STATE MEDICAL LICENSES WITHOUT BORDERS*

MEIGHAN PARKER**

Access to health care in the United States is undermined by a maldistribution of physicians, and state medical licensure remains a barrier to correcting this issue, despite legal reforms that attempt to streamline physician licensure pathways. Geographic distribution gaps can have serious consequences in rural areas, such as poor health outcomes, reduced access to care, and further entrenchment of health disparities.

On the bright side, physicians can potentially use telemedicine to help improve geographic distribution gaps through the provision of clinically appropriate, virtual care across state lines. But states have traditionally required physicians, even those who are currently licensed in other states, to complete their respective licensure pathways. These licensure requirements generally hinder telemedicine expansion by forcing physicians to repeat substantively similar licensure processes in each state.

This Article envisions and addresses the need for medical license reciprocity where the physician's license from her state of domicile is recognized across state lines and is portable, like a driver's license. Congress has the authority under the U.S. Constitution's Full Faith and Credit Clause to require medical license reciprocity through this Article's Proposed State Medical Licensing Reciprocity Act. The Full Faith and Credit Clause empowers Congress to determine the extraterritorial effect of, among other things, a state's "public Acts" (namely, state laws). Because medical licenses indicate a physician's privilege to practice medicine conferred by applicable state law and are based on compliance with statutory requirements, these licenses should be understood as extensions of state "public Acts" for full faith and credit purposes. Therefore, Congress can mandate

** Assistant Professor, University of Georgia School of Law. I am grateful to the participants of the Works-in-Progress Program for Emerging Issues in Law, Medicine, and Health Care at the 2025 Association of American Law Schools' Annual Meeting, the "Navigating Telehealth's Crossroads" session at the 2025 Annual Health Law Professors Conference, the 2025 New Scholars Workshop (Health Law and Healthcare Justice) at the Southeastern Association of Law Schools (SEALS) conference, the University of Georgia School of Law and Emory University School of Law faculty workshop, and the Georgia State University School of Law faculty workshop. Special thanks to Douglas Baird, William Baude, Nathan Chapman, Wendy Epstein, Robert Gatter, Chavis Jones, Alex Kreit, Richard McAdams, Elizabeth Pendo, Jessica Roberts, and Chris Robertson for insightful conversations and comments at various stages of this project. Lastly, thanks to the editors of the *North Carolina Law Review* for the excellent feedback and editorial work.

that medical licenses receive full faith and credit in other states, while leaving the states ultimately responsible for issuing and regulating licenses and medical practice within their borders.

This Article makes three principal contributions to existing legal scholarship. First, it provides a fresh analysis of how various state reforms to the traditional medical licensure pathway (for example, specific waivers, the Interstate Medical Licensure Compact, and the Uniform Telehealth Act of 2022) have failed to fully address this barrier. Second, it identifies the legal problem of nonreciprocity and proposes a novel federal solution under the Full Faith and Credit Clause. Finally, it enriches the ongoing discourse on federalism and health care regulation, specifically in the context of physician licensure.

INTRODUCTION

The United States is facing another public health crisis—an unprecedented shortage of physicians.[1] By 2034, the United States will suffer from a shortage of up to 124,000 physicians.[2] More specifically, American communities will lack between 17,800 and 48,000 primary care physicians and between 21,000 and 77,100 non-primary care physicians.[3] Without legal reforms and other interventions, the shortage will only worsen.

Physicians are crucial for the delivery of health care services and resources. As the gatekeepers to the health care system, physicians, especially primary care providers, are channels for the allocation of health care.[4] Physicians prescribe specific medications, conduct medical procedures, and provide medical counsel to patients.[5] Thus, physicians serve both as stewards of health care resources and as essential health care resources themselves. Without them, many patients cannot access the health care system for diagnosis and treatment of medical conditions.

As we grapple with the current national shortage, one thing is clear: it will not improve any time soon. To increase the overall number of physicians, we

1. *See* Theodosia Stavroulaki, *The Healing Power of Antitrust*, 119 NW. U. L. REV. 943, 955 (2025); Andis Robeznieks, *Doctor Shortages Are Here—and They'll Get Worse if We Don't Act Fast*, AM. MED. ASS'N (Apr. 13, 2022), https://www.ama-assn.org/practice-management/sustainability/doctor-shortages-are-here-and-they-ll-get-worse-if-we-don-t-act [https://perma.cc/WR5U-DHNJ].

2. Robeznieks, *supra* note 1.

3. *Id.*

4. *See* Michelle Oberman, *Mothers and Doctors' Orders: Unmasking the Doctor's Fiduciary Role in Maternal-Fetal Conflicts*, 94 NW. U. L. REV. 451, 460 (2000); William M. Sage, *Regulating Through Information: Disclosure Laws and American Health Care*, 99 COLUM. L. REV. 1701, 1746 (1999) (describing how primary care physicians control patient referrals to specialists).

5. *See generally* Richard S. Saver, *Physicians' Elusive Public Health Duties,* 99 N.C. L. REV. 923 (2021) (discussing physicians' dual role in providing care and safeguarding broader public health interests).

must account for the significant amount of time required to educate and train future doctors. Generally, a physician must complete four years of formal medical education and several years of residency, depending on their specialty.[6] Thus, even if all U.S. medical schools increased their enrollment, it would take years to even see an increase in the total number of physicians who have completed the requisite education or training to lawfully treat patients.

In addition to a national shortage of physicians, geographic distribution gaps contribute to the exacerbated shortages in some areas. For example, around fifteen percent of Americans reside in rural areas, but only ten percent of physicians practice in those areas.[7] Specialists tend to practice in urban areas,[8] and individuals living in urban areas have easier access to primary care physicians than those living in rural areas.[9] Such shortages can have serious consequences, such as poor health outcomes, reduced access to care, and further entrenchment of health disparities.[10]

There are several causes underlying the physician distribution disparities that create medical deserts—areas with inadequate access to physicians.[11] First, doctors often complete their medical training or residencies in urban areas, which makes it harder for rural areas to attract physicians.[12] Second, rural areas

6. Family practice, for example, may require three years of residency. On the other hand, obstetrics/gynecology residency may take four years. After residency, an advanced fellowship may take one to three years. *See Residency Roadmap*, WASH. UNIV. SCH. OF MED. ST. LOUIS, https://residency.wustl.edu/residencies/length-of-residencies/ [https://perma.cc/FX9K-6XQA].

7. Hyacinth Empinado, *Treating Rural America: The Last Doctor in Town*, STAT (Sep. 25, 2023), https://www.statnews.com/2023/09/25/rural-health-doctor-shortage-physicians/ [https://perma.cc/9PMK-KSFT].

8. *See* Howard K. Rabinowitz, *The Rural vs Urban Practice Decision*, 287 JAMA 108, 113 (2002).

9. *About Rural Health Care*, NAT'L RURAL HEALTH ASS'N, https://www.ruralhealth.us/about-us/about-rural-health-care [https://perma.cc/8E28-5R28] ("Ease of access to a physician is greater in urban areas. The patient-to-primary care physician ratio in rural areas is only 39.8 physicians per 100,000 people, compared to 53.3 physicians per 100,000 in urban areas."). Even some communities within urban cities have an insufficient number of physicians. *See* Elaine K. Howley, *The U.S. Physician Shortage Is Only Going to Get Worse. Here Are Potential Solutions*, TIME (July 25, 2022, at 16:07 ET), https://time.com/6199666/physician-shortage-challenges-solutions/ [https://perma.cc/QJ8Y-T8M5].

10. *See* Stavroulaki, *supra* note 1, at 947 (describing how physician shortages in rural areas lead to residents traveling long distances for care); Ahmed M. Ahmed & Fidencio Saldana, *New Physicians and the Gap in Serving the Underserved*, JAMA NETWORK OPEN (May 28, 2025), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2834526 [https://perma.cc/8UKG-DE49] (explaining that physician distribution gaps contribute to poor health outcomes and less access to care).

11. *See* Brian T. Horowitz, *What Are Medical Deserts, and How Can Technology Alleviate Them?*, HEALTHTECH (June 2, 2022), https://healthtechmagazine.net/article/2022/06/what-are-medical-deserts-perfcon [https://perma.cc/RM65-36YD (staff-uploaded archive)] (explaining that medical deserts include "areas without access to hospitals, primary care physicians, pharmacies and other healthcare providers").

12. *See* Laura Gates, *IU Trains Physicians to Practice in Rural and Urban Areas of Critical Need*, IND. U. SCH. MED. (Jan. 18, 2024), https://news.iu.edu/live/news/33822-iu-trains-physicians-to-practice-in-rural-and [https://perma.cc/4RWM-ZSAK] ("Across the nation, most physicians train in urban centers and tend to stay there, where pay and access to resources are better. That leaves many rural counties with only a handful of primary-care physicians and even fewer specialists.").

are frequently comprised of larger populations of older and lower-income individuals who rely on Medicare or Medicaid for health insurance.[13] Through these programs, doctors are often reimbursed for services at lower rates, which means lower pay than those physicians would have received if their patients had private insurance.[14] Third, increasing rates of rural hospital closures leave specialists with fewer employment opportunities and other physicians, like primary care physicians, with little to no options for health care facilities to admit patients for inpatient care.[15] "When a hospital closes, physicians may be forced to leave the community and search for employment elsewhere."[16]

The good news is that telemedicine,[17] the use of telecommunications software to facilitate virtual appointments for medical and diagnostic health services between physicians and patients, is a useful tool for improving patient access to and continuity of care.[18] While legal scholars and policymakers posit ways of directly addressing the national shortage, telemedicine could be further leveraged to facilitate better allocation of available physicians to states with larger rural communities that are experiencing significant geographic distribution gaps. Through virtual appointments, physicians in other states

13. *See Payment & Delivery in Rural Hospitals*, AM. MED. ASS'N (2024), https://www.ama-assn.org/system/files/issue-brief-rural-hospital.pdf [https://perma.cc/A3P7-7GK7].

14. *See* Tanya Albert Henry, *AMA Outlines 5 Keys to Fixing America's Rural Health Crisis*, AM. MED. ASS'N (June 6, 2024), https://www.ama-assn.org/public-health/population-health/ama-outlines-5-keys-fixing-america-s-rural-health-crisis [https://perma.cc/MTN6-TLM8] (explaining that Medicare physician payment has fallen and needs to be fixed to address access issues in rural areas); *see also* Nora Super, *The Geography of Medicare: Explaining Differences in Payment and Costs*, NAT'L HEALTH POL'Y F., July 3, 2003, at 2 (detailing the argument that current Medicare payment formulas disadvantage rural hospitals).

15. *See* Hayley Drew Germack, Ryan Kandrack & Grant R. Martsolf, *When Rural Hospitals Close, The Physician Workforce Goes*, 12 HEALTH AFFS. 2086, 2087 (2019).

16. *Id.*

17. *Telehealth, Telemedicine, and Telecare: What's What?*, FCC, https://www.fcc.gov/general/telehealth-telemedicine-and-telecare-whats-what [https://perma.cc/9YQ4-TRHN] ("[T]elemedicine us[es] telecommunications technologies to support the delivery of all kinds of medical, diagnostic and treatment-related services usually by doctors."). For example, telemedicine "includes conducting diagnostic tests, closely monitoring a patient's progress after treatment or therapy and facilitating access to specialists that are not located in the same place as the patient." *Id.* In addition, the resource provides additional context on the connection between "telemedicine" and "telehealth." *Id.* "Telehealth is similar to telemedicine but includes a wider variety of remote healthcare services beyond the doctor-patient relationship. It often involves services provided by nurses, pharmacists or social workers, for example, who help with patient health education, social support and medication adherence, and troubleshooting health issues for patients and their caregivers." *Id.*

18. *See* Victor C. Ezeamii, Okelue E. Okobi, Hassana Wambai-Sani, Gamamedaliyanage S. Perera, Shakhnoza Zaynieva, Chinwe C. Okonkwo, Mohamed M. Ohaiba, Pamela C. William-Enemali, Okiemute R. Obodo & Ngozika G. Obiefuna, *Revolutionizing Healthcare: How Telemedicine Is Improving Patient Outcomes and Expanding Access to Care*, CUREUS (July 5, 2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11298029/pdf/cureus-0016-00000063881.pdf [https://perma.cc/5GU9-5GBF (staff-uploaded archive)].

can provide clinically appropriate care to patients in communities suffering from shortages.[19]

Telemedicine can help bridge the gap between medical deserts and practicing physicians. However, telemedicine's ability to expand care is limited by state-based restrictions on physician licensure.[20] States, through their medical boards, generally have the authority to regulate the practice of medicine within their respective borders.[21] A state's Medical Practice Act details its requirements for obtaining a medical license and the medical practice standards within its borders.[22] Absent an exception or waiver, a physician must complete the often-repetitive licensure process for every state in which a patient is located.[23]

This Article explores a regime for state medical licenses similar to the current treatment of state driver's licenses: it would allow a physician licensed in her state of domicile to practice in any other state through medical license reciprocity.[24] What if there were an alternative approach to physician licensure that retained state authority over licensure but required State A to recognize

19. Telemedicine is not appropriate for all types of care or health conditions. *See* Danielle Chaet, Ron Clearfield, James E. Sabin & Kathryn Skimming, *Ethical Practice in Telehealth and Telemedicine*, 32 J. GEN. INTERNAL MED. 1136, 1137 (2017) ("For example, telemedicine is inappropriate for encounters when a hands-on physical examination is crucial or critical data can be gleaned only through direct physical contact.").

20. *See* Fazal Khan, *From Pixels to Prescriptions: The Case for National Telehealth Licensing & AI-Enhanced Care*, 57 IND. L. REV. 581, 602 (2024).

21. *See* discussion *infra* Part II.

22. *See* discussion *infra* Part II.

23. *See* discussion *infra* Part II; *see also* Tara Sklar & Christopher Robertson, *The States' Hodgepodge of Physician Licensure Requirements*, 52 J.L. MED. & ETHICS 419, 420 (2024).

24. Scholars have called for different legal approaches to require out-of-state recognition of medical licenses. *See, e.g.*, Khan, *supra* note 20, at 605 ("Congress should first mobilize Medicaid financing to endorse mutual recognition of out-of-state medical licenses expressly for the administration of telehealth services across state lines."); Joy Elizabeth Matak, *Telemedicine: Medical Treatment via Telecommunications Will Save Lives, but Can Congress Answer the Call?: Federal Preemption of State Licensure Requirements Under Congressional Commerce Clause Authority & Spending Power*, 22 VT. L. REV. 231, 249–50, 251 (1997) (describing Congress's power under the Spending Clause to encourage states to participate in the author's proposed "Medical Licensure Reciprocity Programs"); Ashley Maru, *Single Medical Licensure Approach for Physicians Practicing Interstate Medicine*, 100 N.C. L. REV. F. 24, 39–40 (2021) (explaining that Congress could condition Medicaid funds on "state medical license recognition reciprocity"); Samyukta Mullangi, Mohit Agrawal & Kevin Schulman, *The COVID-19 Pandemic—an Opportune Time to Update Medical Licensing,* 181 JAMA INTERNAL MED. 307, 308 (2021) (arguing the Interstate Medical Licensure Compact should be expanded to require reciprocity between participating states); Shirley Svorny, *Liberating Telemedicine: Options to Eliminate State-Licensing Roadblocks*, CATO INST., Nov. 15, 2017, at 1, 7–9 (explaining that, among other options, states could implement mutual recognition arrangements with other states); Helen Hughes & Mark Sulkowski, *Advancing Access to Health Care Through Federal Medical Licensure Reciprocity for Clinical Trials*, PETRIE-FLOM CTR. (Sep. 5, 2024), https://petrieflom.law.harvard.edu/2024/09/05/advancing-access-to-health-care-through-federal-medical-licensure-reciprocity-for-clinical-trials/ [https://perma.cc/V6CG-Y7WA] (discussing federal medical license reciprocity only for clinical trials).

the valid, current license of a physician from State B without requiring that physician to complete State A's licensure application process?

Based on the U.S. Constitution's Full Faith and Credit Clause ("FFAC" or the "Clause"), this Article presents a novel and practical legal reform—the State Medical Licensing Reciprocity Act ("Proposed SMLRA" or the "Proposed Act"). The Clause of Article IV states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may . . . prescribe . . . the Effect [of such Acts, Records, and Proceedings]."[25] Essentially, the Clause directs states to recognize the public Acts (i.e., state laws) or final judicial judgments of other states.[26] The Clause also grants Congress the power to pass legislation that prescribes the "Effect" of those out-of-state laws and judicial judgments.[27]

This Article's central assertion is that the Clause provides constitutional authority for Congress to enact federal legislation, like this Article's Proposed SMLRA, that would obligate states to provide medical license reciprocity to certain licensed, out-of-state physicians. By adding to the longstanding commentary on the barriers imposed by state regulation of physician licensure and the practice of medicine in general, this Article posits an alternative constitutional authority for federal regulation of medical licensure that leaves the states ultimately responsible for issuing and regulating medical licenses as well as medical practice within their borders.

