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Diversity Jurisdiction and Alien Corporations: The Application of Section 1332(c)

Prior to 1958, both domestic and foreign corporations were considered citizens only of the state of their incorporation for purposes of diversity jurisdiction. In 1958 Congress enacted title 28 U.S.C. section 1332(c) to reduce the case load of the federal courts and to rectify abuses of diversity jurisdiction. Section 1332(c) provides that for purposes of diversity jurisdiction, a corporation is a citizen of both the state of its incorporation and the state where it has its principal place of business. While this dual citizenship creates no problems when domestic corporations are involved, the application of section 1332(c) to alien corporations has been inconsistently applied.


   (a) The district court 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 foreign states or citizens or subjects thereof;
      (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
      (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different states.
   (b) Except when express provision therein is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.
   (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: Provided further, That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer 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 Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

3. This Note will deal solely with corporations chartered in a foreign country. Such corporations will be referred to as “alien” or “foreign” corporations. They are not to be confused with corporations incorporated in another state of the United States which are often referred to as foreign corporations when discussing diversity jurisdiction.
Congress failed to consider the question of how section 1332(c) was to be applied to foreign corporations, particularly when the corporation's principal place of business was located in the United States. As a result, section 1332(c) has been interpreted in contradictory ways: sometimes creating diversity jurisdiction for alien corporations when it would not otherwise be present and at other times destroying it when it would have been available but for subsection (c). Numerous solutions have been proposed by the courts and commentators to deal with the problem of alien corporations.

Furthermore, this Note addresses the issue of citizenship for alien corporations which are incorporated in a foreign county but have their principal place of business in the United States. It should be recognized that a corporation incorporated in the United States with its principal place of business in a foreign country must deal with many of the same problems and issues under section 1332(c). See J. Moore, J. Lucas, H. Fink, D. Weckstein & J. Wicker, Moore's Federal Practice ¶ 0.77[2-3] (2d ed. 1984) [hereinafter cited as Moore].

4. See infra text accompanying notes 25-78.


6. This situation occurs when a corporation chartered in a foreign state with its principal place of business in a state of the United States is able to sue or be sued by an alien. Diversity jurisdiction applies because the alien corporation under section 1332(a)(2) is deemed to be a citizen of a state of the United States. If section 1332(c) does not apply to the corporation, no diversity jurisdiction exists because the corporation is not a citizen of a state of the United States and it would not be deemed an alien citizen; the presence of aliens on both sides of a controversy will serve to defeat diversity jurisdiction. See, e.g., Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303 (1809); Merchants' Cotton Press and Storage Co. v. Insurance Co. of N. Am., 151 U.S. 368, 385-87 (1894).

7. Diversity jurisdiction would be destroyed where an alien corporation with its principal place of business in state A is sued by or sues a citizen of state A. If section 1332(c) is applied to this corporation there would not be diversity jurisdiction as it would not be a controversy between citizens of different states as required under section 1332(a). However, if 1332(c) is not applied, the corporation would be a foreign citizen and there would be diversity jurisdiction under 1332(a)(2).

8. Two solutions are generally promulgated by the courts and commentators. The first is to retain the traditional rule and interpret section 1332(c) as inapplicable to alien corporations. See infra notes 25-34 and accompanying text; 13B C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 3628 (1984) [hereinafter cited as Wright & Miller]. A second approach is to apply section 1332(c) to alien corporations, deeming the corporation to be a citizen of the state where it has its principal place of business as well as its foreign country of its incorporation. Id.; See infra notes 35-53 and accompanying text.

At least one court has suggested there is a third alternative, that is to deem an alien corporation to be a citizen of the place where it maintains its principal place of business. See Salomon Englander y CIA, LTDA v. Israel Discount Bank Ltd., 494 F. Supp. 914, 917-18 (S.D.N.Y. 1980); see also Comment, Diversity Jurisdiction: The Dilemma of Dual Citizenship and Alien Corporations, 77 Nw. U.L. Rev. 565 (1982). The author of this Comment concludes that "[a] clear and simple approach to determine the alien corporation's citizenship for diversity purposes would be to base citizenship solely on the location of the corporation's principal place of business." Id. at 587. This interpretation does have some merit; however, it disregards the language of
This Note will discuss section 1332(c) and the underlying goals of that statute. The various interpretations taken by the courts will be analyzed in order to demonstrate the inconsistencies that result from these approaches. Attention will be given to the constitutionality of expanding federal jurisdiction to alien corporations seeking judicial recognition of their "dual citizenship." This Note concludes that section 1332(c) should be narrowly applied only in those situations where the result is to limit diversity jurisdiction, a situation that may occur only when an American citizen is one of the parties to the controversy.

I. THE STATUTE

The issue of the "proper extent of the federal judicature" first confronted the statute which states that a corporation is a citizen of the "State" where its principal place of business is located and of its "State" of incorporation. The question of whether "State" with a capital "S" can apply to an alien chartered corporation remains a concern. It does seem unreasonable, however, not to recognize the alien charter of a corporation in any way, especially when the corporation may be owned by a foreign government or foreign citizens. This also ignores the constitutional problem that can arise when two alien chartered and owned corporations are able to take advantage of American federal courts. See infra text accompanying notes 70-83.

