3327 HJUD HB 288 - HB 294

rural subsistence priority. The House rejected this argument - and for good reason.

A statewide poll recently conducted by Hellenthal and Associates indicates that 60 percent of the Alaskans surveyed support a rural subsistence priority, including a significant majority of Alaskans who live in Anchorage and other urban areas. A copy of the statewide subsistence poll is attached to my written testimony. The poll is consistent with the vote of the people in 1982. The vast majority of Alaskans believe that the subsistence way of life in rural Alaska should be protected by state law - and that the best way to do so is to establish a rural subsistence priority.

Mr. Chairman, the legislature should enact acceptable subsistence legislation this session which contains the rural subsistence priority which all Alaskans support. However, if it does not, it is important to note that it is the residents of urban, not rural, Alaska who will again suffer the consequences. Native and non-Native Alaskans will continue to be protected by the federal rural subsistence priority.

Because the Senate State Affairs Committee substitute has only been available for public review and comment for a few hours my comments on sections of the bill dealing with matters other than the definition of "subsistence uses" must be of a somewhat cursory nature. However, during AFN's review of previous drafts many provisions appeared to

establish state regulatory standards inconsistent with the federal regulatory standards set forth in ANILCA.

Don Mitchell has had an opportunity to review the new bill and I would like for him to present AFN's comments on the technical aspects of the latest draft.

ALASKA PUBLIC OPINION RESEARCH

SURVEY

ALASKAN FEDERATION OF NATIVES (AFN)

DECEMBER 1985

Hellenthal & Associates, Inc.

ALASKA PUBLIC OPINION RESEARCH SURVEY

DECEMBER 1985

Prepared for

ALASKAN FEDERATION OF NATIVES (AFN)

Prepared by

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The research and studies forming the basis for this report were conducted pursuant to a contract between Alaskan Federation of Natives and Hellenthal & Associates, Inc. The author and publisher are solely responsible for the accuracy of statements or interpretations contained therein.

INTRODUCTION AND METHODOLOGY

This report presents an analysis of a survey of Alaska statewide adults. The survey measured properties of Alaskan residents' demographics and attitudes toward subsistence. Research typically involves estimating the characteristics of a designated population. Because of the costs of conducting a census of all items in a population, and the adequacy of sample results, sample statistics were used to make statistical inferences concerning population parameters.

Five hundred and fifty five (555) Alaskan adults were interviewed between November 14th and 22nd, 1985. Interviewing was conducted by telephone on a random digit basis. All Alaskan adults who are accessible by telephone, had an equal chance of being interviewed.

The sample used for this survey was stratified by geographic areas. The following number of interviews were conducted by geographic region: Southeast (House Districts 1 through 4) = 25; Cordova, Valdez, Kenai Penninsula (House Districts 5,6, and 7) = 99; Anchorage (House Districts 8 through 15) = 204; Mat-Su and Greater Fairbanks (House Districts 16 and 17) = 100; Fairbanks (House Districts 18 through 21) = 100; and Rural (House Districts 22 through 27) = 26. The results presented in this report were weighted to reflect the actual population of each geographic region.

At a 95% confidence level, the empirical proportions presented in this report can be projected, within plus or minus 4.16%, to the entire Alaskan population of adults — aged 18 and over. This means one can be 95% sure that the frequencies reported in this survey are within 4.2% of the true Alaskan adult population proportions.

The following is a presentation of certain specialized tables concerning Alaskan adults' perception of subsistence.

2200 VANDERBILT CIRCLE • ANCHORAGE, ALASKA 99508 • (907) 276-1001

QUESTIONNAIRE:

SUBSISTENCE, POLITICAL AND GENERAL

FREQUENCIES

ALASKA STATEWIDE PUBLIC OPINION RESEARCH SURVEY

December 1985

HELLENTHAL & ASSOCIATES, INC.
2200 Vanderbilt Circle
Anchorage, Alaska 99508
(907) 276-1001 or
277-2315

Hello, I am_____from HELLENTHAL & ASSOCIATES. We are conducting a State-wide public opinion research survey. Your telephone number was randomly selected. The questions I need to ask will take only 8 to 10 minutes. All of your responses will be completely confidential. (PAUSE AND PROCEED)

S1. Is this telephone number _____? (IF NO, TERMINATE WITH, "I'm sorry, I dialed the wrong number.")

S2. Is this a residence in which you live? (IF NO, TERMINATE INTERVIEW WITH, "I'm sorry, I need to talk with someone at a residence.")

S3. Are you 18 years old or older?

IF YES, THEN PROCEED TO QUESTION #1

IF NO, THEN ASK .....

Is there anyone home who is 18 years old or older?

IF YES, THEN ASK .....
May I speak with them? (PROCEED TO QUESTION #1 OR TERMINATE AND NOTE ON TELEPHONE CALL RECORD SHEET)

IF NO, THEN ASK .....
When will someone be home who is 18 or older? (TERMINATE AND NOTE ON TELEPHONE CALL RECORD SHEET)

1. What is the closest major intersection to your residence? (GET AS MUCH DETAIL AS POSSIBLE. LABEL EAST-WEST AND NORTH-SOUTH STREETS ON THE ANSWER SHEET AND PLACE AN 'X' IN THE PROPER QUADRANT.)

ASK IN ANCHORAGE AND FAIRBANKS ONLY
Do you live North or South of this intersection?
(ANCHORAGE: DOWNTOWN = NORTH; RABBIT CREEK = SOUTH)

Do you live East or West of this intersection?
(ANCHORAGE: MOUNTAINS = EAST; INLET = WEST)

AREA OF STATE	FREQUENCY	PERCENT
Southeast	81	14.6%
Valdez, Kenai, S. Anchorage	59	10.6%
Anchorage	224	40.4%
Mat-Su, Greater Fairbanks	50	9.0%
Fairbanks	76	13.7%
Rural	65	11.7%

HOUSE DISTRICT	FREQUENCY	PERCENT
One	21	3.9%
Two	14	2.5%
Three	11	2.0%
Four	35	6.2%
Five	33	6.0%
Six	11	2.0%
Seven	15	2.7%
Eight	43	7.7%
Nine	25	4.5%
Ten	30	5.3%
Eleven	25	4.6%
Twelve	25	4.6%
Thirteen	22	3.9%
Fourteen	25	4.6%
Fifteen	29	5.2%
Sixteen	43	7.8%
Seventeen	7	1.2%
Eighteen	17	3.1%
Nineteen	7	1.3%
Twenty	34	6.2%
Twenty-one	18	3.2%
Twenty-two	7	1.2%
Twenty-three	6	1.1%
Twenty-four	8	1.4%
Twenty-five	8	1.4%
Twenty-six	22	3.9%
Twenty-seven	15	2.7%

2. Are you presently registered to vote in the State of Alaska?

REGISTERED TO VOTE	FREQUENCY	PERCENT
Yes	447	80.5%
No	108	19.5%

3. Are you registered to vote as a ..... (IF THEY ARE NOT REGISTERED TO VOTE, ASK "If you were to register to vote, would you register as a .....")

PARTY AFFILIATION	FREQUENCY	PERCENT
Democrat,	120	21.6%
Republican,	145	26.1%
Libertarian, or did you indicate	17	3.0%
No Party Affiliation (Non-Partisan)?	273	49.3%

4. In 1982, three years ago, did you vote in either the August 24th Primary or November 2nd General State Elections?

VOTE IN 1982 ELECTIONS	FREQUENCY	PERCENT
Yes	362	65.2%
No	193	34.8%

5. In 1984, last year, did you vote in either the August 28th Primary or November 6th General State Elections?

VOTE IN 1984 ELECTIONS	FREQUENCY	PERCENT
Yes	373	67.3%
No	182	32.7%

6. Do you consider yourself to be .....

RESPONDENT'S IDEOLOGY	FREQUENCY	PERCENT
1. Very Liberal	16	3.0%
2. Liberal,	112	20.2%
3. Moderate,	237	42.7%
4. Conservative, or	172	31.0%
5. Very Conservative	18	3.2%
	(MEAN = 3.112)	

7. Would you say that you generally are .....

INTEREST IN CAMPAIGNS	FREQUENCY	PERCENT
1. Very interested,	119	21.4%
2. Somewhat interested, or	319	57.6%
3. Not very interested in political campaigns?	117	21.4%
	(MEAN = 1.997)	

8. I am going to read to you a list of names of organizations. Please tell me whether your feelings toward each of them is VERY POSITIVE, POSITIVE, NEUTRAL, NEGATIVE, or VERY NEGATIVE — or if you don't know what they are. Are your feelings toward _____ (FILL IN ORGANIZATION) very positive, positive, neutral, negative, or very negative — or don't you know what it is?

ORGANIZATION	4 VERY POSITIVE	3 POSITIVE	2 NEUTRAL	1 NEGATIVE	0 VERY NEGATIVE	WHO?	MEAN
Alaskans for Sensible Fish and Game Management	7.3%	36.2%	17.2%	4.2%	0.9%	34.3%	2.682
Alaska State Department of Fish and Game	14.0%	51.5%	20.8%	9.2%	2.3%	2.2%	2.672
Oil Companies in Alaska	10.6%	50.0%	29.3%	7.2%	1.2%	1.7%	2.626
Alaska Sports Fisherman Association	8.2%	44.9%	21.3%	8.4%	0.7%	16.6%	2.616
Alaskans for Equal Hunting and Fishing Rights	9.4%	38.0%	19.2%	6.9%	1.9%	24.7%	2.612
Alaska Outdoors Council	6.9%	25.1%	15.2%	4.8%	0.9%	47.2%	2.511
Rural Alaska Community Action Program or RuralCap	3.0%	22.4%	19.3%	3.2%	0.3%	51.8%	2.512
Alaska Native Foundation (ANF)	7.1%	32.8%	28.2%	10.1%	1.7%	20.1%	2.418
Alaskan Federation of Natives (AFN)	6.1%	30.1%	32.1%	10.1%	1.4%	20.3%	2.370
Womens' Political Groups, such as NOW, in Alaska	5.5%	34.1%	30.2%	12.4%	3.1%	14.7%	2.311
United Tribes of Alaska (UTA)	4.6%	20.5%	28.3%	9.5%	0.6%	36.6%	2.298
The Republican Party in Alaska	4.6%	28.0%	53.9%	10.0%	1.9%	1.6%	2.238
The Democratic Party in Alaska	1.9%	26.3%	52.1%	13.4%	3.4%	2.9%	2.101
Unions in Alaska	4.4%	23.3%	29.1%	27.5%	11.0%	4.6%	1.818
The Alaska Association of White Men	1.5%	7.4%	10.6%	10.6%	6.0%	63.9%	1.663

9. There is presently a bill before the Legislature that defines subsistence use as providing a priority for rural Alaskans, over urban Alaskans, in the taking of fish and game for personal consumption as food, clothing, fuel, or tools. Do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?

PRIORITY FOR RURAL ALASKANS	FREQUENCY	PERCENT
Favor	315	56.7%
Oppose	203	36.5%
DON'T KNOW	38	6.8%

10. Do you favor or oppose Alaskan Natives being allowed to regulate fish and game in their own areas?

NATIVES REGULATE IN OWN AREAS	FREQUENCY	PERCENT
Favor	222	40.4%
Oppose	269	48.4%
DON'T KNOW	64	11.6%

11. Do you favor or oppose Alaskan Native efforts for tribal self-government?

TRIBAL SELF-GOVERNMENT	FREQUENCY	PERCENT
Favor	266	48.0%
Oppose	195	35.1%
DON'T KNOW	94	16.9%

12. Do you favor or oppose Alaskan Native efforts for sovereignty?

NATIVE SOVEREIGNTY	FREQUENCY	PERCENT
Favor	160	28.8%
Oppose	282	50.9%
DON'T KNOW	113	20.3%

13a. Think now about the overall quality of hunting and fishing in Alaska during the last three years. Do you think the quality of hunting and fishing in Alaska has improved, stayed the same, or gotten worse over the past three years?

QUALITY OF HUNTING/FISHING	FREQUENCY	PERCENT
Improved	75	13.6%
Stayed the Same	236	42.5%
Gotten Worse	244	43.9%

13b. (IF "WORSE", ASK .....) Which of the following reasons do you think are most responsible for this change for the worse?

REASONS	FREQUENCY	PERCENT
There are more fishmen	186	33.5%
There are more hunters	179	32.2%
There are fewer animals	140	25.3%
There are more outside trophy hunters	137	24.6%
There are more restrictions on where one can hunt	135	24.3%
There are more restrictions on where one can fish	135	24.3%
There are fewer fish	100	18.0%

14a. Do you feel there is enough fish and game in Alaska for everyone to go hunting and fishing for whatever amount they want, or do you feel there should be regulations limiting the amount of fish and game any individual can take?

NON-REGULATION VS REGULATION	FREQUENCY	PERCENT
Whatever Amount They Want	28	5.0%
Regulations Limiting Amount	515	92.7%
DON'T KNOW	12	2.2%

14b. If a fish stock or game population is not large enough to allow everyone to fish or hunt, should rules limiting the amount of fish and game people can take be based on .....

REASONS	FREQUENCY	PERCENT
The customary and traditional uses of fish and game for personal consumption?	337	60.7%
Income or economic status of the household?	240	43.2%
Rural residency?	247	44.5%
How much people depend on fish and game?	402	72.5%
A person's race?	28	5.1%

15. Alaska's fish and game resources are used in three ways: subsistence use which is personal consumption by rural Alaskans for food, clothing, fuel, or tools; sports and recreational use; and commercial use. Please tell me which of these fish and games uses is most important for Alaska? How about 2nd most important? And least (3rd) important?

FISH AND GAME USES	1ST	2ND	3RD	DON'T KNOW	MEAN
Subsistence	47.7%	29.5%	20.8%	2.0%	1.725
Sports and Recreation	12.6%	31.6%	52.9%	2.8%	2.415
Commercial	37.9%	36.0%	23.4%	2.7%	1.851

16. How important would you say subsistence hunting and fishing by rural Alaskan residents for personal consumption is to the economies of rural communities? Would you say it is very important, somewhat important, neither important or unimportant, somewhat unimportant, or very unimportant?

IMPORTANCE OF SUBSISITENCE	FREQUENCY	PERCENT
Very Important	275	49.6%
Somewhat Important	166	29.9%
Neither Important or Unimportant	39	7.0%
Somewhat Unimportant	36	6.5%
Very Unimportant	16	2.9%
DON'T KNOW	23	4.1%

17. There has been some discussion in Alaska concerning subsistence fishing and hunting. Some people believe, if there is not enough fish or game for all Alaskan residents, a priority for the taking of fish and game should be given to rural Alaskans. Other people believe subsistence is not that important anymore and that all Alaskan residents should be treated the same. Do you think rural Alaskan residents should be given a priority or do you think all Alaskan residents should be treated the same?

RURAL VS ALL RESIDENTS	FREQUENCY	PERCENT
Rural Alaskan Residents	265	47.8%
All Alaskan Residents	275	49.5%
DON'T KNOW	15	2.7%

18. Some people say it is fair for rural subsistence uses of fish and game to be considered more important than commercial and recreational uses of fish and game? Do you think it is fair or not fair for rural subsistence uses to be considered more important than commercial and recreational uses?

RURAL / OTHER USES	FREQUENCY	PERCENT
Fair	301	54.3%
Not Fair	225	40.6%
DON'T KNOW	28	5.1%

19. Now I am going to read you a short series of statements. Please tell me if you STRONGLY AGREE, MILDLY AGREE, MILDLY DISAGREE, OR STRONGLY DISAGREE with each of the following statements: (IF AGREE OR DISAGREE SAY, "Is that strongly agree/disagree or just mildly agree/disagree?")

STATEMENTS	1 STRONGLY AGREE	2 MILDLY AGREE	4 MILDLY DISAGREE	5 STRONGLY DISAGREE	3 DON'T KNOW	MEAN
In Alaska there are people who need to hunt and fish in order to live	55.0%	35.8%	6.0%	2.7%	0.4%	1.656
In Alaska the supply of fish and game is limited and no Alaskan should be allowed to catch all the fish or take all the game they want	55.8%	27.6%	9.0%	4.1%	3.5%	1.780
People in Rural Alaska are more dependent on fish and game than Urban Alaskans	39.8%	40.0%	12.3%	4.1%	3.7%	2.010
Both Alaska natives and Alaska non-natives need to hunt and fish in order to live	32.5%	38.1%	19.3%	8.4%	1.7%	2.329
Not providing a subsistence priority for rural Alaskans harms those who want to live off the land	18.3%	37.0%	28.9%	6.1%	9.7%	2.675
Not providing a subsistence priority for rural Alaskans harms rural people who live off the land to the benefit of urban sports fishermen	16.5%	35.6%	25.4%	6.5%	16.0%	2.697

STATEMENTS (CONTINUED)	1 STRONGLY AGREE	2 MILDLY AGREE	4 MILDLY DISAGREE	5 STRONGLY DISAGREE	3 DON'T KNOW	MEAN
Rural Alaskans <u>should</u> have a priority to fish and hunt over Urban Alaskans	24.9%	26.7%	24.8%	16.4%	5.2%	2.790
<u>Not</u> providing a subsistence priority for rural Alaskans only invites the federal government to come into Alaska to regulate fish and game on federal land in Alaska	16.0%	29.2%	26.2%	11.1%	17.5%	2.872
All Alaskans are equal and no Alaskan should have a hunting and fishing priority over any other Alaskan	22.4%	27.6%	30.6%	15.8%	3.7%	2.899
<u>Not</u> providing a subsistence priority for rural Alaskans is a direct attack on Alaska tradition and Native Alaska Culture	17.9%	27.0%	30.6%	14.6%	9.7%	2.972
Unimproved land owned by Native Corporations should <u>remain</u> excempt from local property taxes	12.6%	23.0%	31.8%	20.9%	11.8%	3.253
Alaska natives receive a greater share of State Revenues than they should	10.1%	13.6%	36.0%	16.2%	24.0%	3.347
Alaska natives take more fish and game than they really need	9.2%	20.3%	27.7%	23.7%	19.1%	3.364
Those groups and people presently fighting subsistence laws are partially, at least, racially motivated against Alaskan Natives	6.3%	22.0%	29.5%	22.9%	19.4%	3.407
Alaska natives, in this day and age, no longer need to fish and hunt in order to survive	6.1%	19.6%	39.1%	32.1%	3.2%	3.714
Improved land owned by Native Corporations <u>should be</u> exempt from local property taxes	5.6%	10.4%	33.9%	38.0%	12.1%	3.883

20. Now that you have heard some of the reasons for and against providing a subsistence priority for rural Alaskans. Let me ask you again, do you favor or oppose providing a priority for rural Alaskans in the taking of fish and game for subsistence use?

PRIORITY FOR RURAL ALASKANS #2	FREQUENCY	PERCENT
Favor	338	60.9%
Oppose	178	32.1%
DON'T KNOW	39	7.0%

21. Do you know any rural Alaska residents who live off the land by fishing and hunting?

KNOW ANYONE LIVES OFF LAND	FREQUENCY	PERCENT
Yes	290	52.2%
No	265	47.8%

22. Have you ever lived in rural, remote, primarily native areas of Alaska?

LIVED IN RURAL ALASKA	FREQUENCY	PERCENT
Yes	189	34.0%
No	366	66.0%

23. During the past 12 months, how many times did you, or someone else in your household, go hunting or trapping for game?

HUNTING LAST 12 MONTHS	FREQUENCY	PERCENT
1 to 3 Times	110	19.7%
4 to 10 Times	79	14.2%
11 or More Times	80	14.4%
NO HUNTER IN HOUSEHOLD/NONE	288	51.7%

24a. During a typical 12 month period or year, how many times do you, or someone else in your household, go hunting or trapping for game?

HUNTING TYPICAL 12 MONTHS	FREQUENCY	PERCENT
1 to 3 Times	123	22.2%
4 to 10 Times	92	16.6%
11 or More Times	102	18.4%
NO HUNTER IN HOUSEHOLD/NONE	237	42.8%

24b. Typically, do you, or someone else in your household hunt or trap .....

GAME	FREQUENCY	PERCENT
Duck or Geese?	126	22.7%
Moose, Caribou, bear, sheep, goat, Ptarmigan, rabbit, fox, etc.?	264	47.6%

24c. Typically, when you, or someone else in the household, goes hunting or trapping, do you hunt or trap .....

AREAS	FREQUENCY	PERCENT
In the Matanuska-Susitna Borough Anchorage or Chugach Mountain area?	117	21.1%
On the Kenai Peninsula?	100	18.0%
In the Fairbanks or Brooks Range area of Northern Alaska?	94	16.9%
In Southeast Alaska?	84	15.1%
In Western Alaska or west of the Alaska Range?	66	11.9%
In Kodiak or the Aleutians Islands?	58	10.5%
In the Copper River, Wrangell, or Valdez area?	54	9.7%

25. During the past 12 months, how many times did you, or someone else in your household, go fishing?

FISHING LAST 12 MONTHS	FREQUENCY	PERCENT
1 to 5 Times	147	26.4%
6 to 10 Times	72	12.9%
11 to 20 Times	94	16.9%
21 or More Times	130	23.4%
NO FISHERMEN IN HOUSEHOLD/NONE	113	20.4%

26a. During a typical 12 month period or year, how many times do you, or someone else in your household, go fishing?

FISHING TYPICAL 12 MONTHS	FREQUENCY	PERCENT
1 to 5 Times	139	25.1%
6 to 10 Times	92	16.5%
11 to 20 Times	110	19.7%
21 or More Times	142	25.4%
NO FISHERMEN IN HOUSEHOLD/NONE	74	13.3%

26b. Typically, when you, or someone else in the household, goes fishing, do you fish .....