Legal scholarship has used telemedicine to highlight the friction between modern health care delivery and traditional state licensing systems. Legal commentators have largely focused on using Congress's power under the Commerce Clause to regulate medical licensure because licensing, especially in the telemedicine context, substantially involves interstate commerce.[28] Others have argued that state regulation of telemedicine violates the Dormant Commerce Clause by placing an "undue burden on interstate commerce."[29]

25. U.S. CONST. art. IV, § 1.

26. *See* discussion *infra* Section III.B.

27. *See* U.S. CONST. art. IV, § 1.

28. *See, e.g.*, Michael S. Young & Rachel K. Alexander, *Recognizing the Nature of American Medical Practice: An Argument for Adopting Federal Medical Licensure*, 13 DEPAUL J. HEALTH CARE L. 145, 194 (2010) (proposing that Congress leverage the Commerce Clause to establish a national medical licensing regime); Paul J. Larkin, Jr., Marie Fishpaw & Lauren McCarthy, *Telemedicine and Occupational Licensing*, 73 ADMIN. L. REV. 747, 779–85 (2021) (explaining that Congress could leverage the Commerce Clause to pass cross-state licensing legislation that improves cross-state access to telemedicine); *cf*. Lindsey T. Goehring, *H.R. 2068: Expansion of Quality or Quantity in Telemedicine in the Rural Trenches of America*, 11 N.C. J.L. & TECH. 99, 112 (2009) (stating that Congress's power to regulate the practice of medicine is limited by the Tenth Amendment of the Constitution, which "grants states the power to regulate the practice of medicine").

29. *See* Amar Gupta & Deth Sao, *The Constitutionality of Current Legal Barriers to Telemedicine in the United States: Analysis and Future Directions of its Relationship to National and International Health Care Reform*, 21 HEALTH MATRIX 385, 417–18 (2011).

Both groups have overlooked Congress's power under the Full Faith and Credit Clause, which would allow Congress to enact a "general" law to regulate physician licensure, even if physician licensure does not implicate interstate commerce.

This Article proceeds in four parts. Part I briefly describes this Article's Proposed SMLRA and comparable legislation in different medical contexts. Part II identifies the state licensure regime as a barrier to telemedicine expansion writ large and evaluates how states currently regulate physician licensure and medical practice. Part II ends with a fresh discussion of the benefits and drawbacks of existing legal reforms that aim to encourage state uniformity in licensure requirements or to streamline the licensing process for physicians who wish to care for patients in several states. These legal reforms include the following: (1) state licensure waivers or exceptions; (2) the Interstate Medical Licensure Compact; (3) the Uniform Telehealth Act of 2022; (4) medical licensure by reciprocity or endorsement; and (5) approaches that combine these reforms. However, none of these reforms has created a portable medical license, addressed the telemedicine barrier related to the patchwork of state licensing laws and regulations, or alleviated the cost burden of maintaining multiple licenses.

Part III briefly examines the Clause's historical background before turning to the two diverging interpretations of the Clause. These interpretations originate from distinct readings of the Clause's two provisions. The first sentence, called the "Self-Executing" Provision, provides that "Full Faith and Credit . . . be given to" state "public Acts" (i.e., state laws), records, and judgments.[30] The second sentence, called the "Effects" Provision, authorizes Congress to enact "general Laws" that "prescribe the Manner in which [states'] Acts, Records and Proceedings shall be proved, and the Effect thereof."[31] Distinct from what this Article calls the "non-self-executing" view, modern United States Supreme Court doctrine treats the first sentence (the Self-Executing Provision) as a nonevidentiary and substantive command. It requires states to give conclusive effect to other states' judicial judgments, while allowing them to refuse to apply another state's law based on the public policy exception.

Finally, Part IV situates Supreme Court doctrine and the "non-self-executing" view within the state physician licensure landscape. Part IV applies the legal principles within Supreme Court doctrine to argue that such licenses should be considered extensions of state laws and therefore fit within the Self-Executing Provision's category for "public Acts." To recognize a license is to acknowledge that it operates as an extension of the state law under which it was issued and evidences that the holder possesses the rights that the law confers.

30. *See* U.S. CONST. art. IV, § 1.

31. *Id.*

In this way, medical licenses are indicative of a physician's privilege to practice medicine based on compliance with the issuing state's laws or "public Acts."

However, without congressional intervention, pure application of the Supreme Court's interpretation of the Self-Executing Provision would raise a host of legal questions that would create confusion and implementation difficulties amongst states. For example, what is the extraterritorial effect of an out-of-state judicial judgment, or a medical board's disciplinary action revoking a physician's license, on that physician's reciprocal licensure status? Fortunately, the "Effects" power allows Congress to pass this Article's Proposed SMLRA to provide more clarity on this and other questions regarding the scope and "effect" of the interstate recognition of medical licenses.

I. THE STATE MEDICAL LICENSING RECIPROCITY ACT & COMPARABLE LEGISLATION

This Part encourages this Article's audience to step outside of the current licensure landscape and reimagine it such that states will retain authority over physician licensure and medical practice, but are required, in certain circumstances, to provide licensed, out-of-state physicians with reciprocity. To engage in this enterprise, this Part briefly highlights key provisions of the Proposed SMLRA. This Part then seeks to diminish the provocativeness of the Act's goals by discussing specific medical contexts in which certain licensed doctors already have the practical benefit of license reciprocity to practice in any U.S. state or territory.

As described more fully in Part IV, the critical features of the Proposed Act are as follows: (1) a domiciliary requirement for licensure reciprocity (i.e., the physician must be licensed in her state of domicile); (2) the conditions for when full faith and credit is owed to judicial judgments, or decisions from a state medical board, that affect a physician's licensure status; and (3) a provision highlighting that state medical boards maintain authority over other substantive standards governing medical practice within their borders.[32]

Federal laws have given certain doctors the benefit of license reciprocity. Indeed, in 2018, Congress passed legislation providing "the Veterans Administration [with the] power to allow interstate practice of medicine regardless of licensure, effectively preempting state laws."[33] Additionally, if a doctor or other medical professional is employed by the armed forces, performs authorized duties for the Department of Defense, and holds a valid license in any state or territory, she is authorized to practice medicine "regardless of where

32. *See* discussion *infra* Part IV.

33. Sklar & Robertson, *supra* note 23, at 420 (citing 38 U.S.C. § 1730C).

such health-care professional or the patient is located, so long as the practice is within the scope of the authorized Federal duties."[34]

Even health care professionals who regularly travel with sports teams can care for their athletes outside of their primary state of licensure *without* obtaining licensure in those other states.[35] With bipartisan support, Congress passed the Sports Medical Licensure Clarity Act of 2018[36] to mandate that "[m]edical services provided in the secondary state will be treated as occurring in the primary state, if the secondary state's licensure requirements are substantially similar to the primary state . . . ."[37] While the law does not provide full medical licensure reciprocity, it does allow a physician licensed in the primary state to satisfy the licensure requirements in the secondary state when traveling with the athletic team and to the extent that the secondary state's licensure requirements are substantially similar to the primary state's standards.[38] The law also expands medical malpractice coverage beyond the physician's home state to other states when the physician is traveling with the sports team.[39] As a result, licensed, out-of-state sports medicine professionals can practice medicine across state lines "without fear of great professional harm, such as loss of license to practice . . . ."[40]

As these examples underscore, the Proposed SMLRA is not an unprecedented transformation of our health care system, as licensing reciprocity already occurs on a smaller scale in different medical contexts. Setting aside their different constitutional authorities, all of these laws were arguably motivated by Congress's desire to make it easier for qualifying physicians to treat patients in other states without having to obtain licensure in each one, among other things.[41] This is one of the most significant and frequently discussed barriers to telemedicine expansion as well.

34. 10 U.S.C. § 1094(d)(1) (detailing the law on licensure of health care professionals who practice under the jurisdiction of the U.S. Military).

35. *See Sports Medicine Licensure Clarity Act Signed into Law*, NAT'L ATHLETIC TRAINERS' ASS'N (Oct. 5, 2018), https://www.nata.org/nata-now/articles/sports-medicine-licensure-clarity-act-signed-law [https://perma.cc/FL25-6DSU]; *see also* Sports Medicine Licensure Clarity Act of 2018, Pub. L. No. 115-254, § 12, 132 Stat. 3186, 3197–99 (2018) (codified at 15 U.S.C. § 8601).

36. Sports Medical Licensure Clarity Act of 2018, 15 U.S.C. § 8601.

37. NAT'L ATHLETIC TRAINERS' ASS'N, *supra* note 35.

38. 15 U.S.C. § 8601(a).

39. *Id.* § 8601(a)(1); *see also* NAT'L ATHLETIC TRAINERS' ASS'N, *supra* note 35.

40. NAT'L ATHLETIC TRAINERS' ASS'N, *supra* note 35.

41. The Federal Register notice that implemented the Department of Veterans Affairs ("VA") telehealth licensure flexibility regulation associated with 38 U.S.C. § 1730C underscores the following: to ensure all VA beneficiaries have access to health care services—including those in rural or medically underserved areas—Congress directed the VA to allow providers to provide telehealth across state lines, notwithstanding some states' licensure laws that could limit telehealth access and jeopardize provider credentials for the unauthorized practice of medicine. Authority of Health Care Providers to Practice Telehealth, 83 Fed. Reg. 21897, 21898 (May 11, 2018) (to be codified at 38 C.F.R. pt. 17).

II. STATE REGULATION OF MEDICAL LICENSURE AND REFORMS

A state's "Medical Practice Act" provides the state's medical board with the authority to set and enforce the parameters for physician licensure and medical practice within that state.[42] Accordingly, a physician generally must obtain a medical license in the state where the patient is located.[43] The patchwork of state licensure laws is an obstacle to telemedicine expansion because a physician must complete the traditional licensure process, or fit the requirements for an exception or waiver, within each state where a patient is located.[44]

Although physician licensure requirements vary by state, some requirements are shared between states. For example, requirements such as education, residency training, passage of a national licensing exam, and mental, moral, and physical fitness to practice medicine are common across states.[45] But even so, "the process of obtaining a license in another state is often slow, burdensome, and costly."[46]

This Part reviews the variety of state efforts that attempt to ease the burdens on physicians who wish to care for patients from multiple states. These legal reforms include: (1) state licensure waivers or exceptions; (2) the Interstate Medical Licensure Compact; (3) the Uniform Telehealth Act of 2022; (4) medical licensure by reciprocity or endorsement; and (5) state approaches that

42. *See* Gupta & Sao, *supra* note 29, at 393.

43. *See* Dent v. West Virginia, 129 U.S. 114, 122–23 (1889).

44. *See* discussion *infra* Section II.A.

45. *About Physician Licensure: How Physicians Gain Licenses to Practice Medicine*, FSMB, https://www.fsmb.org/u.s.-medical-regulatory-trends-and-actions/guide-to-medical-regulation-in-the-united-states/about-physician-licensure/ [https://perma.cc/7NP9-STNQ (staff-uploaded archive)].

46. U.S. DEP'T OF HEALTH & HUM. SERVS., U.S. DEP'T OF THE TREASURY & U.S. DEP'T OF LAB., REFORMING AMERICA'S HEALTHCARE SYSTEM THROUGH CHOICE AND COMPETITION 37 (2018), https://www.hhs.gov/sites/default/files/Reforming-Americas-Healthcare-System-Through-Choice-and-Competition.pdf [https://perma.cc/SAC4-A47B (staff-uploaded archive)]. The medical license approval processes vary. Per the American Medical Association, applicants should be prepared to wait at least two months after application submission for licensure to be granted. Georgia Garvey, *Medical License Requirements: What Physicians Should Know*, AM. MED. ASS'N (Apr. 28, 2026), https://www.ama-assn.org/medical-residents/transition-resident-attending/medical-licensing-requirements-what-physicians [https://perma.cc/GHE3-U9UD]. On the cost issue, Massachusetts requires a $600 fee for a full medical license. *Board of Registration in Medicine—Schedule of Fees*, COMMONWEALTH OF MASS., https://www.mass.gov/info-details/board-of-registration-in-medicine-schedule-of-fees [https://perma.cc/3SD8-KTJW]. California's process includes a license application fee of $674, and once that application is complete, an initial license fee of $1,176. *Physicians and Surgeons*, MED. BD. OF CAL., https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Apply/Physicians-and-Surgeons-License/Fees.aspx [https://perma.cc/HR3B-BJBY]. These fees do not include the oft-expensive renewal fees to maintain the physician license over time. *See* Annie Sciacca, *California's Medical Board Can't Pay Its Bills, but Doctors Resist Proposed Fixes*, CAL. HEALTHLINE (Aug. 24, 2023), https://californiahealthline.org/news/article/california-medical-board-finances-doctors-license-fees/ [https://perma.cc/SXP5-53TK] (explaining that the license renewal fee is currently $863 and may increase to $1,289 every two years).

involve a combination of these reforms. However, such reforms have not resulted in a truly portable medical license. They have also failed to eliminate telemedicine barriers created by the collage of state licensure laws or to reduce the financial burden of maintaining multiple licenses.

A. *State Licensure Waivers or Exceptions*

Once the COVID-19 public health emergency began, states sought to address the increased need for virtual health care.[47] As a result, most states developed special licenses or waivers to allow physicians to practice medicine across multiple states, thereby expanding access to telemedicine.[48] For instance, the Medical Licensure Commission of Alabama temporarily allowed out-of-state physicians to provide care in the state via emergency medical licenses.[49] Other states required specific registration with the state's medical board.[50]

Today, many states have allowed their COVID-19-related licensure flexibilities to expire.[51] Others permanently amended their licensure standards to allow out-of-state physicians to provide telehealth services via special-purpose licenses.[52] Nevertheless, these varying legal and regulatory standards still create a collage of licensing requirements that present legal barriers to physicians aiming to provide care to patients in multiple states.

B. *The Interstate Medical Licensure Compact*

The Interstate Medical Licensure Compact (the "Compact" or the "IMLC") is a more promising legal reform that has attempted to target the

47. *See* Allyson E. Gold, Alicia Gilbert & Benjamin J. McMichael, *Socially Distant Health Care*, 96 TUL. L. REV. 423, 444–45 (2022); Julia Shaver, *The State of Telehealth Before and After the COVID-19 Pandemic*, 49 PRIM. CARE: CLIN. OFF. PRAC. 517, 519 (2022).

48. Meighan Parker, *Come As You Are?: Democratizing Healthcare Through Black Church-Telehealth Initiatives*, 25 COLUM. SCI. & TECH. L. REV. 108, 129 (2023).

49. FED'N OF STATE MED. BDS., U.S. STATES AND TERRITORIES MODIFYING REQUIREMENTS FOR TELEHEALTH IN RESPONSE TO COVID-19 1 (2023), https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf [https://perma.cc/B58E-NN4B].

50. Minnesota's 2023 statute governing "interstate practice of telehealth" allows out-of-state physicians to provide telehealth services to patients in Minnesota if, among other requirements, the physician annually registers with Minnesota's Board of Medical Practice. *See* MINN. STAT. § 147.032(1)(a)(4) (2023); Parker, *supra* note 48, at 129.

51. For a discussion of Delaware's COVID-19-related licensure laws, see FED'N OF STATE MED. BDS., *supra* note 49, at 6. Although some states' licensing waivers (for example, Florida's and Georgia's licensing waivers) have expired, some have special registration or licenses for out-of-state physicians who are caring for patients via telehealth. *Id.* at 6–8. *See generally* Carmel Shachar, Kaylee Wilson & Ateev Mehrotra, *Increasing Telehealth Access Through Licensure Exceptions*, 331 JAMA 19 (2024) (describing some current exceptions, including those for follow-up care for existing physician-patient relationships and screening for certain specialties).

52. *See, e.g.*, FED'N OF STATE MED. BDS., *supra* note 49, at 17 (describing Nevada's Special Purpose Medical Licenses).

collage of state medical licensing laws. The Compact is a legal agreement between forty-four states, the District of Columbia, and Guam[53] that "significantly streamline[s] the licensing process for physicians who want to practice in multiple states."[54] States can voluntarily join the Compact after their state legislature introduces and passes a bill allowing the state to join.[55] Once a state is a member, eligible physicians can submit one application to the Compact and then receive separate licenses from each member state.[56] Most notably, the licenses are issued by the participating states, not by the Compact.[57] Thus, the participating states remain responsible for setting medical licensing standards and practice requirements within their jurisdictions, such as the scope of practice and disciplinary standards.[58] As a result, the Compact does not disrupt the state-centric licensing regime.

