

# Shall be entitled to all Privileges and Immunities of Citizens **IN** and **OF** the several States

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Before the *Slaughterhouse Cases*, Article IV, Section 2, Clause 1 of the Constitution of the United States of America, was in these words:

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

However, after the *Slaughterhouse Cases*. Article IV, Section 2, Clause 1 of the Constitution, is in this language:

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

Article IV, Section 2, Clause 1 of Constitution was modified by the Fourteenth Amendment, in particular, Section 1, Clause 2. This was determined by the Supreme Court of the United States, in the *Slaughterhouse Cases*: [\[Footnote 1\]](#)

A citizen of a State, under Article IV, Section 2, Clause 1 of the Constitution, is entitled to privileges and immunities of citizens in the several States [\[Footnote 2\]](#) AND entitled to privileges and immunities of citizens of the several States. [\[Footnote 3\]](#) Privileges and immunities of citizens in the several States are still common privileges and immunities. [\[Footnote 4\]](#) Privileges and immunities of citizens of the several States are fundamental privileges and immunities. [\[Footnote 5\]](#)

A citizen of a State, therefore, under Article IV, Section 2, Clause 1 of the Constitution, has common and fundamental privileges and immunities. [\[Footnote 6\]](#) It is to be added that privileges and immunities of a citizen of a State are to be found in the constitution and laws of a particular State. [\[Footnote 7\]](#)

Notice of this change to Article IV, Section 2, Clause 1 of the Constitution of the United States of America should be given as follows:

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

(\*) modified by Section 1, Clause 2 of the Fourteenth Amendment. *Slaughterhouse Cases* (83 U.S. (16 Wall.) 36, at 75 thru 77, 1873). **[Footnote 1]** See also; *Cole v. Cunningham* (133 U.S. 107, at 113 thru 114, 1890), general citizenship; *Wheeler v. United States* (254 U.S. 281, at 293, 296, 297, 1920), fundamental privileges and immunities; *Kimmish v. Ball* (129 U.S. 217, at 218 thru 219, 222, 1889), common privileges and immunities; *McKane v. Durston* (153 U.S. 684, at 687, 1894), privileges and immunities of a citizen of a State; *Maxwell v. Dow* (176 U.S. 581, at 592, 1900), privileges and immunities of a citizen of the several States **[Footnote 8]**; *Harris v. Balk* (198 U.S. 215, at 223, 1905) and *Blake v. McClung* (172 U.S. 239, at 256 thru 257, 1898), a citizen of a State is entitled to privileges and immunities of a citizen of the several States.

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#### Footnotes:

1. “The first occurrence of the words ‘privileges and immunities’ in our constitutional history, is to be found in the fourth of the articles of the old Confederation.

It declares ‘that the better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all the privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively.’

In the Constitution of the United States, which superseded the Articles of Confederation, the corresponding provision is found in section two of the fourth article, in the following words: ‘The citizens of each State shall be entitled to all the privileges and immunities of citizens **OF** the several States.’

There can be but little question that the purpose of both these provisions is the same, and that the privileges and immunities intended are the same in each. In the article of the Confederation we have some of these specifically mentioned, and enough perhaps to give some general idea of the class of civil rights meant by the phrase.

Fortunately we are not without judicial construction of this clause of the Constitution. The first and the leading case on the subject is that of *Corfield v. Coryell*, decided by Mr. Justice Washington in the Circuit Court for the District of Pennsylvania in 1823.

‘The inquiry,’ he says, ‘is, what are the privileges and immunities of citizens **OF** the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belong of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent, and sovereign. . . .’

This definition of the ***privileges and immunities of citizens of the States*** is adopted in the main by this court in the recent case of *Ward v. The State of Maryland*, while it declines to undertake an authoritative definition beyond what was necessary to that decision. [Note A] The description, when taken to include others not named, but which are of the same general character, embraces nearly every civil right for the establishment and protection of which organized government is instituted. They are, in the language of Judge Washington, those rights which are FUNDAMENTAL. Throughout his opinion, they are spoken of as rights belonging to the individual as a ***citizen of a State***. They are so spoken of in the constitutional provision which he was construing. And they have always been held to be the class of rights which the State governments were created to establish and secure.

In the case of *Paul v. Virginia*, the court, in expounding this clause of the Constitution, says that ‘the privileges and immunities secured to citizens of each State **IN** the several States, by the provision in question [Note B], are those privileges and immunities which are COMMON to the citizens in the latter States under their constitution and laws by virtue of their citizens.’

