

harbor master defendants, a narrow declaratory judgment claim related to the Town's regulation of its boat ramp, and a tortious interference claim against Patrick Feeney and Alan Taylor.

Summary Judgment Material Facts

The following statement of facts is drawn from the parties' Local Rule 56 statements of material facts in accordance with this District's summary judgment practice. See Doe v. Solvay Pharms., Inc., 350 F. Supp. 2d 257, 259-60 (D. Me. 2004) (outlining the procedure); Toomey v. Unum Life Ins. Co., 324 F. Supp. 2d 220, 221 n.1 (D. Me. 2004) (explaining "the spirit and purpose" of Local Rule 56). Pursuant to Rule 56 of the Federal Rules of Civil Procedure, all evidentiary disputes appropriately generated by the parties' statements have been resolved, for purposes of summary judgment only, in favor of the non-movant. Merchants Ins. Co. v. United States Fid. & Guar. Co., 143 F.3d 5, 7 (1st Cir. 1998).

John Drouin is a lobsterman who has been a resident of Cutler, Maine, for 25 years. (Defs.' Statement of Material Facts (DSMF) ¶ 1, Docket No. 37.) John Drouin was a harbor master for the Town of Cutler at all times relevant to this lawsuit. (Id. ¶ 2.) Robert Alan Cates and Patrick Feeney also served as harbor masters at all times relevant to this suit. (Id. ¶¶ 3, 12, 17.) Like Drouin, Cates and Feeney are lobster fishermen. (Id. ¶¶ 4, 10; Pls.' Statement of Additional Material Facts (PSAMF) ¶ 15, Docket No. 56.) The record reflects that Drouin and Cates live in Cutler (DSMF ¶¶ 4, 10), but the parties' papers do not specify where Feeney's residence is, although it is presumably in Cutler. Drouin testified that he considers it his duty as a Cutler Harbor Master to serve only the residents of Cutler. In his view, it is not the Town's policy to "worry about nonresidents of Cutler." (PSAMF ¶¶ 11-12; Drouin Dep. at 120:20-25.) In addition, on one occasion during a town meeting Drouin stated that he thought resident fishermen of Cutler who held mooring permits would likely be willing to pay to defend the

lawsuit because, with respect to "the resources and facilities" of the Town of Cutler, "those of us that do wish to use them would probably be willing to pay for the defense of those resources of the harbor. . . . It's our resources of the harbor, the protection of the harbor." (PSAMF ¶ 13; Drouin Dep. at 63:1-12.)

The fourth individual defendant, Alan Taylor, is a Cutler resident and lobster fisherman who was at all relevant times a voting member of the Cutler Harbor Committee. (DSMF ¶¶ 220-221; Pls.' Opposing Statement of Material Facts (PSMF) ¶ 222, Docket No. 56.)

The Harbor Masters and the Town assert that when it comes to issuing nonresident mooring permits they are "required" to comply with the provisions of the Harbor Masters Act and, specifically, section 7-A, set forth in the discussion section below. (DSMF ¶ 6.) They assert that that provision establishes the legality of their denial of the Griffins' mooring permit applications. (Id.) I have set forth the language of that provision in the discussion, below.

Michael Griffin engages in lobster fishing, among other occupations, and he owns property in, but does not reside in, Cutler. (Id. ¶ 21; PSMF ¶¶ 21, 23.) Michael Griffin resides in Edmonds. (DSMF ¶ 26.) From 2001 to 2004, Michael Griffin moored his boat in Cutler during the summer lobster-fishing season. (Id. ¶ 28; PSMF ¶¶ 28-29.) Between 2001 and 2003, he moored his boat at one of several rental mooring sites assigned to Sterling Fitzhenry and permitted by the Army Corp of Engineers as of about 1996. (PSAMF ¶ 27.) Michael Griffin removed his boat from Cutler Harbor in May of 2005 because of actions undertaken by the harbor masters in April 2005. (DSMF ¶ 31; PSMF ¶ 31.)

Dale Griffin is a resident of Whiting. (DSMF ¶ 35.) He engages in lobster fishing, among other occupations. (Id. ¶ 37.) Dale Griffin moored his fishing boat briefly in Cutler Harbor in 2003, at a commercial mooring owned by Sterling Fitzhenry, but was asked by Mr.

Fitzhenry to stop coming to the mooring because it would cause trouble if he did. (Id. ¶ 38; PSMF ¶ 38; PSAMF ¶¶ 40-44.) In 2004, Dale Griffin purchased another fishing boat with his son and that boat was moored in Cutler Harbor during most of the year 2004, although neither Dale nor his son had a mooring permit assigned to them. (DSMF ¶ 47; PSMF ¶ 47.)

Beginning in about 1996, both Griffins sold the lobsters they caught to Sterling Fitzhenry in Cutler Harbor, hoping to establish a relationship that would facilitate their efforts to fish from Cutler Harbor. (DSMF ¶¶ 25, 41; PSMF ¶¶ 25, 41; PSAMF ¶¶ 22-23.) That relationship ended in 2004, as discussed below.

In April 2004, Michael and Dale Griffin submitted mooring permit applications to the Town of Cutler.¹ (DSMF ¶ 52; PSAMF ¶ 66.) The issue of the Griffins' mooring permit applications came up during a meeting of the Town of Cutler Harbor Masters on April 27, 2004. (DSMF ¶ 54.) During the meeting on April 27, 2004, the Harbor Masters agreed to check on temporary moorings and agreed to let the Griffins know about the status of their applications within 30 days. (Id. ¶ 55.) The Cutler Harbor Committee also met on April 27, 2004. At that meeting, one member of the committee motioned to have a boat ramp use fee set up to be charged exclusively to non-residents using the ramp for commercial purposes, which motion was seconded. Inquiry was then made into whether the Town could prohibit all commercial use of the ramp. There were 11 votes in favor of pursuing this course. (PSAMF ¶ 67; Apr. 27, 2004, Cutler Harbor Comm. Meeting Minutes at 1, Ex. P13, Docket No. 56.) The Griffins had commenced using the ramp in support of their lobster fishing efforts prior to the April 27 meeting. (PSAMF ¶ 68.)

¹ In 2003, Michael Griffin began building a house in Cutler, thinking it was the only way he would ever have access to his own mooring. He subsequently abandoned that project because he did not believe he should have to build a home in Cutler to have access to Fitzhenry's wharf and a mooring in the Harbor. (PSAMF ¶¶ 36-37.)

The Cutler Harbor Masters place a ceiling on the number of mooring permits they will issue to applicants who do not reside in Cutler. Specifically, they set aside 10% of vessel moorings in Cutler Harbor to all non-resident applicants and the 10% figure is based on the total number of moorings that are allocated to residents at the time of application.² (DSMF ¶ 56.) Prior to 2004, this limit was applied informally, if at all.³ On May 3, 2004, the Harbor Masters met to review the mooring permit applications, to get a count of the number of resident and non-resident mooring applications, and to determine who was eligible for non-resident moorings. (Id. ¶ 61.) In 2004, the Harbor Masters issued a total of 45 mooring permits. Residents of Cutler received 36 permits for commercial use and 2 for recreational use. Nonresidents received 3 permits for commercial use and 4 permits for recreational use.⁴ (PSMF ¶ 59.) The Harbor Masters voted on May 3, 2004, to deny permits to Michael Griffin and Dale Griffin, who were placed first and second on a waiting list for non-resident, commercial moorings, which list continues to be in effect. (DSMF ¶¶ 63, 67, 69; PSMF ¶¶ 59, 63; PSAMF ¶ 69; Mooring Waiting List, Exhibit P16, Docket No. 56, Elec. Attach 5.) Commercial mooring applications submitted by two other individuals were also denied. (DSMF ¶¶ 63, 67.)

