

Of course, the McDonald sons have a constitutional right to work for a living; see *State v. Polakow's Realty Experts, Inc.*, 243 Ala. 441, 10 So.2d 461, 462 (1942). But beyond this constitutional right, they further have the constitutional right to travel which is protected by the U.S. Constitution; see *Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 49 (1868) (“We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own states”); *Kent v. Dulles*, 357 U.S. 116, 125, 78 S.Ct. 1113, 1118 (1958) (“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without the due process of law under the Fifth Amendment”); *United States v. Guest*, 383 U.S. 745, 757, 86 S.Ct. 1170, 1178 (1966) (“The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union”); *Shapiro v. Thompson*, 394 U.S. 618, 629, 89 S.Ct. 1322, 1329 (1969) (“This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement”); *Dunn v. Blumstein*, 405 U.S. 330, 339, 92 S.Ct. 995, 1001 (1972) (“...since the right to travel was a constitutionally protected right, ‘any classification which serves to penalize the exercise of that right,¹ unless shown to be necessary to promote a compelling governmental interest, is unconstitutional”); and *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 254, 94 S.Ct. 1076, 1080 (1974) (“The right of interstate travel has repeatedly been recognized as a basic constitutional freedom”). See also *Schachtman v. Dulles*, 225 F.2d 938,941 (D.C.Cir. 1955) (“The right to travel, to go from place to place as the

¹ The Court in *Dunn* also declared that the “The right to travel is an ‘*unconditional*’ personal

means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under law”); *Worthy v. Herter*, 270 F.2d 905, 908 (D.C.Cir. 1959)(“The right to travel is a part of the right to liberty”); *Cole v. Housing Authority of City of Newport*, 435 F.2d 807, 809 (1st Cir. 1970)(“...the right to travel is a fundamental personal right that can be impinged only if to do so is necessary to promote a compelling governmental interest”); *King v. New Rochelle Municipal Housing Authority*, 442 F.2d 646, 648 (2nd Cir. 1971)(“It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state”); *Demiragh v. DeVos*, 476 F.2d 403, 405 (2nd Cir. 1973)(“...the right to travel... [is] a ‘fundamental’ one, requiring the showing of a ‘compelling’ state or local interest to warrant its limitation”); *United States v. Davis*, 482 F.2d 893, 912 (9th Cir. 1973)(“...it is firmly settled that freedom to travel at home and abroad without unreasonable governmental restriction is a fundamental constitutional right of every American citizen... At the minimum, governmental restrictions upon freedom to travel are to be weighed against the necessity advanced to justify them, and a restriction that burdens the right to travel ‘too broadly and indiscriminately’ cannot be sustained”); *McLellan v. Miss. Power & Light Co.*, 545 F.2d 919, 923 n. 8 (5th Cir. 1977)(“The Constitutional right to travel is ‘among the rights and privileges of National citizenship”); *Andre v. Board of Trustees of Village of Maywood*, 561 F.2d 48, 52 (7th Cir. 1977)(“The right to travel interstate, although nowhere expressed in the Constitution, has long been recognized as a basic fundamental right”); *Wellford v. Battaglia*, 343 F.Supp. 143, 147 (D.Del. 1972)(“The right to travel... is a right to intrastate as well as interstate migration”); *Costa v. Bluegrass Turf Service, Inc.*, 406 F.Supp. 1003, 1007 (E.D.Ken. 1975)(“...pure administrative convenience, standing alone, is an insufficient basis for an enactment which ... restricts the right

right,’ a right whose exercise may not be conditioned,” *Id.*, at 341.

to travel”); *Coolman v. Robinson*, 452 F.Supp. 1324, 1326 (N.D.Ind. 1978)(“The right to travel is a very old and well established constitutional right”); *Tetalman v. Holiday Inn*, 500 F.Supp. 217, 218 (N.D.Ga. 1980)(the “constitutionally protected right to travel ... is basically the right to travel unrestricted by unreasonable government interference or regulation”); *Bergman v. United States*, 565 F.Supp. 1353, 1397 (W.D. Mich. 1983)(“The right to travel interstate is a basic, fundamental right under the Constitution, its origins premised upon a variety of constitutional provisions”); *Lee v. China Airlines, Ltd.*, 669 F.Supp. 979, 982 (C.D.Cal. 1987)(“...the right to travel interstate is fundamental”); and *Pottinger v. City of Miami*, 810 F.Supp. 1551, 1578-79 (S.D.Fla. 1992).

