



Not Your Grandmother's Fundamental Right (or is it?):

Travel to Re

Civil
Tuesday, November 4,
2025

The Fundamental Right to Travel

Could a County pass a law that fines:

Unpermitted temporary activity [such as going to or from an organized protest] promoted via a social media platform which substantially increases or disrupts the normal flow of traffic on a roadway, street, or highway?



The Fundamental Right to Travel

Could a City pass a law prohibiting:

Using local streets and highways to obtain an out-of-state abortion?



The Fundamental Right to Travel

Could a State enforce:

Private HOA provisions that bar get-out-the-vote canvassing efforts?



Roadmap:

Doctrinal Overview:

- The “fundamental right to travel” as it exists.
- State power over travel.



1913: Women's Suffrage March

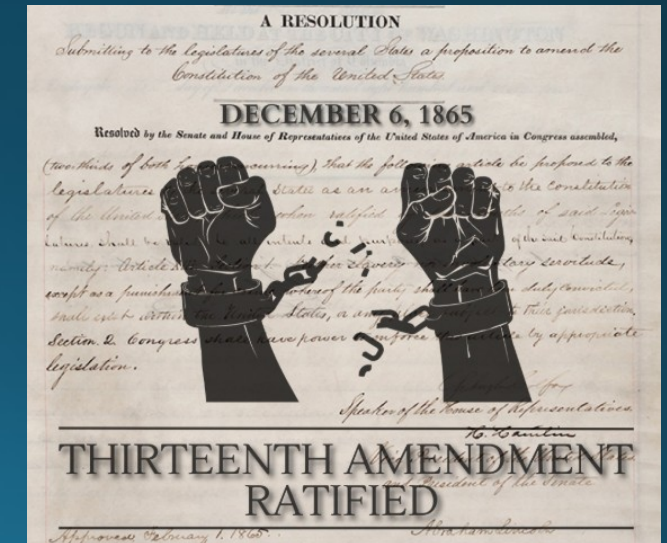
Travel to Resist:

- Careful description of the right.



How We Get There:

- Substantive Due Process analysis.
- Textual hook.



Doctrinal Overview:



The “fundamental right to travel”:

- 1) Protects non-residents’ right to enter another State.
- 2) Ensures travelers are treated as “welcome” visitors.
- 3) Guarantees all residents – whether old or new – equal treatment by their State.

~ Justice Scalia

Bray v. Alexandria Women’s Health Clinic, 506 U.S. 263 (1992).

State Power Over Travel



1955: Map of Jackson Ward in Richmond, Virginia.



Left: 1956 photo showing the razing of Jackson Ward.
Bottom: 1957 aerial showing construction of the Petersburg-Richmond Turnpike.



Overlay of I-64's current path over historic Jackson Ward.

Loving v. Virginia, 388 U.S. 1 (1967)

No. 420276 Marriage License

To Reverend John L. Henry
authorized to celebrate marriages in the District of Columbia, GREETING:
You are hereby authorized to celebrate the rites of marriage between
Richard Perry Loving, of Passing, Virginia
AND
Mildred Delores Jeter, of Passing, Virginia
and having done so, you are commanded to make return of the same to the Clerk's Office of the United States District Court for the District of Columbia within TEN days, under a penalty of \$50 for default therein.