But the Compact presents several drawbacks. First, although an overwhelming majority of the states have joined the Compact, it still has not reached full participation. Physicians seeing patients in states that have *not* joined the Compact must complete the licensure pathways for each of those states. For example, South Carolina has not joined the Compact.[59] Physicians may be discouraged from pursuing licensure in states like South Carolina that have neither joined the Compact nor created a broad licensure waiver for

53. *See* Gerry Carpenter, *Interstate Medical Licensure Compact States List and Guide for 2026*, COMPHEALTH (Mar. 18, 2026), https://comphealth.com/resources/interstate-medical-licensure-compact [https://perma.cc/UR42-EF6S]; *Participating States*, INTERSTATE MED. LICENSURE COMPACT, https://imlcc.com/participating-states/ [https://perma.cc/ZV6T-MGMY] [hereinafter IMLC, *Participating States*]; Information Release, Interstate Med. Licensure Compact Comm'n, Alaska Finalizes Legislation–Welcomed as the 44th State Member of the Interstate Medical Licensure Compact (June 26, 2026) (on file with the North Carolina Law Review).

54. *General FAQs About the Compact*, INTERSTATE MED. LICENSURE COMPACT, https://www.imlcc.com/faqs/ [https://perma.cc/748F-6H7Y] [hereinafter IMLC, *General FAQs*] (describing the Compact at a high level in the "What is an interstate compact?" FAQ).

55. *Id.* (explaining in the "How does a state join the Compact?" FAQ that, to participate, a state legislature must introduce and enact authorizing legislation).

56. *See id.*

57. *See id.*

58. *See id.* (emphasizing, in response to "Does the Compact supersede a state's authority over the practice of medicine in any way?," that "[t]he Compact does not change in any way a state's Medical Practice Act, or a state's full authority in administering its duties of oversight. The Compact simply creates another pathway for licensure.").

59. *See* INTERSTATE MED. LICENSURE COMPACT, *supra* note 53.

telemedicine practice.[60] Notably, South Carolina is facing more severe physician shortages than some other states.[61]

Second, state participation in the Compact is *voluntary*. Thus, there is no guarantee that the current rate of participation will not decrease by a participating state's voluntary withdrawal from the Compact or membership termination by a vote of the Compact's Commission.[62] The IMLC's bylaws permit a state to voluntarily withdraw from the Compact by repealing the statute that authorized the state to join the Compact.[63] Additionally, the Compact's Commission may vote to terminate a participating state's membership.[64] According to one rule, titled "Notice to Licensees Upon Withdrawal or Termination of Membership in the Compact," a withdrawing state must send notices within ninety days of enacting a withdrawal statute to licensees who were licensed in the withdrawing state through the Compact and to licensees who list the withdrawing state as their state of principal license.[65] Similarly, a terminated state must also notify its licensees of the membership termination within ninety days.[66] Upon a participating state's withdrawal or termination from the IMLC, licensees who had been licensed in that state may not be permitted to renew other licenses through the Compact.[67] As of publication, no state has withdrawn or been terminated from the IMLC. However, such an occurrence is not outside of the realm of possibility,

60. South Carolina requires licensure for telemedical practice, unless the out-of-state physician provides certain consultations or ongoing care. *See* S.C. CODE ANN. § 40-47-37(A)(4) (2024) ("A licensee who provides care, renders a diagnosis, or otherwise engages in the practice of medicine . . . via telemedicine as defined in Section 40-47-20(53) shall: . . . be licensed to practice medicine in [South Carolina]; provided, however, a licensee need not reside in this State so long as he or she has a valid, current South Carolina medical license."); § 40-47-37(A)(4)(a)–(b) (discussing the licensure exception for informal consultations or ongoing care by an out-of-state physician).

61. *See* CICERO INST., SOUTH CAROLINA PHYSICIAN SHORTAGE FACTS (2024), https://ciceroinstitute.org/wp-content/uploads/2024/01/SC-Physician-Shortage-Facts-one-pager-1-31-2024.pdf [https://perma.cc/9EPR-QUPP].

62. *See* INTERSTATE MED. LICENSURE COMPACT COMM'N, RULE ON NOTICE TO LICENSEES UPON WITHDRAWAL OR TERMINATION OF MEMBERSHIP IN THE COMPACT 1 (2019) [hereinafter RULE ON NOTICE], https://imlcc.com/wp-content/uploads/2020/02/IMLCC-Rule-Chapter-8-Rule-on-Notice-to-Licensees-Upon-Withdrawal-or-Termination-of-Membership-in-the-Compact-Adopted-11-19-2019.pdf [https://perma.cc/PN5B-UJLX].

63. INTERSTATE MED. LICENSURE COMPACT COMM'N, INTERSTATE MEDICAL LICENSURE COMPACT 22 (2015) [hereinafter IMLC COMPACT LAW], https://imlcc.com/wp-content/uploads/2021/02/IMLC-Compact-Law.pdf [https://perma.cc/EE3Y-CB8B].

64. *See id.* at 20.

65. *See* RULE ON NOTICE, *supra* note 62, at 1–2 ("The notice to licensees whose state of principal license is the withdrawing state shall inform licensees that they must maintain a state of principal license through the compact under Compact Rule 4.5. The notice shall inform the licensees that they will not be able to renew their license in any state through the compact if they have not redesignated their state of principal license prior to the withdrawing state's exit from the Compact.").

66. *Id.* at 2–3.

67. *Id.*

especially given that the Compact's bylaws leave open the grounds for when a default has occurred, which may result in membership termination.[68]

Third, unlike the Nurse Licensure Compact,[69] the IMLC does not grant a portable multi-state license.[70] As a result, physician participation is subject to numerous fees imposed by the Compact itself and the medical boards of the participating states. After paying the initial fee of $700 to participate in the Compact, physicians must also pay initial fees to each state where they want to practice.[71] For instance, Texas has one of the highest fees ($833.25) to obtain licensure via the Compact, and Alabama has the lowest initial fee of $75.[72] Physicians must also pay renewal fees for each medical license obtained through the IMLC.[73]

C. *Uniform Telehealth Act of 2022*

The Uniform Telehealth Act of 2022 ("UTA") is another limited approach to improving physician license flexibility. The UTA sets forth a model of telehealth laws, including registration requirements for out-of-state practitioners, that states may voluntarily enact to harmonize certain aspects of telehealth regulation across state lines.[74] The UTA aims to "expand the circumstances under which appropriately qualified out-of-state practitioners are permitted to deliver telehealth services to patients located in the enacting state."[75] To that end, Section 7 of the UTA describes the process by which out-

68. INTERSTATE MED. LICENSURE COMPACT, BYLAWS: ARTICLE IX WITHDRAWAL, DEFAULT, AND TERMINATION 1 (2015), https://imlcc.com/wp-content/uploads/2020/02/IMLC-Bylaws-Article-IX-Withdrawal-Default-and-Termination.pdf [https://perma.cc/4YFL-Q6RQ]; IMLC COMPACT LAW, *supra* note 63, at 20 ("The grounds for default include, *but are not limited to*, failure of a member state to perform such obligations or responsibilities imposed upon it by the Compact, or the rules and bylaws of the Interstate Commission promulgated under the Compact." (emphasis added)). Section 18 also explains: "[t]ermination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted." *Id.*

69. The Nurse Licensure Compact is an agreement between participating U.S. states and territories that allows nurses to have a multi-state license, facilitating nursing practice in all participating states without obtaining additional licenses. *See How It Works*, NCSBN, https://www.nursecompact.com/how-it-works.page [https://perma.cc/Y3M8-SDZE].

70. *See* Khan, *supra* note 20, at 600–01 (citing *Nurse Licensure Compact*, NCSBN, https://www.nursecompact.com [https://perma.cc/NUE7-4LCD]).

71. *See What Does It Cost?*, INTERSTATE MED. LICENSURE COMPACT, https://www.imlcc.com/what-does-it-cost/ [https://perma.cc/4LKH-PQWX].

72. *See id.*

73. *See Renew a License*, INTERSTATE MED. LICENSURE COMPACT, https://imlcc.com/renew/ [https://perma.cc/ZZ24-KY72]. In addition to the state's renewal fees, the Compact assesses a service fee of $25 for each license renewed through the Compact. INTERSTATE MED. LICENSURE COMPACT COMM'N, RULE ON FEES 2 (2017), https://imlcc.com/wp-content/uploads/2020/02/IMLCC-Rule-Chapter-3-Administrative-Rule-on-Fees-Amended-May-22-2017.pdf [https://perma.cc/UD8B-B4D3].

74. *See* UNIF. TELEHEALTH ACT § 7 (UNIF. L. COMM'N 2022).

75. *Id.*, prefatory note.

of-state physicians may register to provide care in the enacting state.[76] The UTA notes that a licensed, out-of-state physician's care must comply with professional practice standards and the scope of practice limitations where the patient is located.[77] Currently, only Washington State has enacted the UTA, and Washington, D.C. has passed "substantially similar" legislation.[78] Thus, the UTA presents complications similar to those of the IMLC, particularly related to incomplete state participation and the risk of repeal.

D. *Medical License Reciprocity or Endorsement*

A different approach is physician licensure by reciprocity or endorsement. Licensure by reciprocity provides a streamlined process through which specific jurisdictions have agreed to grant medical licenses to physicians in jurisdictions subject to the agreement.[79] For instance, the District of Columbia, Maryland, and Virginia medical boards have an agreement to recognize the medical licenses of physicians in those jurisdictions.[80] Through this process, physician applicants from D.C., Maryland, and Virginia are granted a license by reciprocity that is portable in those jurisdictions without having to complete the extensive application process of the traditional licensure pathway.[81] Once granted a license by reciprocity, a physician is only responsible for paying

76. Out-of-state physicians are required to register with a state-designated board and fulfill other requirements, such as holding an "active, unrestricted license or certification in another state that is substantially equivalent to a license or certification issued by the registering board to provide health care." *Id.* § 7(a)(2). The physician should not be subject to any pending disciplinary investigation by a board. *Id.* § 7(a)(3).

77. *Id.* § 4 cmt. 1 ("In providing the services, the practitioner is subject to other law of this state, including law of this state that requires licensure, registration, certification, or other authorization to deliver health care and law of this state that limits the practitioner's scope of practice. For example, a nurse practitioner who holds a license in another state would need to obtain a license or other appropriate authorization to provide telehealth services in this state and would be subject to any restrictions this state places on nurse practitioners' practice, such as limits on their ability to prescribe particular drugs or requirements for collaborative agreements or supervision. . . . Section 5 of this act makes clear that a practitioner providing telehealth services to a patient located in this state is required to adhere to the relevant professional practice standards in this state; the standard of care applicable to in-person care also applies to comparable telehealth services delivered to a patient in this state.").

78. *See Telehealth Act*, UNIF. L. COMM'N, https://www.uniformlaws.org/committees/community-home?CommunityKey=2348c20a-b645-4302-aa5d-9ebf239055bf#LegBillTrackingAnchor [https://perma.cc/BBB2-DT9L] (noting that Washington D.C. enacted "substantially similar" legislation).

79. AM. MED. ASS'N, AMA ISSUE BRIEF: TELEHEALTH LICENSURE 2 (2023), https://www.ama-assn.org/system/files/issue-brief-telehealth-licensure.pdf [https://perma.cc/Q4VA-97H6].

80. *See id.* (referencing the DMV Reciprocity Pathway and the Maryland Expedited License Pathways).

81. *See* D.C. HEALTH, DMV RECIPROCITY PATHWAY 1 (2023), https://dchealth.dc.gov/sites/default/files/dc/sites/doh/service_content/attachments/BOM%20DMV%20Reciprocity%20Notification%203.15.2023.pdf [https://perma.cc/LF98-M625].

minimal fees, which "not only saves time, money, and stress for the regional healthcare system, but also benefits patients in need of care."[82]

Similarly, states with licensure by endorsement allow a medical board in a sister state to essentially "endorse" physicians who are already licensed in that state.[83] As a result, the physician applicant could receive licensure by endorsement if the physician meets specific qualifications, such as active practice in the endorsing state, to obtain a medical license in the state that has established this pathway.[84]

E. *Combined Approaches*

Additionally, states have implemented a combination of these legal reforms to offer a more robust system of licensure flexibility for telehealth. Although Maryland is a participant in the IMLC and allows license reciprocity with D.C. and Virginia, Maryland still offers the licensure by endorsement pathway to physician applicants.[85] This topic raises the following questions: (1) why would a state need to offer a variety of pathways to multi-state licensure; and (2) is this spectrum of approaches the most efficient means of creating physician licensure flexibility, or does this variety further entrench the collage of state physician licensure laws and regulations?

The plethora of strategies indicates that many states have created or are interested in developing legal reforms to ease the burden on physicians by streamlining their licensure application processes. But the diversity of

82. *Maryland Expedited License Pathways*, MD. BD. PHYSICIANS, https://www.mbp.state.md.us/mbp_expedited_License/default.aspx [https://perma.cc/SM3C-HTJQ]; MSDC Staff, *MSDC President Susanne Bathgate Calls for License Reciprocity "ASAP"—and Gets It*, MED. SOC'Y D.C. (Mar. 15, 2023), https://www.msdc.org/detail/news/2023/03/15/msdc-president-susanne-bathgate-calls-for-license-reciprocity-asap-and-gets-it [https://perma.cc/U5MC-BZ92]; *see also* D.C. HEALTH, *supra* note 81 ("We understand that obtaining a license can be a lengthy process for physician applicants and due to the close proximity and geographical relationship of the District of Columbia, Maryland, and Virginia, many physicians need licensure in all three (3) jurisdictions. The purpose of the expedited pathway allows the Board to minimize the administrative burden on the applicant and staff, while still concurrently ensuring minimum qualifications are met to protect the public.").

83. *See generally* U.S. GEN. ACCT. OFF., MEDICAL LICENSING BY ENDORSEMENT: REQUIREMENTS DIFFER FOR GRADUATES OF FOREIGN AND U.S. MEDICAL SCHOOLS (1990) https://www.gao.gov/assets/hrd-90-120.pdf [https://perma.cc/YFN5-3AD8] (describing varying requirements for endorsement across states).

84. *See, e.g.*, *Maryland Expedited License Pathways*, *supra* note 82; HAW. MED. BD., REQUIREMENTS AND INSTRUCTIONS—PHYSICIAN (MD) LICENSE BY ENDORSEMENT, https://cca.hawaii.gov/wp-content/uploads/2026/01/Physician-MD-License-by-Endorsement_07.24R.pdf [https://perma.cc/A4VH-FRZZ]; VA. TELEHEALTH NETWORK, VIRGINIA LICENSURE BY ENDORSEMENT: QUICK FACTS, https://www.ehealthvirginia.org/wp-content/uploads/2021/09/Virginia-Licensure-by-Endorsement-Quick-Facts.pdf [https://perma.cc/B62R-CN2X].

85. *See, e.g.*, *Interstate Medical Licensure Compact (IMLC)*, MD. BD. PHYSICIANS, https://www.mbp.state.md.us/resource_information/res_pro/resource_practitioner_compact.aspx [https://perma.cc/XQ34-QN3V] (providing the IMLC application instructions); *Maryland Expedited License Pathways*, *supra* note 82 (describing various expedited pathways to medical licensure).

approaches also suggests that no one option is comprehensive, requiring others to fill the gaps.

These legal reforms have helped address the physician licensure barrier, but they have failed to mitigate the complicated pathways physicians must research and undertake to actually obtain licensure in multiple jurisdictions. While reasonable minds may disagree about the merits of each approach, it is clear that none fully resolves the fragmented landscape of state licensure requirements. Instead, this Article's Proposed SMLRA would allow certain licensed physicians to have a portable license that would eliminate the difficulties of navigating these different pathways. Part III explores the Constitution's Full Faith and Credit Clause as a source of authority for the Proposed SMLRA.

III. THE FULL FAITH AND CREDIT CLAUSE

The Full Faith and Credit Clause of Article IV empowers Congress to enact legislation requiring physician license reciprocity. The Clause states: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."[86] One of the Clause's key aims is to promote certainty and to "minimize friction inherent in multistate problems of enforcement of laws and judgments."[87]

Despite the Clause's noble goals, it has been the subject of much scholarly debate. This Part begins with a concise history of the Clause to set the stage for a description of its two diverging interpretations. The prevailing approach, grounded in Supreme Court doctrine, focuses on the Clause's first sentence, known as the Self-Executing Provision. According to Supreme Court doctrine, the Self-Executing Provision commands states to recognize the judicial judgments and certain public acts of sister states.[88] In contrast, this Article refers to the second interpretation as the "non-self-executing" view because it deems the Self-Executing Provision a mere evidentiary standard that does not provide directives to the states.[89] Instead, the Clause's force originates from the second sentence, known as the Effects Provision, whereby Congress may "prescribe" the "Effect" of state acts and judicial judgments.[90]

Under both views, the Full Faith and Credit Clause specifically concerns three categories of interstate materials: judicial proceedings, public Acts, and

86. U.S. CONST. art. IV, § 1.

87. WILLIAM L. REYNOLDS & WILLIAM M. RICHMAN, THE FULL FAITH AND CREDIT CLAUSE: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION 10 (2005).