This right to travel is also a constitutional right under our state constitution, embodied within the “liberty” provision of Art. I, §1; see *Joseph v. Randolph*, 71 Ala. 499, 504-05 (1882)(“There can be no denial of the general proposition that every citizen of the United States, and every citizen of each State of the Union, as an attribute of personal liberty, has the right, ordinarily, of free transit from, or through the territory of any State. This freedom of egress or ingress is guaranteed to all by the clearest implications of the Federal, as well as of the State constitution”). This constitutional right to travel is widely recognized; see

State v. Wylie, 516 P.2d 142, 145-46 (Alaska 1973)(“...the freedom to travel throughout the United States ‘uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement’ is a fundamental personal right under the United States Constitution ... [and] ‘any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional”); *People v. Horton*, 14 CalApp.3d 930, 92 Cal.Rptr. 666, 668 (1971)(“...the right of the citizen to drive on a

public street with freedom from police interference ... is a fundamental constitutional right”); *In re White*, 97 Cal.App.3d 141, 158 Cal.Rptr. 562, 566-67 (1979)(“...there is a constitutional right to intrastate travel”); *Heninger v. Charnes*, 200 Colo. 194, 613 P.2d 884, 887 (1980)(“...the right to travel interstate is without question a fundamental right under the United States Constitution”); *Florida Motor Lines, Inc. v. Ward*, 102 Fla. 1105, 137 So. 163, 167 (Fla. 1931)(“The right of a citizen to use the highways, including the streets of the city or town, for travel and to transport his goods, is an inherent right which cannot be taken from him, but it is subject to reasonable regulation in the interest of the public good”); *Hall v. King*, 266 So.2d 33, 34 (Fla. 1972)(the right to travel “may be restricted only for a compelling state interest”); *Chicago Motor Coach Co. v. City of Chicago*, 337 Ill. 200, 169 N.E. 22, 25 (1929) (“Even the Legislature has no power to deny a citizen the right to travel upon the highway and transport his property in the ordinary course of his business or pleasure, though this right may be regulated in accordance with the public interest and convenience”); *People v. Chambers*, 32 Ill.App.3d 444, 335 N.E.2d 612, 617 (1975); *Sturup v. Mahan*, 290 N.E.2d 64, 68 (Ind.App. 1972)(“...each citizen, adult or minor, has a fundamental right to move freely from State to State and from City to City within the State”); *Swift v. City of Topeka*, 43 Kan. 671, 23 P. 1075, 1076 (1890)(“This right of the people to the use of the public streets of a city is so well established and so universally recognized in this country that it has become a part of the alphabet of fundamental rights of the citizen”); *Manzanares v. Bell*, 214 Kan. 589, 522 P.2d 1291,1301 (1974) (“...freedom to travel throughout this state and this nation is a fundamental right”); *Town of Milton v. Civil Service Comm.*, 365 Mass. 368, 312 N.E.2d 188, 191 n. 2 (1974); *State v. Moseng*, 254 Minn. 263, 95 N.W.2d 6, 13 (1959)(“...one’s inalienable right to liberty and the pursuit of happiness is curtailed if he may be unreasonably kept off the highways maintained by him as a citizen and taxpayer ;... ‘the freedom to make use

