

A doctor is a resident of state A and is licensed to practice medicine in State A as well as neighboring State B. The doctor finds that the most convenient place to treat her patients who need hospital care is in a publicly owned and operated hospital located in State B. For many years, the doctor had successfully treated her patients in that hospital.

Early this year, the hospital adopted a new rule in conformance with all required procedures. The new rule stated that every doctor who practices in that hospital must be a resident of State B. The doctor was then notified that she could no longer treat patients in that hospital because she was not a resident of State B.

Which of the following constitutional provisions would be most helpful to the doctor in an action to challenge her exclusion from the State B hospital solely on the basis of this hospital rule?

- A. The bill of attainder clause.
- B. The due process clause of the Fourteenth Amendment.
- C. The ex post facto clause.
- D. The privileges and immunities clause of Article IV.

Explanation:

Rights of state citizenship

(Article IV privileges & immunities clause)

- Travel/reside in state
- Pursue employment
- Practice commercial trade/business
- Own/transfer property
- Seek medical services
- Access state courts
- Civil liberties
- Creditor's rights
- Tax exemptions

The **Article IV privileges and immunities clause** generally **prohibits states** from **discriminating against citizens of other states** by denying them a **right of state citizenship**. But such discrimination is **valid if** the state can show:

- a substantial reason for the difference in treatment—ie, **nonresidents cause or contribute to the problem** that the state is attempting to solve *and*
- the **discrimination** against nonresidents **bears a substantial relationship** to the **state's objective**.

Here, the State B hospital rule discriminates against out-of-state doctors by excluding them from practicing in that hospital. This denies out-of-state doctors a right of state citizenship—to practice their profession in State B. And since there is no evidence that out-of-state doctors contribute to *any* problem the state is trying to solve, the hospital rule likely violates the Article IV privileges and immunities clause. Therefore, this clause would be *most* helpful to the State A doctor in challenging her exclusion.

(Choice A) The hospital rule is *not* a prohibited bill of attainder—ie, a legislative act that punishes a specified person or group without a judicial trial—since it is a legislative act and does not seek to punish the doctor.

(Choice B) The Fourteenth Amendment due process clause prohibits states from depriving persons of life, liberty, or property without adequate justification. When no **fundamental right** is involved (as seen here), the state action need only be rationally related to a legitimate state interest. And since state action is almost always upheld under this rational basis test, the hospital rule likely complies with due process.

(Choice C) The Article I [ex post facto clauses](#) bar state and federal governments from enacting *criminal* statutes that punish actions retroactively. But the hospital rule is not an ex post facto law since it is *civil* in nature.

Educational objective:

The Article IV privileges and immunities clause prohibits states from discriminating against out-of-state citizens by denying them a right of state citizenship unless (1) nonresidents cause or contribute to the problem that the state is attempting to solve and (2) the discrimination bears a substantial relationship to the state's objective.

References

- Ward v. Maryland, 79 U.S. 418, 430 (1870) (holding that the Article IV privileges and immunities clause protects the right of non-state citizens to enter another state to conduct business or practice a trade).
- 16B Am. Jur. 2d Constitutional Law § 800 (listing examples of privileges and immunities of state citizenship).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.