A fourth issue which should be addressed is whether section 1332(c), if it applies to an alien corporation, should apply to the corporation's worldwide principal place of business or simply its principal place of business within the United States. See Moore, supra note 3, ¶ 0.75[3]. If the second alternative is used a corporation which does very little business in the United States may still find itself a citizen of a state of the United States by virtue of the state being the corporation's principal place of business in the United States. Professor Moore argues that if section 1332(c) applies to alien corporations it should apply to their principal place of business in the United States even if it is not their worldwide principal place of business. He states that "to hold otherwise would ignore the corporation's impact in the United States, an effect which seems most relevant to determining the extent of jurisdiction of the federal courts in this country." Id.

Such an interpretation does not seem reasonable when one considers the rule applied to domestic corporations. A domestic corporation can have only one principal place of business even though there are many situations when a corporation's impact in another state is significant. See, e.g., Wright & Miller, supra. Moreover, this interpretation is potentially unfair to certain foreign corporations. Diversity jurisdiction could be denied where an alien corporation's contact with a state is so slight that it becomes unfair to deem the corporation a citizen of the state. Therefore, if section 1332(c) applies to alien corporations, it should apply to their principal place of business in the United States. See R.W. Sawant & Co. v. Ben Kozloff, Inc., 507 F. Supp. 614, 616 (N.D. Ill. 1981); Eisenberg v. Commercial Union Assurance Co., 189 F. Supp. 500, 502 (S.D.N.Y. 1960).

It should be pointed out that the majority of cases do not make such a distinction when considering section 1332(c) nor do they identify whether they are dealing with a corporation's worldwide principal place of business or simply its principal place of business within the United States. Unless it is noted otherwise, the reader should assume that when this Note uses "principal place of business" in the text, that it refers to the worldwide principal place of business of the corporation. Additionally, whenever a hypothetical is set out in the text or footnotes, "state" will always refer to a state in the United States. A foreign state will be referred to as a "foreign state."


10. The term was coined by Alexander Hamilton. See The Federalist No. 80, at 494 (H. Lodge ed. 1888).
the drafters of the Constitution. Concerns were voiced that citizens of different states or nations might suffer prejudice at the hands of state courts.\textsuperscript{11} The framers responded to these fears by adopting section 2, clause 1 of article III. This section empowers Congress to create jurisdiction for cases involving a controversy between citizens of different states or between a citizen of a state and that of a foreign state.\textsuperscript{12}

Congress exercised its article III powers in attempting to limit the federal judiciary's diversity jurisdiction with the passage of section 1332(c) of title 28.\textsuperscript{13} Under this amendment, a corporation is considered to be a citizen of both the state in which it is incorporated as well as of the state where its principal place of business is located. Prior to its enactment, a domestic corporation was considered to be a citizen solely of its state of incorporation.\textsuperscript{14} An alien corporation was deemed to be a citizen of the foreign state in which it was chartered.\textsuperscript{15}

The primary purpose of the drafters of section 1332(c) was to ease the workload of the federal courts.\textsuperscript{16} Another purpose for creating diversity jurisdiction was to provide a safe federal forum for out-of-state citizens against the possible prejudices of local state courts and juries.\textsuperscript{17} Despite the spate of criticism directed at diversity jurisdiction in recent years,\textsuperscript{18} this latter purpose remains the rationale upon which it survives.\textsuperscript{19} Section 1332(c) was enacted to protect against the potential prejudices of state courts as well as to prevent corporations from "forum shopping."\textsuperscript{20}


The contention was that a state court would treat alien commercial interests unfairly. Madison said, "It may happen that a strong prejudice may arise in some states, against the citizens of others, who may have strong claims against them." Id. at 493. Madison also feared that unless the fears of foreign commercial interests were assuaged, the economy of the United States would suffer: "We . . . know . . . that foreigners cannot get justice done them in [state] courts, and this has prevented many wealthy gentlemen from trading or residing among us." James Madison, reprinted in 3 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention in Philadelphia in 1787 528 (1836). Judge Friendly argues that the delegates' primary fear was the possibility of prejudice from the hands of the state legislatures. Friendly, supra, at 495.


17. Elliot, supra note 11, at 528.


19. See Eisenberg v. Commercial Union Assurance Co., 189 F. Supp. 500 (S.D.N.Y. 1960). "[I]t was not the purpose of the amendment to abandon the protection from local prejudice against outsiders as the reason for diversity jurisdiction." Id. at 502.

Prior to the passage of the amendment, a local corporation could bring suit in federal court against another local corporation by dissolving itself and reincorporating in another state. Section 1332(c) was never intended to extend to a local corporation which, because of a legal fiction, is considered a citizen of another state.

The question of whether diversity jurisdiction could be properly invoked in a suit where one of the parties is an alien citizen operating in the United States was never addressed in the legislative history of section 1332(c). Congress also failed to consider the resultant problem of an alien citizen asserting dual citizenship for purposes of diversity jurisdiction. The issue, consequently, has been left to the courts which have been unable to concur on the proper application of section 1332(c) to an alien corporation, particularly when the corporation’s principal place of business is located in the United States.

