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To: Barry Carter

From: Jim Moyer

Subject: The Citizenship Cases

My review of the major Supreme Court cases dealing with congressional abridgment of citizenship convinces me that the area provides no useful analogy to the problem of circumscribing congressional power over a territory. In Afroyim v. Rusk, 387 U.S. 253 (1967), the Court held that, once acquired, citizenship could not be cancelled by the federal government. I can think of no appropriate analogy between this limitation upon congressional power and the proposed U.S. - Marianas relationship.

This is not an example of Congress using an agreement to limit its own power. Rather, congressional inability to legislate away citizenship is a fundamental curb on governmental power which springs from the nature of a political society where sovereignty lies with the citizens:

> The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship. 387 U.S. at 268.

One might argue that in the case of a naturalized citizen, the naturalization is in effect an agreement between the individual and the government which limits congressional power. Such logic strikes me as extremely attenuated, and not useful to us.

Another approach one could take is to argue that the Afroyim case really shows that Congress cannot legislate away the sovereign power of a group, and therefore Congress ought not to be able to meddle in the internal affairs of the Marianas, an area over which the people of Marianas have sovereignty. Such an argument merely begs the question: can the people of the Marianas ever have ultimate political power over their internal affairs while affiliated with the United States?