



**AMERICAN LAWS
AND REGULATIONS
THAT DISCRIMINATE AGAINST
AMERICAN CITIZENS
LIVING ABROAD**



A COMPENDIUM OF 50 ISSUES

PREPARED BY

***AMERICAN CITIZENS ABROAD
GENEVA, SWITZERLAND***

AND SENT TO

***PRESIDENT JIMMY CARTER
THE WHITE HOUSE
WASHINGTON, D.C.***

ON DECEMBER 18, 1978

AMERICAN CITIZENS ABROAD

Geneva, Switzerland

December 18, 1978

Mr. Jimmy Carter
President of the United States
The White House
Washington, D.C.

Dear Mr. President,

The 1979 Foreign Relations Authorization Act, which you signed on October 7, 1978, contains a special section (611) which asks you to submit a report to the Congress by January 20, 1979, concerning American laws and regulations that discriminate against Americans who live abroad.

American Citizens Abroad (ACA) is a group of American citizens living around the world who feel that improving the way those living abroad are treated is in the best interest of all Americans, especially those living in the United States.

We have been working for the past several months to collect information to assist you and the members of your staff and Administration in the preparation of this report that you must submit to the Congress. We have been aided in our work by a multitude of ideas and suggestions that we have received from Americans around the world including those living on all of the major continents and those living behind the Iron Curtain.

We are proud to present these ideas and suggestions to you in the form of the book that is being sent under separate cover. We would very much like to be able to help you in any other way that you might find appropriate. Should members of your staff find it useful, we would be prepared to arrange for meetings with groups of Americans abroad in different countries to provide a fuller development of the issues that we have presented.

Your concerns for the human rights of mankind is greatly appreciated by those of us who live abroad, and it certainly makes us proud to be able to proclaim that this is what America is really all about. We would only hope that this concern would also be translated into new policies which would extend the same guarantees of human rights to American citizens who happen to live abroad. Sadly enough, such guarantees are not at present in existence.

Our kindest regards to you and your family and our hopes that you will have a joyful holiday season.

Most sincerely,

s/
Francis Pribula,
Andrew P. Sundberg,
Steven M. Kraft,
Don W. V. Person,
John Iglehart,
Eugene Epstein,
Robert W. Sheets

Directors

AMERICAN LAWS AND REGULATIONS THAT DISCRIMINATE AGAINST AMERICAN CITIZENS LIVING ABROAD



THE FOREIGN RELATIONS AUTHORIZATION ACT FOR FISCAL YEAR 1979 (PUBLIC LAW 95-426), SIGNED BY PRESIDENT CARTER ON OCTOBER 7, 1978, CONTAINED THE FOLLOWING PROVISION:

Section 611(a) The Congress finds that –

- (1) United States citizens living abroad should be provided fair and equitable treatment by the United States Government with regard to taxation, citizenship of progeny, veterans' benefits, voting rights, Social Security benefits, and other obligations, rights, and benefits; and
- (2) Such fair and equitable treatment would be facilitated by a periodic review of the statutes and regulations affecting Americans living abroad.

(b) Not later than January 20, 1979, the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report which –

- (1) identifies all United States statutes and regulations which discriminate against United States citizens living abroad;
- (2) evaluated each such discriminatory practice; and
- (3) recommends legislation and any other remedial action the President finds appropriate to eliminate unfair or inequitable treatment of Americans living abroad.



THIS COMPENDIUM OF FIFTY ISSUES HAS BEEN PREPARED BY AMERICAN CITIZENS ABROAD, IN GENEVA, SWITZERLAND, TO ASSIST THE PRESIDENT IN THE PREPARATION OF HIS REPORT TO THE CONGRESS



INTRODUCTION

America is a land of immigrants. Most of her citizens left their home countries to seek a new life in what was believed to be a promised land, specially endowed and especially favored in the eyes of deity.

American was build by immigrants, and by the gifts of individuals who were willing to come, some for only a limited time, to create this new entity out of a nearly virgin wilderness.