The Harbor Masters contend that their decision to deny the Griffins' applications was "guided" by the language of 38 M.R.S.A. § 7-A, which was set forth in their Harbor Management Guide. (Id. ¶¶ 71-72, 74-77.) The letter they sent to the Griffins specifically cites that provision as the exclusive ground for the denial. (PSAMF ¶ 70.) The Harbor Masters

² Note that the Cutler Harbor Ordinance does not articulate the 10% rule. (DSMF ¶ 79.) In 2004 the Town had a vote on whether to add a provision to the Harbor Ordinance to permit non-resident moorings for as many as 25% of the resident moorings in existence. The measure failed to pass. (Id. ¶ 253.)

³ The Town reorganized its harbor Committee in the late summer of 2003 and instituted what appears to be its first serious effort to formalize its regulation of the Harbor. (PSAMF ¶¶ 45, 48; March 1, 2004, Cutler Harbor Comm. Meeting Minutes ¶ 6, Ex. P9, Docket No. 56.)

⁴ These permits went to individuals having preexisting mooring privileges as of 2003, not to any new applicants. (PSAMF ¶ 48; March 1, 2004, Cutler Harbor Comm. Meeting Minutes ¶ 6, Ex. P9.) Essentially, the Harbor Masters reissued the preexisting permits before considering the Griffins' applications. (See PSMF ¶ 58.) I also note that additional mooring permits were likely issued for floats, as opposed to vessels. (Id. ¶ 252.)

presently assert that the Griffins cannot qualify for a commercial mooring until 71 permits are issued to residents, thereby effectively conceding that Cutler Harbor has additional mooring space.⁵ (PSAMF ¶ 18; DSMF ¶ 73;.)

By letters dated July 7, 2004, the Harbor Masters reminded Dale Griffin and Michael Griffin that their applications had been denied, informed them that the Cutler Harbor Ordinance prohibited them from mooring their vessels at moorings assigned to others, and ordered them to remove their vessels from the moorings to which they were presently attached. (DSMF ¶¶ 84-85; PSAMF ¶ 74; July 7, 2004, Harbor Master Meeting Minutes, Ex. P17, Docket No. 56; July 7, 2004, Letters to Dale and Michael Griffin, Ex. P18, Docket No. 56; Drouin Dep. Ex. 16; Cates Dep. Ex. 16.) The Harbor Masters afforded two weeks for compliance and cautioned that violations would result in the assessment of penalties pursuant to 30-A M.R.S.A. § 4452. (DSMF ¶ 86.)

In early 2004, Sterling Fitzhenry, the owner of a commercial fishing wharf in Cutler Harbor, who had purchased lobsters from the Griffins over the years, ceased doing business with the Griffins. (DSMF ¶¶ 122, 144.) According to Fitzhenry, he did so because resident Cutler lobster fishermen, including defendants Feeney and Taylor, told him that they would cease doing business with him if he continued doing business with the Griffins. (PSMF ¶¶ 122, 144, 158; PSAMF ¶¶ 34-35, 54-60.) A Cutler fisherman named Mark "Skip" McGuire was present when these men met with Fitzhenry to pressure him not to do business with the Griffins and he

⁵ On January 24, 2005, the Harbor Masters granted a mooring permit to one Justin Wright, the son of one of the Harbor Masters, who had just completed a 180-day residency requirement in Cutler Harbor. Wright thereafter moved to Machiasport, but the Harbor Masters concluded that his mooring rights were grandfathered because he had previously met residency requirements. (PSAMF ¶¶ 93-94.) It is not clear whether they count this mooring as a resident mooring or a non-resident mooring for purposes of performing their mooring-related calculations.

identified the men present based on his observation of the event.⁶ (PSAMF ¶ 54; McGuir Dep. at 29-30, 58-61, Docket No. 68.)

After this development at Fitzhenry's wharf, the Griffins decided to utilize the Cutler boat ramp to service their lobster boats during the 2004 lobster season. This meant that they needed to load their traps on a trailer, haul the trailer to the boat ramp, move the traps from the trailer to a skiff, and ferry the traps to their lobster boats. (PSAMF ¶¶ 61-62.) At the end of a day's fishing, the process was reversed to unload lobsters and bait so that they could be trucked to and sold in Lubec, since Fitzhenry would no longer purchase lobsters from the Griffins. (Id. ¶ 64.) On July 8, 2004, the Town adopted an amended Harbor Ordinance with a section requiring permits to use the boat ramp, calling for the assessment of a daily or weekly use fee for commercial use of the boat ramp, and providing that no fee be assessed for any use (including commercial use) by town residents.⁷ (Id. ¶ 75.) The section also restricts all commercial fishing use by non-residents except "for the sole purpose of launching or hauling out a boat." (July 8, 2004, Cutler Harbor Ordinance § 5, Ex. P19, Docket No. 56.) In other words, the use of the boat ramp to transfer bait, traps or lobsters was prohibited. Subsequently, on July 28, 2004, the Harbor Committee set the usage fee at \$20 per day or \$50 per week. (PSAMF ¶ 77.)

In June of 2004, Dale and Michael Griffin purchased a woodlot with frontage on Cutler Harbor. (Id. ¶ 87; PSMF ¶ 87.) The inter-tidal zone fronting this property is a mudflat and the parties are agreed that it is not practicable to place a mooring in front of it. (DSMF ¶¶ 89-90.)

⁶ There is an evidentiary dispute whether Mr. Fitzhenry sells the lobsters he acquires in interstate commerce. Fitzhenry sells the lobsters he purchases from the lobster fishermen to one Sid Look. Fitzhenry represents that he has knowledge that Mr. Look sells his lobsters in Boston and New York and that his trucks "go towards" Boston and New York. (PSAMF ¶ 122; Fitzhenry Dep. at 85.) It appears likely that this "knowledge" is based on hearsay. I am not persuaded that this factual dispute is really material for purposes of the defendants' request for summary judgment on the Commerce Clause claim because, in my view, that claim cannot be made out on the basis of the denial of mooring permits and limited ramp access, as explained below.

⁷ See Ex. P3, Docket No. 56, for the preexisting Cutler Harbor Ordinance. (PSAMF ¶ 8.)

The Griffins' counsel wrote the Harbor Masters on July 18, 2004, to indicate that the property had been purchased and counsel asserted that the Griffins should each receive moorings as owners of shorefront property because the lot could be subdivided so that each brother would qualify for a permit under 30-A M.R.S.A. § 3. (Id. ¶ 91; PSAMF ¶ 78.) The Harbor Masters declined to respond to the letter on the advice of Cutler's municipal counsel. (Id. ¶¶ 92-93.) The defendants contend that the Griffins were required by law to submit new applications indicating their status as landowners. (Id. ¶ 94.) However, the application form then in use did not require an applicant to designate his or her "landowner" status and it is undisputed that the Harbor Masters had placed the Griffins on a waiting list based on their still pending 2004 applications.⁸ (PSMF ¶ 94.)

