 1706, 85th Cong., 2d Sess. 2-3 (1958) [hereinafter cited as House Report]. As part of its effort to reduce the federal district court caseload Congress raised the jurisdictional amount for both federal question and diversity jurisdiction from over $3,000 to over $10,000, 28 U.S.C. §§ 1331(a), 1332(a) (1976) (jurisdictional amount requirement repealed for federal question cases in 1980), and effectively ended removal jurisdiction of state workers' compensation cases, id. § 1445(c).

44. See, e.g., Senate Report, supra note 38, at 4-5, reprinted in 1958 U.S. Code Cong. & Ad. News at 3101-02; House Report, supra note 43, at 3-4.

45. 57 U.S. (16 How.) 314 (1853). For a brief discussion of the history of corporate citizenship, see infra notes 82-86 and accompanying text.

46. Prior to the adoption of § 1332(c), *Y Corp.*, deemed a citizen of Delaware, could sue New York citizens either in state court, or in federal district court under 28 U.S.C.

ered this advantage unfair,[47] as well as unwarranted by what it perceived to be the underlying purpose of the diversity statute: protection of out-of-state litigants from the prejudice of local courts and local juries by providing a disinterested forum.[48]

Congress saw no reason to believe that New York courts bore any greater animosity toward the "pseudo-foreign"[49] *Y Corp.*, essentially a local enterprise, than they did toward *X Corp.*, simply because the former happened to be chartered in Delaware. In order to correct this perceived inequity, while at the same time reducing the federal court caseload, Congress modified the rule of *Marshall* and enacted section 1332(c). Measured against these purposes, an interpretation of section 1332(c) that applies the provision to alien corporations is plainly preferable to one that does not.

1. *Reduction of Litigation in Federal District Courts.* — Application of section 1332(c) to alien corporations, whether to establish dual or single citizenship, is likely to serve the 1958 amendment's purpose of reducing litigation in the federal district courts.[50] If section 1332(c) were understood to create dual citizenship for the alien corporation with its principal place of business in an American state, the reduction in litigation would be absolute. The provision would operate to defeat diversity in many cases in which it had previously existed and would create diversity jurisdiction in no new category of cases.[51] If understood to establish single, domestic citizenship, there would

---

§ 1332(a)(1) (1976). It could also remove to federal district court suits brought against it by New York citizens. 28 U.S.C. § 1441(a) (1976). *X Corp.*, deemed a citizen of New York, could sue New York citizens only in state court, and could not remove to federal court suits brought against it by New Yorkers (in the absence of a federal question).

47. See Senate Report, supra note 38, at 4, reprinted in 1958 U.S. Code Cong. & Ad. News at 3102 ("This circumstance can hardly be considered fair because it gives the privilege of a choice of courts to a local corporation simply because it has a charter from another State, an advantage which another local corporation that obtained its charter in the home State does not have.").

48. See id.:

> The underlying purpose of diversity of citizenship legislation (which incidentally goes back to the beginning of the Federal judicial system, having been established by the Judiciary Act of 1789) is to provide a separate forum for out-of-State citizens against the prejudices of local courts and local juries by making available to them the benefits and safeguards of the Federal courts. Whatever the effectiveness of this rule, it was never intended to extend to local corporations which, because of a legal fiction, are considered citizens of another State.

Congress apparently failed to consider other possible rationales for diversity jurisdiction. See Friedenthal, New Limitations on Federal Jurisdiction, 11 Stan. L. Rev. 213, 214 & n.5 (1959). For the debate over the continuing vitality of the rationale adopted by Congress, as well as debate over other rationales for diversity jurisdiction, see sources cited supra note 4.

49. The term "pseudo-foreign" is taken from Currie, supra note 4, at 37.

50. See supra note 43 and accompanying text.

51. In the typical case—the suit between a citizen of state *A* and *Z Corp.*, an alien corporation with its principal place of business in state *A*—application defeats diversity; *Z Corp.* is deemed a citizen of state *A*. See supra note 9 and accompanying text. In the apparently less common case—between *Z Corp.* and another alien—creation of dual citizenship has no effect; *Z Corp.* retains its alien citizenship, and the presence of aliens on both sides of a controversy defeats diversity. See supra note 10 and accompanying text.

likely be a *net* reduction. The provision would create diversity in a small class of cases in which it had previously *not* existed—those involving suits between an alien and an alien corporation with its principal place of business in the United States—but would defeat diversity in the apparently more common case of a suit between a citizen of state *A* and an alien corporation with its principal place of business in state *A*.[52] Thus, either of the two possible applications of the provision to alien corporations better effectuates the 1958 amendment's goal of reducing the federal court caseload than does nonapplication.

