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PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

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WASHINGTON, D.C. 20543

**DKT/CASE NO.** 83-1466

**TITLE** SUPREME COURT OF NEW HAMPSHIRE, Appellant v.  
KATHRYN A. PIPER

**PLACE** Washington, D. C.

**DATE** October 31, 1984

**PAGES** 1 thru 53

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IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT OF NEW HAMPSHIRE, :  
Appellant, :  
v. : No. 83-1466  
KATHRYN A. PIPER :  
- - - - -x

Washington, D.C.  
Wednesday, October 31, 1984

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 10:55 o'clock a.m.

APPEARANCES:  
MARTIN I. GROSS, ESQ., Concord, New Hampshire; on  
behalf of the Appellant.  
JON MEYER, ESQ., Manchester, New Hampshire, on  
behalf of the Appellee.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Supreme Court of New Hampshire against Piper.

I think you may proceed whenever you are ready, Mr. Gross.

ORAL ARGUMENT OF MARTIN L. GROSS, ESQ.,

ON BEHALF OF THE APPELLANT

MR. GROSS: Mr. Chief Justice, and may it please the Court, in a recent swearing in ceremony, in several, as a matter of fact, the New Hampshire Supreme Court has admonished new admittees that in the court's view New Hampshire lawyers should not just be merchants of law, but instead should be servants of justice.

The residency requirement involved in this case is one of the ways the New Hampshire court has chosen to reinforce the court's aspirations for New Hampshire lawyers as part of a system for administering justice in the state.

The New Hampshire court has concluded that requiring residency at the time of admission assists in assuring that New Hampshire lawyers will be available to perform obligations that the court has imposed on lawyers in the course of defining the nature and characteristics of the proper practice of law in the state.

1           At stake in this case, we submit, is whether  
2 the New Hampshire court can continue to reinforce its  
3 aspirations for New Hampshire lawyers through use of a  
4 simple residency requirement that New Hampshire lawyers  
5 be residents of New Hampshire at the time they take the  
6 oath of admission.

7           QUESTION: But they may be nonresidents the  
8 next day and still practice in New Hampshire?

9           MR. GROSS: We suggest not, having acted in  
10 good faith with the New Hampshire Supreme Court. The  
11 New Hampshire Supreme Court requires residency at the  
12 time of administering the oath, and in order to become a  
13 resident, one has to undertake to the court that one has  
14 become a resident with the indefinite intention of  
15 remaining.

16           QUESTION: Suppose one has been born, and a  
17 lifelong resident of New Hampshire, at that time becomes  
18 a member of the New Hampshire bar, and the next day  
19 moves over to Vermont. May he continue to practice law  
20 in New Hampshire?

21           MR. GROSS: Yes, and that, of course --  
22 therein lies one of the great challenges of our brethren  
23 in this case, because they seem to say that because New  
24 Hampshire does not revoke licenses if someone moves  
25 away, that somehow there is something wrong with this

1 requirement.

2 If I may just express to the Court what the  
3 New Hampshire court's reasons are for that requirement,  
4 then I would like to address why the revocation argument  
5 doesn't hold any water. I think the facts bearing on  
6 the New Hampshire Supreme Court's reasons are extremely  
7 important. We have no need to guess in this case.  
8 Those reasons are embodied in an affidavit of New  
9 Hampshire Chief Justice King.

10 Those reasons appear at the Jcint Appendix on  
11 Page 32, and the case comes here on summary judgment.  
12 There are no findings contrary to Justice King's  
13 affidavit, and on this record I don't think there is any  
14 room to doubt that Justice King accurately states what  
15 the New Hampshire court is doing with the residency  
16 requirement.

17 And what it is doing is as follows. As the  
18 affidavit recites, the New Hampshire court regards  
19 residency as establishing New Hampshire as the principal  
20 place of physical residence for the indefinite future.  
21 So residency at the time of admission is the New  
22 Hampshire court's chosen proxy for promoting sustained  
23 physical presence in the New Hampshire community.

24 QUESTION: What is the requirement for taking  
25 the examination in the first instance? Is it either

1 residence or a statement of intent to become a  
2 resident?

3 MR. GROSS: Yes, precisely.

4 QUESTION: Either one will do?

5 MR. GROSS: Either one will do. And the only  
6 time that one has to become a resident is at the moment  
7 before the oath of admission is administered. That is  
8 the time that the admission requirement bites. And it  
9 is at that time that we say that it has proven effective  
10 to accomplish the goals that the New Hampshire court  
11 wishes to carry out. Why is it important --

12 QUESTION: They don't care what happens  
13 after?

14 MR. GROSS: Oh, they care. Oh, yes, indeed,  
15 they care.

16 QUESTION: What do they do if you move out?

17 MR. GROSS: Well, so far they haven't done  
18 anything.

19 QUESTION: Well, then you have to answer my  
20 question they don't.

21 MR. GROSS: Oh, yes --

22 QUESTION: The only thing they want is for you  
23 to be a resident of New Hampshire for -- how long does  
24 it take to administer the oath? Is that it?

25 MR. GROSS: Moments, Your Honor, but I don't

1 believe --

2 QUESTION: Well, is that it?

3 MR. GROSS: No, it is not. I don't believe  
4 that's the New Hampshire court's position.

5 QUESTION: What else can you do to somebody  
6 who takes the oath and then leaves that night?

7 MR. GROSS: Excuse me?

8 QUESTION: That night.

9 MR. GROSS: Well, I suppose that you could  
10 chase them, if that were you --

11 QUESTION: I would like something better than  
12 supposing.

13 MR. GROSS: Let me just simply say that the  
14 New Hampshire court doesn't, and the reason it doesn't  
15 is that it has found, and I think the facts in this case  
16 demonstrate that it need not in order to accomplish what  
17 it is trying to do in requiring the requirement in the  
18 first place.

19 Referring to Justice King's affidavit, we  
20 invite the Court's particular attention to the reasons  
21 in Paragraph 9, and I might say this is an important  
22 statement of reasons because it was totally overlooked  
23 or disregarded by the lower courts.

24 It is possibly most important in the terms of  
25 the New Hampshire court's high aspirations for the New



1 Hampshire bar that the New Hampshire lawyers not just be  
2 merchants of the law, but be servants of justice.

3 In the New Hampshire court's view, the  
4 residency requirement supports availability of lawyers  
5 for the extra activities the New Hampshire court expects  
6 of them above and beyond basic concerns for competence  
7 and ethical conduct.

8 QUESTION: Mr. Gross, I suppose states vary on  
9 this, don't they?

10 MR. GROSS: Yes, they do.

11 QUESTION: As I understand, in Virginia, for  
12 instance, the Commonwealth insists that an attorney --  
13 that residency is not enough. He has to have an office  
14 in the state. Now, at least New Hampshire doesn't go  
15 that far.

16 MR. GROSS: No, and I might observe, Your  
17 Honor, that New Hampshire does not go as far as some  
18 states do in requiring residence at some point prior to  
19 the admission of the oath. There are several states  
20 that require residence.

