Even if an activity is labeled "fundamental," a state is not categorically barred from distinguishing between residents and nonresidents in regulating it: The Privileges and Immunities Clause is not "an absolute." [195] Be there a substantial reason for different treatment and a substantial relationship between the means used and the objective to be achieved, discrimination against nonresidents in a fundamental activity can stand. This two-part test is not easily met, however. An Alaska statute giving residents preference over nonresidents in hiring for work on oil and gas pipelines within the state failed both elements, because the state did not show that nonresidents constituted a peculiar source of the "evil," high unemployment among Native Alaskans, at which the statute was aimed.[196] Also failing the test were a New Hampshire rule that limited admission to the bar to state residents [197] and a Virgin Islands rule that limited bar membership to attorneys residing in the territory at least one year.[198] The more mixed fate of privileges and immunities challenges to state tax laws is discussed below.

One area generally excepted from coverage is core political activities. "A State may, by rule uniform in its operation as to citizens of the several States, require residence within its limits for a given time before a citizen of another State who becomes a resident thereof shall exercise the right of suffrage or become eligible to office." [199]

Discrimination in Private Rights

Not only has judicial construction of the comity clause excluded certain privileges of a public nature from its protection, but the courts also have established the proposition that the purely private and

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[195] Toomer v. Witsell, 334 U.S. 385, 396 (1948).

[196] Hicklin v. Orbeck, 437 U.S. 518 (1978). Activity relating to pursuit of an occupation or common calling, the Court recognized, had long been held to be protected by the clause. The burden of showing constitutional justification was clearly placed on the state, id. at 526–28, rather than giving the statute the ordinary presumption of constitutionality. *See* Mullaney v. Anderson, 342 U.S. 415, 418 (1952).

[197] Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985).

[198] Barnard v. Thorstenn, 489 U.S. 546 (1989)(clause made applicable to the Virgin Islands under the Revised Organic Act). The case was brought by nonresidents, a subset of the disqualified class, and the Court did not address the durational requirements that applied to the separate subset of new residents. *Cf.* United Building & Constr. Trades Council v. Mayor of Camden, 465 U.S. 208 (1984). *See also* Supreme Court of Virginia v. Friedman, 487 U.S. 59 (1988) (striking down a Virginia rule that denied nonresident attorneys admission to the bar "on motion."

[199] Blake v. McClung, 172 U.S. 239, 256 (1898) (*dictum*). Of course as to suffrage, *see* Dunn v. Blumstein, 405 U.S. 330 (1972), but not as to candidacy, the principle is now qualified under the Equal Protection Clause of the Fourteenth Amendment. Baldwin v. Montana Fish & Game Comm'n, 436 U.S. 371, 383 (1978) (citing Kanapaux v. Ellisor, 419 U.S. 891 (1974); Chimento v. Stark, 353 F. Supp. 1211 (D.N.H.), *aff'd*, 414 U.S. 802 (1973)).