II. JUDICIAL INTERPRETATION OF THE STATUTE

A. Suits Between a Citizen of State A and an Alien Corporation Whose Principal Place of Business is in State A: Section 1332(c) Does Not Apply

The issue of whether section 1332(c) is applicable to alien corporations was first addressed in Eisenberg v. Commercial Union Assurance Co. The plaintiff, a citizen of New York, brought suit in federal district court against a British corporation whose principal place of business in America was located in New York. The defendant moved to dismiss for lack of diversity jurisdiction, claiming that it should be considered to be a citizen of New York since its principal place of business was located there.

The court relied on a very literal interpretation of the statutory language in rejecting this argument. Section 1332(c), in the opinion of the court, does not invest dual citizenship in alien corporations. It reasoned that Congress

21. Id.
22. The legal fiction issue arose because of problems that developed prior to the 1958 amendment. For example, in 1928 a Kentucky corporation dissolved itself in Kentucky and reincorporated in Tennessee so that it could bring suit in federal court, against a local competitor, also a Kentucky corporation. Id. Congress cited this case in the Senate report to section 1332(c). S. Rep., supra note 5, at 3102.
23. See supra note 5.
intended to distinguish between businesses incorporated in one of the several states and those holding a foreign charter.

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. Subdivision (c), therefore, in dealing with the place of incorporation refers only to a corporation incorporated in a State of the United States. When subdivision (c) goes on to deal with principal place of business it refers to the same corporation and thus only to a corporation incorporated in a State of the United States. The subdivision is not susceptible of the construction as if it read "all corporations shall be deemed citizens of the States by which they have their principal place of business." Unless 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.26

Even if section 1332(c) could be interpreted as extending citizenship to alien corporations whose principal place of business was in the United States, the defendant's claims would have been rejected. A corporation, in the view of the Eisenberg court, cannot maintain a principal place of business in Europe and a separate principal place of business in another country.27

The reasoning in Eisenberg was relied upon four years later in Chemical Transportation Corp. v. Metropolitan Petroleum Corp.28 The plaintiff, incorporated under the laws of Liberia and claiming to maintain its principal place of business in New York, brought suit against a corporation organized under the laws of New York. The defendant moved to dismiss the complaint on the ground that no diversity of citizenship existed between the parties.

The Chemical Transportation court took the Eisenberg decision one step further in denying the defendant's motion, basing its analysis on the congressional intent behind section 1332(c).29 The defendant argued that the Eisenberg analysis was mistaken in its reasoning that Congress had intended to distinguish between foreign "states" and "States" of the United States.30 The defendant reasoned that the word "States" was intended to apply to both foreign states and states of the United States, but that the drafters "necessarily could use only one form of the word or the other, not both . . . ."31

The court rejected this argument because it failed to find any congressional intent to support the defendant's contention. The Chemical Transportation court argued that Congress was aware that it had previously utilized different meanings for the words "States" and "states" in section 1332(a). Had Con-

26. Id. at 502 (emphasis in original).
27. The legislative history states that a corporation's principal place of business shall be determined under similar tests in the Bankruptcy Act. S. Rep., supra note 5, at 3102. See generally Wright & Miller, supra note 8, § 3625 (determining a corporation's principal place of business).
29. Id. at 566.
30. Id.
31. Id.
gress wanted section 1332(c) to apply to alien corporations, it could have provided that a corporation be considered a citizen of the "State or foreign state" in which it was incorporated or had its principal place of business.\(^ {32} \)

The court reasoned that the determination of whether a statute should apply to alien corporations should be left to Congress. It noted that:

*Congress, for example, might wish to determine whether diversity jurisdiction should be withdrawn from alien corporations which might not have standing to institute suits in State courts; whether applicability of § 1332(c) to alien corporations would have a negative effect on foreign trade or commerce; or whether the alien corporation should retain a status similar to the alien individual who may invoke diversity jurisdiction despite prolonged residence in the State of which his adversary is a citizen."\(^ {33} \)

The court concluded that the wording of the statute and the absence of congressional consideration and guiding policy compelled it to hold that section 1332(c) does not apply to alien corporations.\(^ {34} \)

### B. Suits Between a Citizen of State A and an Alien Corporation Whose Principal Place of Business is in State A: Section 1332(c) Does Apply

The conferral of state citizenship upon an alien corporation was recognized by a federal court in *Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc.*\(^ {35} \) The two parties in the controversy were a corporation chartered in the Bahamas and a corporate citizen of Illinois; the defendant asserted that no diversity jurisdiction existed because the Bahamian corporation maintained its principal place of business in Illinois.\(^ {36} \) The court held that section 1332(c) applies to alien corporations that have their principal place of business in the United States.\(^ {37} \)

Under the *Eisenberg* analysis, an alien corporation is considered to be a citizen solely in the state of its foreign incorporation. An alien corporation, under this analysis, would always be diverse to citizens of a state regardless of the length of time that it conducted business enterprises in the same locale. The *Southeast* court expressly rejected the literal interpretation of the language of section 1332(c) relied upon is *Eisenberg*. The court reasoned that the *Eisenberg* analysis is appropriate when it is applied to the first part of section 1332(c) (regarding state of incorporation), but it errs when it is applied to the principal place of business clause.\(^ {38} \) When a corporation has its principal

