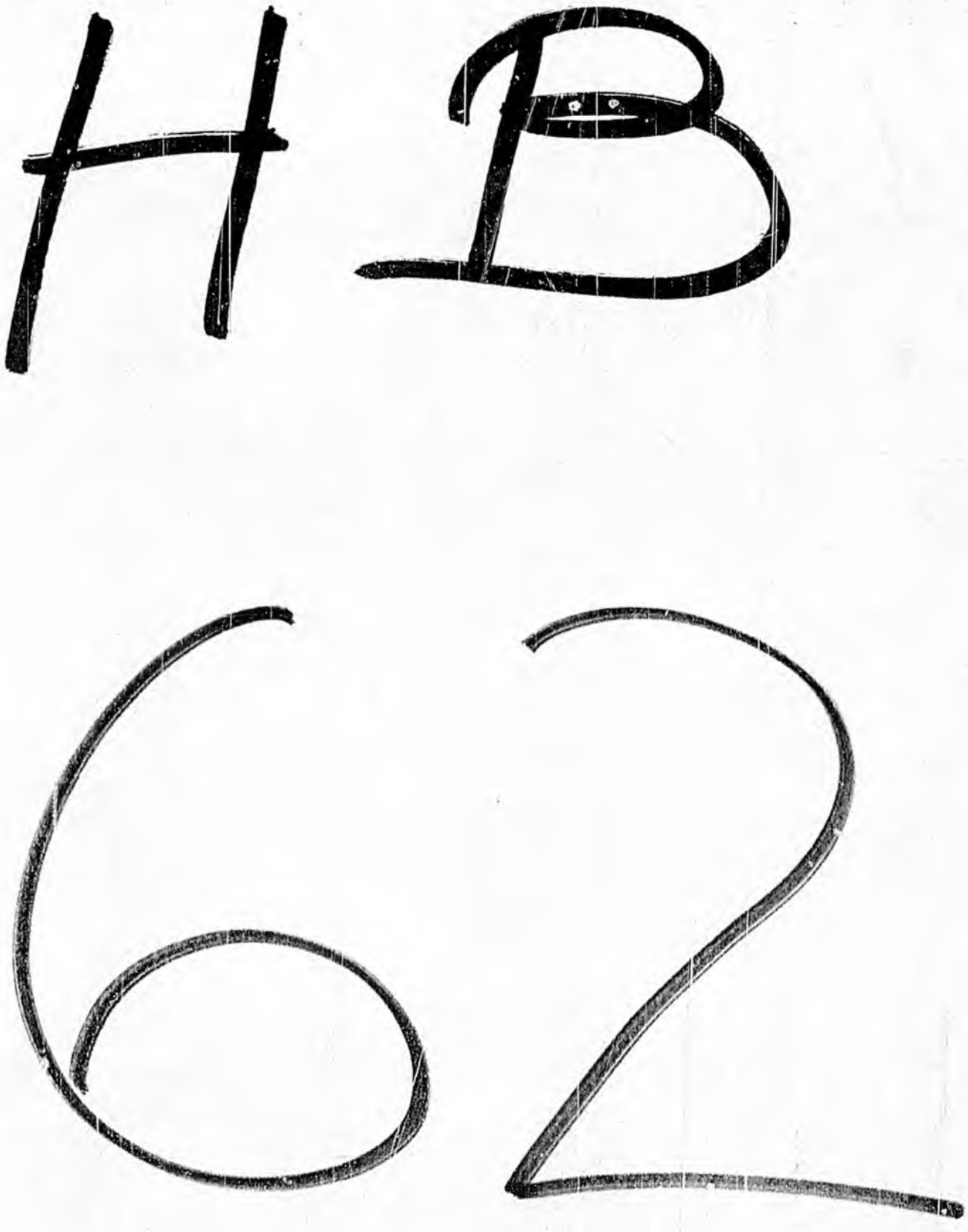
HB
62

FROM THE DESK OF IRIS A. LATHROP

P.O. BOX 187, TOK, ALASKA 99780
907-883-5172

April 18, 1984

The Honorable Mitch Abood
Alaska State Legislature
Pouch V, Mail Stop 3100
Juneau, Alaska 99811

Dear Representative Abood: Re: Magistrate Retirement
House Bill 279

I respectfully ask for your "do pass" recommendation on the subject bill. I spoke with Representative Shultz a few days ago and he recommended that I write to you, as Chairman for the State Affairs Committee.

I was present at a teleconference March 25th at Anchorage, where two of our magistrates and a district judge gave testimony to Senator Ray and the senate judiciary committee. During that conference APEA entered their opposition, to which I later responded by letter to Senator Ray and enclose a copy for your information.