AREAS	FREQUENCY	PERCENT
On the Kenai Peninsula?	248	44.7%
In the Matanuska-Susitna Bourough, Anchorage or Chugach Mountain area?	197	35.5%
In Southeast Alaska?	127	22.8%
In the Fairbanks or Brooks Range area of Northern Alaska?	97	17.4%
In the Copper River, Wrangell, or Valdez area?	73	13.2%
In Kodiak or the Aleutians Islands?	62	11.1%
In Western Alaska or west of the Alaska Range?	59	10.6%

27. In 1971, the U.S. Congress passed a law which set up village and regional corporations whose stock is owned only by Alaska natives. Under the current law, in 1991, village and regional corporation stock may be bought by non-natives. Alaska natives want to ammend the law so that the native shareholders of each corporation, by a majority vote, may decide whether the corporation's stock can be sold to non-natives after 1991. Do you favor or oppose amending the law to allow village and regional corporation shareholders to decide whether stock can be sold to non-natives after 1991?

AMENDING STOCK LAW	FREQUENCY	PERCENT
Favor	357	64.4%
Oppose	156	28.1%
DON'T KNOW	42	7.5%

28. What type of residence do you live in? Is it a.....

HOUSING TYPE	FREQUENCY	PERCENT
Single family,	358	64.6%
Apartment, or a	86	15.4%
Duplex,	50	9.1%
Mobile home?	32	5.7%
Zero lot line,	11	2.0%
Condominium,	10	1.7%
Townhouse,	8	1.5%

29. Does someone in your houshold own your home, or do you rent it?

EQUITY STATUS	FREQUENCY	PERCENT
Own	373	67.2%
Rent	182	32.8%

30. In what year were you born? (COMPUTED TO AGE BY SUBTRACTING FROM 85)

AGE OF RESPONDENT	FREQUENCY	PERCENT
18 - 24	74	13.4%
25 - 29	91	16.4%
30 - 34	93	16.8%
35 - 39	91	16.5%
40 - 49	113	20.4%
50 plus	92	16.6%

(n = 555)
(MEAN = 37.603)
(MEDIAN = 35.034)

31. How many total years and months have you lived in Alaska?

ALASKAN RESIDENCY	FREQUENCY	PERCENT
1982 - 1985	87	15.7%
1976 - 1981	129	23.3%
1967 - 1975	144	26.0%
Before 1967	194	34.9%

(n = 555)
(MEAN = 16.400)
(MEDIAN = 12.967)

32. How many total years and months have you lived in the _____ area? (FILL IN AREA CALLING AND WRITE NUMBER OF YEARS AND MONTHS ON ANSWER SHEET)

LOCAL RESIDENCY	FREQUENCY	PERCENT
1982 - 1985	160	28.9%
1976 - 1981	149	26.8&
1967 - 1975	124	22.3%
Before 1967	122	22.0%

(n = 555)
(MEAN = 11.766)
(MEDIAN = 7.330)

33. Are you, or is any member of your household (living at home), a veteran?

VETERAN IN HOUSEHOLD	FREQUENCY	PERCENT
Yes	250	45.1%
No	305	54.9%

34. Are you, or is any member of your household (living at home), a member of a union?

UNION MEMBER IN HOUSEHOLD	FREQUENCY	PERCENT
Yes	182	32.8%
No	373	67.2%

35. Are you married, separated, divorced, widowed, never married and living with another adult, or never married and living alone?

MARITAL STATUS	FREQUENCY	PERCENT
Married	370	66.7%
Divorced	67	12.1%
Never Married and Living with Another Adult	63	11.3%
Never Married and Living Alone	35	6.4%
Widowed	11	2.0%
Separated	8	1.4%

(COMPUTED FROM MARITAL STATUS AND GENDER QUESTIONS)

MARITAL STATUS BY GENDER	FREQUENCY	PERCENT
Married Males	185	33.2%
Married Females	185	33.4%
Single Males	110	19.8%
Single Females	75	13.5%

(COMPUTED FROM AGE, CHILDREN, GENDER, AND MARITAL STATUS QUESTIONS)

FAMILY STATUS	FREQUENCY	PERCENT
Mature Family	127	22.9%
Young Family	101	18.2%
Mature Couple	97	17.4%
Young Single	76	13.8%
Adult Single	57	10.2%
Single Parent	52	9.3%
Young Couple	45	8.1%

36. Do you or does anyone in your household (living at home) work for the federal, state or local government? IF YES, ASK, "Which level of government? Is it the ....."

GOVERNMENT EMPLOYEE	FREQUENCY	PERCENT
NO GOVERNMENT EMPLOYEE	319	57.4%
State, or	135	24.3%
Federal,	56	10.2%
Municipal Government?	45	8.1%

The last few questions are being collected purely for statistical purposes.

37a. How many total people, including children and adults, live in your household?

HOUSEHOLD SIZE	FREQUENCY	PERCENT
One	68	12.2%
Two	164	29.5%
Three	118	21.2%
Four	122	22.0%
Five or More	84	15.1%

(n = 555)
(MEAN = 3.079)
(MEDIAN = 2.392)

37b. Of the people in your household, living at home, how many are adults — aged 18 and older?

NUMBER OF ADULTS	FREQUENCY	PERCENT
One	87	15.6%
Two	361	65.1%
Three	85	15.4%
Four or More	22	3.9%

(n = 555)
(MEAN = 2.082)
(MEDIAN = 1.528)

37c. How many are children or adolescents under 18 years old?

CHILDREN IN HOUSEHOLD	FREQUENCY	PERCENT
NONE	275	49.5%
One	111	20.0%
Two or More	169	30.4%

(n = 555)
(MEAN - ALL HOUSEHOLDS = 0.997)
(MEDIAN - ALL HOUSEHOLDS = 0.025)
(MEAN - HOUSEHOLDS WITH CHILDREN = 1.976)
(MEDIAN - HOUSEHOLDS WITH CHILDREN = 1.266)

38. How many total years of education have you completed? (FORMAL ATTENDANCE IN SCHOOL) (EIGHTH GRADE = 8; HIGH SCHOOL = 12; TRADE SCHOOL = 13; COLLEGE GRADUATE — BA OR BS = 16; MASTERS DEGREE = 18; LAWYER, DOCTOR, PH.D = 19)

YEARS OF EDUCATION	FREQUENCY	PERCENT
12 Grade or Less	194	34.9%
1 - 2 Years College	170	30.6%
3 - 4 Years College	124	22.3%
Post Graduate	68	12.2%

(n = 555)
(MEAN = 13.941)
(MEDIAN = 13.055)

39. Are you seasonally employed, annually employed, unemployed and looking for work, not looking for work, or retired?

EMPLOYMENT STATUS	FREQUENCY	PERCENT
Annually Employed	341	61.5%
Seasonally Employed	74	13.3%
Not Looking for Work	66	11.9%
Retired	39	7.0%
Unemployed and Looking for Work	35	6.4%

40a. How many individuals in your household are presently working fulltime 35 or more hours per week? How many part-time, 34 or less hours?

(COMBINES WAGE EARNERS COMPUTED FROM THE PRECEEDING TWO QUESTIONS)

TOTAL WAGE EARNERS	FREQUENCY	PERCENT
Under One	52	9.4%
One	185	33.4%
One and One-half	77	14.0%
Two	176	31.6%
Over Two	65	11.6%

(n = 555)
(MEAN = 1.545)
(MEDIAN = 1.259)

41a. Including only those living at home, what was your total household income for 1984 before taxes and other deductions were made? Please tell me the figure to the nearest thousand dollars.

41b. We don't need the exact dollar figure; could you tell me which of these broad categories it falls in...

Less than 16,000 dollars,
Between 16,000 and 25,000 dollars,
Between 26,000 and 35,000 dollars,
Between 36,000 and 45,000 dollars,
Between 46,000 and 55,000 dollars,
Between 56,000 and 65,000 dollars,
Between 66,000 and 75,000 dollars, or
More than 75,000 dollars?

(COMPUTED INCOME FROM THE PRECEEDING TWO QUESTIONS)

1985 HOUSEHOLD INCOME	FREQUENCY	PERCENT
$ 0 - $15,999	73	14.5%
$16,000 - $25,999	67	13.3%
$26,000 - $35,999	74	14.6%
$36,000 - $45,999	93	18.5%
$46,000 - $65,999	96	19.1%
$66,999 or More	101	20.0%

(n = 504)
(MEAN = $46,132)
(MEDIAN = $39,889)

(COMPUTED FROM WAGE AND INCOME QUESTIONS)

INCOME PER WAGE EARNER	FREQUENCY	PERCENT
$ 0 - $15,999	133	26.4%
$16,000 - $25,999	116	23.0%
$26,000 - $35,999	104	20.7%
$36,000 - $49,999	80	15.9%
$50,000 or More	71	14.0%

(n = 504)
(MEAN = $30,595)
(MEDIAN = $25,777)

42. Is your telephone number.....

TELEPHONE LISTING	FREQUENCY	PERCENT
Listed or	483	87.0%
Unlisted	72	13.0%

43. SEX.....

GENDER OF RESPONDENT	FREQUENCY	PERCENT
Male	295	53.1%
Female	260	46.9%

THIS COMPLETES THE SURVEY, THANKYOU VERY MUCH FOR HELPING US — GOODBYE

SUBSISTENCE PRIORITY FOR RURAL ALASKANS

BY

POLITICAL AND GENERAL DEMOGRAPHICS

SUBSISTENCE PRIORITY	FREQUENCY	PERCENT
FAVOR	338	60.9%
OPPOSE	178	32.1%
DON'T KNOW	39	7.0%

DEMOGRAPHICS	n	FAVOR	OPPOSE	DON'T KNOW	TOTAL % OF ADULTS
AREA OF STATE: (Row %)					p = 0.0190
Valdez-Kenai--S. Anc	59	59.3%	33.7%	7.0%	10.6%
Anchorage	224	60.2%	34.4%	5.4%	40.4%
Mat Su/Grtr Fbks	50	54.2%	39.9%	5.9%	9.0%
Fairbanks	76	47.9%	43.0%	9.1%	13.7%
Southeast-Rural Alaska	146	71.7%	19.7%	8.6%	26.3%
REGISTERED TO VOTE: (Row %)					p = 0.4858
Yes	447	59.9%	33.3%	6.8%	80.5%
No	108	64.8%	27.4%	7.8%	19.5%
PARTY AFFILITATION: (Row %)					p = 0.0007
Democrat	120	73.8%	19.4%	6.9%	21.6%
Republican	145	66.1%	31.4%	2.5%	26.1%
Libertarian	17	63.5%	29.9%	6.6%	3.0%
Independent	273	52.3%	38.3%	9.4%	49.3%
VOTED IN 1982, NOVEMBER: (Row %)					p = 0.2295
Yes	362	59.0%	34.6%	6.4%	65.2%
No	193	64.4%	27.6%	8.0%	34.8%
VOTED IN 1984, NOVEMBER: (Row %)					p = 0.1290
Yes	373	58.1%	34.8%	7.1%	67.3%
No	182	66.7%	26.6%	6.8%	32.7%
IDEOLOGY OF RESPONDENT: (Row %)					p = 0.0461
Liberal	128	70.5%	23.4%	6.1%	23.2%
Moderate	237	59.4%	32.0%	8.6%	42.7%
Conservative	190	56.3%	38.3%	5.5%	34.2%
INTEREST IN STATE CAMPAIGNS: (Row %)					p = 0.7837
Very Interested	119	56.4%	36.5%	7.0%	21.4%
Somewhat Interested	319	61.3%	31.5%	7.2%	57.6%
Not very Interested	117	64.3%	29.4%	6.3%	21.0%
ADULT MARKET SHARE		60.9%	32.1%	7.0%	100.0%

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. O. Smith
Signature of Camera Operator

7/25/89
Date

02-519 (REV 3/78)


HB
294

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/11/85	1:30 pm
" "	4/12/85	1:30 pm
House Labor & Commerce	3/27/85	1:20 pm

4/12

COMMITTEE REPORT

HOUSE

(7)

FURTHER: FINANCE

3/29/85

Date: _____

The Committee on JUDICIARY has had HB 294

"An Act relating to preferential hire of Alaskans; and providing for an effective date."

under consideration and recommends:

[✓] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note [ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

_____

CHAIRMAN

Alaska State Legislature

House of Representatives
House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

HB 294 Contents

April 11, 1985

HB 294

Draft Letter of Intent

Fiscal Note and Position Paper - Department of Labor, 3/18

Press Release - Rep Boucher, 3/15/85

History and Future of Alaska Hire - David Donley, 2/25/85

Alaska Statutes - Title 36: Public Contracts

Article on Wyoming Supreme Court Decision - NEWS, Vol. 30, 1/30/85, page 1311 of Construction Labor Report

United States Supreme Court Decision: Hicklin v. Orbeck, October term, 1977 437 U.S. 518-535

Francis v. Robinson, Findings of Fact and Conclusions of Law - decision by Karl S. Johnstone, Judge, May 23, 1984

Letter from Barry Haight, Fairbanks Central Labor Council, March 18, 1985 to Chairman Navarre

Memo from Teresa Cramer to Senator Fischer on Alaska Hire -2/14/85 (also attached is the Unites States Court of Appeals, Seventh Circuit decision of March 16, 1984 in W.C.M. Window Co v. Bernardi & the State of Illinois)

Copy of the Wyoming Supreme Court decision in Wyoming v. Antonich, January 10, 1985 from ARthur Lyle Robson

3/26/85 memo from Teresa Cramer to Max Gruenberg re retrospective clause in HB 294

Economic Analysis - Dept. of Labor

3/27/85 minutes from House Labor & Commerce Committee

LETTER OF INTENT

House Bill 294

The purpose of HB 294 is to specify in statute form the factual basis, purpose and policy for the existing AS 36.10.010 as amended in 1983.

The House Judiciary Committee finds that the evidence and testimony in support of HB 294 contradicts portions of the Findings of Fact and Concusions of Law dated May 23, 1984 reached by the Superior Court in Francis v. Robison, 3 AN 83 - 9969 Civil. The committee finds that the existence of new evidence, not available to the Superior Court but submitted to the legislature in its review of HB 294, indicates that portions of the Superior Court's findings are inaccurate and should be corrected.

Furthermore, since the findings of fact, purpose and policy contained in HB 294 are consistent with the legislature's intent and factual circumstances in 1983, it is appropriate that HB 294 be specifically retroactive to July 16, 1983 (the date SSSB 174 amending AS 36.10.010 became law). Any judicial review of AS 36.10.010 should consider the provisions added by HB 294 as contemporaneous to the 1983 amendments.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I WELCOME THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO OFFER COMMENT ON HOUSE BILL 294.

MY NAME IS PAUL D. FLEMM AND I SERVE AS LABOR RELATIONS MANAGER FOR ARCO ALASKA, INC. MY COMPANY, I BELIEVE, IS THE LARGEST PRIVATE EMPLOYER IN THE STATE. WE CURRENTLY EMPLOY ABOUT 2,650 EMPLOYEES WORKING IN ANCHORAGE, THE NORTH SLOPE AND THE KENAI PENINSULA PRIMARILY. THESE 2,650 EMPLOYEES ARE ALMOST EXCLUSIVELY ALASKAN RESIDENTS. WE BELIEVE THAT STABLE EMPLOYMENT IS THE DESIRED OBJECTIVE.

WE BELIEVE AT THIS TIME THAT NOT ENOUGH IS KNOWN ABOUT THE EMPLOYMENT AND UNEMPLOYMENT PICTURE TO ADDRESS THE ISSUE OF WHETHER ANY LOCAL HIRE LEGISLATION WILL ACCOMPLISH THAT OBJECTIVE OF STABLE EMPLOYMENT.

HOUSE BILL 295 PROPOSED TO ALLOCATE $100,000 TO STUDY THE ISSUE. WE SUPPORT JUST SUCH AN EFFORT. HOUSE CONCURRENT RESOLUTION #20 ASKED THE COMMISSIONER OF LABOR AND ATTORNEY GENERAL TO SUGGEST A FUTURE COURSE OF ACTION TO MAXIMIZE LOCAL HIRE. WE SUPPORT JUST SUCH A REVIEW.

WE DO NOT SUPPORT ANY SPECIFIC LOCAL HIRE LEGISLATION BEFORE CAREFUL REVIEW IS DONE. WE BELIEVE THAT A CAREFUL REVIEW WILL SHOW THAT LEGISLATION WHICH FOCUSES ON JUST CONSTRUCTION OR JUST NORTH SLOPE CONSTRUCTION IS COUNTER-PRODUCTIVE. BECAUSE, WE BELIEVE, ANY CAREFUL REVIEW WOULD NOT JUST INVOLVE THE ATTORNEY

GENERAL OR THE DEPARTMENT OF LABOR BUT WOULD ALSO INCLUDE THE DEPARTMENT OF COMMERCE WHOSE JOB IT IS TO FOSTER COMMERCE IN OUR STATE.

IT IS, WE BELIEVE, THE PROVIDING OF JOBS AND AN ENVIRONMENT FOR BUSINESS TO FLOURISH THAT WILL IN THE END SEE THE MAXIMUM NUMBER OF OUR CITIZENS AT WORK. THE CURRENT BILL AND OTHERS LIKE IT MISS THE MARK. REPRESENTATIVE PIGNALBERI'S INITIAL THRUST AT EXAMINING AVAILABLE DATA ALREADY DEPICTS THAT WE HAVE MORE RESIDENTS SEEKING WORK THAN WE HAVE JOBS TO BE DONE. WE APPLAUD REPRESENTATIVE PIGNALBERI FOR BEGINNING THE INQUIRY INTO THE MANY FACETED QUESTIONS OF EMPLOYMENT AND UNEMPLOYMENT AMONG VARIOUS INDUSTRIES AND OCCUPATIONS. IT IS, HOWEVER, ONLY A BEGINNING.

CONSTRUCTION IS PARTICULARLY IMPORTANT TO ALASKA BECAUSE WE ARE A YOUNG STATE STILL GROWING AND <u>BUILDING</u> OUR FUTURE <u>STABLE</u> EMPLOYMENT PLACES. HOWEVER, <u>CONSTRUCTION</u> WILL ALWAYS BE UNSTABLE. IT IS ELSEWHERE AS WELL. IT IS THE NATURE OF THE BUSINESS. THIS IS THE HISTORICAL BASIS FOR HIGH WAGES IN CONSTRUCTION - TO OFFSET PERIODIC AND CYCLICAL UNEMPLOYMENT IN THE BUSINESS. CONSTRUCTION INDUSTRY AROUND THE COUNTRY RECOGNIZED THE SEASONAL AND TRANSIENT NATURE OF THE WORK AND TOOK THIS INTO ACCOUNT IN FASHIONING ITS HISTORICAL SOLUTIONS. EXAMPLES OF THIS ARE: (1) HIGHER WAGES (2) HIRING HALLS TO ACT AS CLEARING HOUSES FOR WORKERS SEEKING WORK FOR CONTRACTORS WHO CAME AND WENT AND (3) MULTI-STATE LABOR AGREEMENTS TO ALLOW WORKERS TO MOVE FROM STATE TO STATE TO FOLLOW THE WORK. MANY CONSTRUCTION WORKERS CHOOSE

THOSE TRADES BECAUSE OF THE OPPORTUNITY FOR INTENSE WORK FOLLOWED BY PERIODS OF TIME OFF.

UNFORTUNATELY A PATTERN IS GROWING WHERE WORKERS FEEL THEY HAVE PAID INTO UNEMPLOYMENT FUNDS SO THEY SHOULD COLLECT WHENEVER POSSIBLE. THIS IS NOT JUST IN CONSTRUCTION BUT IN ALL WALKS SUCH AS TEACHERS WHO ARE KNOWINGLY EMPLOYED AND COMPENSATED FOR NINE MONTHS AND COLLECT UNEMPLOYMENT DURING SUMMER VACATION.

SPECIFICALLY 112 OF HOUSE BILL 294 STATES THAT "NONRESIDENT WORKERS DISPLACE A SUBSTANTIAL NUMBER OF QUALIFIED, AVAILABLE AND UNEMPLOYED ALASKAN WORKERS ON JOBS ON STATE FUNDED PUBLIC WORKS PROJECTS." HOW IS THIS POSSIBLE? DO EMPLOYERS KNOWINGLY HIRE LESS QUALIFIED WORKERS WHEN THEY HAVE THE CHOICE? WHO BETTER TO MAKE THOSE DECISIONS THAN THE EMPLOYER? CERTAINLY NOT THE DEPARTMENT OF LABOR OR A CADRE OF HEARING OFFICERS THAT WOULD BE NECESSARY UNDER SENATOR JOSEPHSON'S BILL.

WHAT REALLY IS AT ISSUE HERE MAY SIMPLY BE THAT AVAILABILITY OF JOBS FALLS AT INOPPORTUNE TIMES AND PLACES. IF I AM AN ALASKA RESIDENT WORKING ON A JOB IN FAIRBANKS, MY HOMETOWN, I CAN NOT BE IN PRUDHOE BAY WORKING AT THE SAME TIME. NOR WOULD I CHOOSE TO WORK AT PRUDHOE BAY WHEN I COULD WORK IN FAIRBANKS AND GO HOME TO MY FAMILY EACH NIGHT.

ANALYZING YEARLY UNEMPLOYMENT STATISTICS AND YEARLY JOB AVAILABILITY PROJECTIONS DOES NOT DEAL WITH THE FACT THAT BOTH JOBS IN FAIRBANKS AND PRUDHOE BAY WILL END AND BOTH WORKERS WILL

BE UNEMPLOYED FOR SOME TIME UNTIL ANOTHER SEASON OR UNTIL ANOTHER PROJECT IS MADE AVAILABLE TO WORK ON.