21 And I believe Virginia may be one of them that  
22 require residence at the point of actually taking the  
23 bar examination, or at the point of applying for  
24 admission to the bar, and those are far more rigorous  
25 requirements than New Hampshire's, which is a simple

1 requirement.

2 QUESTION: Suppose Mrs. Piper here, living, as  
3 she did, just across the border in Vermont, maintained  
4 or joined a law firm that had an office in New  
5 Hampshire. Still not eligible?

6 MR. GROSS: No, that would not be sufficient,  
7 and the reason it wouldn't be sufficient is because in  
8 order to achieve the New Hampshire court's purpose of  
9 sustained physical presence in order to provide  
10 availability for these tasks that the Court wants  
11 lawyers to perform over and above basic competence and  
12 ethical conduct, the requirement of an office doesn't  
13 seem to work as well.

14 The reason: If it is not a primary office, it  
15 doesn't assure physical presence. And if it is not a  
16 primary office, it could simply be a mail drop or an  
17 answering service or something like that.

18 QUESTION: Suppose it is in my example, it was  
19 a primary office.

20 MR. GROSS: Well, in terms of a primary  
21 office, then I guess some line drawing would have to be  
22 done about whether in fact it was a primary office. Is  
23 it really the place where this lawyer spends most of his  
24 or her time? How do we determine that?

25 QUESTION: Suppose it was the only place. She

1 was offered a partnership in a New Hampshire firm, but  
2 lived across the line in Vermont, just commuted. Like a  
3 lot of areas in the country, you commute across state  
4 lines to do the only law practice you do.

5 MR. GROSS: Well, obviously, if it were the  
6 only place that one practiced, then it would assure  
7 physical presence for the purpose --

8 QUESTION: Well, I know, but that wouldn't be  
9 enough in New Hampshire.

10 MR. GROSS: Not to meet the New Hampshire  
11 requirement, because the New Hampshire requirements go  
12 to more than 9:00 to 5:00 practice of law.

13 QUESTION: Does the record show anything about  
14 what the lady's intention was with respect to an office,  
15 or where she was going to practice?

16 MR. GROSS: Just give me a moment. I want to  
17 think.

18 QUESTION: Did she apply for an exemption, or  
19 for a waiver?

20 MR. GROSS: She applied -- she initially,  
21 before she applied to take the exam, inquired whether an  
22 exemption might be available. The answer was no. She  
23 applied anyway, signed a sworn statement indicating --

24 QUESTION: Is that in the record?

25 MR. GROSS: Yes, it is.

1 QUESTION: Do you know where it is?

2 MR. GROSS: Yes, I will get -- I will focus on  
3 that in just one moment, if I may. That is at Joint  
4 Appendix Page 43.

5 QUESTION: Thank you very much.

6 MR. GROSS: She was aware of the residency  
7 requirement to begin with. She took the exam, or she  
8 actually applied, signed a statement of intention to  
9 reside in New Hampshire, giving the address of  
10 Littleton, New Hampshire.

11 Beyond that, I don't believe the record  
12 indicates any place of intention to take up employment.  
13 I believe she stated in her letters to the court that  
14 she intended to have employment in New Hampshire in  
15 order to avoid professional conflicts with her husband,  
16 who is a Vermont attorney.

17 QUESTION: The District Court said that the  
18 respondent, Ms. Piper, resided in Lower Waterford.

19 MR. GROSS: Yes, sir.

20 QUESTION: Is that right across the river from  
21 Littleton?

22 MR. GROSS: I don't know whether it's across  
23 from Littleton or it's across from Lyme. It is across  
24 the river from New Hampshire. The state line is the  
25 westerly boundary of Connecticut River, and Mrs. Piper

1 lives about 400 yards --

2 QUESTION: Yes, but that's about 120 or 130  
3 miles that the river is the boundary. Is it in the  
4 Littleton area, say, rather than the Brattleboro area?

5 MR. GROSS: Oh, yes. It is up in that neck of  
6 the woods, Your Honor. It isn't way down at the bottom.

7 QUESTION: I notice the rules that the court  
8 construe deal with taking the bar exam, and the  
9 admission of people who have just taken the bar exam.  
10 What do the rules provide with respect to people who  
11 have been admitted in other states maybe five or ten  
12 years earlier and practiced for a period of time?

13 Is there any provision for, say, a member of  
14 the New York bar ever to be admitted?

15 MR. GROSS: Only by examination, Your Honor.

16 QUESTION: It must be by examination.

17 MR. GROSS: There is no admission on motion.  
18 I think I'd like to pay some attention to the question  
19 that Judge Marshall asked about the lack of revocation,  
20 because I gather it is a matter of concern.

21 There are two reasons why I suppose it is  
22 being argued in this case that it is important to attach  
23 -- important that the New Hampshire Supreme Court  
24 doesn't chase lawyers to assure they remain New  
25 Hampshire residents after they take the oath.

1           The arguments seem to have two purposes. The  
2 first is to insinuate bad faith or unworthy motive on  
3 the part of New Hampshire's court, but again, we suggest  
4 there is nothing in the record to support unworthy  
5 motivation. New Hampshire's reasons are what they are,  
6 and they are plainly set forth in the Chief Justice's  
7 affidavit.

8           The other apparent purpose, at least the  
9 purpose that appears to me, is to argue that the New  
10 Hampshire residence requirement fails to meet this close  
11 tailoring test of standard privileges and immunities  
12 analysis, and I would just like to observe that it is an  
13 odd argument that the rule would have to be more  
14 restrictive in order to meet the close tailoring test,  
15 that is, more restrictive by requiring people to remain  
16 New Hampshire residents to infinity in order to keep  
17 their license.

18           QUESTION: Doesn't it bear on the strength of  
19 your justifications for your rule if it is clear that a  
20 lawyer who is a resident of New Hampshire can move out  
21 of the state and still practice law in New Hampshire?  
22 Because a lot of the reasons that you give would sort of  
23 wash out with him.

24           You wouldn't have control over him. You  
25 couldn't control his pro bono work, et cetera.

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MR. GROSS: Yes, but I want to express once again --

QUESTION: Yes? Is that right, or not? It does bear on the strength of your justification?

MR. GROSS: Yes, it does, and I would like to demonstrate to you why in practice it supports the justifications.

First of all, we are not talking about a mere scintilla of time. If people are going to deal in good faith with the New Hampshire Supreme Court, which I sincerely hope they would do if they are asking to be admitted to the bar, they are asked to express their intention to become residents in the indefinite future.

Secondly, the present requirement, and I think this is important to grasp, does the job of promoting sustained physical presence without further restrictions.

Even the beyond the record figures cited in the Vermont bar amicus brief show that almost 90 percent of New Hampshire lawyers remain in the state, and so the present requirement seems to be a practical success to accomplish these objectives that the New Hampshire Supreme Court wants to accomplish without additional restrictions.

The statistics offered by Mrs. Piper and the

1 Vermont bar brief don't even really show that the 13.6  
2 number they claim are cut-of-state lawyers. The problem  
3 with their statistics is that they rely on business  
4 mailing addresses, not residence addresses, and the  
5 statistics sweep in lawyers who may be away temporarily  
6 on government service.