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32. *Id.*
33. *Id.*
34. *Id.*
36. *Id.* at 1005. Diversity would be lacking because both plaintiff and defendant would be deemed to be citizens of Illinois under section 1332(c).
37. *Id.* at 1006-07.
38. *Id.*
place of business in the same state as its charter, the second half of section 1332(c) is inapplicable. The court said:

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." Similarly, we see no grounds for concluding that because the first half of the section does not apply to foreign corporations, that the second half should have no applicability to them at all. It seems no greater extension of the language to read in, when dealing with foreign corporations, "if its principal place of business is in the United States." Obviously Congress would only use the word state with a capital S, since if a corporation's principal place of business was in a foreign state it would have no effect whatsoever on its citizenship for diversity purposes in the courts of the United States."

It rejected the argument that congressional silence on the issue should be interpreted as applying section 1332(c) only to domestic corporations. The underlying purpose of section 1332(c)—to limit diversity jurisdiction—formed the basis of the Southeast court's analysis. This purpose is achieved when section 1332(c) is interpreted as applying to an alien corporation that operates its principal place of business in the United States. This interpretation eliminates all technical findings of diversity when diversity does not actually exist.

The Southeast court's application of section 1332(c) to alien corporations was approved by other courts of appeals decisions. In Jerguson v. Blue Dot Investment, Inc., a Fifth Circuit decision, a Florida plaintiff brought suit against a Panamanian corporation. The diversity issue arose because the Panamanian corporation located its principal place of business in Florida. If section 1332(c) applied to the corporation, diversity would be lacking under section 1332(a)(1), which requires that the parties be citizens of different states. In affirming a dismissal for lack of diversity jurisdiction, the Fifth Circuit relied on an analysis similar to that used in the Southeast case.

The court interpreted the reference in section 1332(c) to state of incorporation as limited to state corporations; its focus on principal place of business, however, could not be similarly interpreted. The court reasoned:

39. Id. at 1007.
40. Id.
41. Id.
42. Id.
43. See Jerguson v. Blue Dot Inv., Inc., 659 F.2d 31 (5th Cir. 1981). The Second Circuit briefly addressed this issue in dictum in Clarkson Co. v. Shaheen, 544 F.2d 624 (2d Cir. 1979), where a Canadian trustee brought suit to gain access to a bankrupt Canadian corporation's New York office. The issue of diversity jurisdiction was raised sua sponte; the Clarkson court by footnote stated that as an alien corporation, organized under the laws of Canada, the bankrupt corporation was probably a citizen exclusively of Canada for purposes of diversity. Id. at 628 n.5.
44. 659 F.2d 31 (5th Cir. 1981).
45. The similarity exists in the fact that both courts argued that congressional silence does not necessarily imply that section 1332(c) cannot apply to alien corporations.
Reading the word "State" to refer only to an American state, however, does not necessitate the conclusion that the principal place of business part of section 1332(c) cannot be applied to alien corporations. We disagree with the analysis in Eisenberg that since the first part of section 1332(c) dealing with the place of incorporation necessarily applies only to a business incorporated in the United States, the second part of section 1332(c) dealing with the principal place of business must also be limited to domestic corporations.⁴⁶

The opinion further argued that the statute itself fails to provide adequate guidance in that there is no evidence that it is applicable solely to domestic corporations.⁴⁷ The court recognized that the statute can be, and indeed has been, interpreted in conflicting ways.⁴⁸ Since Congress apparently did not consider the question of alien corporations and diversity jurisdiction, the court noted that "it cannot be inferred from Congress' silence that Congress intended the statute to be construed one way or the other."⁴⁹

Section 1332(c) was enacted in order to limit diversity jurisdiction to those out-of-state citizens who might suffer from the results of local prejudices.⁵⁰ To apply section 1332(c) to alien corporations whose principal place of business is located in the same state as the domicile of the other party to the suit would best effectuate the congressional purpose.⁵¹

The application of section 1332(c) to alien corporations in limited circumstances is appropriate. It results in the limitation of diversity jurisdiction because it eliminates the legal fiction that the alien corporation is solely a citizen of its place of legal incorporation. A company whose principal business operations are located in a given state is unlikely to suffer prejudice from the local judicial system.⁵² The conferral of state citizenship upon the alien corporation results in treating it in the same manner, for instance, as a Delaware corporation with its principal place of business in that state.⁵³

C. Suits Between Alien Corporations

No diversity jurisdiction exists when a suit is brought by an alien corporation against a second alien corporation. At the same time, section 1332(c)

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⁴⁶ Jerguson, 659 F.2d at 35.
⁴⁷ Id.
⁴⁸ Id.
⁴⁹ Id.
⁵⁰ See S. Rep., supra note 5, at 3102.
⁵¹ Jerguson, 659 F.2d at 35.
⁵² "It is a fair inference that a corporation which has located its principal place of business in a State has adopted that State as its actual residence and will not be subject to prejudice against outsiders." Eisenberg, 189 F. Supp. at 502.
provides that a corporation is considered a citizen of the state in which it maintains its principal place of business. When an alien corporation operating principally in the United States is involved in a suit against another alien corporation, the question arises whether section 1332(c) should be interpreted to permit a suit involving alien corporations to be brought in federal court. Two fundamental purposes of section 1332(c), as discussed previously, are to reduce the federal courts' workload and to prevent local corporations from artificially creating diversity by incorporating in a separate state. Applying section 1332(c) to alien corporations potentially places the primary purposes of the section in conflict.

