No. 13-1064

In the

Supreme Court of the United States

JAMES COURTNEY, et al.,

Petitioners,

v.

DAVID DANNER,
Chairman and Commissioner
of the Washington Utilities and
Transportation Commission, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

The Fourteenth Amendment's Privileges or Immunities Clause bars states from interfering with a person's right use the navigable waterways of the United States. *See Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 79 (1873). That Clause is modeled on the Privileges and Immunities Clause of Article IV, which has always been held to prohibit state interference with a person's right to cross state lines for commercial purposes. *See*, *e.g.*, *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823) (No. 3,230); *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 280-81 (1985). Does the Fourteenth Amendment's protection for the right to use waterways stop short of protecting the right to navigate for commercial purposes?

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37.2(a), Pacific Legal Foundation (PLF) respectfully submits this brief amicus curiae in support of the petition for certiorari.[1] PLF is widely recognized as the largest and most experienced nonprofit legal foundation representing the views of thousands of supporters nationwide who believe in limited government, individual rights, and economic liberty. PLF has litigated on behalf of clients, and has participated as amicus curiae, in many cases involving the right to earn a living at an ordinary occupation, and the meaning of the Privileges or Immunities Clause of the Fourteenth Amendment. *See, e.g.*, *Colon Health Ctrs. of Am., LLC v. Hazel*, 733 F.3d 535 (4th Cir. 2013); *McDonald v. Chicago*, 130 S. Ct. 3020 (2010); *Merrifield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008). PLF attorneys have also published extensively on the history and meaning of the Privileges or Immunities Clause. *See, e.g.*, Timothy Sandefur, *The Conscience of the Constitution* 33-70 (2014); Lana Harfoush, *Grave Consequences for Economic Liberty: The Funeral Industry's Protectionist Occupational Licensing Scheme, the Circuit Split, and*

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[1] Pursuant to this Court's Rule 37.2(a), all parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the Amicus Curiae's intention to file this brief. Letters evidencing such consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

Why It Matters, 5 J. Bus. Entrepreneurship & L. 135, 138-41 (2011). PLF believes its legal expertise and public policy experience will assist this Court in its consideration of the merits of this case.

SUMMARY OF REASONS FOR GRANTING THE PETITION

By holding that the Privileges or Immunities Clause does not protect federal constitutional rights when a person exercises those rights for "economic concerns," *Courtney v. Goltz*, 736 F.3d 1152, 1161 (9th Cir. 2013), or for a "professional venture," *id.* at 1160, the Court of Appeals created a brand-new limitation on the Fourteenth Amendment's protections—one with no foundation in the Amendment's history and meaning.

Indeed, the Ninth Circuit's new "commercial activity" limitation on the Privileges or Immunities Clause clashes with virtually the entire history of caselaw interpreting the privileges or immunities of citizenship, and, absent this Court's review, this new "economic activity" restriction would undermine the holding of *Saenz v. Roe*, 526 U.S. 489 (1999), by allowing states to impose an indefinite range of discriminatory burdens on individuals, if those burdens are characterized as "economic" in nature. The decision below therefore creates an unwarranted new limit on federal protection for constitutional rights, in direct conflict with decisions of this Court.

This case presents a rare and important opportunity to provide lower courts with sorely needed guidance as to the import and meaning of the Clause. Because *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873), has been erroneously assumed to foreclose virtually all applications of the Privileges or

Immunities Clause, major questions central to a healthy Privileges or Immunities jurisprudence are lacking even the most rudimentary answers. Courts do not know what standard of review applies; what elements suffice to state a claim; what rights the Clause protects; how those rights are categorized, if at all; or the differences between the Clause (which refers to "abridge[ment]" and "privileges or immunities") and other provisions, such as the Due Process Clause (which refers to "deprivation" and "liberty"). This very lack of guidance makes it unlikely that plaintiffs will even try to raise Privileges or Immunities claims in court—thus perpetuating the lack of understanding of this Clause. This case is unusual in that it squarely and *solely* presents the Privileges or Immunities question, and involves no complications such as overlap with other constitutional provisions, as in *McDonald*, 130 S. Ct. at 3030-31, or any questions of standing or ripeness.

