

# Interstate Compacts: A Primer

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# 01 Introduction

Analysts have recently focused their attention on two pathways for the United States to reopen prior to the development of a vaccine for COVID-19. The first is to accept a series of rolling openings and closings: reopening as infection rates decrease, then reclosing as they rise again due to increased interactions. This approach is generally thought to be enormously costly both economically and socially, as people will be kept in their homes and commerce restrained for considerable amounts of time. The second approach is to massively ramp up the production of testing, either through a universal testing regime (which would require capacity to test all 300+ million Americans once a week) or a system of testing, tracing, and supported isolation (which would require testing 5 million Americans a day, plus tracing those who were in contact with the infected and isolating them). The testing pathway would enable the United States to reopen without having to close repeatedly and it would, as a result, save billions of dollars.

The problem is that we do not have the number of tests necessary to pursue a testing pathway to reopening. Scaling up testing presents a variety of challenges. For instance, there are likely to be supply issues with respect to the tests' underlying materials, or coordination problems that prevent supply and demand from linking as they should. And there will undoubtedly be logistical challenges with personnel and plans needed to deploy millions of tests per day.

One solution to these challenges, which the Harvard Roadmap for Pandemic Resilience has outlined, is to create a single coordinating body—a Pandemic Testing Board—to be tasked with ensuring the necessary supply of tests, deploying those tests, and facilitating a tracing program. There are two ways to design this body. It could be a federal government institution, part of the Executive Branch. Or it could be built through an interstate compact, with federal appropriations but not federal administration. This paper provides an introduction to interstate compacts, in order to inform the design of a possible Pandemic Testing Board.

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<sup>2</sup> Paul Romer, Roadmap to Responsibly Reopen America, <https://roadmap.paulromer.net/paulromer-roadmap-report.pdf>

<sup>3</sup> Danielle S. Allen et al., “Roadmap to Pandemic Resilience.”, <https://ethics.harvard.edu/covid-roadmap>

<sup>4</sup> Danielle S. Allen, E. Glen Weyl, and Kevin M. Guthrie, “The Mechanics of the COVID-19 Diagnostic Testing Supply Chain: Version 2.”, <https://ethics.harvard.edu/files/center-for-ethics/files/safracenterforethicswhite-paper9v2.pdf>

<sup>5</sup> Julius Krein, Ganesh Sitaraman & E. Glen Weyl, “A War Production Board for Coronavirus Testing.” *Boston Globe*, April 13, 2020.

# 02 Interstate Compacts: The Basics

Interstate compacts are legally binding agreements that states can enter into to take collective action to solve shared problems or enact a common agenda.<sup>6</sup> States enter these compacts for various reasons—to address complex interstate policy issues like cross-border crime, to administer shared resources and boundaries like bodies of water, to establish common standards and guidelines like regulating carbon dioxide emissions, or merely to lower costs by taking advantage of economies of scale. Interstate compacts also allow groups of states to partner with the federal government to address national issues, like emergencies. These compacts give states the flexibility to pilot new solutions and adapt to challenges that emerge over time. They can also help states take advantage of their distinct capacities and build consensus towards greater collaboration.

## A Constitutional Primer

The Compacts Clause of the US Constitution grants states the right to create interstate compacts for their common benefit.<sup>7</sup> This right dates back to before the Constitution, when colonies resolved border controversies by negotiating contracts that the Crown would then approve.<sup>8</sup>

While the text of the Compacts Clause requires congressional consent to these agreements, the Supreme Court has narrowed the types of agreements that require such approval. As early as 1893, the Supreme Court held that only a subset of compacts required congressional consent.<sup>9</sup> More recently, the Court explained that the pivotal question in assessing whether a compact requires congressional consent is “whether the Compact enhances state power quoad the National Government.”<sup>10</sup> That is, consent is only required for agreements that threaten federal supremacy —

<sup>6</sup> States may also enter into compacts with territories and tribal nations. See, e.g., Emergency Management Assistance Compact, Pub. L. 104-321, 110 *Stat.* 3877 (1996) (“For the purposes of this compact, the term ‘states’ is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U. S. territorial possessions.”) See also Harvard Law Review Association, Intergovernmental Compacts in Native American Law: Models for Expanded Usage 922, 932, 112 *Harvard Law Review* 922, 932 (1999).