The constitutional provision there alluded to did not create those rights, which it called ***privileges and immunities of citizens of the States***. It threw around them in that clause no security for the ***citizen of the State*** in which they were claimed or exercised. [Note C] ” Slaughterhouse Cases: 83 U.S. (16 Wall.) 36, at 75 thru 77 (1873).

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## Slaughterhouse Cases

**Note A:** In the case of *Ward v. State of Maryland* (79 U.S. 418), the Supreme court concerned itself with privileges and privileges which were FUNDAMENTAL under

Article IV, Section 2, Clause 1 of the Constitution of the United States of America. At page 430:

“Attempt will not be made to define the words ‘privileges and immunities,’ or to specify the rights which they are intended to secure and protect, beyond what may be necessary to the decision of the case before the court. Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens.

... [T]he Constitution provides that the citizens of each State shall be entitled to all privileges and immunities of citizens **IN** the several States.”

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Note that the *Ward* court uses the word “IN” in its reference to Article IV, Section 2, Clause 1 of the Constitution while the *Slaughterhouse* court uses the word “OF”. Article IV, Section 2, Clause 1 has, therefore, been modified, in this case, by the Fourteenth Amendment. Thus, when dealing with a privilege or immunity that is FUNDAMENTAL, future references to Article IV, Section 2, Clause 1 are to be made as “privileges and immunities of citizens **OF** the several States.”

**Note B:** In the case of *Paul v. State of Virginia* (75 U.S. 168 1868), the Supreme court dealt with privileges and immunities which are COMMON under Article IV, Section 2, Clause 1 of the Constitution of the United States of America. At page 180:

“[T]he privileges and immunities secured to citizens of each State in the several States, by the provision in question, are those privileges and immunities which are COMMON to the citizens in the latter States under their constitution and laws by virtue of their being citizens.”

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Article IV, Section 2, Clause 1 of the Constitution “declares that ‘the citizens of each State shall be entitled to all the privileges and immunities of citizens **IN** the several States.’ “ Page 177.

Therefore, when dealing with a privilege or immunities that is COMMON, Article IV, Section 2, Clause 1 is to be cited as “privileges and immunities of citizens **IN** the several States.”

**Note C:** A citizen of a State is entitled to privileges and immunities of a citizen of the several States. A citizen of a State is therefore a citizen of the several States. A citizen of a State is entitled to privileges and immunities of a citizen in the several States. A citizen of a State is also (still) a citizen of a State.

Privileges and immunities of a citizen of a State are to be found at the constitution and laws of a particular State. Privileges and immunities of a citizen of the several States are located at Article IV, Section 2, Clause 1 of the Constitution. Therefore, Article IV, Section 2, Clause 1 is a Citizen Clause. It is to be quoted as “The citizens of each State shall be entitled to all the privileges and immunities of citizens **IN and OF** the several States.”

2. “It was undoubtedly the object of the clause in question (‘the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States’) to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. . . .

But the privileges and immunities secured to citizens each State in the several States, by the provision in question, are those privileges and immunities which are COMMON to the citizens in the latter States under their constitution and laws by virtue of their being citizens. SPECIAL privileges enjoyed by citizens in their own States are not secured in other States by this provision.” Paul v. State of Virginia: 75 U.S. 168, at 180 (1868).

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3. “There can be no doubt that Balk, as a citizen of the State of North Carolina, had the right to sue Harris in Maryland to recover the debt which Harris owed him. ***Being a citizen of North Carolina, he was entitled to all the privileges and immunities of citizens of the several States***, one of which is the right to institute actions in the courts of another State.” Harris v. Balk: 198 U.S. 215, at 223 (1905).

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“ . . . So, a State may, by rule uniform in its operation as to citizens of the several States, require residence within its limits for a given time before a citizen of another State who becomes a resident thereof shall exercise the right of suffrage or become eligible to office. It has never been supposed that regulations of that character materially interfered with the enjoyment by ***citizens of each State of the privileges and immunities secured by the Constitution to citizens of the several States***. The Constitution forbids only such legislation affecting citizens of the respective States

as will substantially or practically put a citizen of one State in a condition of alienage when he is within or when he removes to another State, or when asserting in another State the rights that commonly appertain to those who are part of the political community known as the People of the United States, by and for whom the Government of the Union was ordained and established. Blake v. McClung: 172 US. 239, at 256 thru 257 (1898).

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4. "To this petition the defendants demurred on the grounds, first, that §§ 4058 and 4059 are in conflict with Section 8, Article 1 of the Constitution of the United States, in that the legislature of Iowa undertakes to regulate and interfere with interstate commerce; and second, that the sections are in conflict with Section 2 of Article 4 of the Constitution of the United States ***relative to the privileges and immunities of citizens of the several States***.