In his dissent in *Slaughter-House*, Justice Field charged that the majority had rendered the Privileges or Immunities Clause "a vain and idle enactment, which accomplished nothing, and most unnecessarily excited Congress and the people on its passage." 83 U.S. (16 Wall.) at 96 (Field, J., dissenting). The majority insisted to the contrary, promising that there are "privileges and immunities of citizens of the United States which no State can abridge." *Id.* at 78-79. The Court should take this opportunity to redeem that promise and prove the continuing viability of what its authors considered "the centerpiece of section 1 of the Fourteenth Amendment." Kimberly C. Shankman & Roger Pilon, *Reviving the Privileges or Immunities Clause to Redress the Balance Among States,*

Individuals, and the Federal Government, 3 Tex. Rev. L. & Pol. 1, 7 (1998).

ARGUMENT

I

THE NINTH CIRCUIT CRAFTED AN UNPRECEDENTED NEW LIMITATION ON THE APPLICABILITY OF THE PRIVILEGES OR IMMUNITIES CLAUSE

As the Ninth Circuit acknowledged in the decision below, this Court recognized as early as *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 79 (1873), that the Privileges or Immunities Clause of the Fourteenth Amendment protects the individual's right "to use the navigable waters of the United States, however they may penetrate the territory of the several States."

The *Slaughter-House* Court said this because it held that the then-new Clause prohibited states from interfering with rights "which owe their existence to the Federal government, its National character, its Constitution, or its laws," *id.*, and the right to use the waterways belonging to the United States was one of the rights appurtenant to federal citizenship. *See* Thomas M. Cooley, *Constitutional Limitations* 590-94 (1868); *cf. Commonwealth v. Inhabitants of Charlestown*, 18 Mass. (1 Pick.) 180, 189 (1822) ("[B]y the principles of the common law, as well as by the immemorial usage of this government, all navigable waters are public property for the use of all the citizens.").

The principle that citizens have a federal right to navigate the nation's waterways predated the Fourteenth Amendment, and virtually every pre-

Fourteenth Amendment decision addressing this right involved a claimant who sought to use those waterways *for commercial purposes*—for ferries, steamboating, fishing, or other economic activities. The most obvious example was *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824), in which the Court struck down a state's effort to grant a monopoly on river transportation on a waterway of the United States. *Gibbons* made no distinction, as the court below did, between the right to use the nation's waterways and the right to do so *for commercial purposes*—on the contrary, the Court found that "[e]very district has a right to participate" in the nation's *commerce*, which included "traffic . . . buying and selling, or the interchange of commodities," *id.* at 195, 189, and that "[t]he deep streams which penetrate our country in every direction . . . furnish the means of exercising this right." *Id.* at 195.

Thus the right to which *Slaughter-House* referred was hardly confined to non-commercial activities. Instead, throughout the nineteenth century, state and federal courts held that the general public enjoyed a right to use rivers and other waterways for purposes of fishing and transportation and for other commercial uses. *See generally* James L. Huffman, *Speaking of Inconvenient Truths—A History of the Public Trust Doctrine*, 18 Duke Envtl. L. & Pol'y F. 1, 93-96 (2007). No court ever suggested that the public right to access navigable waterways would *cease* when that right was exercised for "professional venture[s]." *Courtney*, 736 F.3d at 1160.[2]

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[2] On the contrary, as *Gibbons* noted, 22 U.S. (9 Wheat.) at 189-91, the federal government's power over navigable waterways derives

(continued...)