IF INDEED CONSTRUCTION IS IMPORTANT BECAUSE OF THE CORE OF ASSOCIATED JOBS IT CREATES THEN WE SHOULD BE DOING ALL WE CAN TO PROMOTE CONSTRUCTION NOT ARTIFICIAL BARRIERS TO THE COMPETITION FOR WHO WILL DO THOSE JOBS.

FOR EXAMPLE, REPRESENTATIVE PIGNALBERI DISCLOSED THAT 51% OF THOSE WORKING IN EATING AND DRINKING PLACES APPEARED TO BE NON-RESIDENTS BY VIRTUE OF PERMANENT FUND APPLICATIONS FOR DIVIDENDS. IT IS DIFFICULT TO IMAGINE THESE WORKERS FLYING HOME FROM ANCHORAGE OR JUNEAU TO SEATTLE EACH NIGHT AFTER THEIR SHIFT OF WAITING TABLES. THERE MUST BE SOMETHING ELSE OPERATIVE THEN. MAYBE IT IS THAT TOURISM IS SEASONAL ALSO. DO WE SEEK TO PLACE BARRIERS ON TOURISM? NO, WE TRAVEL THE LENGTH AND BREADTH OF THESE UNITED STATES TO FOSTER THE GROWTH OF TOURISM. WE SEEK TO IRON OUT SEASONAL PEAKS AND VALLEYS BY COMING UP WITH NEW AVENUES TO SEE TOURISM GROW - LIKE THE WINTER OLYMPIC GAMES. THIS EMPLOYS ALASKANS AND YES, IT WILL EMPLOY THOSE WHO COME FROM LESS ADVANTAGEOUS PLACES LIKE DETROIT AND PITTSBURGH WHERE ARTIFICIAL BARRIERS TO COMPETITION FOR WAGES AND INDUSTRY WERE PLACED BEFORE.

WE NEED TO ACCOMPLISH LOCAL HIRE THROUGH FOSTERING MORE JOBS. I PLEDGE TO YOU ON BEHALF OF ARCO ALASKA THAT WE WILL VOLUNTARILY WORK WITH ANY PERSON OR ORGANIZATION WHO IS TRULY SEEKING TO MAXIMIZE LOCAL EMPLOYMENT FOR ALL ALASKANS. WE HAVE

ALREADY OFFERED THIS TO THE COMMISSIONER OF LABOR AND TO UNION LEADERS. WE ASK, HOWEVER, THAT THE STATE LEND ITS EFFORTS TO STUDYING THE TRUE PROBLEM BEFORE IT OFFERS SOLUTIONS AND BEFORE IT SINGLES OUT INDUSTRIES AND PARTS OF INDUSTRIES.

REPRESENTATIVE PIGNALBERI STATES THAT LOCAL HIRE AND LOCAL CONTRACTOR PREFERENCE ARE FLIP SIDES OF THE SAME COIN. WE DO NOT AGREE. OUR EXPERIENCE SHOWS THAT IT IS THE CONTRACTOR'S EMPHASIS ON LOCAL HIRE AND IN MANY CASES UNION EMPHASIS OR LACK OF IT THAT MAKES THE DIFFERENCE. WE HAVE ONLY RECENTLY BECOME AWARE THAT MANY OF OUR "LOCAL" CONTRACTORS PERFORM WORSE IN ATTRACTING ALASKANS TO WORK THAN DO SOME OF THE NEWER CONTRACTORS. THIS IS A MATTER OF EMPHASIS THAT WE HAVE VOLUNTARILY ENCOURAGED NEW CONTRACTORS TO TAKE VERSUS SOME POLICIES OF HIRING HALLS THAT SOME UNION CONTRACTORS ENDURE.

I THANK YOU FOR YOUR TIME AND THE OPPORTUNITY TO ADDRESS THIS ISSUE. WE LOOK FORWARD TO COOPERATING WITH YOU IN YOUR INQUIRY AS WE ARE NOW DOING WITH THE DEPARTMENT OF LABOR IN GATHERING STATISTICS.

International Brotherhood of Electrical Workers

2204 TONGASS
KETCHIKAN, ALASKA 99901
PHONE (907) 225-4020

P.O. BOX 7241
KETCHIKAN, ALASKA 99901
TELEX - 56376

UNIT - 1547-4

Local 1547

APR 2 1985

April 1, 1985

Rep. M. M. Miller, Chairman
House Judiciary Committee
Pouch V
Juneau, AK 99811

RE: HB 294 and HB 295, ALASKA HIRE LEGISLATION

Dear Representative Miller:

I am sure that you, as well as your legislative colleagues, are well aware that the residents of the State of Alaska need enforceable local hire legislation that will withstand court challenges. There are too many of us who have seen non-resident workers hired before residents on projects funded by our local and/or state dollars.

I urge that you support HB 294 and HB 295 and do whatever possible to guarantee Alaska residents preferential hire on Alaska projects.

Sincerely,

John W. Philbrook
Assistant Business Manager

JWP:vp

Bill No. House Bill No. 294

Date March 28, 1985

Title "An Act relating to preferential hire of Alaskans; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

Since 1982, one of the Department's highest priorities has been the enforcement of preferential hiring of Alaska residents on state-funded public works projects, pursuant to AS 36.10.010. In late 1983, however, the state's resident hire law was challenged on constitutional grounds and resulted in a Superior Court decision that the law was unconstitutional. That decision is now on appeal to the Alaska Supreme Court.

One of the Superior Court's key findings was that there was insufficient evidence to show that the in-migration of non-residents was displacing qualified and available Alaska residents from public works employment. By explicitly setting forth the legislative findings underlying the resident hire law, House Bill No. 294 would provide a more solid foundation from which to defend the principle of Alaska hire. The Department of Labor, therefore, strongly endorses the comprehensive legislative findings contained in the bill.

The Department of Labor supports House Bill No. 294. It will not have a fiscal impact on the department.

APPROVED:

Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 294

Title: "An Act relating to preferential hire of Alaskans..."

Sponsor: Boucher, Davis et al.

Requestor: House Labor & Commerce

Date of Request: 3/18/85

FISCAL DETAIL

Agency Affected: Labor

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected: Labor Standards & Safety

Wage & Hour Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert J. Bacolas, Sr. (Robert J. Bacolas by RB) Phone: 465-4870

Division: Labor Standards & Safety Date: 3/19/85

Approved by Commissioner: Jim Robison (Robert W. Jordan for) Date: 3/19/85

Agency: Labor

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

Bill No. House Bill No. 294

Date March 18, 1985

Title "An Act relating to preferential hire of Alaskans; and providing for an effective date."

Contact: Robert Landau
465-2700
Eileen Plate
465-2700

Since 1982, one of the Department's highest priorities has been the enforcement of preferential hiring of Alaska residents on state-funded public works projects, pursuant to AS 36.10.010. In late 1983, however, the state's resident hire law was challenged on constitutional grounds and resulted in a Superior Court decision that the law was unconstitutional. That decision is now on appeal to the Alaska Supreme Court.

One of the Superior Court's key findings was that there was insufficient evidence to show that the in-migration of non-residents was displacing qualified and available Alaska residents from public works employment. By explicitly setting forth the legislative findings underlying the resident hire law, House Bill No. 294 would provide a more solid foundation from which to defend the principle of Alaska hire. The Department of Labor, therefore, strongly endorses the comprehensive legislative findings contained in the bill.

It is noted that section 2 of the bill proposes a retroactive effective date for the provisions of section 1. The department has no problem with the retroactive date per se. However, the legality of the retroactive effective date could play a major role in determining the constitutionality of section 1 as a whole should a legal challenge to the section arise in the future. Therefore, a careful legal review may be in order to assure that the provisions of section 1 do fall within the legal parameters of the types of provisions which can be retroactive.

The Department of Labor supports House Bill No. 294. It will not have a fiscal impact on the department.

APPROVED:

Robert W. Landau, Deputy
for Jim Robison, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4931

DISTRICT 10
BOX 111038
ANCHORAGE, ALASKA 99511
(907) 349-2192

CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

PRESS RELEASE

SUBJECT: Alaska Hire Legislation DATE: March 15, 1985

Today I introduced in the House two pieces of legislation on the subject of Alaska Hire.

The first bill (HB 294) adds legislative findings of fact and purpose to our current Alaska Hire law AS 36.10.010. AS 36.10.010 is currently in effect and being enforced but is before the Alaska Supreme Court for review in the case of Francis v Robison.

These proposed additions to AS 36.10.010 have been drafted in cooperation with the Department of Labor and incorporate case law on the subject of local hire which has occurred since AS 36.10.010 was adopted in 1983. Most notable of such cases was the recent Wyoming Supreme Court case which upheld a local hire law similar to AS 36.10.010. House Bill 294 has been cosponsored by 33 other Representatives.

The second bill (HB 295) provides the Department of Labor with $100,000 to conduct a study into ways the state may provide preference to Alaskan workers. House Bill 295 has been cosponsored by 21 other Representatives

Both these bills have been endorsed by the Department of Labor as providing the necessary factual foundation to support a resident hire preference under current legal standards. The study would allow the Department to assemble information currently not available to support future state action to ensure that Alaskans receive preference for jobs in Alaska.

Also today Senator Fahrenkamp introduced legislation identical to HB 294 in the Senate (SB 235). Senator Fahrenkamp explained: "Most of the revenues going into public works projects comes from royalty oil money belonging to Alaskans. We want to ensure that Alaskan's will continue to be given a hiring preference on public works projects funded by money that rightfully belongs to them. Representative Boucher and I have introduced legislation that is designed to reinforce existing law and hopefully protect it from any legal challenges in the future."

For your background, I'm attaching a memorandum on this subject. Representative Gruenberg has allowed Dave Donley of his staff to assist me on this matter. Please contact Dave at 465-4986, Capitol Room 112, or Edie Russell of Senator Fahrenkamp's office for additional background.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU
BILL SHEFFIELD
GOVERNOR

NEWS RELEASE

FOR INFORMATION CONTACT:
John Greely
Press Secretary

Molly McCammon
Deputy Press Secretary
Office of the Governor
Pouch A, Juneau, AK 99811
Bus. Phone: (907) 465-3500

GOVERNOR SHEFFIELD ANNOUNCES JOB SURVEY RESULTS
March 15, 1985
No. 85-34

FOR IMMEDIATE RELEASE

JUNEAU -- The Alaska Department of Labor has surveyed North Slope construction firms and found a significant number of non-resident workers employed, Governor Bill Sheffield announced today. Of the 2,123 workers employed by 10 companies, 600 were non-resident.

"These figures are simply not acceptable," Sheffield said. "Furthermore, with the influx of workers expected on the North Slope this spring and summer, the situation is bound to get worse."

Jim Robison, commissioner of the Department of Labor, will be meeting with representatives of the 10 companies next week, as well as with other North Slope firms. Robison also is examining the hiring record for maintenance and operations personnel of a major oil producer and others to determine if similar problems exist there.

"I have asked Commissioner Robison to work in close cooperation with the private sector in addressing the issue of jobs for Alaskans," the Governor said. "In the past, we have assessed the workforce needs of the timber and fishing industries, and we've been very successful in getting their cooperation in putting Alaska residents to work first. We are trying to expand that effort now."

A preferential hire law for Alaskans on oil and gas development projects was enacted by the state in 1972 but struck

-MORE-

down as unconstitutional by the U.S. Supreme Court six years later. The state has responded with expanded job training and placement programs for Alaskans, as well as with a local hire law on state-funded construction programs. That law, requiring 95 percent local hire, is currently under challenge before the Alaska Supreme Court.

"The economic problems caused by involuntary unemployment are a serious menace to the health and welfare of the people of the state," the Governor said. "When jobs open up, we need to place Alaskans in them, or train Alaskans to fill the needs of industry."

Sheffield said he was particularly concerned about reports that non-residents were being recruited for Alaska jobs through solicitions by companies in such states as Louisiana, Texas, Arkansas and Oklahoma.

-30-

Ironworker awaits response in local hire dispute

by Kay Monroe Levine
Times Writer

A written response is due from state attorneys Monday in the case of a Montana ironworker who is appealing a Superior Court judge's decision to strike down Alaska's local hire law last May.

The ruling by Anchorage Superior Court Karl Johnstone favored the ironworker, James Francis. However, Francis' attorney, Ron Zobel, filed a brief in December asking the Alaska Supreme Court to return the case to the Superior Court. Zobel argued that the lower court should have found the law unconstitutional for more reasons than it did and that the Superior Court has not finished its work on the case.

The law requires that 90 to 95 percent of all workers on state and local government construction projects be Alaskans. In handing down his decision, Johnstone said workers have a fundamental constitutional right to seek work in any state.

Assistant Attorney General Jan Hart DeYoung, who had argued that construction workers from the Lower 48 take jobs from Alaskans, filed an appeal in the case in June. The Supreme Court ruled in July that the local hire law will be enforced until the court makes a final decision in the case.

Francis challenged the law as discriminatory after losing his job on a North Pole High School project during October of 1983.

The state had informed his employer, Regan Steel & Supply Co., that it was violating the preferential hiring law.

The state required the firm to comply with the law within one week and Francis and several others were fired. However, Francis' union, Ironworkers Local 751, agreed in July to treat him like an Alaska union member until the case was resolved so that he did not have to remain unemployed for the duration.

But the union also has filed a separate appeal of the decision favoring Francis. "Intervenors (Local 751) attack the factual findings which underlie the court's conclusion that Francis was a nonresident, that AS 36.10.010 caused Francis to lose his job, and that the statute was a cause of Francis' continued unemployment," union attorneys argued.

The state also appealed Johnson's May decision. In a brief filed in late December, DeYoung argued as she has before that the court has been ignoring evidence about chronic unemployment in Alaska.

"The state has also presented evidence from which a strong inference can be drawn that nonresident construction workers contribute to its unemployment," she concluded in asking for a reversal.

No oral arguments are scheduled in upcoming weeks for any of the three appeal cases.

Alaska's 8.9 percent unemployment tops nation

2/7/85

Associated Press
and Times Business Staff

Washington — Alaska has the highest insured unemployment rate in the country, the Labor Department said today in reporting figures on the number of jobless claims in the nation.

The department said Alaska's insured jobless rate, a seasonally adjusted figure, for the week ending Jan. 19 was 8.9 percent. The next highest rate in the country was in West Virginia where is was 7.7 percent. Other high rates reported today included Idaho, 6.3 percent; Washington, 6.0 percent; Montana, 5.7 percent; Maine and Pennsylvania, 5.5 percent; North Dakota and Oregon, 5.4 percent; and Arkansas, 5.2 percent.

Nationally, first-time applications for unemployment compensation rose to 394,000 for the week ending Jan. 26, up 3,000 from the previous week, the Labor Department said.

The total number of people collecting jobless benefits under state programs was 2,504,000 for the week ending Jan. 19, down 36,000 from the previous week's 2,540,000, said the department's Employment and Training Administration.

The insured jobless rate was unchanged at 2.8 percent for the week ending Jan. 19. The rate reflects the proportion of those eligible in the 114 million-member U.S. civilian labor force who are drawing unemployment compensation.

The number of recipients of jobless benefits through Jan. 19 under a variety of state and federal programs was 3,553,400, down 11,400 from the previous week's seasonally unadjusted 3,564,800. During the comparable week a year ago, the number of recipients was 3,949,500.

Daily News Miner 2/16/85

State jobless rate up to 11.2 percent

JUNEAU (AP)—Alaska's jobless rate climbed to 11.2 percent in January, nearly a full percentage point above the December figure of 10.3 percent but well below the 12.5 percent of a year ago, the state Department of Labor said Friday.

Nationally, the comparable unemployment rate was 8 percent for January.

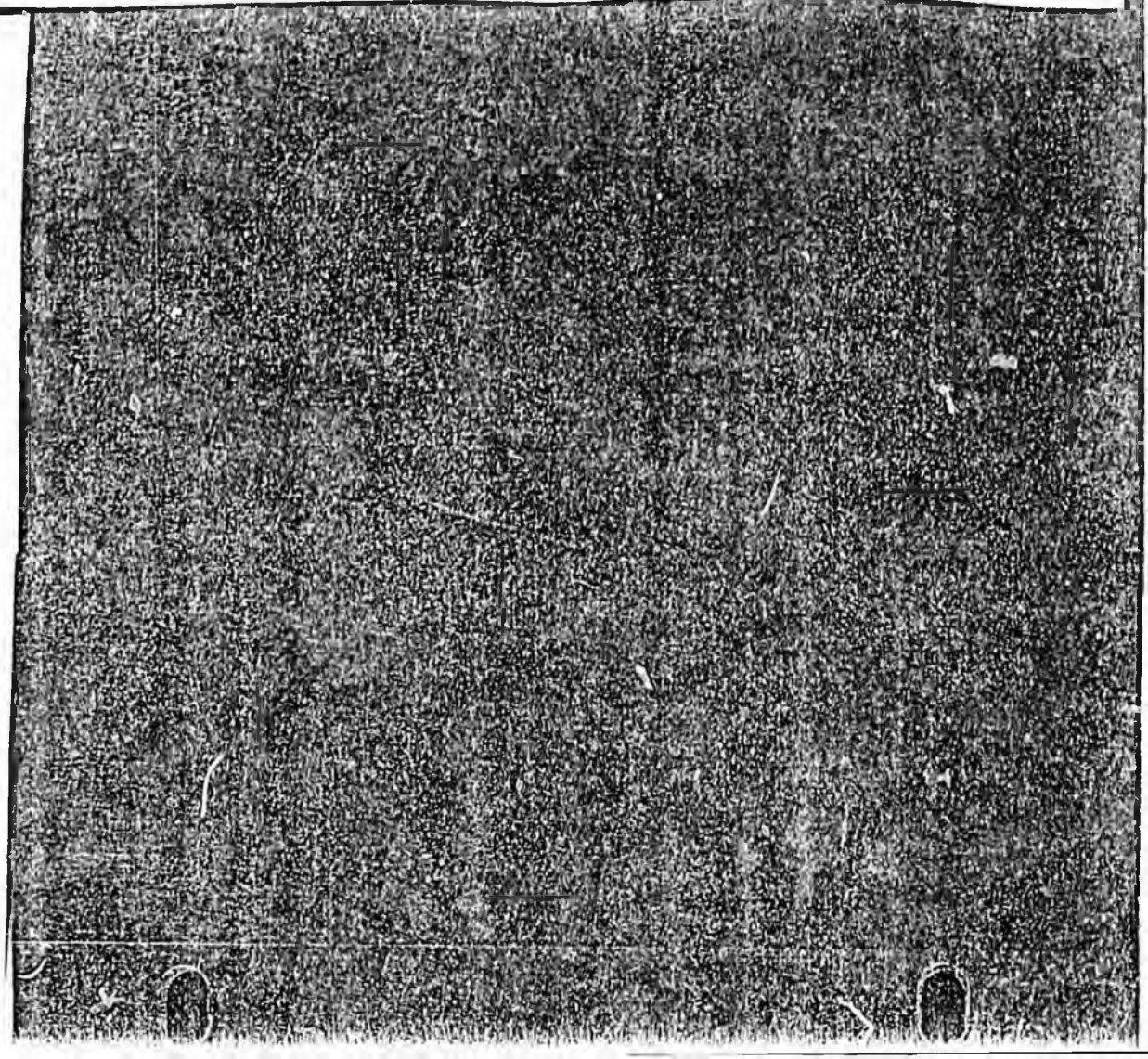
Nonagricultural employment in Alaska dipped by about 4,800 jobs from December to January, officials said.

The trade sector showed the largest employment drop during the period, largely because of store layoffs and a normal winter drop in work at eating and drinking establishments, analysts said.

Mining was the only industry to gain in employment through the month. Increased activity in the oil and gas industry was the primary factor behind that increase, officials said.

Locally, the Skagway-Yakutat-Angoon area had the highest jobless rate for the month, with 22.1 percent. The Aleutian Islands reported the lowest unemployment figure, or 3.3 percent.

Anchorage showed a jobless rate of 8.2 percent for January, up from the previous month's 7.7 percent.



ISER RESEARCH SUMMARY

Institute of Social and Economic Research, University of Alaska September 1984, R.S. No. 20

Economic Impacts of Capital Spending in Alaska

A report by the University's Institute of Social and Economic Research indicates that Alaska's construction industry is increasingly supported by state capital spending. State capital appropriations in 1982 (not including loan programs) of $1,203.2 million represented a five-fold increase above the average annual expenditure of $237 million during the 1970s. Capital spending in 1982 directly produced 7,450 jobs and supported 5,731 additional jobs, for a total of 13,181. This amounts to an expenditure of approximately $91,000 for the equivalent of each full-time job of one year's duration (Table 1). If all funds appropriated had been spent in 1982 and all jobs produced in 1982, this would have accounted for one-third of all construction jobs and 6 percent of total jobs in the state for that year.

The report is the first of a two-part project designed to estimate the economic impact of capital expenditures for different types of projects and to assess the dollars required to operate and maintain these projects in future years. Types of capital expenditures being investigated include highways, schools, office buildings, and sewer works. Private construction activities have similar impacts on the economy. The direct, indirect, and induced effects[1] of particular construction efforts on Alaska's economy are measured in terms of employment, wages and salaries, personal income, value added, and output.

For example, as shown in Table 2, $1 million in school construction produces the equivalent of 10.6 jobs of one year's duration, $355 thousand in wages, $354 thousand in resident personal income, and $1.46 million of total output in Alaska. Table 2 also demonstrates how the size of the economic impact varies with the type of project. In general, the more labor-intensive projects (for example, maintenance, as opposed to initial construction), have larger impacts on the economy. This occurs because more of each dollar spent on labor remains within the economy, compared to a dollar spent on materials which are procured almost exclusively from outside the state. In addition, the higher wages in heavy construction result in a higher ratio of indirect and induced employment to direct employment than other categories of construction. This occurs because indirect and induced employment depend upon the proportion of personal income that remains in Alaska rather than the number of directly created jobs.