One cannot understand the history of America without stumbling over countless instances of special people who came from abroad to participate in the fight for independence and in the creation of a new form of government. Count Pulaski came from Poland, Baron von Steuben came from Hesse, Lafayette came from France, Albert Gallatin came from Switzerland, and so on.

But many of those who came also returned to their home countries, or to other lands. Lafayette went back to participate in the French Revolution. John Paul Jones, who is called the "Father of the American Navy", went to Russia and became an Admiral in Catherine the Great's Navy. Yet these were undeniably vital people in the building of America.

Other individuals who we cannot conceive of as other than "Americans" spent many years abroad in the service of the United States. Benjamin Franklin and Thomas Jefferson created ties of affection between the fledgling new Union and France. John Adams was in Holland, others built ties the other powers in Europe.

And, finally, throughout our short history, many Americans have continually gone abroad to build the links of commerce and social affection which have brought the United States into a full sense of harmony and participation with the other nations of the world.

Yet, throughout all of this period, America has been principally building inside, rather than looking outside. It has been growing and absorbing new waves of immigrants arriving to meet the continuing need for more labor. And each new wave of immigrants has felt a keen need to prove quickly that they as much the incarnation of patriotism and dedication to the ideals of the United States as those who preceded them.

America remains a land of immigrants. Most of its commercial activity is internal rather than external. And the basic traits of the American character still remain dominated by a patriotic machismo which attributes praise to those who come to play our game.

It is not surprising, therefore, that even today the role of expatriates, those who have gone abroad from America, is still little understood, and even less accepted with equanimity. For if immigrants are to be praised, what are we to think of emigrants, even those who are only abroad for a short period of time?

Thus it is that unlike almost every other country of the world, America has not affection for its expatriates, but rather hostility and mistrust. For isn't there something fundamentally wrong with those who might choose to live in any other country?

Today there are over 1.5 million U.S. citizens living outside of the United States as private citizens. If those working for the U.S. Government and the Armed Forces and their dependents are added, the total would approach nearly three million.

The population of civilian expatriates, without and contractual ties to the Government, exceeds the population of 14 different States in the United States, and in fact is larger than the combined population of the three smallest political units added together.

Yet, for all intents and purposes, the American expatriate community and its problems are almost totally unknown to the average American citizen, and the indifference if not subliminal hostility that would be manifested if the question of expatriates were to be raised is rather well represented in the attitudes and opinions of many of the individuals who are chosen to conduct the legislative business of the United States.

Americans living abroad have generally been a forgotten constituency. And, for many who are abroad, this was a situation that did not have too many inconveniences, although certain severe problems inevitably occurred for individuals who came into confrontation with specific laws applying to expatriates.

However, in 1976, the roof fell in on those living abroad. The Congress, impelled by a tax reforming zeal, decided that it was time to start applying much more severe pressure on the taxation of those

living abroad. A plan was proposed for essentially doing away with the exclusion of any income earned abroad for U.S. tax purposes, and coincidental with this Congressional action the U.S. Tax Courts rules that any allowances or services paid to Americans working abroad had to be declared as income at the full value of the services or facilities provided, not at whatever nominal cost an employer might charge.

The result was an enormous extra tax burden. The Treasury Department did a great misservice to those abroad by grossly underestimating what impact the 1976 law would have. Treasury's initial estimate was extra revenue of \$ 50 million, which implied extra tax of a few hundred dollars per expatriate taxpayer. But the uproar from the expatriate community following the enactment of this bill was stunning. Under pressure from Congress which began to receive voluminous complaints from those abroad and from their employers, the Treasury made a new estimate of the revenue to be earned from changes in taxation of those abroad and this time, based upon different data, the estimate came to close to \$400 million. The Congress had required the typical taxpayer abroad to pay an extra several thousand dollars, not the much smaller sum that they had originally believed.

The stage was obviously set for a new form of relief from this mistake. But much hyperbolic rhetoric had been expended at the expense of those living abroad, and this could not be retracted. There was no way to go back to the old practice of excluding part of the income earned abroad from U.S. tax, so a new form of special deductions was chosen. Alas, for those in many countries this was not an improvement at all.