Section 1332(c) has been inconsistently applied to alien corporations. This inconsistency has resulted in the creation of diversity jurisdiction in situations where diversity would not normally be recognized. It has also denied standing to a foreign-chartered corporation in some instances despite the corporation's assertions that its principal place of business is located in the United States.

A literal interpretation of section 1332(c), such as that employed by the Eisenberg court, may appear the most reasonable one. At the same time, however, this approach fails because it creates diversity jurisdiction in situations that in actuality involve citizens of the same state when one of the parties is legally chartered in a foreign country. A corporation, domiciled in state A, may claim diversity jurisdiction as an alien corporation because it is incorporated in another country—clearly the type of scenario that section 1332(c) was designed to prevent. The result is the expansion of diversity jurisdiction. This may further result in a possible advantage to the foreign corporation to the detriment of the domestic entity.

The most recent case on this issue was decided in the Middle District of Tennessee. In Trans World Hosp. Supplies Ltd. v. Hospital Corp. of Am., 542 F. Supp. 869 (M.D. Tenn. 1982), the defendant was an American corporation, the plaintiff a British corporation. The controversy over section 1332(c) arose because the plaintiff wanted to join Hospital Corporation of America Service Supply Co. (HCAS&S) as an additional defendant. Id. at 870. HCAS&S was chartered under the laws of the Cayman Islands. However, HCAS&S was a subsidiary of the defendant, Hospital Corporation of America, and it maintained its principal place of business in Nashville, Tennessee. The court stated that the joinder of HCAS&S would leave an alien corporation present on both sides of this controversy, and that this alignment would preclude diversity jurisdiction. On the other hand, should section 1332(c) apply to alien corporations, diversity jurisdiction would survive as HCAS&S maintains its principal place of business in the state of Tennessee. Id. at 871-72. The court, relying heavily on Bergen Shipping Co. v. Japan Marine Services, Ltd., 386 F. Supp. 430 (S.D.N.Y. 1974), and Southeast, ruled that section 1332(c) does apply to alien corporations. 542 F. Supp at 879.

54. See supra text accompanying notes 16-20.
55. Eisenberg, 189 F. Supp. at 502-03.
56. See S. REP., supra note 5, at 3100-01.
57. See WRIGHT & MILLER, supra note 8, § 3601. Among the reasons cited for preferring a federal forum are to escape the prejudices of local courts; the alleged superiority of the federal courts; tactical considerations; the superiority of the Federal Rules of Civil Procedure; and the maintenance of a free flow of capital from one section of the country to another. Id.
The *Southeast* and *Blue Dot* opinions deal with this problem by applying section 1332(c) to alien corporations. These courts held that a corporation should be considered to be a citizen of a state when its principal place of business is located there. In the above hypothetical, no diversity jurisdiction would exist because the corporation would be deemed a citizen of state $A$, the location of its principal place of business. A controversy between citizens of "different states" therefore would not exist as required by section 1332(a)(1).

This interpretation has received a great deal of support. Many commentators concur with this interpretation, reasoning that it best complies with the rationale underlying the creation of section 1332(c). It may be argued that if section 1332(c) is not applied to alien corporations, a situation will arise equivalent to the undesirable scenario that the section was designed to prevent. Assigning state citizenship to an alien corporation principally operating in the United States would prevent it from suing in a federal court solely because of its incorporation in another country. Furthermore, this interpretation is consonant with the basic purpose of the statute—the reduction of the diversity jurisdiction case load of the federal courts.

While it is true that diversity jurisdiction is rejected in the above hypothetical, supposedly reducing the federal court workload, this interpretation fails because it creates diversity in certain other situations involving alien corporations. In *Bergen Shipping Co. v. Japan Marine Service, Ltd.*, a situation factually opposite to that of *Southeast* confronted the court. The suit was brought by a Liberian corporation with its principal place of business in New York against a Japanese corporation with its principal place of business in Japan. Under the *Eisenberg* approach no federal diversity jurisdiction existed because both parties were aliens. The *Bergen* court, however, relied on the *Southeast* approach in finding that diversity jurisdiction was appropriate. It held that the plaintiff was a citizen of the state of New York, according to the language of section 1332(a)(2), engaged in a controversy against a citizen of a foreign state. According to this view, diversity would be created under section