of one's own property, here a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a 'liberty' which under the Fourteenth Amendment cannot be denied or curtailed by a state without due process of law.' In any event, the right of a citizen to drive a motor vehicle upon the highways is to be safeguarded against the whim or caprice of police or administrative officers"); *Davis v. Davis*, 297 Minn. 187, 210 N.W.2d 221, 223 (1973)("Freedom to travel throughout the United States has long been recognized as a basic right under the Constitution, and the freedom to travel includes the freedom to enter and abide in any state"); *Teche Lines, Inc. v. Danforth*, 195 Miss. 226, 12 So.2d 784, 787 (1943)("The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety.... The rights aforesaid, being fundamental, are constitutional rights, and while the exercise thereof may be reasonably regulated by legislative act in pursuance of the police power of the State, and although those powers are broad, they do not rise above those privileges which are imbedded in the constitutional structure"); *State v. Johnson*, 75 Mon. 240, 243 P. 1073, 1078 (1926)("...while a citizen has the right to travel upon the public highways and to transport his property thereon, that right does not extend to the use of the highways, either in whole or in part, as a place of business for private gain. For the latter purpose no person has a vested right in the use of the highways of the state, but is a privilege or license which the Legislature may grant or withhold in its discretion"); *Donnelly v. City of Manchester*, 111 N.H. 50, 274 A.2d 789, 791 (1971)("The right of every citizen to live where he chooses and to travel freely not only within the state but across its borders is a fundamental right"); *Gow v. Bingham*, 107 N.Y.S. 1011, 1014 (1907)("...the right of personal liberty ... includes ... absolute freedom to every one to go where and when he pleases"); *State v. Dobbins*, 277 N.C. 484, 178 S.E.2d 449, 456 (1971)("...the right to travel upon the

public streets of a city is a part of every individual's liberty"); Fraternal Order of Police, *Youngstown Lodge v. Hunter*, 36 Ohio Misc. 103, 303 N.E.2d 103, 106 (1973)("Any classification which serves to penalize the exercise of a constitutional right (freedom of movement across frontiers in either direction and inside frontiers as well) unless shown to be necessary to promote a compelling governmental interest, is unconstitutional"); *Cummins v. Jones*, 79 Or. 276, 155 P. 171, 172 (1916); *Josephine County School District No. 7 v. Oregon School Activities Assoc.*, 15 Or.App. 185, 515 P.2d 431, 437 (1973)("...the right to travel intrastate is a right protected from discriminatory regulation to the same extent as is his right to freedom of interstate movement"); *Henry v. Cherry & Webb*, 30 R.I. 13, 73 A. 97, 107 (1909)("...the right of personal liberty include[s] .. the right to go where a persons please[s]"); *Berberian v. Lussier*, 87 R.I. 226, 139 A.2d 869, 872 (1958); *Knowlton v. Board of Law Examiners*, 513 S.W.2d 788, 790-91 (Tenn. 1974)("The right to travel freely among the states is a fundamental, constitutionally protected right"); *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579, 583 (1930)("The right of a citizen to travel upon the public highways and to transport his property thereon in the ordinary course of life and business is a common right which he has under his right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety... It is not a mere privilege..."); *Hadfield v. Lundin*, 98 Wash. 657, 168 P. 516, 518 (1917)("They all recognize the fundamental distinction between the ordinary right of a citizen to use the streets in the usual way and the use of the streets as a place of business or main instrumentality of a business for private gain. The former is a common right, the latter an extraordinary use"); *Eggert v. City of Seattle*, 81 Wash.2d 840, 505 P.2d 801, 804 (1973)("The right to travel is a right applicable to intrastate as well as interstate commerce... Both travel within and between states is protected"); *Ex parte Dickey*, 76 W.Va. 576, 85 S.E. 781, 782 (1915)("The right of a citizen to travel upon the highway and transport his property thereon, in the ordinary course of life and business, differs radically and obviously

from that of the one who makes the highway his place of business and uses it for private gain... The former is the usual and ordinary right of a citizen, a common right, a right common to all, while the latter is special, unusual, and extraordinary. As to the former, the extent of legislative power is that of regulation; but, as to the latter, its power is broader"); and *Ervin v. State*, 41 Wis.2d 194, 163 N.W.2d 207, 210 (1968)("The freedom to move about is a basic right of citizens under our form of government").

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Part of Scott McDonald brief submitted by Larry Becraft