7 For example, the numbers show that 24 New  
8 Hampshire lawyers had business addresses in the District  
9 of Columbia, the second highest number of supposed  
10 absentees. Virginia had 18, the fourth highest.

11 So, we are talking about lawyers who may leave  
12 New Hampshire temporarily to come down here on  
13 government service, and then may go back.

14 They are swept into these statistics, and the  
15 statistics also sweep in lawyer who may practice in  
16 neighboring states but may retain New Hampshire  
17 residence, and so they are still available to  
18 participate in these additional activities that the  
19 court requires of New Hampshire lawyers.

20 And there again, we see those statistics  
21 presented, and these are at Joint Appendix Page 30:  
22 Massachusetts, 96; Main, 19; Vermont, 13.

23 So, what we see is a rule which bites at the  
24 time of admission of the oath, and as a practical  
25 matter, that is all that's all it needs to do, because



1 as Judge Campbell of the Court of Appeals noted, the New  
2 Hampshire court could reasonably conclude that not many  
3 New Hampshire lawyers will both pull up stakes and  
4 continue practice in New Hampshire, and the bureaucracy  
5 required to keep track of their comings and goings would  
6 not be worth the effort.

7 And I suggest to you that that is exactly what  
8 the New Hampshire court has concluded, because their  
9 present rule does work, and it does work as a reasonable  
10 proxy for sustained physical presence in the state in  
11 order to carry out these extensive additional duties  
12 that the New Hampshire court expects of members of the  
13 New Hampshire bar.

14 If I can turn now to the legal points that we  
15 are talking about, the first legal point that we made is  
16 that the New Hampshire court's residency requirements  
17 shouldn't be subject to federal judicial scrutiny under  
18 the privileges and immunities clause.

19 At the outset, I would like to make it clear  
20 that we are not contending that state court regulations  
21 of the bar are immune from all constitutional scrutiny  
22 by federal courts. That is simply not the law. It is  
23 not our argument, and we don't make it here.

24 What we do argue, as the Court recently  
25 pointed out in *United Building and Construction Trades,*

1 is that there is a threshold issue to be determined in  
2 every case involving the privileges and immunities  
3 clause, whether the interest at stake is fundamental to  
4 the promotion of interstate harmony.

5 And in this case, the question is whether  
6 state court control over the legal profession involves  
7 regulation of an interest fundamental to the promotion  
8 of a state --

9 QUESTION: Well, you are assuming, aren't you,  
10 Mr. Gross, that the lawyers in question do business as  
11 individuals when you say that the privileges and  
12 immunities clause applies to. For instance, a lawyer  
13 doing business as a professional corporation, I presume,  
14 couldn't claim the benefit of the privileges and  
15 immunities clause.

16 MR. GROSS: I believe the citizens -- the  
17 privileges and immunities clause speaks of citizens, and  
18 so anyone who is a citizen could claim it.

19 QUESTION: We have held it doesn't apply to  
20 corporations.

21 MR. GROSS: That may be the Fourteenth  
22 Amendment, but in any event, in New Hampshire, while we  
23 may practice as professional corporations, in respect to  
24 our duties to the court, we are always individuals, and  
25 we are held responsible as individuals to the court.

1           And while there may be a distinction for some  
2 purposes, where, as here, we are talking about the  
3 relationship of a lawyer to the court and what the court  
4 expects of lawyers, I would not want to claim that  
5 somehow practice in a corporate mode would somehow  
6 insulate a New Hampshire lawyer from responsibilities  
7 that they would otherwise have to the court.

8           QUESTION: Well, I think the argument is quite  
9 the contrary, that if they practice in the corporate  
10 form, they cannot get any benefit from the privileges  
11 and immunities clause which they now are urging to  
12 somehow insulate themselves.

13           MR. GROSS: Yes, and I understand and accept  
14 that. I guess it does not lie well in my argument to  
15 take any refuge in that, because I believe that New  
16 Hampshire lawyers' relationships with the court are  
17 individual relationships, and so I wouldn't want to  
18 claim the benefit of saying that anybody who was  
19 practicing in the corporate form was any different from  
20 a lawyer practicing as an individual.

21           The matter of whether the privilege and  
22 immunities clause applies is a threshold question. We  
23 rely on a long line of this Court's decisions which say  
24 that instead of being an interest fundamental to the  
25 promotion of interstate harmony, regulation of the bar

1 is a sovereign function of the state court, is at the  
2 core of the state's power to protect the public, is  
3 essential to the primary function of administering  
4 justice, and involves the pursuit of an especially great  
5 state interest.

6 QUESTION: Mr. Gross, do you think Bradwell  
7 versus Illincis is still good law?

8 MR. GROSS: I don't want to discard it. It is  
9 a decision of this Court that has never been overruled  
10 or expressly questioned. I believe that a lot of things  
11 have happened since Bradwell was decided. I think this  
12 case is ripe for decision under today's circumstances,  
13 and the New Hampshire Supreme Court believes that in  
14 requiring these additional duties of New Hampshire  
15 lawyers it is in tune with the times.

16 QUESTION: Well, do you think that Bradwell's  
17 holding that a state can exclude women from the practice  
18 of law without violating the privileges and immunities  
19 clause is still good law?

20 MR. GROSS: Without violating -- I don't think  
21 it is good law to say that a state court could exclude  
22 women from the practice of law for any reason, and to  
23 put the privileges and immunities clause in there, I  
24 guess, would raise some technicality with me about what  
25 the privileges and immunities clause is designed to do.

1           If I were bringing the case on behalf of a  
2 woman applicant who had been denied admission simply  
3 because she was a woman, I wouldn't use the privileges  
4 and immunities clause. I'd use the Fourteenth  
5 Amendment, and I think I'd win.

6           QUESTION: Where do you think the privileges  
7 and immunities clause is found, I mean, what amendment?

8           MR. GROSS: The privileges and immunities  
9 clause, in Article 4, Section 2 of the Constitution.  
10 And as this Court has held repeatedly, that is a  
11 constitutional protection which is relative.

12           It applies as a threshold matter only where  
13 there is an interest fundamental to promotion of  
14 interstate harmony is concerned. It doesn't apply at  
15 all where, as here, we argue that the function of  
16 regulating the bar is a very, very high matter of  
17 importance to the state.

18           QUESTION: Mr. Gross, I am just wondering if  
19 your argument would -- I notice in your opponent's brief  
20 there are 269 members of your bar that have offices out  
21 of state. Do you think the Supreme Court of your state  
22 would have the power to say that they must confine their  
23 practice to the state in order to further these  
24 objectives that you describe, and not divert their  
25 energies by practicing elsewhere?

1 MR. GROSS: Well, therein lies another problem  
2 with a more restrictive rule, if Your Honor pleases.

3 QUESTION: I am not suggesting it would be a  
4 better rule. I am asking if you think they would have  
5 the power to adopt such a rule.

6 MR. GROSS: And I am addressing that, because  
7 I am concerned about limitations on the right to  
8 travel. One of the difficulties with the New Hampshire  
9 Supreme Court saying that if you leave, your license is  
10 revoked, is that the next --

11 QUESTION: No, I am not saying if you leave.  
12 I say just, A, you've got to be a resident, and B, you  
13 must confine your practice to this state, because we are  
14 interested in having the highest quality practice within  
15 our state. We don't want your energies diverted by  
16 going over across the river.

