AmTrust Title Insurance Company

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NEW CASES JULY 2026

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ACCESS IS GOOD BUT ARBITRATION IS GREAT

Aiello v. Meridian Title Co., 2026 Ind. App. Unpub. LEXIS 747, 2026 LX 299161, 2026 WL 1469701 (Ind. Ct. App. May 26 2026).

Where a title insurance policy's arbitration clause covered any matter in dispute between “You and Us” and plaintiff's negligent misrepresentation (tort) claim arose from the same failure to discover landlocked property as the breach of contract claim, the trial court properly compelled arbitration of the tort claim despite plaintiff's appellate argument that it was a separate claim not covered by the arbitration provision.

Bart Aiello (“Aiello”) purchased vacant land for $230,000 in April 2015 and secured title insurance from Arsenal Insurance Corp. (“Arsenal”) through its agent, Meridian Title Co. (“Meridian”). The land was later discovered to be landlocked because Wellworth Drive was a private road owned by a homeowners' association. Arsenal retained counsel for a declaratory judgment action against the homeowners’ association and neighboring landowners to obtain legal access. Aiello also filed a complaint in January 2020 against Arsenal and Meridian alleging breach of contract and negligent misrepresentation against both defendants. The Trial court compelled arbitration on all claims except punitive damages in April 2021. In October 2021, the homeowners’ association granted Aiello a nonexclusive easement over Wellworth Drive. Arbitration concluded in July 2024 with awards of $345,000 for breach of contract and $39,698 for negligent misrepresentation.

The Indiana Court of Appeals upheld the trial court's orders compelling arbitration (covering any matter in dispute between “You and Us,” whether contract or tort), denying the motion to sever Meridian from arbitration, and granting summary judgment on punitive damages. Aiello's arbitration awards of $384,698 total remained intact, but his claim for punitive damages was dismissed.

In his appeal, Aiello contended that the trial court erred by ordering Aiello's negligent misrepresentation claim to be arbitrated, by denying Aiello's motion to sever Meridian from the arbitration, and by granting defendants' motion for summary judgment regarding Aiello's punitive damages claim. The appellate court affirmed the trial court's judgment.

Meridian, as agent for Arsenal, issued an ALTA Owner's Policy of title insurance ("Policy") to Aiello. The Policy provided insurance in the amount of $230,000 and stated: "This Policy insures You against actual loss, including any costs, attorney's fees and expenses provided under this Policy. . . ." The covered risk relevant under this policy was: "11. You do not have actual vehicular and pedestrian access to and from the land, based upon a legal right."

Aiello later learned that the property was landlocked because Wellworth Drive was not a public access road, but was instead a private drive owned by a homeowners' association. Aiello filed a notice of claim with Arsenal under the Policy. Defendants were unable to reach an agreement with the homeowners' association that

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satisfied Aiello. Accordingly, Arsenal retained separate counsel to initiate a declaratory judgment action against the homeowners' association and neighboring property owners on Aiello's behalf to obtain legal access to the land.

In January 2020, while the declaratory judgment action was pending, Aiello filed the complaint against defendants and alleged that defendants "agreed to insure Plaintiffs against any loss sustained by Plaintiffs by reason of any defect or defects in the title of the insured" to the land and that the "Defendants did not exercise reasonable care in searching the records to ascertain the lack of access, or the Defendants negligently and willfully failed to disclose to Plaintiffs the lack of access." He claimed that Defendants materially breached "the express contract of insurance," and Plaintiffs sustained damages of $230,000.

Defendants filed a motion to compel arbitration, which the trial court granted in April 2021. The trial court compelled arbitration on "all claims, except those requesting exemplary or punitive damages, which shall be reserved for the Trial Court."

The arbitrator found that: (1) Defendants were "in breach of contract under the terms of the Policy"; and (2) as for the negligent misrepresentation claim, Defendants breached their duty "to show Wellworth Drive was a private road." Aiello was awarded $345,000 for the breach of contract claim and $39,698 for the negligent misrepresentation claim, with both amounts to be paid by Meridian and Arsenal jointly and severally.

The arbitration clause covered "**any matter in dispute** between You and Us." It did not differentiate between breach of contract actions and tort actions, and all of the claims related to Defendants' failure to discover that the land was landlocked. The arbitration provision clearly provided for arbitration of the breach of contract claim and the negligent misrepresentation claim. Accordingly, the trial court did not err by compelling arbitration of the negligent misrepresentation claim. The Policy defined "We/Ours/Us" as "Arsenal Insurance Corporation" and Aiello, thus, argued that the arbitration clause applied only to Arsenal, not to Meridian. Aiello contends that Meridian "was never a party to the Policy and, therefore, was not covered by the arbitration clause therein."

The court held that Aiello was not entitled to punitive damages for the breach of contract claim, and the trial court properly granted summary judgment as to any punitive damages related to the breach of contract claim. "It is well settled that a breach of contract claim may not lead to an award of punitive damages." *Sheaff Brock Inv. Advisors, LLC v. Morton*, 7 N.E.3d 278, 288 (Ind. Ct. App. 2014), *trans. denied*.

"Only if the claimant proves that the conduct of the breaching party independently establishes the elements of a common law tort for which punitive damages are allowed may the claimant receive punitive damages." Thus, Aiello was not entitled to punitive damages for his breach of contract claim, and the trial court properly granted summary judgment as to any punitive damages related to the breach of contract claim.

Punitive damages may be awarded only if there is clear and convincing evidence that defendant "acted with malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, overzealousness, mere negligence, or other human failing." Thus, mere negligence in failing to discover the landlocked nature of the Property will not support a punitive damages award, and Aiello was required to prove malice, fraud, gross negligence, or oppressiveness in the failure to discover the landlocked nature of the land. But Aiello provided no evidence to support the claim and made no argument on appeal regarding the claim. Therefore, the trial court properly granted summary judgment on the punitive damages request concerning the negligent misrepresentation claim.

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BE AWARE OF THE CREDITORS' RIGHTS EXCLUSION

Hanks v. First American Title Ins. Co., 2026 Mich. Cir. LEXIS 213 (Tenn. App. May 16, 2018)

Robert A. Hanks and Lee E. Hanks ("Plaintiffs") owned real property located in Sumner County, Tennessee (the "Land"), which they bought from Charles R. Dennie and Joanne R. Dennie (the "Dennies") on October 11, 2013. Charles Dennie was the son of Plaintiff Lee E. Hanks and the step-son of Plaintiff Robert A. Hanks. The Dennies had filed a Chapter 7 bankruptcy petition on October 10, 2013, one day before the transfer of the Land. At the closing on the Land, the Dennies executed an affidavit as to liens and encumbrances that stated no proceedings in bankruptcy or receivership had been filed.

