Consistent "Deeming": A cohesive construction of 28 U.S.C. § 1332 in cases involving international corporations and permanent-resident aliens.

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ABSTRACT

Two categories of alienage-jurisdiction cases have proven troublesome: cases involving permanent-resident aliens and cases involving international corporations. Jurisdiction in these categories depends upon the construction of 28 U.S.C. § 1332's deeming provisions. The permanent-resident deeming provision and the corporate deeming provision operate uncontroversially to remove certain cases from federal jurisdiction, but controversy exists as to what extent they create jurisdiction that did not exist before the amendments that added the deeming provisions. The results and analytical approaches in these categories have varied, and the resulting confusion is unsatisfactory. The cases in this area are plagued by a structural flaw—while framing their analyses in terms of "clear" or "unambiguous" text, the courts have actually imposed no construction at all, instead jumping extratextually to the what-would-Congress-have-wanted question. Further, the courts faced with cases in each category have decided the cases without reference to the other category.

My solution is a modest one but provides the consistency needed in a jurisdictional inquiry. I give the words "shall be deemed" a consistent construction in the two deeming provisions and resolve the missing-word problem that lurks in the background. Under my solution, the words "shall be deemed" perform a simple function in the deeming provisions—they confer State citizenship on certain litigants. But they do not strip a party of preexisting alien status. When construed this way and combined with the § 1332(a) jurisdiction-granting subcategories, the deeming provisions create no jurisdiction that did not exist before the deeming provisions.

My solution provides several benefits. First, it provides the consistency and coherence needed in a jurisdictional inquiry. Second, it is textually faithful and gives effect to the similar language used in the deeming provisions and differing language used elsewhere in § 1332. And third, it avoids the constitutional problems that arise under alternative construction. To be sure, one might conjure up scenarios where, in the view of the conjurer, exercising jurisdiction would better serve the purposes of alienage jurisdiction. But those scenarios are rare, and desirability of results cannot distort the task—giving effect to the statute. Among permissible solutions, mine yields the best results. It simply is not an acceptable method of statutory interpretation to determine: when no construction yields the construer's desired result in every case, the statute need be given no construction except what Congress should have intended in each case.

Introduction

Two categories of alienage-jurisdiction cases under 28 U.S.C. § 1332 have proven troublesome. The first category involves permanent-resident aliens, the second involves international corporations.[1] Within each category, the courts' analytical approaches and results have varied widely. The current state of the law is unsatisfactory, with jurisdiction too often depending upon unpredictable guesses at congressional intent without providing a coherent construction of § 1332 to guide future litigants. While courts have decided the cases in each of the two categories without reference to the other, in this Article I propose a solution that synthesizes the two categories and gives the language "shall be deemed" in § 1332 a consistent construction. In one sense, the solution that I propose is modest, in that it produces *results* consistent with the majority approach under each category. But in another sense it is novel because it is textually reconcilable, it synthesizes both categories, and it provides the certainty needed in a jurisdictional inquiry.

A preliminary note about my solution is needed. It is not one of a strict constructionist, whatever that means. But it is one of *a* constructionist. The cases in this area are plagued by a structural flaw. While framing their analyses in terms of "clear" or "ambiguous" text, the courts have actually imposed no construction at all, instead jumping to the what-did-Congress intend answer, which when divorced from the text translates into what the judge thinks Congress should have done.[2] But even spotting an

[1] In this Article, I use the term "international corporations" to refer to a corporation that has either—but not both—a foreign incorporation or a foreign principal place of business. No problem exists if the corporation is purely foreign or purely domestic. *See infra* page 13-14.

[2] "When you are told to decide, not on the basis of what the legislature said, but on the basis of what it *meant*, and are assured there is no necessary connection between the two, your best shot at figuring out what the legislature meant is to ask yourself what a wise and intelligent person *should* have mean and that

ambiguity is not a license to choose the most desirable result. Rather, spotting an ambiguity is only a license to choose between permissible constructions of the words. The end goal should be to give the statute a meaning that resolves the instant case and applies consistently in future cases, not to merely choose the winner in each case. Consistency and predictability are especially important in jurisdictional inquiries, where the lack of either results in prolonged litigation about where to litigate.

To determine jurisdiction in cases involving international corporations and permanent resident aliens, courts must construe two "deeming provisions" in 28 U.S.C. § 1332, which I will refer to as the corporate deeming provision[3] and the permanent resident deeming provision,[4] respectively. As explained in Part I-B, determining jurisdiction under § 1332 is a two-step process: a court must first classify the citizenship of the parties and second determine whether the party lineup as classified satisfies any of the jurisdiction-granting subcategories of § 1332(a). The deeming provisions impact the first step, classifying citizenship.

The corporate deeming provision and the permanent-resident deeming provision use the same "deeming" language, which is emphasized below. The corporate deeming provision provides that a "corporation *shall be deemed* to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."[5] The permanent-resident deeming provision provides that an "alien admitted to the United States for permanent residence *shall be deemed* a citizen of the State in

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will surely bring you to the conclusion that the law means what you think it *ought* to mean." Antonin Scalia, *A Matter of Interpretation*: *Federal Courts and the Law*, at 18 (Princeton 1997).

[3] 28 U.S.C. § 1332(c)(1).

[4] *Id.* § 1332(a).

[5] *Id*.

which such alien is domiciled."[6] The "shall be deemed" phrase becomes important later, both in anchoring a cohesive, textually defensible, synthesized result and in demonstrating how the courts have been skipping a step.

Both deeming provisions were added by congressional amendments and unquestionably *remove* from federal jurisdiction some cases that were within it before the amendments. The disputes in this area have centered on whether, while removing some cases from §1332, the deeming provisions also *create* jurisdiction in some cases where jurisdiction did not exist before the amendments added the deeming provisions. What becomes apparent later is that resolving the does-it-expand-jurisdiction question requires that we insert a word into the deeming provisions. My solution resolves the missing-word problem consistently in both provisions. At the risk of providing too much information too soon and before the needed context, the next paragraph previews the missing-word problem and my solution.

Under my solution, the words "shall be deemed" perform a simple function in the deeming provisions. They confer State citizenship (that's capital-S State, meaning a United States State)[7] on litigants. But they do not strip litigants of preexisting alien status. If an alien was an alien before the deeming provision was passed, she retains her alien status. So, the deeming provisions deem a litigant [also] a State citizen, rather than [only] a State citizen. When construed this way, neither of the deeming provisions create jurisdiction where it did not exist before the amendments. The historical context suggests that Congress enacted the deeming provision to remove essentially local disputes from § 1332. Under my approach, that's all the provisions do. Two other benefits follow. First,

[6] *Id*. § 1332(a).
[7] The reference to capital-S States also includes United States Territories, the District of Columbia, and the Commonwealth of Puerto Rico. 28 U.S.C. § 1332(d).

my solution avoids the constitutional problems created by construing the deeming provisions to strip a litigant of alien status. And second, my solution gives effect to differing language in the other deeming provision in § 1332, which expressly provides that certain litigants are deemed "only" citizens of certain States.

To be sure, one might conjure up certain scenarios where my solution would eliminate jurisdiction but where, in the view of the conjurer, exercising jurisdiction would better serve the purposes of alienage jurisdiction. But it is not an acceptable method of statutory construction to conclude: when no construction yields the construer's desired result in every case, the statute need be given no construction.

The Article proceeds in three parts. In Part I, I will outline the structure of subject-matter jurisdiction generally and the statutory grant of jurisdiction in 28 U.S.C. § 1332 specifically.[8] This preliminary material, while elementary in a traditional diversity case, presents subtleties that must be mastered to understand the problems that have arisen in the two categories. In Part II, I will outline the issues surrounding both deeming provisions and how courts have resolved recurring litigation patterns.[9] In Part III, I will propose my solution and demonstrate how it operates consistently in both categories, how it solves the problems raised in Part II, and how it applies in common scenarios.[10] Finally, at the end of the Article, a chart appears.[11] The chart contains: (1) the common scenarios presented under both deeming provisions; (2) whether jurisdiction existed in each scenario before the relevant deeming provision; (3) whether jurisdiction exists under my solution; and (4) whether jurisdiction might exist under any feasible alternative

[8] *See Infra*, Part I, p.
[9] *See Infra*, Part II, p.
[10] *See Infra,* Part II, p.
[11] *See Infra*, p.

solutions. While I aim this Article at the current interpretative task facing the courts, in the margins I will also reference and compare proposed legislation, which is in its early stages.[12]

I. Basic Structure of subject-matter jurisdiction and § 1332

The cases involving international corporations and permanent-resident aliens present questions both of statutory construction and constitutional boundaries. These questions often overlap, as the potential unconstitutional results influence statutory construction. This Part provides the structural background needed to understand the issues described in Part II. In Part I-A, I will outline the basic nature of the subject-matter jurisdiction inquiry and Article III of the Constitution's role in that inquiry. In Part I-B, I will detail 28 U.S.C. § 1332's structure, emphasizing alienage jurisdiction.

A. Article III's role in the subject-matter jurisdiction inquiry.

Article III, § 2 provides that the judicial power "shall extend" to certain categories of cases or controversies, known as the heads of jurisdiction.[13] Despite the "shall extend" language, Article III is not a self-executing grant of jurisdiction to the lower federal courts.[14] That is, Article III confers no jurisdiction on the federal district courts.[15] To

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[12] *See* H.R. 5440. HR 5440, entitled "A Bill to amend title 28, United States Code, to clarify the jurisdiction of the Federal Courts, and for other purposes," was approved by the Subcommittee on Courts, the Internet and Intellectual Property of the House Judiciary Committee on May 22, 2006.

[13] "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; --to all Cases affecting Ambassadors, other public Ministers and Consuls; --to all Cases of admiralty and maritime Jurisdiction; --to Controversies to which the United States shall be a Party' –to Controversies between two or more States; --between a State and Citizens of another State [modified by the 11th Amendment]; --between Citizens of different States; --between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects." U.S. CONST. art. III, § 2.

[14] Merrell-Dow Pharmaceuticals v. Thompson, 478 U.S. 804, 807 (1986); Cary v. Curtis, 44 U.S. 236, 245 (1845).

[15] *Id.*; John T. Parry, *No Appeal: The U.S.-U.K. Supplementary Extradition Treaty's Effort to Create Federal Jurisdiction*, 25 LOYOLA L.A. INT'L & COMP. L. REV. 543, 561 (Summer 2003). In contrast, Article III's grants of jurisdiction to the Supreme Court are self-executing. Lawrence Gene Sager,

have subject-matter jurisdiction, the federal district courts need congressional authorization.[16] What purpose, then, do the heads of jurisdiction serve in Article III, § 2? The heads of jurisdiction define the limits on *Congress's* power to confer jurisdiction on the federal courts.[17] In other words, Article III, § 2 defines the maximum reach of the federal judicial power—it sets the limits on what jurisdiction Congress can give its courts.[18] When Congress confers jurisdiction on the federal courts, it must be able to point to one of the heads of jurisdiction within the Constitution as authorizing that particular grant. Thus, determining subject-matter jurisdiction is a two-step process. First, did Congress confer jurisdiction? And second, if so, did Article III, § 2 give Congress the power to do so?