In addition, a representative of the State Division of Retirement and Benefits advised it would cost the state $625,000 to include the magistrates in the judicial retirement system. Inasmuch as I have no conception of what is involved to administer a retirement system, I have written to that division for a cost breakdown. If this figure is accurate, I wonder at the cost to the state for the high-salaried people that are presently participating in that system.

I realize that you have many other issues to decide this session, however, I must ask that you give consideration to our magistrate association's request. We have had bills submitted in prior years, and as you may or may not know, we have been deeply disappointed that none of those bills were enacted. Hopefully, with your help, as well as the members of your committee, this will be the year the legislature acts in our favor.

Thank you for your consideration.

Enclosure
Copy: Honorable Bill Ray

Sincerely,

Iris A. Lathrop

Iris A. Lathrop

P. S. Please feel free to copy this letter for distribution to other house members.

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FROM THE DESK OF IRIS A. LATHROP

16

P.O. BOX [redacted] TOK, ALASKA 99780
907-883-5172 Office
907-883-4311 - Home

April 1, 1983

The Honorable Bill Ray
Alaska State Senate
Pouch V (MS 3100)
Juneau, Ak. 99811

Dear Senator Ray: Re: Teleconference 3/25/83 on Senate Bill #20

I respectfully request your "do pass" recommendation for this subject bill and wish to thank you for this teleconference.

In response to APEA's opposition, I wish to point out some differences between state employees and magistrates.

1) Most state employees work 37-1/2 hour weeks and are paid overtime. Magistrates work 37-1/2 hours plus any number of hours overtime and on-call duty 24 hours per day, seven days per week and are not paid overtime.

2) State employees can be union members. Magistrates cannot.

3) Most state employees do not have to abide by the Conflict of Interest Law. Magistrates must.

4) Most state employees can contribute to their choice of political parties and candidates. Magistrates cannot.

5) Most state employee's families (if any) do not have to abide by the conflict law and the judicial cannons. Magistrate's families must abide by both.

In addition, any of the state employees that may be bound by either the conflict law or judicial cannons earn salaries which enable them to provide for their retirement years. Magistrate salaries are, in most cases, less than half of those state employees. In addition, many of those state employees have the use of state vehicles. Magistrates must use their own vehicles. Some magistrates use their vehicles to transport bodies in coroner cases. The only mileage magistrates are allowed is for long distance trips and then only from city limit to city limit. Each of us put on many miles for court business which we are unable to be reimbursed for.

Historically, magistrates have been underpaid for their positions of trust, although we are finally becoming recognized to some degree.

It is very difficult to "blow our own horns" so to speak, as by nature, for the most part, we are humble people and the type that do best in this position. We cannot afford to hire a lobbyist nor can we give or receive any favors, as we are bound by the judicial cannons.

In response to Mr. Humphries, of the Division of Retirement and Benefits, presentation, at this time I am unable to understand the horrendous cost for one year! $625,000 is unbelievable!! I am writing to Mr. Humphries for a copy of this estimate.

I respectfully request that copies of this letter be distributed to all members of the judiciary committee.

I do wish to thank you for any consideration you may give to a "do-pass" recommendation.

Sincerely,

Iris A. Lathrop

House of Representatives

March 2, 1983

TO: House State Affairs Committee

FROM: Representative John Lindauer

RE: House Bill #62: "An Act relating to the use of public money for the payment of nonresident individuals or businesses."

The purpose of this bill is to assist the state and its educational institutions in the identification of the career opportunities and educational needs of the youth of Alaska.

It is the state's policy to encourage our youth to stay in Alaska. For that reason we have for some years forgiven a portion of our student loans in the event that student borrower resides in Alaska after graduation.

The retention of Alaska's youth requires that we provide them with an educational system which trains them for the jobs which exist in the Alaskan economy. This requires that the state identify those areas for which there are not enough trained Alaskans. This bill will identify the occupational areas and training where our scarce educational dollars can be best concentrated.

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

POUCH C (MS 0210)
JUNEAU, ALASKA 99811

(907) 465-2150

March 8, 1982

Honorable John Lindauer
Alaska State Legislature
House of Representatives
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Lindauer:

Re: HB 62

After discussion with you and further thought I find that I agree with your points regarding HB 62. Though it would be easier to apply if "resident" and "expertise or services" were defined, it would not be impossible to implement the bill as is.

Sincerely,

Robert Link
Acting Director

RL/dlr
6/0308-01/6GSS2
cc: Commissioner Lisa Rudd
Department of Administration

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 7, 1983

SUBJECT: Constitutionality of SSHB 62

TO: Representative John Lindauer

FROM: Thomas A. Sofo
Legislative Counsel

This memo supplements my earlier memo to you of February 25, 1983, regarding the constitutionality of SSHB 62. The recent (February 28, 1983) decision of the United States Supreme Court in White v. Massachusetts Council of Construction Employees, Inc. may add strength to arguments supporting the constitutionality of SSHB 62. I have attached a copy of the slip decision in that case for your review.