Such a proposition would not only have conflicted with longstanding principles of water law, but would also have clashed with the generally accepted definition of the phrase "privileges and immunities." That phrase originally appeared in Article IV of the Articles of Confederation, which provided that "the free inhabitants of each of these States" would be "entitled to all privileges and immunities of free citizens," and "enjoy [in each state] all the privileges of *trade and commerce*, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively." (Emphasis added.) Such language derived from Section 41 of the Magna Carta, which protected the right of "all merchants" to "enter or leave England . . . and . . . travel within it, by land or water, for purposes of trade." *See generally* George F. Carpinello, *State Protective Legislation and Nonresident Corporations: The Privileges and Immunities Clause As a Treaty of Nondiscrimination*, 73 Iowa L. Rev. 351, 360-67 (1988). Blackstone referred to the rights secured by Magna Carta and other elements of the British Constitution as the "privileges and immunities" of Englishmen, and in the years leading up to the Revolution, colonists protested Great Britain's discriminatory trade practices by reference to the terms "privileges and immunities." *See McDonald*, 130 S. Ct. at 3065-66 (Thomas, J., concurring).

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[2] (...continued)
from its power to regulate commerce. *See also N. River Steam Boat Co. v. Livingston*, Hopk. Ch. 149, 201 (N.Y. Ch. 1824) ("Navigation is subject to the control of the laws of the United States, not directly as such, but only as an instrument of commerce, or as an object of taxation."). Commerce, at the very least, *includes* economic activity. *Cf. NFIB v. Sebelius*, 132 S. Ct. 2566, 2578-79 (2012) (commerce means commercial transactions).

The authors of the 1787 Constitution, therefore, included the Privileges and Immunities Clause in Article IV to protect, among other things, the right of persons engaged in trade to travel for business purposes from state to state without discrimination, thereby "enhanc[ing] economic union and, ultimately, political union." Carpinello, *supra*, at 362. In the famous case of *Corfield v. Coryell*, 6 F. Cas. 546 (C.C.E.D. Pa. 1823) (No. 3,230), Justice Washington held that the Privileges and Immunities Clause includes "[t]he right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade." *Id.* at 552.[3] Other decisions of the period repeatedly held that the Privileges and Immunities Clause of Article IV included the freedom to engage in economic transactions and to form and enforce contracts. *See*, *e.g.*, *Douglass' Adm'r v. Stevens*, 2 Del. Cas. 489, 496-99 (1819) (right to collect debts in another state); *Elmondorff v. Carmichael*, 13 Ky. (3 Litt.) 472, 476-79 (1823) (right to acquire land); *Oliver v. Washington Mills*, 93 Mass. (11 Allen) 268, 281 (1865) (giving Congress power to regulate interstate "trade and commerce" and "to secure an equality of rights, privileges and immunities in each state for the citizens of all the states" was "[o]ne of the most efficient methods" of forming a more perfect union).

The authors of the Fourteenth Amendment, who modeled its Privileges or Immunities Clause on the existing Article IV Clause, repeatedly referred to the right to engage in a trade as one of the rights which

[3] Justice Washington ultimately ruled that the Clause did not entitle a person from one state to harvest oysters in the oysterbeds of another state, but only because those oysterbeds were wholly owned by the state, which could therefore restrict access rights to its own citizens.

would be protected by the new provision. *See*, *e.g.*, Timothy Sandefur, *The Right to Earn a Living* 40-41 (2010). And although the *Slaughter-House* Court declined to enforce this right, it insisted that the Clause does protect some rights, including rights exercised as part of one's trade or professional pursuits—*e.g.*, "the right of free access to its seaports, through which all operations of foreign commerce are conducted." 83 U.S. (16 Wall.) at 79 (citing *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 44 (1867)).

The decision below rejected the Petitioners' reliance on the Clause by holding that it protects only "a broad navigation privilege"—a privilege the court vaguely described as a right to navigate "in a general sense"—but not the right to "utilize those waters for a very specific professional venture." *Courtney*, 736 F.3d at 1160. Because "the driving force behind this litigation" was the Petitioner's "desire to operate a particular business . . . an activity driven by economic concerns," the Fourteenth Amendment could not apply. *Id.* at 1160-61.

But Article III standing rules require that *every* case be presented in the context of a "very specific" venture, rather than alleging a constitutional right in a "general sense." Thus the decision below means that *economic activity is qualitatively excluded from the rights protected by the Privileges or Immunities Clause*.

