

Are Local Residency Requirements Legal?

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With the current economic conditions, the mantra of most every business, union, or political leader these days is jobs, jobs, jobs. Local political leaders face the harsh reality that they have little control over the local unemployment rates affecting their constituents. One way for cities and towns to attempt to address this issue includes requiring contractors performing work on local construction projects to hire local residents. But are these types of local residency requirements legal?

Local residency requirements for construction projects face a long and difficult road to be deemed constitutional. For instance, both the U.S. Supreme Court and the Massachusetts Supreme Judicial Court have found residency requirement ordinances to be unconstitutional under a little known clause known as the Privileges and Immunities clause, which states that “[t]he citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the several States.” The founding fathers included this clause in our Constitution to prevent the citizens of one state from discriminating against citizens of other states.

The leading case addressing residency requirements arose in the United States Supreme Court which considered a residency requirement instituted by the City of Camden, New Jersey and the Court found that Camden’s requirements unconstitutional. To reach this conclusion, the Court first found that employment by a private contractor to be a protected, fundamental privilege. The Court also rejected an argument that the ordinance only discriminated against residents outside of Camden, not out of state residents because adopting this reasoning would allow each city or town in one state to enact similar ordinances preventing citizens from other states from having equal access to jobs.

The Court then found that because the ordinance discriminates against a protected privilege, there must be a substantial reason, beyond non-residence, for the difference in treatment between residents and non-residents. In evaluating whether there is a “substantial reason” to justify the difference in treatment, the Court found that the degree of discrimination must bear a close relationship to the reasons supplied to justify the policy and that when a city or town enacts these ordinances, it must receive evidence and conclude that nonresidents constitute the “peculiar source of evil”

which the ordinance is aimed to address. In other words, there must be evidence that the out of state residents caused unemployment in the city or town. The Court cited the absence of any findings of fact on which to base a determination and found the ordinance to be invalid.

Our Massachusetts Supreme Judicial Court issued an advisory opinion on a proposed bill in 1984 and essentially adopted the analysis of the Supreme Court in the *Camden* case when it concluded that the proposed employment requirement of eighty-percent of Commonwealth residents would violate the Privileges and Immunities Clause. Courts addressing challenges to residency requirements adopted in Lowell, Worcester, and more recently in Fall River, have also been struck down as invalid under this clause.

As a result, it is difficult to see how any town or city can meet its burden to justify the requirement because it would need to show that the out of city residents and more importantly out of state residents are the source of the evil to be addressed by these types of ordinances - unemployment. In other words, each town or city would have to show that it enacted its residency requirement because of unemployment problems caused in part by contractors employing workers from Vermont, New Hampshire, Maine or other states. Because these requirements are very hard to justify, any contractor facing enforcement of a residency requirement should consult with an attorney. While enacted with good intentions, these requirements are in all likelihood invalid.