

Do Foreign Corporations Have Rights?

Bank of Augusta v. Earle (1839)

The Supreme Court had decided in this case that a corporation created in one state does not have the unrestricted right to conduct business in another state.

The Court stated:

"Whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter; and not the contract of the individual members. The only rights it can claim are the rights that are given to it in that character...."

Consequences:

- Although corporations could **not** be kept out of federal courtrooms (Deveaux, 1809),
- Corporations **could** be kept out of state territory (i.e. states could favor local business interests).

Problem: What happens when a state imposes fees & taxes on foreign corporations **already residing there?**

Paul v. Virginia (1868)

- State of Virginia passed a statute that foreign corporations had to deposit security bonds with the State (but local corporations were not required to do so).
- Paul, agent for a N.Y. insurance company, claimed that this statute was in violation of Article IV of the Constitution.

Article IV

Section 2: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

The Court's response:

“ The term citizens ...applies only to **natural** persons...not to **artificial** persons created by the legislature....”

- Which theory of corporate personality is this?
- The creature theory

**XIV Amendment
(ratified in 1868)**

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of **citizens** of the United States; nor shall any State deprive any **person** of life, liberty, or property, without due process of law; nor deny to any **person** within its jurisdiction the equal protection of the laws. (emphasis added)

**Pembina Mining Co. v.
Pennsylvania (1887)**

- Pembina, a Colorado mining company, had an office in Philadelphia on which Pennsylvania assessed an office tax (but not on offices of Pennsylvania corporations).
- Pembina claimed this tax was in violation of the 'privileges and immunity clause' of the XIV Amendment as well as the 'equal protection clause'.

What happened?

- The Court noted that the 'privileges and immunities' clause was similar to Article IV. The Court stated: "The term citizens...applies only to natural persons...not to artificial persons created by the legislature...."
- However, 'equal protection and due process' was another story:
"Under the designation of person there is no doubt that a private corporation **is included**."

So, has the Pembina Court adopted the 'person' theory?

“The inhibition of the amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. Under the designation of person there is no doubt that a private corporation **is included**. Such corporations are merely **associations of individuals** united for a special purpose, and permitted to do business **under a particular name....**”

Court's rationale

1. A state has the right to regulate corporate entry.
2. Once admitted though the state must extend to foreign corporations the same rights as given to domestic corporations.
3. Otherwise, the state would be discriminating against a class of persons- i.e. the corporate members that have vested interests.

Southern Railway Co. v. Greene (1909)

- Railway Co., chartered in Virginia, had an extensive network of lines in Alabama.
- Alabama imposed franchise tax on foreign corporations (but not on domestic ones).
- Railroad claimed it was not receiving equal protection of the laws.
- Court's interpretation of 'equal protection': "equal laws, applying alike to all in the same situation."

What theory of corporate personality do we find here in the Greene case?

In reaching their decision the Court quoted the first two sentences of the *Pembina* case (but not the third).

1. The inhibition of the amendment that no State shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.
2. Under the designation of person there is no doubt that a private corporation is included.
3. Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name....”

Court's conclusion in Greene case

“That a corporation is a person, within the meaning of the Fourteenth Amendment, is no longer open to discussion.”

Diversity vs. Equal Protection

- *Deveaux* - group theory
- *Letson* – person theory
- *Marshall* – hybrid of group + person
- Statute (1958) – person theory
- *Bank of Augusta* – creature theory
- *Paul v. Virginia* – creature theory
- *Pembina* – group theory
- *Greene* – person theory

Illegal Immigration

- Estimated number of illegal immigrants: 12 million.
- Cost: billions of dollars
- Strong popular opposition
- Estimated that 10% of all U.S. births were to illegal mothers.
- Why are these babies citizens?
- Due to "birthright citizenship"

XIVth Amendment

Section 1: All persons born or naturalized in the United States and **subject to the jurisdiction thereof**, are citizens of the United States and of the State wherein they reside.

How to interpret the 'jurisdiction requirement'

- Only limitation: Foreign diplomat children
- Strict constitutionalists:
No illegal aliens in 1868 (year of ratification of the XIVth Amendment)—no restrictions then on immigration. But what if there were?
- Purpose: to grant citizenship to former 'black slaves'

Judge Richard Posner (U.S Court of Appeals):
"The situation we have today is absurd...For example, there is a huge and growing industry in Asia that arranges tourist visas for pregnant women so they can fly to the United States and give birth to an American...We should not be encouraging foreigners to come to the United States solely to confer U.S. citizenship on the future children."

Birthright Citizenship Act of 2009

- Submitted by Rep.Nathan Deal (R-GA)
Including: California—
Brian Bilbray, Duncan Hunter
- Birthright citizenship would be granted only to children with at least one parent who is:
 1. A U.S. citizen; or
 2. A legal permanent resident; or
 3. An undocumented alien serving in the military.