<sup>7</sup> “No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State.” U.S. Const., art. I, § 10, cl. 3.

<sup>8</sup> See generally Frankfurter and Landis, *The Compact Clause of the Constitution: A Study in Interstate Adjustments*, 34 *Yale L. J.* 685 (1925).

<sup>9</sup> *Virginia v. Tennessee*, 148 U.S. 503, 519 (1893).

<sup>10</sup> *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452, 473 (1978).

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either by affecting a power that is reserved to Congress or by changing the balance of power between states and the federal government.<sup>11</sup>

Practically, the congressional consent requirement has not proven burdensome for states, and Congress rarely denies states' requests. Courts have generally held that when states use compacts to implement programs they could have carried out individually, the compacts can go forward without congressional approval. What's more, the Constitution specifies neither the timing nor the form of congressional consent required.<sup>12</sup> Congress can approve a compact before states enact it by passing legislation that encourages states to enter into a compact for a given objective or legislation that becomes effective once the requisite number of states have enacted the compact.<sup>13</sup> Congress can also consent explicitly by reviewing or revising agreements after the fact,<sup>14</sup> or implicitly by supporting the objective of a compact.<sup>15</sup>

Compacts that receive congressional approval have the force of federal law and therefore supersede state laws.<sup>16</sup> The act of congressional consent "federalizes" the agreement between the states, making the compact and its rules an instrument of federal law.<sup>17</sup> This insulates state action from constitutional attack—say, for violating the "dormant" Commerce Clause by negatively affecting interstate commerce.<sup>18</sup> Any dispute between the states in a congressionally ratified compact goes straight to the Supreme Court.

Compacts that do not require congressional approval are still legally enforceable as contracts and as state law, but they do not have the power of federal law. They differ from uniform state laws because, since they involve contractual obligations, they cannot be changed unilaterally.

<sup>11</sup> The Court recently held that congressional approval served to "prevent any compact . . . which might affect injuriously the interests of the others" or "check any infringement of the rights of the national government." *Texas v. New Mexico*, 138 S. Ct. 954, 958 (2018) (internal quotation marks and citations omitted).

<sup>12</sup> *Green v. Biddle*, 21 U.S. (8 Wheat.) 1, 85 (1823).

<sup>13</sup> *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275, 281-82 (1959).

<sup>14</sup> *State ex rel. Baird v. Joslin* 116 Kan 615, 227 (1924).

<sup>15</sup> *Virginia v. West Virginia*, 78 U.S. (11 Wall.) 39 (1871).

<sup>16</sup> *Texas*, 138 S. Ct. at 958

<sup>17</sup> *Cuyler v. Adams*, 449 U.S. 433, 440 (1981) (holding that congressional consent "transforms the States' agreement into federal law under the Compact Clause").

<sup>18</sup> See Michael L. Buenger et al., *The Evolving Law and Use of Interstate Compacts* 56 (2d ed. 2016).

## Interstate Compacts: The Basics

### *Creating an Interstate Compact*

## *Creating an Interstate Compact*

The most straightforward way to establish a congressionally authorized interstate compact is for Congress to preemptively give its approval by adopting legislation authorizing the creation of a compact. The enacting legislation would outline the compact's nature, purposes, and policies, and establish that the compact goes into effect once a certain number of states have entered into it. As with all federal statutes, the House or Senate would introduce the compact bill, both bodies would approve it, and the president would customarily sign the compact into law. The states who want to participate in the compact would pass identical statutes through their own state legislatures. In doing so, they would assume the conditions attached by Congress. In recent years, Congress has passed multiple pieces of legislation encouraging states to adopt interstate compacts.<sup>19</sup>

If Congress did not initially pass authorizing legislation and the issue that states want to compact to address does not require congressional approval, states would negotiate the compact directly and enact it through their own legislatures.<sup>20</sup> In those cases, the compact would function like a contract. After negotiating, a state would “make an offer” by enacting a statute that outlines the compact and by specifying the number of other states that must approve the compact for it to go into effect. The compact would become effective once the requisite number of states have “accepted” the offer by enacting identical statutes through their respective legislatures. Congress could approve or amend the compact by enacting legislation of its own after the compact became effective.<sup>21</sup>

States generally establish a compact commission once the threshold number of states have enacted the compact legislation. This is a quasi-governmental entity that operates at the supra-state level.<sup>22</sup>

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<sup>19</sup> The Energy Policy Act of 2005 granted a minimum of three states the right to enter into a compact for electric transmission line siting. Pub. L. 109-58, 119 Stat. 594, 950. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 encouraged states to compact around standards for the surplus lines insurance industry. Pub. L. 111-203, 124 Stat. 1376, 1589.