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58. See supra text accompanying notes 35-49.
59. The corporation and its opposition would both be citizens of State $A$.
60. See generally, Wright & Miller, supra note 8, § 3628; Moore, supra note 3, ¶ 0.75[3].
61. Wright & Miller, supra note 8, § 3628.
62. Id.
64. The *Bergen* court stated that "[i]t is beyond dispute that this section [1332(a)] does not confer jurisdiction on the federal courts in suits between aliens." Id. at 432.
65. This analysis did, however, receive support in Richmond Constr. Corp. v. Hilb, 482 F. Supp. 1201 (M.D. Fla. 1980), where the court stated that this interpretation would seem to be consistent with the overall purpose and intent of section 1332(c). That is, it would often reduce the instances of diversity jurisdiction (although not in every situation) and eliminate the "unfair advantage given the actually-local, but fictionally-foreign corporation." Id. at 1203, quoting S. Rep., supra note 5, at 3119-20. But see Hercules Inc. v. Dynamic Export Corp., 71 F.R.D. 101 (S.D.N.Y. 1976). In *Hercules* the court refused to invoke diversity jurisdiction where both
1332(a)(1) when an alien corporation with its principal place of business in
state A sued or was sued by an alien corporation with its principal place of
business in state B because the controversy involved citizens of “different
states.”

The court in Bergen recognized this dilemma and attempted to distinguish
between the “underlying purpose” of section 1332(c) and the “stated” pur-
pose of the statute. The court stated:

While we are cognizant that the application of the Southeast rule in the
present case would enlarge federal jurisdiction, rather than restricting it,
which was the underlying purpose of Section 1332(c), and the result of
the Southeast decision, it at least is not inconsistent with the stated pur-
pose of the statute, i.e., eliminating the “evil” of allowing purely local
controversies to be resolved in the federal courts.66

The Bergen decision has not been adopted uniformly. In Corporacion
Venezolana de Fomento v. Vintero Sales,67 the court held that the federal
district court lacked diversity jurisdiction in a suit involving two alien cor-
porations. One of the parties, a Swiss corporation, had its principal place
of business in New York and thereby claimed dual citizenship under section
1332(c). The court refused to consider the issue, holding that, even assuming
such dual citizenship, the fact that alien parties were present on both sides
would destroy complete diversity.68

An alien corporation can be deemed to possess dual citizenship only in a
limited number of situations. This interpretation of section 1332(c) is consis-
tent with the intent of Congress in enacting subsection (c). It is also within
the constitutional strictures of article III which define the scope of controver-
sies that may be considered by federal courts.69

III. CONSTITUTIONAL IMPLICATIONS OF APPLYING SECTION 1332(c)
TO ALIEN CORPORATIONS

Congress may not create federal court jurisdiction beyond the limits
established by article III.70 The Supreme Court has held that a “statute can-

68. Id. at 617-18.
69. Article III provides in pertinent part: “The judicial Power shall extend . . . to Con-
troversies . . . between Citizens of different States . . . and between a State, or the Citizens
70. Id.
not extend the jurisdiction beyond the limits of the Constitution." Arguably, section 1332(c) exceeds those limits by creating dual citizenship for alien corporations if that statute is interpreted, as it was in Bergen, to permit an alien corporation whose principal place of business is located in the United States to bring suit in federal court against another alien corporation.

Congress' ability to determine the jurisdictional limits of the federal judiciary has been broadly interpreted. In Eldridge v. Richfield Oil Corp., the constitutionality of section 1332(c), as applied to domestic corporations, was upheld. The court interpreted "citizen" when applied to corporations to be something other than the citizenship afforded an individual. The Eldridge court stated that "corporations are 'deemed' to be the equivalent of citizens for the purposes of federal diversity jurisdiction." Congress, according to the Eldridge analysis, has the authority to expand as well as limit jurisdiction.

This conferral of a "special" citizenship has been the basis of commentators' arguments that section 1332(c) is constitutional when applied to alien corporations as well. If Congress has the power to change the status of an entity for diversity purposes, and if a corporation is deemed to be a citizen, then no reason exists, under this analysis, for the jurisdiction statute to be inapplicable to alien corporations.

Congress does possess the authority to expand jurisdiction. Indeed, the Supreme Court has said, "pleas for extension of the diversity jurisdiction to hitherto uncovered broad categories of litigants ought to be made to Congress and not to the courts." But Congress, as previously discussed, may not extend jurisdiction beyond the limits of the Constitution.

Article III recognizes that federal court jurisdiction includes disputes between a citizen of a state and a subject of a foreign state. To deem an alien corporation to be a citizen of the state of its principal place of business and to allow it to bring suit in a federal forum is clearly recognized by the Constitution. This ability does not, however, extend to that same alien corporation bringing suit against another corporation chartered by a foreign country; only "national" citizens have the ability to bring a suit in a United States court. To interpret section 1332(c) as allowing a suit between two aliens exceeds the language of the Constitution. The application of section 1332(c)

73. 247 F. Supp. at 409.
74. Id. at 410. See also United Steelworkers v. R.H. Bouligny, Inc., 382 U.S. 145 (1965).
75. E.g., Wright & Miller, supra note 8, § 3628.
76. Id.
77. Id.
78. Id.
80. See supra note 71.
81. See supra note 69.
to the alien corporation in this situation results in the creation of a form of triple citizenship: United States citizenship in order to gain access to the federal court; state citizenship to determine whether there is diversity; and the foreign citizenship already held by the entity. This application also has the result of expanding the workload of the federal court system, the very thing that Congress attempted to reduce by enacting subsection (c).