88. *See* discussion *infra* Section III.B.

89. *See* discussion *infra* Section III.C.

90. *See* discussion *infra* Section III.D.

records. For simplicity, this Article will refer to these materials collectively as the Clause's "Categories." The Court has interpreted "judicial Proceedings" as final judgments "rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment."[91] "[P]ublic Acts" include actions by a state legislature (i.e., state laws or statutes).[92] Records, on the other hand, can represent a wide range of state judicial and nonjudicial documents, such as birth certificates.[93] Because the Supreme Court has proffered limited guidance on the records category, this Article focuses on the full faith and credit owed to final judicial judgments and state laws.[94]

A. *A Brief History of the Full Faith and Credit Clause*

To address cross-jurisdictional conflicts on the recognition of judicial judgments, Article IV of the Articles of Confederation commanded that "[f]ull faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state."[95] The Confederation's Full Faith and Credit Clause ("Confederation's Clause") was limited to "records, acts, and judicial proceedings" of the courts, but courts were still uncertain how much legal weight those subjects should receive in another jurisdiction.[96] In other words, did the Articles require all courts to give those materials substantive effect, or were states merely required to authenticate them as evidence with the discretion to deny the substantive effect?[97] Given the lack

91. Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998).

92. *See* Hughes v. Fetter, 341 U.S. 609, 611 (1951). *See generally* David E. Engdahl, *The Classic Rule of Faith and Credit*, 118 YALE L.J. 1584, 1624 (2009) (discussing how the choice of "public Acts" over "acts of the Legislatures" in the Clause provided greater specificity).

93. *See* Anna Marie D'Ginto, *The Birth Certificate Solution: Ensuring the Interstate Recognition of Same-Sex Parentage*, 167 U. PA. L. REV. 975, 999 (2019).

94. *See id.* ("The obscurity of the proper treatment of such records has been noted by numerous commentators and, in conjunction with a recognition of the increasing significance of records issued by state executive offices in citizens' daily lives, has led to calls for clarification from the Supreme Court or Congress."); Darren A. Prum, *The Full Faith and Credit Clause: Do Factual Executive Documents Require Equivalent Treatment Between States?*, 23 U. FLA. J.L. & PUB. POL'Y 151, 165 (2012) ("Curiously, none of the opinions providing precedential authority used the clause as a sole basis for requiring the acknowledgment of factually based executive branch records."); Meighan Parker, *The Situs Fiction: Telemedicine and the Strict Patient Location Rule* (2026) (working title for unpublished manuscript) (on file with author) [hereinafter Parker, *The Situs Fiction*].

95. ARTICLES OF CONFEDERATION OF 1781, art. IV, cl. 2.

96. *See* Stephen E. Sachs, *Full Faith and Credit in the Early Congress*, 95 VA. L. REV. 1201, 1224–26 (2009) ("The divergence between 'authentication' and 'effect' interpretations of the Confederation's Clause soon appeared in contemporary state court decisions. The strongest statement in favor of an 'effects' reading may have come from the South Carolina case of *Jenkins v. Putnam*, which concerned the enforcement of the admiralty judgment of a prize court. . . . By contrast, a powerful voice for an 'authentication' reading came from the Pennsylvania case of *James v. Allen*, which construed the effect in that state of a debtor previously discharged from civil arrest by a New Jersey court."); Ralph U. Whitten, *Full Faith and Credit for Dummies*, 38 CREIGHTON L. REV. 465, 467–68 (2005) [hereinafter Whitten, *For Dummies*].

97. *See, e.g.*, Sachs, *supra* note 96, at 1224–26.

of clarity, James Madison described the Confederation's Clause's meaning as "'extremely indeterminate; and . . . of little importance under any interpretation which it can bear.'"[98]

The Constitution's Full Faith and Credit Clause ("Constitution's Clause") was largely modeled after the similar provision in the Articles of Confederation, but with specific modifications to strengthen the Clause's clarity.[99] One alteration was to include "faith and credit" for legislative acts because the Confederation's Clause only addressed the acts of "courts and magistrates."[100] As a result, the Constitution's Clause provides that "Full Faith and Credit shall be given . . . to the public Acts . . . of every other State."[101]

The Constitution's Clause also differs from the Confederation's Clause by its inclusion of the Effects Provision, a "grant of congressional power to specify the authentication and effect of sister-state records."[102] After a series of other amendments, the Constitution's Clause ultimately included the current Effects Provision's grant of constitutional power to Congress regarding more than just records—the Effects Provision applies to public acts, records, and judicial proceedings in other states.[103]

Shortly after the Constitution's ratification, the First Congress leveraged its power under the Effects Provision to enact the Full Faith and Credit Statute of 1790 ("the implementing statute").[104] The current implementing statute of the Full Faith and Credit Clause, 28 U.S.C. § 1738, provides instructions for authenticating the records and judicial proceedings of any state court, as well as acts of any state's legislature that are admitted to another state's courts.[105] Furthermore, the Full Faith and Credit Statute adds that these authenticated acts, records, and judicial proceedings should be afforded "full faith and credit within every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."[106]

Yet, the Full Faith and Credit Statute has also been critiqued for its ambiguity.[107] What does it mean to provide one of the Clause's Categories, such as another state's judicial judgments or state legislative acts, with full faith and

98. *Id.* at 1229 (quoting THE FEDERALIST NO. 42, at 287 (James Madison) (Jacob E. Cooke ed., 1961)).

99. *Id.* at 1227.

100. *Id.*

101. U.S. CONST. art. IV, § 1.

102. Sachs, *supra* note 96, at 1227.

103. *Id.* at 1229.

104. Act of May 26, 1790, ch. 11, 1 Stat. 122 (1790) (codified as amended at 28 U.S.C. § 1738). Congress enacted the Full Faith and Credit Statute to clarify the scope of the directives. *See* Prum, *supra* note 94, at 163–64.

105. 28 U.S.C. § 1738.

106. *Id.*

107. *See, e.g.*, Sachs, *supra* note 96, at 1231–32.

credit? Are there any exceptions that allow a forum to not apply a sister-state's laws? These questions opened the door to the two different views of the Clause's full faith and credit command to sister states. As Section III.B elaborates, both interpretations hinge on the role of the Self-Executing Provision.

B. *The United States Supreme Court Doctrine and the Full Faith and Credit Clause*

1. The Self-Executing Provision

Supreme Court doctrine focuses on the Clause's command in the Self-Executing Provision. The Clause's Self-Executing Provision provides: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[108] Because this sentence includes "shall" in its directive,

> most . . . scholarship on the Full Faith and Credit Clause . . . [has] accepted the premise, found in the Supreme Court's precedent, that the first portion of the Clause provided a substantive command requiring states to give conclusive effect to state judgments and—in certain situations—to state acts.[109]

That precedent includes, for example, the first Full Faith and Credit Clause case—the 1813 case of *Mills v. Duryee*.[110] In relying on the implementing statute, the Court in *Mills* held that judgments of sister states were to be given conclusive effect in other states.[111] If "judgments of the state Courts," the Supreme Court explained, "ought to be considered prima facie evidence only[,] . . . [the Full Faith and Credit] [C]lause in the [C]onstitution would be utterly unimportant and illusory."[112] Thus, the *Mills* Court held that the full faith and credit command meant more than a mere evidentiary mandate for judicial judgments: out-of-state judgments are not only proof to be considered, but must be given full binding effect in the forum state.[113]

108. U.S. CONST. art IV § 1.

109. Jeffrey M. Schmitt, *A Historical Reassessment of Full Faith and Credit*, 20 GEO. MASON L. REV. 485, 487 (2013).

110. 11 U.S. (7 Cranch) 481 (1813); Engdahl, *supra* note 92, at 1647–50.

111. *Mills*, 11 U.S. (7 Cranch) at 484 ("It remains only then to inquire in every case what is the effect of a judgment in the state where it is rendered. . . it is beyond all doubt that the judgment of the Supreme Court of New York was conclusive upon the parties in that state. It must, therefore, be conclusive here also.").

112. *Id.* at 485.

113. *Id.* at 484. Moreover, though the case primarily concerned the implementing statute, the Court's reference to the Clause in the previous quote is evidence that the Court was grappling with both the interpretations of the statute's language and its impact on the purpose of the Full Faith and Credit Clause. *Mills* is unclear as to whether the Court's holding suggests that the Full Faith and Credit

Afterward, the Court's rulings on the conclusive effect of out-of-state judgments were consistent with *Mills*.[114] But some scholars argue that the Court later expanded *Mills*'s holding to state that the Full Faith and Credit Clause on its own mandates that judgments, records, and the public Acts of another state be given the same conclusive effect as they would receive in the rendering state.[115] In *Chicago & Alton Railroad v. Wiggins Ferry Company*,[116] Chief Justice Waite suggested the following in dictum as "clearly the logical result of the principles announced as early as 1813 in *Mills v. Duryee* . . . ."[117]:

> Without doubt the constitutional requirement, Art. IV, § 1, that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state," implies that the *public acts of every state* shall be given the same effect by the courts of another state that they have by law and usage at home.[118]

Chief Justice Waite's assertion not only signaled that another state's judgments should receive conclusive effect in sister-state courts, but also that other state's laws should as well, even though the implementing statute did not reference public acts at all.[119]

Subsequent cases adhered to the reinterpreted *Mills* holding in *Chicago & Alton Railroad*, framing the plain language of the Clause's Self-Executing Provision as a constitutional directive on the conclusive effect of a sister-state's

Clause intrinsically commands that judgments receive conclusive effect or whether that holding is based on the implementing statute. *See* Engdahl, *supra* note 92, at 1649 ("Justice Story in *Mills* did not say the Clause by itself gave sister-state judgments conclusive effect. Instead, just like Justices Wilson and Washington earlier at circuit, he attributed the effect solely to the 1790 Act."); *see also* Schmitt, *supra* note 109, at 512 ("[T]he Court's opinion could also be read to say that the 1790 Act—and not the Constitution—made state judgments conclusive rather than prima facie evidence."). Schmitt further writes: "While *Mills* holds that conclusive effect must be given to state judgments, it is unclear whether this holding was derived from the 1790 Act, the Constitution, or both." *Id.* at 521 (footnote omitted).

114. *See, e.g.*, Schmitt, *supra* note 109, at 513 n.158 (detailing example cases such as Hampton v. McConnel, 16 U.S. (3 Wheat.) 234, 235 (1818)); Christmas v. Russell, 72 U.S. (5 Wall.) 290, 301 (1866) ("Speaking of the [1790] act of Congress, Judge Story says it has been settled, upon solemn argument, that that enactment does declare the effect of the records as evidence when duly authenticated. . . . 'If a judgment is conclusive in the State where it was pronounced, it is equally conclusive everywhere' in the courts of the United States.") (quoting 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1313 (3d ed.)).

115. *See, e.g.*, Engdahl, *supra* note 92, at 1647–54; Ralph U. Whitten, *The Original Understanding of the Full Faith and Credit Clause and the Defense of Marriage Act*, 32 CREIGHTON L. REV. 255, 327–28 (1998) [hereinafter Whitten, *The Original Understanding*] (arguing that *Mills* did not address the Clause's Self-Executing Provision).

116. Chi. & Alton R.R. v. Wiggins Ferry Co., 119 U.S. 615 (1887).

117. *Id.* at 622 (dictum).

118. *Id.* (emphasis added).

119. The 1790 statute provided evidentiary rules for judgments and records, not statutes. *See* Act of May 26, 1790, ch. 11, 1 Stat. 122 (codified as amended at 28 U.S.C. § 1738); *Chi. & Alton R.R.*, 119 U.S. at 622.

judgments, records, and public Acts.[120] Thus, the Clause's command in the first sentence was "self-executing," not evidentiary.[121] Moreover, states were obligated to give the Clause's Categories conclusive effect without congressional legislation providing the "Effect thereof."[122]

Since then, a forum state must accord conclusive effect to final judicial judgments rendered by a sister-state's court with proper jurisdiction over the case and the parties, even if enforcement would violate the forum state's public policy or involve conduct that would otherwise be illegal there.[123] However, the Court has limited the "self-executing" directive on the full faith and credit owed to some out-of-state judgments, such as penal judgments, and to another state's laws.[124]

120. *See, e.g.*, Harris v. Balk, 198 U.S. 215, 221 (1905).

121. *See* Larry Kramer, *Same-Sex Marriage, Conflict of Laws, and the Unconstitutional Public Policy Exception*, 106 YALE L.J. 1965, 1976 (1997). *See generally* George P. Costigan, Jr., *The History of the Adoption of Section I of Article IV of the United States Constitution and a Consideration of the Effect on Judgments of That Section and of Federal Legislation*, 4 COLUM. L. REV. 470 (1904) (providing a historical analysis of the Full Faith and Credit Clause).

122. U.S. CONST. art. IV, § 1. To the "Effects" Clause, several scholars have argued Congress may help states provide full faith and credit by refining, enforcing, and implementing guidance on the Self-Executing Provision. *See, e.g.*, Kramer, *supra* note 121, at 2003 ("Given its language, it is more credible to read the Full Faith and Credit Clause as imposing a mandatory requirement of faith and credit (defined by the Supreme Court), with the Effects Clause authorizing Congress to enact whatever national legislation is needed to refine and implement it. Refine and implement, not undermine or abolish--which means that even federal legislation must be tested against, and shown to be consistent with, the core requirements of full faith and credit."); Andrew Koppelman, *Dumb and DOMA: Why the Defense of Marriage Act Is Unconstitutional*, 83 IOWA L. REV. 1, 20–21 (1997) ("The Effects Clause is immediately preceded by a clear, self-executing command, in the first sentence of the Full Faith and Credit Clause, that full faith and credit 'shall be given' to each state's laws. The second sentence should not be read in a way that contradicts the first. The grant of power is thus limited by its context: Congress may not exercise its Effects Clause powers in a way that contradicts the self-executing command."); Rex Glensy, Note, *The Extent of Congress' Power Under the Full Faith and Credit Clause*, 71 S. CAL. L. REV. 137, 165–66 (1997) ("In light of the goals of the clause, the current state of law, and the precedent in this area, the conclusion must be that the first sentence of the clause is the floor under which nothing can fall, while the second sentence ensures that a higher level of interstate cohesion can be achieved should the national legislature deem it advisable. . . . The second sentence of the clause can therefore be explained as an ability by Congress to enlarge the command. . . . Therefore, '[u]nder the full faith and credit clause, it would seem that the function confided to Congress is that of promoting and not curtailing the extraterritorial recognition of state judgments and public acts.'" (quoting Paul A. Freund, *Chief Justice Stone and the Conflict of Laws*, 59 HARV. L. REV. 1210, 1230 n.42 (1946)). Compare discussion on the scope of the Effects Clause with corresponding notes in *infra* Section III.D.1.

123. *See, e.g.*, Fauntleroy v. Lum, 210 U.S. 230, 237 (1908); Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 805 (1985) ("[A] judgment issued without proper personal jurisdiction over an absent party is not entitled to full faith and credit elsewhere . . . .").

124. *See* discussion *infra* Subsections III.B.2 and III.B.3.

2. The Penal Judgments Exception

The penal judgments exception permits a state to decline enforcement of another state's penal judgments.[125] Because such judgments are grounded in a state's penal laws, the relevant question is whether penal laws are *enforceable* in other states. Since Chief Justice Marshall's 1825 discussion in *The Antelope*, it has been well understood that a state is not required to enforce the penal, or criminal, laws of other jurisdictions.[126]

Later, in *Huntington v. Attrill*,[127] the Court clarified that a law does not have to be included in the criminal statutory code or otherwise labeled as a criminal law to be considered a penal law.[128] Instead, the penal law inquiry asks "whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual . . . ."[129] Quoting Blackstone, the majority described the following penal law test:

> Wrongs are divisible into two sorts or species: *private wrongs* and *public wrongs*. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed *civil injuries*: the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of *crimes* and *misdemeanors*.[130]

Huntington's penal law test indicates that the penal judgment exception is not restricted to decisions based on criminal laws, which undoubtedly fit into the penal judgment exception. If a civil law's aim is to punish a wrong to the public, then the civil judgment pursuant to that law will be considered a penal judgment and subject to the exception.[131] In contrast, if a civil law's aim is to "afford a private remedy to a person injured by the wrongful act," then the civil judgment based on that law will not meet the requirements for the penal judgments exception.[132] Thus, for judgments pursuant to criminal statutes and the former type of civil laws, a state is permitted to refuse full

125. *See generally* Walker McKusick, Comment, *The Penal Judgment Exception to Full Faith and Credit: How to Bind the Bounty Laws*, 99 WASH. L. REV. 649 (2024) (describing the penal judgment exception and the Full Faith and Credit Clause).