17 MR. GROSS: I think they might do that, but I  
18 don't believe that that would accomplish the objectives  
19 that the New Hampshire Supreme Court has in mind.

20 QUESTION: But you would think they would have  
21 constitutional power to do that? And if you are going  
22 to say yes to that, I mean, I don't see how that's  
23 really different from saying to somebody across the  
24 river, you can't come into the state.

25 But it seems to me you must say that you could

1 tell all the members of your bar, don't practice  
2 elsewhere if you want to retain your membership.

3 MR. GROSS: Well, you see, I don't believe  
4 that ties in with what the New Hampshire Supreme Court  
5 is trying to do. It might well be as a matter of  
6 abstract principle --

7 QUESTION: All the reasons that you have  
8 explained would seem to me to support such a rule.

9 MR. GROSS: Well, one of the difficulties I  
10 have had is that I haven't been able to outline those  
11 specific reasons. The reasons have to do, I submit, not  
12 merely with the everyday practice of law and the matter  
13 of competence and ethical conduct. They have to do with  
14 community service. They have to do with service on bar  
15 committees. They have to do with --

16 QUESTION: Right, and my rule would serve  
17 those same functions.

18 MR. GROSS: Yes, I do, and I think probably it  
19 would be more restrictive than the rule we have. And I  
20 am not here to campaign for a high degree of  
21 restriction. I am here to campaign only for the degree  
22 of restriction that this Court has deemed necessary to  
23 accomplish these purposes.

24 The point that we have is this on the  
25 threshold question. If the interest of individual

1 states in regulating the bar is as great as this Court  
2 has repeatedly recognized, then we are not dealing with  
3 an interest fundamental to the promotion of interstate  
4 harmony.

5 The two would seem to be logically reciprocal,  
6 because the greater degree of regulatory interest  
7 recognized in individual states, the lesser the interest  
8 in promoting interstate harmony through national  
9 treatment of the subject, and this isn't a mere result  
10 of a game of logic.

11 The amicus brief of Virginia and other states  
12 shows a solid historical foundation for our position in  
13 the sense that at the time of the adoption of the  
14 privileges and immunities clause, state bar residence  
15 requirements existed side by side with the clause, and  
16 were well recognized at that time.

17 And our brief points out that the lower courts  
18 in this case didn't deal adequately with the threshold  
19 issue even though we strongly argued it. The matter of  
20 In Re Griffiths has figured prominently in my brother's  
21 brief, all through this proceeding. We think that  
22 Griffiths doesn't say anything about how to decide this  
23 case. Particularly does it not say anything about  
24 whether we have got here an interest which is  
25 fundamental to the promotion of interstate harmony.



1 Griffiths was an equal protection case dealing  
2 with the suspect classification of alienage, and it  
3 simply held that the political function exemption  
4 doesn't apply to lawyers. We don't claim lawyers have a  
5 political function here.

6 We claim that lawyers are subject to this high  
7 degree of regulation, and that the states have this  
8 tremendous interest in regulating lawyers, because  
9 lawyers in effect share the judicial power. They are  
10 different from physicians.

11 They are different from the health care  
12 profession. They are different from professions which  
13 the states regulate in the ordinary exercise of the  
14 police power.

15 Lawyers share in the administration of  
16 justice. They share in the administration of the  
17 judicial power, and we think the state's interest in  
18 regulating lawyers is fundamentally different.

19 QUESTION: What if a lawyer from Alexandria  
20 wants to come up in practice in your state? What must  
21 he show, or she?

22 MR. GROSS: In order to be admitted?

23 QUESTION: Yes.

24 MR. GROSS: Character and fitness, for  
25 openers, pass the bar examination, which consists of the

1 Multistate Bar Examination and an essay examination,  
2 pass the Multistate Professional Responsibility  
3 Examination, and show the residence requirement.

4 QUESTION: What if the lawyer has practiced  
5 for 20 years in Virginia? Is there no --

6 MR. GROSS: There is no admission on motion in  
7 New Hampshire.

8 QUESTION: No admission on reciprocity.

9 MR. GROSS: And we share that with several and  
10 I believe a growing number of states.

11 I would like to turn now to the matter of  
12 deference. One of the issues --

13 QUESTION: Mr. Gross, before you do that, and  
14 with reference to your last argument, do you think that  
15 In Re Griffiths, where the Court rejected the kind of  
16 argument you are making on behalf of lawyers, is  
17 relevant?

18 MR. GROSS: I don't believe the case is  
19 relevant, and I think it is not because I don't think  
20 that the case rejected an argument like the one I am  
21 making, because I think in Griffiths what the Court said  
22 is that alienage doesn't make any difference for bar  
23 admission under any circumstances, and we say that -- we  
24 are not arguing with that. We are saying the New  
25 Hampshire Supreme Court wants his physical presence in

1 order to perform these duties, and a resident alien can  
2 do that as well as a resident citizen, and a resident  
3 alien can do that better than a nonresident citizen.

4 At this stage, I would like to --

5 QUESTION: Mr. Gross, just one thing before  
6 you sit down. Exactly what harm is done to New  
7 Hampshire by somebody that goes up, passes the bar,  
8 passes the test, and is not a resident?

9 MR. GROSS: Your Honor, they are not available  
10 on a sustained basis to carry out the additional duties  
11 that the New Hampshire Supreme Court expects of them,  
12 and they are not there on a sustained basis to --

13 QUESTION: How does that hurt the state? All  
14 I know the state has done is given them a piece of  
15 paper.

16 MR. GROSS: Well, it hurts the state in the  
17 New Hampshire Supreme Court's view, Your Honor, because  
18 the court believes that the administration of justice in  
19 the state is improved by activity by lawyers above and  
20 beyond their everyday practice of law.

21 QUESTION: How will this one case affect  
22 that?

23 MR. GROSS: One case of a person moving in and  
24 practicing? Possibly only de minimis, but you can't  
25 deal with just one case.

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QUESTION: Would 100 be de minimis?

MR. GROSS: Excuse me?

QUESTION: Would 100 be de minimis?

MR. GROSS: Not in New Hampshire.

QUESTION: What harm would it do?

MR. GROSS: It would simply make it more difficult for the court to expect all New Hampshire lawyers to conduct themselves in the way that the court wants them to with respect to community activity.

QUESTION: Well, some of these New Hampshire lawyers have moved to -- they don't have any interest in that, do they?

MR. GROSS: And they are probably not practicing law in New Hampshire any more either, and so --

QUESTION: That's what I'm saying.

MR. GROSS: If they move away, then they are not New Hampshire lawyers any more. As long as they are not attempting to practice. But our court is saying, as long as they are attempting to practice law in New Hampshire, they should share in the obligations that our court wishes to impose on them.

Thank you.