Defining citizenship flexibly is a reasonable exercise of congressional authority. Congress has recognized the relationship between a corporation, regardless of its place of incorporation, and its base of business operations. To confer a form of state citizenship on an alien corporation is no more unreasonable than the suggestion that Congress could require domestic incorporation as a condition precedent to operating its principal place of business in this country. Citizenship should never be so liberally interpreted, however, that it confers a form of national citizenship on an alien corporation.

IV. A NARROW INTERPRETATION OF SECTION 1332(c)

Section 1332(c) should not be broadly applied to alien corporations. A restrictive approach such as the one employed by the Eisenberg court, however, is equally unacceptable. The statute instead should be construed as conferring dual citizenship on an alien corporation only when it maintains its principal place of business in the United States. The statute should never be read as conferring national citizenship on that entity.

This approach concurs with the goals of Congress in enacting section 1332(c). One result would be the reduction of the federal courts’ workload because the number of situations eligible for diversity jurisdiction would necessarily remain limited. Furthermore, a corporation maintaining its prin-

82. Wright & Miller, supra note 8, § 3628.

83. The American Law Institute has suggested that the wording of section 1332(c) be changed so that a corporation shall be deemed a citizen of “every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” The ALI stated:

The Reporters do not believe that this constitutional question is a substantial one. The corporate fiction does not appear to rest on any basis that should foreclose the clearly reasonable conclusion that a corporation can be treated as having American state citizenship if it is incorporated in a foreign country but has its principal place of business in the United States. This would certainly seem true where the shareholders are United States citizens but should apply more generally as well.

If nothing else, it would seem difficult to maintain such a Constitutional barrier in circumstances such as these where Congress could undoubtedly require domestic incorporation as a condition of having a principal place of business in the United States.

American Law Institute, Study of Division of the Jurisdiction Between State and Federal Courts § 1301(b)(1) (1969) [hereinafter cited as ALI].

84. See supra note 19.

85. See supra text accompanying notes 16-20.
Principal business operations in the United States would be precluded from hiding behind the legal fiction of a foreign charter for purposes of litigation.86

A Liberian-chartered corporation, for example, could not avail itself of a federal forum solely because of its status as an alien corporation.87 In order to bring suit in federal court, this corporation, headquartered in state \( A \), would be required to demonstrate that the other party to the litigation was not a citizen of that state. This hypothetical recognizes that a corporation, as an employer and a member of the community, may benefit from local prejudices,88 a fact that is not altered by its legal incorporation in a foreign country. Deeming an alien corporation to be a citizen of its state of principal business activities also prevents the corporation from successfully manipulating the legal system as was done in *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*,89 the catalyst for the passage of section 1332(c).90 The minimization of the federal courts' workload must always be the crucial factor in applying section 1332(a) to a particular fact situation.

Following this interpretation, if an alien corporation with its principal place of business in state \( A \) sues or is sued by a citizen of state \( A \), no diversity jurisdiction would exist.91 Section 1332(c) would apply to the alien corporation because it is deemed to be a citizen of state \( A \).92 In a second hypothetical, no jurisdiction would exist when a foreign corporation with its principal place of business in state \( A \) is involved in a controversy with an alien corporation, foreign state, or citizen. Diversity would be lacking because, following this Note's interpretation, section 1332(a) requires that a United States citizen be involved on at least one side of the controversy. The alien corporation would be considered a citizen of state \( A \) but would not have the requisite national citizenship93 necessary to bring a suit against another alien corporation in a federal court.

The application of section 1332(c) to an alien corporation in the first hypothetical is similar to its application to a domestic corporation. It prevents

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88. See Moore & Weckstein, supra note 86. The authors argue that the Founders' fears that an alien corporation would suffer the effects of the prejudice of local courts and legislatures is unfounded today. Id. at 1449.

89. 276 U.S. 518 (1927).

90. See supra text accompanying notes 20-22.


92. It would not be a controversy between citizens of "different States" as required by section 1332(a)(1), nor would it fall within 1332(a)(2) or 1332(a)(3).

93. But see Wright & Miller, supra note 8, § 3628: Congress clearly has the power to change the states of corporations for purposes of diversity. . . . Thus there seems to be no reason why the jurisdiction statute cannot be applied to foreign corporations. . . . [W]hen the dispute between an alien and a foreign corporation with a principal place of business in the United States arises out of local activities, a federal court should be available.
a truly local corporation from invoking diversity jurisdiction by virtue of its foreign charter. Furthermore, it limits the application of diversity jurisdiction. Such an application therefore would be consistent with the enactment of section 1332(c).94 There is no constitutional issue because the intepretation does not expand the reach of federal judicial power beyond the constitutional limitations of article III.