126. *See* Mark W. Janis, *The Recognition and Enforcement of Foreign Law:* The Antelope's *Penal Law Exception*, 20 INT'L L. 303, 303–05 (1986).

127. 146 U.S. 657 (1892).

128. *See id.* at 665–86. *See generally* Lindsay F. Wiley, *States as Shields*, 110 MINN. L. REV. 1 (2025) (parsing the distinction between public harms and private harms under the penal judgment exception).

129. *Huntington*, 146 U.S. at 668.

130. *Id.* at 668–69 (quoting 3 WILLIAM BLACKSTONE, COMMENTARIES *2).

131. *See id.*

132. *Id.* at 668–69, 674.

faith and credit (or conclusive effect) to those judgments under the penal judgments exception.[133]

3. Public Acts and the Public Policy Exception

Supreme Court jurisprudence has reiterated the public policy exception to a state's application of another state's laws. Though the plain language of the Full Faith and Credit Clause does not differentiate between the treatment of a sister-state's laws, records, and judgments, the Supreme Court has held that a forum state may be "guided by [its] 'public policy' in determining the *law* applicable to a controversy."[134] In contrast, there is no "'public policy exception' to the full faith and credit due *judgments*."[135]

But what types of justifications would fit into the public policy exception and exempt a state from applying another state's laws? A state can refuse to apply a sister-state's law that "outrages the public policy" of that state.[136] That outrage should be derived from some violation of its "fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal."[137] Accordingly, this exception is intended to be construed narrowly and reserved for the rare circumstances in which the application of a sister-state's law would offend the forum state's "fundamental principle of justice."[138]

In one of the leading public policy exception cases, *Pacific Employers Insurance Co. v. Industrial Accident Commission of California*,[139] the Court reiterated limitations on the Clause's applicability to out-of-state laws and explored the practical implications of requiring a state to enforce another state's law.[140] In that case, a Massachusetts resident sued a Massachusetts company for workers' compensation after suffering an injury in California.[141] After the California Industrial Accident Commission granted the out-of-state employee compensation under California's workers' compensation law, the employer's insurance carrier argued that California violated the Full Faith and Credit

133. *See* Mark D. Rosen, *Extraterritoriality and Political Heterogeneity in American Federalism*, 150 U. PA. L. REV. 855, 951 (2002) [hereinafter Rosen, *Extraterritoriality*] ("Full faith and credit is not applicable to criminal judgments . . . .").

134. *See* Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998); *see also* Franchise Tax Bd. of Cal. v. Hyatt, 538 U.S. 488, 497–99 (2003); Sun Oil Co. v. Wortman, 486 U.S. 717, 726 (1988); Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 819 (1985).

135. *Baker*, 522 U.S. at 233.

136. Loucks v. Standard Oil Co. of N.Y., 120 N.E. 198, 202 (N.Y. 1918).

137. *Id.*

138. *Id.*; Kramer, *supra* note 121, at 1972 ("[I]f courts took Judge Cardozo's language in *Loucks* seriously, the public policy exception would be very narrow and relatively unimportant.").

139. Pac. Emps. Ins. Co. v. Indus. Accident Comm'n, 306 U.S. 493 (1939).

140. *Id.* at 497–98.

141. *See id.*

Clause by not applying Massachusetts's applicable law.[142] The Court reasoned that commanding a state to be bound by the laws of a sister state would produce "the absurd result" that a state would be required to apply another state's law but not its own.[143] In recognizing that a strict application of the Clause's plain text would hinder a forum state's application of its own law, the Court acknowledged the Clause's "self-executing" command for state laws is not absolute.

Although it is well settled that the public policy exception limits enforcement of sister-state laws, Professor Larry Kramer has argued against recognizing such an exception altogether. Kramer has asserted that the Clause's main objective was to prohibit states from refusing to recognize laws or judgments that were unfavorable.[144] The public policy exception, he argues, allows states to "dismiss or ignore the laws of sister states," even though the "states were to be a community, with mutual obligations to respect each other's laws and judgments."[145] Despite this critique, the Court has clearly declared that states may invoke the public policy exception to avoid applying a sister-state's laws.[146]

142. *Id.* at 499–501. The Court stated that the Massachusetts law was applicable to the parties in Massachusetts because the case involved a Massachusetts contract of employment between a Massachusetts employee and employer. *See id.* Moreover, "[T]he provisions of the California statute awarding compensation for injuries to an employee occurring within its borders, and for injuries as well occurring elsewhere, when the contract of employment was entered into within the state, is not open to question." *Id.* at 500. Therefore, Massachusetts or California law could have been applied under general choice-of-law principles. *See id.*

143. *Id.* at 501 (citing Alaska Packers Ass'n v. Indus. Acc. Comm'n of Cal., 294 U.S. 532, 547 (1935)).

144. *See, e.g.*, Kramer, *supra* note 121, at 1986.

145. *Id.* This critique echoes some of the concerns in the "policy of hostility to the public Acts' of a sister State" exception to the public policy exception. *See* Franchise Tax Bd. of Cal. v. Hyatt (*Hyatt I*), 538 U.S. 488, 499 (2003) (quoting Carroll v. Lanza, 349 U.S. 408, 413 (1955)). For instance, in *Franchise Tax Board of California v. Hyatt (Hyatt II)*, 578 U.S. 171 (2016), the Court held that, under the Full Faith and Credit Clause, Nevada was not permitted to apply a special rule against a California agency, as opposed to a California law, that permitted damages beyond what it could award against Nevada's agencies. *See id.* at 178–80. Nevada claimed that its application of the special rule was based on "concerns that California's agencies 'operat[e] outside' the systems of 'legislative control, administrative oversight, and public accountability' that Nevada applies to its own agencies." *Id.* at 178 (quoting Franchise Tax Bd. of Cal. v. Hyatt, 130 Nev. 662, 694 (2014), *vacated and remanded by Hyatt II*, 578 U.S. 171 (2016)). The court was not convinced by this argument and instead reasoned that application of this special law was "hostile to [the laws of] another state." *Id.* As a result, Nevada had ignored "its own ordinary legal principles" and had "a constitutionally impermissible 'policy of hostility to the public Acts' of a sister State" in violation of the Full Faith and Credit Clause. *Id.* at 178–79 (quoting *Hyatt I*, 538 U.S. at 499). Notably, the Court suggested that other policy considerations could have "jusiti[fied] the application of the special rule of Nevada Law," but Nevada had not provided "'sufficient policy considerations'" to justify its application of a discriminatory rule. *Id.* at 179 (quoting *Carroll*, 349 U.S. at 413).

146. *See, e.g.*, Baker v. Gen. Motors Corp., 522 U.S. 222, 232–33 (1998) (citing Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493, 501 (1939)) (explaining that states are not

In summary, relevant Supreme Court doctrine includes the following general principles: (1) final judicial judgments are given conclusive effect in sister-states' courts; (2) penal judgments are not entitled to conclusive effect; and (3) states may invoke the public policy exception to avoid giving full faith and credit to another state's law. Even though there are two main exceptions, Supreme Court doctrine deems the first sentence as the key operative provision of the Full Faith and Credit Clause, while the second sentence grants Congress discretionary power that *may* be used to enact legislation specifying the out-of-state "effect" of judgments and state laws.

C. *The "Non-Self-Executing" View of the Full Faith and Credit Clause*

Several legal scholars have challenged the Court's interpretation of the substantive effect of the Clause's Self-Executing Provision.[147] Advocates of the "non-self-executing" view assert that the Supreme Court shifted from early understandings of the Clause during the Constitutional Convention and employed an overbroad interpretation of the *Mills* Court's holding.[148]

As mentioned in Section III.B.1, the Court's holding in *Mills* focused on the 1790 implementing statute, but it was subsequently read more broadly to suggest that the Clause itself required that sister states give conclusive effect to the Clause's Categories.[149] In response, advocates of the "non-self-executing" view argue that *Mills* was misinterpreted, and the Clause itself does not provide more than an evidentiary standard that requires states to admit the Clause's Categories "as conclusive proof of their own existence and contents—*i.e.*, as proof that such a statute, record, or judgment actually existed and dealt with the matters contained in the (properly authenticated) copy of the statute, record, or judgment presented to the court that was being asked to recognize it."[150] Because this view claims that the Clause does not mandate that conclusive effect be given to a final judgment or law from another state, it focuses on the scope of Congress's power in the Effects Provision.

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forced to "substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate"). *Baker* also emphasizes a state court may consider its public policy to determine the applicable law to the case. *Id.* at 234. Even in *Hyatt II*, the Court reiterated that a state is not required to offend its "own legitimate public policy" by applying an out-of-state law. *Hyatt II*, 578 U.S. at 177 (quoting *Hyatt I*, 538 U.S. at 497).

147. *See, e.g.*, Sachs, *supra* note 96, at 1208; Whitten, *For Dummies*, *supra* note 96, at 466–68; Engdahl, *supra* note 92, at 1584.

148. *See supra* Section III.B.1; Sachs, *supra* note 96, at 1227–31; Whitten, *For Dummies*, *supra* note 96, at 469–73.

149. *See supra* Section III.B.1; Mills v. Duryee, 11 U.S. (7 Cranch) 481, 484 (1813).

150. Whitten, *For Dummies*, *supra* note 96, at 466 (italicized in original); *see supra* Section III.B.1 for discussion of Supreme Court doctrine on the Self-Executing Provision.

D. *Congress's Authority Under the Effects Provision*

"And the Congress may by general Laws prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the *Effect* thereof."[151]

The Effects Provision grants Congress the power to determine the specific effects of out-of-state laws and judicial judgments. The Clause's plain language includes "may,"[152] which indicates that Congress can invoke this power at its discretion to prescribe the authentication requirements and out-of-state effects of judgments, records, and laws.[153]

But if the Clause's force flows from congressional power, one must first consider the scope of that power. Unfortunately, Congress has infrequently invoked this power to test its boundaries.[154] As a result, the Court has had limited opportunities to delineate its appropriate scope.[155] This Section, therefore, examines the potential boundaries of Congress's power using the few instances in which Congress has invoked the Effects Provision.

1. The Scope of the Effects Provision

To date, Congress has invoked the Effects Provision in specific legal areas, including child custody orders,[156] child support decisions,[157] domestic violence,[158] and marriage licensure.[159] For example, the Parental Kidnapping Prevention Act (PKPA) gives full faith and credit to certain child custody determinations, requiring courts to honor such determinations by other states.[160] The Full Faith and Credit for Child Support Orders Act ensures that parents can receive child

151. U.S. CONST. art. IV, § 1 (emphasis added).

152. *Id.*

153. *See* Kramer, *supra* note 121, at 2004. For example, the current FFAC implementing statute describes the authentication requirements for and effect of state statutes, records, and judicial proceedings. *See* 28 U.S.C. § 1738.

154. For example, the federal Parental Kidnapping Prevention Act (PKPA) requires full faith and credit for certain child custody orders. *See* Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, § 8(a), 94 Stat. 3568 (codified as amended 28 U.S.C. § 1738A). Moreover, the Full Faith and Credit for Child Support Orders Act requires states to enforce valid child support orders, issued by sister states. *See* Full Faith and Credit for Child Support Orders Act, Pub. L. 103-383, § 3(f)–(g), 108 Stat. 4063 (1994) (codified as amended at 28 U.S.C. § 1738B). Lastly, the Violent Crime Control and Law Enforcement Act of 1994 mandates that specific protection orders be given full faith and credit and enforced by another state's court. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, § 40221(a), 108 Stat. 1796 (codified as amended at 18 U.S.C. § 2265).

155. *See* William D. Araiza, *Reciprocal Concealed Carry: The Constitutional Issues*, 46 HASTINGS CONST. L.Q. 571, 591 (2019).

156. *See* 28 U.S.C. § 1738A.

157. *See* 28 U.S.C. § 1738B.

158. *See* 18 U.S.C. § 2265.

159. *See* Defense of Marriage Act, Pub. L. No. 104-199, § 2, 110 Stat. 2419, 2419 (1996), *repealed by*, Respect for Marriage Act, Pub. L. No. 117-228, § 4, 136 Stat. 2305, 2305–07 (2022) (codified as amended at 28 U.S.C. § 1738C); *see also* discussion *infra* Section III.D.2.

160. *See* Parental Kidnapping Prevention Act of 1980, Pub. L. No. 96-611, § 8 94 Stat. 3566, 3569–71 (codified as amended 28 U.S.C. § 1738A).

support across state lines by requiring states to recognize and enforce child support orders issued by other states.[161] Aside from the now-repealed federal law regarding marriage licensure, which permitted states to refuse recognition of certain marriage licenses,[162] these provisions instruct states to recognize the relevant acts, judicial judgments, or records of a sister state.

These examples are useful for examining competing scholarly views on the scope of Congress's "Effects" power. One approach limits Congress's authority to enforcing the minimum requirements already imposed by the Clause's "self-executing" command, as interpreted by the Supreme Court.[163] For example, the Court has held that the Self-Executing Provision requires that a sister-state's final judicial judgments receive conclusive effect in other states. Accordingly, Congress may not invoke the Effects Provision to enact legislation that diminishes that rule by limiting the effect of final judgments in other jurisdictions.[164] However, Congress may arguably expand full faith and credit requirements beyond the constitutional floor.[165]

A second view identifies the "Effects" power as a broad, plenary power through which Congress can "prescribe that a particular class of acts will have no effect at all, or that their effect will be confined to their state of origin."[166] Critics of this interpretation argue that such an expansive, unqualified power would give Congress the authority to eliminate the effect of the Clause's Categories in a manner inconsistent with current Supreme Court doctrine.

In 1996, this topic arose when Congress leveraged the Effects Provision to pass the now-obsolete Defense of Marriage Act ("DOMA").[167] Instead of requiring states to give full faith and credit to a sister-state's laws or judgments, Section 2(a) of DOMA provided the opposite. DOMA declared that:

> [N]o State [would] be required to give effect to any public act, record, or judicial proceeding of any other State . . . respecting a relationship between persons of the same sex that is treated as a marriage under

161. *See* The Full Faith and Credit for Credit Support Orders Act, Pub. L. 103-383, § 3 108 Stat. 4063, 4064–66 (1994) (codified as amended at 28 U.S.C. § 1738B).

162. *See infra* notes 165–66 and accompanying text.

163. *See, e.g.*, Kramer, *supra* note 121, at 2003–06; Koppelman, *supra* note 122, at 20–21.

164. The Full Faith and Credit Clause does not require states to enforce the penal judgments of other states. *See supra* Section III.B.2.

165. *See* Glensy, *supra* note 122, at 174.

166. *See* Araiza, *supra* note 155, at 592 (citing Andrew Koppelman, *Dumb and DOMA: Why the Defense of Marriage Act is Unconstitutional*, 83 IOWA L. REV. 1, 20 (1997)).

167. *See* Koppelman, *supra* note 122, at 18–19.

> the laws of such other State . . . [or] a right or claim arising from such relationship.[168]

Though the public policy exception may unfortunately permit a state to *refuse* to recognize the marriage laws, and thus marriage licenses, of another state,[169] DOMA may have unconstitutionally limited states' full faith and credit obligation to give conclusive effect to another state's final judicial judgments involving claims that recognize the marriage (i.e., a divorce decree and ensuing judgments regarding marital property).[170] Unlike state laws, these judgments are not subject to the public policy exception, meaning the states are constitutionally obligated to give them conclusive effect regardless of policy disagreement.[171] Therefore, the Clause's Self-Executing Provision establishes a constitutional floor for state obligations that, according to certain scholarly interpretations, Congress cannot undermine through the Effects Provision.[172]

2. General Laws[173]

The Clause allows Congress to prescribe the effect of its Categories only by "general Laws."[174] Thus, this term impacts Congress's authority to effectuate the Clause.[175] However, the Supreme Court appears to have paid little attention to the meaning of "general Laws," beyond brief references in its full faith and credit cases.[176]

168. Defense of Marriage Act, Pub. L. No. 104-199, § 2, 110 Stat. 2419, 2419 (1996), *repealed by*, Respect for Marriage Act, Pub. L. No. 117-228, § 4, 136 Stat. 2305, 2305–07 (2022) (codified as amended at 28 U.S.C. § 1738C).

169. *See* Mark D. Rosen, *Why the Defense of Marriage Act Is Not (Yet?) Unconstitutional:* Lawrence*, Full Faith and Credit, and the Many Societal Actors That Determine What the Constitution Requires*, 90 MINN. L. REV. 915, 933 (2006) [hereinafter Rosen, *What the Constitution Requires*].

170. *See* REYNOLDS & RICHMAN, *supra* note 87, at 126; Kramer, *supra* note 121, at 2000–02.

171. *See* discussion and accompanying notes *supra* Section III.B (explaining that the Full Faith and Credit Clause requires that nonpenal, civil judgments be given conclusive effect).