WITNESS my hand and seal of said Court, this 2nd
day of June, anno Domini 1958

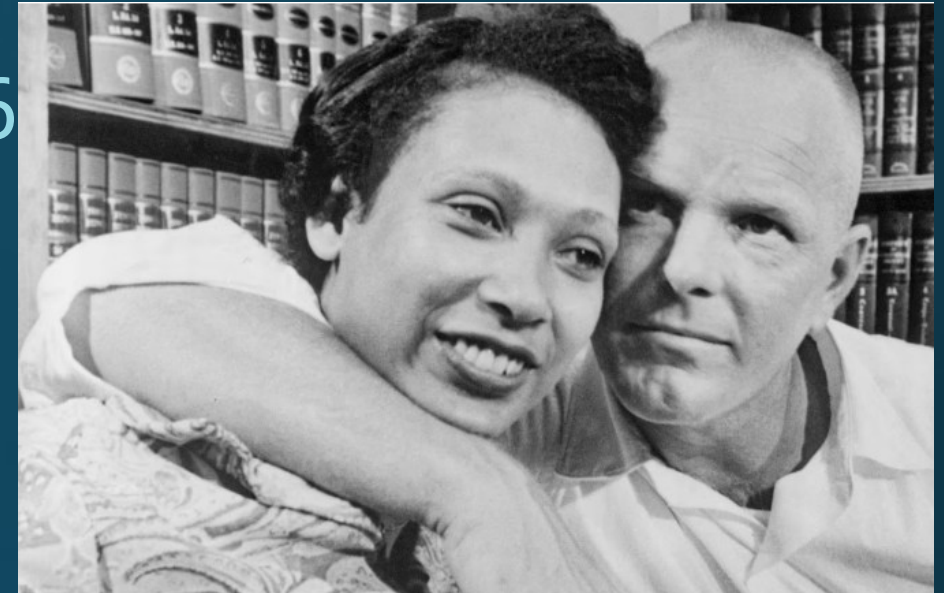
HARRY M. HULL, Clerk.
By Maud R. Ryner Deputy Clerk

No. 420276 Return

I, Reverend John L. Henry
who have been duly authorized to celebrate the rites of marriage in the District of Columbia, do hereby certify that, by
authority of license of corresponding number herewith, I solemnized the marriage of
Richard Perry Loving and Mildred Delores Jeter
named therein, on the 2nd day of June, 1958, at 748 Princeton Place, N. W.
(Name of church, or street address, etc.)
in said District.

6/4/58 ewg Rev. John L. Henry

FPI ERO—8-19-57-16N-7208



Richard and Mildred Loving

interracial marriages. The Lovings were convicted of violating § 20-58 of the Virginia Code:

“Leaving State to evade law.—If any white person and colored person shall go out of this State, for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be punished as provided in § 20-59, and the marriage shall be governed by the same law as if it had been solemnized in this State. The fact of their cohabitation here as man and wife shall be evidence of their marriage.”

Richard and Mildred's marriage certificate, 6/2/1958 (c/o the National Archives).

Travel to Resist:



Careful description of the right:

1. Self movement over any distance
2. To dissent, advocate change, or evade existing laws / regimes
3. That is non-violent and complies with (permissible) regulations at the destination.

1932: Hunger protest outside Boston Commons.

Travel to Resist: How We Get There



1963: March on Washington for Jobs and Freedom

14th Amendment Substantive Due Process has two elements:

- 1) The fundamental right must be “deeply rooted in this Nation's history and tradition.”
- 2) And a “careful description of the asserted fundamental liberty interest.”

~ Justice Rehnquist, majority opinion in *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

Travel to Resist: Careful Description of the Right



Above: 2004
March for
Women's
Lives.



Left: 1964
Deacons of
Defense.

1st Amendment liberties:

"[T]he Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984).