Table 2 also illustrates that dollars spent on general government operations create both direct and total economic effects two-and-one-half times those spent on capital projects. Thus, if supporting (subsidizing) employment is a goal of state spending, expenditures in general government operations have significantly greater economic impacts than do capital expenditures.

Factors Affecting the Economic Impact of Construction Spending

The impact of construction spending is largely determined by how fast the money "leaks out" of the economy. This leakage depends primarily on the local availability of (1) construction "inputs" (labor and materials) and (2) goods and services purchased by construction employees. Figure 1 shows how $1 million of school construction funds is typically spent. Little of the 55 percent allocated to materials impacts the local economy because almost no materials are manufactured in Alaska. For imported materials, only portions of the wholesale and transport margins provide income for firms within the state. The local direct impact occurs primarily through

[1] *Direct Effect* is the direct purchase of a commodity, service, or labor input needed to design or construct a project. *Indirect Effect* results from the demand for commodities, services, and labor needed to produce the inputs required to construct the project. *Induced Effect* results when individuals spend in Alaska the wages, salaries, and other income resulting from the direct and indirect effects of the project.

TABLE 1

Estimated Employment Impact of 1982 State Capital Appropriations[a,b]

Budget Category	Appropriation (million $)	Direct Employment Produced[c]	Total Employment Produced[c,d]
Building—education	$139.8	741	1,485
Building—other	141.1	810	1,510
Highway, airport, & other transportation	231.4	854	1,995
Water & Sewer	26.3	122	235
Harbors, docks, flood control	34.7	215	379
Energy Projects	368.2	2,279	4,024
Equipment	57.9	–	–
Other	61.0	–	–
Subtotal	$1,060.4	5,021	9,628
Engineering, design, & planning	142.8	2,429	3,553
Total	$1,203.2[e]	7,450	13,181

[a]Including municipal grants but not loan programs.

[b]Based upon appropriation bills.

[c]Average annual equivalent.

[d]Total = direct + indirect + induced.

TABLE 2

Economic Impact of $1 Million of State Spending: Contract Construction and Operations

Project Type	Average Annual[a,b] Equivalent Employment Produced (Jobs) Direct	Total[c]	Wages and Salaries[d] (thousand $) Direct	Total[c]	Output[e] (thousand $) Direct	Total[c]	Personal Income[f] (thousand $) Direct	Total[c]
Construction								
School	5.30	10.62	$240	$355	$1,000	$1,462	$224	$354
Office	5.74	10.70	260	368	1,000	1,435	238	359
Hospital	5.97	11.30	270	385	1,000	1,455	252	381
Sewers	4.64	8.94	210	307	1,000	1,397	212	321
Highway and Street	3.69	8.62	220	335	1,000	1,489	216	347
Land Reclamation	6.19	10.93	280	384	1,000	1,425	276	394
Operations								
Highway and Street Maint.	6.71	12.45	400	533	1,000	1,568	371	524
Nonfarm Building Maint.	7.73	12.83	350	461	1,000	1,452	329	453
General Govt. Operations	17.01	24.88	530	701	1,000	1,700	584	776

[a]At 1982 average wage rate levels.

[b]Wage and salary employment in Alaska is independent of the residence of the worker (does not include proprietors).

[c]Total = direct + indirect + induced.

[d]Wages and salaries is that paid to workers for employment which occurs in Alaska independent of the place of residence of the worker.

[e]Direct output by construction firm to government plus other output attributable to Alaskan businesses. In the trade sector this is the trade margin rather than the value of goods sold.

[f]The component of value added which accrues to Alaskan residents. Because a portion of wages and salaries, proprietor income, and profits which is project-generated accrues to nonresidents, the personal income impact is not much larger than that of wages and salaries.

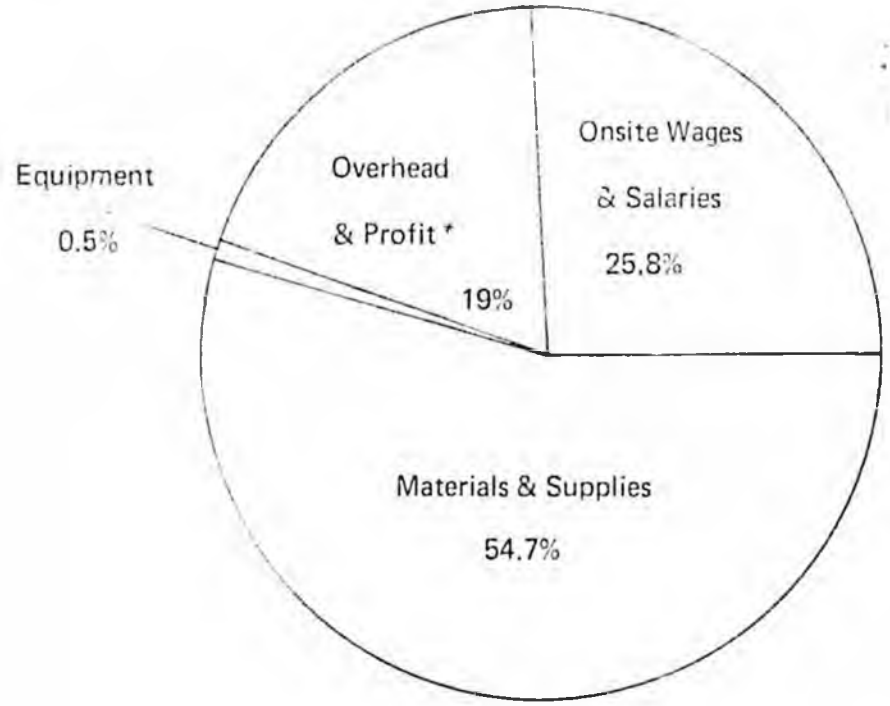


Figure 1. Distribution of Contract Costs for Public Schools

*Includes off-site wages, fringe benefist, construction financing, inventory, other overhead, and profit.

Source: U.S. Department of Labor, Bureau of Labor Statistics, "Labor and Material Requirements for Sewer Works Construction," Bulletin 2003, January 1979, Tables 12, 13, and 14.

wage and salary payments, although some workers may remain in the state only until the job is finished and leave with their earnings. Subsequent impacts result primarily when workers spend their wages in the local economy. Most money spent on commodity purchases flows out of the local economy to the places where those commodities are produced. Money spent on local services, however, remains within the local economy to generate an additional round of spending.

Additional Economic Impacts

In addition to those effects described and measured above, there may be other effects before, during, and after construction which add to the economic impact. These are:

- Anticipatory Effects. The announcement of a project may cause the business sector to invest in expansion of supporting industries before construction. Preconstruction planning and design may also impact the economy.
- Accelerator Effects. Investment in the business sector (new stores) or household sector (new housing) may result if the general level of economic activity strains the capacity of existing infrastructure.[2] This is a major factor in generating business cycles.
- Government Effects. Growth in the private sector generally increases the demand for goods and services provided by the public sector.
- Operation and Maintenance Effects. The operation and maintenance of new capital facilities require labor, commodities, and services. Operations and maintenance also generate indirect and induced effects.
- Structural Change Effects. The existence of a new capital facility may produce an increase or even a decrease in economic activity because it changes the structure of the econ-

[2]Economic infrastructure is the underlying foundation upon which an economy is built. It includes the basic supporting services required by an economy to operate, such as communications, transportation, and public utilities.

omy. One type of structural change is a change in the price or availability of inputs to production. For example, a hydroelectric facility which reduced the price of electricity could attract industry that would otherwise not locate in the state, or a transportation improvement could make local businesses less competitive in relation to lower 48 firms. Structural change can also result from a change in market size. A recent phenomenon in Alaska has been the establishment of new types of business services made possible by an increase in the size of the Alaskan market. The economic "scale" effects occur independently of the source of the increase in market size, i.e. private or public investments.

This Research Summary *was written by Scott Goldsmith of the Institute of Social and Economic Research, University of Alaska. Address any questions to Scott Goldsmith at ISER, 707 A Street, Suite 206, Anchorage, Alaska 99501, telephone 278-4621.*

* * * *

RECENT RESEARCH SUMMARIES

- "Alaska Statewide Housing Needs Study," by Cheryl K. Thomas Associates, et al., November 1983, RS No. 12.
- "Effective Schooling in Rural Alaska," by Judith Kleinfeld and G. Williamson McDiarmid, January 1981, RS No. 13.
- "The Anchorage Consumer Price Index—How Accurate?" by Scott Goldsmith and Phillip Rowe, January 1981, RS No. 14.
- "Effects of State Fisheries Management on Nonresident Fishermen," by Gunnar Knapp, Thomas A. Morehouse, and Karen A. White, January 1981, RS No. 15.
- "Alaska's Urban and Rural Governments," by Thomas A. Morehouse, Gerald A. McBeath, and Linda Leask, February 1981, RS No. 16.
- "Alaska Resources Development: What Beyond Prudhoe Bay?" by Thomas A. Morehouse, et al., February 1981, RS No. 17.
- "Alaska Economic Projections and the Effects of OCS Development," by Matt Berman and Teresa Hull, June 1984, RS No. 18.
- "Import Substitution in Alaska," by Lee Huskey, Arlon R. Tussing, and Thomas Singer, June 1984, RS No. 19.

RESEARCH SUMMARY (RS No. 20)
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February 25, 1985

LETTER TO THE EDITOR
RE: THE HISTORY AND FUTURE OF ALASKA HIRE

Currently there appears to be much public misunderstanding about the status of our present Alaska Hire Law AS 36.10.010. As one of the persons who helped draft that legislation I think it is important that all Alaskans understand the history behind and current status of Alaska Hire.

The history of preferential hire for residents of Alaska has been turbulent. The first Alaska Hire law was adopted in 1960. Over the years, the 1960 law was enforced with varying degrees of enthusiasm. Then in 1972, in an effort to obtain employment for Alaskans on the construction of the Trans Alaska Pipeline, the 1972 "Local Hire Under State Leases" law was adopted. The 1972 law required that Alaska residents be employed in preference to non-residents in all construction involving oil and gas development. In 1978 in Hicklin v. Orbeck, the U.S. Supreme Court struck down the 1972 law as contrary to the Privileges and Immunities Clause of the U.S. Constitution. While the 1972 law was struck down, the 1960 law was not challenged and remained in effect but was not enforced until 1983.

In 1983, in response to public desire for an enforceable Alaska Hire law and new legal developments, the Alaska legislature amended the 1960 law. The 1983 act, which is the current law, requires 95% Alaska hire on most construction projects funded by State or local funds.

Then in February 1984 in the case of United Building & Construction Trades Council of Camden County and Vicinity v. Mayor and Council of City of Camden et al, the U.S. Supreme Court reversed a New Jersey Supreme Court holding that the Privileges and Immunities Clause of the U.S. Constitution did not apply to municipal ordinances creating preferential hire for local residents. The court held that such ordinances are properly subject to the requirements of the Privileges and Immunities Clause. The court ordered that on remand, the determination of whether the Camden ordinance violates the Privileges and Immunities Clause should be made under the appropriate constitutional standard which requires determination of whether the ordinance burdens one of those privileges and immunities protected by the clause and if so, whether there is substantial reason for the discrimination against citizens of other states. However, the U.S. Supreme Court found it impossible from the record, as it was presented to the court, to evaluate Camden's contention that its ordinance was carefully tailored to counteract the specified economic and social ills of the unemployment of state residents and a sharp decline in the city's population. On remand, the U.S. Supreme Court recognized that the New

Jersey Supreme Court may decide, consistent with state procedures, on the best method for making the necessary findings of fact.

In 1984, Alaska's current law was challenged in Francis v. Robison. Superior Court Judge Johnstone ruled the current law in violation of the Privileges and Immunities Clause of the U.S. Constitution on May 23, 1984. On request of the State of Alaska the Alaska Supreme Court stayed Judge Johnstone's action until the State could appeal his decision. This case is currently on appeal before the Alaska Supreme Court and a decision is expected in the latter half of 1985.

In January of 1985, the Supreme Court of Wyoming upheld a Wyoming Hire law that is even stronger than our current Alaska law, in that it requires 100% Wyoming hire, not just 95%, on public construction projects. The Wyoming Supreme Court overruled a lower Wyoming court which found, as Judge Johnstone found for the Alaska law, that the Wyoming law violated the Privileges and Immunities Clause. The Wyoming Supreme Court specifically referenced both the Camden desision and Hicklin v. Orbeck in it's decision.

Currently then, our Alaska Hire law is in effect and being enforced and in light of the Wyoming case has a better chance than ever of being found constitutional by our Alaska Supreme Court. Of course, even if the Alaska Supreme Court approves the current law, Alaska Hire may still be challenged in the U.S. Supreme Court.

If our current law is struck down by the Alaska Supreme Court or challenged in the U.S. Supreme Court, the key factor in its success or failure will probably be the State of Alaska's ability to prove that the resulting discrimination against non-residents is necessary to relieve unemployment among Alaskans.

To effect this proof of need legislative hearings on the subject and the adoption of legislative findings of fact may be advisable. Whether it would be better for the legislature to take action at this time, or to wait until after the Alaska Supreme Court's ruling on the pending case, is difficult to predict.

In any event the Department of Labor should be empowered to commission a study on the relationship of out-of-state workers to unemployment in Alaska and the Alaska Hire question in general. Such legislation would additionally provide the vehicle for public hearings at which evidence could be compiled to support Alaska Hire.

Sincerely,

David Arthur Donley

Alaska Statutes

Title 36. Public Contracts.

Chapter
10. Employment Preference (§§ 36.10.010, 36.10.090)
95. General Provisions (§ 36.95.010)
98. Professional Services Contracts (§ 36.98.070)

Chapter 10. Employment Preference.

Section
10. Employment preference
90. Publication of list of violators

Sec. 36.10.010. Employment preference. (a) In the performance of contracts let by a municipality for construction, repair, preliminary surveys, engineering studies, consulting, maintenance work or any other retention of services necessary to complete any given project, 95 percent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given residents. In an area which has been designated as an area impacted by an economic disaster, residents of that area shall be given employment preference as provided in AS 44.33.290, followed by other residents of the state.

(b) When a construction project is partly or wholly funded by state money and the state or an agency of the state, a department, office, agency, state board, commission, regional school board with respect to an educational facility under AS 14.11.020, public corporation or other organizational unit of or created under the executive, legislative or judicial branch of state government, including the University of Alaska, is a signatory to the construction contract, the contract shall require that the worker hours on a craft-by-craft basis shall be performed at least 90 percent by bona fide state residents. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In an area which has been designated as an area impacted by an economic disaster, residents of that area shall be given employment preference as provided in AS 44.33.290, followed by other residents of the state. (§ 1a ch 177 SLA 1960; am § 11 ch 142 SLA 1972; am § 1 ch 208 SLA 1972; am § 7 ch 277 SLA 1976; am § 15 ch 147 SLA 1978; am §§ 1, 2 ch 72 SLA 1983)

Effect of amendments. — The 1983 amendment, effective July 16, 1983, designated the existing language as subsection (a) and added subsection (b), and in the first sentence of present subsection (a) substituted "a municipality" for a former reference to the state, a political subdivision, or a regional school board.

Sec. 36.10.090. Publication of list of violators. (a) The commissioner of labor shall distribute to all departments and agencies of the state government and to all political subdivisions of the state a list of the names of persons or firms convicted of a violation of this chapter. No person appearing on the list and no firm, corporation, partnership or association in which the person has an interest may work as a contractor or subcontractor on a public construction contract for the state or a political subdivision until after three years from the date of publication of the list.

(b) A local government or school district covered by the provisions of this chapter which is found to be in violation of these provisions may be required to forfeit all or part of the state aid made available for the project in which the violation occurs and in addition may be denied up to 12 months of state revenue sharing or public school foundation money. A state department or agency head found to be in violation of this chapter may be required to forfeit the position of department or agency head.

(c) A person or governmental entity covered by the provisions of (b) of this section who is not satisfied by a decision of the Department of Labor may, as the final administrative process, appeal the decision to a committee consisting of the commissioners of transportation and public facilities, labor and administration. The commissioner of transportation and public facilities is the chairman of the committee. A quorum for conducting business is three members and any decision made must be supported by a majority of the committee members. The committee may, upon a showing of hardship, waive all or any part of the penalty provisions of this chapter. (§ 7 ch 177 SLA 1960; am § 12 ch 142 SLA 1972; am § 4 ch 208 SLA 1972; am E.O. No. 39, § 11 (1977))

Chapter 25. Contractors' Bonds.

Sec. 36.25.020. Rights of persons furnishing labor or material.

NOTES TO DECISIONS

Recovery subject to AS 08.18.151. — Recovery under this section is subject to, and not independent of, the express penalty of AS 08.18.151, which prohibits those contractors who fail to duly register from suing on the contracts in which they are unlawfully engaged. State ex rel. Smith v. Tyonek Timber, Inc., Sup. Ct. Op. No. 2813 (File Nos. 7170, 7256), P.2d (1984).

Quoted in State ex rel. Smith v. Tyonek Timber, Inc., Sup. Ct. Op. No. 2813 (File Nos. 7170, 7256), P.2d (1984).

ents." "If they can't take the heat, they should stay out of the kitchen," he said. The fast pace of the bill is justified because of the threats, Glenn said. "It's a potentially violent situation that shouldn't be prolonged," he said.

Jim Kerns, Idaho AFL-CIO executive director, said reports of violent threats lacked substance. He predicted that despite the rapid momentum of the legislation, the Senate may sustain the governor's veto, preventing the bill from becoming law. If the bill does become law in Idaho, Kerns said organized labor might seek a referendum on the issue, possibly delaying its implementation. Kerns said that with a right-to-work law, local unions would be weakened by decreased dues and by the "fear factor" of the legislation. "The interpretations of the law are so broad that workers would be afraid to talk to their neighbors."

Prevailing Wage Bill

Idaho's prevailing wage law for public construction also faces a challenge. A bill to repeal the state's "Little Davis-Bacon Act," H.B. 7, passed the house 68 to 16 on Jan. 22, and now is before the full Senate. Previous attempts to repeal the law have been vetoed by Evans each year since 1980.

Republican Representative Dean Haagenson, a Coeur d'Alene contractor who sponsored the bill in the House, said the prevailing wage law adds 15 to 20 percent to the cost of public work projects.

H.B. 7 also strikes the portion of the present public works law mandating an eight-hour workday on public work jobs. Haagenson said this was done to allow workers in remote sites to work four, 10-hour days at straight time.

WYOMING SUPREME COURT UPHOLDS STATE RESIDENT PREFERENCE LAW

The Wyoming Supreme Court says the state's Preference Act requiring contractors to employ state residents on publicly-funded construction projects does not violate the Privileges and Immunities Clause of the U.S. Constitution.

Although the Preference Act infringes upon the rights of out-of-state residents to some extent, it narrowly addresses the goal of reduced unemployment among the state's taxpayers who fund the projects, the court reasons.

State's Objectives

The Wyoming Preference Act says in part:

"Every person who is charged with the duty of construction, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation, or other governmental unit, shall employ only Wyoming laborers on the project or improvement. Every contract let by any person shall contain a provision requiring that Wyoming labor be used except other laborers may be used when Wyoming laborers are not available for the employment from within the state or are not qualified to perform the work involved. The state employment office nearest the proposed contract or construction site shall maintain a list of laborers, classified by skills, who are residents and are available for employment. When the nearest state employment office is unable to provide the requested number of laborers from its own list, it shall immediately contact other state employment offices and request the names of other available laborers. Every person required to employ Wyoming laborers shall inform the nearest state employment office of his employment needs. If the state employment office certifies that the person's need for laborers cannot be filled from those listed as of the date the information is filed, then the person may employ other than Wyoming laborers." [§§16-6-201-203]

Offense Acknowledged

The case arose when the Converse County prosecuting attorney charged Roger Antonich, Westates Construction Company superintendent, with violating state code §16-6-203 by dismissing a state resident from a public school project so that out-of-state workers could be hired. A county judge dismissed the charges, finding that the statute in question violated the Privileges and Immunities Clause — Article IV — of the U.S. Constitution.

Justice Rose issues the opinion joined by Justices Rooney, Brown, and Cardine. Chief Justice Thomas concurs.

Judge Rose says:

"The State concedes that the discrimination against nonresidents under the Wyoming Preference Act burdens a fundamental right. In an early case, the United States Supreme Court held that the Privileges and Immunities Clause protects the right of a citizen of one state to travel to another state for purposes of employment. *Ward v. Maryland, 12 Wall 418, 430 (1870)* ... Even more pertinent to the instant case, the Supreme Court recently held that an enactment preferring local workers for public construction projects burdens a fundamental right, and therefore, falls within the purview of the Privileges and Immunities Clause. *United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden ... [29 CLR 1649 (Feb. 29, 1984)]* ... Clearly, Wyoming's Preference Act offends the Privileges and Immunities

Clause unless a close link exists between valid reasons for the Act and the discrimination practiced."