In most modern litigation, the focus is on the first step—determining whether Congress conferred jurisdiction. This focus is appropriate because, in most cases, jurisdiction depends upon statutes that the Supreme Court has construed more narrowly than the boundaries of Article III. For example, in federal-question cases, the focus is almost always on the scope of the statutory grant, 28 U.S.C. § 1331, because the court has construed § 1331's jurisdictional grant much more narrowly than the corresponding

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Constitutional Limitations on Congress's Authority to Regulate the Jurisdiction of the Federal Courts, 95 HARV. L. REV. 17, 23-24 (1981).

[16] *Cary*, 44 U.S. at 245 ("[T]he judicial power of the United States, although it has its origins in the Constitution, is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited or concurrent, or exclusive, and of withholding jurisdiction for them in the exact degrees and character which to Congress may seem proper for the public good.").

[17] Sheldon v. Sill, 49 U.S. 441, 449 (1850) ("The Constitution has defined the limits of the judicial power of the United States, but has not prescribed how much of it shall be exercised" by the lower federal courts.); *see* Mesa v. California, 489 U.S. 121, 136 (1989); Verlinden B.V. v. Central Bank of Nigeria, 461 U.S. 480, 491 (1983).

[18] Rory Ryan, *No Welcome Mat, No Problem?: Federal-Question Jurisdiction After Grable*, __ ST. JOHN'S LAW REVIEW ___ (2006).

head of jurisdiction.[19] Similarly, in a pure diversity case (one involving no alien parties), courts have no need to check constitutional boundaries because, as detailed in the next part, the Court has construed the statutory grant of diversity jurisdiction more narrowly than the corresponding head of jurisdiction that authorizes Congress to confer jurisdiction in cases "between Citizens of different States."[20]

Alienage cases (particularly those involving permanent-resident aliens) can raise issues at both steps. Cases involving international corporations and permanent-resident aliens present difficult questions of § 1332's proper construction. But unlike the plain vanilla federal-question and diversity cases mentioned last paragraph, the alienage cases also present constitutional questions. Article III authorizes Congress to confer jurisdiction in cases between citizens of different States and in cases between citizens of a State and citizens or subjects of a foreign state (aliens).[21] But Article III does not authorize Congress to confer jurisdiction in cases solely between aliens.[22] Certain expansive constructions of the deeming provisions raise questions about the precise boundaries of Congress's Article III power and about exactly what constitutes a

[19] For example, the well-pleaded-complaint rule eliminates some cases from district-court jurisdiction under § 1331, *Louisville & Nashville RR Co. v. Mottley*, 211 U.S. 149 (1908) though the presence of a federal defense makes a case "arise under" federal law for Article III purposes, *Louisville & Nashville RR Co. v. Mottley*, 219 U.S. 467 (1911) and Congress can override the rule. *Mesa v. California*, 489 U.S. 121, 136-137 (1989) (The federal officer removal statute "merely serves to overcome the well-pleaded complaint rule which would otherwise preclude removal even if a federal defense were alleged.").

[20] State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523, 531 (1967) (The complete-diversity rule arises from the language of § 1332, not from the Constitution. "Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens.")

[21] U.S. CONST. Art. III, § 2.

[22] Hodgson v. Bowerbank, 9 U.S. (5 Cranch) 303, 3 L.Ed. 108 (1809), *see also* Kramer v. Caribbean Mills, Inc., 394 U.S. 823, 825 n. 2 (1969) (federal court may not exercise jurisdiction over case solely between two alien corporations); Jackson v. Twentyman, 27 U.S. (2 Pet.) 136, 136 (1829) (noting that, under the Constitution, "the judicial power was not extended to private suits, in which an alien is a party, unless a citizen be the adverse party"); Montalet v. Murray, 8 U.S. (4 Cranch) 46, 47 (1807) ("The Court was unanimously of opinion that the courts of the United States have no jurisdiction of cases between aliens.").

forbidden suit between aliens.[23] Because of the potential constitutional problems, the two steps commingle—under accepted principles of statutory construction, the potential unconstitutionality influences the construction of the statutory language.

Having presented the basic constitutional structure, I will leave the details of the constitutional questions until Parts II and III. Next, I turn to the statutory grant of diversity and alienage jurisdiction, 28 U.S.C. § 1332.

B. 28 U.S.C. § 1332 and the deeming provisions

28 U.S.C. § 1332 provides, in relevant part:

> (a)The district courts shall have original jurisdiction over all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interests and costs, and is between:
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> > (1) citizens of different States;
> > (2) citizens of a State and citizens or subjects of a foreign state; and
> > (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties.
> > ***
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> For the purposes of this section . . . and section 1441 an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.
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> ***
>
> (c) For purposes of this section and section 1441 of this title—
>
> > (1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business . . . .
> >
> > (2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal

[23] *See generally* In re Bridgestone/Firestone, Inc., 247 F. Supp.2d 1071, 1073 (S.D. Ind. 2003) (noting the potential collision course between certain constructions of the permanent-resident deeming provision and Article III).

> representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

Assuming the amount-in-controversy requirement is satisfied, jurisdictional inquiries under § 1332 have two steps. First, the court must classify the citizenship of all the parties. Section 1332 contains several provisions governing how to classify a party's citizenship.[24] But not all citizenship questions are answered by § 1332, and the citizenship classification therefore often requires resort to judicially created principles.[25] Second, having classified the parties' citizenships, the court must examine whether the party lineup fits one of the subsections of § 1332(a). The subsections of § 1332(a) are the congressional grants of jurisdiction. For logistical reasons, I will discuss the steps in reverse order, starting with the subsections.

(1) The subsections

Subsections § 1332(a)(1)-(a)(3)[26] grant jurisdiction in three different categories of cases and contain subtleties that are lost in a common generalization regarding § 1332. It is often generalized (imprecisely) that § 1332 requires "complete diversity" of citizenship and that all aliens are treated as citizens of the same foreign state.[27] So (following the generalization) if the case involves litigants on both sides who either share citizenship in a State or who are both aliens, jurisdiction is improper. This generalization will, in some

[24] *E.g.*, 28 U.S.C. §§ 1332 (a), (c) & (d).
[25] For example, the definition of an individual's citizenship has been left to judicial development, Wright & Miller, Federal Practice and Procedure § 3611 at 507, as has the definition of what constitutes a corporation's principal place of business. *E.g.*, Teal Energy USA, Inc. v. GT, Inc., 369 F.3d 873 (5th Cir. 2004).
[26] Subsection(a)(4) is outside the scope of this article. It authorizes jurisdiction when the amount in controversy exceeds $75,000 and the civil action is "between a foreign state . . . as plaintiff and citizens of a State or of different States." 28 U.S.C. § 1332 (a)(4).
[27] Allendale Mut. Ins. Co. v. Bull Data Systems, Inc., 10 F.3d 425, 428 (7th Cir. 1993) (discussing underlying statutory framework).

situations, produce incorrect results, as demonstrated below. A proper analysis views each subsection as an independent grant of jurisdiction.[28]

Subsection (a)(1) is the grant of pure diversity jurisdiction.[29] It grants jurisdiction in cases "between citizens of different States."[30] The Court has consistently construed this quoted statutory phrase to require complete diversity of citizenship, meaning that no litigant on one side of a case can share State citizenship with any litigant on the other side of the case.[31] Co-parties, but not adverse parties, can share State citizenship. Importantly, subsection (a)(1) does not apply when the case involves *any litigant* who is an alien. Subsection (a)(1) authorizes jurisdiction in cases involving only State—that's State with a capital "S", as in the United States[32]—citizens. If an alien litigant is present in the suit, jurisdiction must be found under (a)(2) or (a)(3).

Subsection (a)(2) is the congressional grant of pure alienage jurisdiction.[33] Pure alienage jurisdiction exists when all litigants on one side are State citizens and all litigants on the other side are aliens.[34] It does not authorize jurisdiction between State citizens. If State citizens are present on both sides, jurisdiction depends upon either (a)(1) or (a)(3). Nor does (a)(2) authorize jurisdiction when aliens are present on both sides.[35] If a case involves aliens on both sides, jurisdiction can only be proper under (a)(3).

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[28] *See id*. (noting that the proper inquiry is whether the party alignment satisfies one of § 1332(a)'s pigeonholes).
[29] 28 U.S.C. § 1332(a)(1).
[30] *Id*.
[31] Owen Equipment v. Kroger, 437 U.S. 365, 373 (1978).
[32] *See* note 7, *supra*.
[33] 28 U.S.C. § 1332(a)(2).
[34] *See* Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828 (1989); Allendale Mut. Ins. Co.v. Bull Data Systems, Inc., 10 F.3d 425, 428 (7th Cir. 1993).
[35] *See* Allendale Mut. Ins. Co. v. Bull Data Systems, Inc., 10 F.3d 425, 428 (7th Cir. 1993) (rejecting jurisdiction when the suit involved an alien versus an alien and citizen).