2. *Correcting Abuse of Diversity Jurisdiction.* — The second and more important purpose underlying the enactment of section 1332(c) was to deny "pseudo-foreign" corporations access to the federal courts in essentially local disputes.[53] This purpose strongly suggests that application of section 1332(c) to alien corporations is preferable to nonapplication.

Congress enacted section 1332(c) in the belief that a domestic corporation maintaining its principal place of business in state *A* has significant contacts there, and need not fear local bias, even if it happens to be incorporated in state *B*.[54] In order to eliminate "technical finding[s] of diversity,"[55] Congress

---

52. Although it is not readily determinable that the suit between an alien corporation with its principal place of business in state *A* and a citizen of state *A* is more common than one between that corporation and another alien, a review of the available cases suggests that this is so. In the 22 alien-corporation cases available on LEXIS in which section 1332(c) might have had an effect, diversity would have been created in 8 and defeated in 14. Of course, reported cases do not necessarily constitute an accurate sample of the cases in which the question of section 1332(c)'s effect on alien corporate citizenship arises. Even if the creation of single citizenship created diversity as often as it defeated it, however, that result is not inconsistent with "a statute whose purpose was to rationalize as well as to limit jurisdiction." Currie, supra note 4, at 42 n.198.

53. See supra notes 44–48 and accompanying text.

54. "A corporation which [maintains its principal place of business in a] State is so closely tied to the local commercial fabric of that State as to be properly considered a citizen thereof, even though it may have been incorporated elsewhere." Senate Report, supra note 38, at 20–21, reprinted in 1958 U.S. Code Cong. & Ad. News at 3120 (Report of Committee on Jurisdiction and Venue of the Judicial Conference of the United States (March 12, 1951)). The sentence quoted above actually refers to "[a] corporation which receives more than half its gross income from business within a single State." The original Judicial Conference recommendation, which provided that a corporation be deemed a citizen of that state "within which it derived more than half its gross income," id. at 26, reprinted in 1958 U.S. Code Cong. & Ad. News at 3126, was later changed to the current "principal place of business" language, because the latter provided "a simpler and more practical formula," id. at 30–31, reprinted in 1958 U.S. Code Cong. & Ad. News at 3132.

As it turns out, "principal place of business" has not proved a simple formula to apply, and determining its proper application is beyond the scope of this Note. It is apparently well settled that every corporation has one, and only one, principal place of business, but the question of how to locate that place remains unsettled. The two competing formulas for locating that place are the "nerve-center" or home-office test, and the place-of-operations test. See 13 C. Wright, A. Miller & E. Cooper, supra note 8, § 3625.

55. Southwest Guar. Trust Co. v. Rodman & Renshaw, Inc., 358 F. Supp. 1001, 1007 (N.D. Ill. 1973).

chose to treat this corporation as a citizen of state *A* for diversity purposes. An alien corporation with its principal place of business in state *A* need have no greater fear of local bias simply because it is chartered in a foreign country rather than in state *B*. This alien corporation is no less "local" than its domestic counterpart, and a finding of diversity between it and a citizen of state *A* would be no less "technical."[56]

Indeed, the ability of an alien corporation with its principal place of business in state *A* to bring essentially local disputes with citizens of state *A* into federal court constitutes precisely the sort of evil Congress sought to correct. It is difficult to imagine clearer guidance from legislative purpose. Application of section 1332(c) to alien corporations, whether to create dual or single citizenship, furthers this legislative purpose; nonapplication ignores it.

C. *The Special Concerns of Alienage Jurisdiction*

The purposes of section 1332(c) strongly suggest that it ought to be applied to alien corporations. Nonetheless, a conscientious decision whether to interpret the provision as applicable to alien corporations requires consideration of an additional set of concerns—those that come into play when alienage is the basis of the court's diversity jurisdiction. At least two courts have suggested that application of section 1332(c) to alien corporations might conflict with the special concerns of alienage jurisdiction.[57] Upon examination, however, such an argument proves unpersuasive. In fact, the special concerns of alienage jurisdiction militate in favor of reading the provision to create single, domestic citizenship for an alien corporation that maintains its principal place of business in the United States.