The Congress has also been considering whether those living abroad, and being taxed, should not be granted a better opportunity to exercise the right to vote in the United States. A new law was enacted to guarantee all expatriates the right to Federal Elections and this took effect in 1976. However, there was no rush to the polls from abroad because expatriates were becoming very wary of gifts from Washington. One obvious trap was the fact that registering in a State in the USA could lead to the State using this as a justification for wanting income tax to be paid at the State level. Those abroad, already badly bruised with Federal tax had little interest in an even greater tax burden. It was finally recognized in 1978 that the law, to be meaningful, had to be amended to forbid States to use the voting registration as any claim by the State to be able to tax the overseas voter. But, of course, many of those who live abroad are not willing to take any chances with income or with estate tax liability from voting, and many will probably never use this new franchise.

The situation today concerning expatriates is still very confused. The United States has a peculiar philosophy of insisting that obligations of citizenship are ubiquitous but that many rights and benefits of citizenship must stop at the water's edge.

The expatriate community, on the other hand, has finally been awakened from its political torpor by the recent rape of the pocketbook. And now awake, the community is taking a much closer look at other problems which face those living abroad.

AMERICAN CITIZENS ABROAD (ACA)

During the last few years, a group of American citizens living in Geneva, Switzerland, has been concerned with a number of problems that afflict expatriates.

During the summer of 1977, members of the group decided to seek help for those living abroad by appealing directly to the White House for assistance. A special request was sent to the President asking him to establish some sort of Commission to look at problems facing those living outside of the United States. Members of the group met with some of the members of the President's staff and found some initial encouragement from the personal views of these staff members. But, eventually, when asked for a final verdict the reply was given that the President does not like Commissions and there would be no special help from the White House for expatriates.

Indeed, in early 1978, the Administration's new position on how the tax laws should be amended concerning those living abroad proved to be so unfair that all hope for help from the Administration was quickly dissipated.

Fortunately, there are a number of Members of Congress who have been more sympathetic with the plight of those living away from home. Americans in Geneva had the opportunity to meet with Senator George McGovern in 1977, and he and his staff were particularly concerned that there seemed to be no overall policy in the United States toward expatriates and this was continually giving rise to all sorts of new problems which not only had an impact on individuals abroad, but which also could be much more profoundly important to the future of the United States.

Senator McGovern forwarded the request that had been sent to the President for a Commission on Expatriates to the State Department for its comments. The reply was that such a Commission or study of expatriate problems could be useful, it should not be confined to State since the problems that would be raised would reach many other Departments of the Government.

Having found that the White House was not going to do anything voluntarily for expatriates, and that State did not feel fully competent to deal with the need for analysis of expatriate policy, Senator McGovern decided to help Americans abroad by convincing other Members of Congress to accept an amendment to the 1979 Foreign Relations Authorization Act which required the President to report to the Congress on expatriate problems.

EQUITABLE TREATMENT OF UNITED STATES CITIZENS LIVING ABROAD

Section 611 of the Foreign Relations Authorization Act of 1979 required that:

- (b) Not later than January 20, 1979, the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report which –
 - (1) identifies all United States statutes and regulations which discriminate against United States citizens living abroad;
 - (2) evaluates each such discriminatory practice; and
 - (3) recommends legislation and any other remedial action the President finds appropriate to eliminate unfair or inequitable treatment of Americans living abroad.

This amendment was accepted by Members of the House of Representatives and Members of the Senate and became law with the full bill on October 7, 1978 when signed by the President.

To insure that there would be proper attention paid to this study, and to the identification of all of the issues that were felt to be particularly unfair by those living abroad, it was decided to create a new organization which would work to bring as many Americans living overseas as possible into the arena for this project.

In July 1978, after the amendment has been accepted by the Senate, American Citizens Abroad was founded in Geneva, Switzerland, by a number of private American citizens. The organization is a non-profit association of American who are striving to create a better understanding in the United States of the value of the expatriate community, and of the need for the United States to take a more concerted effort to ensure that expatriates were being fairly and equitably treated while they were living abroad.