The case certainly seems to stand for the proposition that the state, as a market participant rather than regulator, may prefer its own residents without a violation of the Commerce Clause. The Court did not decide whether there is a Privileges and Immunities Clause violation. Inasmuch as SSHB 62 involves the use of the state's own money in providing services to the state, the parallel to the White case may support a defense to a challenge to the bill in the basis of its constitutionality.

TAS:ljb

Enclosure
1/011

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

WHITE, MAYOR OF BOSTON, ET AL. *v.* MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

No. 81–1003. Argued November 1, 1982—Decided February 23, 1983

Petitioner Mayor of Boston, Mass., issued an executive order requiring all construction projects funded in whole or in part by city funds or funds that the city had authority to administer to be performed by a work force at least half of which are bona fide residents of the city. The Massachusetts Supreme Judicial Court held the order unconstitutional under the Commerce Clause.

Held: The Commerce Clause does not prevent the city from giving effect to the Mayor's executive order. Pp. 2–11.

(a) When a state or local government enters the market as a participant, it is not subject to the restraints of the Commerce Clause. *Hughes* v. *Alexandria Scrap Corp.*, 426 U. S. 794; *Reeves, Inc.* v. *Stake*, 447 U. S. 429. In a case like the instant one, the only inquiry is whether the challenged program constituted direct state or local participation in the market. Pp. 2–4.

(b) Insofar as the city expended only its own funds in entering into construction contracts for public projects, it was a market participant and entitled to be treated as such under the rule of *Alexandria Scrap Corp.* Even if implementation of the Mayor's order might have a significant impact on specialized construction firms employing out-of-state residents, this is not relevant to the inquiry of whether the city is participating in the marketplace when it provides funds for construction. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause. And, even if the Mayor's order is characterized as sweeping too broadly, such

Syllabus

characterization is relevant only if the Commerce Clause imposes restraints on the city's activity and is no help in deciding whether those restraints apply. Pp. 5–7.

(c) Insofar as the Mayor's order was applied to projects funded in part with funds obtained from certain federal programs, the order was affirmatively sanctioned by the pertinent regulations of those programs. Where the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress, then no dormant Commerce Clause issue is presented. Pp. 7–9.

384 Mass. 466, 425 N. E. 2d 346, reversed and remanded.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, MARSHALL, POWELL, STEVENS, and O'CONNOR, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in which WHITE, J., joined.

SUPREME COURT OF THE UNITED STATES

No. 81–1003

KEVIN H. WHITE, ETC., ET AL., PETITIONERS *v.* MASSACHUSETTS COUNCIL OF CONSTRUCTION EMPLOYERS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[February 28, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1979 the mayor of Boston, Massachusetts, issued an executive order[1] which required that all construction projects funded in whole or in part by city funds, or funds which the city had the authority to administer, should be performed by a work force consisting of at least half *bona fide* residents of Boston.[2] The Supreme Judicial Court of Massachusetts decided that the order was unconstitutional, observing that

[1] The executive order provides:

"On any construction project funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis shall be performed, in accordance with the contract documents established herewith, as follows:

a. at least 50% by bona fide Boston residents;
b. at least 25% by minorities;
c. at least 10% by women."

Only the residency requirement is being challenged.

[2] In 1980, of approximately $482 million expended on construction in the City of Boston, some $54 million, or 11%, was spent on projects to which the executive order applied. Of this latter amount, approximately $34 million represented projects being funded in part through federal Urban Development Action Grants (UDAGs).

the Commerce Clause "presents a clear obstacle to the city's order." 384 Mass. 446, 425 N. E. 2d 346 (1981). We granted certiorari to decide whether the Commerce Clause of the United States Constitution, Art. I, § 8, cl. 3, prevents the city from giving effect to the mayor's order. 455 U. S. 919 (1982). We now conclude that it does not and reverse.

I

We were first asked in *Hughes* v. *Alexandria Scrap Corp.*, 426 U. S. 794 (1976), to decide whether state and local governments are restrained by the Commerce Clause when they seek to effect commercial transactions not as "regulators" but as "market participants." In that case, the Maryland legislature, in an attempt to encourage the recycling of abandoned automobiles, offered a bounty for every Maryland-titled automobile converted into scrap if the scrap processor supplied documentation of ownership. An amendment to the Maryland statute imposed more exacting documentation requirements on out-of-state than in-state processors, who in turn demanded more exacting documentation from those who sold the junked automobiles for scrap. As a result, it became easier for those in possession of the automobiles to sell to in-state processors. "The practical effect was substantially the same as if Maryland had withdrawn altogether the availability of bounties on hulks delivered by unlicensed suppliers to licensed non-Maryland processors." 426 U. S., at 803, n. 13. In upholding the Maryland statute in the face of a Commerce Clause challenge, we said that "[n]othing in the purpose animating the Commerce Clause prohibits a State, in the absence of congressional action, from participating in the market and exercising the right to favor its own citizens over others." *Id.*, at 810 (footnotes omitted). Because Maryland was participating in the market, rather than acting as a market regulator, we concluded that the Commerce Clause was not "intended to require independent justification," *id.*, at 809, for the statutory bounty.