<sup>20</sup> The governors can conduct direct negotiations, but often, the states will create joint commissions staffed by appointees of the respective governors to hammer out the details. Other mechanisms include having the National Conference of State Legislatures promote a compact or having one state's legislature enact a compact and invite others to pass the same compact, too. Joseph F. Zimmerman, **Interstate Cooperation: Compacts and Administrative Agreements** 43 (2002).

<sup>21</sup> Buenger et al., *The Evolving Law and Use of Interstate Compacts* 41 (2016).

<sup>22</sup> Zimmerman, *Interstate Cooperation: Compacts and Administrative Agreements* at 55-6 (2002) (listing twenty-five forms of compacts administered by commissions or agencies).

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It generally has the authority to hire staff responsible for implementing the policies and procedures that the commission establishes.

Congress can also appropriate funds for the operations of interstate compacts, or states can fund them directly. The amount of federal support for interstate compacts varies; the Adult Offender Compact receiving over \$1.2 million from the National Institute of Corrections, while the Compact for the Placement of Children received approximately \$100,000.<sup>23</sup>

### *Examples of Interstate Compacts*

Today, over two hundred interstate compacts are in operation.<sup>24</sup> The prevalence of these compacts has boomed over the past century. Until the 1920s, states used them sparingly, mostly as a means to settle boundary disputes. But the 1922 creation of the Port Authority of New York and New Jersey—one of the most famous examples of interstate compacts—opened the door for the use of these compacts to tackle increasingly frequent and complex interstate issues.<sup>25</sup> Since then, the number of interstate compacts exploded not only in number but in reach. Unlike the bistate agreements of the nineteenth century, many compacts today are regional, and roughly two dozen are national.<sup>26</sup> Today, states are used to managing these arrangements: the average state is a party to twenty-five of these interstate agreements.<sup>27</sup>

The nature of compacts has expanded to cover all manner of political, social, and environmental issues. The majority of compacts established since the 1970s have served regulatory purposes, most often through the establishment of regulatory agencies.<sup>28</sup> Recently, states have increasingly looked to interstate compacts as a more viable means of making progress on intensely partisan issues. In the face of federal inaction on tobacco, all but four states formed a compact to increase the price of cigarettes, which now yields billions in revenue each year.<sup>29</sup> One notable success is the 2008 Regional

<sup>23</sup> Council of State Governments, National Center for Interstate Compacts, "Compact FAQs.", <https://www.csg.org/knowledgecenter/docs/ncic/CompactFAQ.pdf> (accessed April 28, 2020).

<sup>24</sup> Council of State Governments, National Center for Interstate Compacts, "Understanding Interstate Compacts."

<sup>25</sup> Frankfurter and Landis, *The Compact Clause of the Constitution: A Study in Interstate Adjustments*, 34 Yale L.J. 685 (1925).

<sup>26</sup> Council of State Governments National Center for Interstate Compacts, "Understanding Interstate Compacts," [https://www.gsgp.org/media/1313/understanding\\_interstate\\_compacts-csgncic.pdf](https://www.gsgp.org/media/1313/understanding_interstate_compacts-csgncic.pdf) (accessed April 23, 2020).

<sup>27</sup> Id.

<sup>28</sup> Patricia S. Florestano, *Past and Present Utilization of Interstate Compacts in the United States*, 13, 21.

<sup>29</sup> See Michael S. Greve, *Compacts, Cartels, and Congressional Consent*, 68 Mo. L. Rev. 285, 34654 (2003).

