cut [186] extended the same rule to wild game, and *Hudson Water Co. v. McCarter* [187] applied it to the running water of a state. In *Toomer v. Witsell*,[188] however, the Court refused to apply this rule to free-swimming fish caught in the three-mile belt off the coast of South Carolina. It held instead that "commercial shrimping in the marginal sea, like other common callings, is within the purview of the privileges and immunities clause" and that a severely discriminatory license fee exacted from nonresidents was unconstitutional.[189]

As the state "public patrimony" theory of resource ownership receded [190] into one of power to regulate and preserve, the essential inquiry in resources cases became whether a state distinguished between residents and nonresidents [191] in regulating a "fundamental" activity, that is, an activity the "interference with which would frustrate the purposes of the formation of the Union." [192] Thus, recreational hunting was found not to be a fundamental activity, because regulating it did not frustrate the ability of nonresidents to work or travel within the state, nor was nondiscriminatory access to sport hunting within the state otherwise basic to maintaining the primacy of the Nation.[193] Accessing public records through a state freedom of information act also has been held not to be a "fundamental" activity, and a state may limit such access to its own citizens.[194]

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[186] 161 U.S. 519 (1896).

[187] 209 U.S. 349 (1908).

[188] 334 U.S. 385 (1948).

[189] 334 U.S. at 403. In Mullaney v. Anderson, 342 U.S. 415 (1952), an Alaska statute providing for the licensing of commercial fishermen in territorial waters and levying a license fee of $50.00 on nonresident and only $5.00 on resident fishermen was held void under Art. IV, § 2 on the authority of Toomer v. Witsell.

[190] The legal fiction of state ownership was eventually discredited as erecting impermissible barriers to interstate commerce. *See* Douglas v. Seacoast Products, Inc., 431 U.S. 265, 284 (1977) (dictum). Geer v. Connecticut, 161 U.S. 519 (1896), was overruled in Hughes v. Oklahoma, 441 U.S. 322 (1979); Hudson Water Co. v. McCarter, 209 U.S. 349 (1908), was overruled in Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941 (1982).

[191] Although the clause specifically refers to "citizens," the Court treats the terms "citizens" and "residents" as "essentially interchangeable." Austin v. New Hampshire, 420 U.S. 656, 662 n.8 (1975); Hicklin v. Orbeck, 437 U.S. 518, 524 n.8 (1978).

[192] Justice Washington's opinion on Circuit in *Coryell* afforded the Court the standard. While recognizing that Justice Washington relied on notions of natural rights, the Court thought he used the term "fundamental" in the modern sense as well.

[193] Baldwin v. Montana Fish & Game Comm'n, 436 U.S. 371, 387 (1978) (upholding substantially higher hunting license fees for nonresidents).

[194] McBurney v. Young, 569 U.S. ___, No. 12–17, slip op. (2013). The Court further found that any incidental burden on a nonresident's ability to earn a living, own property, or exercise another "fundamemtal" activity could largely be ameliorated by using other available authorities. The Court also emphasized that the primary purpose of the state freedom of information act was to provide state citizens with a means to obtain an accounting of their public officials.