Subsection (a)(3) is the grant of diversity-alienage hybrid jurisdiction. This subsection grants jurisdiction when the case would satisfy diversity jurisdiction among State citizens but also involves aliens.[36] To trigger (a)(3), State citizens must be present on both sides of the case, and complete diversity must exist among those State citizens.[37] This trigger is needed because (a)(3) uses the same language as (a)(1), "citizens of different States."[38] Under subsection (a)(3), provided the trigger is present (completely diverse State citizens on both sides), jurisdiction is proper even if aliens are additional parties.[39] It is in this situation that the above-mentioned generalization fails. Under the plain language of (a)(3), the presence of aliens on both sides of the case does not destroy jurisdiction.[40] For example, suppose the suit involves two plaintiffs—one a Citizen of State X and one nonresident alien—versus two defendants—one a citizen of State Y and one nonresident alien. Applying (a)(3), jurisdiction would be proper because the suit contains completely diverse State citizens on both sides, and aliens are additional parties.[41] Conversely, suppose the suit involves a Citizen of State X and a nonresident alien as plaintiffs and only a nonresident alien as defendant. Now, jurisdiction is improper, but not because the presence of aliens on both sides is always fatal, but rather

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[36] 28 U.S.C. § 1332(a)(3).
[37] *See Newman-Green, Inc.*, 490 U.S. at 828 (1989).
[38] 28 U.S.C. § 1332(a)(1), (3).
[39] Dresser Indus., Inc. v. Underwriters at Lloyd's of London, 106 F.3d 494, 497-500 (3d Cir. 1997).
[40] *Id.*; Goar v. Compania Peruana de Vapores, 688 F.2d 417, 421 (5th Cir. 1982); *see* Israel Aircraft Indus. Ltd v. Sanwa Bus Credit Corp., 16 F.3d 198, 202 (7th Cir. 1994); Karaznos v. Madison Two Assocs., 147 F.3d 624, 627 (7th Cir. 1998). *See also* Hunter v. Shell Oil Co., 198 F.2d 485, 488 (5th Cir. 1952); Nancy M. Berkley, Note, *Federal Jurisdiction Over Suits Between Diverse United States Citizens With Aliens Joined to Both Sides of the Controversy Under 28 U.S.C. § 1332(a)(3)*, 38 RUTGERS L.REV. 71, 94 (1985) (noting that the purpose of § 1332(a)(3) was to provide a federal forum for diverse United States citizens irrespective of their involvement with alien parties).
[41] *See* cases cited, *supra*, note 40.

because now this case simply doesn't trigger subsection (a)(3), which is the only subsection that allows aliens to be on both sides.[42]

Several rules emerge from synthesizing these subsections. First, jurisdiction is never proper under § 1332 when citizens of the same State are present on both sides of a suit. Both (a)(1) and (a)(3) require complete diversity, and (a)(2) applies only to pure alienage situations. Second, jurisdiction is never proper in a suit *only* between aliens. No subsection authorizes such a suit, and for good reason—the Constitution does not authorize Congress to grant jurisdiction in a suit *only* between aliens.[43] Third, when aliens are present on both sides of the case, jurisdiction is only proper when completely diverse State citizens appear on both sides of the dispute, triggering § 1332(a)(3).[44]

The discussion thus far has assumed the citizenship of the parties. The next subpart works backwards to detail how the court classifies the citizenship of various parties.

(2) Classifying citizenship

Before a court can evaluate whether a case fits one of the § 1332(a) subsections, it must classify the citizenship of each party. Because of this Article's scope, I will focus only upon classifying the citizenship of corporations and individuals, beginning with the law before the deeming provisions and then focusing specifically upon the deeming provisions and how they impact the citizenship classification in cases involving permanent-resident aliens and international corporations.

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[42] *Karaznos*, 147 F.3d at 627.
[43] *See* cases cited, note 22, *supra*.
[44] *E.g.*, Chick Kam Choo v. Exxon Corp., 764 F.2d 1148, 1151 n.1 (5th Cir. 1985) (Section "1332(a)(3) is inapplicable in this case because United States citizens are not on both sides of the controversy.").

Corporations. Before Congress added the corporate deeming provision in 1958, all corporations were citizens only of their places of incorporation.[45] So, a corporation incorporated in a State was only a citizen of that State, while a corporation incorporated abroad was an alien for § 1332 purposes.[46] After classifying citizenship in the place of incorporation, courts could easily apply the § 1332(a) subcategories.

In 1958, Congress amended 28 U.S.C. § 1332 by adding the corporate deeming provision.[47] The corporate deeming provision provides:

> "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.[48]

Historical context and legislative history reveal that Congress added the corporate deeming provision to remove a certain category of cases from federal jurisdiction.[49] Because of the long-standing pre-1958 rule that a corporation was only a citizen of its place of incorporation, diversity existed in cases where it was not needed to avoid local bias.[50] For example, suppose a corporation is headquartered in State X and conducts essentially all of its operations in State X, but for practical reasons is incorporated in State Y. Before 1958, though the corporation was essentially at home in State X and could not fear local bias in State X, diversity jurisdiction would have existed over a suit

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[45] *See* Federal Practice and Procedure §§ 3624 (discussing pre-1958 law) & 3626 (discussing the unusual circumstance of a corporation incorporated under multiple states' laws).
[46] Steampship Co. v. Tugman, 106 U.S. 118, 121 (1882) (A "corporation of a foreign State is, for purposes of jurisdiction in the courts of the United States, to be deemed, constructively, a citizen or subject of such State."); Lewis v. Manufacturers Cas. Ins. Co., 107 F. Supp. 465, 470 (D.C. La. 1952).
[47] Pub. L. No. 85-554, § 2, 72 Stat. 415 (1958
[48] 28 U.S.C. § 1332(c).
[49] *See generally*, Hearing before the Subcommittee on courts, the internet and intellectural property, No. 109-67 (November 15, 2005), at 4 (Testimony of the Hon. Janet C. Hall).
[50] *See* Jerguson v. Blue Dot Investment, 659 F.2d 31, 33 (1981) ("'The underlying purpose of diversity of citizenship legislation … 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.'") (citing S.Rep. No. 1830 Cong. 2d Sess., reprinted in (1958) U.S. Code Cong. & Ad. News 3099, 3101-02.).

between the corporation and another State X citizen. By deeming the corporation as State X citizen, "Congress intended to limit the diversity jurisdiction . . . to those out-of-state citizens who should be free of local bias."[51]

The corporate deeming provision creates no complexities when corporate parties are either purely domestic or purely foreign. When a corporation is purely domestic, meaning it has both a domestic incorporation and domestic principal place of business, the corporate deeming provision deems the corporation a citizen of the State (or States) where it is incorporated and of the State where it has its principal place of business. For example, a corporation incorporated in Delaware with a principal place of business in Texas is a dual citizen of Delaware and Texas, and thus jurisdiction would fail if any litigant on the other side were a Delaware or Texas citizen.[52] Similarly, purely foreign corporations, meaning corporations that have both a foreign incorporation and principal place of business, are simply aliens.

But that capital-S term "State" has created problems in cases involving international corporations.[53] Does the corporate deeming provision apply to foreign corporations? If so, does a foreign corporation with a domestic principal place of business have dual citizenship as both an alien and State citizen? What about a domestically incorporated corporation with a principal place of business abroad? Does the corporate deeming provision, while removing jurisdiction in some cases, actually create jurisdiction that did not exist before the corporate deeming provision? Part II explores these problems and surveys the relevant case law. Part III presents my solutions.

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[51] *Id*.
[52] *Supra*, text p. 14 (Note to editors: this supra note will appear frequently. It targets my paragraph beginning "Several rules emerge," which at submission appeared on page 14).
[53] *See, e.g.,* Danjaq, S.A. v. Pathe Communications Corp., 979 F.2d 772 (9th Cir. 1992).

Individuals. Individuals generally fit within one of four categories: (1) United States citizens domiciled in a State; (2) United States citizens domiciled abroad; (3) nonresident aliens; and (4) permanent-resident aliens.[54] A United States citizen domiciled in a State is a citizen of that State for diversity purposes.[55] A United States citizen domiciled abroad is a citizen of nowhere, and that citizen's presence in the lawsuit destroys jurisdiction under § 1332 regardless of the citizenship of the remaining parties.[56] Nonresident aliens (meaning a citizen or subject of a foreign state not admitted to the United States for permanent residence) are aliens.[57] When a lawsuit involves only parties in these first three categories, the § 1332(a) subsections can be neatly evaluated under the framework provided in the previous subpart.

Permanent-resident aliens present more complex problems because of the 1988 amendment adding the permanent-resident deeming provision. Before 1988, for jurisdictional purposes, an alien was an alien. That is, if a litigant was a "citizen or subject of a foreign state," the litigant was an alien. Neither the alien's domicile nor status as a permanent resident affected the alien's citizenship.[58] In 1988, Congress added the permanent-resident deeming provision, which provides: "[A]n alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which

[54] Two additional categories, though less common, exist. First, the unusual problem of dual nationals is addressed later in Part III-B-2. And second, a person may be a "homeless wanderer" with no nationality, thus making her a citizen of nowhere, akin to the United States citizen domiciled abroad. *See* Blair Holdings Corp. v. Rubenstein, 133 F. Supp. 496, 502 (S.D.N.Y. 1955).
[55] Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828 (1989); Mas v. Perry, 489 F.2d 1396, 1399 (5th Cir. 1974).
[56] Cresswell v. Sullivan & Cromwell, 922 F.2d 60, 68 (2d. Cir. 1990).
[57] "A person is considered a citizen or subject of a foreign nation if he or she is accorded that status by the laws or government of that country." Federal Practice and Procedure, § 3611 at 508-09.
[58] C.H. Nichols Lumber Co. v. Franson, 203 U.S. 278, 283 (1906); Sadat v. Mertes, 615 F.2d 1176, 1183 (7th Cir. 1980).

such alien is domiciled."[59] What impact does this provision have on classifying a permanent-resident alien's citizenship?

The permanent-resident deeming provision creates no complexities in the class of cases in which it was apparently intended to apply. Like the purpose of the corporate deeming provision, the purpose of the permanent-resident deeming provision was to carve out a narrow category of essentially local disputes. Because of the pre-1988 an-alien-is-an-alien rule, jurisdiction existed under § 1332 where it was not needed to avoid local bias. For example, suppose a permanent-resident alien is domiciled in State X. Before 1988, though the permanent-resident alien was at home in State X and could not fear local bias there, jurisdiction would have existed over a suit between a United States citizen domiciled in State X and the permanent-resident alien. Congress added the deeming provision because it saw "no apparent reason why actions between persons who are permanent residents of the same State should be heard by Federal courts merely because one of them remains a citizen or subject of a foreign state."[60] All courts agree that the deeming provision removes jurisdiction over this category of cases, in which a permanent-resident alien domiciled in a State sues a citizen of the same State.

But Congress apparently never considered what effect the permanent-resident deeming provision would have on a case involving a permanent-resident alien on one side and an alien on the other. Does the permanent-resident deeming provision, while removing some disputes from § 1332, actually create jurisdiction in some cases where jurisdiction did not exist before 1988? Part II explores these problems and surveys the relevant case law. Part III presents my solutions.

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[59] 28 U.S.C. § 1332(a).
[60] Saadeh v. Farouki, 107 F.3d 52, 59 (D.C. Cir. 1997) (citing 131 Cong. rec. at 31, 054 (1988)).

II. Detailing the struggle

As demonstrated earlier, the deeming provisions govern the citizenship classification of international corporations and permanent-resident aliens. In some cases, the deeming provisions interact uncontroversially with the § 1332(a) subcategories to *remove* jurisdiction that would have existed before the deeming provisions. The cases that have troubled the courts, though, involve a different situation—one party argues that the deeming provisions interact with the subsections to *create* jurisdiction where jurisdiction would not have existed before the deeming provisions. In the two subparts below, I will explore the struggles involved with the two deeming provisions. In part III, I will propose a solution that synthesizes the two provisions, highlight the lurking missing-word problem, and return to apply my solution to the categories formed in part II. The chart that follows the Article tracks this structure.