The second hypothetical is more difficult because the result is seemingly inequitable. Section 1332(c) is applied to alien corporations in the first hypothetical but denied in the second. The rationale for not applying section 1332(c) to alien corporations when it creates diversity jurisdiction is that section 1332(c) defines state citizenship only; it does not confer United States national citizenship on that corporate entity. Diversity jurisdiction may be involved only in those situations where a United States citizen is a party to the action. A foreign-chartered corporation necessarily fails under this interpretation.

It is not sufficient to maintain that state citizenship is the sole requisite for invoking diversity jurisdiction. Nor should much deference be given to the argument that access to the federal courts should always be granted to a foreign-chartered corporation merely because it maintains its principal place of business headquarters in the United States. If such a corporation is concerned with gaining access to a federal forum, that corporation could easily re-incorporate in the United States and thereby receive the protection of the American courts.

A more troublesome situation occurs when an alien corporation, with its principal place of business in state A, sues or is sued by an alien-chartered corporation whose principal place of business is located in state B. Section 1332(a)(1) may apply if the situation is interpreted as a controversy between "citizens of different States." Again it seems that if section 1332 is considered as a whole, then implicitly one of the parties must be a United States citizen. The corporations in this hypothetical may be defined as state citizens, but it is unreasonable to deem them to be national citizens. Until Congress amends section 1332, it is unreasonable to give the statute any broader meaning than the one suggested by this Note.

Commentators96 have argued that section 1332(c) should apply to alien corporations without limitation because there "seems to be no reason why the

94. See supra text accompanying notes 20-22.
95. ALI, supra note 83, at 113 n.14.
96. E.g., WRIGHT & MILLER, supra note 8, § 3628. The ALI uses a similar argument in asserting that the constitutional issue involved is not a substantial one. ALI, supra note 83, at 113 n.14. The Reporter states that "[i]f nothing else, it would seem difficult to maintain such as constitutional barrier in circumstances such as these where Congress could undoubtedly require domestic incorporation as a condition of having a principal place of business in the United States." Id.
jurisdiction statute cannot be applied to foreign corporations." The argument, however, fails to address the issue of the expansion of diversity jurisdiction, which is the necessary result of applying section 1332(c) in this manner. Proponents assert that there may be affirmative reasons why Congress should provide a federal forum when a foreign corporation sues or is sued by an alien. However, it is questionable whether Congress has the constitutional power to provide a federal forum in such a case. Moreover, Congress did not articulate any of these "affirmative reasons" when enacting section 1332(c).

V. A LEGISLATIVE SOLUTION

Various proposals have been recommended to expand the language of section 1332(c) by creating dual citizenship for alien corporations. The American Law Institute (ALI) has proposed that dual citizenship be created for a foreign-chartered corporation so that the corporation would be a citizen of its foreign state of incorporation as well as a citizen of the state or foreign state where its principal place of business is located. The ALI proposal would also deem a corporation to be a citizen of every state in which it is incorporated. Such an amendment, it is argued, would help to avoid "any possible appearance of injustice or tenable ground for resentment." The alien corporation would have the assurance that it was being afforded the same judicial protections guaranteed to similar domestic corporations.

Amending section 1332(c) in this manner would clearly confer access to the federal courts upon alien corporations. As discussed previously, the constitutionality of such an amendment is questionable. Such an amendment could be interpreted as allowing an alien corporation to bring suit against another alien corporation in federal court. Diversity jurisdiction would then be expanded and the workload of the federal courts increased—the very problem that Congress attempted to resolve by enacting section 1332(c). The proponents of the amendment fail to address this issue in a forthright manner.

The ability of two alien corporations to bring suit in federal court should always be precluded. Allowing such suits results in a further burden on the

97. Wright & Miller, supra note 8, § 3628.
98. Id.
99. See supra note 5.
100. Wright & Miller, supra note 8, § 3628; ALI, supra note 83, at 113-14.
101. The proposed amendment reads: "A corporation shall be deemed a citizen of every State and foreign state by which it has been incorporated and of the State or foreign states where it has its principal place of business." ALI, supra note 83, at 110.
102. Id. at 108.
103. Id.
104. See supra text accompanying notes 74-82.
105. See supra text accompanying notes 20-22.
federal courts' workload. In light of the increase in international commercial trade and the growing number of foreign corporations locating plants and offices in the United States, it would be contrary to the goals of section 1332(c) to allow these corporations access to the federal courts on the grounds of diversity of citizenship. Amending section 1332(c) in this manner would be detrimental to the federal judicial system.

CONCLUSION

The unique problems that arise when section 1332(c) is applied to alien corporations are created because of the confusion regarding a definition of corporate citizenship. There does not seem to be a truly consistent application of section 1332(c) to alien corporations. This Note supports the application of the statute only when a United States citizen is on one side of the controversy. This interpretation limits the use of diversity jurisdiction and, moreover, it prohibits a purely local, but fictionally alien, corporation from gaining access to the federal courts. It also avoids potential constitutional problems.

There is no easy solution to this problem. Perhaps the answer lies in a redefinition of corporate citizenship, possibly by looking to the citizenship of directors or majority stockholders. This issue should be addressed by Congress with a view towards the increase in multinational corporations and the growth in the world economy. Absent congressional action, however, it is unreasonable to give section 1332(c) a broader meaning than that offered by this Note.

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