ACA publicized the fact that the Study of Expatriate Discrimination was to take place, and invited Americans from all over the world to send in information and suggestions of issues to be covered. Replies to this request were received from hundreds of individuals including residents in all of the continents of the world, from those behind the Iron Curtain, and from those in North America, especially in Canada and Mexico. But, of equal interest was the volume of replies from those abroad working for the U.S. Government who also felt that there were laws and regulations that discriminated against Government employees abroad.

ACA has volunteered to help the White House in the preparation of its study, and remains at the disposal of the President for whatever additional contributions might be found to be appropriate.

THE PRESENT REPORT

The present report is a compilation of issues that have been identified by American citizens living abroad which are felt to be discriminatory against American expatriates.

Each issue has been individually addressed in a form which will hopefully assist those responsible for the preparation of the President's study. Each issue has a short title, a background discussion, a presentation of the problem of discrimination, and some suggestions as to how a solution could be reached for each problem.

This report is by no means complete in its identification, and should not be taken to suggest that any issues not herein contained need not be addressed. It is rather the first effort at a preliminary catalog of vital issues as seen from those living abroad.

A NOTE ON DISCRIMINATION

There are really two different aspects to discrimination that are important to consider when analyzing laws and policies that affect expatriates. The first is in terms of equity between citizens living in the United States and those living abroad. The second concerns the extent to which laws enacted for expatriates create a situation abroad in which American citizens face problems which are not the same as those facing other nationalities abroad. In this second case it could well be that discriminatory American laws and regulations are not only hurting individuals Americans, but they may be also hurting those who hire Americans, and ultimately they may be doing major harm to all of the citizens of the United States, particularly those living at home.

ACKNOWLEDGEMENTS

ACA would like to thank the many generous members of the overseas American community who have contributed their time and thoughts to help make this present submission as full and complete as possible.

We would also like to particularly thank the many individuals in Washington who have given sympathetic support to our cause and who have given invaluable suggestions as to how to better promote the interests of Americans abroad, and thereby all Americans.

And, of course, a special thanks is due to the most kind generosity of Senator McGovern and the members of his staff without whom this report would have not been necessary or possible.

THE FIFTY ISSUES

1. Constitutional Right Denied to Children Born Outside of the United States.
2. Eligibility of an American Child Born Abroad with American Citizenship at Birth to Run for the Office of President of the United States.
3. Congressional Representation for Americans Living Abroad.
4. Discrimination Against Certain American Citizens in the Ability to Transmit Citizenship to Children Born Abroad.
5. Discriminatory Preference Shown Toward Certain Individuals Living Abroad in Qualifying to Transmit Citizenship to Children Born Abroad.

6. Retroactivity of the Elimination of Subsequent Residence Requirements of Certain American Children Born Abroad.
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28. Inadequate Credit Given for Taxes Paid by American Citizens Living Abroad.
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33. Taxation: Exchange Controls.
34. Taxation: Maximum Tax Treatment with Non-Resident Alien Spouse.
35. Taxation: Joint Filing Status with Non-Resident Alien Spouse.
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37. Taxation: Foreign Conventions.
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*(The Following Full Compendium of These Fifty Issues was
Subsequently Reprinted in the Congressional Record
of the United States Senate on January 23, 1979)*

ISSUE No. 1

SHORT TITLE

Constitutional Right Denied to Children Born Outside of the United States.

BACKGROUND

In 1971, the Supreme Court by a five-to-four majority decided that there are two classes of citizens of the United States, those with full Constitutional rights, and those who are to be denied some of these rights. The distinction is made strictly on the basis of where the individual is born.

At issue in this case, *Rogers v. Bellei*, was whether a law was Constitutional which required American children born abroad (if only one parent was an American citizen and the other was an alien) to return to the United States and live for a certain period of time or face involuntary loss of American citizenship.

In an earlier decision of the Court in *Afroyim vs Rusk*, it was stated that the Congress has no "power, expressed or implied, to take away an American citizen's citizenship without his assent." This ruling was based upon an individual's Constitutional rights as expressed in the first sentence of the 14th Amendment.