<https://ethics.harvard.edu/interstate-compacts>

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### Examples of Interstate Compacts

Greenhouse Gas Initiative (RGGI), which, in response to federal inaction to curb rising emissions, created the first “mandatory, market-based CO2 emissions reduction program in the United States.”<sup>30</sup> Under RGGI, the nine signatory states participate in a regional cap-and-trade program to limit CO2 emissions from the power sector.<sup>31</sup> RGGI has operated for years without explicit congressional approval and has “claimed reductions in lifetime energy bills” of nearly \$5 billion for 4.6 million residences.<sup>32</sup>

There is also precedent for using interstate compacts to coordinate state and federal responses in times of crisis. All fifty state and federal territories have entered into the congressionally approved Emergency Management Assistance Compact (EMAC). EMAC helps states (usually through the state equivalents of FEMA) coordinate resource deployment between states and provides oversight for the distribution of interstate aid—for example, it enabled firefighters from Massachusetts to help fight California’s wildfires.<sup>33</sup> It has been activated to respond to crises ranging from September 11th to Hurricane Katrina, where EMAC coordinated the deployment of nearly 70,000 personnel to affected states.<sup>34</sup> California is currently using EMAC to share ventilators with other states in need.<sup>35</sup>

It is worth noting that while some news reports have called some newly formed regional COVID-19 agreements “compacts,”<sup>36</sup> these agreements do not appear to be interstate compacts. So far, governors in three “regions of the country” have established working agreements—a West Coast regional agreement, a Northeast multi-state council, and a midwestern state partnership. . Because these agreements do not have the features of a contract, they are not interstate compacts.<sup>37</sup> The current state

<sup>30</sup> The Regional Greenhouse Gas Initiative, “Welcome.” <https://www.rggi.org/> (accessed April 23, 2020).

<sup>31</sup> See Michael S. Smith, Note *Murky Precedent Meets Hazy Air: The Compact Clause and the Regional Greenhouse Gas Initiative*, 34 B.C. Envtl. Aff. L. Rev 387 (2007).

<sup>32</sup> The Regional Greenhouse Gas Initiative, “The Investments of RGGI Proceeds in 2015,” October 2017, [https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI\\_Proceeds\\_Report\\_2015.pdf](https://www.rggi.org/sites/default/files/Uploads/Proceeds/RGGI_Proceeds_Report_2015.pdf)

<sup>33</sup> Daniel C. Vock, “The Pact Changing How Governments Respond to Disaster,” March 2018, <https://www.governing.com/topics/transportation-infrastructure/gov-emergency-management-local-federal-fema-states.html>.

<sup>34</sup> National Emergency Management Association, “EMAC Overview,” August 2006. <https://www.fema.gov/media-library-data/20130726-1726-25045-0915/060802emac.pdf>

<sup>35</sup> Kathleen Ronayne, “California Ventilators En Route to New York, Other States,” *The News-Gazette*, April 7, 2020., [https://www.news-gazette.com/coronavirus/california-ventilators-en-route-to-new-york-other-states/article\\_99691dfd-0d15-5c42-a191-51704f68bfd8.html](https://www.news-gazette.com/coronavirus/california-ventilators-en-route-to-new-york-other-states/article_99691dfd-0d15-5c42-a191-51704f68bfd8.html).

<sup>36</sup> “Coronavirus Shelter-At-Home: West Coast Governors Form Compacts To Coordinate Reopenings,” CBS Sacramento, April 13, 2020, CBS, <https://sacramento.cbslocal.com/2020/04/13/west-coast-democratic-governors-compact-coronavirus-reopening/>.

<sup>37</sup> The Supreme Court suggested that arrangements that did not have any form of consideration (a standard element for a valid contract) would not meet the definition of a compact. *Virginia v. Tennessee*, 148 U.S. 503, 520 (1893). (“The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it, for example, as made upon a similar declaration of the border or contracting State. The mutual declarations may then be reasonably treated as made upon mutual considerations.”).

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### *Examples of Interstate Compacts*

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regional agreements more closely resemble state unilateral actions: they establish shared “priorities” and suggest that states will consult one another and work together. But the agreements don’t bind the participants, each of which will establish “state-specific” plans. This means that they certainly don’t require any form of congressional approval, but it also means that they fall short of having any force of law, state or federal, and thus aren’t enforceable. As a practical matter, if states were to come to an agreement to cooperate on testing, they could similarly adopt that agreement without concern for the legal requirements of a compact. If Congress decided to establish more prescriptive policies through an interstate compact, however, it would supersede the informal agreements that states have developed.

