

### The Right to Travel

The doctrine of the “right to travel” actually encompasses three separate rights, of which two have been notable for the uncertainty of their textual support. The first is the right of a citizen to move freely between states, a right venerable for its longevity, but still lacking a clear doctrinal basis.<sup>1981</sup> The second, expressly addressed by the first sentence of Article IV, provides a citizen of one state who is temporarily visiting another state the “Privileges and Immunities” of a citizen of the latter state.<sup>1982</sup> The third is the right of a new arrival to a state, who establishes citizenship in that state, to enjoy the same rights and benefits as other state citizens. This right is most often invoked in challenges to durational residency requirements, which require that persons reside in a state for a specified period of time before taking advantage of the benefits of that state’s citizenship.

***Durational Residency Requirements.***—Challenges to durational residency requirements have traditionally been made under the Equal Protection Clause of the Fourteenth Amendment. In 1999, however, the Court approved a doctrinal shift, so that state laws that distinguished between their own citizens, based on how long they had been in the state, would be evaluated instead under the Privileges or Immunities Clause of the Fourteenth Amendment.<sup>1983</sup> The Court did not, however, question the continuing efficacy of the earlier cases.

A durational residency requirement creates two classes of persons: those who have been within the state for the prescribed period and those who have not.<sup>1984</sup> But persons who have moved recently, at least from state to state,<sup>1985</sup> have exercised a right protected by the Constitution, and the durational residency classification ei-

<sup>1981</sup> *Saenz v. Roe*, 526 U.S. 489 (1999). “For the purposes of this case, we need not identify the source of [the right to travel] in the text of the Constitution. The right of ‘free ingress and regress to and from’ neighboring states which was expressly mentioned in the text of the Article of Confederation, may simply have been ‘conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.’” *Id.* at 501 (citations omitted).

<sup>1982</sup> *Paul v. Virginia*, 75 U.S. (8 Wall.) 168 (1869) (“without some provision . . . removing from citizens of each State the disabilities of alienage in other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.”).

<sup>1983</sup> *Saenz v. Roe*, 526 U.S. 489, 502–03 (1999).

<sup>1984</sup> *Dunn v. Blumstein*, 405 U.S. 330, 334 (1972). Because the right to travel is implicated by state distinctions between residents and nonresidents, the relevant constitutional provision is the Privileges and Immunities Clause, Article IV, § 2, cl. 1.

<sup>1985</sup> Intrastate travel is protected to the extent that the classification fails to meet equal protection standards in some respect. *Compare* *Hadnott v. Amos*, 320 F. Supp. 107 (M.D. Ala. 1970) (three-judge court), *aff’d. per curiam*, 405 U.S. 1035 (1972),