A. International Corporations

The corporate deeming provision provides: " 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."[61] Two types of international corporations exist. First, a foreign corporation (meaning a corporation incorporated by a foreign state) may have its principal place of business[62] in a State. And second, a domestic corporation may have a foreign principal place of business.

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[61] 28 U.S.C. § 1332(c). The proposed amendment mentioned in note 12, HR 5440, would fix the ambiguities in this area by expressly deeming corporations citizens of foreign states: "a corporation shall be deemed to be 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." § 3(1).

[62] A corporation can have only one principal place of business. It is now settled that the inquiry seeks the corporation's worldwide principal place of business. Arab In'tl Bank & Trust Co. v. National Westminister Bank Ltd., 463 F.Supp. 1145 (S.D.N.Y. 1979); Richmond Const. Corp. v. Hilb, 482 F.Supp. 1201, 1205 (D.C. Florida 1980); and David Crystal, Inc. v. Cunard S.S. Co., 223 F.Supp. 273, 289 n.2 (S.D.N.Y.

(1) Foreign Corporation with domestic principal place of business.

Two underlying questions exist. First, does the corporate deeming provision apply at all to foreign corporations? And second, if it does apply, does it create dual citizenship for a foreign corporation with a domestic principal place of business?

The first question, despite initial mixed results, has been settled—the corporate deeming provision does apply to foreign corporations. In *Eisenberg*, the first court to address the question determined that the corporate deeming provision *did not apply* to foreign corporations at all.[63] Following reasoning that has been overwhelmingly rejected,[64] the court concluded that, even if a foreign corporation has a principal place of business in a State, it is not a citizen of that State, and is instead *only* an alien because, while the corporate deeming provision deems the corporation a citizen of the State where it has its principal place of business, the corporate deeming provision does not apply to foreign corporations.[65]

I accept as settled the nearly uniform rejection of *Eisenberg* and evaluate the second question, on which a dispute exists. The question is not whether the corporate deeming provision applies to foreign corporations. Instead, the question is *how* it applies. With *Eisenberg* out of the picture, two potential solutions apply to classifying the

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1963); R.W. Sawant & Co. v. Ben Kozloff, Inc., 507 F.Supp. 614 (N.D.Ill., 1981); Lee v. Trans American Trucking Service, Inc., 111 F.Supp.2d 135 (E.D.N.Y. 1999). A few early courts and commentators suggested that the court should seek out the corporation's principal place of business *within* the United States, *Simon Holding PLC Group of Cos. U.K., v. Klenz,* 878 F.Supp. 210 (M.D. Fla. 1995) but this approach has been correctly rejected. To illustrate, suppose a corporation was incorporated in Mexico, and had 99.9% of its operations in Mexico, but had a single United States "place of business,", one-person office in Texas. If the inquiry sought the corporations principal place of business *within* the United States, the corporation would be deemed a Texas citizen. *See also,* Federal Practice & Procedure § 3628.

[63] Eisenberg v. Commercial Union Assur. Co., 189 F.Supp. 500, 502 (S.D.N.Y. 1960)

[64] *E.g.,* Rouhi v. Harza Engineering Co., 785 F.Supp. 1290, 1293 (N.D.Ill. 1992); Torres v. Southern Peru Copper Corp., 965 F.Supp. 895, 897 (S.D.Tex. 1995) ; Danjaq, S.A. v. Pathe Communications Corp., 979 F.2d 772, 774 (9th Cir. 1992); Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1558+ (11th Cir. 1989). See also, Federal Practice & Procedure, § 3628.

[65] Eisenberg, 189 F. Supp. at 502.

citizenship of a foreign corporation with a principal place of business in State X: (1) the foreign corporation could be classified as *only* a citizen of State X; or (2) the foreign corporation could be classified as a dual citizen, as a citizen of State X *and* an alien. Both of these solutions treat, as they must, a corporation as a citizen of the State where it has its principal place of business—the plain language of § 1332(c) and its capital-S State demand it. The underlying question is whether the corporation retains its alien status or whether the deeming provision strips the corporation of its preexisting alien status. With this context in mind, I explore the decisions in the context of common party alignments to examine the different constructions of the deeming provisions and the results generated by combining those constructions with the § 1332(a) subcategories.

Foreign corporation with principal place of business in State X v. United States Citizen domiciled in State X. Under both of the two potential solutions mentioned above, jurisdiction fails. Whether the foreign corporation is *only* a citizen of State X or is *both* a citizen of State X and an alien, citizens of State X still appear on both sides, and the case therefore fits none of the § 1332(a) subcategories.[66] Accordingly, once they have rejected *Eisenberg*, courts have unanimously held jurisdiction improper in this scenario.[67] Notably, before 1958, jurisdiction would have been proper in this scenario, but now it's not.

Foreign Corporation with principal place of business in State X v. nonresident alien In this scenario, the answer depends upon which of the two potential solutions a

[66] *Supra*, text p. 14 (Note to editors: this supra note will appear frequently. It targets my paragraph beginning "Several rules emerge," which at submission appeared on page 14).
[67] Danjaq v. Pathe 979 F.2d 772, 773 (9th Cir. 1992); Petroleum & Energy Intelligence 762 F.Supp. 530, 532 (S.D.N.Y. 1989); Lee v. Trans American Trucking Serv. Inc. 111 F.Supp.2d 135, 139 (E.D.N.Y. 1999); Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc. 358 F.Supp. 1001, 1005-1006 (N.D. Ill. 1973); Vareka v. American Investment Properties 724 F.2d 907, 910 (11th Cir. 1984).

court has chosen. Most courts have chosen the second solution, treating the corporation as *both* an alien and a Citizen of State X.[68] Under this approach, jurisdiction fails because aliens appear on both sides and the alignmentdoes not satisfy § 1332(a)(3).[69] For example, in *Chick Kam Choo v. Exxon*, alien plaintiffs sued Esso Tankers, a foreign corporation with its principal place of business in New Jersey.[70] The Fifth Circuit held that Esso Tankers, "though a citizen of New Jersey, is to be regarded as a citizen of Liberia as well."[71] Because aliens appeared on both sides and the alignment did not satisfy § 1332(a)(3), jurisdiction failed.[72]

A few courts have chosen the first solution, treating the corporation *only* as a citizen of State X. Under this approach, jurisdiction would be proper under § 1332(a)(2) because it would be a suit between a State citizen and an alien.[73] One example, *Trans World Hospital Supplies Limited v. Hospital Corporation of America*,[74] through its omission of a step helps to illustrate the interaction of the corporate deeming provision and the subsections. There, an alien sued the defendant corporation, which was incorporated abroad and had its principal place of business in Tennessee.[75] After rejecting *Eisenberg* and concluding that the corporate deeming provision does apply to foreign corporations, the court held that "Despite its incorporation in a foreign country, if an alien corporation maintains a principal place of business in a State in the United States, no

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[68] Danjaq v. Pathe Communications Corp., 979 F.2d 772 (9th Cir. 1992); Petroleum & Energy Intelligence v. Liscom, 762 F.Supp 530 (S.D.N.Y. 1989); Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc., 358 F.Supp. 1001 (N.D. Ill. 1973); Vareka Investments v. American Investment Properties, 724 F.2d 907 (11th Cir. 1984).
[69] *Supra*, text p. 14 (Note to editors: this supra note will appear frequently. It targets my paragraph beginning "Several rules emerge," which at submission appeared on page 14).
[70] Chick Kam Choo v. Exxon Corp., 764 F.2d 1148, 1149 (5th Cir. 1985).
[71] *Id.*
[72] *Id.*
[73] 28 U.S.C. § 1332(a)(2).
[74] 542 F. Supp. 869, 870 (MD Tenn 1982).
[75] *Id.*

compelling reason exists that it should not be deemed a citizen of that State."[76] Thus, the court found jurisdiction proper under § 1332(a)(2). The *TransWorld* court skipped a vital step. No plausible post-*Eisenberg* dispute exists about whether the alien corporation was a Tennessee citizen—the plain text of the corporate deeming provision demands it. The skipped step was determining whether the corporation was *only* a Tennessee citizen or whether the corporation was *both* an alien and a Tennessee citizen. A familiar analogy is helpful. Suppose our plaintiff is a Texas citizen. Our defendant is incorporated in Texas and has its principal place of business in Nebraska. Under *Transworld*, the inquiry would seemingly stop once we determine that "no compelling reason exists" not to deem the defendant a Nebraska citizen. But of course jurisdiction fails because the defendant is also a Texas citizen.

While the *TransWorld* approach is flawed, it does, through its omission, help highlight the proper path. Returning to our hypothetical, our plaintiff is an alien. Before 1958, jurisdiction would have been improper because this would have been a forbidden suit between aliens, the corporation being an alien because of its foreign incorporation. We know now that the corporate deeming provision deems the defendant a State-X citizen. The precise issue is whether: (1) the corporate deeming provision strips the corporation's preexisting alien status, makes the corporation *only* a citizen of State X, and therefore expands jurisdiction; or (2) whether the deeming provision adds State-X citizenship to the corporation, but does not strip alienage status and therefore does not expand jurisdiction.

(2) Domestic corporation with foreign principal place of business.

[76] *Id.* at 878.

This situation has arisen infrequently, but deserves mention. Suppose our plaintiff is incorporated in State X and has its principal place of business abroad. Again, two potential solutions exist: (1) the corporation could be classified as only a citizen of State X; or (2) the corporation could be classified as *both* an alien and State X citizen.[77] The courts that have directly addressed this issue have correctly concluded that a domestic corporation with its principal place of business abroad has only a single citizenship in its State of incorporation.[78] Under this approach, jurisdiction does not exist when the corporation sues a State X citizen, but does exist when the corporation sues an alien. Both of these results are the same as they would have been before 1958. I explore this scenario further in Part III.

B. Permanent-Resident Aliens

As does the corporate deeming provision, the permanent-resident deeming provision applies uncontroversially to remove certain essentially local disputes from § 1332. The problems have arisen when alien litigants are present on the side opposite the permanent-resident alien. In this situation, some courts have construed the permanent-resident deeming provision to create jurisdiction where it would not have existed before 1958.[79] For context, I will first briefly revisit the uncontroversial application. Then I will examine the split in authority in the controversial cases. As before, two potential

[77] No plausible argument exists that the corporation is *only* an alien.

[78] Torres v. Southern Peru Copper Corporation, 113 F.3d 540, 544 (5th Cir. 1997); Cabalceta v. Standard Fruit Company, 883 F.2d 1553, 1559 (11th Cir. 1989); Lebanese American Univeristy v. National Evangelical Synod of Syria and Lebanon, No. 04 Civ. 5434, 2005 WL 39917 (S.D.N.Y. Jan. 6, 2005); Willems v. Barclays Bank, 263 F.Supp. 774 (S.D.N.Y. 1966).