We faced the question again in *Reeves, Inc.* v. *Stake*, 447 U. S. 429 (1980), when confronted with a South Dakota policy to confine the sale of cement by a state operated cement plant to residents of South Dakota. We underscored the holding of *Hughes* v. *Alexandria Scrap Corp.*, saying:

> "The basic distinction drawn in *Alexandria Scrap* between States as market participants and States as market regulators makes good sense and sound law. As that case explains, the Commerce Clause responds principally to state taxes and regulatory measures impeding free private trade in the national marketplace. [Citation omitted]. There is no indication of a constitutional plan to limit the ability of the States themselves to operate freely in the free market." 447 U. S., at 436–437.[3]

We concluded that South Dakota, "as a seller of cement, unquestionably fits the 'market participant' label" and applied the "general rule of *Alexandria Scrap*." *Id.*, at 440.

Alexandria Scrap and *Reeves*, therefore, stand for the proposition that when a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause. As we said in *Reeves*, in this kind of case there is "a single inquiry: whether the challenged 'pro-

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[3] We also noted the policy in support of this limitation on the Commerce Clause:

"Restraint in this area is also counseled by considerations of state sovereignty, the role of each State 'as guardian and trustee for its people,' *Heim* v. *McCall*, 239 U. S. 175, 191 (1915), quoting *Atkin* v. *Kansas*, 191 U. S. 207, 222–223 (1903), and 'the long recognized right of trader or manufacturer, engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal.' *United States* v. *Colgate & Co.*, 250 U. S. 300, 307 (1919). Moreover, state proprietary activities may be, and often are, burdened with the same restrictions imposed on private market participants. Evenhandedness suggests that, when acting as proprietors, States should similarly share existing freedoms from federal constraints, including the inherent limits of the Commerce Clause." 447 U. S., at 438–439 (footnotes omitted).

gram constituted direct state participation in the market.'" *Id.*, at 436, n. 7. We reaffirm that principle now.

The Supreme Judicial Court of Massachusetts concluded that the City of Boston is not participating in the market in the sense described in *Alexandria Scrap Corp.* and *Reeves* because the order applies where the city is acting in a nonproprietary capacity, has a significant impact on interstate commerce, is more sweeping than necessary to achieve its objectives, and applies to funds the city receives from federal grants. 384 Mass., at ——, 425 N. E. 2d, at 354–355. For the same reasons the court found that the city is not a market participant, it concluded that the executive order violated the substantive restraints of the Commerce Clause.[4] *Ibid.*

II

Petitioners and respondents both, to a greater or lesser extent, seek to have us decide questions not presented by the record in this case. In support of the Massachusetts court's finding that the city is acting in a nonproprietary capacity, respondents urge that much of the construction subject to the mayor's order involved nonpublic projects that were financed largely through private funds. While the mayor's order by its terms would appear to apply to such construction, there is simply nothing in the record before us to support the conclusion that city funds were used for these types of construction projects. Respondents, had they wished to raise this question, were obligated to offer some evidence that city funds and private funds were used jointly to finance construction of some of the projects which were in fact subjected to the provisions of the mayor's order; nothing in the record supports such a conclusion.[5] The only issues before us, then, are the

[4] Respondents made several other challenges to the order, none of which are before us. Respondents also directed challenges to resident preferences contained in other state and local laws. None of these provisions is before us.

[5] The case was submitted below on an agreed statement of facts. The

propriety of applying the mayor's executive order to projects funded wholly with city funds and projects funded in part with federal funds. We address first the application of the order to city funded projects.

The Supreme Judicial Court of Massachusetts expressed reservations as to the application of the "market participation" principle to the city here, reasoning that "the implementation of the mayor's order will have a significant impact on those firms which engage in specialized areas of construction and employ permanent works crews composed of out-of-State residents." 384 Mass., at ——, 425 N. E. 2d, at 354. Even if this conclusion is factually correct,[6] it is not relevant

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only reference in that statement to the funds affected by the order provides:

"The approximate dollar value of construction, both private and public, within the City of Boston in 1980 was $492,886,000; of that amount approximately $4,421,040 represented construction projects 'funded in whole or in part by City funds, or funds which, in accordance with a federal grant or otherwise, the City expends or administers, and to which the City is a signatory to the construction contract' to which the Executive Order, by its terms, was applicable. Of that $54,421,040 approximately $34,000,000 represented projects involving Urban Development Action Grants." Agreed Statement of Facts, at A42.