The bankruptcy trustee ("Trustee") filed a complaint on December 9, 2013 in the United States Bankruptcy Court for the Middle District of Tennessee seeking to void the transfer of the Land and alleging that the transfer was a fraudulent transfer under state law, a fraudulent transfer pursuant to the bankruptcy code, and an invalid post-petition transfer under federal law.

Plaintiffs sued First American Title Insurance Company ("First American") and asserted that the title insurance covered any claim by the Trustee under either federal bankruptcy code or Tennessee law for a claim of an alleged fraudulent conveyance, fraudulent transfer, or preferential transfer. Plaintiffs also asserted coverage on the Trustee's post-petition transfer claim because the claim was not excluded from coverage pursuant to an exclusionary provision (post-policy exclusion) of the title policy.

The policy included the following exclusions:

> **The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:**
>
> *** * ***
>
> **3. Defects, liens, encumbrances, adverse claims, or other matters**
>
> > **(a) created, suffered, assumed, or agreed to by the Insured Claimant;**
> >
> > **(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became [*4] an insured under this policy.**
> >
> > **(c) resulting in no loss or damage to the Insured Claimant;**
> >
> > **(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or**
> >
> > **(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.**
>
> **4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is**
>
> > **(a) a fraudulent conveyance or fraudulent transfer; or**

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(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

On appeal, the Trustee, on behalf of the bankruptcy estate of the Dennies and on behalf the Dennies' unsecured creditors, was determined to be entitled to avoid all such fraudulent transfers pursuant to, among other things, Tennessee's law against fraudulent conveyances, T.C.A. § 66-3-101, *et seq.*, and Tennessee's codification of the Uniform Fraudulent Transfers Act, T.C.A. § 66-3-301, *et seq.*, including strong-arm provisions afforded to the Trustee pursuant to 11 U.S.C. § 544(b). The Trustee was further entitled to avoid, and recover back, on behalf of the Dennies' bankruptcy estate, all fraudulent transfers, pursuant to the United States Bankruptcy Code's Section prohibiting fraudulent transfers, 11 U.S.C. § 548.

Plaintiffs notified First American of the claim. First American investigated and determined that Plaintiffs were related to the Dennies, that Plaintiffs agreed to purchase the Property for $170,000, that CMG Mortgage Inc., in anticipation of closing, had obtained an appraisal valuing the Property at $260,000, that at closing two mortgages totaling approximately $132,500 were paid off, that the Dennies had received approximately $29,515 in cash at closing, that the Dennies had filed for bankruptcy the day before closing, and that the Dennies had executed the affidavit as to liens and encumbrances at closing.

First American refused Plaintiffs' claim. Plaintiffs paid $65,000 to the Trustee to clear title to the Property and extinguish claims and liens, and an agreed order of voluntary dismissal was entered in the bankruptcy case. Plaintiffs sued First American for breach of contract.

First American filed a motion for summary judgment. After a hearing, the Chancery Court for Sumner County granted summary judgment to First American after finding and holding, *inter alia*, that the title policy excluded any claim pursuant to either federal bankruptcy code or Tennessee law for an alleged fraudulent conveyance, fraudulent transfer, or preferential transfer. Plaintiffs appealed the grant of summary judgment to the appellate court.

The appellate court found that First American made a proper motion for summary judgment demonstrating that Plaintiffs' evidence was insufficient to establish an essential element of their claim and that Plaintiffs failed to demonstrate that there were genuine disputed issues of material fact regarding the claims for fraudulent conveyance or fraudulent transfer. The court further held that the claim for post-petition transfer was not excluded from coverage pursuant to exclusion 4 of the title policy, and, therefore, summary judgment on the post-petition claim was improper. The court affirmed the grant of summary judgment, in part, and reversed it, in part, and remanded the case for further proceedings consistent with the opinion.

Note Texas Insurance Code Section 2502.006 effectively states a title insurance policy must not insure against creditors’ rights issues (as defined) in the current transaction:

Certain Extra Hazardous Coverages Prohibited

(a) A title insurance company may not insure against loss or damage sustained by reason of any claim that under federal bankruptcy, state insolvency, or similar creditor’s rights laws the transaction vesting title in the insured as shown in the policy or creating the lien of the insured mortgage is:

(1) a preference or preferential transfer under 11 U.S.C. Section 547;

(2) a fraudulent transfer under 11 U.S.C. Section 548;

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(3) a transfer that is fraudulent as to present and future creditors under Section 24.005, Business & Commerce Code, or a similar law of another state; or

(4) a transfer that is fraudulent as to present creditors under Section 24.006, Business & Commerce Code, or a similar law of another state.

(b) The commissioner may by rule designate coverages that violate this section. It is not a defense against a claim that a title insurance company has violated this section that the commissioner has not adopted a rule under this subsection.

(c) Title insurance issued in or on a form prescribed by the commissioner shall be considered to comply with this section.

(d) Nothing in this section prohibits title insurance with respect to liens, encumbrances, or other defects to title to land that:

(1) appear in the public records before the date on which the contract of title insurance is made;

(2) occur or result from transactions before the transaction vesting title in the insured or creating the lien of the insured mortgage; or

(3) result from failure to timely perfect or record any instrument before the date on which the contract of title insurance is made.

(e) A title insurance company may not engage in the business of title insurance in this state if the title insurance company provides insurance of the type prohibited by Subsection (a) anywhere in the United States, except to the extent that the laws of another state require the title insurance company to provide that type of insurance.

This law applies only to a title insurance policy that is delivered, issued for delivery, or renewed (by a new policy) on or after January 1, 2012. A policy delivered, issued for delivery, or renewed before January 1, 2012, is governed by the law as it existed immediately before September 1, 2011, and that law is continued in effect for that purpose. Thus, any title insurer doing business in Texas may not provide creditors' rights coverage arising out of the current transaction in any state, absent a requirement by that state for such coverage.

SUBDIVISION COMPLIANCE

Kaay v. Chicago Title Ins. Co., 2026 Cal. App. Unpub. LEXIS 4041 (Cal. Ct. App. June 17, 2026).