QUESTION: You must, Mr. Gross, you must have attorneys admitted to the New Hampshire bar that go to

1 Boston and come up and try cases in New Hampshire.

2 MR. GROSS: I am sure there are some of those.

3 QUESTION: But you are not concerned with  
4 that.

5 MR. GROSS: Well, the court --

6 QUESTION: This is the weak spot in your case,  
7 if there is any.

8 MR. GROSS: Yes, I have to say it is, and I  
9 have to say that my response to the point that it is a  
10 weak spot is that what we have is working very well with  
11 a minimal degree of restriction. And yes, there are  
12 lawyers who go to Boston and who occasionally come up to  
13 New Hampshire, but they are a small number compared to  
14 what is actually the effect of this rule.

15 And in most cases the lawyers who --  
16 overwhelming number of cases, the lawyers who establish  
17 residence at the time of admission stay there and  
18 support the work that the New Hampshire Supreme Court  
19 expects of them, and others --

20 QUESTION: I suppose that is true of any  
21 state, really.

22 MR. GROSS: Well, it may be, but I think it is  
23 a matter of record in this case, Your Honor.

24 QUESTION: Mr. Gross, is there any record of  
25 waivers for people who say, I live across the border, I

1 want to commute into New Hampshire and practice law, and  
2 I have a job with a law firm, I want a waiver, and if  
3 you will give it to me, I will take the bar, and go to  
4 work in New Hampshire?

5 Is there any record of waivers in those  
6 situations?

7 MR. GROSS: I can represent to the Court that  
8 there are no such waivers, that the treatment that Mrs.  
9 Piper was accorded by the court in this case is 100  
10 percent.

11 QUESTION: Right, well, and so you feel the  
12 rule is that rigid, that it just doesn't make any  
13 difference.

14 MR. GROSS: Well, rather than use the word  
15 "rigid," I would say applied uniformly.

16 (General laughter.)

17 CHIEF JUSTICE BURGER: Mr. Meyer.

18 ORAL ARGUMENT OF JON MEYER, ESQ.,

19 ON BEHALF OF THE APPELLEE

20 MR. MEYER: Mr. Chief Justice, and may it  
21 please the Court, it is our position under the standards  
22 of review developed by this Court under the privileges  
23 and immunities clause of Article 4 that it is incumbent  
24 upon New Hampshire to establish that out of state  
25 attorneys admitted to the New Hampshire bar would be the

1 peculiar source of a substantial problem relating to  
2 legal practice, and furthermore, that the particular  
3 terms of the New Hampshire residency requirement are  
4 closely related to remedying the problem stated.

5 QUESTION: What provision of the Constitution  
6 do you rely on to say that the burden is on the state of  
7 New Hampshire rather than on the person in the position  
8 of your client?

9 MR. MEYER: Your Honor, I think under --  
10 although I don't think the Court's jurisprudence is that  
11 clear in allocating the burden of proof, it is my  
12 understanding of Hicklin and Toomer and the other cases  
13 interpreting the privileges and immunities clause in  
14 Article 4, and it is that we rely upon rather than the  
15 same clause in the Fourteenth Amendment, that once the  
16 applicant establishes that the measure is discriminatory  
17 against out of staters, and this measure is  
18 discriminatory on its face, that the burden then shifts  
19 to the state to establish, as Hicklin put it, that the  
20 out of staters are the peculiar source of a substantial  
21 problem, and that the particular measure is closely  
22 related to remedying the problem stated.

23 QUESTION: Do you think Camden changed that  
24 test somewhat?

25 MR. MEYER: Your Honor, I think that Camden is

1 significant because it restated the case. The precise  
2 language this Court has used in developing the test has  
3 varied slightly from case to case. I think Camden is  
4 significant because it restates that test, and restates  
5 it, I believe, precisely in the terms I use, peculiar  
6 source of a substantial problem, and that it be closely  
7 related.

8 And I think Camden is also a significant case  
9 because in that -- again in that case the city had some  
10 fairly strong claims to be exempt from the clause's  
11 coverage altogether, insofar as the measure only applied  
12 to public employees.

13 Nevertheless, this Court held that the clause  
14 applied, and I think that shows an intention to give  
15 Article 4 a broad reading, which we believe is consonant  
16 with the values that are protected by it.

17 What I would like to do in the time allotted  
18 is respond to New Hampshire's contentions that it should  
19 have -- in effect, the rule should be examined under a  
20 lesser standard of review or no standard at all, and  
21 then to look at the New Hampshire justifications in the  
22 context of the standard that this Court has set forth.

23 QUESTION: Mr. Meyer, before you get into  
24 that, may I ask you this question? Is the issue before  
25 us only related to lawyers who are willing to take the



1       bart in New Hampshire and who have taken it?

2               MR. MEYER: Yes, Your Honor, that is correct,  
3       and I want to clearly distinguish the challenge raised  
4       in this case from the challenge, for example, raised in  
5       the case of Leis v. Flynt, where the lawyer in fact  
6       coming from out of state said he had a right under due  
7       process to practice without meeting the requirements of  
8       the state.

9               We acknowledge the right of the state of New  
10       Hampshire to establish admission standards. Our  
11       position is, though, that those standards cannot violate  
12       the constitutional rights of applicants.

13              QUESTION: One of those standards may be that  
14       the bar examination of your state must be passed.

15              MR. MEYER: Yes, Your Honor.

16              QUESTION: I thought your friend told us that  
17       in order to take the examination in the first place, the  
18       applicant must represent that they intend to make a  
19       residence in New Hampshire and practice law there, and  
20       that without that they are not even permitted to take  
21       the examination. Is that right?

22              MR. MEYER: Mr. Chief Justice, that is  
23       correct. In fact, there is no --

24              QUESTION: That isn't quite and fully  
25       consistent with your earlier response. You have cleared

1 it up now.

2 MR. MEYER: Your Honor, we don't think -- yes,  
3 I would like to clarify our position. We think that the  
4 requirement of a bar examination is a reasonable and  
5 legitimate requirement, but if the state conditions it  
6 upon meeting a residency test, then we think the  
7 residency condition is not permissible. We think the  
8 requirement of the test is permissible

9 QUESTION: Well, do you think the state of New  
10 Hampshire can require you to come physically to Concord  
11 and take the bar examination, or do you think you can  
12 have it sent to you in Los Angeles?

13 MR. MEYER: No, Your Honor, we think the state  
14 of New Hampshire can require you to come to Concord to  
15 take the bar exam. We also think --

16 QUESTION: So they would be requiring you to  
17 reside in Concord at least for the day that you are in  
18 Concord?

19 MR. MEYER: Your Honor, the difference, and my  
20 client had no objection to actually going to New  
21 Hampshire to take the bar exam. The difference is, the  
22 state's residency requirement, as stated by my brother,  
23 requires you to establish your principal place of  
24 physical domicile in state and intend to do that for the  
25 indefinite future.

1           Obviously, there would be no problem with my  
2 client going over the border, but she did not feel as a  
3 matter of honesty that she could say that she was  
4 intending to stay there in the indefinite future when in  
5 fact she wanted -- her intention was to reside with her  
6 family in Vermont. I would like to just briefly --

7           QUESTION: Mr. -- Go ahead.

8           QUESTION: But your position is also that this  
9 rule is unconstitutional even if the applicant wants to  
10 have her principal office in Vermont.