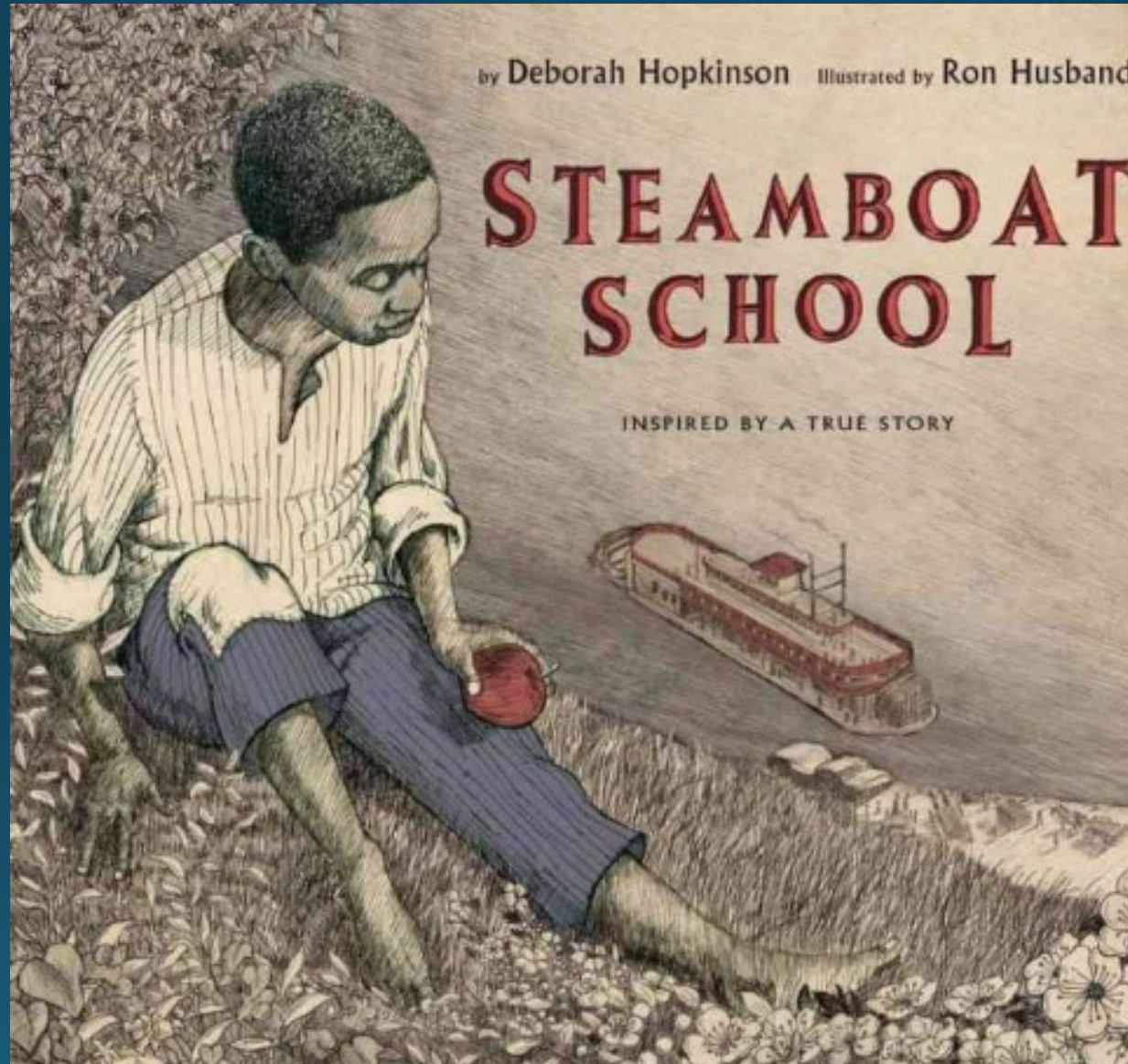
2nd Amendment liberties:

"[T]he Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 10 (2022).

4th Amendment liberties:

"[A traffic stop] remains lawful only so long as unrelated inquiries do not measurably extend the duration of the stop." *Rodriguez v. U.S.*, 575 U.S. 348, 355 (2015).

Travel to Resist: Deeply Rooted in our History & Tradition



Travel to Resist: Deeply Rooted in our History & Tradition



Spirit of Idaho Women, Boise, ID,
2022.

Travel to Resist: Deeply Rooted in our History & Tradition



Dr. Willie Parker, Board of Directors of Physicians for Reproductive Health.