Alexander Kaay ("Kaay") purchased Santa Barbara land in August 2014 for $640,000 and secured a title insurance policy from Chicago Title Insurance Company ("Chicago Title"). Santa Barbara County determined in August 2017 that the parcel was created by illegal 1967 land division, but no notice of enforcement was recorded by the August 27, 2014 policy date.

In October 2019, Kaay tendered a claim on the title insurance policy. In June 2020, Chicago Title denied coverage and cited Exclusion from Coverage 1(a), which provides in part:

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> **"The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:**
>
> **"1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to . . . (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; . . . or the effect of any violation of these laws, ordinances or governmental regulations, <u>except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy</u>." (Italics omitted.)**

Kaay thereafter filed a complaint against Chicago Title. Kaay subsequently filed the second amended complaint for damages arising from breach of contract and/or breach of special relationship of insurance, but the court held that a reasonable trier of fact could not find the potential for coverage. (See *Total Call Internat., Inc. v. Peerless Ins. Co.* (2010) 181 Cal.App.4th 161, 167, 104 Cal. Rptr. 3d 319 ["The absence of a duty to defend is established when the insurer shows that 'the underlying claim [could not] come within the policy coverage by virtue of the scope of the insuring clause or the breadth of an exclusion.'"].) The policy unambiguously excluded "loss or damage, costs, attorneys' fees or expenses" due to "[a]ny law, ordinance or governmental regulation . . . relating to . . . a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part . . . ." Kaay appealed the trial court's decision, but the appellate court held that Kaay's losses, which stemmed from the County's interpretation of its ordinances and the Subdivision Map Act, fell squarely within this exclusion. The exclusion would not apply had certain notice been "recorded in the public records at Date of Policy." But no notice was recorded by then. Therefore, the trial court properly granted summary judgment.

WHEN DOES THE LAND INCLUDE MORE ADJACENT STRIPS?

Lester v. Old Republic Title Ins. Co., 106 Mass. App. Ct. 658, 2026 Mass. App. LEXIS 36 (Mass. App. April 10,2026)

The title insurance policy described the Land as located "on the northerly side of Hillcrest Acres Lane and excluded 'lying within the bounds of Hillcrest Acres Lane.'" The policy unambiguously excluded coverage for land under a stone wall that fell within the 40-foot width, although the actual road was only 10-12 feet wide and the property owner held fee title to the disputed land under the "derelict fee statute" (G.L. c. 183, § 58), which creates a presumption for instruments passing title to real estate abutting ways.

In 2019, the insureds were sued in the Superior Court by the owners of the adjacent lot, the Dromskys. The issue related to the insureds' restoration of a stone wall that was south of the metes and bounds of the land as

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described in both the deed and the policy. The insureds filed a claim with the title insurer under the policy to defend them in the suit. The title insurer declined to defend and claimed that the land under the stone wall was not covered by the policy.

Exhibit A of the policy contained a legal description that described the Land as located “on the northerly side of Hillcrest Acres Lane, so called, (private way – min 40 feet wide).” The language detailing the boundaries of the Land to be insured, and agreed to by all contracting parties, unambiguously framed that coverage as ceasing at the border of Hillcrest Acres Lane; more particularly, a Hillcrest Acres Lane that is at least forty feet wide. The Land under the stone wall lay beyond the described boundaries of the insured land, and Schedule B excluded coverage for land 'lying within the bounds of Hillcrest Acres Lane.” The Superior Court judge held that the insureds owned the stone wall land under the derelict fee statute.

The insureds invited application of the presumption in the statute to the terms of the policy and asserted this would expand the boundaries of the policy to cover the land under the stone wall. The court declined to broaden the statute, as the expansion would contradict the statute.

The court held that the insureds’ argument that “Covered Risk No. 23” was ambiguous and was therefore resolved against the defendant, was unpersuasive. That provision provided coverage where “[Plaintiffs] are forced to remove [their] existing structures which encroach onto an Easement or over a building set-back line, even if the Easement or building set-back line is excepted in Schedule B.” The policy’s stated definitions of “Easement” (“the right of someone else to use the Land for a special purpose”) and “Land” (“the land or condominium unit described in paragraph 3 of [Exhibit] A and any improvements on the Land which are real property”), rendered unambiguous Covered Risk No. 23, which applied exclusively to structures located on the Land, and that did not include the land under the stone wall. See *Balles*, 476 Mass. at 571.

THE RIGHT TO LAY ADDITIONAL PIPELINES
Close Armstrong, LLC v. Trunkline Gas Co., LLC, 172 F.4th 516, amended 2026 U.S. App. LEXIS 11767 (7th Cir. April 24, 2026).

Where 1959 right-of-way agreements granted Trunkline floating easements to lay additional non-parallel pipelines on Indiana properties, and Trunkline had only exercised rights to install and maintain the existing 100 Line pipeline since 1960, the unexercised future rights to lay additional pipelines remained unfixed despite landowners' arguments based on Trunkline's limited historical use of a 66-foot corridor.

The 1959 agreements provided Trunkline the following rights:

- “[A] right of way and easement to construct, lay, maintain, operate, alter, repair, remove, change the size of, and replace one or more pipe lines and appurtenances thereto ... for the transportation of oil, gas, petroleum products or any other liquids, gases or substances which can be transported through pipe lines
- “[T]he right to select, change, or alter the routes of such pipe lines under, upon, over, and through lands which the undersigned owns or in which the undersigned has an interest

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- "[T]he right to lay, construct, maintain, operate, alter, repair, remove, change the size of, and replace at any time or from time to time one or more additional lines of pipe and appurtenances thereto, said additional lines not to necessarily parallel any existing line laid under the terms of this agreement."

The Seventh Circuit declined to certify the floating easement fixation question to the Indiana Supreme Court because there was sufficient Indiana case law to conclude with certainty that unexercised future easement rights cannot be fixed. The1959 right-of-way agreements granted Trunkline easements to construct pipelines and lay additional non-parallel lines. Subsequently, Trunkline installed the 100 Line pipeline in 1960, and Trunkline has historically maintained only a 66-foot corridor around the 100 Line, but Trunkline never exercised rights to install additional pipelines or relocate the 100 Line.

Indiana easement law distinguishes between fixed and floating easements; Indiana precedents include Town of Ellettsville v. DeSpirito (2018), Panhandle E. Pipe Line Co. v. Tishner (1998), and Rees v. Panhandle E. Pipe Line Co. (1983). Indiana contract law favors freedom of contract.