172. *See* Koppelman, *supra* note 122, at 21; *see also* Kramer, *supra* note 121, at 2002–04 ("Given its language, it is more credible to read the Full Faith and Credit Clause as imposing a mandatory requirement of faith and credit (defined by the Supreme Court), with the Effects Clause authorizing Congress to enact whatever national legislation is needed to refine and implement it. Refine and implement, not undermine or abolish—which means that even federal legislation must be tested against, and shown to be consistent with, the core requirements of full faith and credit.").

173. U.S. CONST. art. IV, § 1.

174. *Id.*

175. Outside of DOMA, there is another reading of "general" laws. First, "[Congress] may not legislate with reference to particular cases." Whitten, *The Original Understanding*, *supra* note 115, at 388 (alteration in original) (quoting *Defense of Marriage Act: Hearing on S. 1740 Before the Senate Comm. on the Judiciary*, 104th Cong. 42, 57 (1996) (statement of Michael W. McConnell)). For instance, "[Congress] could not . . . pass a law specifying that Mr. John Doe's divorce must (or must not) be recognized throughout the Union. Congress should not judge individual cases." *Id.*

176. *See id.*; *see also* Julie L. B. Johnson, *The Meaning of "General Laws": The Extent of Congress's Power Under the Full Faith and Credit Clause and the Constitutionality of the Defense of Marriage Act*, 145 U. PA. L. REV. 1611, 1614 (1997).

As a result, full faith and credit scholarship has attempted to ascertain the term's meaning. Under one view, legislation enacted pursuant to the Clause must contain general directives regarding "extraterritorial recognition, and may not target a specific segment of acts, records, or judgments."[177] In other words, such laws should not be subject-matter-specific.[178] However, this argument is unpersuasive because it is inconsistent with federal laws enacted under the Clause that target specific classes of the Clause's Categories.[179] For example, Section 40221(a) of the Violent Crime Control and Law Enforcement Act of 1994 affords specific protection orders in domestic violence cases with full faith and credit in out-of-state courts.[180] That law, along with similar full faith and credit legislation addressing child support[181] and child custody orders,[182] has not been challenged on the grounds that it lacks the Clause's generality requirement.[183]

A second view suggests that "general Laws" are laws that do not single out a specific state's legislation and use the "Effects" power to favor or disfavor that law over the laws and policies of other states.[184] Under this argument, DOMA may have violated the Clause's "general Laws" requirement. In contrast to previously enacted full faith and credit laws, Congress unfortunately passed DOMA to explicitly codify marriage as a union between a man and a woman and permit states to deny full faith and credit to a certain segment of acts, records, and judicial judgments that recognize same-sex marriage.[185] During his testimony before the Senate Judiciary Committee, Professor Cass Sunstein

177. *See* Johnson, *supra* note 176, at 1614; *see also* Rosen, *What the Constitution Requires*, *supra* note 169, at 944 (discussing different perspectives on whether choice-of-law doctrine is substantive law).

178. *See* Araiza, *supra* note 155, at 595.

179. Rosen, *What the Constitution Requires, supra* note 169, at 941–42.

180. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 40221(a), 108 Stat. 1796, 1926–27 (codified as amended at 18 U.S.C. § 2261).

181. *See* Full Faith and Credit for Child Support Orders Act, Pub. L. No. 103-383, 108 Stat. 4063 (1994) (codified as amended at 28 U.S.C. § 1738B).

182. *See* Parental Kidnaping [sic] Prevention Act of 1980, Pub. L. No. 96-611, 94 Stat. 3566 (codified as amended 28 U.S.C. § 1738A).

183. *See* Rosen, *What the Constitution Requires*, *supra* note 169, at 942 ("[T]he above-noted pattern of congressional practice coupled with the absence of constitutional challenges suggest that it is the scholarly theories, rather than the several statutes, that require reworking.").

184. *See* Johnson, *supra* note 176, at 1638–40.

185. Defense of Marriage Act, Pub. L. No. 104-199, § 2, 110 Stat. 2419, 2419 (1996), *repealed by*, Respect for Marriage Act, Pub. L. No. 117-228, § 4, 136 Stat. 2305, 2305–07 (2022) (codified as amended at 28 U.S.C. § 1738C).

opined on the generality requirement in the Effects Provision and its impact on DOMA's constitutionality.[186] Sunstein stated:

> Congress can single out those state acts and judgments of which it disapproves and give them no effect in other states. Does this power exist? It is certainly not clear . . . . There is no historical evidence that this . . . power was something that the framers thought to grant to Congress.[187]

DOMA was not the end of debates regarding the extent of congressional power under the Full Faith and Credit Clause. A federal bill, titled the Concealed Carry Reciprocity Act of 2017,[188] reinvigorated legal discourse on the scope of the "Effects" power and raised similar considerations.[189] With Supreme Court doctrine interpreting the Clause and the "non-self-executing" view in mind, Part IV applies the Clause to state regulation of physician licensure.

IV. APPLYING THE FULL FAITH AND CREDIT CLAUSE TO MEDICAL LICENSURE

It is clear by now that the Full Faith and Credit Clause is subject to different interpretations of the "self-executing" command and the scope of the Effects Provision. This Part applies those approaches to state regulation of physician licensure to evaluate the constitutional viability of a federal law mandating state medical license reciprocity. To begin, this Part focuses on the Supreme Court doctrine described in Part III and discusses a host of legal issues and counterarguments arising from the application of its interpretation of the "self-executing" command to out-of-state recognition of medical licenses. Fortunately, Congress can leverage the Effects Provision to pass legislation requiring medical license reciprocity across state lines. A federal law, like this Article's Proposed SMLRA, will help resolve ambiguities about what it means to provide full faith and credit to out-of-state physician licenses and the impact of reciprocity on medical practice within another state's borders.

186. *See The Defense of Marriage Act: Hearing on S. 1740 Before the Senate Comm. on the Judiciary*, 104th Cong. 44–45 (1996) [hereinafter *Hearing*] (statement of Cass R. Sunstein, Professor, U. Chi.).

187. *Id.* at 46.

188. Concealed Carry Reciprocity Act of 2017, H.R. 38, 115th Cong. (as referred to the S. Comm. on the Judiciary, Dec. 7, 2017). If enacted, the bill would have required a state that allowed concealed carry to honor the concealed carry licenses of sister states, even if the sister state had less stringent requirements for holding the license. *See id.* § 101(c)(1).

189. *See* Letter from Stephen Sachs, Professor of L., Duke U. Sch. L., Randy Barnett, Director of Georgetown Center for the Constitution, Geo. L. Center, and William Baude, Assistant Professor of L., U. Chi. L. Sch. to the Hons. Trey Gowdy, Richard Hudson, and Justin Amash (Mar. 23, 2017) (on file with the North Carolina Law Review). *See generally* Araiza, *supra* note 155, at 591–96 (describing the constitutional issues associated with a federal bill requiring states to honor the concealed carry permits of other states).

A. *Supreme Court Doctrine and Medical License Reciprocity*

Supreme Court doctrine identifies the Self-Executing Provision as a command that states recognize out-of-state judicial judgments and, in some circumstances, their laws.[190] Accordingly, Congress does not need to pass legislation specifying the substantive effect of those Categories. However, without a federal law specifically addressing the topics discussed in this Section, states will have little guidance on how to apply the Clause's principles to the physician-licensure landscape. Consider the following scenario: a physician licensed in State X sues State Y's medical board in State Y, seeking recognition of the physician's out-of-state medical license.[191] Is State Y's court required to recognize that license and allow the physician to treat State Y's citizens, even though the physician has not completed State Y's licensure process? Which of the Clause's Categories are applicable to medical licenses? The subsections below explore these questions and assess the viability of challenges to state laws that require a licensed, out-of-state physician to complete their licensure processes.

1. Private Causes of Action

Based on the Supreme Court's decision in *Thompson v. Thompson*,[192] a licensed physician cannot file a suit under the Full Faith and Credit Clause challenging another state's licensure requirements because the Clause does not confer a private cause of action.[193] In *Thompson*, the Supreme Court interpreted the PKPA, a federal law enacted under the "Effects" Provision,[194] which requires state courts to enforce certain child custody decrees of a sister state.[195] According to the *Thompson* Court, the PKPA does not afford an implied private cause of action because the Clause:

> only prescribes a rule by which courts, Federal and state, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a state other than that in which the court is sitting.[196]

190. *See* discussion and accompanying notes *supra* Section III.B.

191. This suit may implicate the Eleventh Amendment and the doctrine of sovereign immunity, which prohibits certain suits against a state and its agencies, without the state's consent. *See* William Baude & Stephen E. Sachs, *The Misunderstood Eleventh Amendment*, 169 U. PA. L. REV. 609, 614 (2021). The Supreme Court has determined that state sovereign immunity may be abrogated in other legal contexts, such as cases involving Section 5 of the Fourteenth Amendment. *See, e.g.*, Fitzpatrick v. Bitzer, 427 U.S. 445, 456 (1976). Regarding the Full Faith and Credit Clause, a full analysis of this issue is outside of this Article's scope.

192. 484 U.S. 174 (1988).

193. *See id.* at 179–80.

194. *Id.*

195. *See id.*

196. *Id.* at 182–83 (quoting Minnesota v. N. Sec. Co., 194 U.S. 48, 49 (1904)).

As the PKPA was enacted pursuant to Congress's power under the Clause, the Court reasoned that the PKPA was not intended to "create an entirely new cause of action."[197]

Instead, suppose a licensed, out-of-state physician is criminally charged with practicing medicine in another state without a license to care for patients within that state. The physician argues that the court must give the license full faith and credit by recognizing the physician's out-of-state medical license. Does the Full Faith and Credit Clause require the forum to treat the physician as licensed to practice medicine because the physician has a valid license from a sister state? Because the licensure issue arises during the progression of a pending case, the legal inquiry turns initially on whether a medical license fits within the Clause's category for "public Acts."

2. Medical Licenses as Public Acts

Because a license is not a judicial judgment, the relevant question is whether any license, medical or otherwise, falls within the scope of "public Acts." State-issued licenses serve as "evidence" of a state's authorization to engage in a regulated activity under its laws.[198] Because a license is issued pursuant to state statutes governing that activity, it reflects an official determination that the licensee is authorized by the state to engage in the regulated activity. Thus, a license, though not a state law itself, can be considered an extension of a state's "public Acts," placing the license within the ambit of "public Acts" for full faith and credit purposes.[199]

As discussed in Part II, states are responsible for regulating the practice of medicine and the conduct of physicians who see patients within their jurisdictions.[200] A state's Medical Practice Act requires that a physician be licensed to practice medicine within its borders and gives the state medical board the authority to regulate the practice of medicine.[201] A medical license indicates that a physician has a privilege to practice under the state's Medical Practice Act.

197. *Id.* at 183.

198. *See* Whitten, *For Dummies*, *supra* note 96, at 477.

199. *See id.* at 476.

200. Dent v. West Virginia, 129 U.S. 114, 122–23 (1889).

201. *See, e.g.*, GA. CODE ANN. § 43-34-26 (2026) (setting a medical licensure requirement with the State Board of Medical Examiners or the State Board of Examiners in Osteopathy and authorizing these boards to determine qualifying medical and osteopathic schools); GA. CODE ANN. § 43-34-5(c)(8) (2026) (providing that the obligations of Georgia's medical board include but are not limited to "establish[ing] rules regarding licensure and certification status . . . ."); Medical Practice Act, CAL. BUS. & PROF. CODE § 2052(a) (2026) (making it illegal to practice medicine without a valid certificate); *id.* at §§ 2001.1–2004 (establishing the Medical Board of California's responsibilities for overseeing medical professionals).

Moreover, the substantive requirements for medical licensure are frequently set by the state legislature and implemented by the state medical board. For example, Georgia's Medical Practice Act defines a "physician" as a "person licensed to practice" under the Act and requires its licensees to practice medicine within the state.[202] Georgia law also provides the licensure requirements for physicians practicing medicine within the state.[203]

Similarly, other state legislatures have articulated the specific requirements for medical licensure in their respective Medical Practice Acts or similar codes.[204] California's Business and Professions Code, for instance, provides detailed requirements for obtaining a medical license, including the specific documents for inclusion in a physician's license application.[205] Then, the Medical Board of California's regulations implement the state's Business and Professions Code by articulating administrative and substantive requirements for a physician's application for and maintenance of a California physician license (e.g., the minimum passing score for required examinations).[206]

According to Supreme Court doctrine, a state may refuse to provide another state's legislative acts with full faith and credit if the public policy exception applies.[207] In states like Georgia, a medical license is indicative of a physician's privilege to practice medicine based on compliance with the state's relevant statutory code. Once a physician is licensed, a state medical board operates as an agency that investigates complaints of violations of its rules or medical misconduct.[208]

Though a state's Medical Practice Act (or similar body of laws) identifies the requirements to obtain licensure in that state, the state legislature may simultaneously defer to the state medical board's expertise in determining some of the requisite qualifications for the license.[209] In this context, a medical license could be viewed as reflective of the requirements deemed necessary to practice

202. *See* GA. CODE ANN. § 43-34-1 (2026); GA. CODE ANN. § 43-34-26(a)(1)(A) (2026).

203. *See* GA. CODE ANN. § 43-34-26 (2026) (detailing, for example, the academic qualifications and requisite postgraduate training for medical licensure).

204. *See* ALA. CODE § 34-24-70 (2026) ("Qualifications of applicants"); CAL. BUS. & PROF. CODE §§ 2080 to 2099 (2026) ("Requirements for Licensure").

205. *See* CAL. BUS. & PROF. CODE § 2082 (2026) (listing the required contents and attached documents for a licensure application).

206. *See* CAL. CODE REGS. tit. 16 § 1328.1 (2026) (explaining that the minimum passing score for each national licensing examination is accepted by the board).

207. *See* discussion *supra* Section III.B.3.

208. Drew Carlson & James N. Thompson, *The Role of State Medical Boards*, ETHICS J. AM. MED. ASS'N, Apr. 2005, at 311, https://journalofethics.ama-assn.org [https://perma.cc/Y6UN-T6A7 (staff-uploaded archive)] (click "Issues by Year"; choose "2005" from dropdown; then select "Professional Self Regulation").

209. *See, e.g.*, GA. CODE ANN. § 43-34-26(d) (2026) ("The board may approve any examination or examinations that it deems must be passed in order to meet the requirements for licensure.").

medicine by both the state's laws and the regulations promulgated by state medical boards. Even though many states' laws clearly specify their requirements for licensure, some may argue that, because not every state's medical licensure requirements are identified in state law, the "public Acts" category does not apply in full here. Therefore, if a state provides full faith and credit to an out-of-state medical license, it will result in honoring a state's laws *and* regulations, which is not explicitly discussed in Supreme Court doctrine.[210]

However, these administrative regulations are likely "public Acts." When a state's legislature enacts its Medical Practice Act, it requires licensure for medical practice.[211] It then grants rulemaking authority to its medical board, which, in turn, promulgates regulations fleshing out specific licensing details.[212] Because those regulations have the statutorily delegated responsibility and purpose of implementing the baseline qualifications identified in applicable state laws on licensure, recognition of the medical license still boils down to a recognition of the relevant state's Medical Practice Act.[213]

Because physician licenses likely fall within the Clause's "public Acts" category, "a court may be guided by the forum State's public policy in determining the *law* applicable to a controversy."[214] Yet states may not invoke the public policy exception simply because their medical laws and regulations, which grant the license in the first place, are different from those of a sister state.[215] It is therefore worth examining the applicability of the public policy

210. Legal scholarship has discussed whether nonstatutory law is covered under the "public Acts" category in the Full Faith and Credit Clause. *See* Engdahl, *supra* note 92, at 1591 (citing Louise Weinberg, *Theory Wars in the Conflict of Laws*, 103 MICH. L. REV. 1631, 1635–36 (2005)). In this context, most of the legal scholarship focuses the full faith and credit owed to state laws and judicial judgments.

211. *See* GA. CODE ANN. § 43-34-26 (making licensure a requisite for the practice of medicine).

212. *See, e.g.*, *id.* § 43-34-5(c)(8) (providing that the obligations of Georgia's medical board include but are not limited to "establish[ing] rules regarding licensure and certification status"). Professor Nadia Sawick has described the rulemaking authority of the state medical board, noting:

> [M]edical practice acts aimed at protecting the public from the "unprofessional, improper, incompetent, unlawful, fraudulent and/or deceptive" practice of medicine vest adjudicative and rulemaking authority in state medical boards. These boards, which are composed primarily of licensed medical professionals (and some public members), are responsible for imposing standards for entry into the profession, establishing guidelines for ethical and competent practice, and enforcing those guidelines by way of discipline. Ultimately, the medical profession is given a significant degree of autonomy in determining how best to achieve the state's interests in patient welfare and public health.