Were states to come together to form an interstate compact dedicated to testing, the compact would not necessarily require congressional consent under the Supreme Court’s current Compact Clause jurisprudence. In 1978, the Court explained that an increase in member states’ bargaining power was not determinative of whether a compact required congressional approval.<sup>38</sup> Since then, courts across the country have found only one compact to violate the Compact Clause for lack of congressional consent.<sup>39</sup> The case law suggests that only a compact that violated federal law on its face would be found unconstitutional for lack of congressional consent, though some scholars believe a wider range of agreements ought to require such authorization.<sup>40</sup>

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<sup>38</sup> *U.S. Steel v. Multistate Tax Comm’n*, 434 U.S. 452, 472-73 (1978).

<sup>39</sup> *Sauer v. Nixon*, No. 14AC-CC00477, 2015 WL 4474833, at \*1 (Mo. Cir. Ct. Cole Cty. Feb. 24, 2015), *appeal dismissed as moot*, 474 S.W.3d 624, 626 (Mo. Ct. App. 2015); see also Finkel, “Note: A Stranger in the Land of Federalism: A Defense of the Compact Clause,” 1575, 1586.

<sup>40</sup> See Michael S. Greve, *Compacts, Cartels, and Congressional Consent*, 285, 346-54, 307-8; see also Jacob Finkel, Note, *A Stranger in the Land of Federalism: A Defense of the Compact Clause*, 1575, 1586.

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# 03 Potential Issues

## *Appointments and Removals*

Leaders of a testing board created by interstate compact would be appointed by the states in the compact. Because an interstate compact is not a federal agency, the appointment of members of a compact's board or commission can be vested in the members of the compact (e.g., governors), appointments do not require Senate confirmation, and members of the compact can direct their removal.<sup>41</sup>

## *Interstate Travel from Outside the ITC*

The Supreme Court has recognized a long-standing right to travel freely between states that is grounded in the Constitution (though its exact textual source is a bit murky).<sup>42</sup> There are three components to this right: the right of a citizen to move freely between one state and another; the right of a citizen visiting a state not to be discriminated against; and the right of a new settler in a state to enjoy the same rights as other state citizens, which deals largely with durational residency requirements. The right to interstate travel is protected under the Privileges and Immunities clause, which prohibits the discriminatory treatment of US citizens under the laws of different states.<sup>43</sup> In *Edwards v. California*, the Supreme Court found that California's "Okie law," which restricted indigents from entering the state, was unconstitutional under the Commerce Clause as well.<sup>44</sup>

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<sup>41</sup> The Ninth Circuit rejected an appointments clause attack on governors' appointment of commissioners who exercised substantial authority over a federal program. The threatened compact, a congressionally-authorized regional electric power planning agreement, gave appointments authority for commissioners to governors of the affected states. The court rejected the petitioner's theory because it "would outlaw all interstate compacts because all or most of them impact federal activities and all or most of them have members appointed by the participating states." *Seattle Master Builders Ass'n v. Pacific Northwest Elee. Power and Conservation Planning Council*, 786 F.2d 1359, 1365 (9th Cir. 1986). See also Dave Frohnmayer, *The Compact Clause, the Appointments Clause and the New Cooperative Federalism: The Accommodation of Constitutional Values in the Northwest Power Act*.

<sup>42</sup> In *Saenz v. Roe*, the Supreme Court identified a constitutional right to travel between states but did not identify a specific textual source for it. *Saenz v. Roe*, 526 U.S. 489, 501 (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'").

<sup>43</sup> *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274 (1985).

<sup>44</sup> Anthony Michael Kreis suggests that while most observers will turn to *Edwards* when evaluating interstate travel restrictions, it is not a particularly helpful example of the freedom of movement principle because the holding focuses more on rejecting economic protectionism than balancing free movement and public health. Anthony Michael Kreis, "Contagion and the Right to Travel," Harvard Law Review Blog, posted March 27, 2020., accessed April 24, 2020, <https://blog.harvardlawreview.org/contagion-and-the-right-to-travel/>.