1. *The Argument Against Application.* — The underlying rationale of alienage jurisdiction is generally considered to be protection against the appearance of unfairness toward foreign citizens. The American Law Institute, for example, has described the rationale as follows:

> Whether the state courts in fact generally render full, fair, and speedy justice to alien litigants is largely beside the point. It is

---

56. In Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563 (S.D.N.Y. 1964), for example, the plaintiff was a corporation with its principal (and perhaps only) place of business in New York, wholly owned and operated by a New York citizen, but incorporated in Liberia. Id. at 564 n.2. The court's failure to hold § 1332(c) applicable to alien corporations allowed the plaintiff to sue a New York citizen in federal court based on diversity jurisdiction, a result that did not further any congressional objective.

Congress also had noted that out-of-state incorporations "are primarily initiated to obtain some advantage taxwise in the State of incorporation or to obtain the benefits of the more liberal provisions of the foreign State's corporation laws." Senate Report, supra note 38, at 4, reprinted in 1958 U.S. Code Cong. & Ad. News at 3102. Judging by the facts of *Chemical Transportation*, this observation would seem to be no less true of incorporations in foreign countries.

57. See Salomon Englander y Cia v. Israel Discount Bank, Ltd., 494 F. Supp. 914, 918 (S.D.N.Y. 1980) (noting "unique policy considerations relevant to foreign corporations"); Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563, 567 (S.D.N.Y. 1964) (questioning "whether applicability of § 1332(c) to alien corporations would have a negative effect on foreign trade or commerce").

> important in the relations of this country with other nations that any possible appearance of injustice or tenable ground for resentment be avoided. This objective can best be achieved by giving the foreigner the assurance that he can have his cases tried in a court with the best procedures the federal government can supply and with the dignity and prestige of the United States behind it.[58]

Application of section 1332(c) to alien corporations would compel an alien corporation that maintained its principal place of business in an American state to carry on litigation against citizens of that state in state court. At least two decisions have suggested that such a result might give rise to potential conflicts with foreign sovereigns.[59]

This objection, however, has only superficial appeal. When an alien corporation's principal place of business, evaluated on a worldwide scale,[60] is

---

58. American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts 108 (1969) [hereinafter cited as ALI Study].

See also The Federalist No. 80, at 500-01 (A. Hamilton) (C. Rossiter ed. 1961):

> [T]he peace of the WHOLE ought not to be left at the disposal of a PART. The Union will undoubtedly be answerable to foreign powers for the conduct of its members. And the responsibility for an injury ought ever to be accompanied with the faculty of preventing it. As the denial or perversion of justice by the sentences of courts, as well as in any other manner, is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned. This is not less essential to the preservation of the public faith, than to the security of the public tranquillity.

59. See supra note 57.

60. This Note's analysis of § 1332(c) rests on the assumption that a corporation's principal place of business is to be determined on a worldwide scale. It has been suggested, however, most notably by Professor Moore in his federal practice treatise, that under section 1332(c) a domestic corporation should be deemed a citizen of its principal place of business within the United States, "no matter how meager such business may be in relation to the corporation's foreign operations." 1 Moore's Federal Practice, supra note 4, ¶ 0.77[2.-3], at 717.47. Under this view a corporation, alien or domestic, doing 99% of its business in France and 1% of its business in New York would be deemed a citizen of New York—its "principal place of business" within the United States. This result would substantially undercut the argument that an alien (or domestic) corporation with its principal place of business in a given state is an essentially local enterprise that need not fear local bias.

Professor Moore's interpretation, however, while still mentioned, see, e.g., Salomon Englander y Cia v. Israel Discount Bank, Ltd., 494 F. Supp. 914, 918 (S.D.N.Y. 1980), has been overwhelmingly rejected by the courts that have considered the question. See, e.g., id.; R.W. Sawant & Co. v. Ben Kozloff, Inc., 507 F. Supp. 614, 616 (N.D. Ill. 1981) (noted in 22 Harv. Int'l L.J. 688 (1981)); Eisenberg v. Commercial Union Assurance Co., 189 F. Supp. 500, 502 (S.D.N.Y. 1960). But see Sansone v. Ocean Accident and Guar. Corp., 228 F. Supp. 554, 555 (E.D. La. 1964) (diversity jurisdiction exists in suit between Connecticut plaintiffs and an alien corporation with principal United States place of business in Georgia). Moreover, the interpretation is inconsistent with the legislative purpose underlying the enactment of § 1332(c). That section was intended to remove the option of choosing a federal forum from the "*local* institution, engaged in a *local* business," that happened to be incorporated elsewhere. Senate Report, supra note 38, at 4, reprinted in 1958 U.S. Code Cong. & Ad. News at 3101-02 (emphasis added). A corporation, whether chartered domestically or in a foreign country, doing only the slightest fraction of its business in a given state, cannot be considered a "local institution, engaged in a local business."