Nadia N. Sawicki, *Doctors, Discipline, and the Death Penalty: Professional Implications of Safe Harbor Policies*, 27 YALE L. & POL'Y REV. 107, 132 (2008).

213. *See* REYNOLDS & RICHMAN, *supra* note 87, at 29 (arguing that administrative regulations in general are "public Acts").

214. Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998) (emphasis in original) (citing Nevada v. Hall, 440 U.S. 410, 421 (1979)).

215. *See* discussion *supra* Section III.B.3 (examining the public policy exception to the full faith and credit owed to "public Acts").

exception to physician licensure, which involves a consideration of various state laws and policies governing the delivery of hotly debated health care services. The subsequent discussion explores these points.

3. Medical License Reciprocity and the Public Policy Exception

The Self-Executing Provision generally commands states to recognize the "public Acts" of another state.[216] However, in *Baker v. General Motors Corp.*,[217] the Supreme Court noted the public policy exception, which may allow a state to ignore a sister-state's law under limited circumstances.[218]

Even though medical licenses function as extensions of "public Acts" and fall within that Full Faith and Credit category, a state could constitutionally refuse to apply a sister-state's law through which the physician obtained a medical license because the law "outrages the public policy" of the forum state.[219] That outrage could be derived from violation of its "fundamental principle of justice, some prevalent conception of good morals, [or] some deep-rooted tradition of the common weal."[220] Based on the language in *Loucks v. Standard Oil Co. of New York*,[221] this exception is for the rare and extraordinary circumstances in which the application of a sister-state's law would offend the forum state's "fundamental principle of justice."[222]

Here, states may raise two public policy reasons in an effort to avoid the Clause's mandate for "public Acts." First, a state may invoke its public policy interests in arguing against the recognition of licenses issued by states whose medical practice standards permit physicians to perform certain types of health care services, such as abortions.[223] Some states permit medication abortions via telemedicine,[224] which expands access to abortion care in areas with shortages of qualified clinicians.[225] States that ban or otherwise limit access to abortion care may worry that licensed physicians from states with more relaxed standards

216. *See* discussion *supra* Sections III.B.1 and III.B.3.

217. 522 U.S. 222 (1998).

218. *Id.* at 232–33.

219. Loucks v. Standard Oil Co. of N.Y., 120 N.E. 198, 202 (N.Y. 1918).

220. *Id.*

221. 120 N.E. 198, 202 (N.Y. 1918).

222. Kramer, *supra* note 121, at 1972–73 (citing *Loucks*, 120 N.E. at 202).

223. *See generally* David S. Cohen, Greer Donley & Rachel Rebouchè, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 2–4 (2023) (explaining the patchwork of state laws on abortion access that resulted from the Supreme Court's overruling of *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*).

224. Physicians prescribe oral treatment regimens, mifepristone with misoprostol or misoprostol alone, to terminate a pregnancy. *See The Availability and Use of Medication Abortion*, KFF (Mar. 10, 2025), https://www.kff.org/womens-health-policy/fact-sheet/the-availability-and-use-of-medication-abortion/ [https://perma.cc/W2DB-6E4C]; *see also* Cohen et al., *supra* note 223, at 15 (discussing the connection between "medication abortion" and telemedicine).

225. *See* KFF, *supra* note 224.

on abortions will provide care to their patients in accordance with those substantive medical practice laws and regulations, rather than based on the guidelines in the state where the patient is located.

Absent a sufficient public policy justification, the Full Faith and Credit Clause only requires states to recognize an out-of-state physician's *license*. The Clause does not mandate that each state's other substantive medical practice laws and regulations also receive full faith and credit in other jurisdictions. Although those practice of medicine standards would qualify as "public Acts," a state could easily present compelling reasons for why those standards upset its "conception of good morals"[226] to the extent that they violate its public policy. Put another way, recognition of an out-of-state medical license only exempts the physician from another state's traditional licensure pathway, which is often duplicative. But it does not authorize the physician to impose another state's other substantive medical practice standards on other states. Thus, a licensed, out-of-state physician remains subject to the medical practice limitations of the state in which the patient is located.

Second, a state may argue that honoring the medical licensure laws of sister states will offend its "deep-rooted tradition of the common weal"[227] or its citizens' best interests. Those states may be concerned about a "race-to-the-bottom" scenario, where physicians would obtain licensure in the state with the least-stringent licensure requirements and the shortest application process. Subsequently, states may be concerned about the quality of the physicians who, through license reciprocity, would be authorized to care for their citizens.

However, this argument is even less convincing as the substantive requirements for physician licensure are often analogous across states. According to the AMA, "[a]lthough each state's licensing processes may be different, the applications and requested information are usually similar."[228] As of June 2026, forty-four states, the District of Columbia, and Guam have joined the Interstate Medical Licensure Compact, which streamlines the licensure application process by setting uniform application requirements for participating states.[229] The Compact has found that "[a]pproximately 80% of U.S. physicians meet the criteria for licensure through the Compact."[230] Therefore, it is highly unlikely that a physician who does not meet the baseline requirements for licensure across multiple states would even be granted an initial license to be eligible for medical license reciprocity.

Medical licenses, not medical practice laws and regulations, should receive the full faith and credit owed to the Clause's category for "public Acts." The

226. *Loucks*, 120 N.E. at 202.

227. *Id.*

228. Garvey, *supra* note 46.

229. Carpenter, *supra* note 53; IMLC, *Participating States*, *supra* note 53.

230. IMLC, *General FAQs*, *supra* note 54 (noting statistic at "What does the Compact do?" FAQ).

public policy reasons summarized above are not persuasive enough to permit states to refuse medical license reciprocity. Moreover, without a federal law, states may misinterpret the "effect" of out-of-state judicial judgments or disciplinary actions of the state medical board on license reciprocity. Subsection IV.A.4 applies Supreme Court doctrine to physician licensure to evaluate whether these decisions will also gain recognition beyond the rendering state's borders.

4. The Implications of Out-of-State Disciplinary Actions and Judicial Judgments on Medical License Reciprocity

Physicians may face disciplinary action from state medical boards, with the right to appeal a final decision in the state court system.[231] State medical boards, for instance, can take disciplinary action, such as revocation or suspension of a physician's medical license for "unprofessional, improper, incompetent, unlawful, fraudulent, deceptive, or unlicensed practice of medicine, and [to] enforce the provisions of the medical practice act and related rules."[232] Physicians can also be held liable for wrongdoings in both the civil and criminal law systems.[233] For example, physicians may face civil liability for medical malpractice.[234] Additionally, physicians may be subject to criminal penalties for fraud and abuse violations (e.g., unlawful kickbacks)[235] or for

231. Elizabeth Pendo, Tristan McIntosh, Heidi A. Walsh, Kari Baldwin & James M. DuBois, *Protecting Patients from Physicians Who Inflict Harm: New Legal Resources for State Medical Boards*, 15 ST. LOUIS U. J. HEALTH L. & POL'Y 7, 20–22 (2021) (describing the general disciplinary process of state medical boards).

232. Jacqueline Landess, *State Medical Boards, Licensure, and Discipline in the United States*, 17 FOCUS 337, 338 (2019) (citing ESSENTIALS OF A STATE MEDICAL AND OSTEOPATHIC PRACTICE ACT, FED'N OF STATE MED. BDS. (Apr. 2015), http://www.fsmb.org/siteassets/advocacy/policies/essentials-of-a-state-medical-and-osteopathic-practice-act.pdf [https://perma.cc/8AA8-5VAH]). "Unprofessional conduct is a broad category and may include alcohol/substance use, sexual misconduct, conviction of a felony, fraud, inadequate record keeping, failing to meet continuing medical education requirements, deviating from the standard of care, prescribing drugs negligently, and others." *Id*. (citing U.S. MEDICAL REGULATORY TRENDS AND ACTIONS, FED'N OF STATE MED. BDS. (2018), https://www.fsmb.org/siteassets/advocacy/publications/us-medical-regulatory-trends-actions.pdf [https://perma.cc/2C2Y-7M9Y]). *See generally* Nadia N. Sawicki, *Character, Competence, and the Principles of Medical Discipline*, 13 J. HEALTH CARE L. & POL'Y 285 (2010) (discussing the history of medical board authority over physician discipline).

233. *See* Michelle M. Mello, *Of Swords and Shields: The Role of Clinical Practice Guidelines in Medical Malpractice Litigation*, 149 U. PA. L. REV. 645, 705 (2001) (describing civil tort liability for medical malpractice); Diane E. Hoffman, *Physicians Who Break the Law*, 53 ST. LOUIS U.L.J. 1049, 1057–59 (2009).

234. *See* Mello, *supra* note 233.

235. *See Fraud & Abuse Laws*, HHS-OIG, https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/ [https://perma.cc/GJL6-K79V].

providing abortions[236] in states with bans or other limitations on the provision of that type of care.

The Full Faith and Credit Clause itself does not extend conclusive effect to disciplinary actions from an out-of-state medical board.[237] This means that, even if an out-of-state physician's license is given full faith and credit, the Clause does not require other states to honor the disciplinary actions of an out-of-state medical board. Texas's Health and Safety Code ("Texas's Code"), for example, allows the state medical board to revoke the license of a physician who "performs, induces, or attempts" an unlawful abortion.[238] Per *Franchise Tax Board of California v. Hyatt*,[239] "the full faith and credit command 'is exacting' with respect to '[a] *final judgment . . . rendered by a court* with adjudicatory authority over the subject matter and persons governed by the judgment . . . .'"[240] A state medical board's disciplinary action is neither final nor issued by a court; it is a decision from an administrative agency proceeding. The *Hyatt* Court's emphasis on final, judicial judgments underscores that the Self-Executing Provision applies to court-issued decisions, not to administrative determinations by executive agencies.[241] Thus, the decision does not meet the Clause's requirements to be owed full faith and credit.[242]

Likewise, states can refuse enforcement of criminal judgments from sister states. Section III.B.2 describes the penal judgment exception to the full faith and credit given to judicial judgments. Based on those legal principles, states are not required to recognize another state's penal judgments.[243] Therefore, judgments that punish a physician's criminal behavior need not receive full faith and credit.

On the other hand, some courts may determine that judicial decisions from civil cases are *penal judgments* when the underlying civil statute's purpose is to punish a violation against the state instead of punishment for a harm against an individual.[244] Let us return to Texas's Code on the "[p]erformance of

236. *See* Reva B. Siegel & Mary Ziegler, *Abortion's New Criminalization—A History-and-Tradition Right to Health Care Access After* Dobbs, 111 VA. L. REV. 413, 421–22 (2025).

237. *See generally* REYNOLDS & RICHMAN, *supra* note 87, at 56 (describing the full faith and credit owed to administrative proceedings).

238. TEX. HEALTH & SAFETY CODE ANN. § 170A.007 (2025).

239. 538 U.S. 488 (2003).

240. *Id.* at 494 (2003) (emphasis added) (quoting Baker v. Gen. Motors Corp., 522 U.S. 222, 233 (1998)).

241. *See id.*

242. Note, courts often uphold a state medical board's disciplinary determination, unless the court finds that the board's determination was not based on substantial evidence. *See* Pendo et al., *supra* note 231, at 21–22. When the court upholds the board's decision, a state may be required to afford conclusive effect to the judicial judgment. But the analysis depends on whether the judicial judgment is a penal judgment, which is exempt from the full faith and credit mandate.

243. *See* discussion *supra* Section III.B.2; Nelson v. George, 399 U.S. 224, 229 (1970).

244. *See* discussion *supra* Section III.B.2.

[a]bortion[s]."[245] Section 170A.002 penalizes licensed physicians for "performing, inducing, or attempting the abortion," unless the pregnant person has a "life-threatening" medical condition "arising from a pregnancy" that places her at risk of death or "substantial impairment of a major bodily function."[246]

Even if Section 170A.004 did not identify a violation of Section 170A.002 as a "criminal offense,"[247] it could be considered a penal law because a "civil penalty" of no less than $100,000 may be assessed for each violation and recovered by Texas's attorney general.[248] Texas's imposition of a substantial, fixed statutory penalty is unconnected to any victim injury and recovered by the state, rather than by any victim.[249] Accordingly, Texas's law may be meant to punish the violating physician for allegedly committing a harm against the public, rather than to compensate a specific individual for the physician's alleged wrongdoing. Should another state refuse to recognize a civil judgment that relies on these parts of Texas's Code, that state has a compelling argument that this type of judgment is penal in nature.[250]

Even if these civil judgments do not fit the penal judgment exception and are owed full faith and credit, out-of-state enforcement of the judgment may be uncertain. The Supreme Court has noted that "[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law."[251] More specifically, the Clause does not require another state to adopt the rendering state's "time, manner, and mechanisms for enforcing [the rendering state's] judgments."[252]

245. TEX. HEALTH & SAFETY CODE ANN. § 170A (West 2025).

246. § 170A.002.

247. § 170A.004.

248. § 170A.005.

249. *See* Huntington v. Attrill, 146 U.S. 657, 667–68 (1892); McKusick, *supra* note 125, at 672–73 (explaining that whether a law allows recovery of civil judgments by a state is evidence that the law is penal in nature).

250. "State courts have permitted the enforcement of judgments involving what would seem to be 'penal' elements, such as punitive damages, sanctions, and so on." Diego A. Zambrano, Mariah E. Mastrodimos & Sergio F. Z. Valente, *The Full Faith and Credit Clause and the Puzzle of Abortion Laws*, 98 N.Y.U. L. REV. ONLINE 382, 401 (2023) (citing case law examples, including *Rein v. Koons Ford, Inc.*, 567 A.2d 101 (1989)). In *Rein v. Koons Ford*, the Maryland Court of Appeals held that a Virginia consumer protection statute was not penal in nature, even though it "additionally punishe[d] the wrongdoer or help[ed] to deter unwanted conduct." *Rein*, 567 A.2d at 103. This case illustrates how the penal judgment exception does not block enforcement for civil judgments that are primarily designed to compensate and deter wrongdoing in a *private* dispute. *See id.*

251. Baker v. Gen. Motors Corp., 522 U.S. 222, 235 (1998) (citing McElmoyle v. Cohen, 38 U.S. 312, 325 (1839)). In *Baker,* the constitutional issue concerned, among other issues, whether an injunction, or equity decree is covered under the Full Faith and Credit Clause because such decrees are equivalent to judgments. *See id.* at 226. By emphasizing that "the Court has never placed equity decrees outside the full faith and credit domain," the Court determined that these decrees are subject to the conclusive effects afforded to judgments on the underlying parties. *Id.* at 223.

252. *Id.* at 235.

The Fifth Circuit elaborated that, "'[e]venhanded' means only that the state executes a sister state judgment in the same way that it would execute judgments in the forum court."[253]

Accordingly, states would only be required to recognize or provide conclusive effect to out-of-state, civil judgments (that are not penal in nature) against physicians practicing within their borders with a reciprocal medical license. But a state may invoke its respective laws in deciding whether and how to *enforce* those judgments, as long as the forum state evenhandedly applies its own law. For example, the enforcing court may refer to its own statute of limitations to bar enforcement of the civil judgment.[254]

These analyses lead to peculiar results. The Clause likely requires that the medical license of a physician licensed in State A be honored in State B. However, if State A's medical board later suspends or revokes that physician's license, Supreme Court doctrine does not require other states to give that decision conclusive effect. As a result, a sanctioned physician may continue medical practice in other jurisdictions with an invalid reciprocal license. Allowing a physician without a valid license to care for patients poses serious risks to patient safety and creates legal liability for hospitals.

This Subsection highlights the importance of the Effects Provision, which empowers Congress to clearly "prescribe" the "effect" of the Clause's Categories.[255] Without congressional guidance, application of Supreme Court doctrine on the Self-Executing Provision to physician licensure will result in unresolved questions, practical complications, and confusion amongst states. Indeed, Congress has leveraged this constitutional power to pass legislation to resolve similar problems resulting from our federal system.[256] This Article's Proposed SMLRA would be an appropriate use of Congress's power to enforce

253. Adar v. Smith, 639 F.3d 146, 159 (5th Cir. 2011). According to the Fifth Circuit, the Clause only required the Registrar to *recognize* "the validity of the New York adoption decree." *Id.* In relying on *Baker*, Louisiana was permitted to determine how best to enforce the adoption decree under its laws as long as such enforcement was "evenhanded." *Id.* To illustrate this point, the majority cites *Hood v. McGehee*, 237 U.S. 611 (1915), a Supreme Court case where adopted children from Louisiana brought a quiet title action regarding their adoptive father's property in Alabama. *Id.* As Alabama's inheritance statute excluded adopted children from other states, the adopted children claimed that Alabama's law violated the Full Faith and Credit Clause. *Hood*, 237 U.S. at 611. The Supreme Court reached a different conclusion and held that the law did not violate the Clause. *Id.* at 615. Alabama recognized that the children were legally adopted by the father. *Adar*, 639 F.3d at 159. Additionally, Alabama's law was applied evenhandedly because "no children adopted in other states could inherit land in Alabama from their adoptive parents." *Id.* at 177 (Wiener, dissenting). *Cf.* V.L. v. E.L., 577 U.S. 404, 407–09 (2016) (holding that Alabama *must* give full faith and credit to a Georgia adoption judgment because the rendering court had jurisdiction to enter the decree).