11          MR. MEYER: Yes, Your Honor, but I think an  
12 office requirement would be -- I mean, that is a  
13 different -- again, the constitutionality of that  
14 requirement is a different question.

15          QUESTION: Well, would you be satisfied if we  
16 ruled in your favor to the extent that at least where  
17 the intention is to commute into New Hampshire to your  
18 principal legal office?

19          MR. MEYER: Your Honor, I think satisfaction  
20 with that response would be an overstatement. I think  
21 that ruling would --

22          QUESTION: Well, but how about satisfying your  
23 client?

24          MR. MEYER: Well, Your Honor, my client --

25          QUESTION: It may not satisfy your

1 organization, but it may --

2 MR. MEYER: Your Honor, I did want to make  
3 that distinction. I think that the principal office  
4 requirement would raise some significant problems under  
5 the commerce clause, but in terms of my client, if there  
6 had been an office requirement, this case never would  
7 have been brought.

8 And I would like to, in response to your  
9 earlier question, in terms of what was her intention and  
10 what is in the record, in the letter that she sent  
11 requesting exempting to the New Hampshire Supreme Court  
12 --

13 QUESTION: I see it, on Page 41, 42?

14 MR. MEYER: No, it is contained on Pages 12 to  
15 14 of the Appendix. She stated in there that she wanted  
16 to practice in New Hampshire to avoid conflicts with her  
17 husband, and she also stated, "I am interested in  
18 admission to the New Hampshire bar exam inasmuch as I  
19 have a possible job with Attorney Panccast in Littleton,  
20 New Hampshire."

21 QUESTION: Yes.

22 MR. MEYER: So that is the only information  
23 that I am aware of in the record with respect to her  
24 intention after admission. With respect to the --

25 QUESTION: Mr. Meyer, in looking at the

1 privileges and immunities clause issue, do we have to  
2 look at the threat posed by the whole class rather than  
3 as to the particular individual?

4 MR. MEYER: Yes, Your Honor, we do. We  
5 concede that. But on the other hand, the requirement, I  
6 think, there has to be concern as to whether the class  
7 encompassed is substantially overbroad beyond the  
8 particular problem that is designated. There has to be  
9 some, I think, connection, and this Court would say  
10 close connection, between the class actually negatively  
11 affected by the discrimination as opposed to the class  
12 raising what the state alleges to be the peculiar and  
13 substantial problem.

14 I would like to briefly respond to this  
15 question of the lack of a residence requirement after  
16 admission. There is no information either in the record  
17 or to my knowledge anywhere else as to how many New  
18 Hampshire attorneys actually reside out of state.

19 I think it is instructive in itself that the  
20 New Hampshire Supreme Court has never seen fit to  
21 collect this information. The only information we have  
22 is how many attorneys had a principal office address  
23 outside of New Hampshire, and that number in 1982 was  
24 269.

25 But we think that that substantially --

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QUESTION: Out of how many, Mr. Meyer?

MR. MEYER: Out of, in 1980, it was 1,987 -- in 1982. We think, though, that that total substantially undercounts the number actually out of state. We think there is likely to be a significant class of people who practice in New Hampshire, as my client desired to do, who actually live outside of the state.

But I think the principal fallacy as we see it in New Hampshire's argument on these statistics is, they say, well, most New Hampshire attorneys live in state, and we concede that that is probably true, and they therefore jump to the conclusion that the reason they live in state is because of the residency requirement.

QUESTION: Mr. Meyer, let me go back just a moment to a statement you made. You say your client wanted to practice in New Hampshire. Now, does the record show any specific plan, like, was she going to open an office in Littleton?

MR. MEYER: Your Honor, the only information contained in the record is what I cited before, her statement to the Supreme Court that she had a possible job offer in Littleton, that she wanted to practice in New Hampshire to avoid conflicts with her husband, practicing in Vermont.

1           But again, we think that the claim that  
2 because most people live in New Hampshire, the residency  
3 requirement has been effective is fallacious, because  
4 although I may be prejudiced, we believe that the reason  
5 most people live in New Hampshire, most attorneys, is  
6 not because of the residency requirement, but because  
7 New Hampshire is a nice state to live in, and because if  
8 you happen to practice in New Hampshire, it is a  
9 convenient state to live in.

10           So, we think residency requirement or no  
11 residency requirement, the likelihood is that the  
12 majority of New Hampshire practitioners are going to  
13 continue to live in New Hampshire.

14           Now, the significance of a lack of after  
15 admission residency requirement is, Number One, that it  
16 suggests that the particular requirement is really not  
17 closely tailored to the problem stated, but more  
18 importantly, it suggests that the problems alluded to  
19 really are lacking in significance.

20           If in fact lawyers residing out of state but  
21 admitted to the New Hampshire bar pose such a  
22 substantial problem, then why has New Hampshire not even  
23 made any effort to count how many there are?

24           QUESTION: Isn't your opponent's position  
25 basically that the requirement is working the way it is,

1 that if you have 269 out of 1,900 living out of state,  
2 the great majority of those are not attempting to  
3 practice in New Hampshire?

4 MR. MEYER: Your Honor, our response to that  
5 is, Number One, that he doesn't know --

6 QUESTION: Do you know?

7 MR. MEYER: No, because no statistics, no  
8 court has ever been made as to where New Hampshire  
9 attorneys live.

10 QUESTION: Then was this a proper case for the  
11 District Court to render summary judgment on?

12 MR. MEYER: Your Honor, I think it was a  
13 proper case, because I think that the District Court had  
14 to rely on the information presented to it. There was  
15 no contest in terms of the evidence that was presented.  
16 And that the -- in terms of this Court's --

17 QUESTION: But your opponent argues the system  
18 as it is now is working. You say it really isn't  
19 working. And he says the New Hampshire lawyers  
20 practicing out of state or living out of state are not  
21 practicing in New Hampshire. You say some of them are.

22 MR. MEYER: But, Your Honor, it was not  
23 necessary for the District Court to reach that issue,  
24 because even if the New Hampshire residency requirement  
25 has been successful in ensuring that most New Hampshire



1 attorneys live in New Hampshire, we don't think that  
2 that is an adequate justification.

3 We think that then it comes to the specific  
4 justifications provided by the state, and the principal  
5 one they are relying upon is saying, well, it is  
6 important that New Hampshire attorneys live in New  
7 Hampshire in order to be available for public service  
8 and pro bono assignments from the court.

9 We don't question that that is an important  
10 interest. However, we think it is paradoxical to say  
11 that, in terms of the interests of the clients, that by  
12 admitting more attorneys, you are going to have a  
13 problem with pro bono work.

14 We believe, if anything, it is the opposite,  
15 that by permitting previously excluded attorneys, there  
16 are going to be more attorneys available.

17 QUESTION: Mr. Meyer, on that particular  
18 question, what if the lawyer lives in Chicago, or San  
19 Francisco, or New Orleans? Is it your view that the New  
20 Hampshire court would have the right to appoint him to  
21 defend an indigent criminal and compel him to come to  
22 New Hampshire to try it?

23 MR. MEYER: Your Honor, assuming that the New  
24 Hampshire Supreme Court has a right to make involuntary  
25 appointments, I do not believe that the court should be

1 limited by the geographical location of the  
2 individual.