There is no foundation in the constitutional history or meaning for categorically excluding "economic" or "professional" activities from the class of rights protected by the Privileges or Immunities Clause. On the contrary, the Constitution protected navigation rights in large part *because* they were economic in nature, and the Clause and its

predecessors had always been principally focused on protecting "activit[ies] driven by economic concerns." *Id.* at 1161. This Court has consistently recognized as much, holding that the Privileges and Immunities Clause of Article IV protects the right to travel *for specific economic or professional reasons*. *See*, *e.g.*, *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 280-81 (1985); *Baldwin v. Fish & Game Comm'n of Montana*, 436 U.S. 371, 386 (1978).

Morever, the holding below leads to an obvious anomaly: the *owner* of a ferry is categorically barred from the protection of the Clause when *he* uses federal waterways, because he does so for commercial purposes—while the ferry's passengers receive the Clause's protection when riding, because they do so for leisure or recreational purposes.[4] Or a vacationer would be covered while walking to the lake—but not when she engages in her intended commercial transaction by renting a paddleboat to enjoy the lake. The *Slaughter-House* decision held not only that use of waterways was a right protected by the Privileges or Immunities Clause, but also that the right to travel to Washington, D.C., to petition the government, was protected by the Clause. 83 U.S. (16 Wall.) at 79. Yet a categorical exclusion of commercial or professional activities from the Clause's protections, as established below, would presumably mean that a person who travels to Washington *as a professional lobbyist* would not be covered by the Clause.

When *Slaughter-House* was written, navigation on the waterways was overwhelmingly for commercial

[4] Indeed, since the right to travel is subject to strict scrutiny, *Saenz*, 526 U.S. at 498-504, the passengers would presumably enjoy the *highest* protection afforded by federal courts.

purposes. In the absence of government-operated transportation systems like Amtrak, rail and water transportation was undertaken exclusively by private entities, or by shipping companies that were privately operated even if government-subsidized. Even the U.S. Mail was carried by private shipping companies operating under contract.[5] It is therefore unimaginable that when the *Slaughter-House* Court referred to the right to use waterways, it meant to protect only non-commercial use of waterways. To read the Privileges or Immunities Clause as confining its protections only to non-commercial or recreational navigation, or to navigation "in a general sense," *Courtney*, 736 F.3d at 1160, is anachronistic and inconsistent with the intent and meaning of that provision, and leads to perverse results.

II

THE NINTH CIRCUIT'S NEW "NON-COMMERCIAL" LIMITATION ON THE PRIVILEGES OR IMMUNITIES CLAUSE CONFLICTS WITH OTHER CIRCUIT COURT DECISIONS AND RADICALLY UNDERMINES FOURTEENTH AMENDMENT PROTECTIONS

In *Saenz*, 526 U.S. at 500, this Court held that the Privileges or Immunities Clause bars states from discriminating in the distribution of welfare benefits against people who move in from other states. Such discrimination "penalize[d] the right to travel," *id.* at 497, which right is protected by the Privileges or

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[5] *See* United States Postal Service, *Postal History: Moving the Mail*, *available at* https://about.usps.com/who-we-are/postal-history/moving-mail.htm (last visited Apr. 2, 2014).

Immunities Clause. The plaintiffs in that case had moved across state lines "to pursue employment" and "look for a better job." *Roe v. Anderson*, 966 F. Supp. 977, 980 (E.D. Cal. 1997). This Court found no reason to cut off the protections of the Privileges or Immunities Clause simply because the plaintiffs had exercised their right to travel out of economic concerns, or for professional pursuits.

If allowed to stand, the decision below would fundamentally undermine the protections recognized in *Saenz*, because it would be a simple matter for states to evade the constitutional protections for the right to travel by characterizing their discrimination as merely the regulation of an economic pursuit. Indeed, as *Saenz* recognized, states have frequently done just this. *See* 526 U.S. at 502 (citing as instances of state discrimination against newcomers *Hicklin v. Orbeck*, 437 U.S. 518 (1978), *Doe v. Bolton*, 410 U.S. 179 (1973), and *Toomer v. Witsell*, 334 U.S. 385 (1948)).