in an American state, that corporation necessarily has developed substantial ties in the United States. These ties protect the corporation from possible local bias, eliminating any reasonable basis for foreign objection to the corporation's litigation in state court. Moreover, such an alien corporation may have no ties with the chartering country other than the fact of incorporation,[61] significantly diminishing the need to fear foreign objection.[62]

Indeed, Congress's actions in a related area—foreign arbitration—confirm that the concerns underlying alienage jurisdiction are of limited force in the case of an alien corporation that maintains its principal place of business in the United States. The Foreign Arbitral Awards Convention, as implemented by Congress in 1970,[63] allows a party to an agreement covered by the Convention to ask a federal district court to confirm an arbitral award, compel arbitration, or appoint an arbitrator.[64] Congress limited the scope of the Convention to exclude most agreements "entirely between citizens of the United States," and it defined a corporation as a "citizen of the United States if it is incorporated *or* has its principal place of business in the United States."[65]

The objection could have been made that requiring alien corporations that have their principal place of business in the United States to seek enforcement of their arbitration agreements in state, rather than federal, court risks offending the foreign states in which the corporations are chartered. Yet Congress apparently was untroubled by such a possibility, or at least was unwilling to allow it to override the purposes of excluding essentially local arbitration matters from the federal courts. No greater reason to fear foreign offense exists in denying nominally alien corporations access to federal court in diversity suits against citizens of the state in which they maintain their principal place of business. Nor should this fear override Congress's intent to exclude such essentially local disputes from the federal courts.

2. *The Argument in Favor of Single-Citizenship Application.* — A suit between a citizen of state *A* and an alien corporation with its principal place of business in state *A* can be regarded as an essentially local dispute, to which the concerns of alienage jursdiction have little reasonable application. The same is not true, however, of a suit between an alien and an alien corporation with its principal place of business in an American state. In that case the special

---

61. See supra note 56.

62. This is the position apparently taken by the American Law Institute, which, despite its awareness of the fear-of-foreign-entanglement rationale for alienage jurisdiction, see supra text accompanying note 58, has advocated amending section 1332(c) in order to make clear its application to alien corporations. ALI Study, supra note 58, at 10, 112-13 (proposed § 1301(b)(1)).

63. Pub. L. No. 91-368, 84 Stat. 692 (1970), 9 U.S.C. §§ 201-208 (1982). See H.R. Rep. No. 1181, 91st Cong., 2d Sess. (1970), reprinted in 1970 U.S. Code Cong. & Ad. News 3601.

64. Bergesen v. Joseph Muller Corp., 548 F. Supp. 650, 652-53 (S.D.N.Y. 1982).

65. 9 U.S.C. § 202 (1982) (emphasis added).

concerns of alienage jurisdiction support reading section 1332(c) to create diversity.

Since an alien corporation with its principal place of business in state *A* is likely to be viewed as a local entity, the true alien may well have reason to fear precisely that local bias in the courts of state *A* that the diversity jurisdiction of the federal courts was designed to prevent.[66] More important, the true alien's government is likely to regard the nominally alien corporation as a local entity, rightly perceiving little difference between the suit in question and one involving a purely local corporation. In both cases, the policy underlying alienage jurisdiction compels the conclusion that the true alien be afforded access to a court "with the best procedures the federal government can supply and with the dignity and prestige of the United States behind it," in order to avoid creating "any possible appearance of injustice or tenable ground for resentment."[67]

Nonapplication of section 1332(c) to alien corporations fails to provide the true alien with the option of proceeding in federal court. The same holds true if the statute is read to create dual citizenship for the nominally alien corporation. In each case, the presence of "aliens" on both sides of the controversy defeats diversity and thus bars access to federal court.[68] The concerns of alienage jurisdiction are adequately addressed only by interpreting section 1332(c) to create a single, domestic citizenship for alien corporations that have their principal place of business in an American state.[69]

D. *Clear-Statement Concerns*

Measured against the policies underlying the enactment of section 1332(c), application of the provision to alien corporations is plainly preferable to nonapplication. In addition, the special concerns of alienage jurisdiction strongly suggest an interpretation that vests the alien corporation with a single, domestic citizenship. Nonetheless, one remaining question of statutory interpretation raises a possible objection to the interpretation of section 1332(c) offered here.