[79] The proposed amendment mentioned in note 12, HR 5440, would remove the existing ambiguities by removing the permanent-resident deeming provision entirely. Rather than relying upon a deeming provision to remove the local disputes, the amendment would expressly carve them out. Amendment § 1332(2) would thus grant jurisdiction when the amount-in-controversy is satisfied and the suit is between "citizens of a State and citizens or subjects of a foreign state, *except that the district courts shall not have original jurisdiction of an action between a citizen of a State and a citizen or subject of a foreign state admitted to the United States for permanent residence and domiciled in the same State*." HR 5440, §§ (1)-(2).

solutions exist to classifying the citizenship of a permanent-resident alien domiciled in State X: (1) the permanent-resident alien could be classified as *only* a State X citizen; or (2) the permanent-resident alien could be classified as a dual citizen, as a citizen of State X and an alien.

Permanent-resident alien domiciled in State X v. United States Citizen domiciled in State X. This is the uncontroversial situation, and indeed is the situation Congress targeted with the permanent-resident deeming provision. Under both of the potential solutions mentioned above, jurisdiction fails. Even if the permanent-resident alien is *only* a citizen of State X, State X citizens still appear on both sides, and the case therefore fits none of the § 1332(a) categories.[80] Courts have uniformly concluded that jurisdiction fails in this scenario.[81] Notably, pure alienage jurisdiction would have existed before 1988 because the permanent-resident alien was an alien.[82]

Permanent-resident alien domiciled in State X v. Nonresident Alien. In this scenario, the answer depends upon which of the potential solutions the court chooses. Most courts have concluded that jurisdiction fails, at least implicitly choosing the second option and treating the permanent-resident alien as *both* an alien and a citizen of State

[80] *Supra*, text p. 14 (Note to editors: this supra note will appear frequently. It targets my paragraph beginning "Several rules emerge," which at submission appeared on page 14).
[81] Saadeh v. Karouki, 107 F.3d 52, 55 (D.C. Cir. 1997); Singh v. Daimler-Benz AG, 9 F.3d 303, 308 (3d. Cir. 1993); Gall v. Topcall, 2005 WL 664502 at *5 (E.D. Pa. 2005) (Slip Opinion); In re Bridgestone, 247 F.Supp.2d 1071 (S.D. Indiana 2003); Marcus v. Five J Jewelers Precious Metals Industry Ltd., 111 F.Supp.2d 445, 448 (S.D.N.Y. 2000); China Nuclear Energy Industry v. Anderson, 11 F.Supp.2d 1256, 1258 (D. Colo. 1998); Engstrom v. Hornseth, 959 F.Supp. 545, 549 (D. Puerto Rico 1997); Buti v. Impressa Perosa, S.R.L., 935 F. Supp. 458, 462 (S.D.N.Y. 1996); Paparella v. Idreco Invest S.p.A., 858 F.Supp. 283, 284 (D. Mass. 1994); Song v. Kim, 1993 WL 526340 at *8 (D.N.J. 1993); Lloyds Bank v. Norkin, 817 F.Supp. 414, 418 (S.D.N.Y. 1993); and Arai v. Tachibana, 778 F.Supp. 1535, 1540 (D. Haw. 1991). See also Adolph v. Yung, 81 F.3d 167 (9th Cir. 1996); Samudio v. O'Loughlin 1997 WL 136308, (N.D.Ill 1997) (Unreported Decision); and Jyan v. Frankovich 1994 WL 705292 (N.D.Cal. 1994) (Unreported Decision).
[82] C.H. Nichols Lumber Co. v. Franson, 203 U.S. 278, 282-3 (1906); Sadat v. Mertes, 615 F.2d 1176, 1183 (7th Cir. 1980).

X.[83] Under this approach, jurisdiction fails because aliens appear on both sides, unless the alignment satisfies § 1332(a)(3). A few courts have chosen the first solution, impliedly treating the permanent-resident alien as only a citizen of State X.[84] Under this approach, pure alienage jurisdiction exists because a suit exists between an alien (the nonresident alien) and a State citizen (the permanent-resident alien). Notably, before the deeming provision, jurisdiction would not have existed in this scenario because an alien was an alien.

The decisions in this area are troubling—even those that reach the correct result. The prevailing template has been to conclude that the permanent-resident deeming provision's "clear" and "unambiguous" text favors finding jurisdiction and then to evaluate whether extratextual reasons justify departing from the clear text. Some courts have concluded that they are bound by the clear text, though they don't evaluate the text in any detail, instead generalizing broadly about how the neglected text comports with congressional intent. Other courts, uncritically conceding textual clarity, nonetheless depart from it because of the compelling extratextual reasons. After setting forth the two diverging circuit decisions below, I will demonstrate in Part III that the template is wrong. Neither answer is textually preferable. Here again, we encounter the missing-word problem. The extratextual reasons are not extratextual at all; rather they are contextual factors to examine when construing an ambiguous text.

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[83] *See* Saadeh v. Karouki, 107 F.3d 52, 60 (D.C. Cir. 1997); Gall v. Topcall 2005 WL 664501 at *6 (E.D.Pa. 2005) (Slip Opinion); China Nuclear Energy Industry v. Anderson, 11 F.Supp.2d 1256, 1259-60 (D. Colo. 1998); Engstrom v. Hornseth 959 F.Supp. 545, 553 (D. Puerto Rico 1997); and Lloyds Bank v. Norkin, 817 F.Supp 414, 419 (S.D.N.Y. 1993).

[84] *See* Singh v. Daimler-Benz AG, 9 F.3d 303, 312 (3d. Cir. 1993); In re Bridgestone/Firestone, Inc., 247 F.Supp.2d 1071, 1076 (S.D. Indiana 2003) and Song v. Kim 1993 WL 526340 at *4 (D.N.J. 1993) (Unreported Decision).

The Third Circuit in *Singh v. Daimler-Benz AG* held that jurisdiction was proper when a permanent resident alien domiciled in Virginia sued two defendants: a German corporation and a Delaware corporation with its principal place of business in New Jersey.[85] The court held that the plain meaning of § 1332(a) clearly deemed the permanent resident alien a citizen of Virginia—and apparently *only* a citizen of Virginia. Therefore, this was a case between citizens of different States in which an alien was an additional party.

Although finding the answer textually compelled, the *Singh* court continued to examine the provision's legislative history and concluded that the 1988 amendments were intended only to make "modest adjustments to the scope of diversity jurisdiction."[86] Importantly, the court recognized the potential unconstitutional application of the permanent-resident deeming provision when a permanent-resident alien sues another alien. The court disregarded these potential problems, however, stating "[t]he alleged constitutional issue that might arise when one alien sues another is not presented in this case because there is a citizen party, thereby satisfying minimal diversity."[87] Thus, the Court refused to apply the canon of constitutional avoidance because applying the statute to *these* parties would not be unconstitutional even if the court's construction of the statute might lead to unconstitutional results with other parties.

Other courts have disagreed with *Singh* and refused jurisdiction when an alien was adverse to the permanent-resident alien. Without much analysis, those courts have followed the template, uncritically assuming that the "textual" answer is the one favoring

[85] Singh v. Daimler-Benz AG, 9 F.3d 303, 312 (3d. Cir. 1993).
[86] *Id.* at 306-07 (citations omitted).
[87] *Id.* at 312.

jurisdiction,[88] but have departed for extratextual reasons. For example, in the only similar case to reach the circuit level, the D.C. Circuit held that subject-matter jurisdiction did not exist when a nonresident alien plaintiff sued a permanent-resident alien domiciled in Maryland. While the court noted that the literal language of the statute created jurisdiction, it found that Congress did not "intend" to create jurisdiction in this situation.[89] The court justified looking beyond the language of the statute, and determined "'[w]here the literal reading of a statutory term would 'compel an odd result,' ... we must search for other evidence of congressional intent to lend the term its proper scope."[90]

Generally courts thathave gone beyond the text of the statute [91] have done so for the two reasons mentioned in Singh. First, applying the language "literally" could violate the Constitution by creating jurisdiction in a suit solely between aliens. Second the courts have looked at the legislative history and concluded Congress's intent was to limit jurisdiction, not to expand it. [92]

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[88] *See* China Nuclear Energy Industry v. Anderson, 11 F.Supp. 1256, 1258 (D. Colo. 1998) ("[I]f applied as written the amendment authorized jurisdiction in cases where neither party is a citizen of the United States."); and Lloyds Bank v. Norkin, 817 F.Supp. 414, 416-417 (S.D.N.Y. 1993) ("Under the literal application of 28 U.S.C. § 1332(a), amended as set forth above, this Court plainly has subject matter jurisdiction: under that section, the action is brought by an alien (Lloyds) against a citizen of Connecticut (Mr. Norkin) and a citizen of New York (Ms. Norkin, by virtue of section 1332(a)), so that complete diversity exists."). *See also* Saadeh v. Farouki, 107 F.3d 52, 55 (D.C. Cir. 1997); Singh v. Daimler-Benz AG, 9 F.3d 303 (3d Cir. 1993); Gall v. Topcall, 2005 WL 664501 at *5 (E.D.Pa. 2005) (Slip Opinion); In re Bridgestone/Firestone, Inc., 247 F.Supp. 1071, 1076 (S.D. Indiana 2003); China Nuclear Energy Industry v. Anderson, 11 F.Supp. 1256, 1258 (D. Colo. 1998); Engstrom v. Hornseth, 959 F.Supp. 545, 550 (D. Puerto Rico 1997); Buti v. Impressa Perosa, 935 F.Supp. 458, 462 (S.D.N.Y. 1996); Song v. Kim, Full cite, (D.N.J. 1993) (Unreported Decision); and Arai v. Tachibana, 778 F.Supp. 1535, 1542 (D. Haw. 1991).

[89] Saadeh v. Karouki, 107 F.3d 52, 60 (D.C. Cir. 1997).

[90] *Id.* at 58.

[91] E.g., China Nuclear Energy Industry v. Anderson, 11 F.Supp. 1256 (D. Colo. 1998), Engstrom v. Hornseth, 959 F. Supp 545 (D. Puerto Rico 1997)), Buti v. Impressa Perosa, 935 F.Supp. 458, (S.D.N.Y. 1996), Lloyds Bank v. Norkin 817 F.Supp. 414 (S.D.N.Y. 1993) and Arai v. Tachibana 778 F.Supp. 1535 (D. Haw. 1991).

[92] Some courts have also articulated third reason. Specifically that Congress would not have abrogated the long standing rule of complete diversity without discussion. *See* In re Bridgestone/Firestone, Inc. 247

As discussed in Part III, the template is wrong. The courts have overlooked the missing-word problem. They have implicitly read the permanent-resident deeming provision to "clearly" contain the word "only." When the clear-text barrier disappears, the constitutional problems and legislative history can be viewed properly, as contextual tools used to determine the most reasonable meaning of the phrase "shall be deemed."