The Ninth Circuit narrowed the right at issue here from the right to navigate national waters to what it characterized as a "very specific professional venture," 736 F.3d at 1160, which it declared the Clause could not protect. Taking such a crabbed view of the plaintiffs' claims, however, demeans the liberty at stake in the case and prejudices the constitutional analysis. *Cf. Lawrence v. Texas*, 539 U.S. 558, 566-68 (2003). Moreover, such an approach is illogical, since people will always exercise a constitutional right in some specific context and will be motivated by some specific "concern" or other[6]—very often a professional

[6] Indeed, all lawsuits must assert some "specific" concern. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 563-66 (1992). Any (continued...)

or economic concern—yet that cannot bear on the meaning of the constitutional provision at issue. As this Court observed in *Lawrence*, such a "misapprehen[sion of] the claim of liberty" in a case can distort constitutional analysis. *Id.* at 567. Were the same approach used in cases involving the right to travel, a court could declare that the Privileges or Immunities Clause does not protect the right to travel *for the specific purpose at issue in that case.* States could therefore burden the right to travel by limiting the freedoms for which people travel, and evade this Court's holding in *Saenz*, not to mention *Piper*, *Baldwin*, and other right to travel cases.

Other Courts of Appeals—in conflict with the decision below—have continued to follow *Saenz* even where plaintiffs who allege discrimination were exercising their right to travel for economic reasons. For instance, in *Selevan v. New York Thruway Auth.*, 584 F.3d 82 (2d Cir. 2009), the Second Circuit reversed dismissal of a Privileges or Immunities claim that plaintiffs brought against the state for establishing a bridge toll which discriminated against persons based on residence. The plaintiffs in that case crossed the bridge for economic reasons, *id.* at 87, yet the court applied *Saenz* to hold that they stated a cause of action for an infringement of their "fundamental right to travel within the United States," protected under the Fourteenth Amendment's Privileges or Immunities Clause. *Id.* at 99. Likewise, in *Connelly v. Steel Valley Sch. Dist.*, 706 F.3d 209 (3d Cir. 2013), the

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[6] (...continued)
lawsuit asserting only a right to navigate "in a general sense," *Courtney*, 736 F.3d at 1160, would run afoul of Article III standing requirements.

Third Circuit reviewed a challenge to the constitutionality of a school district's differential pay scale for teachers who moved from another state. Although it upheld the constitutionality of the pay scale, it did not reject the plaintiffs' case on the grounds that the "driving force" behind his litigation was a "professional venture." *Courtney*, 736 F.3d at 1160.

Indeed, no Fourteenth Amendment Privileges or Immunities case—and no Article IV Privileges and Immunities case—has ever suggested that the protections conferred by those clauses hinge on whether the driving force behind the exercise of a right is economic in nature. In fact, the overwhelming majority of such cases involve plaintiffs motivated by economic concerns, or seeking to exercise their privileges and immunities for specific professional reasons. Although cases like *Piper*, *Baldwin*, *Selevan*, and *Connelly* involved the right to travel from state to state that was also at issue in *Saenz*—instead of the right to use the nation's waterways, at issue here—both are within the privileges or immunities covered by the Fourteenth Amendment. Such rights cannot end where economic activity or professional ventures begin. The decision below, by creating an unprecedented and unwarranted categorical barrier to Privileges or Immunities claims, conflicts with these holdings and critically undermines this Court's holding in *Saenz*.

III

THIS CASE PRESENTS A GOOD—AND RARE—OPPORTUNITY TO INSTRUCT LOWER COURTS ON THE INDEPENDENT SIGNIFICANCE OF THE PRIVILEGES OR IMMUNITIES CLAUSE

Due largely to the *Slaughter-House* decision, litigants rarely allege claims under the Fourteenth Amendment's Privileges or Immunities Clause. As a result, there is a dearth of precedent examining and applying that provision, and what precedent does exist is largely redundant and unhelpful. *See Evans v. Romer*, 882 P.2d 1335, 1352 (Colo. 1994) (Scott, J., concurring) ("By the force of an unfortunate history . . . no important line of decision rests solely on the Privileges or Immunities Clause."). The fallacious approach taken by the court below was made possible by this lack of guidance.

