

Sec. 2—Interstate Comity

Cl. 1—State Citizenship: Privileges and Immunities

States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws.”¹⁶¹

The cases continue to emphasize that this clause is tied to comity and promoting the Union. “Some distinctions between residents and nonresidents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single Union of those States. Only with respect to those ‘privileges’ and ‘immunities’ bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally.”¹⁶² In this regard, the clause primarily “was intended to create a national economic union,” but it also has been cited as protecting common noneconomic interests.¹⁶³

Hostile discrimination against all nonresidents infringes the clause,¹⁶⁴ but controversies between a state and its own citizens are not covered by the provision.¹⁶⁵ However, a municipality’s discrimination, approved by the state, in favor of its own residents implicates the clause as to out-of-state residents, even though the disfavored class consists of in-state residents as well.¹⁶⁶ The clause should not be read so literally, the Court held, as to permit states to exclude out-of-state residents from benefits through the simple expe-

¹⁶¹ *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1869) (Justice Field for the Court; *but see supra*); *see also Slaughter House Cases*, 83 U.S. (16 Wall.) 36, 77 (1873); *Chambers v. Baltimore & O.R.R.*, 207 U.S. 142 (1907); *Whitfield v. Ohio*, 297 U.S. 431 (1936).

¹⁶² *Baldwin v. Montana Fish & Game Comm’n*, 436 U.S. 371, 383 (1978). *See also Austin v. New Hampshire*, 420 U.S. 656, 660–65 (1975) (clause “implicates not only the individual’s right to nondiscriminatory treatment but also, perhaps more so, the structural balance essential to the concept of federalism.” *Id.* at 662); *Hicklin v. Orbeck*, 437 U.S. 518, 523–24 (1978).

¹⁶³ *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 281–82 (1985). *See also Doe v. Bolton*, 410 U.S. 179, 200 (1973) (discrimination against out-of-state residents seeking medical care violates clause).

¹⁶⁴ *Blake v. McClung*, 172 U.S. 239, 246 (1898); *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60 (1920).

¹⁶⁵ *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 138 (1873); *Cove v. Cunningham*, 133 U.S. 107 (1890). *But see Zobel v. Williams*, 457 U.S. 55, 71 (1982) (Justice O’Connor concurring).

¹⁶⁶ *United Building & Constr. Trades Council v. Mayor of Camden*, 465 U.S. 208 (1984).