Michael Griffin claims that during the 2004 season he lost between 350 and 400 lobster traps. (PSAMF ¶ 84.) Dale Griffin claims that he and his son lost 300. (Id. ¶ 85.) The Griffins do not have any direct evidence, such as first hand observations by a witness, that would tend to prove that the named defendants were involved in cutting the trap lines. They believe, however, that the defendants know who cut the lines and had the authority to stop it from happening.

Meanwhile, beginning with a March 14, 2005, Harbor Committee meeting, the Cutler Harbor Committee voted to install a gate at the Harbor's boat ramp to enforce collection of fees from non-residents. The gate was first proposed in November 2004 at a Harbor Committee meeting. (Id. ¶¶ 86-87.) While the gate did not last for more than a couple of days, in July 2005 the Harbor Committee voted to prohibit use of the boat ramp for bulk loading of bait (defined as more than three bushels of bait) and bulk refueling of boats (defined as more than 10 gallons of fuel) by all users, whether resident or nonresident. (Id. ¶¶ 87, 112; PSMF ¶ 259; July 25, 2005,

⁸ More importantly, it is clear that the Cutler Harbor Committee actually acted on the letter request at its April 11, 2005, meeting. (Apr. 11, 2005, Harbor Committee Meeting Minutes, Ex. P30, Docket No. 56, Elec. Attach. 7.)

Cutler Harbor Committee Minutes, Ex. P36, Docket No. 56, Elec. Attach. 8.) Also on March 14, 2005, the Harbor Committee voted to exclude all rental moorings from Cutler Harbor, provided that they could determine that such a measure would be legal. (PSAMF ¶ 95; Mar. 14, 2005, Harbor Comm. Meeting Minutes, Exs. P25, P28.) Such a provision, excluding all rental moorings, was adopted by way of amendment passed at a special town meeting on May 11, 2005. (PSAMF ¶ 95; May 11, 2005 Cutler Harbor Ordinance § 3(B), Ex. P32.)

In April 2005 the Griffins submitted new permit applications that specifically indicated their landowner status and these applications were considered during an April 15, 2005, meeting of the Harbor Masters. (DSMF ¶ 97; PSMF ¶ 97; PSAMF ¶ 101.) Because it was agreed that the Griffins' woodlot did not afford any practicable mooring space along its shore frontage, the Harbor Masters denied any mooring in front of the lot. They also denied any mooring elsewhere in the Harbor. (DSMF ¶¶ 98-100; PSMF ¶¶ 98-100; PSMAF ¶ 102.) In May 2005 the Griffins removed their boats from Cutler Harbor, having been notified by the Harbor Masters that they would be fined if they continued to use moorings assigned to others. (PSAMF ¶¶ 103, 107-108.)

In October 2005, the Cutler Harbor Committee voted to create a special mooring permit rule for law enforcement applicants because they had concluded that they could not otherwise issue a nonresident mooring permit to a marine patrol officer. The Committee voted that moorings be afforded to law enforcement and that such moorings not be considered either resident or nonresident moorings. (PSAMF ¶¶ 117-118.)

In 2005 the Harbor Masters issued 7 new resident mooring permits and no new nonresident permits. (PSAMF ¶ 17; Defs.' Reply Statement ¶ 17.)

Also in 2005, Sterling Fitzhenry negotiated a deal with the Griffins and other investors to sell his wharf and residence in Cutler Harbor. (DSMF ¶ 145; PSAMF ¶ 96.) The Griffins

contend that they decided not to go through with this arrangement because they could not rely on the business of the resident fishermen and any non-resident fishermen would be discouraged from doing business with them because they could not obtain moorings in the Harbor, including any rental mooring at the wharf. (PSMF ¶ 148; PSAMF ¶¶ 98-100.)

Discussion

The Griffins' claims are as follows:

- Count I: A request for judicial review of the Town's initial denial of their April 2004 mooring applications, brought pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- Count II: A request for judicial review of the Town's July 2004 order that the Griffins remove their boats from moorings assigned to third parties.
- Count III: A request for judicial review of the Town's July 2004 refusal to issue mooring permits upon notice that the Griffins owned waterfront property in Cutler.
- Count IV: A claim against the Town for deprivation of the Griffins' civil rights, brought pursuant to 42 U.S.C. § 1983 and specifically identifying rights secured by the Equal Protection Clause and the Commerce Clause,⁹ and framed in terms of the denial of mooring rights to nonresident lobster fishermen, the selective enforcement of the Harbor Ordinance against nonresident lobster fishermen, and the purposeful amendment of the Harbor Ordinance to disadvantage nonresident lobster fishermen, in order to protect the economic interests of resident lobster fishermen. (Third Am. Compl. ¶ 64, Docket No. 30.)

⁹ The Griffins also pointed to the Due Process Clause, but the Court previously granted the defendants' motion to dismiss any due process theory for failure to state a claim for which relief may be granted. (See Order Affirming Rec. Dec. at 4, Docket No. 29; Rec. Dec. on Mot. to Dismiss at 23-24, Docket No. 23.) In effect, the Griffins are receiving due process presently, in the form of their Rule 80B appeal.

The Griffins have not articulated any claim that the Privileges and Immunities Clause of the Constitution is implicated by their claim to a right of access to moorings in navigable waterways. See, e.g., Supreme Ct. of Va. v. Friedman, 487 U.S. 59 (1988) (invalidating residency requirement for admission to state bar on motion, without having to take the state bar exam, based on a violation of the Privileges and Immunities Clause) (Rehnquist and Scalia, JJ., dissenting, but conceding that Privileges and Immunities Clause applies with regard to access to commercial fishing licenses, citing Toomer v. Witsell, 334 U.S. 385 (1948)); Hicklin v. Orbeck, 437 U.S. 518 (1978) (invalidating statute requiring preferential hiring of Alaska residents for work on Alaska pipelines on the basis of the privileges and immunities clause) (unanimous opinion); Silver v. Garcia, 760 F.3d 33 (1st Cir. 1985) (invalidating residency requirement for an insurance consultant's license).

- Count V: A claim against defendants Drouin, Feeney and Cates in their personal capacities that parallels the claims asserted against the Town in count IV but including a civil rights conspiracy theory.
- Count VI: A request for a declaratory judgment against the Town, pursuant to 28 U.S.C. § 2201, finding that the 2005 Harbor Ordinance was *ultra vires* and may not be enforced.
- Count VII: A claim for "wrongful interference" with the Griffins' trade or business, brought against defendants Drouin, Feeney, Cates and Taylor.
- Count VIII: An abandoned claim brought under the Unfair Trade Practices Act. (See Pl.'s Opp'n Mem. at 47 (abandoning count VIII).)

The defendants' motion for summary judgment challenges each and every claim. Accordingly, I address the substance of all eight counts below.

