

## Sec. 2—Interstate Comity

## Cl. 1—State Citizenship: Privileges and Immunities

diency of delegating authority to political subdivisions.<sup>167</sup> A violation can occur whether or not a statute explicitly discriminates against out-of-state interests.<sup>168</sup>

**How Implemented**

The Privileges and Immunities Clause is self-executory, that is to say, its enforcement is dependent upon the judicial process. It does not authorize penal legislation by Congress. Federal statutes prohibiting conspiracies to deprive any person of rights or privileges secured by state laws,<sup>169</sup> or punishing infractions by individuals of the right of citizens to reside peacefully in the several states and to have free ingress into and egress from such states,<sup>170</sup> have been held void.

**Citizens of Each State**

A question much mooted before the Civil War was whether the term could be held to include free Negroes. In the *Dred Scott* case,<sup>171</sup> the Court answered it in the negative. "Citizens of each State," Chief Justice Taney argued, meant citizens of the United States as understood at the time the Constitution was adopted, and Negroes were not then regarded as capable of citizenship. The only category of national citizenship added under the Constitution comprised aliens, naturalized in accordance with acts of Congress.<sup>172</sup> In dissent, Justice Curtis not only denied the Chief Justice's assertion that there were no Negro citizens of states in 1789 but further argued that, although Congress alone could determine what classes of aliens should be naturalized, the states retained the right to extend citizenship to classes of persons born within their borders who had not previously enjoyed citizenship and that one upon whom state citizenship was thus conferred became a citizen of the state in the full sense of the Constitution.<sup>173</sup> So far as persons born in the United

<sup>167</sup> 465 U.S. at 217. The holding illustrates what the Court has referred to as the "mutually reinforcing relationship" between the Commerce Clause and the Privileges and Immunities Clause. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 280 n.8 (1985) (quoting *Hicklin v. Orbeck*, 437 U.S. 518, 531 (1978)). *See, e.g.*, *Dean Milk Co. v. City of Madison*, 424 U.S. 366 (1976) (city protectionist ordinance that disadvantages both out-of-state producers and some in-state producers violates the Commerce Clause).

<sup>168</sup> "[A]bsence of an express statement . . . identifying out-of-state citizenship as a basis for disparate treatment is not a sufficient basis for rejecting [a] claim." *Hillside Dairy, Inc. v. Lyons*, 539 U.S. 59, 67 (2003).

<sup>169</sup> *United States v. Harris*, 106 U.S. 629, 643 (1883). *See also Baldwin v. Franks*, 120 U.S. 678 (1887).

<sup>170</sup> *United States v. Wheeler*, 254 U.S. 281 (1920).

<sup>171</sup> *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

<sup>172</sup> 60 U.S. at 403–11.

<sup>173</sup> 60 U.S. at 572–90.