It is an established canon of statutory construction that principles of federalism compel courts to read ambiguous federal statutes narrowly in order to avoid intruding on state sovereignty.[70] In *United States v. Bass*,[71] for

---

66. See Trans World Hosp. Supplies, Ltd. v. Hospital Corp. of Am., 542 F. Supp. 869, 878 n.8 (M.D. Tenn. 1982).

67. ALI Study, supra note 58, at 108, quoted supra text accompanying note 58.

68. See supra note 10 and accompanying text.

69. So interpreted, § 1332(c) allows the true alien to proceed in federal court against the alien corporation with its principal place of business in an American state.

70. See, e.g., United States v. Bass, 404 U.S. 336, 349 & n.16 (1971) (collecting cases); L. Tribe, American Constitutional Law 141-42 (1978) ("Supreme Court should not lightly infer serious congressional inroads upon state autonomy"); H. Hart & A. Sacks, supra note 42, at 1241.

71. 404 U.S. 336 (1971).

example, the Supreme Court invoked this "requirement of clear statement,"[72] declining to read a federal criminal statute as making conduct generally thought to be within the purview of state regulation a federal crime: "unless Congress conveys its purpose clearly, it will not be deemed to have significantly altered the federal-state balance."[73]

Section 1332(c), if understood to create federal diversity jurisdiction in cases previously within the exclusive domain of the state courts,[74] works some change in the federal-state balance,[75] arguably rendering objectionable an otherwise valid interpretation. Indeed, a concern for clear statement is evident in one court's observation that "[h]ad Congress wished to have § 1332(c) apply to alien corporations, it could have [so] provided."[76]

Clear-statement rules, however, are not intended to be a substitute for traditional methods of statutory interpretation.[77] Rather, they operate in the absence of clear guidance from legislative purpose. In *Bass*, for example, the Supreme Court resorted to the policy of clear statement only after deciding that "'seiz[ing] very thing from which aid can be derived,' . . . we are left with an ambiguous statute."[78]

Such a situation does not exist in the case of section 1332(c). While the statutory language admits of several interpretations and specific congressional direction is lacking, the purposes of the 1958 amendment and the related concerns of alienage jurisdiction provide clear guidance. Disregard of the legislative design in the name of "clear statement" misperceives the purpose of the rule and of statutory interpretation generally.[79]

---

72. Id. at 349.

73. Id.

74. See supra notes 25-28, 66-69 and accompanying text.

75. The change would hardly be "significant," however. Access to federal diversity jurisdiction would not be conferred on any new class of litigants. Cf. United Steelworkers v. R.H. Bouligny, Inc., 382 U.S. 145, 150-51 (1965) (declining to extend the benefits of diversity jurisdiction to unincorporated associations). In fact, applying § 1332(c) works a net reduction in federal diversity jurisdiction, thereby *increasing* the jurisdiction of the state courts. See supra notes 50-52 and accompanying text.

76. Chemical Transp. Corp. v. Metropolitan Petroleum Corp., 246 F. Supp. 563, 566 (S.D.N.Y. 1964).

77. The rule is "applicable only when we are uncertain about the statute's meaning and [is] not to be used 'in complete disregard of the purpose of the legislature.'" Scarborough v. United States, 431 U.S. 563, 577 (1977) (quoting United States v. Bramblett, 348 U.S. 503, 510 (1955)); see also Comment, Section 1983 Municipal Liability and the Doctrine of Respondeat Superior, 46 U. Chi. L. Rev. 935, 968-69 (1979) ("]T]he clear-statement rule seems to be merely a canon of construction to be applied when the usual methods of statutory interpretation do not reveal the congressional intent.").