The Court, in *Rogers v. Bellei*, had a different composition than when the earlier case had been decided. The new Court was at pains to uphold the right of Congress to set special burdens upon those born abroad, but did not want to overrule the import of the earlier case. Resort was therefore made to a most extraordinary interpretation of the 14th Amendment's first sentence:

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

According to the Court, this definition excludes those born abroad. Said the Court, "The central fact, in our weighing of the plaintiff's claim to continuing and therefore current United States citizenship is that he was born abroad. He was not born in the United States. He was not naturalized in the United States. And he has not been subject to the jurisdiction of the United States. All this being so, it seems indisputable that the first sentence of the Fourteenth Amendment has no application to plaintiff Bellei. He simply is not a Fourteenth-Amendment-first-sentence citizen". By this judgment, not only Mr. Bellei, but every other American child born abroad will spend the rest of his life deprived of some of his constitutional rights.

It is interesting to recall the dissenting opinion of Justices Black, Douglas and Marshall in this case. Said Justice Black on behalf of himself and the others, "I cannot accept the Court's conclusion that the Fourteenth Amendment protects the citizenship of some Americans and not others. Indeed, the concept of a hierarchy of citizenship, suggested by the majority opinion, was flatly rejected in *Schneider v. Rusk*, 377 U.S.163 (1964): "We start from the premise that the rights of citizenship of the native born and the naturalized person are of the same dignity and are coextensive."

Justice Black further commented, "Under the view adopted by the majority today, all children born to Americans while abroad would be excluded from the protections of the Citizenship Clause and would instead be relegated to the permanent status of second-class citizenship, subject to revocation at the will of Congress. The Court rejected such narrow, restrictive, and super-technical interpretations of the Citizenship Clause when it held in *Afroyin* that that Clause "was designed to, and does, protect every citizen of this nation."

THE PROBLEM

The problem with the present status of children born abroad is obviously one of having to spend the rest of one's life with less Constitutional protection against involuntary loss of citizenship than all other citizens of the United States. The practical import of this second-class status was that up until October 10th, 1978, some children born abroad had to fulfill subsequent residence requirements in the United States or face involuntary and automatic loss of American citizenship. This provision has now been stricken from the law. But there is no protection for children born abroad from some future decision on the part of Congress to impose a similar burden, or one of another form. The Congress would not be able to impose any such burden on any other citizen, born in or naturalized in the United States, however, because these individuals have greater Constitutional rights than those born abroad.

The inequity of this situation is apparent when it is recalled that many children born abroad are in alien latitudes and longitudes at birth precisely because their parents have been sent there by the U.S. Government or by their American employers. And, at the same time these children are born into second-class citizenship status, children born in the United States to casual tourists acquire full u.S. citizenship rights which those born abroad will never enjoy.

This is an example of a discrimination based solely on the latitude and longitude of an individual's place of birth.

THE SOLUTION

There is no simple solution which is evident for this discrimination short of an amendment to the Constitution which would guarantee that there shall be no second-class category of American citizens, and that all citizens shall be equal regardless of race, religion, color, creed or place of birth.

ISSUE No. 2

SHORT TITLE

Eligibility of an American child born abroad with American citizenship at birth to run for the office of President of the United States.

BACKGROUND

Article II, Section 1 clause 5 of the United States Constitution states: "No Person, except a natural-born Citizen, or a Citizen of the United States, at the time fo the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States."

THE PROBLEM

The problem facing children who are born abroad with American citizenship acquired automatically at birth is that there is no legal Constitutional definition of "*natural born Citizen*."

In recent years there have been several potential Presidential candidates who were not born in the United States and whose candidature would have been in doubt due to this definitional lacuna. Among these potential candidates were: George Romney (born in Mexico), Governor Christian Herter of Massachusetts (born in France) and Franklin D. Roosevelt, Jr. (born in Canada).

There has been much legal debate on whether those born abroad were intended by the Founding Fathers to be eligible for this office. There is no recorded discussion of the Fathers' opinions. However, during the First U.S. Congress, just after the Constitution was adopted, the first citizenship bill concerning those born aboard was passed. This bill stated that:

"And the children of citizens of the United States, that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural-born citizens: PROVIDED, That the right of citizenship shall not descend to persons whose fathers have never been a resident in the United States.¹

Equally significant in this bill and its use of the term "natural born citizen" is the fact that twenty members of the First Congress had been delegates to the Constitutional Convention, and that among these twenty were eight members of the Committee of Eleven at the Constitutional Convention which drafted the presidential qualification clause.