III. A solution.

As noted in the introduction, my solution is modest in that the *results* it produces are consistent with the results reached by the majority in each category mentioned in part II. Thus the approach does not require radical changes, but still produces several benefits. First, it provides a reasoned, principled approach that provides more guidance than the what-did-Congress-intend free for all that has infiltrated these areas. Second, it synthesizes the two provisions, which have thus far been analyzed independently, and gives the phrase "shall be deemed" a consistent meaning. And third, it avoids the constitutional problems that arise from other solutions.

The deeming provisions provide:

> "[A] corporation *shall be deemed* to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."[93]
>
> "[A]n alien admitted to the United States for permanent residence *shall be deemed* a citizen of the State in which such alien is domiciled."[94]

My solution is simple. The key to understanding it is recognizing two things. First, before Congress added the deeming provisions, law outside of § 1332 created alien

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F.Supp.2d 1071, 1073 (2003). This articulation is circular. The deeming provisions impact the first step — classifying citizenship, not what party alignments satisfy the subsections.

[93] 28 U.S.C. 1332(c).

[94] 28 U.S.C. 1332(a).

status for certain litigants. Specifically, though no statute so provided, a corporation incorporated abroad was historically classified as an alien.[95] Also, an individual who was a citizen or subject of a foreign state was an alien, despite being a domiciliary or permanent resident of the United States (that is, an alien was an alien). Second, to resolve the highlighted jurisdictional questions, the court must insert a word after the statutory phrase "shall be deemed" before the court can examine the subcategories. That missing word is either "only" or "also." By passing the deeming provisions, Congress "deemed" litigants citizens of certain States, thus removing certain categories of cases from jurisdiction. Had Congress written "shall be deemed [only]"in the relevant deeming provisions—as it did in § 1332(c)(2) when "deeming" estate representatives citizens of certain states[96]--the provisions would operate to not only reduce jurisdiction in some cases but also to create jurisdiction in others because by deeming a litigant "only" a citizen of certain States, Congress would be stripping some litigants of alien statuses they possessed before the deeming provisions were passed. But the best reading of the provisions, considering context and consequences, is that Congress meant to confer additional citizenship on the litigants without stripping preexisting alien status. If historical reasons outside of § 1332 give a litigant alien status, the deeming provisions deem the litigant [also] a citizen of certain States. Both constructions (the [only] and [also] constructions) require inserting an additional word, but the latter is easily superior, as demonstrated below.

The following subsections (and the summarizing chart) detail my construction in all of the categories mentioned in Part II. In Subpart A, I apply my construction to

[95] J.P. Morgan Chase Bank v. Traffic Stream (BVI), 536 U.S. 88, 98 (2002) (citing Nat. Steam-Ship Co. v. Tugman, 106 U.S. 118 (1882)).
[96] 28 U.S.C. 1332(c)(2).

international corporations. In Subpart B, I repeat the process for permanent-resident aliens. Within Subparts A and B, I will first briefly summarize the citizenship determination. Then, I will detail how the citizenship determination interacts with the subsections and how my approach comports with the results most courts have reached in the categories described in Part II. Also, within each, I will consider and respond to potential counterarguments. In part C, I conclude by examining the results of giving the words "shall be deemed" a consistent construction in both deeming provisions.

A. International Corporations

(1) Classifying the citizenship of international corporations

Historically, a corporation was considered to be a citizen of its place of incorporation, whether domestic or foreign.[97] If incorporated in a foreign state, a corporation was an alien. And before the corporate deeming provision, a corporation's principal place of business was irrelevant.

Under my construction, the corporate deeming provision: (1) deems the corporation a citizen of any capital-S State where it is incorporated and (if it has a domestic principal place of business)[98] of the capital-S State where it has its principal place of business; but (2) does not strip a corporation of any alien status that existed before the deeming provision. Thus, a foreign corporation with a principal place of business in State X is both an alien and a Citizen of State X because the corporate deeming provision deems the corporation a Citizen of State X, but does not deem it "only" a Citizen of State X. The deeming provision does not divest the corporation of its preexisting alien status. Conversely, a corporation incorporated in State A with a

[97] J.P. Morgan Chase Bank v. Traffice Stream (BVI), 536 U.S. 88, 98 (2002) (citing Nat. Steam-Ship Co. v. Tugman, 106 U.S. 118 (1882)).
[98] *See* note 62, *supra*.

principal place of business abroad has only single citizenship. The deeming provision "deems" the corporation a Citizen of State A, but now there is no historical reason to treat the corporation as an alien and the corporate deeming provision does not deem the corporation an alien because it only applies to capital "S" states.

(2) Plugging it into the subcategories

Having determined the citizenship of the international corporation above, I now evaluate the result under the § 1332(a) subcategories, comparing the results under my approach with the results reached in Part II and with the law before the deeming provisions. The reader should assume the existence of no unmentioned parties that might trigger § 1332(a)(3).

Foreign corporation with PPB in State X v. U.S. Citizen Domiciled in State X. Under my approach, the foreign corporation has dual citizenship, as both an alien and State X citizen. Because citizens of State X appear on both sides, jurisdiction fails. This result is not controversial.[99] Jurisdiction fails because the foreign corporation is deemed a citizen of State X, and it matters not whether it is deemed [only] or [also] a citizen of State X.

Foreign corporation with PPB in State X v. Nonresident Alien. Under my approach, again, the foreign corporation has dual citizenship, as both an alien and State X citizen. Because aliens appear on both sides and because § 1332(a)(3) does not apply, jurisdiction fails. In this scenario, the choice of bracketed words matters. If the foreign corporation is deemed [only] a citizen of State X, the corporate deeming provision strips

[99] *See* cases cited, note 67, *supra*.

the corporation of alien status, and pure alienage jurisdiction exists under § 1332(a)(2). Most, but not all, courts have agreed with my conclusion.[100]

Finding no jurisdiction is the better answer. First, before 1958, jurisdiction would not have existed, and the historical context and reasonable inferences from the text and structure suggest that Congress intended to reduce, not expand, jurisdiction. Second, just lines below the corporate deeming provision, another provision deems estate representatives "only" citizens of certain states, suggesting—at the very least —that courts should search for a principled basis before determining that "shall be deemed" means "shall be deemed [only]."[101] Another reason for refusing jurisdiction is bound up with the construction of the permanent-resident deeming provision. As discussed in the next subpart, compelling constitutional-avoidance reasons exist to read the permanent-resident deeming provision as "deemed [also]," and thus consistency and coherence support the same reading of the corporate deeming provision.

Corporation incorporated in State X with PPB abroad v. U.S. Citizen Domiciled in State X. Under my approach, the corporation has a single citizenship, in State X. Because citizens of State X appear on both sides, jurisdiction fails. This result is not controversial because even if one were to consider the corporation a dual citizen, jurisdiction would still fail because State X citizens would be on both sides.

Corporation incorporated in State X with PPB abroad v. Nonresident Alien. Under my approach, the corporation has a single citizenship, in State X. Thus, pure

[100] Danjaq v. Pathe, 979 F.2d 772 (9th Cir. 1992); Petroleum & Energy Intelligence Weekly, Inc. v. Liscom, 762 F.Supp. 530 (S.D.N.Y. 1989); Southeast Guaranty Trust Co. v. Rodman & Renshaw, Inc. 358 F.Supp. 1001, 1005-1006 (N.D. Ill. 1973); Vareka v. American Investment Properties 724 F.2d 907, 910 (11th Cir. 1984). *But cf,* Transworld Hospital Supplies Limited v. Hospital Corporation of America, 542 F.Supp. 869 (M.D. Tenn. 1982).

[101] *Russello v. U.S.,* 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (internal quotations omitted).

alienage jurisdiction exists under § 1332(a)(2) between a State citizen (the corporation) and an alien (the nonresident alien). The courts that have squarely addressed the issue agree.[102] Some courts, however, in dicta have suggested that a domestically incorporated corporation with a principal place of business abroad also has dual citizenship.[103] No legal basis supports this conclusion. Before 1958, a corporation was a citizen only of its State or foreign country of incorporation. The corporate deeming provision deems the corporation a citizen of any capital-S State where it is incorporated and (if it has a domestic principal place of business) of the capital-S State where it has its principal place of business.[104] Neither the corporate deeming provision nor pre-1958 law creates alien status for a corporation that has its principal place of business abroad.

Conceptually, some may find troubling the distinction between a domestically incorporated corporation with a principal place of business abroad and a foreign corporation with a domestic principal place of business. But the alternative constructions of the current statute are more troubling.[105] For simplicity and to treat all corporations equally, courts could follow the alternative suggested in dicta in the immediately preceding paragraph and simply give all international corporations dual citizenships. The problem with that approach is there is *no* basis for doing so.[106] This alternative doesn't merely choose between permissible interpretations of the law, it makes a new law.

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[102] Torres v. Southern Peru Copper Corp., 965 F.Supp. 895, 897 (S.D.Tex. 1995); Cabalceta v. Standard Fruit Co., 883 F.2d 1553, 1558+ (11th Cir. 1989).
[103] *Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.,* 20 F.3d 987, 990 (9th Cir. 1994).
[104] 28 U.S.C. § 1332 (c).
[105] The proposed amendment, HR 5440, would remove this anamoly by removing any distinction between States and foreign states from the corporate-citizenship inquiry. *See* note 9, *infra*. Thus, the amendment would produce the same result as my solution *except* that a domestic corporation with a principal place of business abroad would be a dual citizen under the amendment, but is only a citizen of its State of incorporation under my solution.
[106] Again, only two sources potentially impact a corporation's citizenship, and neither of those cares about a foreign principal place of business. The corporate deeming provision applies only to capital-S States and historically a foreign principal place of business was irrelevant.

Second, courts could avoid the distinction by reading the corporate deeming provision as deeming international corporations [only] a citizen of capital S states. This alternative is troubling for the reasons outlined earlier. The most unsatisfactory alternative is the one that seems to pervade many of the opinions in this area—because the text is unclear, we'll just ask if exercising jurisdiction in this situation would be wise. Certainly, when determining a statute's meaning courts must consider the potential effects of various constructions. Words mean nothing in isolation, and evaluating the impact of words is one way to determine the most reasonable construction to give to those words. But the end goal remains giving meaning to the words. In the alienage area (especially in the permanent-resident context), some courts have gone astray. They have spotted an ambiguity, evaluated the impact of finding or rejecting jurisdiction, and then concluded. But they have never returned to the text, even for a post-hoc justification of how the result comports with the statutory language. Further, even if flexible, functional approaches are sometimes desirable, they have no place in jurisdictional inquiries. As Judge Posner wrote:

> Functional approaches to legal questions are often, perhaps generally preferable to mechanical rules; but the preference is reversed when it comes to jurisdiction. When it is uncertain whether a case is within the jurisdiction of a particular court system, not only are the cost and complexity of litigation increased by the necessity of conducting an inquiry that will dispel the uncertainty, but the parties will often find themselves having to start their litigation over from the beginning, perhaps after it has gone all the way through to judgment. Jurisdictional rules ought to be simple and precise so that judges and lawyers are spared having to litigate over not the merits of a legal dispute but where and when those merits shall be litigated. The more mechanical the application of a jurisdiction rule, the better. The chief and often the only virtue of a jurisdictional rule is clarity.[107]

[107] Hoagland v. Sandberg, 385 F.3d 737, 740-41 (7th Cir. 2004).