Professor Easterbrook has recently criticized the clear-statement principle as failing to prescribe the conditions for its own application. See Easterbrook, Statutes' Domains, 50 U. Chi. L. Rev. 533, 544-45 (1983); cf. H. Friendly, Benchmarks 211-12 (1967) (criticizing the doctrine of construction to avoid constitutional doubts as "one of those rules that courts apply when they want and conveniently forget when they don't").

78. United States v. Bass, 404 U.S. 336, 347 (1971) (quoting United States v. Fisher, 6 U.S. (2 Cranch) 358, 386 (1805)).

79. Professors Hart and Sacks have said that policies of clear statements have "special force when the departure is so great as to raise a serious question of constitutional power." H. Hart &

III. Constitutional Considerations: Alien Corporations and Article III Citizenship

Subsection (c) of the diversity statute[80] should be interpreted to apply to, and create single, domestic citizenship for, alien corporations that maintain their principal place of business in an American state. Since this interpretation would alter the preexisting citizenship rule for alien corporations, the question arises whether the interpretation is consistent with the word "citizens" in article III,[81] in terms of both *who* may be considered a citizen and *where* that citizenship may be located. An examination of the issues and available precedent confirms that such an interpretation is indeed consistent with article III.

That corporations can be article III citizens is not, today, open to serious question. More than one hundred years of corporate access to diversity jurisdiction effectively forecloses any argument that they cannot.[82] In *Marshall v. Baltimore & Ohio Railroad*,[83] decided in 1853, the Supreme Court held that corporations, though not actually citizens, would be treated for diversity purposes as citizens of their state of incorporation.[84] Thirty years later, in

---

A. Sacks, supra note 42, at 1413. The suggested interpretation of § 1332(c) does raise a question of constitutional power, see infra notes 80–101 and accompanying text, arguably giving the clear-statement objection added force. Nevertheless, the addition of a possible constitutional problem does not alter the rule's inapplicability to situations in which legislative purpose dictates a particular reading of the statute.

80. 28 U.S.C. § 1332 (1976).

81. Article III provides in pertinent part: "The judicial Power shall extend . . . to Controversies . . . between Citizens of different States . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. Const. art. III, § 2.

82. It may be that as a matter of original intent corporations were not "citizens" within the meaning of article III. See McGovney, supra note 1 (arguing that by treating corporations as citizens for diversity purposes the Supreme Court extended diversity jurisdiction beyond constitutional limits); Doub, Time For Re-Evaluation: Shall We Curtail Diversity Jurisdiction?, 44 A.B.A. J. 243, 279–80 (1958). Nevertheless, if the doctrine of stare decisis is to operate anywhere, it must operate here. "History has its claims, at least where settled expectations of the body politic have clustered around constitutional doctrine." Monaghan, Taking Supreme Court Opinions Seriously, 39 Md. L. Rev. 1, 7 (1979).

83. 57 U.S. (16 How.) 314 (1853).

84. Id. at 328–29. In 1809 the Court had held that "[t]hat invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen." Bank of the United States v. Deveaux, 9 U.S. (5 Cranch) 61, 86 (1809). The Court treated the suit against a corporation as a suit against all the stockholders, with diversity jurisdiction depending on the citizenship of those stockholders. In fact, the Court sustained jurisdiction in *Deveaux* based on an averment that the members of the plaintiff corporations were citizens of Pennsylvania, while the defendants were citizens of Georgia. According to Professor Green, however, many of the bank's shareholders were not citizens of Pennsylvania, and some were citizens of Georgia. Green, supra note 1, at 211–12 & n.43.

In 1844 the Court, dissatisfied with *Deveaux* and apparently cognizant of the growing size and economic importance of corporations, see Weckstein, Multi-State Corporations and Diversity of Citizenship: A Field Day for Fictions, 31 Tenn. L. Rev. 195, 196 (1964), held that for the purposes of diversity jurisdiction a corporation would be treated as a citizen of its state of incorporation. Louisville, C. & C.R.R. v. Letson, 43 U.S. (2 How.) 497, 558 (1844).

Steamship Co. v. Tugman,[85] the Court extended the rule of *Marshall* to alien corporations, deeming them citizens of their country of incorporation.[86] *Marshall* and *Tugman*, which endured unmodified until the 1958 amendment to the diversity statute, plainly presuppose that the word "citizen" in article III is broad enough to embrace corporations.