The Rule 80B Appeals (Counts I-III)

When reviewing state administrative decisions, the Maine Superior Court reviews for "abuse of discretion, errors of law, or findings not supported by the substantial evidence in the record." McGhie v. Town of Cutler, 2002 ME 62, ¶ 5, 793 A.2d 504, 505. With respect to reviewing any factual findings made by the Cutler Harbor Masters, "[s]ubstantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion." Forbes v. Town of S.W. Harbor, 2001 ME 9, ¶ 6, 763 A.2d 1183, 1186. The challenged administrative decisions in this case do not turn on any factual disputes. Instead, the Griffins contend that the Cutler Harbor Masters' restriction on the number of mooring permits made available to nonresidents is based on an erroneous interpretation of Maine law, that the Harbor Masters Act requires the issuance of a mooring permit to owners of shorefront property and that the Harbor Masters' enforcement measures went beyond their lawful authority. The interpretation of a local ordinance, like the interpretation of a state statute, presents a question of law to be decided *de novo* by the Court. Gensheimer v. Town of Phippsburg, 2005 ME 22, ¶ 16,

868 A.2d 161, 166. The defendants assert in this case that the 10% limit that the Cutler Harbor Masters imposed on the availability of mooring permits for nonresidents was imposed because it is required by a reading of section 7-A of the Harbor Masters Act.¹⁰ (Mot. Summ. J. at 3-4.) In other words, they do not offer any rationale for their decision other than that they believe it was dictated by the Harbor Masters Act. (Defs.' Reply Mem. at 6.)¹¹ The Griffins respond that the Act in no way calls for the imposition of a 10% ceiling on the award of mooring permits to nonresidents, that instead the Act implies that mooring permits should be issued on a first-come, first-served basis to the extent mooring space is available in the Harbor, and that, regardless of what the Act provides, they have a constitutional right to have equal access to the waters of Cutler Harbor, including mooring permits issued by Cutler in agency to the State of Maine. (Pls.' Opp'n Mem. at 23-28, 34-38.) I begin with the relevant language of the Act.

The Harbor Masters Act recognizes the general authority of municipalities "to enact ordinances to regulate the assignment and placement of moorings and other activities in their harbors," including the creation of processes "for assigning mooring privileges and determining the location of moorings." 38 M.R.S.A. § 7. The primary dispute herein concerns the import of the subsequent section, section 7-A:

§ 7-A. Waiting lists; nonresident moorings

1. Waiting lists. If a municipality receives more applications for mooring privileges on state-owned lands that are controlled by its rules or ordinances than there are mooring spaces, the municipality shall assign spaces as they become available from a waiting list or lists according to its rules or ordinances, except as

¹⁰ As set forth above, the Town's denial of the initial permit application specifically cited 38 M.R.S.A. § 7-A(2) as authority for the decision to deny the Griffins' initial permit applications.

¹¹ Here is the defendants' position in their own words:
Contrary to Plaintiffs' argument, the Defendants are not suggesting that their actions must be weighed against the public interest to be served by limiting the issuance of non-resident mooring permits. The Defendants' actions were based on a simple application of Title 38 to the facts. They assume that the Maine Legislature in passing the statute determined the "public interest" served by limiting the issuance of non-residence mooring permits.

(Defs.' Reply Mem. at 6.)

provided in this section. Waiting lists in effect at the time that this section becomes law may continue in effect, but persons shall be selected from those lists in accordance with the allocation provisions of this section. If at the time a person applies for a mooring there is no waiting list, this person may be assigned a mooring without regard to the allocation provisions of this section.

2. Allocations to nonresidents. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is noncommercial and less than 10% of the moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If there are applicants who are nonresidents who wish to moor a vessel the principal use of which is commercial and less than 10% of the assigned moorings are currently assigned to persons fitting this description, the next mooring available shall be assigned to the first such person on the list. If both nonresident noncommercial and nonresident commercial assignments are below 10% and there are both types of applicants on the waiting list, the available space shall be assigned to an applicant in the category that is the farthest below 10%. The burden of proof in determining residence and the principal use of a vessel shall be upon the applicant.

Each year, persons with mooring assignments shall report to the harbor master their anticipated residency status for the next year and whether they anticipate the principal use of their boats to be commercial or noncommercial. The harbor master shall update the percentage of mooring holders in each category from this data.

It is not a requirement of this section that a person lose a current mooring assignment to meet the objectives of this section.

Shorefront property owners shall be assigned mooring privileges as established in section 3.

If the mooring fee charged to nonresidents exceeds \$ 20 a year, the fee charged shall be reasonable in relation to the costs involved in providing that mooring and shall not exceed 5 times the amount charged to residents.

This subsection shall be construed broadly in order to accomplish the distribution of moorings to nonresidents as specified in this section.

Id. § 7-A. Section 8 of the Act expands on these provisions as follows:

§ 8. Waiting list

Whenever there are more applicants for a mooring assignment than there are mooring spaces available, the harbor master or other town official shall create a waiting list. The town officials shall work out a reasonable procedure for persons to add their names to

this list. The procedure shall be posted in a public place. The list shall be considered a public document under the freedom of access law.

It is plain from the foregoing provisions that waiting lists were deemed, by the Legislature at least,¹² to be appropriate only under circumstances in which the "state-owned lands" regulated by a municipality afford no additional mooring spaces. Both sections 7-A and 8 make explicit reference to the availability of mooring spaces, and not to the number of existing resident mooring permits as the Town of Cutler maintains. Moreover, it was plainly the intention of the Legislature when enacting section 7-A, as is obvious from the language of subsection 2, that nonresident applicants for mooring privileges receive priority whenever the available mooring space is exhausted and more than 90% of the total permitted moorings have been issued to municipal residents. In other words, the language of section 7-A presupposes that the available mooring space will be utilized and mandates that, when it is exhausted, if nonresidents do not already have a certain minimum number of the available moorings, nonresident applicants must receive the moorings that become available, whether or not they were the first in line for them. Significantly, nothing in section 7-A prevents a municipality from issuing a greater number of mooring permits to citizens residing outside of the municipality's boundaries. Indeed, it is implicit from this language that nonresidents may hold more than 10% of the available mooring spaces. Furthermore, even when the 10% rule comes into effect, it is clearly to be factored

¹² The defendants claim that Terry Stockwell, the harbor master for the Town of Southport, would testify at a trial that the "10% rule" applied in Cutler Harbor was "correctly and legally applied." (Defs.' Designation of Expert Witnesses at 2, Stockwell Dep. Ex. 2, Docket No. 45.) This claim does not make it into the summary judgment record as an undisputed fact because it concerns a legal question and also because counsel's expert designation is not evidence. Note that Mr. Stockwell (at least according to the designation) asserts that there is some connection between the Harbor Masters Act and Maine's statutory scheme governing shellfish fishing licenses, 12 M.R.S.A. §§ 6601 *et seq.* The defendants fail to make any such connection in their memoranda and it is clear from the face of matters that the Cutler Harbor Ordinance, which does not even mention any 10% rule, does not amount to a local shellfish conservation program under 12 M.R.S.A. § 6671. Note that § 6601 of this ancillary statute does not even pertain to lobster fishing licenses, which are separately regulated. *Id.* § 6601(6); *see also id.* § 6421. In any event, Stockwell allegedly draws a connection between the 10% verbiage of section 7-A of the Harbor Masters Act and section 6671(3-A)(E). Rather than bolstering the defendants' position, the latter statutory provision undermines it because that provision similarly uses a 10% measure to set a minimum requirement for issuance of nonresident commercial licenses, not a maximum.

against the total number of all mooring permits, not merely against the number of mooring permits issued to residents.

The Town's contention that section 7-A actually prohibits its harbor masters from assigning a mooring to the Griffins or forces the harbor masters to create a waiting list when it is undisputed that there is additional mooring space available in Cutler Harbor is an error of law that is patently clear from the language of section 7-A.¹³ Section 7-A clearly presented no obstacle whatsoever to the issuance of mooring permits to the Griffins in 2004 because it is undisputed that there was available mooring space in Cutler Harbor (seven new resident permits were issued in 2005). Because the decision to deny the Griffins' initial mooring permit applications was premised on an error of law the motion for summary judgment against Count I must be denied.