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### *Interstate Travel from Outside the ITC*

The right to travel between states is not absolute, however, and states' authority to protect their citizens—including by restricting individual rights—are at their zenith during a public health emergency.<sup>45</sup> The power to take quarantine measures is generally reserved to the states under their Tenth Amendment police powers.<sup>46</sup> In *Jacobson v. Massachusetts*, the Supreme Court held that a mandatory vaccination law was a valid exercise of Massachusetts' police power to protect its residents' public health.<sup>47</sup> A line of cases exploring state quarantine restrictions emphasizes that, during a public health emergency, states can enact rules to protect the public against infection, even if they burden interstate commerce by restricting the movement of people.<sup>48</sup> Indeed, the Supreme Court has held that, despite the harmful effect on interstate commerce, states' power to order quarantine laws "is beyond question" in the absence of a contrary federal command.<sup>49</sup>

However, even in an emergency, there are still constitutional limits on the kinds of restrictions states can impose. In 1985, the Court held that, under the Privileges and Immunities clause, state restrictions against nonresidents must be supported by "substantial" reasons and that the restriction must bear a substantial relationship to those reasons.<sup>50</sup> Discriminatory and unscientific orders will not stand: under the 14th Amendment, regulations cannot be "arbitrary, oppressive, and unreasonable."<sup>51</sup> For example, in *Jew Ho v. Williamson*, the Court struck down racially discriminatory quarantine, in which San Francisco had targeted Chinatown residents on the belief that rice-based diets increased susceptibility to plague.<sup>52</sup> The New York Court of Appeals held that a mandatory isolation was unconstitutional where officials required that anyone who refused smallpox vaccinations be isolated, despite no scientific evidence suggesting that they had been exposed to the disease.<sup>53</sup>

<sup>45</sup> Kreis, "Contagion and the Right to Travel," Harvard Law Review Blog, posted March 27, 2020, <https://blog.harvardlawreview.org/contagion-and-the-right-to-travel/>.

<sup>46</sup> U.S. Const. amend. X.

<sup>47</sup> *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27, (1905). ("Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members."). See also *Oregon-Washington R. & Nav. Co. v. State of Washington*, 270 U.S. 87, 93 (1926); *O'Connor v. Donaldson*, 422 U.S. 563, 582-83 (1975) (Burger, J., concurring) ("There can be little doubt that in the exercise of its police power a State may confine individuals solely to protect society from the dangers of significant antisocial acts or communicable disease").

<sup>48</sup> *Compagnie Francaise de Navigation a Vapeur v. Louisiana State Board of Health*, 186 U.S. 380 (1902).

<sup>49</sup> *Id.*

<sup>50</sup> *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 284 (1985).

<sup>51</sup> *People ex. rel. Barmore v. Robertson*, 134 N.E. 815, 817 (Ill.1922).

<sup>52</sup> *Jew Ho v. Williamson*, 103 F. 10, 26 (C.C.N.D. Cal. 1900).

<sup>53</sup> *In Re Smith*, 146 N.Y. 68 (1895).

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The Court has made it clear that efforts to restrict movement between states will be subject to strict scrutiny, and despite the emergency conditions, it would likely apply this standard.<sup>54</sup> The government will need to show that the restriction of the constitutional right serves a compelling interest and is narrowly tailored towards that end.<sup>55</sup>

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<sup>54</sup> Ilya Somin, “The Case for ‘Regular’ Judicial Review of Coronavirus Emergency Policies,” Reason, April 15, 2020, <https://reason.com/2020/04/15/the-case-for-normal-judicial-review-of-coronavirus-emergency-policies/>; Cf. Ganesh Sitaraman & Ingrid Wuerth, *The Normalization of Foreign Relations Law* 128 Harv. L. Rev. 1897 (2015) (arguing against exceptionalism in the foreign relations context),

<sup>55</sup> *Saenz v. Roe*, 526 U.S. 489, 499 (1999) (holding that a federal restriction on the right to travel between states that leads to unequal treatment of citizens can still be upheld if it is “shown to be necessary to promote a compelling governmental interest”) *see also* *Dunn v. Blumstein*, 405 U.S. 330, 343 (1972) (“It is not sufficient for the State to show that durational residency requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with ‘precision’”).