254. *See* Jeffrey Schoenblum, *Strange Bedfellows: The Federal Constitution, Out-of-State Nongrantor Accumulation Trusts, and the Complete Avoidance of State Income Taxation*, 67 VAND. L. REV. 1945, 1996 (2014) (referring to the forum's application of procedural rules in the tax-related judgments).

255. *See* U.S. CONST. art. IV, § 1.

256. *See* discussion *supra* Section III.D.

the full faith and credit of out-of-state physician licenses and provide significant clarity on the impact of out-of-state disciplinary actions.

B. *The Effects Provision and the State Medical Licensing Reciprocity Act*

This Section returns to and expounds upon the fundamental parts of this Article's Proposed SMLRA. The Proposed SMLRA will follow the previous full faith and credit examples of federal mandates to honor certain types of the Clause's Categories.[257] Currently, Congress has only passed full faith and credit legislation in the family and criminal law areas.[258] But like those federal laws, congressional intervention into the patchwork of state laws on physician licensure will address the need for uniformity to facilitate telemedicine expansion in medical deserts. The absence of uniformity in state medical licensure laws, coupled with the lack of license reciprocity between states, creates barriers for physicians seeking to provide virtual care within out-of-state underserved communities.

This Part then situates the Proposed SMLRA within the full faith and credit doctrine and the "non-self-executing" view of the Effects Provision.[259] Indeed, both of these approaches acknowledge Congress's power under the Effects Provision to determine the full faith and credit that states owe to the Clause's Categories.[260] However, as discussed in Section III.D, the Supreme Court has yet to establish the boundaries of Congress's power. As a result, this Part considers how diverging scholarly conceptualizations of the Clause's scope may impact the Proposed SMLRA's constitutionality.

1. The State Medical Licensing Reciprocity Act's Provisions

The Proposed SMLRA will have three key parts: (1) a domiciliary requirement for license reciprocity; (2) the conditions under which full faith and credit must be given to civil judgments and administrative decisions affecting a physician's licensure status; and (3) a provision highlighting that state medical boards will maintain authority over other substantive standards that govern medical practice within their borders.

First, the Proposed SMLRA will require the "appropriate authorities in each state"[261] to recognize or provide full faith and credit to the current and valid medical licenses of out-of-state physicians who have received a medical

257. *See* discussion *supra* Section III.D.

258. *See* discussion *supra* Section III.D.

259. *See* discussion of Supreme Court doctrine and the "non-self-executing" view *supra* Part III.

260. *See* discussion *supra* Section III.D.

261. Similar language is included in the full faith and credit laws for child support orders and child custody determinations. *See* 28 U.S.C. § 1738A ("Full faith and credit given to child custody determinations."); 28 U.S.C. § 1738B ("Full faith and credit for child support orders.").

license from the state where they are domiciled ("state of domicile license").[262] In the telemedicine context, the domiciliary-license rule would allow a physician licensed in her state of domicile to provide virtual care to patients located elsewhere, without obtaining a medical license or otherwise satisfying the licensure requirements of the patient's state. The Proposed SMLRA will include this requirement to avoid the "race-to-the-bottom" and jurisdiction-shopping concerns described in Section IV.A.3.

Beyond the domiciliary requirement, the Proposed SMLRA will clarify the ambiguities detailed in Section IV.A.4 about the ramifications of out-of-state disciplinary actions on a physician's reciprocal license. The Proposed SMLRA will primarily focus on final civil judgments and administrative decisions by the state medical board in the physician's state of domicile. The Proposed SMLRA will specify that states are required to give full faith and credit to such determinations from the state of domicile that would impact the current or active licensure status of the out-of-state physician. These determinations include, but are not limited to, license expiration, suspension, and revocation. For example, if a physician's license is revoked through a medical board's disciplinary action or that decision is affirmed through a final civil judgment in her state of domicile, other jurisdictions will be required to give those decisions full faith and credit. In other words, the physician would no longer have a current license and therefore would lose eligibility for medical license reciprocity and the ability to lawfully practice in multiple states.

The Proposed SMLRA's extension of full faith and credit to disciplinary actions from the physician's state of domicile is critical to protect the integrity of the state medical license reciprocity system. Without it, a physician who has been disciplined for misconduct in his state of domicile and had his license revoked or suspended may evade the disciplinary sanction and continue providing virtual care in another state. This requirement protects patients from potential harm caused by sanctioned physicians who may attempt to circumvent the licensure system.

The Proposed SMLRA will also underscore that nothing in the Act should be construed to usurp a state's authority over its other substantive standards governing the practice of medicine. Similar to states that participate in the Interstate Medical Licensure Compact, the Proposed SMLRA will allow state medical boards to have jurisdiction over physicians with reciprocal licenses to

262. The physician must remain in good standing with the licensing board in the state of domicile by completing any post-licensure requirements, such as those for continuing medical education activities. Each state medical board has CME requirements. For example, Georgia requires 40 hours of approved CME biennially. *See Continuing Education and Other Required Training for Physicians*, GA. COMPOSITE MED. BD., https://medicalboard.georgia.gov/professional-resources/continuing-education-and-other-required-training-physicians [https://perma.cc/P74R-DNFF].

ensure compliance with their respective Medical Practice Acts.[263] States may also refer to the data collected on physician conduct beyond the physician's state of domicile in the National Practitioner Data Bank—a federal repository of successful medical malpractice claims and disciplinary actions by hospitals and state medical boards[264]—and consider its impact in their jurisdictions.

2. The Scope of Congressional Power

Contemporary scholarship on the scope of the Effects Provision describes the potential boundaries of Congress's "Effects" power.[265] As discussed above, the Clause may confer upon Congress a broad, plenary power to determine the effect of the Clause's Categories.[266] On the other hand, the "Effects" power may be more limited because it should not diminish the Supreme Court's requirements for the "Self-Executing" command.[267]

The Proposed SMLRA does not run afoul of either understanding. Under Supreme Court doctrine, the Clause does not *require* states to afford full faith and credit to disciplinary actions issued by another state's medical board.[268] Consistent with the broad *and* narrow views of the Clause's scope, the Proposed SMLRA will extend the full faith and credit command to these types of determinations to ensure that a revoked or suspended license from the state of domicile does not have the benefit of reciprocity.[269]

Moreover, the Proposed SMLRA does not undermine the Supreme Court's interpretation of the Self-Executing Provision. Rather, it codifies the Clause's "exacting" requirement that final civil judgments (specifically those

263. *See* IMLC COMPACT LAW, *supra* note 63, at 2 ("The Compact creates another pathway for licensure and does not otherwise change a state's existing Medical Practice Act . . . State medical boards that participate in the Compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the Compact.").

264. Kenneth S. Abraham & Paul C. Weiler, *Enterprise Medical Liability and the Evolution of the American Health Care System*, 108 HARV. L. REV. 381, 408 (1994).

265. *See* discussion *supra* Section III.D.1.

266. *See* discussion *supra* Section III.D.1.

267. *See* discussion *supra* Section III.D.1.

268. *See* discussion *supra* Section IV.A.4 (applying Supreme Court doctrine on the full faith and credit owed to civil judgments and out-of-state disciplinary actions).

269. Similarly, before the federal law requiring that full faith and credit be provided to certain child custody determinations, states were not constitutionally required to enforce those child custody orders from other states because those orders were not final judicial judgments. *See* Thompson v. Thompson, 484 U.S. 174, 180 (1988) ("The anomaly traces to the fact that custody orders characteristically are subject to modification as required by the best interests of the child. As a consequence, some courts doubted whether custody orders were sufficiently 'final' to trigger full faith and credit requirements . . . ."). As a result, the law expanded states full faith and credit obligations and now requires them to give full faith and credit to child custody determinations that fit the law's specifications. *See* 28 U.S.C. § 1738A(a)–(d).

from the state of domicile impacting the medical license's status) be recognized in other jurisdictions.[270]

3. The Generality Requirement

The Proposed SMLRA, however, may raise constitutional concerns regarding the specificity, rather than generality, of its provisions. The Supreme Court has not defined "general Laws." However, there are scholarly interpretations that shed light on how the Court may conceptualize the term. The first suggests that subject-matter-specific laws are not *general* laws.[271] For instance, a federal law mandating full faith and credit for a specific type of judicial judgment or state law would not meet the generality requirement under this view.

Nevertheless, Congress has already passed laws that impact certain types of judgments,[272] and all of the current full faith and credit laws are subject-matter specific.[273] The Proposed SMLRA will be comparable to those laws because it will target a specific type of public Acts (i.e., state laws governing physician licensure), as well as the state of domicile's final judicial judgments and regulatory decisions regarding a physician's current licensure status. The lack of constitutional scrutiny of the current laws suggests content-specific laws, like the federal legislation proposed in this Article, do not run afoul of Congress's power under the Effects Provision.[274]

Under the second scholarly interpretation, "general Laws" should not target certain state laws that Congress disfavors or favors to proscribe or enhance the full faith and credit of those laws across states.[275] With the Proposed SMLRA, Congress will not give preference to one state's licensing regime over that of another. Rather, a physician's ability to obtain medical license reciprocity hinges on that physician's fulfillment of the licensure application requirements in her *state of domicile*.

Even though the Proposed SMLRA does not explicitly target any state law governing licensure, an unconvincing argument could be made that the law will consequentially favor state laws providing less stringent physician licensure requirements and disfavor those with more rigid standards. As a result, doctors may hypothetically be motivated to apply for and obtain licensure in the former type of jurisdiction. But again, the Act will specify that the state of domicile

270. *See* Baker v. Gen. Motors Corp., 522 U.S. 222, 235 (1998).

271. *See* discussion *supra* Section III.D.2; *see also* Rosen, *What the Constitution Requires*, *supra* note 169, at 941.

272. *See* discussion *supra* Section III.D.2 (describing Section 40221(a) of the Violent Crime Control Enforcement Act of 1994 and full faith and credit legislation on child custody orders).

273. *See* discussion *supra* Section III.D.2.

274. *See* Rosen, *What the Constitution Requires*, *supra* note 169, at 941–42.

275. *See Hearing*, *supra* note 186, at 45 (statement of Prof. Sunstein).

will be the primary state for the purposes of medical license reciprocity. The substantive physician licensure requirements, moreover, are similar across states.[276] And in any event, AAMC data suggests that the location where physicians enroll in their residencies has a meaningful impact on where they practice after their program's completion.[277] Therefore, these concerns are largely unwarranted.

4. The Tenth Amendment

Not only does Congress have the explicit authority to act under the Effects Provision, but also the Proposed SMLRA likely does not violate the other key constitutional provision in this area, the Tenth Amendment.[278] The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[279] The powers reserved to the states include the "police powers," which refer to authority over the regulation of public safety, health, and morality.[280] State police powers are broad, and the Court has acknowledged that "an attempt to define [their] reach . . . is fruitless."[281]

"Public health regulation has long been regarded as one of the states' primary and most important 'police powers.'"[282] In the nineteenth century, most health care regulation was local because it was primarily in response to contagious disease outbreaks.[283] Because states were quite literally closer to the outbreak, they were in the best position to develop a targeted and community-specific public health response.[284] By the 1850s, state police powers also came to include health professional licensure.[285]

276. *See* Georgia Garvey, *Navigating State Medical Licensure*, AM. MED. ASS'N (Apr. 28, 2026), https://www.ama-assn.org/print/pdf/node/6436 [https://perma.cc/MTQ9-FFJN].

277. *See* Patrick Boyle, *America's Medical Residents, By the Numbers,* AAMC NEWS (Dec. 1, 2021), https://www.aamc.org/news/america-s-medical-residents-numbers-0 [https://perma.cc/TL9K-HUN6].

278. The Full Faith and Credit Clause's Effects Provision may be in tension with the anticommandeering doctrine. This topic is actively being explored in the author's current work. *See* Parker, *The Situs Fiction*, *supra* note 94.

279. U.S. CONST. amend. X.

280. *See* James G. Hodge Jr., *The Role of New Federalism and Public Health Law*, 12 J.L. & HEALTH 309, 319 (1998).

281. *See* Berman v. Parker, 348 U.S. 26, 32 (1954).

282. *See* Hodge, *supra* note 280, at 323–24 (citing several Supreme Court cases).

283. *See* Kevin Outterson, *Health Care, Technology and Federalism*, 103 W. VA. L. REV. 503, 506 (2001).

284. *Id.* (explaining that in America's early years, "[t]ransmission of the relevant diseases was by face-to-face or local contact, which facilitated a predominantly local response.").

285. *Id.* at 512–13 (recognizing that physician licensure is within the state police powers) (citing Dent v. West Virginia, 129 U.S. 114, 122–23 (1889); Hawker v. New York, 170 U.S. 189, 194 (1898)).

While state police powers have been construed quite broadly, Congress has regulated health matters in the past. In *Gonzales v. Oregon*,[286] the Supreme Court stated that the "[state law at issue's] structure and operation presume and rely upon a functioning medical profession regulated under the States' police powers," *and* "[t]he Federal Government can set uniform standards for regulating health and safety."[287] Most notably, Congress passed the Health Care Quality Improvement Act of 1986, which created the National Practitioner Data Bank and its requirements that states report licensing decisions.[288] That federal law is particularly relevant here as it directly implicates the states' police power in the context of medical licensure.

Since then, the Supreme Court has upheld Congress's ability to act in the health care context through the Commerce Clause[289] or other enumerated powers.[290] Congress has utilized its Spending Clause power to pass legislation connected to receipt of federal funds, such as the Anti-Kickback Statute,[291] Stark Law,[292] and Emergency Medical Treatment and Active Labor Act (EMTALA).[293] States have exercised the lion's share of health regulation, but these examples suggest that health regulation in general is not exclusive to the state police power.[294]

The Proposed SMLRA, as a full faith and credit law, is designed to ultimately retain state control over medical licensure. The Act does not purport to create a national license that is distributed by the federal government to physicians who meet its medical education and training requirements. Instead, full faith and credit is owed to a license from the state of domicile, which could be any state, and its licensure regime. As a result, the Act arguably protects the central role of states in this regulatory area.

286. 546 U.S. 243 (2006).

287. *Id.* at 246–47.

288. *See* NAT'L PRACTITIONER DATA BANK, U.S. DEPT. OF HEALTH & HUM. SERVS., https://www.npdb.hrsa.gov/topNavigation/timeline.jsp [https://perma.cc/DFV9-5GJP].

289. *See, e.g.*, Gonzales v. Raich, 545 U.S. 1, 2 (2005) (holding that the federal Controlled Substances Act was a valid exercise of Congress's power under the Commerce Clause to regulate local marijuana cultivation for medical purposes authorized by state law).

290. *See, e.g.*, Nat'l Fed'n Indep. Bus. v. Sebelius, 567 U.S. 519, 574 (2012) (determining that specific parts of the Patient Protection and Affordable Care Act of 2010 (ACA) were constitutional, including the individual mandate under Congress's tax power).

291. *See* 42 U.S.C. § 1320a-7b(b).

292. *See* 42 U.S.C. § 1395nn.

293. *See* 42 U.S.C. § 1395dd; *see also* Elizabeth Y. McCuskey, *Body of Preemption: Health Law Traditions and the Presumption Against Preemption*, 89 TEMP. L. REV. 95, 119 (2016).

294. *See* Bill Marino, Roshen Prasad & Amar Gupta, *A Case for Federal Regulation of Telemedicine in the Wake of the Affordable Care Act*, 16 COLUM. SCI. & TECH. L. REV. 274, 297–302 (2015); Lars Noah, *Ambivalent Commitments to Federalism in Controlling the Practice of Medicine*, 53 U. KAN. L. REV. 149, 192 (2004).

CONCLUSION

State regulation of medical licensure and the ensuing barrier to telemedicine expansion are prominent topics among legal scholars, health care providers, and policymakers. The current lack of medical license reciprocity hinders telemedicine expansion and potentially the provision of telehealth care in states experiencing geographic distribution gaps. Despite current state attempts to ease this burden, the problem remains unsolved, with the patchwork of state licensure regulation underscoring the critical need for systemic reform. This Article calls for consideration of an underexplored congressional authority, under the Full Faith and Credit Clause, to enact this Article's Proposed State Medical Licensing Reciprocity Act. The Proposed SMLRA aims to modernize physician licensure by allowing certain licenses to be portable and recognized by other states. This legislative intervention seeks to harmonize federal authority under the Full Faith and Credit Clause with the preservation of state sovereignty in regulating medical licensure and clinical practice to finally simplify the cumbersome network of licensure pathways.