3 If the individual applies to the New Hampshire  
4 bar, which is an integrated bar, and joins that bar,  
5 then it is our position that he or she are subject to  
6 the exact same obligations as attorneys who reside in  
7 New Hampshire.

8 QUESTION: Do you think as a practical matter  
9 they could perform those obligations? Depending on  
10 where they live, I suppose.

11 MR. MEYER: Your Honor, I think it depends not  
12 so much on where they live. It depends on where they  
13 have a law office. Presuming they -- well, if they want  
14 to join the New Hampshire bar in the first place, the  
15 likelihood is not that they are going to live in  
16 California.

17 The likelihood is that they are going to live  
18 in Massachusetts. In any event, if they are going to  
19 practice in New Hampshire, and getting admitted to the  
20 bar involves a substantial commitment in time and  
21 resources, so one would presume that they intend to  
22 practice in New Hampshire, and if they are available to  
23 practice in New Hampshire, then they should also be  
24 available to take criminal or other types of work.

25 QUESTION: It does impose a burden on the

1 court. I know when I was practicing law, the judge  
2 would call you on the telephone and say, we have an  
3 indigent who needs counsel, are you available, and he  
4 gets an answer right away. I suppose he could call long  
5 distance to New Orleans.

6 MR. MEYER: Your Honor, I think that goes to  
7 another justification asserted by New Hampshire, and  
8 that is availability for court appearances and for  
9 disciplinary hearings.

10 And it is our position that New Hampshire  
11 already has adequate assurances of availability in terms  
12 of the long arm jurisdiction, and also the Supreme  
13 Court, state Supreme Court disciplinary rule making you  
14 subject to the court's jurisdiction by becoming a member  
15 of the bar.

16 QUESTION: I wonder if that is an entirely  
17 satisfactory answer. Supposing that there is an  
18 emergency application filed for an injunction, temperate  
19 TRO, you know the name of the opposing counsel, although  
20 he hasn't actually made an appearance.

21 Now, ordinarily those things are set on very  
22 short notice, and if you know the name of the opposing  
23 counsel, you are supposed to get ahold of him and tell  
24 him about it. Isn't that the practice in New Hampshire,  
25 as the law is elsewhere?

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MR. MEYER: Yes, Your Honor.

QUESTION: Well, if this client is represented by the El Fideldo attorneys in Los Angeles, it is just going to mean several days, isn't it, before they can have a hearing, whereas if they were represented by somebody in Manchester or Concord, it could be tomorrow.

MR. MEYER: Well, Your Honor, I don't think that the phone system -- I mean, communication is obviously possible on an immediate basis in any event, but I don't think that an attorney can say to the court, you have to hold off the hearing because it is going to take us three days to get to New Hampshire.

I think that clients in making their choice of attorney can look to that factor, and I think an attorney representing a client involved in those sort of proceedings is presumably going to want to have an office in New Hampshire, or are going to want to have a relationship with somebody who has an office in New Hampshire.

QUESTION: What about -- I can hear the other side of the argument perhaps from you if you were representing the opposing party, saying that, look, I was in Los Angeles, but I am a member of the New Hampshire bar. We got notice of this expedited hearing

1 on a TRC on Tuesday. We were told to show up by  
2 Wednesday. I couldn't get any red eye flight. I  
3 couldn't possibly get there until Thursday. I was  
4 denied due process of law.

5 Now, a Los Angeles attorney who practices in  
6 New Hampshire can make that argument. A Concord or  
7 Manchester attorney can't.

8 MR. MEYER: Well, Your Honor, two responses.  
9 First, I don't believe that New Hampshire judges would  
10 be sympathetic to that contention. But secondly, I  
11 think the likelihood is in terms of most out of state  
12 attorneys who want to practice in New Hampshire is, they  
13 are not going to come from California.

14 They are going to come from Massachusetts,  
15 from Vermont, and from Maine. Those are the people who  
16 want to get into the New Hampshire bar, not people --

17 QUESTION: Yes, but your answer to Justice  
18 O'Connor's question a while ago, the rule has to apply  
19 to everybody, and it can certainly address evils that  
20 aren't present in every single case or every single  
21 application.

22 MR. MEYER: Your Honor, it is conceivable  
23 certainly that somebody from California would join the  
24 New Hampshire bar, but we don't think that that person,  
25 because he resides in California, can use that fact as

1 an excuse for not being available for court  
2 appearances.

3 But the other point is that what really in our  
4 mind is critical in terms of where an attorneys'  
5 availability is not where he lives, but where he  
6 practices law, and if he lives in California and  
7 practices law in New Hampshire, we think he will be  
8 available in New Hampshire.

9 If he lives in New Hampshire and practices law  
10 in California, he is not likely to be available in New  
11 Hampshire.

12 QUESTION: Mr. Meyer, do you think that a  
13 state bar requirement that the person either live in the  
14 state or in an area immediately adjacent to it would  
15 survive scrutiny?

16 MR. MEYER: Your Honor, I think that that is  
17 more defensible than the New Hampshire rule, but I do  
18 not think that that would survive --

19 QUESTION: But would it survive scrutiny?

20 MR. MEYER: I do not believe so, Your Honor.  
21 I think that -- again, I don't think the justifications  
22 that can be offered for that sort of rule, and it would  
23 depend on specifics, can meet the demanding standard  
24 that this Court has set up under Hicklin.

25 QUESTION: What about a state requirement

1 charging out of state residents more tuition to go to a  
2 state university than in-state residents? I suppose  
3 getting an education is a fundamental right as well.  
4 Would charging out of state students more tuition or  
5 making entrance requirement more difficult for them at  
6 an in-state institution survive your kind of privileges  
7 and immunities analysis?

8 MR. MEYER: Your Honor, it is my  
9 interpretation of Martinez v. Bynam that that sort of  
10 requirement would survive, and I think there is an  
11 important difference.

12 QUESTION: Why?

13 MR. MEYER: Because that involves a state's  
14 use of its own very scarce financial resources, and I  
15 think the state has a -- and what this Court has seen to  
16 be a compelling interest in providing that residents who  
17 through their own tax expenditures help fund this public  
18 university have first shot at attendance there.

19 So, I think that that really involves a  
20 legitimately substantial and important interest, and I  
21 think the difference with this case is that New  
22 Hampshire really is not ultimately able to establish  
23 that where you live makes much difference in terms of  
24 your ability to meet all the requirements and  
25 obligations of the New Hampshire law.

1                   QUESTION: May I ask you a question about the  
2                   recrd? I notice the dissent started out by noting that  
3                   the rule might serve the less than commendable purpose  
4                   of insulating New Hampshire practitioners from out of  
5                   state competition. I am sure that doesn't really  
6                   motivate this at all.

7                   (General laughter.)

8                   QUESTION: But is there anything in the record  
9                   that suggests it might?

10                  MR. MEYER: Excuse me, Your Honor. I missed  
11                  the last part.

12                  QUESTION: Is there anything in the record to  
13                  provide a basis for the dissent's comment, or is that  
14                  just speculation based on judicial notice?