[6]The record does not readily support a finding of "significant impact" on firms employing out-of-state residents. The parties stipulated that a "*small number* of plaintiff contractors are out-of-state contractors who have regular and permanent work crews comprised entirely of out-of-state residents. These contractors for the most part are those who perform specialty work. . . ." Agreed Statement of Facts, at A41 (emphasis added). Although the parties also stipulated that some out-of-state workers who would otherwise have been employed on the projects would be unemployed and that some out-of-state contractors would be discouraged from bidding on public construction work, Agreed Statement of Facts, at A–37, the record does not reveal that any significant number of out-of-state workers or contractors has withdrawn from the construction market because of the order. Furthermore, the data in the record does not show that the increased employment of city residents in publicly funded construction projects has been accompanied by a decline in the percentage of

to the inquiry of whether the city is participating in the marketplace when it provides city funds for building construction. If the city is a market participant, then the Commerce Clause establishes no barrier to conditions such as these which the city demands for its participation. Impact on out-of-state residents figures in the equation only after it is decided that the city is regulating the market rather than participating in it, for only in the former case need it be determined whether any burden on interstate commerce is permitted by the Commerce Clause.

The same may be said of the Massachusetts court's finding that the executive order sweeps too broadly, creating more burden than is necessary to accomplish its stated objectives. *Id.*, at ——, 425 N. E. 2d, at 355. While relevant if the Commerce Clause imposes restraints on the city's activity, this characterization is of no help in deciding whether those restraints apply. The Massachusetts court relied in part on our decision in *Hicklin* v. *Orbeck*, 437 U. S. 518 (1978), saying that "as in *Hicklin*, *supra*, there is a broadly drawn statute which sweeps far wider than merely favoring unemployed or underemployed local residents." *Ibid.*

In *Hicklin* we considered an Alaska statute which required employment in all work connected with oil and gas leases to which the State was a party to be offered first to "qualified" Alaska residents in preference to nonresidents. The State sought to justify the "Alaska Hire" law on the ground that the underlying oil and gas were owned by the State itself. Analyzing the case under the Privileges and Immunities Clause of Art. IV, § 2, cl. 1, we held that mere ownership of a natural resource did not in all circumstances render a state regulation such as the "Alaska Hire" law immune from attack under that clause. We summarized our view of the Alaska statute in these words:

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out-of-state residents. See Agreed Statement of Facts, at Appendix E.

> "In sum, the Act is an attempt to force virtually all businesses that benefit in some way from the economic ripple effect of Alaska's decision to develop its oil and gas resources to bias their employment practices in favor of the State's residents." 437 U. S., at 531.

Even though respondents no longer press the Privileges and Immunities Clause holding of *Hicklin* in support of their Commerce Clause argument, we note that on the record before us the application of the mayor's executive order to contracts involving only city funds does not represent the sort of "attempt to force virtually all businesses that benefit in some way from the economic ripple effect" of the city's decision to enter into contracts for construction projects "to bias their employment practices in favor of the [city's] residents."[1]

The Supreme Judicial Court of Massachusetts also observed that "a significant percentage of the funds affected by the order are received from Federal sources." 384 Mass., at ——, 425 N. E. 2d, at 354. The record does indicate that of approximately $54 million expended on projects affected by the mayor's executive order, some $34 million represented projects being funded in part through Urban Development

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[1] JUSTICE BLACKMUN's opinion dissenting in part, *post*, argues that the mayor's order goes beyond market participation because it regulates employment contracts between public contractors and their employees. We agree with JUSTICE BLACKMUN that there are some limits on a state or local government's ability to impose restrictions that reach beyond the immediate parties with which the government transacts business. Cf. *Hicklin* v. *Orbeck*, 437 U. S. 518, 529–531 (1978). We find it unnecessary in this case to define those limits with precision, except to say that we think the Commerce Clause does not require the city to stop at the boundary of formal privity of contract. In this case, the mayor's executive order covers a discrete, identifiable class of economic activity in which the city is a major participant. Everyone affected by the order is, in a substantial if informal sense, "working for the city." Wherever the limits of the market participation exception may lie, we conclude that the executive order in this case falls well within the scope of *Alexandria Scrap* and *Reeves*.

Action Grants (UDAGs).[4] While the record assigns specific dollar amounts only for UDAGs, the parties also have stipulated that the executive order applies to Community Development Block Grants (CDBGs) and Economic Development Administration Grants (EDAGs).[5]

But all of this proves too much. The Commerce Clause is a grant of authority to Congress, and not a restriction on the authority of that body. See *American Power & Light Co.* v.