... Thereupon, on motion of the plaintiff, it was ordered that the points of disagreement be certified to this court; and upon this certificate (fn 1) the case has been heard.

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(fn 1) The questions certified were as follows:

1 st. Is §4059 of the Code of Iowa repugnant to and in conflict with the provisions of Sec. 8 of Article 1 of the Constitution of the United States relative to the regulation of commerce among the several States and by reason thereof unconstitutional?

2 nd. Is §4059 of the Code of Iowa repugnant to or in conflict with Sec. 2 of Article 4 of the Constitution of the United States ***relative to the privileges and immunities of citizens in the several States*** and by reason thereof unconstitutional?" *Statement of the Case, Kimmish v. Ball*: 129 U.S. 217, at 218 thru 219 (1889).

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"The case is, therefore, reduced to this, whether the State may not provide that whoever permits diseased cattle in his possession to run at large within its limits shall be liable for any damages caused by the spread of the disease occasioned thereby; and upon that we do not entertain the slightest doubt. Our answer, therefore, to the first question upon which the judges below differed is in the negative, that the section in question is not unconstitutional by reason of any conflict with the commercial clause of the Constitution.

As to the second question, our answer is also in the negative. There is no denial of any rights and privileges to citizens of other States which are accorded to citizens of Iowa. No one can allow diseased cattle to run at large in Iowa without being held responsible for the damages caused by the spread of disease thereby; and the clause of the Constitution declaring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States does not give non-resident citizens of Iowa any greater privileges and immunities in that State than her own citizens there enjoy. So far as liability is concerned for the act mentioned, ***citizens of other States and citizens of Iowa stand upon the same footing.*** *Paul v. Virginia*, 8 Wall. 168.” *Opinion, Kimmish v. Ball*: 129 U.S. 217, at 222 (1889).

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5. “. . . [W]e state under separate headings doctrines which are applicable to all the contentions and which are in reason so well founded and so conclusively sustained by authority as to be indisputable.

(a) In all the States from the beginning down to the adoption of the Articles of Confederation the citizens thereof possessed the FUNDAMENTAL right, inherent in citizens of all free governments, peacefully to dwell within the limits of their respective States, to move at will from place to place therein, and to have free ingress thereto and egress therefrom, with a consequent authority in the States to forbid and punish violations of this FUNDAMENTAL right. *Corfield v. Coryell*, 4 Wash. C. C. 371, 380-381; *Slaughter-House Cases*, 16 Wall. 36, 76. . . .

In the *Slaughter-House Cases*, 16 Wall. 36, 75-76, the court, after reciting both the provisions of Article IV of the Articles of Confederation and Article IV, §2, of the Constitution, said [See Footnote 1]: . . . .

The controlling influence of the opinion in the *Slaughter-House Cases*, as well as that of Mr. Justice Washington in *Corfield v. Coryell*, stands out in bolder relief when it is observed that in the latter case, following the statement of the general principles contained in the passage quoted in the *Slaughter-House Cases*, there is found, by way of illustration, an enumeration of particular rights declared to be clearly embraced by the general principles, one of which is described as, ‘The right of a citizen of one state to pass through, or reside in any other state, for purpose of trade, agriculture, professional pursuits, or otherwise.’ “ *Wheeler v. United States*: 254 U.S. 281, at 293, 296, 297 (1920).

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6. “The intention of section 2 of Article 4 was to confer on the ***citizens of the***

*several States a general citizenship*, and to communicate *all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions.*” Cole v. Cunningham: 133 U.S. 107, at 113 thru 114 (1890).

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7. “. . . Whatever may be the scope of section 2 of article IV—and we need not, in this case enter upon a consideration of the general question—the Constitution of the United States does not make the privileges and immunities enjoyed by the citizens of one State under the constitution and laws of the State, the measure of the privileges and immunities to be enjoyed, as of right, by a citizen of another State under its constitution and laws.” McKane v. Durston: 153 U.S. 684, at 687 (1894).

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8. “In speaking of the meaning of the phrase ‘*privileges and immunities of citizens of the several States*,’ under section second, article fourth, of the Constitution, it was said by the present Chief Justice, in *Cole v. Cunningham*, 133 U.S. 107, that the intention was ‘to confer on the *citizens of the several States a general citizenship*, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances, and this includes the right to institute actions.’ “ Maxwell v. Dow: 176 U.S. 581, at 592 (1900).

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