The Griffins also argue that they should have been provided with a mooring permit as of right, pursuant to section 3 of the Act, because they own shorefront property in Cutler. This is the claim set forth in Count III. Section 3 of the Harbor Masters Act directs harbor masters to assign, whenever practicable, mooring privileges to persons owning shore rights in "those waters" where the shore rights are held. The relevant language is as follows:

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural

¹³ The defendants also argue that nothing requires municipal harbor masters to determine the total number of mooring spaces available in a harbor. That statement is true, but it is also moot. Obviously the number of mooring spaces available at any given time would depend on variables such as the size of the vessels currently moored in the harbor. A harbor can hold many more lobster boats than commercial cruise ships. The important point to be made about what the Act does not say is that it does not require harbor masters to withhold mooring permits from nonresidents when space is available. And the important point to be made about what it does say is that it conditions the creation of waiting lists upon the unavailability of mooring space in a harbor. The defendants' convoluted reading of sections 7-A and 8 effectively ignores the entire first conditional clause of section 7-A(1) ("If a municipality receives more applications . . . than there are mooring spaces, . . .") and of section 8 ("Whenever there are more applicants for a mooring assignment than there are mooring spaces available, . . .").

channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any shorefront parcel of land under this privilege. . . . The limitation of one mooring assigned under this privilege does not prevent the owner of a shorefront parcel from receiving additional mooring assignments under the allocation system for all other residents.

38 M.R.S.A. § 3. It is plain from the language of the Act that qualified applicants are entitled to a section 3 mooring whenever it is "practicable" to assign one. The parties are agreed that the Griffins' property abuts mudflats and that a mooring fronting the land is not practicable. They disagree on the question of whether section 3 entitles the Griffins to a mooring in a location other than in front of their land. Once again, the construction of section 3 presents a legal question. Arguably, section 3 might be regarded by some as ambiguous on the question of whether the section 3 entitlement affords a mooring in a location other than one fronting the applicant's property, although it seems to me that it is implicit from the plain language of the Act that a section 3 mooring is not necessarily restricted to a location in front of the land that gives rise to the applicant's shore rights, but "shall" also be assigned in a practicable location within "those waters" associated with the shore rights. The record indicates that the Griffins' shorefront land is in the vicinity of Little River. The Court may take judicial notice of the fact that Little River is at the head of Cutler Harbor. In my view, the Court cannot adequately resolve this matter without there being some fact finding on the question of whether the "waters" associated with the Griffins' property should be construed as Cutler Harbor waters generally or some other, narrower body of water within the Harbor, such as one of the four harbor mooring areas specified in section 1 of the current Ordinance (see Ex. P32, Docket No. 56). Neither the defendants, as the summary judgment movants, nor the Griffins have addressed that factual question in their summary judgment papers and, more importantly, the Harbor Masters never made any relevant factual findings on what would constitute the relevant "waters" associated with the Griffins'

shorefront property although section 3 plainly calls for this inquiry to take place. (See April 15, 2005, Cutler Harbor Master Meeting Minutes at 3, Cates Depo. Ex. 24.) In terms of Rule 56, my opinion is that there is a genuine issue of material fact capable of supporting judgment for the Griffins on Count III, even if it is only a remand to the Harbor Masters to make appropriate findings as to which "waters" within Cutler Harbor the Griffins' section 3 rights relate to.¹⁴ See, e.g., Carroll v. Town of Rockport, 2003 ME 135, ¶¶ 27 & 30, 837 A.2d 148, 156-57 (including a statement of the Rule 80B principle that "when an administrative board or agency fails to make sufficient and clear findings of fact and such findings are necessary for judicial review, we will remand the matter to the agency or board to make the findings").

The third aspect of the pending 80B petition concerns the Harbor Masters' efforts to prohibit the Griffins from using any moorings assigned to other individuals in Cutler Harbor. This is the claim set forth in Count II. The Town asserts that the Griffins' use of third-party moorings violated provisions of section 3 the Harbor Masters Act, which prohibits the transfer of mooring assignments unless permitted by ordinance. (Mot. Summ. J. at 4-5.) The Cutler Harbor Ordinance does not permit the transfer of mooring assignments. The Town also asserts that its permits specify that mooring permits are boat-specific as well as applicant-specific. (Id. at 5.) The Town further notes that the Griffins did not follow the order to quit the moorings in question and argues that, therefore, the orders to depart the moorings caused no harm to the Griffins. (Id. at 6 n.5.) Finally, the Town elsewhere notes that temporary use of another's mooring is authorized,

¹⁴ The defendants cite Edward v. York, 597 A.2d 412 (Me. 1991), in which the Law Court affirmed the denial of a section 3 mooring permit based on an administrative finding that a shorefront mooring was impracticable because it would interfere with navigation and create safety hazards. The applicant in that case requested a shorefront mooring only. Because the applicant did not request a mooring other than in front of his property, the Edwards opinion does not address the question of whether section 3 calls for the issuance of a mooring permit for a location other than in front of the subject parcel when the applicant requests a mooring not fronting his shorefront property, but elsewhere in "those waters" associated with the property.

but only at the discretion of the Harbor Masters. (Id. at 5 n.4.) The Griffins argue that their use of third-party moorings during the lobster fishing season did not amount to a "transfer" as any reasonable person would understand that term, much less as a lawyer might understand that term's legal meaning. (Pls.' Opp'n Mem. at 28.) My interpretation of this aspect of the Rule 80B petition is that there is no effective appellate relief that the Court can provide to the Griffins because they did not abide by the 2004 orders and the 2005 orders that they did abide by were plainly supported by the amended Cutler Harbor Ordinance, which more broadly prohibited the un-permitted use of another's mooring, not merely the "transfer" of moorings.

In summary, I recommend that the Court deny the motion for summary judgment with respect to Counts I and III of the Griffins' Rule 80B petition, which address the Griffins' mooring permit applications, and grant the motion with respect to the allegations of Count II alleging that the orders to remove their vessels from moorings assigned to others were unlawfully issued. Unfortunately, the procedural posture of this case is not ideally suited to affording immediate relief to the Griffins on their Rule 80B petition, even though there does not appear to be any good reason why the Court should have to conduct a hearing on this aspect of the pending action. State procedure would have required the Griffins to file a motion requesting a trial, in the absence of which the petitioner is deemed to have waived any right to an evidentiary hearing. See Me. R. Civ. P. 80B(d). Perhaps the best approach would be to deem the parties' respective summary judgment papers as their Rule 80B briefs and, given the absence of any request for oral argument, enter judgment on all three counts of the Rule 80B petition, "affirm[ing], revers[ing], or modify[ing] the decision under review or [] remand[ing] the case to the

governmental agency for further proceedings." Me. R. Civ. P. 80B(c). Couched in those terms, my recommendation would be to reverse the decision challenged in Count I; treat as moot the decision challenged in Count II; and remand the decision challenged in Count III for further proceedings consistent with this recommendation. Alternatively, the Court might wish to grant summary judgment to the defendants on Count II and withhold judgment on Counts I and III pending a resolution of the federal claims. The parties might do well to address the matter in any objections they raise to this recommended decision. Local Rule 56 is a poor vehicle for resolving a petition for review under a state procedural rule, Rule 80B of the Maine Rules of Civil Procedure.