Summarized simply, the words "shall be deemed" in the corporate deeming provision give a corporation citizenship in certain States, but do not remove preexisting alien status. The permanent-resident deeming provision operates similarly.

B. Permanent-Resident Aliens

Before Congress added the permanent-resident deeming provision in 1988, an alien was an alien. That is, if a litigant was a "citizen or subject of a foreign state," the litigant was an alien.[108] Before 1988, neither an alien's domicile nor status as a permanent resident affected the alien's citizenship under § 1332. Thus, before 1988, once a court determined that a litigant was a citizen or subject of a foreign state, the court simply classified that litigant as an alien, classified the remaining parties, and looked to the § 1332(a) subcategories. What effect did the permanent-resident deeming provision have on an alien's classification? The permanent-resident deeming provision provides that: "[A]n alien admitted to the United States for permanent residence *shall be deemed* a citizen of the State in which such alien is domiciled."[109] Unquestionably, a nonresident alien is still an alien. A nonresident alien's domicile is still irrelevant--a nonresident alien domiciled in State A neither loses her alien status nor gains State A citizenship. But while a nonresident alien's domicile is irrelevant, once an alien has been admitted for permanent residence,[110] the alien's domicile does impact the citizenship classification.

This Subpart will proceed in the same manner as the previous one. First, I will summarize the citizenship classification of permanent-resident aliens under my

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[108] I defer treatment to the obscure area of dual nationals until Subsection III-C.
[109] 28 U.S.C. § 1332(a) (emphasis added).
[110] Chavez-Organista v. Vanos, 208 F.Supp. 2d 174 (D. Puerto Rico 2002) (recognizing that an alien is deemed to be a permanent resident of the United States under 28 U.S.C. § 1332(a) only if the alien has been accorded lawful permanent resident status under the immigration laws, i.e., if the alien has received a green card.). *See also* Chan v. Mui, 1993 WL 427114 (S.D.N.Y. 1993); Kato v. County of Westchester, 927 F.Supp. 714 (S.D.N.Y. 1996) (citing 8 U.S.C. § 1101(a)(2)); and Foy v. Schantz, Schatzman, & Aaronson, P.A., 108 F.3d 1347 (11th Cir. 1997).

construction of the permanent-resident deeming provision. Then I will detail how the citizenship determination interacts with the subsections and how my approach comports with the results most courts have reached in the categories described in Part II. In Subpart C, I will evaluate my solution on a larger scale, considering the overall impact of my construction on both deeming provisions.

(1) Classifying the citizenship of permanent-resident aliens

As I've used the term "alien" when discussing the subcategories, an alien is a citizen or subject of a foreign state. The question is what impact the permanent-resident deeming provision has on the citizenship classification of a permanent-resident alien domiciled in a State. My approach treats the words "shall be deemed" in the permanent-resident deeming provision the same as the same words in the corporate deeming provision. The permanent-resident deeming provision adds citizenship in the State where the alien is domiciled, but does not remove preexisting alien status—the litigant is, after all, still a citizen or subject of a foreign state Thus, while a nonresident alien is just an alien, a permanent-resident alien domiciled in State A has dual citizenship, as both an alien and a Citizen of State X.

I expect the reader to meet this suggestion of an individual with dual citizenship with some resistance. But the alternatives are unsatisfactory, as detailed throughout this and the next Subpart. The dual-citizen result is permissible under the statutory text and avoids the problems raised by alternative constructions.[111]

Starting with the text, one thing again becomes apparent. The bracketed word is missing. Is a permanent-resident alien domiciled in State A deemed [only] a Citizen of

[111] While the proposed amendment, HR 5540, takes a different approach, the results reached under 5440 are identical to those reached under my solution. *See* note 9, *supra*.

State X? Or, does the permanent-resident alien retain her alien status while being deemed [also] a Citizen of State X? If anything, the bracketed [also] is a more natural reading, given the express inclusion of the phrase "shall be deemed only" in § 1332(c)(2), which provides that the legal representative of the estate of a decedent shall be deemed to be a citizen *only* of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen *only* of the same State as the infant or incompetent."[112] Neither approach is textually demanded. While many of the cases detailed in Part II describe the "clear" or "unambiguous text" as favoring one result, those cases never critically evaluate the language or explain just what about the text is clear. Judge Diane Wood recently got it right, concluding that: "some aliens will have two citizenships for diversity purposes rather than one: that of their home country, and that of the U.S. State in which they are domiciled."[113]

I will now apply this construction to the scenarios in Part II, demonstrate how my approach produces results consistent with the majority results in those scenarios, and evaluate counterarguments under each scenario on a smaller scale.

(2) Plugging it into the subcategories

Three common variations involving permanent-resident aliens exist. The reader should assume the existence of no unmentioned parties that might trigger § 1332(a)(3).

Permanent-resident alien domiciled in State X v. U.S. Citizen domiciled in State X. Under my approach, the permanent-resident alien has dual citizenship, as both an alien and a State X citizen. Because citizens of State X appear on both sides, jurisdiction fails. This result is not controversial. Jurisdiction fails because the permanent-resident

[112] 28 U.S.C. § 1332(c)(2).
[113] Karazanos v. Madison Two Associates, 147 F.3d 624, 628 (7th 1998).

alien is deemed a citizen of State X, and it matters not whether she is deemed [only] or [also] a citizen of State X. Indeed, this is the precise scenario targeted by the provision,[114] and courts unanimously agree that jurisdiction does not exist here.[115]

Permanent-resident alien domiciled in State X v. Nonresident Alien. Under my approach, the permanent-resident alien has dual citizenship, as both an alien and State X citizen. Because aliens appear on both sides and because § 1332(a)(3) does not apply, jurisdiction fails. In this scenario, the choice of the bracketed words matters. If the permanent-resident alien is deemed [only] a citizen of State X, the permanent-resident deeming provision strips the permanent-resident alien of alien status, and pure alienage jurisdiction exists under § 1332(a)(2). Most courts, including the DC Circuit, have agreed with my conclusion, but have failed to reconcile their results with the text.[116] A few courts, including the Third Circuit, have disagreed, but have failed to reconcile their results with the text, instead using adverbial shortcuts like "clearly" and "unambiguously."[117]

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[114] "There is no reason why actions involving persons who are permanent residents of the United States should be heard by federal courts merely because one of them remains a citizen or subject of a foreign state or has not yet become a citizen of the United States." *Saadeh v. Farouki*, 107 F.3d 52, 58 (D.C. Cir. 1997) (citing Report of the Proceedings of the Judicial Conference of the United States 77 (Sept. 14, 1988)).

[115] Saadeh, 107 F.3d at 55; Singh, 9 F.3d at 308; Gall, 2005 WL 664502 at *5; In re Bridgestone, 247 F.Supp.2d at 247; Marcus, 111 F.Supp.2d at 448; China Nuclear Energy Industry, 11 F.Supp.2d at 1258; Engstrom, 959 F.Supp. at 549; Buti, 935 F.Supp. at 462; Paparella, 858 F.Supp. at 284; Song, 1993 WL 526340 at *8; Lloyds Bank, 817 F.Supp. at 418; and Arai, 778 F.Supp. at 1540. See also Adolph v. Yung 81 F.3d 167 (9th Cir. 1996); Samudio v. O'Loughlin 1997 WL 136308 (N.D.Ill 1997) (Unreported Decision); and Jyan v. Frankovich 1994 WL 705292 (N.D.Cal. 1994) (Unreported Decision).

[116] See Saadeh v. Farouki 107 F.3d 52, 60 (D.C. Cir. 1997); Gall v. Topcall 2005 WL 664501 at *6 (E.D. Pa. 2005) (Slip Opinion); Marcus v. "Five J" Jewelers Precious Metals Industry, Ltd., 111 F.Supp.2d 445 (S.D.N.Y. 2000); China Nuclear Energy Industry v. Anderson, 11 F.Supp.2d 1256, 1259-60 (D. Colo. 1998); Ozawav v. Miyata, 1997 WL 779047 *2 (N.D.Ill. 1997) (Unreported Decision); Engstrom v. Hornseth 959 F.Supp. 545, 553 (D. Puerto Rico 1997); and Lloyds Bank v. Norkin, 817 F.Supp. 414, 419 (S.D.N.Y. 1993).

[117] See Singh v. Daimler-Benz AG, 9 F.3d 303 (3d Cir. 1993); In re Bridgestone/Firestone, Inc., 247 F.Supp.2d 1071, 1076 (2003) ("We find that the Third Circuit's opinion in Singh presents the better-reasoned analysis and should be followed in this case.") and Song v. Kim 1993 WL 526340 at *4 (1993) (Unreported Decision) ("[I]n accordance with the Third Circuit's rationale and decision in Singh, the Court finds [jurisdiction is proper]."). See also Iscar, Ltd. v. Katz 743 F.Supp. 339, 345 (D.N.J. 1990); D'Arbois

Finding no jurisdiction in this situation is the better answer. First, before 1958, jurisdiction would not have existed because an alien was an alien. Historical context and reasonable inferences from the text and structure suggest that Congress intended to reduce, not expand, jurisdiction. Specifically, the legislative history (consistent with my reading of the text) suggests that Congress wrote the permanent-resident deeming provision to merely remove one category of cases from § 1332—those cases where a permanent-resident alien domiciled in a State sues a United States citizen domiciled in the same State. Under my construction, this is all the amendment does. Second, as noted, the permanent-resident deeming provision does not contain the shall be deemed "only" language that appears elsewhere, and yet, only by removing the permanent-resident alien's alien status can a court fit this scenario into one of the subcategories.

Most importantly, reading the provision to *not* divest the permanent-resident alien of alien status avoids the constitutional questions that pervade in this area. "[W]hen deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise . . . constitutional problems, the other should prevail."[118] Article III § 2 authorizes Congress to confer jurisdiction over suits between citizens of different States and between a citizen of a State and an alien,[119] but it does not authorize Congress to confer jurisdiction over a suit between only aliens.[120] If the permanent-resident alien is deemed only a citizen of the

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v. Sommelier's Cellars, 741 F.Supp. 489, 490 (S.D.N.Y. 1990) (dictum); Syed v. Syed, 1991 WL70851, at *1 (N.D.Ill.1991) (dictum); Nakanishi v. Kanko Bus Lines, Inc. 1989 U.S. Dist. LEXIS 7994, at *6 (S.D.N.Y. 1989) (dictum).