Constitutional Balance

Despite the Act's infringement upon a recognized fundamental right, it does not violate the U.S. Constitution because of its narrow focus, Judge Rose says. The Act merely requires that state funds allocated for public works projects be used to hire qualified, available residents in preference to nonresidents. "Since the degree of discrimination bears a close relation to the state's valid resons for discriminatory treatment, we affirm the Act's validity . . . "

Chief Justice Thomas concurs, saying:

"I am satisfied that on the basis of existing precedent the role of the State in connection with 'constructing, reconstructing, improving, enlarging, altering or repairing any public works project or improvement for the state or any political subdivision, municipal corporation or other governmental unit' is that of a market participant pursuing essentially a proprietary function. It is inappropriate to invoke the Privileges and Immunities Clause to inhibit the State in that regard. Both *Hincklin v. Orbeck, 437 U.S. 518 . . . and United Building and Construction Trades Council of Camden County and Vicinity v. Mayor and Council of the City of Camden . . .* recognize that while the proprietary interest of the State in the property with which the statue deals is often a crucial factor in determining whether a discriminatory statute against noncitizens violates the Privileges and Immunities Clause. I perceive that, without articulating such a concept, the Supreme Court of the United States has preserved a delcate balance between the Reservation of Powers Clause found in Amendment X to the Constitution of the United States of America and the Privileges and Immunities Clause. The line that is drawn is that between the governmental function of the State and the right of the State to participate in the marketplace, satisfy its proprietary functions, and contract freely with those with whom its chooses to contract."

Loyalty to State Citizens

Continuing, Chief Justice Thomas says:

"It cannot be held objectionable for a sovereign state to adopt legislation which provides in essence that to the extent possible public works contracts benefit the citizens of the state whose contributions to the public treasury fund those projects. A state should not be foreclosed by the invocation of the Constitution of the United States of America from loyalty to interests of its own citizens. So long as a statute is narrowly drawn to protect only the right of the state to contract as it sees fit with respect to expenditures for public works projects which it owns and which it funds, I am satisfied that as a matter of law such a statute does not offend the Privileges and Immunities Clause. . . ."

(*State of Wyoming v. Antonich*, Wyo SupCt, No. 84-35, Jan. 10, 1985.)

ARCO MODULE FABRICATION AWARDED TO UNION AND OPEN SHOP FIRMS

Both union and open shop firms have been awarded contracts valued at about $100 million by the Atlantic Richfield Company. The bids call for fabrication at several locations in the Pacific Northwest of oil and gas production modules and equipment for delivery by sea to Alaska's North Slope.

A contract valued at about $60 million was awarded to union contractors for the 1986 sealift of assembled modules to an ARCO's Sadelrochit site in Alaska. The Sadelrochit contract was awarded to Parsons Constructors Inc., Pasadena, Calif., construction manager for the project. Wright-Schuchart-Harbor will be the general contractor, according to spokesmen for Parsons and WSH.

Parsons' 1986 sealift work for ARCO will be performed in Tacoma, Wash., under the terms of a project agreement negotiated by Parsons, WSH, and the Tacoma building trade unions, *30 CLR 1255 (Jan. 16, 1985)*.

The ARCO work in Tacoma will provide about 1.7 million direct manhours of work for up to 1,500 building tradesmen. Construction is expected to start in about a month, according to a Parsons spokesman.

Open Shop Moves Into Portland

In Portland, Ore., ARCO awarded two module fabrication contracts to large open shop firms which will be working for the first time in this area on this type of construction. ARCO awarded a $30 million contract last month to Daniel International Corp., Greenville, S.C., for manufacture of a modular facility to be delivered by barge to the company's Lisburne site in Alaska in the summer of 1986. Work will begin in April 1985 on Swan Island in Portland, according to a Daniel spokesman. Daniel International is a subsidiary of Fluor Corp., Irvine, Calif.

Brown & Root, Inc., Houston, Tex., was awarded a smaller contract for something over $3 million at about the same time. The contract calls for fabrication of equipment to be delivered this summer by barge to six ARCO drilling sites at Kuparuk on the North Slope, according to an ARCO spokesman.

Meanwhile in Coos Bay, Ore., KRI, Inc., a subsidiary of Kellogg Rust in Houston, is working under a $10 million contract from ARCO for the assembly of equipment for delivery to Kuparuk.

0010-6836/85/$00.50

HICKLIN ET AL. *v.* ORBECK, COMMISSIONER, DEPARTMENT OF LABOR OF ALASKA, ET AL.

APPEAL FROM SUPREME COURT OF ALASKA

No. 77-534. Argued March 21, 1978—Decided June 22, 1978

Appellants, at least five of whom are not residents of Alaska, challenged in state court the constitutionality of the "Alaska Hire" statute (which was enacted professedly for the purpose of reducing unemployment within the State) that requires that all Alaskan oil and gas leases, easements or right-of-way permits for oil and gas pipelines, and unitization agreements contain a requirement that qualified Alaska residents be hired in preference to nonresidents. The trial court upheld the statute. The Alaska Supreme Court affirmed except for that part of the Act that contained a one-year durational residency requirement, which it held invalid. *Held:*

1. The invalidation of the one-year durational residency requirement does not moot the case, since a controversy still exists between the nonresident appellants, none of whom can qualify as "residents" under the statutory definition, and the appellees, state officials. Those appellants thus have a continuing interest in restraining the statutory discrimination favoring state residents. P. 523.

2. Alaska Hire violates the Privileges and Immunities Clause of Art. IV, § 2. Pp. 523–534.

(a) Though the Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it," it "does bar discrimination against citizens of other States where there is no reason for the discrimination beyond the mere fact that they are citizens of other States." *Toomer* v. *Witsell*, 334 U. S. 385, 396. See also *Mullaney* v. *Anderson*, 342 U. S. 415. Pp. 524–526.

(b) Even under the dubious assumption that a State may validly alleviate its unemployment problem by requiring private employers within the State to discriminate against nonresidents, Alaska Hire cannot be upheld, for the record indicates that Alaska's unemployment was not attributable to the influx of nonresident jobseekers, but rather to the fact that a substantial number of Alaska's jobless residents were unemployed either because of lack of education and job training or because of geographical remoteness from job opportunities. Employment of nonresidents threatened to deny jobs to residents only to the extent that jobs for which untrained residents were being prepared might be filled by nonresidents before the residents' training was completed. Moreover, even if a showing was made that nonresidents were "a peculiar source of the evil," *Toomer* v. *Witsell*, *supra*, at 398, at which Alaska Hire was aimed, the statute would still be invalid, for its discrimination against nonresidents does not bear a substantial relationship to the "evil" that they are said to present, since statutory preference over nonresidents is given to all Alaskans, not just those who are unemployed. Pp. 526–528.

(c) Alaska's ownership of the oil and gas that are the subject matter of Alaska Hire constitutes insufficient justification for the statute's pervasive discrimination against nonresidents. Alaska Hire's reach includes employers who have no connection with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State; and the Act's coverage is not limited to activities connected with the extraction of Alaska's oil and gas. Pp. 528–531.

(d) The conclusion that Alaska Hire cannot withstand constitutional scrutiny is fortified by decisions under the Commerce Clause that circumscribe a State's ability to prefer its own citizens in the utilization of natural resources found within its borders but destined for interstate commerce. *West* v. *Kansas Natural Gas*, 221 U. S. 229; *Pennsylvania* v. *West Virginia*, 262 U. S. 553; and *Foster Packing Co.* v. *Haydel*, 278 U. S. 1. The oil and gas upon which Alaska hinges its discrimination are bound for out-of-state consumption and are of profound national importance while the breadth of the discrimination mandated by Alaska Hire transcends the degree of resident bias that Alaska's ownership of the oil and gas can justifiably support. Pp. 531–534.

565 P. 2d 159, reversed.

BRENNAN, J., delivered the opinion for a unanimous Court.

Robert H. Wagstaff argued the cause for appellants. With him on the briefs was *Lee S. Glass*.

Ronald W. Lorensen, Assistant Attorney General of Alaska, argued the cause and filed a brief for appellees.*

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*Briefs of *amici curiae* urging reversal were filed by *Edwin Vieira, Jr.*, for the National Right to Work Legal Defense Foundation; and by Peabody Testing—Bill Miller X-Ray, Inc.

Ronald Y. Amemiya, Attorney General, and *Lawrence D. Kumabe* and *Michael A. Lilly*, Deputy Attorneys General, filed a brief for the State of Hawaii as *amicus curiae* urging affirmance.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1972, professedly for the purpose of reducing unemployment in the State, the Alaska Legislature passed an Act entitled "Local Hire Under State Leases." Alaska Stat. Ann. §§ 38.40.010 to 38.40.090 (1977). The key provision of "Alaska Hire," as the Act has come to be known, is the requirement that "all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party" contain a provision "requiring the employment of qualified Alaska residents" in preference to nonresidents.[1] Alaska Stat. Ann. § 38.40.030 (a) (1977).[2] This employment preference is administered by providing persons meeting the statutory requirements for Alaskan residency with certificates of residence—"resident cards"—that can be presented to an employer covered by the Act as proof of residency. 8 Alaska Admin. Code 35.015 (1977). Appellants, individuals desirous of securing jobs covered by the Act but unable to qualify for the necessary resident cards, challenge Alaska Hire as violative of

[1] The regulations implementing the Act further require that all nonresidents be laid off before any resident "working in the same trade or craft" is terminated: "[T]he nonresident may be retained only if no resident employee is qualified to fill the position." 8 Alaska Admin. Code 35.011 (1977). See also 8 Alaska Admin. Code 35.042 (4) (1977).

[2] The complete text of § 38.40.030 (a) is as follows:

"In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party, provisions requiring the lessee to comply with applicable laws and regulations with regard to the employment of Alaska residents, a provision requiring the employment of qualified Alaska residents, a provision prohibiting discrimination against Alaska residents and, when in the determination of the commissioner of natural resources it is practicable, a provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter."

both the Privileges and Immunities Clause of Art. IV, § 2, and the Equal Protection Clause of the Fourteenth Amendment.

I

Although enacted in 1972, Alaska Hire was not seriously enforced until 1975, when construction on the Trans-Alaska Pipeline[3] was reaching its peak. At that time, the State Department of Labor began issuing residency cards and limiting to resident cardholders the dispatchment to oil pipeline jobs. On March 1, 1976, in response to "numerous complaints alleging that persons who are not Alaska residents have been dispatched on pipeline jobs when *qualified* Alaska residents were available to fill the jobs," Executive Order #76-1, Alaska Dept. of Labor (Mar. 1, 1976) (emphasis in original), Edmund Orbeck, the Commissioner of Labor and one of the appellees here, issued a cease-and-desist order to all unions supplying pipeline workers[4] enjoining them "to respond to all open job calls by dispatching *all qualified* Alaska residents before *any* non-residents are dispatched," *Ibid.* (emphasis in original). As a result, the appellants, all but one of whom had previously worked on the pipeline, were prevented from obtaining pipeline-related work. Consequently, on April 28, 1976, appellants filed a complaint in the Superior Court in Anchorage seeking declaratory and injunctive relief against enforcement of Alaska Hire.

At the time the suit was filed, the provision setting forth the qualifications for Alaskan residency for purposes of Alaska

[3] See *Trans Alaska Pipeline Rate Cases*, 436 U. S. 631 (1978); Trans-Alaska Pipeline Authorization Act, 87 Stat. 584, 43 U. S. C. § 1651 *et seq.* (1970 ed., Supp. V).

[4] App. 13–14. The vast majority of pipeline jobs were filled through union dispatchment. Deposition of David Finrow, Deputy Director of the Wage and Hour Division of the Alaska Dept. of Labor, in No. 3025 (Sup. Ct. Alaska), pp. 18–19, 28, 48.

Hire, Alaska Stat. Ann. § 38.40.090,[5] included a one-year durational residency requirement. Appellants attacked that requirement as well as the flat employment preference given by Alaska Hire to state residents. By agreement of the parties, consideration of a motion for a preliminary injunction was consolidated with the determination of the suit on its merits. The case was submitted on affidavits, depositions, and memoranda of law; no oral testimony was taken. On July 21, 1976, the Superior Court upheld Alaska Hire in its entirety and denied appellants all relief. On appeal, the Alaska Supreme Court unanimously held that Alaska Hire's one-year durational residency requirement was unconstitutional under both the state and federal Equal Protection Clauses, 565 P. 2d 159, 165 (1977), and held further that a durational residency requirement in excess of 30 days was constitutionally infirm. *Id.*, at 171.[6] By a vote of 3 to 2, however, the court held that the Act's general preference for Alaska residents was constitutionally permissible. Appellants appealed the State Supreme Court's judgment insofar as it embodied the latter holding, and we noted probable jurisdiction. 434 U. S. 919 (1977). We reverse.

[5] Section 38.40.090 provides:

"In this chapter

"(1) 'resident' means a person who

"(A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;

"(B) maintains a place of residence in the state;

"(C) has established residency for voting purposes in the state;

"(D) has not, within the period of required residency, claimed residency in another state; and

"(E) shows by all attending circumstances that his intent is to make Alaska his permanent residence."

[6] Appellees have not cross-appealed this portion of the Alaska Supreme Court's decision, which rests upon an independent and adequate state ground. *Murdock* v. *Memphis*, 20 Wall. 590 (1875).

II

Preliminarily, we hold that this case is not moot. Despite the Alaska Supreme Court's invalidation of the one-year durational residency requirement, a controversy still exists between at least five of the appellants—Tommy Ray Woodruff, Frederick A. Mathers, Emmett Ray, Betty Cloud, and Joseph G. O'Brien—and the state appellees. These five appellants have all sworn that they are not residents of Alaska. Record 43, 47, 49, 96, 124. Therefore, none of them can satisfy the element of the definition of "resident" under § 38.40.090 (1) (D) that requires that an individual "has not, within the period of required residency, claimed residency in another state." They thus have a continuing interest in restraining the enforcement of Alaska Hire's discrimination in favor of residents of that State.[7]

Appellants' principal challenge to Alaska Hire is made under the Privileges and Immunities Clause of Art. IV, § 2: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." That provision, which "appears in the so-called States' Relations Article, the same Article that embraces the Full Faith and Credit Clause, the Extradition Clause . . . , the provisions for the admission of new States, the Territory and Property Clause, and the Guarantee Clause," *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S. 371, 379 (1978), "establishes a norm of comity," *Austin* v. *New Hampshire*, 420 U. S. 656, 660 (1975), that is to prevail among the States with respect to their treat-

[7] As to the remaining three appellants—Sidney S. Hicklin, Ruby E. Dorman, and Harry A. Browning—the case does appear moot. At the time this suit was instituted, all three claimed to be Alaskan residents, but none had lived in the State continuously for one year. Record 45, 51–52, 126–127. Consequently, the only aspect of Alaska Hire they challenged was the Act's one-year durational residency requirement. When this requirement was held invalid by the Alaska Supreme Court, their controversy with the appellees seems to have terminated.

ment of each other's residents.[8] The purpose of the Clause, as described in *Paul* v. *Virginia*, 8 Wall. 168, 180 (1869), is

> "to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this."

Appellants' appeal to the protection of the Clause is strongly supported by this Court's decisions holding violative of the Clause state discrimination against nonresidents seeking to ply their trade, practice their occupation, or pursue a common calling within the State. For example, in *Ward* v. *Maryland*, 12 Wall. 418 (1871), a Maryland statute regulating the sale of most goods in the city of Baltimore fell to the privileges and immunities challenge of a New Jersey resident against whom the law discriminated. The statute discrimi-

[8] Although this Court has not always equated state residency with state citizenship, compare *Travis* v. *Yale & Towne Mfg. Co.*, 252 U. S. 60, 78–79 (1920), and *Blake* v. *McClung*, 172 U. S. 239, 246–247 (1898), with *Southern R. Co.* v. *Mayfield*, 340 U. S. 1, 3–4 (1950); *Douglas* v. *New Haven R. Co.*, 279 U. S. 377, 386–387 (1929); and *La Tourette* v. *McMaster*, 248 U. S. 465, 469–470 (1919), it is now established that the terms "citizen" and "resident" are "essentially interchangeable," *Austin* v. *New Hampshire*, 420 U. S. 656, 662 n. 8 (1975), for purposes of analysis of most cases under the Privileges and Immunities Clause of Art. IV, § 2. See *Toomer* v. *Witsell*, 334 U. S. 385, 397 (1948).

nated against nonresidents of Maryland in several ways: It required nonresident merchants to obtain licenses in order to practice their trade without requiring the same of certain similarly situated Maryland merchants; it charged nonresidents a higher license fee than those Maryland residents who were required to secure licenses; and it prohibited both resident and nonresident merchants from using nonresident salesmen, other than their regular employees, to sell their goods in the city. In holding that the statute violated the Privileges and Immunities Clause, the Court observed that "the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation." *Id.*, at 430. *Ward* thus recognized that a resident of one State is constitutionally entitled to travel to another State for purposes of employment free from discriminatory restrictions in favor of state residents imposed by the other State.

Again, *Toomer* v. *Witsell*, 334 U. S. 385 (1948), the leading modern exposition of the limitations the Clause places on a State's power to bias employment opportunities in favor of its own residents, invalidated a South Carolina statute that required nonresidents to pay a fee 100 times greater than that paid by residents for a license to shrimp commercially in the three-mile maritime belt off the coast of that State. The Court reasoned that although the Privileges and Immunities Clause "does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it," *id.*, at 396, "[i]t does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." *Ibid.* A "substantial reason for the discrimination" would not exist, the Court explained, "unless there is something to indicate that noncitizens constitute a peculiar source of the evil at which the

[discriminatory] statute is aimed." *Id.*, at 398. Moreover, even where the presence or activity of nonresidents causes or exacerbates the problem the State seeks to remedy, there must be a "reasonable relationship between the danger represented by non-citizens, as a class, and the . . . discrimination practiced upon them." *Id.*, at 399. *Toomer*'s analytical framework was confirmed in *Mullaney* v. *Anderson*, 342 U. S. 415 (1952), where it was applied to invalidate a scheme used by the Territory of Alaska for the licensing of commercial fishermen in territorial waters; under that scheme residents paid a license fee of only $5 while nonresidents were charged $50.

Even assuming that a State may validly attempt to alleviate its unemployment problem by requiring private employers within the State to discriminate against nonresidents—an assumption made at least dubious by *Ward*[9]—it is clear that under the *Toomer* analysis reaffirmed in *Mullaney*, Alaska Hire's discrimination against nonresidents cannot withstand scrutiny under the Privileges and Immunities Clause. For although the statute may not violate the Clause if the State shows "something to indicate that noncitizens constitute a peculiar source of the evil at which the statute is aimed." *Toomer* v. *Witsell*, *supra*, at 398, and, beyond this, the State "has no burden to prove that its laws are not violative of the . . . Clause," *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S., at 402 (BRENNAN, J., dissenting), certainly no showing was made on this record that nonresidents were "a peculiar source of the evil" Alaska Hire was enacted to remedy, namely, Alaska's "uniquely high unemployment." Alaska Stat. Ann. § 38.40.020 (1977). What evidence the record does contain indicates that the major cause of Alaska's high unemployment was not the influx of nonresidents seeking employment, but rather the fact that a substantial number of Alaska's jobless residents—especially the unemployed Eskimo and Indian residents—were unable to

[9] Cf. *Edwards* v. *California*, 314 U. S. 160 (1941).

secure employment either because of their lack of education and job training or because of their geographical remoteness from job opportunities;[10] and that the employment of nonresidents threatened to deny jobs to Alaska residents only to the extent that jobs for which untrained residents were being prepared might be filled by nonresidents before the residents' training was completed.

Moreover, even if the State's showing is accepted as sufficient to indicate that nonresidents were "a peculiar source of evil," *Toomer* and *Mullaney* compel the conclusion that Alaska Hire nevertheless fails to pass constitutional muster. For the discrimination the Act works against nonresidents does not bear a substantial relationship to the particular "evil" they are said to present. Alaska Hire simply grants all Alaskans, regardless of their employment status, education, or training, a flat employment preference for all jobs covered by the Act. A highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program. If

[10] For example, a report quoted in the State's Memorandum in Opposition to Plaintiffs' Motion for Partial Preliminary Injunction and Second Motion for Preliminary Injunction, Record 58, observed:

"The skill levels of in-migrants and seasonal workers are generally higher than those of the unemployed or under-employed resident workers. *Their ability to command jobs in Alaska is a symptom of, rather than a cause of conditions resulting in high unemployment rates*, particularly among Alaska Natives. Those who need the jobs the most tend to be undereducated, untrained, or living in areas of the state remote from job opportunities. Unless unemployed residents—most of whom are Eskimos and Indians—have access to job markets and receive the education and training required to fit them into Alaska's increasingly technological economy and unless there is a restructuring of labor demands, new jobs will continue to be filled by persons from other states who have the necessary qualifications." Federal Field Committee for Development Planning in Alaska, Economic Outlook for Alaska 311–312 (1971) (emphasis added; footnote omitted).

Alaska is to attempt to ease its unemployment problem by forcing employers within the State to discriminate against nonresidents—again, a policy which may present serious constitutional questions—the means by which it does so must be more closely tailored to aid the unemployed the Act is intended to benefit. Even if a statute granting an employment preference to unemployed residents or to residents enrolled in job-training programs might be permissible, Alaska Hire's across-the-board grant of a job preference to all Alaskan residents clearly is not.