Marshall and *Tugman* do not, however, resolve the question of whether the term "citizen" in article III dictates that corporations be treated as citizens only of their state or country of incorporation, a question squarely presented by reading section 1332(c) to create principal-place-of-business citizenship. Courts and commentators evaluating the constitutionality of section 1332(c) generally have avoided this question by reasoning as follows.[87] Congress unquestionably may vest the lower federal courts it creates with less than all the article III jurisdiction it is empowered to bestow.[88] Section 1332(c), at least when applied to domestic corporations, serves only to limit jurisdiction.[89] Therefore, section 1332(c) is necessarily constitutional.[90]

While the foregoing argument undoubtedly is sound, it does not aid in evaluating the constitutionality of an interpretation of section 1332(c) that *creates* diversity in some cases.[91] Such an interpretation must instead be evaluated in light of article III's limits, if any, on the location of article III citizenship.

Guidance in this area, unfortunately, is limited. The Supreme Court did not make clear in either *Marshall* or *Tugman* whether it was referring to article III or to the words of the diversity statute. As a result, these cases might be read to stand for the proposition that place-of-incorporation citizenship is required by article III.[92] The Supreme Court's own understanding of the

---

In *Marshall*, the Court returned to the formulation in *Deveaux* that a corporation's citizenship depends on the citizenship of its shareholders, but held that those shareholders would be conclusively presumed to be citizens of the chartering state. 57 U.S. (16 How.) at 328. Subsequent cases made it clear that this "fictional presumption" applied in all cases, regardless of the actual facts. Moore & Weckstein, supra note 5, at 1428. Thus, the Court's apparent acknowledgment that a corporation "cannot be a citizen," 57 U.S. (16 How.) at 327, is of little import. Since *Marshall*, corporations have been consistently treated as article III citizens.

85. 106 U.S. 118 (1882).

86. Id. at 121.

87. See, e.g., Eldridge v. Richfield Oil Corp., 247 F. Supp. 407, 409-10 (S.D. Cal. 1965), aff'd, 364 F.2d 909 (9th Cir. 1966), cert. denied, 385 U.S. 1020 (1967); Anderson v. A. & W. Tractor Prods., Inc., 181 F. Supp. 90, 94-95 (S.D. Ill. 1960); 13 C. Wright, A. Miller & E. Cooper, supra note 7, § 3624, at 778-79; Moore & Weckstein, supra note 5, at 1431.

88. See, e.g., Palmore v. United States, 411 U.S. 389, 400-01 (1973); Sheldon v. Sill, 49 U.S. (8 How.) 441, 449 (1850). For a modern statement of the contrary view, see Eisenberg, Congressional Authority to Restrict Lower Federal Court Jurisdiction, 83 Yale L.J. 498 (1974).

89. See supra notes 50-52.

90. See sources cited supra note 87.

91. Professor Friedenthal has expressed doubts about the constitutionality of this sort of increase in jurisdiction. See Friedenthal, supra note 48, at 237.

92. See Green, supra note 1, at 206, 215-17 (arguing that "[t]o [the state of incorporation] the incorporated group stands in a relation which for the purposes of the jurisdictional clauses of the Constitution seems identical with that of an individual citizen to his state," and assuming that a corporation must be a citizen of the incorporating state).

cases, however, suggests the contrary. In *United Steelworkers v. R.H. Bouligny, Inc.*,[93] a 1965 case raising the question of whether unincorporated associations were citizens for purposes of diversity,[94] the Supreme Court had occasion to reexamine the *Marshall* line of cases. The Court characterized *Marshall*'s holding as statutory, at least insofar as it located corporate citizenship in the place of incorporation.[95] In fact, to the extent that the Court considered the question at all, it suggested that article III citizenship has no single, fixed meaning, but rather turns on the policies underlying diversity jurisdiction. The Court acknowledged the "arguable irrelevance [of the state of incorporation] in terms of the policies underlying [diversity] jurisdiction,"[96] and noted with apparent approval section 1332(c)'s selection of arguably more rational criteria for locating citizenship.[97] While the Court declined to formulate a new rule governing the diversity citizenship of unincorporated associations, it apparently foresaw no constitutional difficulties in Congress's doing so.[98]

The same inclination, implicit in *Bouligny*, to define article III citizenship flexibly and in light of the objectives of diversity jurisdiction is also apparent in the Supreme Court's efforts to define the citizenship of a corporation chartered in more than one state. In this context, the Court has shown a considerable (and, many say, lamentable)[99] willingness to experiment. A detailed description of the Court's much-maligned "forum doctrine" is unnecessary for present purposes.[100] It is enough to note that the Court, through

---

93. 382 U.S. 145 (1965).