The Federal Claims (Counts IV, V and VI)

The claims upon which this Court's jurisdiction depends concern the alleged deprivation of the Griffins' civil rights (Counts IV and V) and the request (in Count VI), made pursuant to 28 U.S.C. § 2201, that the Court declare unconstitutional the Cutler Harbor Ordinance, either *in toto* or with respect to certain distinct provisions. The claims made in these three counts all raise the same alleged constitutional rights, which I would describe as follows: (1) a right as a Maine state citizen and United States citizen to have equal access to mooring privileges in Cutler Harbor, asserted exclusively under the Equal Protection Clause of the federal Constitution and the analogous provision of the Maine Constitution; (2) a right to equal access to a municipal boat ramp based on the same grounds; and (3) a right to be free from discrimination in regard to making commercial use of Cutler Harbor as a nonresident of Cutler, as compared with residents making commercial use of the Harbor, based upon a legal theory that derives from the "dormant" Commerce Clause of the United States Constitution. I conclude that the equal protection theory

is cognizable as a civil rights claim on the facts of this case but that the Commerce Clause theory is not.

Title 42 U.S.C. § 1983 confers upon every United States citizen a right to redress against any person who, acting under color of state law, causes a deprivation of his or her "rights, privileges, or immunities secured by the Constitution and laws" of the United States. To maintain a claim under section 1983, a plaintiff must establish two things: (1) that the conduct complained of has been committed under color of state law, and (2) that this conduct worked a denial of rights secured by the Constitution or laws of the United States." Barreto-Rivera v. Medina-Vargas, 168 F.3d 42, 45 (1st Cir. 1999) (citing Martinez v. Colon, 54 F.3d 980, 984 (1st Cir. 1995)). The defendants do not challenge that the first matter has been established on the record. As for the second, "[section] 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" Graham v. Connor, 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). "As in any action under § 1983, the first step is to identify the exact contours of the underlying right said to have been violated." County of Sacramento v. Lewis, 523 U.S. 833, 842 n.5 (1998). The following discussion is geared toward ferreting out the contours of the Griffins' constitutional claims.¹⁵

A. Equal Protection

The equal protection guarantee of the Fourteenth Amendment prohibits the state from "deny[ing] any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. With reference to a governmental action, this language has been interpreted to mean that "all persons similarly situated should be treated alike." City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S.

¹⁵ The Town of Cutler does not contend that the deprivations in question did not arise from a municipal policy or custom. See, e.g., Fabiano v. Hopkins, 352 F.3d 447, 452 (1st Cir. 2003). I can discern no basis for the Court to raise this matter *sua sponte* and indeed even in the absence of a local ordinance adopting a 10% rule, it appears that Cutler's official policy is to limit nonresident moorings to 10% of all moorings issued.

432, 439 (1985). Its protections extend to both legislative and executive conduct. See Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 (1923).

Pagan v. Calderon, 448 F.3d 16, 34 (1st Cir. 2006). See also Anderson v. Town of Durham, 2006 ME 39, ¶ 28, 895 A.2d 944, 953 ("Article 1, section 6-A of the Maine Constitution includes similar requirements."). "The Equal Protection Clause safeguards not merely against such invidious classifications as race, gender and religion, but any arbitrary classification of persons for unfavorable governmental treatment." Hayden v. Grayson, 134 F.3d 449, 453 n.3 (1st Cir. 1998). Residency requirements are non-invidious classifications that are subjected to rational basis review. Saenz v. Roe, 526 U.S. 489, 501-502 (1999); Russo v. Reed, 93 F. Supp. 554, 560-61 (D. Me. 1950). When a state actor subjects a person to less favorable treatment based on a residency classification, an equal protection claim will arise only if there exists no rational basis for differential treatment of otherwise similarly situated persons and the plaintiff is able to present "competent evidence of 'purposeful discrimination.'" Hayden, 134 F.3d at 453 (quoting Washington v. Davis, 426 U.S. 229, 243-44 (1976)). Thus:

[W]here the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws.

The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination.

Snowden v. Hughes, 321 U.S. 1, 8 (1944). Purposeful discrimination is "more than intent as volition or intent as awareness of consequences. . . . It implies that the decisionmaker . . . selected or reaffirmed a course of action at least in part 'because of,' not merely 'in spite of' its adverse effects upon an identifiable group." Soto v. Flores, 103 F.3d 1056, 1067 (1st Cir. 1997) (quoting Pers. Adm'r of Mass. v. Feeney, 442 U.S. 256, 279 (1979)). "[D]iscriminatory purpose

may often be inferred from the totality of the relevant facts." Davis, 426 U.S. at 242; see also cf. Anderson v. City of Boston, 375 F.3d 71, 83 (1st Cir. 2004) (observing that the relevant factors include the degree of disproportionate effect, the justification for the decision, or lack thereof, and the legislative or administrative historical background, and citing Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 266-68 (1977)).¹⁶

The Maine Law Court has observed that "[a]rbitrary discrimination between residents and nonresidents of a state or municipality may violate the constitutional guarantee of equal protection of the laws." Aucella v. Winslow, 583 A.2d 215, 216 (Me. 1990) (involving not a facial challenge to a statute or ordinance, but alleged intentional discrimination in the exercise of administrative discretion based on nonresident status) (citing Opinion of the Justices, 255 A.2d 652, 654-55 (Me. 1969), declaring unconstitutional proposed legislation that would criminalize possession of a firearm by a nonresident employed in lumbering operations in the unorganized or unincorporated areas of Maine, and State v. Mitchell, 97 Me. 66, 75, 53 A. 887, 890 (1902), declaring unconstitutional legislation that discriminated between municipal residents and nonresidents, and also between certain residents, with respect to peddler licensing fees). Other Maine cases consistent with the foregoing include State v. Montgomery, 94 Me. 192, 47 A. 165 (1900), and State v. Cohen, 133 Me. 293, 299, 177 A. 403 (1935), both of which invalidated discriminatory licensing provisions related to the selling of trade goods (so-called peddlers,

¹⁶ There is a line of First Circuit cases that call for the imposition of an exceedingly high burden of proof in all equal protection cases that are premised upon a state actor's exercise of discretion in connection with the denial of a state or local permit. See Pagan, 448 F.3d at 34-35 & n.9 (describing the "steep uphill climb" faced by such claimants and collecting cases). The preliminary question of whether this standard applies is not addressed by either party. In fact, neither party even mentions this line of authority as potentially being applicable to the Griffins' equal protection theory. Conceivably, the denial of the Griffins' mooring permit applications might well be construed as a discretionary act, although the Town and the harbor masters argue that discretion had nothing to do with it because their actions were dictated by section 7-A of the Harbor Masters Act. Their motion for summary judgment is premised entirely on the notion that the harbor masters "'had no choice' in denying the Plaintiffs' applications." (Mot. Summ. J. at 13.) Because the matter has not been briefed and because the defendants deny the exercise of any discretion on the part of the harbor masters, I have simply analyzed the equal protection claim in terms of the traditional rational basis test.

hawkers or vendors regulations). All of these cases concern the provision of equal protection or equal privileges to nonresidents or noncitizens within a given state. See, e.g., Montgomery, 94 Me. at 201-203.