Relying on *McCready* v. *Virginia*, 94 U. S. 391 (1877), however, Alaska contends that because the oil and gas that are the subject of Alaska Hire are *owned* by the State,[11] this ownership, of itself, is sufficient justification for the Act's discrimination against nonresidents, and takes the Act totally without the scope of the Privileges and Immunities Clause. As the State sees it "the privileges and immunities clause [does] not apply, and was never meant to apply, to decisions by the states as to how they would permit, if at all, the use and distribution of the natural resources which they own . . . ." Brief for Appellees 20 n. 14. We do not agree that the fact that a State owns a resource, of itself, completely removes a law concerning that resource from the prohibitions of the Clause. Although some courts, including the court below, have read *McCready* as creating an "exception" to the Privileges and Immunities Clause, we have just recently confirmed that "[i]n more recent years . . . the Court has recognized

[11] At the time Alaska was admitted into the Union on January 3, 1959, 99% of all land within Alaska's borders was owned by the Federal Government. In becoming a State, Alaska was granted and became entitled to select approximately 103 million acres of those federal lands. Alaska Statehood Law, 72 Stat. 340, § 6, note preceding 48 U. S. C. § 21. The selection process is not yet complete, but since 1959 large portions of land have been conveyed to the State, in fee, by the Federal Government. Full title to those lands and to the minerals on and below them is vested in the State. 72 Stat. 342, § 6 (i), note preceding 48 U. S. C. § 21.

that the States' interest in regulating and controlling those things they claim to 'own' . . . is by no means absolute." *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S., at 385. Rather than placing a statute completely beyond the Clause, a State's ownership of the property with which the statute is concerned is a factor—although often the crucial factor—to be considered in evaluating whether the statute's discrimination against noncitizens violates the Clause. Dispositive though this factor may be in many cases in which a State discriminates against nonresidents, it is not dispositive here.

The reason is that Alaska has little or no proprietary interest in much of the activity swept within the ambit of Alaska Hire; and the connection of the State's oil and gas with much of the covered activity is sufficiently attenuated so that it cannot justifiably be the basis for requiring private employers to discriminate against nonresidents. The extensive reach of Alaska Hire is set out in Alaska Stat. Ann. § 38.40.050 (a) (1977). That section provides:

> "The provisions of this chapter apply to *all employment which is a result* of oil and gas leases, easements, leases or right-of-way permits *for oil or gas pipeline purposes*, unitization agreements[12] or any renegotiation of any of the preceding to which the state is a party after July 7, 1972; however, the activity which generates the employment must take place inside the state and it must

[12] The term "unitization agreement" is not defined in the Act. Alaska's Commissioner of Natural Resources gave the following definition of the term:

"Well, unitization agreement is an agreement between the operators and any given oil field as to the equity that each of them would have with respect to the oil and gas resources in that field. And in some cases that word is used to also include something called the 'Plan of Operations', which sets out the way in which an oil field or gas field would be operated pursuant to the State's conservation laws." Deposition of Guy R. Martin in No. 3025 (Sup. Ct. Alaska), p. 5.

take place either on the property under the control of the person subject to this chapter *or be directly related to activity taking place on the property under his control* and the activity must be performed directly for the person subject to this chapter *or his contractor or a subcontractor of his contractor or a supplier of his contractor or subcontractor.*" (Emphasis added.)

Under this provision, Alaska Hire extends to employers who have no connection whatsoever with the State's oil and gas, perform no work on state land, have no contractual relationship with the State, and receive no payment from the State. The Act goes so far as to reach suppliers who provide goods or services to subcontractors who, in turn, perform work for contractors despite the fact that none of these employers may themselves have direct dealings with the State's oil and gas or ever set foot on state land.[10] Moreover, the Act's coverage is not limited to activities connected with the extraction of Alaska's oil and gas.[11] It encompasses, as emphasized by the dissent below, "employment opportunities at refineries and in distribution systems utilizing oil and gas obtained under Alaska leases." 565 P. 2d, at 171. The only limit of any consequence on the Act's reach is the requirement that "the

[10] According to one of the administrative regulations implementing Alaska Hire, "[s]uppliers shall have the same hiring requirements as an employer covered by this chapter, as to that portion of their supply business that is the result of a project or activity of a lessee, contractor or subcontractor." 8 Alaska Admin. Code 35.080 (a) (1977).

[11] The Commissioner of Natural Resources expressed this understanding of the scope of the Act:

Mr. Martin: ". . . I think it would cover relationships such as anything on a work pad or an associated construction road or possibly a site for a support camp or construction camp."

Mr. Wagstaff (attorney for appellants): "What about things such as docks if shipping is being used?"

Mr. Martin: "I would think that it could possibly include that." Deposition of Guy R. Martin, *supra*, at 4.

activity which generates the employment must take place inside the state." Although the absence of this limitation would be noteworthy, its presence hardly is; for it simply prevents Alaska Hire from having what would be the surprising effect of requiring potentially covered out-of-state employers to discriminate against residents of their own State in favor of nonresident Alaskans. 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. We believe that Alaska's ownership of the oil and gas that is the subject matter of Alaska Hire simply constitutes insufficient justification for the pervasive discrimination against nonresidents that the Act mandates.[12]

Although appellants raise no Commerce Clause challenge to the Act, the mutually reinforcing relationship between the Privileges and Immunities Clause of Art. IV, § 2, and the Commerce Clause—a relationship that stems from their common

[12] *Heim* v. *McCall*, 239 U. S. 175 (1915) and *Crane* v. *New York*, 239 U. S. 195 (1915)—if they have any remaining vitality, see *Sugarman* v. *Dougall*, 413 U. S. 634, 643-645 (1973); *C. D. R. Enterprises, Ltd.* v. *Board of Education*, 412 F. Supp. 1161 (EDNY 1976), summarily aff'd *sub nom. Lefkowitz* v. *C. D. R. Enterprises, Ltd.*, 429 U. S. 1031 (1977)—do not suggest otherwise. In those cases, a New York statute that limited employment "in the construction of public works" to United States citizens and also required that an employment preference be given to New York citizens in such projects was upheld against challenges under both the Constitution and the Treaty of 1871 with Italy. Although the Art. IV, § 2, Privileges and Immunities Clause, along with the Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment, was listed as one of the constitutional bases for attacking the statute, no out-of-state United States citizen challenged the law. As a consequence, both the appellants and the Court were concerned almost exclusively with the statute's discrimination against resident aliens. This was reflected in the Court's holding, which was limited to the Fourteenth Amendment and Treaty challenges and expressed no view on appellants' passing Art. IV, § 2, privileges and immunities claim.

origin in the Fourth Article of the Articles of Confederation [16] and their shared vision of federalism, see *Baldwin* v. *Montana Fish and Game Comm'n*, 436 U. S., at 379–380—renders several Commerce Clause decisions appropriate support for our conclusion. *West* v. *Kansas Natural Gas*, 221 U. S. 229 (1911), struck down an Oklahoma statutory scheme that completely prohibited the out-of-state shipment of natural gas found within the State. The Court reasoned that if a State could so prefer its own economic well-being to that of the Nation as a whole, "Pennsylvania might keep its coal, the Northwest its timber, [and] the mining States their minerals," so that "embargo may be retaliated by embargo" with the result that "commerce [would] be halted at state lines." *Id.*, at 255. *West* was held to be controlling in *Pennsylvania* v. *West Virginia*, 262 U. S. 553 (1923), where a West Virginia statute that effectively required natural gas companies within the State to satisfy all fuel needs of West Virginia residents before transporting any natural gas out of the State was held to violate the Commerce Clause. *West* and *Pennsylvania* v. *West Virginia* thus established that the location in a given State of a resource bound for interstate commerce is an insufficient basis for preserving the benefits of the resource exclusively or even

[16] That Article provided: "The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions, as the inhabitants thereof respectively; provided, that such restrictions shall not extend so far as to prevent the removal of property, imported into any State, to any other State of which the owner is an inhabitant; provided, also that no imposition, duties or restriction, shall be laid by any State on the property of the United States, or either of them." 9 Journal of the Continental Congress 908–909 (1777) (Library of Congress ed., 1907).

principally for that State's residents. *Foster Packing Co.* v. *Haydel*, 278 U. S. 1 (1928), went one step further: it limited the extent to which a State's purported *ownership* of certain resources could serve as a justification for the State's economic discrimination in favor of residents. There, in the face of Louisiana's claim that the State owned all shrimp within state waters, the Court invalidated a Louisiana law that required the local processing of shrimp taken from Louisiana marshes as a prerequisite to their out-of-state shipment. The Court observed that "by permitting its shrimp to be taken and all the products thereof to be shipped and sold in interstate commerce, the State necessarily releases its hold and, as to the shrimp so taken, definitely terminates its control." *Id.*, at 13.

West, *Pennsylvania* v. *West Virginia*, and *Foster Packing* thus establish that the Commerce Clause circumscribes a State's ability to prefer its own citizens in the utilization of natural resources found within its borders, but destined for interstate commerce. Like Louisiana's shrimp in *Foster Packing*, Alaska's oil and gas here are bound for out-of-state consumption. Indeed, the construction of the Trans-Alaska Pipeline, on which project appellants' nonresidency has prevented them from working, was undertaken expressly to accomplish this end.[17] Although the fact that a state-owned resource is destined for interstate commerce does not, of itself, disable the State from preferring its own citizens in the utilization of that resource, it does inform analysis under the Privileges and Immunities Clause as to the permissibility of the discrimination the State visits upon nonresidents based on its ownership of the resource. Here, the oil and gas upon

[17] In authorizing the construction of the Trans-Alaska Pipeline, Congress expressly found that "[t]he early development and delivery of oil and gas from Alaska's North Slope *to domestic markets* is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources." 43 U. S. C. § 1651 (a) (1970 ed., Supp. V) (emphasis added).

which Alaska hinges its discrimination against nonresidents are of profound national importance.[18] On the other hand, the breadth of the discrimination mandated by Alaska Hire goes far beyond the degree of resident bias Alaska's ownership of the oil and gas can justifiably support. The confluence of these realities points to but one conclusion: Alaska Hire cannot withstand constitutional scrutiny. As Mr. Justice Cardozo observed in *Baldwin* v. *G. A. F. Seelig, Inc.*, 294 U. S. 511, 523 (1935), the Constitution "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."[19]

Reversed.

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[18] In enacting the Alaska Natural Gas Transportation Act of 1976, 15 U. S. C. § 719 *et seq.* (1976 ed.) Congress declared:

"(1) a natural gas supply shortage exists in the contiguous States of the United States;

"(2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;

"(3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and

"(4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system." 15 U. S. C. § 719 (1976 ed.). See n. 17, *supra*.

[19] In light of our conclusion that Alaska Hire is invalid under the Privileges and Immunities Clause of Art. IV, § 2, we have no occasion to address appellants' challenges to the Act under the Equal Protection Clause of the Fourteenth Amendment.

WISE, MAYOR OF DALLAS, ET AL. *v.* LIPSCOMB ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 77–529. Argued April 26, 1978—Decided June 22, 1978

Respondents, Negro and Mexican-American residents of Dallas, Tex., brought this action for injunctive and declaratory relief against petitioners, the Mayor and members of the Dallas City Council, alleging that the City Charter's at-large system of electing council members unconstitutionally diluted the vote of racial minorities. After an evidentiary hearing, the District Court orally declared that system unconstitutional and then "afforded the city an opportunity as a legislative body for the City of Dallas to prepare a plan which would be constitutional." The City Council then passed a resolution expressing its intention to enact an ordinance that would provide for eight council members to be elected from single-member districts and for the three remaining members, including the Mayor, to be elected at large. After an extensive remedy hearing, the District Court approved the plan, which the City Council thereafter formally enacted as an ordinance. The District Court later issued a memorandum opinion that sustained the plan as a valid legislative Act. The Court of Appeals reversed, holding that the District Court had erred in evaluating the plan only under constitutional standards without also applying the teaching of *East Carroll Parish School Bd.* v. *Marshall*, 424 U. S. 636, which held that, absent exceptional circumstances, judicially imposed reapportionment plans should use only single-member districts. *Held:* The judgment is reversed and the case is remanded. Pp. 539–547; 547–549.

551 F. 2d 1043, reversed and remanded.

MR. JUSTICE WHITE, joined by MR. JUSTICE STEWART, concluded:

1. Federal courts, absent special circumstances, must employ single-member districts when they impose remedial reapportionment plans. That standard, however, is more stringent than the constitutional standard that is applicable when the reapportionment is accomplished by the legislature. Here, after the District Court had invalidated the Dallas at-large election scheme in the City Charter, the city discharged its duty to devise a substitute by enacting the eight/three ordinance, which the District Court reviewed as a legislatively enacted plan and held constitutional despite the use of at-large voting for three council seats. Pp. 539–543.

JAMES N. FRANCIS,

Plaintiff,

v.

JAMES ROBISON, COMMISSIONER OF LABOR, et al.,

Defendants,

JAN 83-9969 Civil

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the evidence, the Court makes the following Findings and Conclusions:

1. The plaintiff, James N. Francis, came to the State of Alaska in September of 1983 to look for work.

2. The plaintiff claims residency in the State of Montana, and has numerous indicia of such residency, such as real and personal property in Montana, voter registration in Montana, a driver's license from Montana, a bank account in Montana, and his license plates for his vehicle are from Montana.

3. The plaintiff has never been issued an Alaska hunting, fishing or trapping license.

4. The plaintiff is in the State of Alaska for the purpose of finding work so that he can eventually return to his home in the State of Montana.

5. The plaintiff belongs to the International Association of Bridge, Structural and Ornamental Ironworkers, Local 598, in Kalispell, Montana.

6. The plaintiff is an experienced and skilled ironworker by trade.

7. Upon the plaintiff's arrival in Alaska in September of 1983, he placed his name upon the out-of-work list of Ironworkers Local 751 which has hiring halls in Anchorage and Fairbanks, Alaska.

8. Placement upon the union's out-of-work list

patched by Ironworkers Local 751 to employment with Regan Steel & Supply Company working on construction on the North Pole High School project at North Pole, Alaska.

10. The North Pole High School project is a public works construction project.

11. The plaintiff was 127th on the union's B list at the time he received this dispatch. Such list is primarily maintained for nonresident union members.

12. The procedure in Local 751 is to call all names on the A list first and then the B list in their order in both the hiring halls in Anchorage and Fairbanks simultaneously.

13. No persons on Local 751's out-of-work list on the A list were willing or able to accept the dispatch to the North Pole High School on September 19, 1983.

14. No persons above the plaintiff on Local 751's out-of-work B list were willing or able to accept the dispatch to the North Pole High School on September 19, 1983.

15. The North Pole Senior High School project became the subject of a Department of Labor enforcement effort under A.S. 36.10.010 on October 10, 1983.

16. A number of nonresidents were identified as working for plaintiff's employer, Regan Steel & Supply Company, and it was notified by the Department of Labor on October 12, 1983 that it was not in compliance with A.S. 36.10.010 because of the nonresidents employed on the job.

17. The Department of Labor, in the October 12, 1983, letter to plaintiff's employer, gave it seven days from the receipt of that letter to come in compliance with A.S. 36.10.010 or funds supporting the project would be withheld.

18. On October 17, 1983, the plaintiff's employer informed the State Department of Labor that it would come into compliance with A.S. 36.10.010 by laying off nonresidents.

19. The plaintiff received his termination notice

the plaintiff was performing prior to his termination.

21. Regan Steel & Supply's work on the North Pole High School construction project continued after the plaintiff's termination.

22. Plaintiff was terminated because of his nonresidency.

23. Termination of plaintiff's employment with Regan Steel & Supply Company was the result of the enforcement of A.S. 36.10.010.

24. Since the plaintiff's termination by Regan Steel & Supply Company at the North Pole High School construction project, the plaintiff has sought work in the State of Alaska in the construction industry by placing his name upon Ironworkers Local 751's out-of-work list and going to the union hall every day to search for work.

25. It is likely that but for enforcement of A.S. 36.10.010, plaintiff, because of his work experience, would be employed within the State of Alaska.

26. Between April, 1980, and July, 1982, the population of Alaska has grown by nearly fifteen percent (15%).

27. The population of Alaska has increased in the recent past more rapidly than at any other time in its history, and the State is growing more rapidly than other states in the union.

28. Property values in Alaska have been increasing over the last five years.

29. Alaska is not a depressed area as that term is used in the economics profession.

30. All sectors of the Alaska economy are expanding and Alaska has experienced very rapid economic growth since 1980.

31. Employment in Alaska in 1983 was at record levels, and the rate of increase was the best since the days of the Alaska Pipeline in 1974-1975.

greatest impact on the Alaska economy since the Alaska Pipeline years.

33. The construction industry in Alaska was exceptionally strong in both the public and private sectors during 1983.

34. Construction activity in the State of Alaska in 1984 is unlikely to reach the levels of 1983, but no precipitous decline is expected.

35. Numerous factors determine economic conditions, including unemployment, in the construction industry in the State of Alaska.

36. The major factor affecting the level of employment in Alaska in the construction industry is climatic changes as a result of extreme temperature differentials in the winter and summer months. Construction declines to substantially lower levels during the winter months, and increases, peaking out in August and September, during the latter summer months. During the peak periods of construction activity, the state experiences its lowest rate of unemployment.

37. The expenditure of state funds are a major factor affecting the level of employment in Alaska generally, and the construction industry in particular. The state expenditure for public works projects accounts for approximately sixty to seventy percent (60% to 70%) or more of the total annual construction dollar outlay within the state.

38. Private investment has a lesser effect on the level of construction activity from year to year in the State of Alaska, and such effect, from time to time, is affected by interest rates.

39. Unemployment is substantially greater in the rural areas than in the urban areas. The unemployment rate in Anchorage is less than the national average, while in the rural areas, it is greater than the national average and greater than the average within the State of Alaska.

41. Rural Alaskans lack the training that urban Alaskans have access to in construction work.

42. In-migration in the State of Alaska is a factor affecting unemployment in the construction industry in Alaska.

43. Alaska has the greatest proportion of out-of-state unemployment benefit payments (interstate claims). Alaska is also close to the top of all states in the dollar value of interstate claims.

44. There is no evidence in the record to establish what percent of the interstate claims are being paid to non-residents as opposed to residents who vacation or reside outside the state during the winter months. It is clear, however, from the record that interstate claims are made predominantly during the winter months, during which time construction activity has diminished because of the climatic change.

45. Reasonable inferences from the evidence support a finding that most of the job seekers coming to Alaska intend to become residents upon their entry into the state, thus contributing to the rapid population growth within the state.

46. There is not sufficient evidence to support a finding that nonresident construction workers are a peculiar source of unemployment in the construction industry in Alaska any more than they would be in any other state. The only inference that can be drawn from the record is that nonresident construction workers come to Alaska to work during peak construction periods of time, during which there are more jobs available and less unemployment resulting.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of the proceedings.

2. At all times applicable to this proceeding, the plaintiff did not qualify for the employment preference provided by A.S. 36.10.010, since at the time of discrimination, he was a nonresident of the State of Alaska

[illegible] United States Constitution.

5. A.S. 36.10.010 draws a distinction based upon state citizenship.

6. A.S. 36.10.010 on its face and in its application violates the Privileges and Immunities Clause of Article IV of the United States Constitution.

7. The right to obtain employment in any state is a fundamental right and is a privilege which shall be immune from any burden unless the State of Alaska can show a legitimate purpose for such burden. In this case, the state has failed to establish by a preponderance of the evidence such a legitimate purpose.

8. The defendants and intervenor have failed to prove by a preponderance of the evidence that nonresident construction workers constitute a peculiar source of unemployment in the State of Alaska.

9. Serious factors affecting unemployment within the State of Alaska are the extreme climatic conditions, the change in the legislative appropriation for public works construction projects, the extreme rapid growth of population experienced by Alaska, and the wildly fluctuating interest rates which have a direct effect on the private sector construction spending.

10. Statistics over the last several years demonstrate that Alaska's unemployment rate has increased at a rate lesser than the nationwide average. Whereas Alaska's unemployment rate several years was substantially greater than the nationwide rate, it now stands much closer to the national average, further supporting the conclusion that nonresident employment is not a serious factor in the unemployment rate in Alaska.

11. The State and the intervenor have failed to prove by a preponderance of the evidence that there is a substantial reason to discriminate against employment of

12. A.S. 36.10.010 provides that ninety to ninety-five percent of Alaska residents shall be employed on municipal public works construction projects where they are available and qualified.

13. A.S. 36.10.010 requires that ninety to ninety-five percent of the workers on a state-funded construction project, on a craft by craft basis, shall be Alaska state residents where they are available and qualified.

14. The State and intervenor have failed to prove by a preponderance of the evidence that the preference granted Alaska residents is closely tailored to alleviate unemployment in the construction industry in the State of Alaska.

IT IS ORDERED that plaintiff shall file and serve a proposed Partial Judgment consistent with these Findings of Fact and Conclusions of Law.

Dated at Anchorage, Alaska, this 23 day of May, 1984.

KARL S. JOHNSTONE, Judge

Fairbanks Central Labor Council
AFL-CIO

Barry L. Haight
President

819 First Ave.
Fairbanks, Alaska
99701

(907) 456-8354

NTRAL LABOR COUNCIL
of L. - C. I. O.

819 FIRST AVENUE
AIRBANKS, ALASKA

March 18, 1985

Rep. Mike Navarre
House Labor and Commerce
Committee
Pouch V
Juneau, Alaska 99811

Dear Chairman Navarre:

The Fairbanks Central Labor Council supports and endorses passage of House Bills 294 and 295.

The language of H.B. 294 is testimony to the need for this legislation in itself and does so as well as I can.

I urge you to schedule these bills for hearing as soon as possible. We feel it is important that they pass this session.

There is no doubt in my mind that passage of both into law will have a profound effect on the economy of Alaska and is of great importance to business and labor alike.

Prior to the introduction of H.B. 295, the Central Labor Council had contracted with an economist to develop a proposal for just that sort of study.

Mr. Beasley finished his proposal and presented it to me March 15, the same day H.B. 294 and 295 were introduced.

Our efforts began before the announcement of the "Wyoming Decision" which makes success more likely now.

The Fairbanks North Star Borough Community Research Center has been involved with Mr. Beasley in developing an approach to study non-residency hire and related dollar drain. The Research Center indicated a willingness to do such a study, using Mr. Beasley, should the funding be available.

Our original idea was a study involving the Greater Fairbanks Area. Then, if successful, the study could be used as a model and used

again in the South Central Area and again in the Southeast. This would in effect provide a statewide study.