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[4] Not all UDAG projects in Boston have been subjected to the executive order. HUD publications indicate that in 1980 Boston received $28,600,000 through UDAGs and that this money was to be spent on projects costing a total of $397,000,000. UDAG Project Approval List, Region I, Department of Housing and Urban Development, at 1 (Boston, Mass., Feb. 9, 1982). While we do not know what percentage of the $34,000,000 spent on projects affected by the executive order was in fact UDAG money, we do know that overall UDAG funds comprised 7% of the total costs of projects they were expended on.

[5] UDAGs are administered by the Department of Housing and Urban Development pursuant to the Housing and Community Development Act of 1977, 42 U. S. C. § 5318 (Supp. IV 1980). The HUD regulations governing the program are found at 24 CFR Part 570, Subpart G (1982). CDBGs are administered by HUD pursuant to the Housing and Community Development Act of 1974, 42 U. S. C. § 5301 et seq. (1976 & Supp. IV 1980), and the implementing regulations at 24 CFR Part 570 (1982). EDAGs are administered by the Department of Commerce in accordance with the Public Works and Economic Development Act of 1965, 42 U. S. C. § 3131 et seq. (1976 and Supp. IV 1980), and the implementing regulations at 13 CFR Part 305 (1982).

Respondents have asserted in this Court that the executive order also applies to funds the city receives from the Department of Transportation. In the Agreed Statement of Facts the parties stipulated that a resident preference in a state statute challenged below applied to DOT funds. Agreed Statement of Facts, at A45. There is, however, nothing in the record to indicate that DOT funds are affected by the order. In fact, the parties stipulate that the affected federal funds come from UDAGs, CDBGs, and EDAGs. Agreed Statement of Facts, at A43–A44. Without support in the record for a contrary conclusion, we decide this case as though DOT funds are not involved. See *Ramsey* v. *UMW*, 401 U. S. 302, 312 (1971); *Tyrrell* v. *District of Columbia*, 243 U. S. 1, 4–6 (1917).

SEC, 329 U. S. 90 (1946); *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824). Congress, unlike a state legislature authorizing similar expenditures, is not limited by any negative implications of the Commerce Clause in the exercise of its spending power. Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce. *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 769 (1945). Thus, if the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress then no dormant Commerce Clause issue is presented.

An examination of the applicable statutes reveals that these federal programs were intended to encourage economic revitalization, including improved opportunities for the poor, minorities, and unemployed.[10] Examination of the regulations set forth in the margin indicates that the mayor's executive order sounds a harmonious note; the federal regulations for each program affirmatively permit the type of parochial favoritism expressed in the order.[11]

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[10] See 42 U. S. C. § 5318 (Supp. IV 1980) (UDAGs); 42 U. S. C. § 5301 (1976 and Supp. IV 1980) (CDBGs); 42 U. S. C. 3131 (1976) (EDAGs).

[11] In issuing implementing regulations to carry out its authority under the UDAG program, HUD requires that a city certify that its project would not be undertaken by the private sector without public funds and that the project will alleviate economic distress by helping the poor, minorities, and unemployed. 24 CFR § 570.458(c) (1982). The regulations further provide that the city must "comply with . . . Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135." 24 CFR § 570.458(c)(14)(ix)(D) (1982). The regulations implementing that Act provide that "to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons *residing in the area of such project*. . . ." 24 CFR § 135.1(a)(2)(i) (1982) (emphasis added).

Similarly, CDBG regulations provide that a recipient of funds must "comply with section 3 of the Housing and Urban Development Act of 1968,

III

We hold that on the record before us the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause of the United States Constitution.[12] Insofar as the city expended only its own funds in en-

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as amended, requiring that to the greatest extent feasible *opportunities for training and employment be given to lower-income residents of the project area* and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project." 24 CFR § 570.307(m) (1982) (emphasis added).

EDAG regulations provide that

"[t]he maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct grants and loans. Accordingly, every contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall be required to employ in carrying out such contract work, qualified *persons who regularly reside in the designated area where such project is to be located*, or in the case of economic development centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the economic development district. . . ." 13 CFR § 305.54(a) (1982) (emphasis added).

[12] Respondents ask us to decide whether the executive order offends the Privileges and Immunities Clause of Art. IV, § 2, cl. 1, which provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in several States." In addressing this issue, the Massachusetts court said:

"The preference is for inhabitants of the city, and its 'negative' effect is felt in significant part by other citizens of the Commonwealth, as well as by residents of other States. In such circumstances it may be more difficult to find a violation of the privileges and immunites clause because the discrimination adversely affects citizens of the Commonwealth as well." 384 Mass., at ——, 425 N. E. 2d, at 354.