Distinct from the foregoing line of cases is another line of cases concerning state and municipal regulation of access to state assets and resources, things in which the state is said to have a proprietary or ownership interest, such as the state's fish and wildlife resources.¹⁷ Two of the most notable Maine cases are this Court's decision in Russo v. Reed, 93 F. Supp. 554 (D. Me. 1950) (invalidating a state fisheries regulation that discriminated between state residents and nonresident with regard to commercial offshore fishing licenses), and the Law Court's opinion in State v. Alley, 274 A.2d 718 (Me. 1971) (upholding fisheries regulation that discriminated between municipal residents and nonresidents with respect to the taking of shellfish situated on the tidal flats). In Russo, this Court observed that the Supreme Court's opinions in Toomer v. Witsell, 334 U.S. 385 (1948), and McCready v. Virginia, 94 U.S. 391 (1877), establish that "the Privileges and Immunities clause of Art. IV, Sec. 2 of the Federal Constitution limits state power to control the commercial taking of free-swimming wildlife in the three-mile maritime belt." 93 F. Supp. at 560. However, the Court recognized that states need not treat residents and nonresidents alike with respect to commercial fishing rights in coastal waters when disparate treatment is premised on "perfectly valid independent reasons" and the disparate treatment is not based on "the mere fact" of residency. Id. at 560-61. By comparison, in Alley, the Law Court upheld a municipal regulation that denied nonresidents of Jonesboro commercial (unlimited) access to clams located on tidal flats, but afforded residents the ability to obtain a license for

¹⁷ Other exceptions exist, such as regulations pertaining to the sale and movement of intoxicating liquors, currently under advisement in this Court in the matter of Cherry Hill v. Baldacci, No. 05-CV-153-B-W, or residency requirements for tuition-free public education, Martinez v. Bynum 461 U.S. 321 (1983). See also State v. Cohen, 133 Me. at 302, 177 A. at 407 (discussing other exceptions).

such access. 274 A.2d at 720-21 (citing State v. Lemar, 147 Me. 405, 87 A.2d 886 (1952), and State v. Leavitt, 105 Me. 76, 72 A. 875 (1909)). Of central significance to the Law Court's opinion was the fact that the regulation concerned access to a kind of shellfish that are stationary, "having a relatively fixed location," as opposed to "other forms of ocean life which move freely in coastal waters off the several states." Id.¹⁸ Seemingly of equal significance was the fact that the enabling state legislation from which the ordinance arose was addressed to the creation of shellfish conservation programs, id. at 719, which provided the Law Court with a ready basis for concluding as a matter of law that the ordinance had some relation to the conservation of a municipal resource and was not merely promulgated to discriminate against nonresidents.

In this case the Court is presented with a controversy over access to privileges to moor vessels in navigable coastal waters administered by a municipal harbor authority. The exclusive rationale offered for the executive denial of the permits is that the state legislation says something it clearly does not say. Because the defendants fail to articulate any other rationale other than the state law justification for denying permits to the Griffins that were awarded to subsequent resident applicants, the factfinder could well infer that the challenged act was arbitrary. The remaining question is whether the permit denial was purposefully discriminatory, something that was motivated by its impact upon the Griffins as nonresidents seeking commercial access to the Harbor's resources. I conclude that the record contains sufficient facts from which the factfinder could rationally draw this conclusion. In the first instance, the stated rationale (the alleged 10% rule) depends on a misconstruction of a relatively straight-forward statutory provision. That misconstruction strains credulity sufficiently to be reasonably regarded as pretextual. A waiting list by its very nature presupposes there are no available moorings. In

¹⁸ It strikes me as strange that none of these cases were cited or even alluded to in the parties' summary judgment memoranda. This despite my prior suggestion that they take it upon themselves to conduct research into the matter. See Griffin v. Town of Cutler, 2005 U.S. Dist. LEXIS 17366, *34 (Docket No. 23).

addition, the record reveals a significant amount of controversy surrounding the Griffins' efforts to make commercial use of Cutler Harbor. A reasonable factfinder could conclude that at essentially every turn the Cutler Harbor Masters, the Cutler Harbor Committee and/or the Town reacted to the Griffins' efforts to access Cutler Harbor for commercial purposes with some measure designed to block such access. Most, if not all, of those reactionary measures were designed to discriminate against nonresidents generally or, more narrowly, those nonresidents hoping to make commercial use of the Harbor. Although most of these measures would not justify a federal case in their own right, they are all circumstantial evidence that a discriminatory purpose underlay the denial of the Griffins' applications for mooring permits. In addition to these factors, a factfinder could conclude that defendant Feeney, at all relevant times a Cutler harbor master, went so far as to interfere in the Griffins' private affairs by undermining their business relationship with Mr. Fitzhenry. In addition to this evidence there is the statement by Harbor Master Drouin regarding protecting the Harbor for residents,¹⁹ which a factfinder could reasonably regard as further evidence of an animosity toward the Griffins underlying the denial of the permit applications. This evidence of animosity toward commercial nonresident applicants harbored by two of Cutler's three harbor masters is more than sufficient when combined with the evidence of pretext to support a finding of purposeful discrimination.

Accordingly, I conclude that the Griffins have made out an equal protection claim on this record.

¹⁹ The Cutler Harbor Ordinance is silent on the issue of whether there should be a particular ratio of resident to non-resident, commercial to non-commercial moorings in existence at a given point in time. A town could have legitimate reasons relating to the allocation of scarce resources to limit the ratio of nonresidential commercial or noncommercial permits, subject to the state statute's minimum requirements. However, the state statute does not *require* the Town to limit nonresidential commercial moorings to 10% and the Harbor Masters repeatedly argue that they were compelled by state law to deny the permits. It appears to me that what caused the Harbor Masters to deny the permits was either the Town's own completely neutral but unwritten policy of applying the 10% rule to then existing moorings or the Harbor Master/Town's discriminatory animus toward the Griffins, motivated by financial interests. While the former may be constitutionally permissible and have a rational basis, the later would be a denial of equal protection of the law. If the 10% rule applied as a ratio to existing moorings does have a rational basis, it has not been articulated in these pleadings. The state statute, which speaks in terms of maintaining waiting lists when available space has been filled and giving priority to nonresidents for 10% of those slots, does not have any facial constitutional infirmity and the Griffins do not challenge the State statute's constitutionality.

B. Commerce Clause

Article I, section 8, clause 3 of the United States Constitution assigns to the federal government the power to regulate interstate commerce. The Supreme Court has recognized that this affirmative grant of power to Congress also implies a “negative” or “dormant” authority that restricts the ability of state and local governments to burden interstate commerce by impeding private trade in the national marketplace through local regulation or taxation. GMC v. Tracy, 519 U.S. 278, 287 (1997). Overarching all Commerce Clause cases is the purpose for which the Commerce Clause was enacted. That purpose, in a nut shell, is to ensure that every producer of goods or services “shall be encouraged to produce by the certainty that he will have free access to every market in the Nation [and that] every consumer may look to the free competition from every producing area in the Nation to protect him from exploitation by any.” H. P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 539 (1949). There are several categories of dormant commerce clause cases. One category involves protectionist regulations designed to give local enterprise a commercial advantage over out-of-state competitors. E.g., West Lynn Creamery v. Healy, 512 U.S. 186, 199-200 (1994) (invalidating a Massachusetts milk-pricing order where a tax on milk, though applied equally to in-state and out-of-state producers of milk, was joined with a subsidy that paid the entire tax assessment out only to in-state producers); Or. Waste Systems, Inc. v. Dep’t of Env’tl. Quality, 511 U.S. 93, 100-101 (1994) (invalidating statutory provision imposing a surcharge on disposal of waste generated out of state); Me. v. Taylor, 477 U.S. 131, 138 (1986) (holding that Maine statute prohibiting importation of live baitfish did not violate the Commerce Clause because the legislative scheme served a legitimate local purpose of preventing introduction of parasites and nonnative fish species, which purpose could not be

served through less restrictive measures). Based on the cases cited in the Griffins' opposition memorandum, this is the category in which they place their Commerce Clause claim.