15                  MR. MEYER: Your Honor, there is nothing in  
16                  the record, and I want to make it clear that we are not  
17                  relying upon discriminatory intent, and we don't think  
18                  we have to. Under this Court's rulings, particularly in  
19                  the commerce area, the discriminatory effect, if  
20                  substantial, is sufficient, and that is the basis of our  
21                  claim here, not the intention or lack of intention of  
22                  the New Hampshire Supreme Court.

23                  QUESTION: I am still not quite clear how you  
24                  answered my question. There is nothing in the recrd?

25                  MR. MEYER: No, Your Honor, there is nothing



1 in the record.

2 I did want to briefly address the Griffiths  
3 case, because I think in many ways that is the closest  
4 case to this one, and New Hampshire has attempted to  
5 distinguish it, saying that it really -- issues there  
6 involve the lawyer as a quasi-public officer, and this  
7 is different.

8 Well, I think if you look at the position of  
9 the state of Connecticut in the Griffiths case, and in  
10 particular if you look at the opinion of the Connecticut  
11 Supreme Court, they basically rely upon many of the same  
12 powers, in fact, all the same powers of attorneys, and  
13 the same functions of attorneys as is relied upon by the  
14 state of New Hampshire in this case.

15 And the significance of Griffiths is not its  
16 holding, because that involves a different standard of  
17 -- a different constitutional provision. The  
18 significance of Griffiths in our eyes is that the Court  
19 rejected the claim, Number One, that because their  
20 attorneys should be immune from constitutional review,  
21 and Number Two, that a different constitutional standard  
22 should be applied.

23 I think this Court has consistently recognized  
24 the importance of regulation of the legal profession,  
25 and the special interests that courts have in this area,

1 but this Court has also consistently recognized that  
2 that discretion and that special interest is never  
3 sufficient ground for violating a constitutionally  
4 protected right.

5 And that the four state Supreme Courts which  
6 have considered in adversarial fashion whether a state  
7 residency requirement violates the privileges and  
8 immunities clause have all found that it does. And we  
9 think that indicates at least for those courts that they  
10 do not see the imposition of federal constitutional  
11 values to the state courts as being an undue federal  
12 imposition.

13 QUESTION: I suppose if a claim were made to  
14 them, whether they saw it as an undue imposition or not,  
15 if they felt that the result required was required by a  
16 decision of this Court, they would be obligated to reach  
17 that conclusion, whether they were happy with it or  
18 not.

19 MR. MEYER: Yes, Your Honor, but they have not  
20 taken the position New Hampshire has, that simply  
21 imposing -- that the New Hampshire -- that the state --  
22 the federal -- New Hampshire's position is in fact that  
23 the federal standard shouldn't apply, and the state  
24 courts that have looked at this, and I am referring to  
25 Massachusetts, New Jersey -- New York, West Virginia,

1 and Alaska, have all said that this Court's standards in  
2 Hicklin should apply, even in the area of state  
3 regulation of the bar.

4 And this Court has repeatedly recognized that  
5 among all the privileges and immunities, the most  
6 fundamental and the most central really relate to  
7 occupations, and I think it would be very anomalous  
8 should an exception be made or should a lower standard  
9 of review be applied in this area.

10 The justification in addition to the others  
11 that is relied upon by New Hampshire is knowledge of  
12 local rules, but we think they have entirely failed to  
13 demonstrate that this -- out of state attorneys are in  
14 any way peculiarly deficient in this area.

15 All applicants to the New Hampshire bar must  
16 take and pass an examination on New Hampshire law. They  
17 must also take a practical skills course after  
18 admission. Finally, under the New Hampshire Code of  
19 Professional Responsibility, they are all obligated to  
20 maintain and improve their knowledge of the law.

21 QUESTION: Mr. Meyer, you practice where, in  
22 Manchester?

23 MR. MEYER: Yes, Your Honor.

24 QUESTION: How do attorneys in Manchester  
25 first find out about decisions of the Supreme Court of

1 New Hampshire?

2 MR. MEYER: Your Honor, they are generally  
3 sent to us by mail.

4 QUESTION: Advance sheets?

5 MR. MEYER: Yes.

6 QUESTION: What, seven or eight months later?

7 MR. MEYER: Well, Your Honor, there are two  
8 services. You can get in effect the same week service,  
9 or you can get a same month service.

10 QUESTION: Do you also read about them often  
11 for the first time in the Manchester newspaper?

12 MR. MEYER: Well, Your Honor, I think in  
13 Manchester it is very difficult to rely upon what you  
14 read in the newspapers.

15 (General laughter.)

16 QUESTION: How about Concord?

17 MR. MEYER: Your Honor, there are frequently  
18 accounts of decisions in the New Hampshire newspapers,  
19 but I don't think that they are a reliable or necessary  
20 means of getting that information, and that if you as an  
21 attorney feel --

22 QUESTION: They would be helpful, though,  
23 wouldn't they?

24 MR. MEYER: Well, not, Your Honor, if you  
25 decide to subscribe to the more advanced slip sheet

1 service. You receive it at approximately the same time  
2 the newspapers would.

3 QUESTION: Do you have any idea what  
4 percentage of the attorneys in New Hampshire subscribe  
5 to the slip sheet service?

6 MR. MEYER: No, I don't, Your Honor. But if  
7 -- I want to emphasize that we believe there are  
8 adequately in place adequate protections of attorney  
9 knowledge of local rules and procedures, and in fact  
10 lawyers are tested on it, but if they are not  
11 sufficient, then the state has open to it numerous other  
12 means of assuring that knowledge.

13 For example, requiring continuing legal  
14 education. For example, requiring a linkage between  
15 less and more experienced attorneys. And we think that  
16 the need to exclude all out of states is both  
17 unconnected and too broad.

18 Now, there is also a concern, a justification  
19 raised about concern about your reputation in the legal  
20 community. But we think that what counts is not the  
21 legal community -- is not the community you live in, but  
22 the legal community you practice in.

23 And if an attorney practices in New Hampshire,  
24 that should be more than adequate assurance that he is  
25 concerned about his reputation in the state. And if he

1 doesn't practice in New Hampshire, you don't really  
2 care.

3 But I would also like to point out that for  
4 lawyers who practice in more than one jurisdiction,  
5 under the New Hampshire Supreme Court rules there is a  
6 requirement that anybody suspended or disbarred, that  
7 that be sent to all of the jurisdictions where the  
8 attorney practices.

9 So that would surely provide, in our opinion,  
10 a substantial incentive for any attorney to conform to  
11 the opinions of his New Hampshire peers.

12 Thank you, Your Honors.

13 CHIEF JUSTICE BURGER: Very well.

14 Do you have anything further, Mr. Gross?

15 MR. GROSS: No, Your Honor. Thank you.

16 CHIEF JUSTICE BURGER: Very well, the case is  
17 submitted. Thank you, gentlemen.

18 (Whereupon, at 11:50 a.m., the case in the  
19 above-entitled matter was submitted.)  
20  
21  
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#83-1466 - SUPREME COURT OF NEW HAMPSHIRE, Appellant v. KATHRYN A. PIPER

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BY

Paul A. Richardson

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