

occupation or common calling. Hicklin, 437 U.S. at 524; Baldwin, 436 U.S. at 383; Toomer v. Witsell, 334 U.S. 385, 396 (1948); and Ward v. Maryland, 12 Wall. (79 U.S.) 418, 430 (1871).

In matters enjoying the protection of this clause, a state may not discriminate against residents of other states simply because of their residence, but this does not preclude treating nonresidents differently if there is a substantial basis apart from residence for doing so. Toomer v. Witsell, 334 U.S. 385, 396 (1948). Discrimination against nonresidents is not barred if there is something to indicate that they are a peculiar source of an evil at which a statute is aimed. Id. at 398. In each case the inquiry is whether there are independent reasons for the discrimination against nonresidents and whether the degree of discrimination bears a close relationship to them. Id. at 396. Applying these principles, the Supreme Court struck down the Alaska Hire Law, which required the State's oil and gas lessees to give a preference in their employment to Alaska residents. Hicklin, 437 U.S. at 520 and 525-526. Likewise, we can find no independent justification for the bill's durational residency requirement, which effectively discriminates against out-of-county, including out-of-state, residents who wish to pursue the business of telling fortunes and conducting seances in Dorchester County. The residence requirement is clearly unrelated to any qualification for pursuing these callings and certainly does not guarantee that the public is dealing with reputable practitioners. Indeed, a report signed by the Chairman of the Senate Committee on Economic Affairs, which was prepared by the Department of Legislative Reference, states that the "purpose of this bill is to assist local businesses by giving them a competitive edge over non-local business." Accordingly, the residence requirement violates the Privileges and Immunities Clause of the Federal Constitution. Because this requirement, the other qualifications, and the fee reduction are clearly part of an overall plan to favor local fortune tellers and spiritualists, the residence requirement is not severable and we are unable to approve the bill.

Although the residence requirement may also violate the Commerce Clause, Article I, Sec. 8, Cl. 3, and the Privileges and Immunities and Equal Protection Clauses of the Fourteenth Amendment, we find it unnecessary to pass on these issues or on the validity of the taxpayer and property qualifications in light of the residence requirement's manifest violation of the Privileges and Immunities Clause.

Very truly yours,
Stephen H. Sachs
Attorney General

1 / Although the Privileges and Immunities Clause uses the term "Citizen," this term has generally been understood to be interchangeable with the word "resident." Hicklin, 437 U.S.