THE SOLUTION

Congress should act to remove the ambiguity that presently persists concerning the eligibility of children born abroad with American citizenship acquired at birth to hold the office of President of the United States.

¹ Act of March 26, 1790, ch. 3, 1 Stat. 103, 104.

One form of redress would be for Congress to enact legislation which repeats the use of the term "*natural born citizen*" in the Immigration and Nationality Act. One appropriate place for this term to be used would be in the first sentence of Section 301 of the present Immigration and Nationality Act. In its amended form this first sentence would read:

"SEC. 301. (a) The following shall be nationals and *natural born citizens* of the United States at birth: - " (new wording italic).

Discussion of the intent of this change in the Congressional Record would establish that it was for the purpose of clarifying the issue of Presidential eligibility.

The weakness of this solution is that as an Act of Congress it could just as easily be changed by a future Congress.

A better solution would be in a clarification of the definition of citizenship in the Fourteenth Amendment to the Constitution. Rewording of this section could be as follows:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *All United States citizens who acquire their United States citizenship at birth are natural-born citizens.*-" (new wording italic).

American citizens born abroad should not have to spend their whole lives in doubt about this basic right of citizenship in the United States.

ISSUE No. 3

SHORT TITLE

Congressional Representation for Americans Living Abroad.

BACKGROUND

There are over 1.5 million American citizens living outside of the United States. This number exceeds the population of 14 different States of the United States, and actually exceeds the combined population of the three smallest political units.

Americans living abroad have many common problems that are directly due to their being away from the United States, but at present these expatriates have no unique representation in the Congress.

Recent changes in American voting laws have enfranchised all of those living abroad for all Federal elections. And, this, of course, means that there is access to members of the House of Representatives and to Senator, but most will concede that those living abroad form only tiny marginal percentages of their total constituencies, and those living at home must come first.

It is not to be suggested that the Congress has ignored the American expatriate community. Quite the contrary is the case, but it is very apparent that despite the good will and concern of many members of both Houses of Congress there are still significant problems that have not been addressed and there are still many myths about the expatriate community which have not been successfully destroyed. Indeed, it is quite significant that there is no Committee, or even sub-Committee in either House of the Congress which addresses itself to questions of policy or practice toward those living abroad. Thus, at present, there is no established mechanism whereby expatriates have any possible continuing attention in the Federal legislature.

THE PROBLEM

The problem with the present situation is that despite the goodwill and intentions of many Members of the Congress, the problems of Americans living abroad are not being fully appreciated. Individual members who might be sympathetic to one particular problem or another often have to consecrate valuable staff time and resources to issues that are only of marginal interest to their basic constituencies. And, often such resources are being diverted in parallel with those of other Members of the Congress when a greater amount of coordination could be more efficient and productive.

THE SOLUTION

One useful solution would be for the Congress to consider granting Americans living abroad at least one non-voting delegate in the House of Representatives. This individual would act like those of the same title who now represent Americans living in Guam, the Virgin Islands and Washington, D.C.

The utility of this delegate for those living abroad would be the fact that there would be henceforth one central reference point for contact with the legislature for transmitting comments to Washington, and for feedback to those living abroad.

But the utility would also be great for the other Members of Congress who today do not have such a resource for acquiring broad information about expatriate problems, nor for obtaining proposed solutions to such problems that would be fair and effective for all Americans living abroad. Thus, this would be an asset of major importance to those abroad and to the members of Congress.

The first to have such a delegate would not need to impair the right to participate in regular Federal elections either, for those living abroad would not really be doubly represented. The delegate has no vote, hence those who vote for Congressmen and Senators in their home districts vote once only in terms of real representation in the Congress, but have a delegate to help focus on problems affecting 1.5 million citizens in unusual circumstances who can initiate legislation and serve on Congressional Committees to the benefit of everyone.