94. In Chapman v. Barney, 129 U.S. 677 (1889), the Court had held that an unincorporated joint stock company would not be deemed a citizen of its state of origin, and that, therefore, access to federal jurisdiction depended on the citizenship of its members. The rule of *Chapman* was extended to limited partnerships in Great S. Fire Proof Hotel Co. v. Jones, 177 U.S. 449 (1900). See generally Comment, Limited Partnerships and Federal Diversity Jurisdiction, 45 U. Chi. L. Rev. 384, 389-93 (1978) (tracing the treatment of unincorporated associations in federal diversity jurisdiction).

95. 382 U.S. at 147–48.

96. Id. at 152.

97. Id.

98. Id. at 153:

> Whether unincorporated labor unions ought to be assimilated to the status of corporations for diversity purposes, how such citizenship is to be determined, and what if any related rules ought to apply, are decisions which we believe suited to the legislative and not the judicial branch, regardless of our views as to the intrinsic merits . . . .

99. See generally Weckstein, supra note 84.

100. Under the forum doctrine, a corporation chartered in states *A* and *B* was deemed a citizen only of state *A* when litigating in state *A*, only of state *B* when litigating in state *B*, and of both *A* and *B* when litigating in another state.

Professor Currie's description of the Court's gyrations in the area of multistate corporate citizenship reflects the general dissatisfaction among commentators:

> Not content to have announced three mutually inconsistent rules without disowning any of them, the Supreme Court proceeded to suggest that the first incorporation was determinative; that it mattered whether the second charter had been given to individuals or to a corporation; that the place the cause of action arose was, was not, and might be

several different approaches, attempted to locate the multistate corporation's citizenship in a manner consistent with the purposes of diversity jurisdiction, without any evident concern that article III required placing that citizenship in a particular state or states.[101]

The Supreme Court's approach to multistate corporate citizenship, coupled with the deference of the Court in *Bouligny*, suggests that article III places little limit on the precise location of corporate citizenship. The word "citizen" in article III appears to dictate no more than that there be some significant connection between a person or entity and a state or country. For diversity purposes, as long as Congress might reasonably view the entity as a potential beneficiary of local bias in the citizenship state, or a potential victim of local bias out-of-state, the relevant connection exists.

It is difficult to imagine any likely congressional location of corporate citizenship that might run afoul of this "reasonableness" limit of article III. Perhaps deeming all corporations citizens of the District of Columbia, for example, would risk a judicial declaration of unreasonableness. In any event, the interpretation of section 1332(c) advanced here poses no such risk. The nominally alien corporation bears a sufficiently close relation to the state of its principal place of business to be perceived as a potential beneficiary of local bias in that state.

CONCLUSION

Federal courts are in conflict over the effect section 1332(c) has on diversity suits involving alien corporations maintaining their principal place of business in an American state. The statutory language and specific legislative intent provide inconclusive guidance. The purposes of the 1958 amendment, however, together with the rationale for diversity jurisdiction implicit in that amendment, strongly suggest that section 1332(c) be read to apply to alien corporations. In the typical case, then, between a citizen of state *A* and an alien corporation whose principal place of business is in state *A*, section 1332(c) works to defeat diversity. In addition, the special concerns of alienage jurisdiction support reading the provision to establish single, domestic citizenship for the alien corporation with its principal place of business in an American state. This reading creates diversity in the apparently less common case, between the pseudo-alien corporation and a true alien, thus affording

---

decisive; and that an incorporation compelled as a condition of doing business could be ignored. Then, quietly proud, the Supreme Court retired from the field for forty-two years.

Currie, supra note 4, at 40 (footnotes omitted). It is generally accepted that § 1332(c) eliminated the forum doctrine, treating corporations as citizens, at all times, of every state in which they have been incorporated. 13 C. Wright, A. Miller & E. Cooper, supra note 7, § 3624. Weckstein, supra note 84, at 210-16.

101. See Weckstein, supra note 84, at 197-203.

the true alien access to the federal courts. While this creation of diveristy raises the question whether section 1332(c) is outside the article III grant of jurisdiction, the provision, upon examination, is consistent with article III "citizenship."

H. Geoffrey Moulton, Jr.