Even putting aside the question of *Slaughter-House*'s correctness, major elements of a healthy Privileges or Immunities jurisprudence are simply missing from the *U.S. Reports*. To name only a few:

- Courts do not know what standard of review applies to Privileges or Immunities claims.
- Litigants do not know exactly what elements are necessary to state a claim under the Clause.
- "The Court has consistently refused to list completely the rights which are covered by the clause." *Madden v. Kentucky*, 309 U.S. 83, 92 (1940).

- No case addresses whether rights protected under the Clause are to be divided into "fundamental" and "non-fundamental" categories, as rights have been under other Clauses.
- It is unclear what difference, if any, there is between a "deprivation" under the Due Process Clause and an "abridge[ment]" under the Privileges or Immunities Clause.
- No case explains the difference between the "liberty" protected by the Due Process Clause and the "privileges or immunities of citizens" protected by the Privileges or Immunities Clause.

These problems were only exacerbated by this Court's choice in *McDonald* to postpone consideration of the Clause's import. 130 S. Ct. at 3030-31 (declining to consider the meaning of the Privileges or Immunities Clause because "[f]or many decades, the question of the rights protected by the Fourteenth Amendment . . . has been analyzed under the Due Process Clause"). That decision made it exceedingly unlikely that plaintiffs will raise Privileges or Immunities claims at all—thereby threatening to render the Clause entirely dead letter, and canonize *Slaughter-House* as an entrenched "super precedent" beyond question or reconsideration. *See* Michael J. Gerhardt, *Super Precedent*, 90 Minn. L. Rev. 1204, 1206 (2006) (defining super-precedents as "decisions whose correctness is no longer a viable issue for courts to decide"). That would be an unacceptable result. *See Nordyke v. King*, 563 F.3d 439, 457 n.18 (9th Cir. 2009) ("If contemporary desuetude sufficed to read rights out

of the Constitution, then there would be little benefit to a written statement of them.").

Consideration of the questions presented here is long overdue. As this Court recognized in *McDonald*, 130 S. Ct. at 3029-30, the overwhelming consensus of constitutional scholarship is that existing precedent on the Privileges or Immunities Clause is misguided and badly in need of clarification and elaboration. Lower courts have repeatedly expressed the need for guidance in this area. *See*, *e.g.*, *Craigmiles v. Giles*, 312 F.3d 220, 229 (6th Cir. 2002) (noting "recent speculation that the Privileges and Immunities Clause should have a broader meaning"); *Merrifield*, 547 F.3d at 983 ("*Saenz* represents the Court's only decision qualifying the bar on Privileges or Immunities claims."); *Powers v. Harris*, 379 F.3d 1208, 1214 (10th Cir. 2004) (rejecting Privileges or Immunities claim brought under *Saenz* because "it is [the Supreme] Court's prerogative alone to overrule one of its precedents" (citation omitted)); *Nordyke*, 563 F.3d at 446 n.5 (acknowledging "that judges and academics have criticized *Slaughter-House*'s reading of the Privileges or Immunities Clause," but declining to address the question without further guidance from this Court); *Chavez v. Arte Publico Press*, 204 F.3d 601, 608 (5th Cir. 2000) (While *Saenz* "appeared to revive the long-nascent privileges and immunities clause . . . the Supreme Court has provided no guidance for its "modern" interpretation of the clause.").

This case presents squarely and without interference the question of the content of the Privileges or Immunities Clause, and the means by which litigants may call upon its protections. Unlike *McDonald*, it involves no overlapping constitutional

provisions; it involves a right that has always been grounded in the Privileges or Immunities Clause, even under the *Slaughter-House* decision itself. This case therefore presents a unique opportunity to explain the different nature of the Privileges or Immunities Clause and other provisions in the Fourteenth Amendment.

CONCLUSION

The Court should grant the petition.

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