Indiana precedents addressed fixation of already-exercised easement rights, not unexercised future rights. Evidence of Trunkline's limited historical use did not fix future rights that had never been exercised. Indiana law favors honoring contractual agreements, and the parties contracted for future rights to lay additional pipelines. Existing case law provided sufficient guidance to reach a conclusion.

An easement grants a person or entity the right to use another's land for a specified purpose. Indiana recognizes two types of easements: fixed and floating. An easement is fixed if the instrument creating it specifies its location or if the law requires it to be maintained in a specific position. An easement is floating if it is not limited to any specific part of the land subject to the easement.

On appeal, the landowners asked to certify to the Indiana Supreme Court the question of whether Indiana law required a floating easement to be fixed to a defined location. Alternatively, the landowners asked to reverse the district court's second grant of summary judgment. The appellate court declined the landowners' request for certification because an answer from the Indiana Supreme Court was not necessary to reach this conclusion with certainty. Trunkline's remaining, unexercised floating easement rights were not fixed under Indiana law, and the appellate court affirmed the district court's grant of summary judgment.

"Indiana recognizes two types of easements: fixed and floating." *Id.* "An easement is fixed if the instrument creating it specifies its location or if the law requires it to be maintained in a specific position." *Id.* "An easement is floating if it 'is not limited to any specific part' of the land subject to the easement." *Id.* (citing *Easement, Black's Law Dictionary* (10th ed. 2014)). "Once exercised, a floating easement may become fixed. *See, e.g., Panhandle E. Pipe Line Co. v. Tishner*, 699 N.E.2d 731, 734-35,

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738 (Ind. Ct. App. 1998), *holding modified on other grounds by Fraley v. Minger*, 829 N.E.2d 476 (Ind. 2005).”

FAILURE TO COMPLY WITH DEADLINES FOR MASTER DEED IS ACT OF INSURED

Triple Props. Detroit, LLC v. First American Title Ins. Co., 2026 U.S. App. LEXIS 11011 (6th Cir. April 17, 2026). Triple Properties Detroit, LLC (“Triple”) knew at the time of purchase of undeveloped units that the title was subject to a March 2014 deadline in the Master Deed to complete development or withdraw condominium units from the condominium project. Triple secured an owner’s policy from First American Title Insurance Company (“First American”), which included Exclusion 3(a) to defects, liens, encumbrances, adverse claims, or other matters, created, suffered, assumed, or agreed to by the insured.

Triple failed to take any action despite having the power to do so and later sold the units to Ferlito Group, but without disclosing the title reversion to the Association. Ferlito Group negotiated with the Association for an amendment of the Master Deed. Triple then entered a contract to sell the undeveloped units to PCJ Investments, LLC (“PJC”). Thereafter the Association informed PJC that the undeveloped unit had reverted to the Association.

Triple tendered defense to First American, but First American declined to defend, because the claims fell within the Exclusions, including Exclusion 3(a), which barred coverage because Triple both “suffered” the title defect by failing to prevent it and “created” the buyer's claim through deliberate sale with knowledge of the competing title claim.

Thereafter, Triple brought this suit against First American seeking damages for breach of the title insurance policy. The district court determined that Exclusion 3(a) of the policy barred coverage of the claim because the "loss of title was the direct result of Triple's deliberate acts."

The appellate court affirmed the trial court, noting the trial court applied established interpretations of Exclusion 3(a) terms, and finding Triple “suffered” the title defect by having the power to prevent the reversion but failing to act, and “created” PCJ's claim by deliberately selling with knowledge of the title dispute. The exclusion's plain language clearly applied, and no ambiguity existed

“The meaning of the phrase ‘created, suffered, assumed or agreed to’ in insurance contracts is ‘fairly well established’ across jurisdictions. 793 F.2d 780, 784 (6th Cir. 1986). The term 'created,’ for its part, ‘has generally been construed to require a conscious, deliberate and sometimes affirmative act intended to bring about the conflicting claim, in contrast to mere inadvertence or negligence…. The word ‘suffered' . . . has been deemed synonymous with 'permit,' which implies the power to prohibit or prevent the claim from arising….’ ‘Assume,' . . . requires knowledge of the specific title defect assumed. And 'agreed to' . . . requires full knowledge by the insured of the extent and amount of the claim against the insured's title."

The appellate court agreed with the district court that First American was entitled to summary judgment. Triple's title-insurance policy—via Exclusion 3(a)—excluded any "defects, liens, encumbrances, adverse claims, or other matters" that Triple "created, suffered, assumed, or agreed to."

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The appellate court agreed with the district court and affirmed the trial court's judgment that Triple "suffered" the expiration in its ownership interest that gave rise to PCJ's claim: Triple had "the power to prohibit or prevent" the reversion of its interest but failed to undertake the actions necessary to do so. *Am. Savs. & Loan Ass'n*, 793 F.2d at 784; *see also Suffer*, Black's Law Dictionary (12th ed. 2024) ("To allow or permit (an act, etc.)"); *Archambo v. Law. Title Ins. Corp.*, 2002 Mich. App. LEXIS 1270, 2002 WL 31013194, at *1 (Mich. Ct. App. 2002) (similar). "Triple could have developed the units upon their acquisition in 2011. But Triple instead made 'a business decision' to 'hold' the undeveloped units, based on its assessment that 'market conditions were not right to build at that time….' . Alternatively, Triple could have 'withdraw[n] the undeveloped portions . . . from the Project' before the March 2014 deadline elapsed…. But Triple didn't do that either. And even after title reverted to the Association in 2014, Triple had a third way to restore its rights in the undeveloped units: amending the Master Deed. Yet Triple voted against doing so." The appellate court affirmed the judgment of the district court.

ENCROACHMENTS BY OWNER OF SERVIENT ESTATE DID NOT UNREASONABLY INTERFERE WITH USE OF EASEMENT

Thibault Enters., LLC v. Yost, 927 S.E.2d 806 (Va. 2026).

The trial court granted an injunction to prevent encroachment over an easement. However, the owner of the servient estate retained the right to use land if the use did not unreasonably interfere and was not inconsistent with the use of the easement. The decision to grant or deny an injunction was within the discretion of the trial court and would not be disturbed on appeal unless it was clearly wrong. However, the grant of an injunction is clearly wrong if not supported by the evidence, as was the case here.