Because of its disposition under the Commerce Clause, however, the court did not resolve this issue.

This question has not been, to any great extent, briefed or argued in this Court. We did not grant certiorari on the issue and remand without passing on its merits. See *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 177–178 (1938).

SEC, 329 U. S. 90 (1946); *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824). Congress, unlike a state legislature authorizing similar expenditures, is not limited by any negative implications of the Commerce Clause in the exercise of its spending power. Where state or local government action is specifically authorized by Congress, it is not subject to the Commerce Clause even if it interferes with interstate commerce. *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 769 (1945). Thus, if the restrictions imposed by the city on construction projects financed in part by federal funds are directed by Congress then no dormant Commerce Clause issue is presented.

An examination of the applicable statutes reveals that these federal programs were intended to encourage economic revitalization, including improved opportunities for the poor, minorities, and unemployed.[11] Examination of the regulations set forth in the margin indicates that the mayor's executive order sounds a harmonious note; the federal regulations for each program affirmatively permit the type of parochial favoritism expressed in the order.[12]

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[11] See 42 U. S. C. § 5318 (Supp. IV 1980) (UDAGs); 42 U. S. C. § 5301 (1976 and Supp. IV 1980) (CDBGs); 42 U. S. C. 3131 (1976) (EDAGs).

[12] In issuing implementing regulations to carry out its authority under the UDAG program, HUD requires that a city certify that its project would not be undertaken by the private sector without public funds and that the project will alleviate economic distress by helping the poor, minorities, and unemployed. 24 CFR § 570.458(c) (1982). The regulations further provide that the city must "comply with . . . Section 3 of the Housing and Urban Development Act of 1968, as amended, and implementing regulations at 24 CFR Part 135." 24 CFR § 570.458(c)(14)(ix)(D) (1982). The regulations implementing that Act provide that "to the greatest extent feasible opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any such program be given to lower income persons *residing in the area of such project*. . . ." 24 CFR § 135.1(a)(2)(i) (1982) (emphasis added).

Similarly, CDBG regulations provide that a recipient of funds must "comply with section 3 of the Housing and Urban Development Act of 1968,

III

We hold that on the record before us the application of the mayor's executive order to the contracts in question did not violate the Commerce Clause of the United States Constitution.[12] Insofar as the city expended only its own funds in en-

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as amended, requiring that to the greatest extent feasible *opportunities for training and employment be given to lower-income residents of the project area* and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project." 24 CFR § 570.307(m) (1982) (emphasis added).

EDAG regulations provide that

"[t]he maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct grants and loans. Accordingly, every contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall be required to employ in carrying out such contract work, qualified *persons who regularly reside in the designated area where such project is to be located*, or in the case of economic development centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the economic development district. . . ." 13 CFR § 305.54(a) (1982) (emphasis added).

[12] Respondents ask us to decide whether the executive order offends the Privileges and Immunities Clause of Art. IV, § 2, cl. 1, which provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in several States." In addressing this issue, the Massachusetts court said:

"The preference is for inhabitants of the city, and its 'negative' effect is felt in significant part by other citizens of the Commonwealth, as well as by residents of other States. In such circumstances it may be more difficult to find a violation of the privileges and immunities clause because the discrimination adversely affects citizens of the Commonwealth as well." 384 Mass., at ——, 425 N. E. 2d, at 364.

Because of its disposition under the Commerce Clause, however, the court did not resolve this issue.

This question has not been, to any great extent, briefed or argued in this Court. We did not grant certiorari on the issue and remand without passing on its merits. See *General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175, 177–178 (1938).

tering into construction contracts for public projects, it was a market participant and entitled to be treated as such under the rule of *Hughes* v. *Alexandria Scrap Corp.*, *supra*. Insofar as the mayor's executive order was applied to projects funded in part with funds obtained from the federal programs described above, the order was affirmatively sanctioned by the pertinent regulations of those programs. The judgment of the Supreme Judicial Court of Massachusetts is therefore reversed, and the case is remanded to that court for proceedings not inconsistent with this opinion.

It is so ordered.

HOUSE BILL NO. 62

POSITION PAPER

HB 62 would require that a written report be filed with the Office of the Governor and the Division of Legislative Audit where public money is paid to a nonresident individual or business. Information to be provided includes a work description, reasons a nonresident was chosen, efforts made to use residents and recommendations to use residents in the future.

The use of resident contractors is certainly desirable. Our concern is that there are lower cost methods to conduct the information gathering and review function attempted by this bill. The Division of Legislative Audit or other agency could conduct a peformance review of employment of nonresident contractors, targeting those areas necessary. They can do this with much greater efficiency and without the cost of additional resources, forms, further bureaucracy, etc.