Lawyers Mobilize at Nation's Airports After Trump's Order

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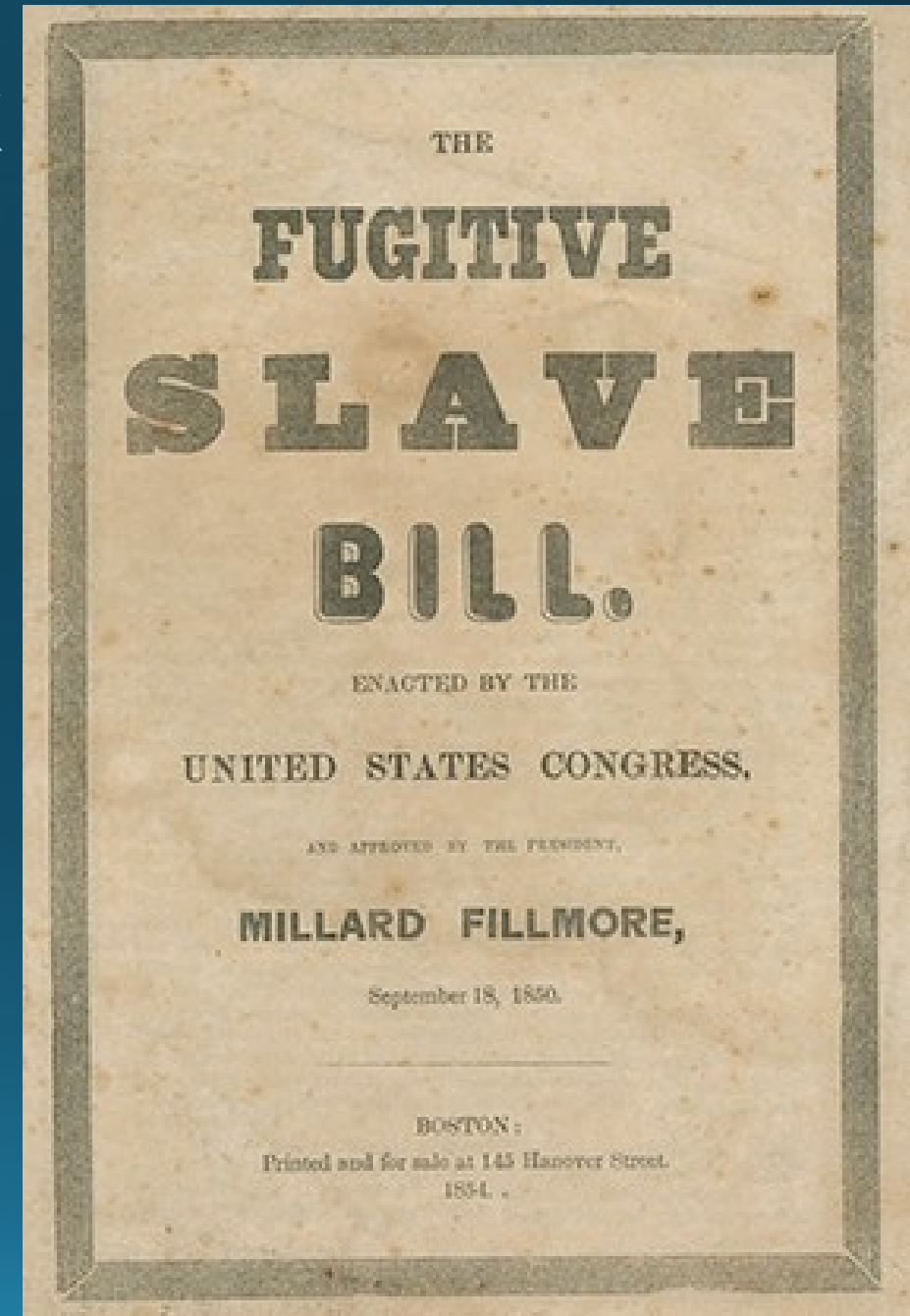


Lawyers worked with the International Refugee Assistance Project at Kennedy Airport for individuals who were denied entry into the United States. Victor J. Blue for The New York Times

Jan. 29, 2017

Travel to Resist: Textual Hook

- **U.S. Constitution, Article IV, Section 2, Clause 3:**
 - *"No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due."*
- **Federal Fugitive Slave Laws of 1793 & 1850:**
 - "[i]t shall be the duty of the executive authority of the state or territory to which such person shall have fled ...



Travel to Resist: Textual Hook

13th Amendment

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Travel to Resist: What's Next?

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

YELLOWHAMMER FUND, *et al.*,

Plaintiffs,

v.

STEVE MARSHALL, in his official
capacity as Attorney General of the
State of Alabama,

Defendant.

No. 2:23-cv-00450-MHT-KFP



PRESIDENTIAL ACTIONS

DESIGNATING ANTIFA AS A DOMESTIC TERRORIST ORGANIZATION

Executive Orders | September 22, 2025

ICE Apprehension of US Citizens Derided as 'Kavanaugh Stops'

Oct. 21, 2025, 4:45 AM EDT



Justin Wise
Reporter