In this case, a 50-foot-wide ingress/egress easement crossed agricultural land, and the servient owner placed fences, vines, and hay bales within the easement but not on the actual 12-foot gravel road in use. The easement owners could travel unimpeded to their residence, so no injunctive relief was needed because the encroachments did not unreasonably interfere with the easement. Consequently, the Supreme Court reversed the judgment of the Court of Appeals and circuit court and vacated the injunction that prohibited placement of objects within the 50-foot easement.

NEGLIGENCE RESTRICTED TO THE POLICY

Marrero v. Thomas, 2026 N.Y. App. Div. LEXIS 3967, 2026 NY Slip Op 03788 ,2026 LX 378002, 2026 WL 1741085 (Sup. Ct. Appt. Div. June 17, 2026).

Stewart Title Insurance Company ("Stewart Title") demonstrated its prima facie entitlement to judgment as a matter of law and to dismissal of the third-party cause of action, which alleged negligence by Stewart Title. The title insurance policy expressly provided that any claim for damages based on negligence by Stewart Title that arose out of the status of the insured title was restricted to the policy. Furthermore, Stewart Title did not assume any additional duty independent of the title insurance contract.

FORFEITURE OF MORTGAGE

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Midwest Bank Federally Chartered Sav. Assn. v. McCoy, 242 A.D.3d 875, 243 N.Y.3d 477, 2025 N.Y. App. Div. LEXIS 5025, 2025 Slip Op 05517, 2025 LX 432230 (2025).

Midwest Bank ("Midwest") sought to foreclose its mortgage and appealed from an order of the Supreme Court, Queens County, which granted the motion of the defendant Normaune McCoy ("McCoy") pursuant to CPLR 3211 to dismiss the complaint, for a declaration that Midwest no longer had a valid mortgage on the land, and to cancel and discharge the mortgage. The result of those orders would vacate a judgment of foreclosure and sale by the same court dated March 25, 2022. The court affirmed the order insofar as it was appealed from, with costs.

On May 4, 2007, McCoy and another individual executed a note for $471,350 in favor of Midwest, which was secured by a mortgage on the land. By deed dated November 1, 2011, the land was transferred to McCoy alone. Thereafter, the land was conveyed to the defendant Launch Development, LLC ("Launch").

On October 1, 2014, Midwest commenced this action against McCoy and Launch, among others, to foreclose the mortgage. McCoy interposed an answer to the complaint. On November 15, 2016, McCoy commenced a separate quiet title action against Launch and Amir Meiri ("Meiri"), among others, alleging that her signature on the January 30, 2014 deed was forged.

In March 2017, Midwest moved for summary judgment on the complaint, and McCoy moved to stay this action pending the outcome of the quiet title action. While those motions were pending, the Supreme Court determined that McCoy's motion in the quiet title action for leave to enter a default judgment should be granted. In an order dated December 6, 2017, the court granted the plaintiff's motion, among other things, for summary judgment on the complaint and denied, as academic, McCoy's motion to stay this action pending the outcome of the quiet title action. In the quiet title action, by order and judgment dated May 18, 2018, the Supreme Court granted McCoy's motion for leave to enter a default judgment, declared McCoy the fee owner of the premises, and directed the Queens County Clerk to set aside and cancel the deed dated January 30, 2014. In March 2019, the plaintiff moved in this action for a judgment of foreclosure and sale. In an order dated August 21, 2019, the Supreme Court granted the unopposed motion.

On or about November 1, 2016, Meiri, a principal of Launch, was indicted in connection with a scheme to defraud distressed homeowners and charged with, among other crimes, conspiracy to commit wire fraud and bank fraud in violation of 18 USC § 1349 (hereinafter the "federal criminal proceeding"). The indictment further sought forfeiture of any and all property "constituting or derived from any proceeds . . . obtained directly or indirectly" as a result of the offenses charged in the indictment pursuant to 18 USC § 981 (a) (1) (C) and 28 USC § 2461. On April 10, 2018, a consent preliminary order of forfeiture as to specific property was entered in the federal criminal proceeding (hereinafter the "preliminary order of forfeiture"). Pursuant to the preliminary order of forfeiture, Meiri, having pleaded guilty to count one of the indictment, agreed to forfeit "all right, title and interest" in various properties, including the land. The preliminary order of forfeiture directed that any person claiming an interest in a property subject to forfeiture under the order "file a Petition within sixty (60) days from the first day of publication of a forfeiture notice on the official government internet web site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier." Between September 26, 2018, and November 30, 2018, the preliminary order of forfeiture was sent to, among others, McCoy and the plaintiff by certified mail, return receipt requested. On or about December 6, 2018, McCoy filed a petition in the federal criminal proceeding asserting an interest in the land. On October 30, 2019, a stipulation and order of withdrawal of petition was entered in the federal criminal proceeding pursuant to which the United States agreed to convey legal title to the land to McCoy. A final order of forfeiture, which was entered on December 6, 2019, directed that the United States "shall have clear title" to the forfeited land under the order and vested "all right, title and interest" in the premises in the United States, specifically noting that the preliminary order of forfeiture had been sent by certified mail, return receipt requested, to, among others, the plaintiff.

By quitclaim deed dated June 16, 2021, the United States Marshals Service, on behalf of the United States, conveyed to McCoy "all the right, title, interest, and claim which the United States of America has in the [land]." The deed was recorded on June 25, 2021.

The preliminary order of forfeiture of the mortgage was affirmed insofar as appealed from, with costs.

The court held that the mortgagee received proper notice of federal criminal forfeiture proceedings affecting the land but failed to file a petition asserting its interest within the required timeframe; consequently, the mortgagee waived its right to assert an interest in the land, and its mortgage lien was extinguished when the United States conveyed the property to another claimant who had properly filed a petition.

DUTY OF ESCROW AGENT LIMITED TO PURCHASE AGREEMENT

Smith v. O'Malley, 2026 Mich. Cir. LEXIS 213 (Mich. Cir. May 12, 2026).

Escrow and Title Services, Inc. ("Bell Title") acted as escrow agent in 25 real estate transactions that involved fraudulent representations by Metro Property Group, LLC ("Metro Properties"), although no written escrow agreements had been made. Bell Title's duties were limited to its obligations in the purchase agreements and included no separate duty to disclose fraud to the investor-purchasers.

The foreign investors purchased Detroit real estate through Metro Properties based on false representations. Sameer Beydoun was in federal prison and Metro Properties was defunct.