[118] Clark v. Martinez 543 U.S. 371, 381-82 (2005). See also, Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council, 485 U.S. 568, 575 (1988). ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems," a court should "construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.").

[119] U.S. CONST. Art. III, § 2.

[120] *See* cases cited note 22, *supra*.

State of his permanent residence, a lawsuit exists between two persons who are aliens for all purposes except § 1332. While Congress ultimately defines citizenship for immigration purposes, surely some limits govern the extent to which Congress can sidestep Article III § 2's limits by "deeming" a person a citizen solely for the purpose of a lawsuit.[121] Could Congress deem an alien a citizen of any State in which the alien files a lawsuit? There's no need to resolve the constitutional question—the statute is ambiguous and the mere *existence* of this plausible constitutional challenge favors not reading an [only] into the statute. The [also] construction eliminates the possibility of an unconstitutional result because it does not remove alien status for purposes of a lawsuit.

The Singh case is the leading case approving of jurisdiction in this area.[122] The Singh court erred in two fundamental ways. First, by using adverbial and adjectival shortcuts, the court concluded that the text is "clear" without parsing the text.[123] According to the court, the statute clearly deems the permanent-resident alien a citizen of his state of domicile.[124] But that's not the dispute. Rather, the dispute is (or at least should be) about whether the permanent-resident alien is deemed *only* a citizen of that State.

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[121] *See* John B. Oakley, *Recent Statutory Changes in the Law of Federal Jurisdiction and Venue: The Judicial Improvements Acts of 1988 and 1990*, 24 U.C. DAVIS L. REV. 735, 745 ("The possibly unconstitutional application of the 1988 Act arises when one alien sues another in federal court on a nonfederal claim.). Richard Bisio, *Changes in Diversity Jurisdiction and Removal* 69 MICH. B.J. 1026, 1028; *see also* Jackson v. Twentyman, 27 U.S. (2 Pet.) 136, 136 (1829) ("[T]he judicial power was not extended to private suits, in which an alien is a party, unless a citizen be the adverse party."). *But see* Singh v. Daimler-Benz AG, 9 F.3d 303, 312 (3d Cir. 1993) (suggesting the presence of an "intriguing issues" regarding what has come to be known as "protective jurisdiction."). The potential application of protective jurisdiction is well beyond this Article's scope. Here, it is enough to say that the Supreme Court has never endorsed the doctrine, *Mesa v. California*, 489 U.S. 121, 137-38 (1989) and that "A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." United States v. Jin Fuey Moy, 241 U.S. 394, 401 (1916).

[122] Singh v. Daimler-Benz AG, 9 F.3d 303 (3d Cir. 1993).

[123] *Id*.

[124] *Id.*

The second and more troubling error appeared in the court's even-if-the-statute-is-ambiguous alternative discussion, where the courtwrongly discarded the canon of constitutional doubt, endorsing a chameleon approach since rejected by the Supreme Court in *Clark v. Martinez*.[125] The *Singh* party alignment was slightly different than the hypothetical we have been evaluating (permanent-resident alien domiciled in State X v. nonresident alien). In the *Singh* variation, the permanent-resident alien domiciled in State X sued an alien *and* a citizen of State Y. The court refused to apply the canon of constitutional doubt. The court correctly noted that, because of the additional party's presence, finding jurisdiction in the case would not violate Article III because minimal diversity was present.[126] But the court erred by relying upon that distinction to refuse to apply the canon. The statute must mean the same thing regardless of whether an additional party happens to be present. The canon of constitutional doubt "is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative, which raises serious constitutional questions."[127] The reasonable presumption is used to divine congressional intent, which has nothing to do with which parties are before the court. As Justice Scalia recently clarified, "when deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail—whether or not those constitutional problems pertain to the particular litigant before the Court."[128] Under the Singh approach, the statute may have meant something different had an

[125] 543 U.S. 371 (2005).
[126] *Id.*
[127] *Id.*
[128] *Id.* at 381.

additional party not been present. Such an approach distorts the role of statutory interpretation, "render[ing] every statute a chameleon, its meaning subject to change depending upon the presence or absence of constitutional concerns in each individual case."[129]

In summary, jurisdiction fails when a permanent-resident alien sues a nonresident alien. The "shall be deemed" language operates the same here as it did when we evaluated whether a foreign corporation with a principal place of business in State X could sue a nonresident alien. Both the corporation and the permanent-resident alien are deemed citizens of State X, but not deemed [only.] Rather, they both retain their preexisting alien status. This construction avoids constitutional problems and is an equally plausible reading of the statutory text.

Finally, one obscure area that borders alien-jurisdiction law deserves mention, namely the area of dual nationals. Because of the nuances of the law of international relations, an individual can be a "citizen or subject" of multiple nations. Several courts have encountered such situations, and "there is an emerging consensus among courts that, for a dual national citizen, only the American citizenship is relevant for purposes of diversity jurisdiction,"[130] though an exception may exist when the foreign citizenship is "dominant."[131] Even assuming these cases are correctly decided, they should not influence the construction of the permanent-resident deeming provision, which presents a different question. The dual-nationals cases involve the courts' struggles with reconciling the term "citizen or subject" of a foreign state with immigration policy, which

[129] *Id.* at 382.
[130] Lemos v. Pateras, 5 F. Supp. 2d 164, 165 (S.D.N.Y. 1998).
[131] Sadat v. Mertes, 615 F.2d 1176, 1187 (7th Cir. 1980).

"abhors dual citizenship,"[132] and the law of international relations. Conversely, in the deeming provision, Congress expressly targeted foreign citizens and conferred State citizenship upon them *when* they are permanent residents. No inference need be drawn about substantive immigration policy because the provision, by definition, does not apply to persons who are "abhorrent" dual citizens; rather, it applies only when the case involves someone who satisfies the congressional definition of permanent resident, which of course expects to find a person who is a citizen or subject of a foreign state.

Permanent-resident alien domiciled in State X v. permanent-resident alien domiciled in State Y. No reported cases discuss this scenario, and the following discussion is largely academic. But it raises some troubling structural issues with § 1332 and its subcategories.

Under my approach, both litigants have dual citizenship, they are both aliens and citizens of their respective states of domicile. Because aliens are present on both sides, jurisdiction fails unless the case satisfies § 1332(a)(3). Section 1332(a)(3) grants jurisdiction when the suit is between "citizens of different States and in which citizens or subjects of a foreign state are additional parties." The parties are citizens of different states, but jurisdiction apparently fails because there are no aliens *as additional parties*—the aliens are the same parties. So jurisdiction fails, right?

To explore how (a)(3) interacts with dual-citizenship litigants, consider a simple example. Suppose our plaintiff is a United States Citizen domiciled in State X. Our defendant is a corporation incorporated abroad and having a principal place of business in State Y. The defendant is a dual citizen, both an alien and a State Y citizen. Jurisdiction obviously exists, but under what subsection? Not under pure diversity jurisdiction,

[132] Von Dunser v. Aronoff, 915 F.2d 1071, 1073 (6th Cir. 1990).

because aliens are parties, and not under pure alienage jurisdiction, because State citizens appear on both sides. Jurisdiction can only exist under (a)(3). But the corporation is not an "additional party." It is tempting to argue that we can find jurisdiction by combining (a)(1) and (a)(2), but that would effectively read (a)(3) out of the statute, and would create more conceptual difficulties. If the answer is that we treat dual-citizenship parties as two separate parties for purposes of (a)(3), then (a)(3) would authorize jurisdiction in our suit between permanent-resident aliens. Indeed, if we continue with that construction, jurisdiction would exist between two alien corporations having principal places of business in different states. If the answer is that the aliens must truly be "additional parties," then where do we find jurisdiction in our corporate example?

These problems are ancillary, and largely academic, but they illustrate that no solution is perfect. Importantly, the existence of these problems does not support the alternate construction. The deemed [also] solution eliminates the constitutional problems in the scenarios where it has arisen and, practically, where it is likely to arise again. The following, final, Subpart evaluates my solution overall and responds to additional criticism.

(C) A cohesive result

Having exhausted the details, I now summarize my construction of the words "shall be deemed" and how my construction yields a cohesive, desirable result.

The words "shall be deemed" perform a simple function in the deeming provisions, i.e., they confer State citizenship on certain litigants. If a corporation is incorporated in a State, it is a citizen of that State. If a corporation has its principal place of business in a State, it is a citizen of that State. If a permanent-resident alien is

domiciled in a State, she is a citizen of that State. But the words "shall be deemed" do not strip a party of preexisting alien status. That is, the words "shall be deemed" do not mean "shall be deemed [only]." If an alien was an alien before Congress passed the deeming provision, the alien remains an alien and is deemed [also] a citizen of a State.

Thus, neither of the deeming provisions *create* jurisdiction where it did not exist before Congress passed the deeming provision. The statutory structure, historical context, and legislative history surrounding the provisions support the idea that Congress enacted the deeming provisions to carve out certain essentially local disputes from § 1332. Under my approach (as illustrated by the chart) that is all the deeming provisions do. They leave other scenarios unchanged, never creating jurisdiction where it did not exist before.

My approach avoids the constitutional problems raised by the alternative approach in the permanent-resident-alien context. If the deeming provision strips a permanent-resident alien of her alien status, serious constitutional questions arise about Congress's Article III power to confer jurisdiction. My approach avoids that question.

My approach facilitates consistency among the deeming provisions in § 1332. By reading the two deeming provisions together, the same words can be given the same meaning. And by reading the two provisions to mean "shall be deemed [also]," significance is given to other provisions of § 1332 that expressly state "shall be deemed only."

My approach is textually faithful. The statute is ambiguous. But that ambiguity is not a license to merely search for congressional intent without reference to the text. When a statute is ambiguous, the courts must choose between plausible interpretations.

That means discerning what the statue might reasonably mean, and then choosing one of those meanings, not saying that the meaning is unclear and then concluding that jurisdiction would be wisely exercised. One might conjure up certain scenarios, where in the view of the conjurer, exercising jurisdiction would better serve the purposes of alienage jurisdiction. But the desirability of results cannot distort the task—giving effect to the statute. It is plausible to read the statute as deeming litigants [also] or [only] citizens of certain states. But one approach must prevail, and for the reasons I've presented, the [also] answer is the better one. A consistent construction must be chosen; "to give these same words a different meaning [in different circumstances] would be to invent a statute rather than to interpret one."[133]

[133] Clark v. Martinez, 543 U.S. 371, 378 (2005).