It is necessary that the bill define "nonresident" so there is no confusion as to which group this bill is to be applied to; also to insure consistency with any other legal rulings as to the definition of residency.

Prepared by:

Anselm Staack, Deputy Commissioner — 3/28/83 Date

Lisa Rudd, Commissioner — 3/28/83 Date

(3/28/83)

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SSHB 62
Title An Act relating to the use of public money for the payment of non- (+)
Requested by Reps. Lindauer and Grussendorf Date

(+) resident individuals or businesses.

II. FISCAL DETAIL
Agency Affected Legislative Audit Division
Program Category Affected
BRU, Program, or Subprogram(s) Affected
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY87	FY 88	FY 89
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES	1.0	1.0	1.0			
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND	1.0	1.0	1.0			
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Form design and printing costs

IV. DATE March 7, 1983 PREPARED BY Gerald L. Wilkerson
AGENCY Division of Legislative Audit
PHONE 465-3830

Original: Legislative Finance
cc: OMB
Prime Sponsor (First Legislator Named)

38-001 (Rev. 12/79)

STATE OF ALASKA
FINAL* STATEMENT OF FISCAL IMPACT

Bill No: HB226 Page 1 of 2 Date on Bill: 2/25/83
Title: "An Act relating to the compensation of State Officers and employees
Sponsor: Governor
Requestor: Governor

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital				
Operating	6,269.6	746.9	12,746.9	
Total	6,269.6	746.9	12,746.9	

b. Revenues:

Revenue				

2. Source of funds to offset fiscal impact of bill:

These funds are included in the Governor's expenditure plan for FY 83 and FY 84. The FY 83 amount has been requested as a supplemental appropriation in HB227. The FY 84 amount will be included as an amendment to the Governor's FY 84 budget.

3. Assumptions:

Estimates of fiscal impact on Legislative Branch, Judicial Branch, and University of Alaska were provided by agency representatives and are assumed to be accurate.

*This statement has been reviewed by the OMB in the Office of the Governor.

Prepared By: Jeff Morrison Phone: 465-3568
Division: Office of Management and Budget - Division of Budget Ana Date: 2/24/83
Approved by Commissioner: Date: 3/1/83
Department: OMB
Reviewed by OMB: Date: 3-3-83
Phone: 7567

5. Distribution:
Original to Legislative Finance
Copy to Department
Copy to Sponsor
Copy to Requestor

2/24/83

HB 226 Page 2 of 2

Analysis of Salary Schedule Bill

The fiscal impact of changing the salary schedule as proposed affects the executive, legislative, and judicial branches of government and the University of Alaska. The fiscal impact on the legislative and judicial branches and the University of Alaska was obtained by contacting the following representatives:

Court System	Robert Fisher
Legislative Affairs	Wally Harrison
Legislative Finance	Pat Williams
Legislative Audit	Merle Jensen
Ombudsman	Robin Ross
University of Alaska	Frank Spargo

The fiscal impact on the executive branch was calculated using a computer program developed by the Office of Management and Budget, and coordinated by Jeff Morrison. Fiscal Impacts are summarized as follows:

	FY 83 TOTAL	FY 83 GF	FY 85/85 TOTAL	FY 84/85 GF
Court System	578.7	578.7	1163.0	1163.0
Legislative Affairs	312.2	312.2	629.8	629.8
Legislative Finance	43.4	43.4	86.8	86.8
Legislative Audit	53.9	53.9	107.8	107.8
Ombudsman	28.9	28.9	57.8	57.8
University of Alaska	3791.3	3390.4	7751.8	6150.1
Executive Branch	1461.2	1408.1	2947.9	2835.2
TOTALS	6269.6	5815.6	12,746.9	11,010.5

The FY 83 amounts will be requested as a supplemental appropriation. The FY 84 amount will be included as an amendment to the Governor's FY 84 budget. The FY 85 amounts will be included in the instructions for agency preparation of the FY 85 budget.

HB
203

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 203 Date on Bill: February 16, 1983
Title: Appropriation to DOT/PF for Phase I of the Home Port Facility
Sponsor: Fuller and Bussell
Requestor:

1. Estimate fiscal impact on:

a. Expenditures:

(Thousands of Dollars)

			FY 84	FY 85	FY 86	FY 87		
Capital			12,000.0					
Operating			-0-					
Total			12,000.0					

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill.

Not identified by sponsor.

3. Assumptions:

This project is already designed. $12 million is sufficient to construct the full 3600' causeway, plus the required bridge.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Robert R. Venuti Phone: 479-4201
Division: Planning and Programming Date: 2/24/83

Approved by Commissioner: Date: 2/25/83
Department: Department of Transportation and Public Facilities

5. Distribution:
Original to Legislative Finance
Copy to OMB
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Copy to Requestor

2/8/83