Three seminal cases outlined the parameters of the law on escrow:

- *Smith v First Nat Bank & Tr. Co of Sturgis*, 177 Mich App 264, 270; 440 NW2d 915, 918 (1989), Which "establishes that escrow agent duties are limited to those in the escrow agreement."
- *Coran v Century Title Agency, LLC* (unpublished), which "held Michigan does not recognize duty to disclose fraud absent contractual provisions."
- *Wormsbacher v Seaver Title Co*, 284 Mich App 1 (2009), which stands for "the proposition that Michigan case law does not recognize [third-party] tort claims against title insurers."

In its most general terms, defendant Bell Title maintained that it owed no legal duty to the plaintiff purchasers of the real estate and hence there could be no cause of action as a matter of law. Such a determination centers on the role of Bell Title in each transaction. There were allegations that in at least 25 of the transactions, Bell Title acted as an escrow agent and that in 10 transactions, Bell Title acted as a closing agent. Here, the court addressed an escrow agent's duties to purchasers in real estate transactions.

The court held that it has long been established that "[a]n escrow agent is the agent of both parties to the escrow agreement." *Smith v First Nat Bank & Tr. Co of Sturgis*, 177 Mich App 264, 270; 440 NW2d 915, 918 (1989). "[A]n escrow agent may be liable in tort for the negligent performance of its duties as escrow agent or

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breach of fiduciary responsibilities owed to its principal…. While there is no published Michigan authority, several Michigan Court of Appeals panels in *unpublished* cases have adopted the rule that, in the absence of a formal escrow agreement, the duties of an escrow agent are determined by examining the underlying contracts / purchase agreements."

"The parties do not agree… what the purchase agreement requires of the escrow agent. Plaintiffs maintain that the escrow agent had a duty to ensure the transactions at issue were closed on the close-by date in the purchase agreements. Yet, Defendant Bell Title denies that an escrow agent has any such obligation. This issue will be developed during the course of discovery…."

The plaintiffs also argued that, in addition to any specific duties identified in the purchase agreements, "Defendant Bell Title had a separate and distinct duty to disclose fraud…. The case law in Michigan and throughout the country does not lend an easy answer to the issue of whether an escrow agent has a duty to disclose fraud."

There are no published cases in Michigan concerning an escrow agent's duty to disclose fraud. In an unpublished case, the Michigan Court of Appeals has held that the duty to disclose fraud does not apply in Michigan. *Coran v Century Title Agency, LLC*, unpublished opinion per curiam of the Court of Appeals, issued November 18, 2010 (Docket No. 293540). "Plaintiffs argue that defendant's silence regarding the circumstances of the transaction in which [seller] purchased the lots that it sold to plaintiffs *at a cost much less* than it sold them to plaintiffs constituted fraudulent or negligent misrepresentation." *Id.* at 4 (emphasis added). Ultimately, the trial court dismissed plaintiffs' tort claims under MCR 2.116(C)(8) and plaintiffs appealed…. On appeal, the Court of Appeals noted that the trial court correctly relied on *Wormsbacher v Seaver Title Co*, 284 Mich App 1 (2009) for the proposition that Michigan case law does not recognize tort claims against title insurers. On appeal, the plaintiffs argued that their case was distinguishable from *Wormsbacher* because the defendant in their case had a dual role as both a title agent and as an escrow or closing agent. *Id.* at 3. The Court of Appeals disagreed. *Id.* The court recognized that "[a]n escrow agent may be held liable in tort for the negligent performance of its duties or breach of its fiduciary duties." *Id.* (citing *Smith v First Nat Bank & Tr. Co of Sturgis*, 177 Mich App 264, 270-71 (1989)). However, the court went on to iterate the rule regarding escrow agent duties as discussed above: "'The duties and liabilities of an escrow agent are those set forth in the escrow agreement,' and if no formal escrow agreement exists, then the escrow agent is 'bound by the terms of the respective purchase agreements.' *Id."* They rely on case law from other jurisdictions, that assert that an escrow agent has an additional duty to disclose fraud, if the escrow agent knows of it. See, e.g., *Berry v. McLeod*, 124 Ariz. 346, 604 P.2d 610 (1979). "<u>However, as defendant argues, this does not reflect the state of the law in Michigan, where the duties of title insurers and escrow or closing agents are delineated by the contracts between the parties."</u> The court held that the plaintiffs failed to assert violations of the contracts, and the trial court correctly granted summary disposition on tort claims.

Other jurisdictions have addressed this situation and have found that there is an exception to the general rule if the escrow agent knows one of the parties to the escrow is committing fraud. *Berry v McLeod*, 124 Ariz 346, 352; 604 P2d 610 (1979) ("Generally, there is no duty to disclose information received by an escrow agent unless such a duty is required by the terms of the agreement, but we hold that there is an exception to the foregoing rule when the escrow agent knows that a fraud is being committed on a party to an escrow."); *Butko v Stewart Title Co of Washington, Inc*, 99 Wash App 533, 549-52; 991 P2d 697 (2000), order for publication withdrawn (May 5, 2000) ("An escrow holder's fiduciary duties are set forth in the escrow instructions," but "an escrow agent has a fiduciary duty to inform the parties to the transaction if it has reasonable cause to believe a party has perpetrated a fraud against another party to the transaction."); *Schoepe v Zions First Nat Bank*, 750 F Supp 1084, 1089 (D Utah 1990) ("Although the Utah Supreme Court has not held that escrow agents have a duty of disclosure regarding 'known fraud' or 'material facts' acquired in the course of the agency, this court believes these duties are logically encompassed within the fiduciary duty an escrow agent owes its principals."); *Mark Properties, Inc v Nall Title Co*, 117 Nev 941, 946; 34 P3d 587, 591 (2001), opinion reinstated on reh (Nov. 26, 2001) ("Generally, the escrow instructions control the parties' rights and define the escrow agent's duties. Other jurisdictions have, however, recognized an exception to this general rule, holding that an escrow agent has a duty to disclose fraud to the parties with whom it has an escrow relationship . . . [w]e adopt this characterization of an escrow agent's duty."); *Powell v HEF Pship*, 793 F Supp 91, 93 (D Vt 1992) ("Dartmouth contends its [fiduciary] duties as an escrow are limited by the express terms of the escrow agreement. Regardless of the agreement's express terms, however, an escrow agent's duty to its principal includes the obligation to disclose information about a known fraud being committed on the principal."); *Am State Bank v Adkins*, 458 NW2d 807, 810 (SD 1990) ("Several fiduciary duties arise from the escrow relationship. First, the escrow agent is obligated to act in strict accordance with the terms of the escrow agreement. Second, the escrow agent has a fiduciary duty to disclose information about a known fraud being committed on a party to the escrow agreement." (Internal citations and quotations omitted)).

