

## ArtIV.S2.C1.13 Right to Travel and Privileges and Immunities Clause

Article IV, Section 2, Clause 1:

*The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.*

The Supreme Court has long recognized the right to travel from one state to another under the Privileges and Immunities Clause,<sup>1</sup> as well as other constitutional provisions.<sup>2</sup> For example, the Court held that a state could not constitutionally limit access to medical care to its own residents, and deny access to nonresidents, without interfering with the right to travel.<sup>3</sup>

In *Saenz v. Roe* , the Court characterized the constitutional “right to travel” as having “at least three different components”:

It protects [1] the right of a citizen of one State to enter and to leave another State, [2] the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, [3] for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.<sup>4</sup>

While the Court did not expressly identify the constitutional basis of the first component, it noted that the Articles of Confederation’s privileges and immunities clause explicitly protected the “free ingress

and regress to and from any other State.”<sup>5</sup> As for the second component of the right to travel, the Court found it to be “expressly protected by the text of the Constitution” through the Privileges and Immunities Clause.<sup>6</sup> *Saenz* [↗](#) connected the third component of the right to travel to the Fourteenth Amendment’s Privileges or Immunities Clause.<sup>7</sup>

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### Footnotes

1. <sup>^</sup> See, e.g., *Ward v. Maryland*, 79 U.S. 418, 430 (1870) (“[The Privileges and Immunities] clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union . . . .”); *Paul v. Virginia*, 75 U.S. 168, 180 (1868) (stating that the Privileges and Immunities Clause includes “the right of free ingress into other States, and egress from them”), *overruled on other grounds by* *United States v. S.-E. Underwriters Ass’n*, 322 U.S. 533 (1944) [↗](#). See *generally* *United States v. Guest*, 383 U.S. 745, 762–67 (1966) [↗](#) (Harlan, J., concurring in part and dissenting in part) (surveying cases).
2. <sup>^</sup> See *Guest*, 383 U.S. at 759 [↗](#) (“Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists.”).
3. <sup>^</sup> *Doe v. Bolton*, 410 U.S. 179, 200 (1973) [↗](#), *abrogated on other grounds by* *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).
4. <sup>^</sup> 526 U.S. 489, 500 (1999) [↗](#) (numbering added).
5. <sup>^</sup> *Id.* at 501 (citing ARTICLES OF CONFEDERATION art. IV, § 1).
6. <sup>^</sup> *Id.* at 501–502.

7. <sup>^</sup> *Id.* at 502–03 (citing U.S. CONST. amend. XIV, § 1). The Commerce Clause is another potential textual basis for the right to travel. See *Guest*, 383 U.S. at 758  (citing *Edwards v. California*, 314 U.S. 160, 173 (1941) ).