We think Mr. Beasley's proposal to use an economic model traditionally applied to international trade is sound and applicable to our Alaska situation. A regional approach may also be beneficial. Of course the study will be necessary to support legislative findings of fact and be of further use in educating all Alaskans regarding the impact of nonresident workers.

We ask that our proposal be given consideration and I request that you enter this letter into the record for both bills.

Sincerely,

Barry L. Haight

Barry Haight
President
Fbks. Central Labor Council

BH:jb

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3700

2450

MEMORANDUM February 14, 1985

SUBJECT: Alaska Hire (Work Order No. 14-0485)

TO: Senator Victor Fischer

FROM: Teresa B. Cramer Teresa Cramer
Legislative Counsel

You have asked for a bill providing for the strongest Alaska resident hire permissible under the constitution, and to apply that law to public and, if possible, private employees. Given the present state of the law, it is not possible to draft a bill that would withstand constitutional scrutiny without specific information about the particular harm that out-of-state employees create for Alaska residents and a close connection between the demonstrated harm and the remedy created in the bill.

Alaska currently has a strong local preference law for state funded construction projects. AS 36.10.010 provides in part

> (a) In the performance of contracts let by a municipality for construction . . . 95 percent residents shall be employed where they are available and qualified. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified. In all cases of public works projects, preference shall be given to residents.
>
> (b) When a construction project is partly or wholly funded by state money and the state . . . is a signatory to the construction contract, the contract shall require that the worker hours on a craft-by-craft basis shall be performed at least 95 percent by bona fide state residents. If 10 or fewer persons are employed under the contract, then 90 percent residents shall be employed where they are available and qualified.

The statute as it now reads could be subject to constitutional challenge under the Privileges and Immunities clause and a strong showing would be required to support it.

Two recent cases of the United States Supreme Court have examined local hire laws. In White v. Massachusetts Council of Construction Employees, 460 U.S. 204, 75 L.Ed. 2d 1 (1983), the Court held that the City of Boston's resident work force preference (requiring employment of at least 50 percent bona fide residents of Boston on construction projects funded in whole or in part by the city) did not violate the Commerce Clause of the U.S. Constitution. The court reasoned that Boston was a market participant rather than a market regulator, entitled to favor its own citizens over others while acting in a proprietary manner. The court noted that the record did not support a finding that the preference would have a "significant impact" on firms employing out-of-state residents.

Under White, Alaska can favor its own citizens while acting as a market participant without violating the Commerce Clause. Measures that required others to favor Alaskans over out-of-state residents would be subject to Commerce Clause and Privileges and Immunities prohibitions. White and Hicklin v. Orbeck, 437 U.S. 518 (1978).

However, in a later case, United Building and Construction Trades Council v. Camden, 104 S.Ct. 1020, 79 L.Ed. 2d 249 (1984), the Court examined a similar ordinance and found that the ordinance appeared to violate the Privileges and Immunities clause of the U.S. Constitution. The distinction between market participant and market regulator that the court relied on in White did not dispose of the Privileges and Immunities issue. The clause imposes a direct restraint on state action in the interests of interstate harmony. The Court noted that a state may discriminate

> against citizens of other states where there is a "substantial reason" for the difference in treatment. "The inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them." As part of any justification offered for the discriminatory law, nonresidents must be somehow shown to "constitute a peculiar source of the evil at which the statute is aimed."

United Bldg & Construction, 52 LW at 4191, citations omitted. The record in the case was insufficient to determine whether there was justification for the discrimination, since the case was heard initially by the New Jersey supreme court without a trial. The Court remanded the case to the state court to permit Camden to attempt to justify the discrimination against citizens of other states.

The Seventh Circuit Court of Appeals considered both White and United Bldg & Construction when it overturned an Illinois preference law as violating the Privileges and Immunities clause. W.C.M. Window v. Bernardi, 730 F.2d 486 (1984). The court noted that Illinois had offered no evidence of the benefits of a residents-preference law in dealing with a problem created by nonresidents and suggested the kind of evidence needed to meet a challenge under the Privileges and Immunities clause.

> We are not told the unemployment rate in Illinois' construction industry, what such unemployment costs the state, whether it would be significantly increased by throwing open public construction projects to nonresidents (which might just cause a reshuffling of jobs between public and private projects), and whether the costs -- if any -- to Illinois of allowing nonresident labor on such projects, costs in higher unemployment or welfare benefits paid unemployed construction workers or their families, are likely to exceed any cost savings in public construction from hiring nonresident workers.

If I may be of further assistance, please advise.

TBC:ejb
J11/095

tion of the questionnaire system), we should opt for the interpretation that effectuates the plain Congressional intent. And there are clear expressions of Congressional commitment to random selection. We should thus decide what constitutes a substantial failure to comply with the Act in light of the overall Congressional purpose of randomness. The majority ignores that purpose, sweeping it under the rug by characterizing any attention to questionnaire return as "conscription." Congress may not have intended a generally applicable system of "conscription." But given the repeated references in the legislative history to the goal of "random selection" there is no doubt that Congress intended some reaction by the clerk to a response rate as extremely low as that alleged in this case.

The majority's references to Gometz' sixth amendment rights are mystifying and lead away from the central problem of Congressional intent. This court has acknowledged that the Act may require a more perfect cross section than the constitution. *See United States v. Dellinger*, 472 F.2d 340, 365 (7th Cir.1972), *cert. denied*, 410 U.S. 970, 93 S.Ct. 1443, 35 L.Ed.2d 706 (1974). Whatever the relationship between the sixth amendment and the Act, Gometz has not made a sixth amendment claim and the majority's discussion of the amendment serves merely to confuse.[1] Certainly the majority does not believe that Congress lacks power to prescribe jury selection standards more rigorous than the minimum intended by the framers.

In summary, I do not think that any level of nonresponse constitutes a *per se* violation of the Act, but a 70% nonresponse coupled with a showing of substantial unrepresentativeness of the jury panel would so far depart from the principles of the Jury Selection and Service Act that a violation would be shown. The only thing that is before us now is whether a hearing should be provided in which the defendant would have the burden of showing the second prong of the requirements for a violation—substantial unrepresentativeness of the resulting panel in a cognizable category. This seems to me to be a minimalist view of our obligations to enforce the Jury Selection and Service Act.

For these reasons, I respectfully dissent with respect to the claim based on nonresponse to questionnaires.

1. In his reply brief, Gometz specifically disavowed any sixth amendment basis to his challenge to the jury pool and criticized the government for citing constitutional cases in response to his statutory arguments.

W.C.M. WINDOW CO., INC., et al., Plaintiffs-Appellees,

v.

E. Allen BERNARDI, Director of the Department of Labor, State of Illinois, Defendant-Appellant.

No. 83-1984.

United States Court of Appeals, Seventh Circuit.

Argued Jan. 10, 1984.

Decided March 16, 1984.

As Amended on Denial of Rehearing and Rehearing En Banc May 11, 1984.

Director of Illinois Department of Labor appealed from a decision of the United States District Court for the Central District of Illinois, Michael M. Mihm, J., enjoining him from enforcing Illinois' preference law. The Court of Appeals, Posner, Circuit Judge, held that: (1) District Court was not required to abstain in favor of state court; (2) Illinois preference law violated commerce clause; (3) law was prima facie unlawful under privileges and immunities clause; and (4) state failed to satisfy burden of justifying law's discrimination against nonresidents under privileges and immunities clause.

Affirmed.

1. Courts ⇐508(7)

Under *Younger*, federal district court may not enjoin state criminal prosecution in civil rights suit, provided that plaintiff in suit can raise his federal claims in state court by way of defense to prosecution. 42 U.S.C.A. § 1983.

2. Courts ⇐508(2)

Younger doctrine includes cases in which state civil proceeding sought to be enjoined in civil rights suit involves important state interests. 42 U.S.C.A. § 1983.

3. Injunction ⇐1, 85(1)

Injunction is extraordinary remedy, rarely available as matter of right and never more extraordinary than when, if granted, it would prevent government officials from proceeding under statute founded on important state interests against violator of statute.

4. Courts ⇐508(1)

Federal court injunction which, if granted, would prevent government officials from proceeding under statute founded on important state interests against violator of statute would offend comity and federalism.

5. Injunction ⇐16

Injunction will not be issued when plaintiff has adequate remedy at law.

6. Injunction ⇐16

Plaintiff has "adequate remedy at law," precluding issuance of injunction, when plaintiff can assert ground on which he seeks injunction as defense to very proceeding to which injunction would put a stop.

See publication Words and Phrases for other judicial constructions and definitions.

7. Courts ⇐508(1)

Younger doctrine is inapplicable when state tribunal is deemed to have prejudged federal claim because tribunal has pecuniary interest in outcome.

8. Administrative Law and Procedure ⇐229

Habeas Corpus ⇐3

Exhaustion of remedies requirements in administrative and habeas corpus cases are satisfied when adverse precedent makes remedies futile as practical matter to pursue.

9. Constitutional Law ⇐207(1)

Privileges and immunities clause of Federal Constitution does not protect corporations. U.S.C.A. Const. Art. 4, § 2, cl. 1.

10. Constitutional Law ⇐207(1)

Unincorporated association is not "citizen" within meaning of privileges and immunities clause. U.S.C.A. Const. Art. 4, § 2, cl. 1; Ill.S.H.A. ch. 30, ¶ 185; ch. 38, ¶ 2-15; ch. 120, ¶ 15-1501(a)(1).

11. Constitutional Law ⇐42.3(1)

Under Illinois law, association may bring equity suit on basis that law violates its member's rights under privileges and immunities clause, even though association has no rights under clause. U.S.C.A. Const. Art. 4, § 2, cl. 1; Ill.S.H.A. ch. 30, ¶ 185; ch. 38, § 2-15; ch. 120, ¶ 15-1501(a)(1).

12. Federal Courts ⇐18

Equities did not require district court to abstain in favor of state court, in which suit was filed on same day as federal civil rights action, on challenge to Illinois preference law where state was not sufficiently exercised about contractors' apparent violations of preference law to bring criminal or quasi-criminal proceeding against them, policy underlying preference law was less central to goals of state government than protecting health, safety and morals of its population, contractors would have no practical remedy in state courts if state courts adhered to prior decision upholding preference law against identical challenge, and individual federal plaintiffs might have no state court remedy at all for violation of privileges and immunities clause. U.S.C.A.

Const. Art. 4, § 2, cl. 1; Ill.S.H.A. ch. 48, ¶¶ 269-274.

13. Constitutional Law ⇐32

Commerce clause contains implicit prohibition, enforceable by courts without congressional action, of state's discriminating against or unduly burdening interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

14. Commerce ⇐51

State may not erect a tariff wall protecting its industries from competition of industries in other states and in foreign countries merely to promote economic welfare of its own citizens. U.S.C.A. Const. Art. 1, § 8, cl. 3.

15. Commerce ⇐51

Fact that state's tariff might have only a small effect on interstate trade would not save it from invalidation under commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

16. Commerce ⇐82.25

If Illinois limited preference law to construction project financed in whole or in part or administered by state, law would not violate commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

17. Commerce ⇐82.25

Where school board's window-replacement project was not even partially financed by state or being administered by state, school board was "market participant" and state was "regulator" for purpose of evaluating Illinois' preference law under commerce clause. Ill.S.H.A. ch. 122, ¶¶ 17-11 to 17-13; U.S.C.A. Const. Art. 1, § 8, cl. 3.

18. Commerce ⇐56

For purpose of evaluating state law under commerce clause, any consideration of impact on interstate commerce is precluded until state is found to be regulator of rather than participant in market. U.S.C.A. Const. Art. 1, § 8, cl. 3.

19. Federal Courts ⇐930

Summary affirmance does not commit Supreme Court to details of lower court's opinion.

20. Commerce ⇐51

Preferring welfare of residents to that of nonresidents is not a good defense under commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

21. Commerce ⇐82.25

Illinois preference law, requiring that contractor on any public works project or improvement for state or any political subdivision or other governmental unit employ only Illinois laborers unless contractor certifies that Illinois laborers either are not available or are incapable of performing particular type of work involved, violated commerce clause. Ill.S.H.A. ch. 38, ¶¶ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, ¶¶ 269-274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 1, § 8, cl. 3.

22. Constitutional Law ⇐16(1)

Court should not decide constitutional question unnecessarily.

23. Federal Courts ⇐753

Although judgment would be the same whether Illinois preference law violated commerce clause, as found, or privileges and immunities clause, where ruling on privileges and immunities issue might avoid necessity of remand should review of decision be sought and granted and Supreme Court disagree with Court of Appeals' interpretation of commerce clause, ruling might also help Supreme Court to decide whether case merited further review, and commerce clause and privileges and immunities clause were closely related in action, Court of Appeals would address privileges and immunities issue. Ill.S.H.A. ch. 38, ¶¶ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, ¶ 274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 1, § 8, cl. 3; Art. 4, § 2, cl. 1.

24. Constitutional Law ⇐207(2)
Public Contracts ⇐2

Illinois preference law, requiring that contractor on any public works project or improvement for state, political subdivision or other governmental unit employ only Illinois laborers unless contractor certifies that Illinois laborers either are not available or are incapable of performing particular type of work involved, was prima facie unlawful under privileges and immunities clause. Ill.S.H.A. ch. 38, ¶¶ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, ¶ 274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 4, § 2, cl. 1.

Cite as 730 F.2d 486 (1984)

25. Constitutional Law ⇐207(1)

Unqualified language of privileges and immunities clause permitting states to keep out nonresidents if they constitute a "peculiar source of evil" permits state to keep out nonresidents who have been exposed to some communicable disease of which state is still substantially free. U.S.C.A. Const. Art. 4, § 2, cl. 1.

26. Constitutional Law ⇐207(1)

Under privileges and immunities clause, there must be some evidence of benefits of residents-preference law in dealing with problem created by nonresidents. U.S.C.A. Const. Art. 4, § 2, cl. 1.

27. Statutes ⇐282

"Evidence" in the technical legal sense is not essential when issue is not application but validity of statute.

28. Constitutional Law ⇐207(1)

Where Illinois, although having full opportunity in preliminary injunction proceeding to put into evidence facts justifying preference law, and although having access to data that might illuminate costs and benefits of law, failed to present any information, statistical or otherwise, concerning benefit of law, state failed to satisfy burden of justifying law's discrimination against nonresidents under privileges and immunities clause. Ill.S.H.A. ch. 38, ¶¶ 1005-8-3(a)(3), 1005-9-1(a)(3); ch. 48, ¶ 274; 42 U.S.C.A. § 1983; U.S.C.A. Const. Art. 4, § 2, cl. 1.

29. Constitutional Law ⇐48(6)

Although burden of proving that state statute violates privileges and immunities clause is on plaintiff, once he shows that statute discriminates exclusively against nonresidents in the pursuit of common callings, state has burden of justifying discrimination or, at the very least, of producing some evidence in justification of it. U.S.C.A. Const. Art. 4, § 2, cl. 1.

Patricia Rosen, Asst. Atty. Gen., Chicago, Ill., for defendant-appellant.

M. Barry Forman, St. Louis, Mo., for plaintiffs-appellees.

Before PELL, CUDAHY and POSNER, Circuit Judges.

POSNER, Circuit Judge.

E. Allen Bernardi, the director of the Illinois Department of Labor, appeals from a decision enjoining him from enforcing Illinois' Preference to Citizens on Public Works Projects Act, Ill.Rev.Stat.1981, ch. 48, ¶¶ 269-274. The Act (in paragraph 271) provides that the contractor on "any public works project or improvement for the State of Illinois or any political subdivision, municipal corporation or other governmental unit thereof shall employ only Illinois laborers on such project or improvement," unless the contractor certifies, and the contracting officer finds, that Illinois laborers either "are not available, or are incapable of performing the particular type of work involved . . ." Violation of the preference law (as it is called) is a misdemeanor punishable by a maximum jail sentence of 30 days and a maximum fine of $500. See Ill.Rev.Stat.1981, ch. 48, ¶ 274; ch. 38, ¶¶ 1005-8-3(a)(3), 1005-9-1(a)(3). The district court held that the law violates both the privileges and immunities clause of Article IV, section 2 of the Constitution ("The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States"), and the commerce clause of Article I, section 8 ("The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes").

The public school board of Decatur, Illinois hired the W.C.M. Window Company, an Illinois corporation, to replace some windows. W.C.M. subcontracted the work to Custom Contracting Company, an unincorporated association of Missouri residents.

On April 12, 1983, Bernardi brought suit in state court against W.C.M. and Custom, asking that they be enjoined from violating the preference law. On the same day, W.C.M., its president, and three individuals who are members of Custom Contracting brought this suit (under 42 U.S.C. § 1983) against Bernardi, and asked the district court to issue a temporary restraining order to prevent Bernardi from proceeding with his state court action. The district court issued the order and later converted it into a permanent injunction.

[1, 2] The first question we consider is whether the district court should have abstained, under the doctrine of *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), in favor of the state court in which Bernardi had filed his action. (The other grounds for abstention urged by the state clearly have no merit.) *Younger* held that a federal district court may not enjoin a state criminal prosecution in a civil rights suit, provided that the plaintiff in that suit can raise his federal claims in state court by way of defense to the prosecution. Its doctrine has since been expanded to cases where a state civil proceeding sought to be enjoined involved "important state interests." See, e.g., *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S.Ct. 2515, 2521-22, 73 L.Ed.2d 116 (1982) (state proceeding to discipline a lawyer for unethical conduct); see also *Ciotti v. County of Cook*, 712 F.2d 312, 313 (7th Cir.1983); *Cate v. Oldham*, 707 F.2d 1176, 1183 (11th Cir.1983); *Coruzzi v. State of New Jersey*, 705 F.2d 688, 690-91 (3d Cir.1983). We must consider whether "important state interests" are involved here, and also the significance of the facts that (1) the plaintiffs in the federal court action and the defendants in the state court action are not identical and (2) the Illinois Supreme Court in *People ex rel. Holland v. Bleigh Construction Co.*, 61 Ill.2d 258, 335 N.E.2d 469 (1975), upheld the preference law against a challenge based on the same grounds urged by these plaintiffs.

[3-6] The *Younger* doctrine is based on, and its contours established by, two principles of equity jurisprudence. The first is that an injunction is an extraordinary remedy, rarely available as a matter of right and never more extraordinary than when, if granted, it would prevent government officials from proceeding, under a statute founded on important state interests against a violator of the statute; such an injunction would offend comity and federalism. The second principle is that an injunction will not be issued when the plaintiff has an adequate remedy at law, which he does if he can assert the ground on which he seeks an injunction as a defense to the very proceeding that the injunction would put a stop to.

Although the plaintiffs apparently did violate the Illinois preference law, the state was not sufficiently exercised about the violation to bring a criminal proceeding, or even a quasi-criminal proceeding as in *Middlesex*. It was content to seek an injunction against continuing the violation. This is some evidence that an injunction against Bernardi's state court action would not impair "important state interests," though not much evidence; the state may simply have believed that, in the circumstances, an injunctive remedy would be cheaper, swifter, and more efficacious. An additional point, however, is that the policy underlying the preference law is less central to the goals of state government than protecting the health, safety, and morals of its population—the types of interest involved in cases where abstention under the *Younger* doctrine has been ordered. Thus, both the nature of the remedy sought by, and more important the underlying right asserted by, the state in its suit make the remedy that these plaintiffs are seeking less invasive of state sovereignty than in the usual *Younger* case.

[7, 8] Moreover, the plaintiffs may not have "an adequate opportunity in the state proceedings to raise [their] constitutional challenges." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, *supra*, 457 U.S. at 432, 102 S.Ct. at 2521-22. Although this quotation could be taken to refer just to procedural obstacles to raising a federal claim in state court, rather than also to any substantive obstacle created by adverse precedent, we know from *Gibson v. Berryhill*, 411 U.S. 564, 577-79, 93 S.Ct. 1689, 1697-98, 36 L.Ed.2d 488 (1973) (cited approvingly in *Middlesex*), that the *Younger* doctrine is inapplicable when the state tribunal is deemed to have prejudged the federal claim because the tribunal has a pecuniary interest in the outcome (see also *United Church of the Medical Center v. Medical Center Comm'n*, 689 F.2d 693, 699-700 (7th Cir.1982)), and maybe other types of prejudgment also make the doctrine inapplicable. The analogous requirements of exhaustion of remedies in administrative and in habeas corpus cases are satisfied when adverse precedent makes the remedies futile as a practical matter to pursue. See *Layton v. Carson*, 479 F.2d 1275, 1276-77 (5th Cir.1973) (per curiam); see also *Carter v. Estelle*, 677 F.2d 427, 446 (5th Cir.1982); *West v. Bergland*, 611 F.2d 710, 717 (9th Cir.1979).

If the Illinois courts were certain to adhere to *Bleigh* in Bernardi's suit against the contractors, the contractors would have no practical remedy in the state courts, so that their only federal remedy (if we abstained) would be to ask the United States Supreme Court to review the inevitable judgment against them in the state courts. The Supreme Court's heavy workload, which prevents it from accepting more than a tiny fraction of the requests for review that it gets, would make this route a chancy one. And we doubt that the Court would want us to add to its workload by expanding the *Younger* doctrine. But the Illinois Supreme Court might be willing to reexamine *Bleigh* in light of the U.S. Supreme Court's subsequent decisions in *Hicklin v. Orbeck*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), and *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, — U.S. —, 104 S.Ct. 1020, 79 L.Ed.2d 249 (1984) the latter decided after argument in this case. The discussion of the privileges and immunities issue in *Bleigh* has been termed "cursory" in a decision which states that *Hicklin* "presumptively overruled" *Bleigh*. *Neshaminy Constructors, Inc. v. Krause*, 181 N.J.Super. 376, 384 n. 6, 437 A.2d 733, 737 n. 6 (Ch.1981), modified (on unrelated grounds) and affirmed, 187 N.J.Super. 174, 453 A.2d 1359 (App.Div.1982) (per curiam). And we are told that the Illinois Supreme Court has recently heard argument in a case in which it is being asked to overrule *Bleigh*.