The court declined to adopt a broader view of the duty to disclose fraud by an escrow agent. The court concluded that the *task of redefining Michigan law on the scope of a duty not yet found to exist in this state is to be left to the appellate courts*. The guidance would "alter [or] modify [] an existing rule of law."

Therefore, consistent with published Michigan law, the court found that that an escrow agent had no duties beyond the escrow agreement or the contracts.

The court also rejected the plaintiffs' argument that there existed a "general duty of care."

The court held that it is without dispute that in any transaction if the defendant acted only as the **title insurer**, there was no legal duty owed to the plaintiffs. Any relief must be based on a breach of the title policy.

BIRTHRIGHT CITIZENSHIP

Trump v. Barbara, 2026.U.S. LEXIS 2885, 2026 LX 322681 (S.Ct. June 30, 2026). (excerpts only)

J. Roberts. “Even the *language* of the [Fourteenth Amendment’s Citizenship] Clause is that of the common law. *Lynch* held that American citizenship extended to ‘all persons born within the jurisdiction of the United States.’ 1 Sand. Ch., at 668. So did Chancellor Kent. See Kent 38, and n. a (‘all persons born within the jurisdiction and allegiance of the United states’ are citizens). So did the first legal treatise on the rights of free black Americans. See Yates 36 (all ‘who are born within the jurisdiction of a State’ are citizens). And so did the famed antebellum lawyer Horace Binney. See Binney 20 (children ‘born within the limits and under the jurisdiction of the United States’ are citizens). Little wonder, then, that the Citizenship Clause’s principal author would explain that its language was ‘simply declaratory of . . . the law of the land already.’ Cong. Globe, 39th Cong., 1st Sess., at 2890 (Sen. Howard).

“That law was clear. Any child who was born ‘under the protection of’ the United States—that is, any child for whom no extraterritorial fiction applied—was made a citizen, for he owed a natural ‘allegiance’ (and thus

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'obedience') to the Nation. *Lynch*, 1 Sand. Ch., at 668; see Cong. Globe, 39th Cong., 1st Sess., at 570 (Sen. Morrill) (the 'essential elements of citizenship' are 'allegiance on the one side and protection on the other')."

"In an opinion by Justice Gray, the Court rejected the Government's position. Justice Gray explained that the Fourteenth Amendment was merely "declaratory" of the "fundamental rule of citizenship by birth" that prevailed at common law. 169 U. S., at 688, 18 S. Ct. 456, 42 L. Ed. 890. That 'same rule,' he wrote, 'was in force in all the English Colonies'—'and continued to prevail under the Constitution.' *Id*., at 658, 18 S. Ct. 456, 42 L. Ed. 890. And its contours were clear. It excluded those recognized as exempt 'from the jurisdiction of this country'—the 'children of ambassadors' and other representatives of foreign sovereigns, as well as those born in the 'alien nations' of Indian tribes. *Id*., at 675, 681-683, 693, 18 S. Ct. 456, 42 L. Ed. 890."

"The specter of *Dred Scott*, however, loomed over Congress's efforts. Opponents of the Act contended that Congress could not grant such expansive citizenship (and set aside this Court's precedent) by statute alone. See, *e.g*., Cong. Globe, 39th Cong., 1st Sess., at 497-498 (Sen. Van Winkle); *id*., at 499 (Sen. Cowan). To quiet those concerns—and to permanently enshrine the common law in the Constitution—Congress turned to the Fourteenth Amendment."

"What the Civil Rights Act began, the Fourteenth Amendment would finish. Like the Act, the Fourteenth Amendment was intended to repudiate *Dred Scott*. This time, however, the goal was even grander—to put the 'great question of citizenship' 'beyond the legislative power' altogether, to settle the issue once and for all. Cong. Globe, 39th Cong., 1st Sess., at 2891, 2896 (Sen. Howard)."

"No such intersovereign concerns apply to children born of parents unlawfully or temporarily present in the United States; no foreign sovereign would 'have any motive for wishing' them outside this Nation's authority. *Ibid.* Those children are thus subject to the jurisdiction of the United States. They satisfy both elements of the Citizenship Clause: they are 'born . . . in the United States' and subject to the jurisdiction thereof. Under the Constitution, they are citizens at birth."

"As to the principal dissent, it is simply not true that domicile in a new nation severs one's ties to the old one. See Story §540, at 451 ('Nations generally assert a claim to regulate the rights, duties, obligations, and acts of their own citizens, wherever they may be domiciled.'). If the test truly is whether a person is 'amenable to the laws' of two governments at once, *post*, at 14 (Thomas, J., dissenting), then it is a test that every child born to a foreign parent fails—a result that even the principal dissent cannot stomach. Justice Alito seems to recognize this bind, so he would create an ad hoc exception for those whose parents have 'done everything within their power . . . to become Americans.' *Post*, at 27. He does not explain how that exception can be squared with his view of the text, which (to repeat) is that anyone 'automatically' made a 'national[ ]' of his 'parents' native country' was not entitled to citizenship under the Civil Rights Act. *Post*, at 37. In our estimation, the Act raises more questions than answers—and was replaced by the Fourteenth Amendment, which 'better' expresses the views of the Reconstruction Congress anyway. Cong. Globe, 39th Cong., 1st Sess., at 2894 (Sen. Trumbull). This Court said as much in *Wong Kim Ark*. See 169 U. S., at 675, 688, 18 S. Ct. 456, 42 L. Ed. 890 ("any possible doubt" about the meaning of the Civil Rights Act "was removed" by the change to "the affirmative words" of the Citizenship Clause)."

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"Citizenship, then and now, was the right to have rights—to freely participate in our political community. The Framers of the Fourteenth Amendment extended that promise to "every free-born person in this land. Cong. Globe, 39th Cong., 1st Sess., at 600 (Sen. Trumbull). We keep that promise today."

"The judgment of the District Court for the District of New Hampshire is affirmed."

Concurrence by Jackson, concurred in part by Justice SOTOMAYOR

"Of course, the ultimate irony is that for all the talk about the detestable *Dred Scott* decision, the Government and the principal dissent propose a return to its core tenet. Their bottom line is that, for certain people, being born on American soil will not suffice to confer citizenship. It is that odious conclusion that the Citizenship Clause plainly rejects, as the Court explains. *Ante,* at 26. I add only that the Fourteenth Amendment's universalist aims should forever be the death knell for this kind of claim—one that seeks to make bloodline the marker of birthright. The America that was reborn from the rubble of the Civil War simply does not countenance that inequitable result. Thankfully, a majority of the Court *remembered* this today, and has dutifully preserved the most basic animating principle of our Nation's founding—that all human beings are created equal—once more."

Justice Kavanaugh, concurring in the judgment and dissenting in part.

Dissent by: KAVANAUGH; THOMAS; ALITO; GORSUCH

"Executive Order No. 14160 establishes new exceptions to birthright citizenship for children born to foreign citizens unlawfully or temporarily in the country. 90 Fed. Reg. 8449 (2025). The Court today holds that the Order violates the Fourteenth Amendment to the Constitution. I respectfully disagree with the Court's constitutional holding. In my view, the Executive Order does not violate the Fourteenth Amendment. But the Order does contravene a federal statute, 8 U. S. C. §1401(a). Congress could—consistent with the Fourteenth Amendment—amend §1401(a) or otherwise enact new legislation establishing exceptions to birthright citizenship for children born to foreign citizens unlawfully or temporarily in the country. But Congress has not yet done so."

"In 2025, however, Executive Order No. 14160 sought to add two new exceptions to birthright citizenship for children born to foreign citizens who are either illegally or temporarily in the United States. In doing so, the Executive Order goes beyond what §1401(a) authorizes. For the Executive Order to be lawful, therefore, Congress would need to amend §1401(a) or otherwise enact new legislation to encompass those two new exceptions. As of now, Congress has not done so. Over the last 30 years, Congress has considered numerous proposed bills to alter birthright citizenship, but Congress has never actually passed such legislation. See, *e.g*., Birthright Citizenship Act of 2021, H. R. 140, 117th Cong., 1st Sess.; Citizenship Reform Act of 1997, H. R. 7, 105th Cong., 1st Sess.

"Unless and until Congress enacts such legislation, the Executive Order contravenes the federal statute, §1401(a)".

"The Citizenship Clause of §1 of the Fourteenth Amendment should be no different. The Court's 1898 decision in *Wong Kim Ark* recognized four exceptions that existed as of the Fourteenth Amendment's ratification in 1868. Therefore, under basic tenets of constitutional interpretation, other exceptions can be recognized when the new exceptions (i) are based on subsequent developments or circumstances that are new, *i.e*., largely unknown or

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unanticipated by the Framers of the Fourteenth Amendment, and (ii) are relevantly similar to the four previously recognized *Wong Kim Ark* exceptions. See generally, *e.g.*, *United States* v. *Hemani*, 608 U. S. ___, ___, 2026 U.S. LEXIS 2559 (2026) (slip op., at 7); *Rahimi*, 602 U. S., at 692; *Moody*, 603 U. S., at 733-734, 144 S. Ct. 2383, 219 L. Ed. 2d 1075; *Bucklew* v. *Precythe*, 587 U. S. 119, 130-134, 139 S. Ct. 1112, 203 L. Ed. 2d 521 (2019); *United States* v. *Jones*, 565 U. S. 400, 404-405, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012); *Brown* v. *Entm't Merchants Ass'n*, 564 U. S. 786, 790, 131 S. Ct. 2729, 180 L. Ed. 2d 708 (2011); *Kyllo* v. *United States*, 533 U. S. 27, 33-34, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001).

"Here, that interpretive principle would support additional exceptions for children born to foreign citizens unlawfully or temporarily in the country."

"All of that said, as noted above, Congress in 1940 and 1952 enacted a statute, §1401(a), that at the time and since has always been understood to authorize only the four *Wong Kim Ark* exceptions. If Congress amends §1401(a) or otherwise enacts a statute creating new exceptions along the lines of the Executive Order for children born to foreign citizens unlawfully or temporarily in the country, such a statute, as I see it, would pass constitutional muster.

"For those reasons, to reiterate, the Executive Order does not violate the Fourteenth Amendment. But the Order does contravene 8 U. S. C. §1401(a). Consistent with the Fourteenth Amendment, Congress could amend §1401(a) or otherwise enact new legislation establishing exceptions to birthright citizenship for children born to foreign citizens unlawfully or temporarily in the country. But Congress has not yet done so.

Justice Thomas, with whom Justice Gorsuch joins, dissenting.

"The Court today takes the extraordinary step of holding facially unconstitutional the President's Order excluding from citizenship the children of foreign temporary visitors and illegal aliens. In doing so, the Court adds to the sad history of the Fourteenth Amendment, which was designed and understood to secure equal rights for the freed blacks but has instead been repurposed for political projects that the Reconstruction Congress did not support. Because many potential applications of the President's Order are consistent with the original public meaning of the Citizenship Clause, I respectfully dissent."

"Citizens were not the people who were temporarily passing through a territory or who happened to be born within it. Citizens were the permanent members of the body politic—the people whose roots were in a place, who called that place home, and who would, if necessary, go to war for that place. The law of both state and national citizenship reflected this principle. Domicile was critical for state citizenship."

"A temporary visitor whose homeland was somewhere else, although he had legal rights and was entitled to dignified treatment, lacked the ties to this country that would make him fit for citizenship. He therefore was generally not eligible for naturalization, and his children were likewise not naturally citizens of their birthplace."

"When a person traveled abroad, he remained subject to the power of his home nation—much like an American who travels abroad today remains subject to the power of this Government. As this Court explained, if a person "goes into a foreign country" on a "temporary" visit, he remains subject to the power of his home country. *Murray* v. *Schooner Charming Betsy*, 6 U.S. 64, 2 Cranch 64, 120, 2 L. Ed. 208 (1804); accord, *The Venus*, 12 U.S. 253, 8 Cranch, at 278, 3 L. Ed. 553. When a person moved to a country permanently, by contrast, he was no longer subject to the power of the country from which he originated: "[T]hose who reside[d]" in a new nation

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"from a permanent cause" became "subject to" the new nation. *Ibid.*; see also *Schooner Charming Betsy*, 6 U.S. 64, 2 Cranch, at 120, 2 L. Ed. 208; Cong. Globe, 37th Cong., 3d Sess., at 992 (statement of Sen. McDougall)."