Hicklin invalidated under the privileges and immunities clause an Alaska statute that required all employment, whether public or private, that was connected with oil and gas leases to which the state was a party to be offered first to Alaska residents. The Supreme Court's opinion is narrowly written, however, and emphasizes facts that have no exact counterpart in the present case. One such fact is that the major cause of Alaska's high unemployment was not the influx of nonresidents seeking employment, but rather the fact that a substantial number of Alaska's jobless residents—especially the unemployed Eskimo and Indian residents—were unable to secure employment either because of their lack of education and job training or because of their geographical remoteness from job opportunities." 437 U.S. at 526-27, 98 S.Ct. at 2487-88. Another is that "a highly skilled and educated resident who has never been unemployed is entitled to precisely the same preferential treatment as the unskilled, habitually unemployed Arctic Eskimo enrolled in a job-training program." *Id.* at 527, 98 S.Ct. at 2488. And another is that "Alaska has little or no proprietary interest in much of the activity swept within the ambit of Alaska Hire [the name of the statute]." *Id.* at 529, 98 S.Ct. at 2489. See also *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, *supra*, — U.S. at —, 104 S.Ct. at 1028-29. As an original matter, the absence of these particular facts from the record of the present case may not save Illinois' preference law, as we shall see. But we doubt that a court committed, as all courts are, to *stare decisis*,

albeit in its flexible American form, would think that the *Hicklin* decision *required* the overruling of *Bleigh*—especially when, in a case decided after *Hicklin*, the Supreme Court cited *Bleigh* with approval, though apparently with reference only to its commerce clause holding. See *Reeves, Inc. v. Stake*, 447 U.S. 429, 437 n. 9, 100 S.Ct. 2271, 2277 n. 9, 65 L.Ed.2d 244 (1980).

United Bldg. & Construction Trades Council v. Mayor & Council of Camden involved a challenge under the privileges and immunities clause to an ordinance of the city of Camden, New Jersey that required that at least 40 percent of the employees of contractors and subcontractors working on city construction projects be Camden residents. Although the Supreme Court did not invalidate the ordinance, it did hold that it "discriminates against a protected privilege," — U.S. at —, 101 S.Ct. at 1029, and could be upheld only if the city justified the discrimination by showing (in the language of an earlier case) that nonresidents "constitute a peculiar source of the evil at which the statute is aimed." *Toomer v. Witsell*, 334 U.S. 385, 398, 68 S.Ct. 1156, 1163, 92 L.Ed. 1460 (1948), quoted at — U.S. at —, 101 S.Ct. 1029-30. Since there had been no trial in *United*, the Court remanded the case to the trial court to give the city a chance to try to justify the ordinance.

It is quite possible that *United Bldg. & Construction* would induce the Supreme Court of Illinois to reexamine *Bleigh* at least to the extent of insisting that the state produce some concrete justification for the preference law. But it is not certain; the court might be willing to take judicial notice of conditions in Illinois justifying the law. Even if we could state with confidence that *United Bldg. & Construction* would induce the Illinois court to overrule *Bleigh* to the extent of requiring the state to make a greater effort at justification than was attempted in that case (or for that matter in this one), there would still be a serious question whether we should order abstention on the basis of a decision that was handed down after the proceedings in the district court were completed. One of the standard criticisms of abstention—that it delays litigation, sometimes inordinately—would gain additional force if abstention were ordered on the basis of events that first came into existence while the case was on appeal.

In any event, the three individual plaintiffs who are members of Custom Contracting Company may have no state court remedy at all for a violation of the privileges and immunities clause, because they were not named as defendants in that action. The omission would not be important if Custom Contracting or W.C.M., which were named, could represent those individuals' interests in that action. *Hicks v. Miranda*, 422 U.S. 332, 348-49, 95 S.Ct. 2281, 2291, 45 L.Ed.2d 223 (1975); *Women's Community Health Center v. Texas Health Facilities Comm'n*, 685 F.2d 974, 981-82 (5th Cir.1982). But neither may have standing to challenge the preference law on privileges and immunities grounds. (Although Bernardi has not raised this point in the present action, his silence is not a commitment not to raise it in the state court action if we order abstention and that action is therefore allowed to proceed to judgment.)

[9, 10] The Supreme Court held long ago that the privileges and immunities clause of Article IV does not protect corporations, *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 177, 181, 19 L.Ed. 357 (1869); and this holding, though criticized, see Eule, *Laying the Dormant Commerce Clause to Rest*, 91 Yale L.J. 425, 450-54 (1982), is too firmly established to be reexamined by a lower court, especially after its recent (if laconic) reaffirmance by the Supreme Court in *Western & Southern Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 665, 101 S.Ct. 2070, 2081, 68 L.Ed.2d 514 (1981). On the basis of a dictum in *Paul* that confines "citizens" in the privileges and immunities clause to "natural persons," 75 U.S. at 177, 19 L.Ed. 357 the only court to consider whether an unincorporated association is a citizen within the meaning of the clause has held that it is not. *American Trucking Ass'ns, Inc. v. Larson*, 683 F.2d 787, 790 (3d Cir.1982). Given *Paul*—even without the dictum—this conclusion seems inescapable. An unincorporated association is not a natural person, and for most purposes not a citizen. Any legal protection it enjoys is, as with corporations, a matter of the state's grace. And in Illinois at least, that protection is much less extensive than what corporations enjoy. See Ill.Rev.Stat. 1981, ch. 30, ¶ 185; ch. 38, ¶ 2-15; ch. 120, ¶ 15-1501(a)(4).

[11] If Custom Contracting is not a citizen under the privileges and immunities clause, it might seem to follow ineluctably that its individual members who are plaintiffs in this suit could not hope for a favorable interpretation of that clause in the state court action, because any attempt by Custom Contracting to challenge the Illinois preference law on privileges and immunities grounds would be summarily rejected on the authority of *Paul* and *Larson*. This may well be the correct conclusion, but against it can be set the modern view that an association has standing to complain of injuries to its members. See, e.g., *NAACP v. Alabama*, 357 U.S. 449, 459, 78 S.Ct. 1163, 1170, 2 L.Ed.2d 1488 (1958); *South East Lake View Neighbors v. HUD*, 685 F.2d 1027, 1032 (7th Cir.1982); 6 Wright & Miller, Federal Practice and Procedure § 1552, at pp. 693-94 (1971). This view fuses the legal identity of an association with that of its members, and if applicable here would allow Custom Contracting to complain in Bernardi's state court action that the preference law violates its members' rights under the privileges and immunities clause, even though the law could not violate the association's own rights under the clause, because it has none. There is Illinois authority for allowing an association to bring an equity suit on this basis, see *DeWitt Cty. Taxpayers' Ass'n v. County Bd.*, 112 Ill.App.3d 332, 334-35, 68 Ill.Dec. 61, 63, 445 N.E.2d 509, 511 (1983), equally should an association be able to defend itself against a suit on this basis.

Although this is a powerful argument, it cannot, after *Larson*, completely still our doubts that the state court action provides an adequate remedy for all of the plaintiffs in the present action. Another point is that Custom Contracting might not assert all the rights of its members in that action. All of these doubts are augmented by the vagueness of the state's references in this suit to the state court action. (At oral argument, for example, counsel for the state was unable to tell us what relief Bernardi had requested in that action.) While asking us to abstain, the state has given us no information on whether the state court action provides these plaintiffs with a usable vehicle for asserting their federal constitutional claims. As a further example, we are not told why Bernardi asked only for an injunction.

[12-14] For all of these reasons, we conclude that the equities did not require the district judge to abstain; we need not decide whether they would have permitted him to do so. So we come to the merits, and begin with the commerce clause. Although in words simply an authorization to Congress to regulate commerce among the states or with foreign nations, the commerce clause has long been interpreted to contain an implicit prohibition (the "negative" or "dormant" commerce clause), enforceable by the courts without congressional action, against a state's discriminating against or unduly burdening interstate commerce. See, e.g., *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 13 L.Ed. 996 (1851); *Southern Pac. Co. v. Arizona*, 325 U.S. 761, 769, 65 S.Ct. 1515, 1520, 89 L.Ed. 1915 (1945). In an age when all parts of the nation's economy are interconnected, so that a state can do hardly anything in the way of regulation or taxation without in a sense burdening interstate commerce, the application of this standard to particular cases is often problematic. But one thing is clear: a state may not erect a tariff wall protecting its industries from the competition of industries in other states and in foreign countries merely to promote the economic welfare of its own citizens. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 522, 55 S.Ct. 497, 500, 79

L.Ed. 1032 (1935); see *Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 335-37, 97 S.Ct. 599, 609-10, 50 L.Ed.2d 514 (1977).

[15] The Illinois preference law erects a nearly prohibitive tariff—saved from being completely prohibitive only by the exception for cases where the requisite labor is not obtainable from Illinoians—against the use on any public project in Illinois of labor imported from another state or from a foreign country. The law has the same general effect on the flow into Illinois of labor services supplied by individuals unwilling to change their residence to Illinois as an Illinois tariff on imports of coal would have on the flow of coal into the state. The preference law may confer benefits on the state in reduced unemployment among Illinois residents and hence reduced unemployment insurance costs to employers in the state, though we shall see later that this is far from certain, and maybe not even likely. But a tariff on imported coal would confer the same benefit, since it would tend to increase the demand for coal mined in Illinois and thus increase employment in the coal mines in the state. True, if Illinois were an exporter as well as importer of coal, the tariff's only effects might be to cause Illinois mines to divert output from their export markets to the Illinois market and to cause out-of-state mines that formerly sold coal in Illinois to replace the Illinois mines in serving those out-of-state markets. But of course the same thing might happen as a result of the preference law (the record contains nothing about the law's effects): Illinois residents who now work either on private construction projects in the state or on public construction projects across the state line might replace, on Illinois public projects, nonresidents who in turn would take the places on private and out-of-state projects of the Illinoians who had replaced them on Illinois public projects. But the fact that a state's tariff might have only a small effect on interstate trade would not save it from invalidation under the commerce clause; the cumulative effects of many states' modest tariffs could be staggering.

However, serious doubt is cast on the legal validity of our tariff analogy by a series of Supreme Court decisions, culminating in *White v. Massachusetts Council of Construction Employers, Inc.*, 460 U.S. 204, 103 S.Ct. 1042, 75 L.Ed.2d 1 (1983), which distinguish between the state's role as a participant in, and as the regulator of, a market. White, the Mayor of Boston, had issued an executive order requiring that at least half the workers on every construction project financed, in whole or part, or administered, by the City of Boston be Boston residents. The Court upheld the order. "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." 460 U.S. at ——, *Id.* at 1016. So if in our coal hypothetical the State of Illinois subsidized the electrical generating plants in Illinois that buy coal, it could, without violating the commerce clause, forbid them to buy coal produced out of state.

At first glance the "market participant" concept may seem inappropriately to equate public agencies with private firms; for the state, in its proprietary or market-participant capacity, may be influenced by the same protectionist motives that but for the negative commerce clause might lead it to erect explicit tariff barriers to goods or labor from out of state. But a more realistic explanation of the concept emphasizes the freedom that states have under the Constitution to provide, often selectively, for the welfare of their residents. There are a thousand devices by which the State of Illinois could if it wanted subsidize the state's coal miners; many would have the same effects on both residents and nonresidents as a subsidy for purchasers of coal who limit their purchases to Illinois; yet the courts could not prevent all of them.

[16-18] In any event, if the State of Illinois had limited the preference law to construction projects financed (in whole or part) or administered by the state, it would be clear after *White* that the law did not violate the commerce clause. But the state has gone further. The preference law applies to every public construction contract in Illinois, even if the purchaser is a local school board, or for that matter the local dog catcher. Of course for many purposes, including many federal purposes such as those behind the due process and equal protection clauses of the Fourteenth Amendment, every local government unit in Illinois is a part of the state government; but maybe not for the purpose of evaluating Illinois' preference law under the commerce clause. Government in Illinois as in all states is decentralized, and local school boards such as that of Decatur which let the contract in issue in this case have substantial autonomy, including authority to levy taxes to support the schools. See Ill.Rev.Stat.1981, ch. 122, ¶¶ 17-11 to 17-13; *Quality Education for All Children, Inc. v. School Bd.*, 385 F.Supp. 803, 820 (N.D.Ill.1974). True, the order upheld in *White* embraced projects that the City of Boston financed in part as well as those that it financed 100 percent or administered. But according to the school superintendent's uncontradicted affidavit in this case, the window-replacement project is not even partially financed by the state; neither is it being administered by the state. The "market participant" is the school board, just as the market participant in *White* was the City of Boston. The state is a regulator, telling thousands of local government units that they must not give construction contracts to employers of nonresidents. It is particularly important to insist on the distinction because *White* prevents any consideration of impact on interstate commerce until the state is found to be a regulator of rather than a participant in the market.

[19] Against the validity of the distinction, however, may be cited the Supreme Court's summary affirmance of *American Yearbook Co. v. Askew*, 339 F.Supp. 719, 723-25 (M.D.Fla.) (three-judge district court), aff'd mem., 409 U.S. 901, 93 S.Ct. 230, 34 L.Ed.2d 168 (1972), which held that a state statute requiring all public printing to be done within the state did not violate the commerce clause. Although the district court did not discuss local government (the only public agencies involved in the case were state universities), it assumed that the statute would apply to a printing contract let by a school board or other local government agency, and was untroubled by this. See 339 F.Supp. at 724. But summary affirmance does not commit the Supreme Court to the details of the lower court's opinion. *Zobel v. Williams*, 457 U.S. 55, 61 n. 13, 102 S.Ct. 2309, 2315 n. 13, 72 L.Ed.2d 672 (1982). And although the Supreme Court cited *Askew* with approval in a recent "market participant" case, *Reeves, Inc. v. Stake*, *supra*, 447 U.S. at 437 n. 9, 100 S.Ct. at 2277 n. 9, that case did not involve a state's attempting to impose home-state preference on a local government entity either; nor was this aspect of *Askew* even mentioned. The Court in the same footnote cited with approval two state cases upholding statutes requiring home-state preference by county as well as state agencies, *State ex rel. Collins v. Senatobia Blank Book & Stationery Co.*, 115 Miss. 251, 76 So. 258 (1917), and *Denver v. Bossie*, 83 Colo. 329, 334, 266 Pac. 214, 217 (1928), as well as the pages in *Bleigh* in which the Illinois preference law was held valid under the commerce clause. See also Note, *Home-State Preferences in Public Contracting: A Study in Economic Balkanization*, 58 Ia.L.Rev. 576 (1973). But in none of the cited cases was the difference between the state's own purchasing and that of its local governmental units discussed. It would be unrealistic to suppose that merely citing a case commits the Supreme Court to everything in the cited opinion, and impertinent to suppose

that citation is a deliberate technique for resolving—*sub rosa*—difficult and important questions not raised or argued in the case actually before the Court.

The difference between the state's preferring state residents in its own dealings and forcing local agencies to do so in theirs is both analytical and quantitative. When the project on which the state impresses a home-state preference is undertaken by a unit of local government without any state financial support or supervision, the state is not a participant in the project but a regulator. And since more public contracting in the states is done at the local level, by cities, school districts, park districts, counties, etc., than at the state level, extending *Reeves* and *White* to cases where the state's relationship to its local agencies is purely regulatory could do great damage to the principles of free trade on which the negative commerce clause is based.

[20, 21] Even if a law interferes with free trade, however, the state may be able to justify it on one ground or another. It can keep out diseased cattle, see *Asbell v. Kansas*, 209 U.S. 251, 28 S.Ct. 485, 52 L.Ed. 778 (1908); *Illinois v. General Elec. Co.*, 683 F.2d 206, 214 (7th Cir.1982)—so why not nonresidents who impose a cost on the state by taking jobs away from residents and thereby forcing them onto the unemployment or welfare rolls, which the state finances in part? And even if the state had no financial stake, would it not have a legitimate interest in protecting its residents from such adversity? But if preferring the welfare of residents (more precisely, of some residents—others, notably consumers, invariably suffer from import restrictions) to that of nonresidents were a good defense under the commerce clause, explicit tariffs would be permissible. *Baldwin v. G.A.F. Seelig, Inc.*, *supra*, 294 U.S. at 522, 55 S.Ct. at 500, held that it is not a good defense. *City of Philadelphia v. New Jersey*, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978), held that a state could not confine the use of its landfill waste dumps to its residents. Change "landfill waste dumps" to "public construction projects" and you have this case. In any event, more than assertion would be necessary to create a persuasive analogy from the quarantine cases; and as we shall see when we discuss the privileges and immunities clause, Illinois has presented no facts relating to actual or probable as opposed to purely conjectural harms from allowing nonresidents to work on public construction projects in Illinois. We conclude that the Illinois preference law violates the commerce clause.

[22, 23] We shall now consider whether it also violates the privileges and immunities clause of Article IV. Normally it would be otiose, or worse, for a court to decide a constitutional question unnecessarily; and the judgment in this case must be the same whether the preference law violates one constitutional provision or many. But it may avoid the necessity of a remand should review of our decision be sought and granted and the Supreme Court disagree with our interpretation of the commerce clause for us to rule on the district court's alternative ground for invalidating the preference law; this may also help the Supreme Court decide whether the case merits further review (technically, since the state has a right of appeal under 28 U.S.C. § 1251(2), whether it raises a substantial federal question). Cf. *Illinois v. General Electric Co.*, *supra*, 683 F.2d at 214. Moreover, the commerce clause and the privileges and immunities clause are so closely related in a case of this kind (see *Hicklin v. Orbeck*, *supra*, 437 U.S. at 531-32, 98 S.Ct. at 2490-91) that it would be artificial to ignore one of them. Indeed, there is a respectable argument that the framers of the Constitution intended the privileges and immunities clause to play the role that has come to be played instead by the negative commerce clause. See Eule, *supra*, 91 Yale L.J. at 447-48. We could not be sure that the preference law does not pass constitutional muster under either clause without considering cases under both, as the Supreme Court did in *Hicklin*, 437 U.S. at 532-34, 98 S.Ct. at 2490-92.

[24] The privileges and immunities question was not addressed in *White*, the Court merely remarking that since the preference was for residents of a city rather than of the state the victims were not limited to out-of-state residents. See 460 U.S. at —— n. 12, 103 S.Ct. at 1048 n. 12. We add: almost certainly the principal victims of the mayor's executive order were workers living in the Boston suburbs, which are in Massachusetts, and these workers had political remedies against the order that nonresidents of the state did not have. Nevertheless, the Supreme Court held in *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, *supra*, that an ordinance similar to that in *White* was prima facie unlawful under the privileges and immunities clause. We think the Illinois preference law must equally (or more, as we shall see presently) be deemed prima facie unlawful under the clause. Although *Hicklin* (the "Alaska Hire" case) is, as we noted earlier, factually distinguishable from the present case, it too suggests the prima facie invalidity of the Illinois preference law. There are no figures in the very sparse record of this case; but public construction projects in the State of Illinois, like projects related to state oil and gas leases in Alaska, must constitute in the aggregate a substantial employment opportunity that at least some nonresidents (besides the three individual Missourians who are plaintiffs in the case) are able, willing, and maybe even eager to take advantage of, since major centers of economic activity in the state, notably Chicago and East St. Louis, are adjacent to large population centers in other states. And the consequences for nonresidents must be much greater than those of the Camden ordinance at issue in the *United Bldg. & Construction* case.

[25] It is true despite the unqualified language of the privileges and immunities clause that states may keep out nonresidents if they constitute a "peculiar source of evil." *United Bldg. & Construction Trades Council v. Mayor & Council of Camden*, *supra*, —— U.S. at ——, 101 S.Ct. at 1029, quoting *Toomer v. Witsell*, *supra*, 334 U.S. at 398, 68 S.Ct. at 1163. On the ground a state could keep out nonresidents who had been exposed to some communicable disease of which the state was substantially free. It could even deal with "free riding" nonresidents, for example by charging higher tuition to nonresidents attending the state university than to residents. See *Martinez v. Bynum*, 461 U.S. 321, —— and n. 6, 103 S.Ct. 1838, 1845 and n. 6, 75 L.Ed.2d 879 (1983), and cases cited there. In both of these examples the justification for the state's discrimination against nonresidents is obvious. But the benefits of Illinois' home-preference law, enacted in 1939 and not amended since, cannot be assumed. Otherwise both the "Alaska Hire" law and the Camden residents-preference ordinance would have been upheld.

[26-28] True, the intimation in *Hicklin*, 437 U.S. at 526, 98 S.Ct. at 2487, based on strong language in *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 430, 20 L.Ed. 449 (1871), that unemployment may never be a valid ground for discriminating against nonresidents can no longer be considered authoritative. The Court in *United Bldg. & Construction* not only allowed the City of Camden to attempt to justify the discrimination but quoted from *Toomer* the statement that "the states should have considerable leeway in analyzing local evils and in prescribing appropriate cures." 334 U.S. at 396, 68 S.Ct. at 1162, quoted at —— U.S. at ——, 101 S.Ct. at 1029. Still, *Hicklin* and *United Bldg. & Construction* make clear that there must be *some* evidence of the benefits of a residents-preference law in dealing with a problem created by nonresidents, and Illinois has presented none. We do not just mean that it has failed to put in "evidence" in the technical legal sense, though it has failed; such evidence is not essential when the issue is not the application but the validity of a statute. Illinois has presented no information—statistical or otherwise, evidentiary or subject