The defendants assert in their motion for summary judgment that the dormant Commerce Clause has no application to this case. (Mot. Summ. J. at 10.) Although they do not articulate why that is so, I conclude that they are correct. Ordinarily, the threshold inquiry in cases of this category is “directed to determining whether [the regulation in question] is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental.” Philadelphia v. N.J., 437 U.S. 617, 624 (1978). This inquiry reflects the fundamental purpose of the Commerce Clause: preventing the Balkanization of the national economy. Although the record could well support a finding that the various circumstances that have arisen in Cutler Harbor grew out of efforts by locals to monopolize the resources of the Harbor, these discriminatory measures have an overwhelmingly local effect and are neither designed nor likely to cause anything more than an incidental impact upon interstate commerce. Certainly there is nothing in the record to establish any appreciable deleterious effect upon either nonresident commercial access to any Maine market or resident consumer access to any out-of-state goods and services. Instead, to the extent that any commercial interests are implicated by the facts of this case, those interests pertain much more directly to the privilege of accessing a harbor mooring for commercial fishing, something falling under the auspices of the Privileges and Immunities Clause of the Constitution, rather than the dormant Commerce Clause. For example, in Toomer the Supreme Court analyzed constitutional challenges related to access to commercial shrimp-fishing licenses and the imposition of certain state regulatory burdens that fell most heavily upon nonresident commercial operations. The Court concluded that the Commerce Clause was not violated by

differential treatment of nonresidents because the statute in question did "not discriminate against interstate commerce in shrimp, and [because] the taxable event, the taking of shrimp, occur[ed] before the shrimp can be said to have entered the flow of interstate commerce."

Toomer, 334 U.S. at 394-95. This holding reflects the fact, equally evident in this case, that activities or regulations incident to harvesting or producing goods are, in essence, pre-commercial, and thus do not fit well within the established commerce clause jurisprudence.²⁰

Like the circumstances in Toomer, the permit denials challenged here do not discriminate against interstate commerce in lobster and the restrictions imposed on nonresident access to Cutler Harbor occur before any relevant product is bound for market. Consistent with what the Supreme Court held in Toomer, I recommend that this Court grant summary judgment to the defendants on the Griffins' commerce clause claim. Inconsistent with what the Supreme Court did in Toomer, I do not go on to analyze this case in terms of the Privileges and Immunities Clause because the Griffins have not articulated any such claim in their summary judgment memorandum and have not alleged any such claim in their third amended pleading.

C. Qualified Immunity

Count V asserts a claim of a conspiracy on the part of defendants Drouin, Feeney and Cates, the three harbor master defendants, to violate the Griffins' civil rights. Drouin, Feeney and Cates assert that they are entitled to judgment against the claim based on the doctrine of qualified immunity. (Mot. Summ. J. at 14-15.) "Qualified immunity is a judge-made doctrine created to limit the exposure of public officials to damages actions, thereby fostering the

²⁰ There is a line of Commerce Clause cases addressed to the regulation of state resources, but these cases appear to concern state regulations that served to prevent or hinder the movement of state resources in interstate commerce. See Hicklin, 437 U.S. at 531-32 (discussing cases and "the mutually reinforcing relationship between the Privileges and Immunities Clause of Art. IV, § 2, and the Commerce Clause—a relationship that stems from their common origin in the Fourth Article of the Articles of Confederation and their shared vision of federalism") (footnote omitted).

effective performance of discretionary functions in the public sector." Pagan, 448 F.3d at 31.

Qualified immunity shields government employees performing their discretionary functions from civil liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1987). In other words, "the doctrine does not shield public officials who, from an objective standpoint, should have known that their conduct was unlawful." Pagan, 448 F.3d at 31. See also Davis v. Rennie, 264 F.3d 86, 113 (1st Cir. 2001) ("Qualified immunity protects state actors 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982))). The First Circuit Court of Appeals has prescribed the following "three-step algorithm" for judging an invocation of the defense:

[C]onsider (i) whether the plaintiff's allegations, if true, establish a constitutional violation; (ii) whether the constitutional right at issue was clearly established at the time of the putative violation; and (iii) whether a reasonable officer, situated similarly to the defendant, would have understood the challenged act or omission to contravene the discerned constitutional right.

Pagan, 448 F.3d at 31 (quoting Limone v. Condon, 372 F.3d 39, 44 (1st Cir. 2004)). See also id. n.5 (suggesting the possibility that the latter two steps might be collapsed into one and citing Higgins v. Penobscot County Sheriff's Dep't, 446 F.3d 11 (1st Cir. 2006) (Howard, J., concurring)). I have already concluded that a viable equal protection claim is established in the summary judgment record. Thus, the question is whether the right was clearly established such that a reasonable harbor master would have known that denying the Griffins' mooring permit applications would have violated the Griffins' constitutional right to equal protection. The cases cited in the foregoing equal protection discussion, much of it Maine state case law interpreting the equal protection clause of the Fourteenth Amendment, reflect that it was clearly established

in the State of Maine as of 2004 and 2005 that the nonresident status of an applicant for a state privilege cannot be used as a disqualifying factor unless a residency requirement bears some rational relationship to a proper governmental objective and that the denial of such a privilege to a nonresident for no better reason than to discriminate against nonresidents violates the Equal Protection Clause. To be sure, the defendants assert that they were simply following the mandate of the Harbor Masters Act, not purposefully discriminating against the Griffins. If the factfinder believes that it was simply an honest, but mistaken reading of the Act, then the finding will be that there was no purposeful discrimination. But the record, viewed in the light most favorable to the Griffins, could support a finding that that explanation is specious because it is directly contrary to the plain language of the Act. Keeping in mind that the qualified immunity test is meant to be an objective one, under these circumstances I conclude that a reasonable harbor master in the defendants' position would have recognized that the arbitrary denial of mooring permits to the Griffins, motivated by animus toward them as non-residents seeking to make commercial use of the harbor, constituted purposeful discrimination based on nonresidency in violation of the Griffins' right to equal protection under the Maine case law I have cited. Accordingly, I conclude that Drouin, Cates and Feeney are not entitled to qualified immunity.

D. The Declaratory Judgment Claim

"The Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 . . . , empowers a federal court to grant declaratory relief in a case of actual controversy." Ernst & Young v. Depositors Econ. Protection Corp., 45 F.3d 530, 534 (1st Cir. 1995). However, the Declaratory Judgment Act "neither imposes an unflagging duty upon the courts to decide declaratory judgment actions nor grants an entitlement to litigants to demand declaratory remedies." El Dia, Inc., v. Hernandez Colon, 963 F.2d 488, 493 (1st Cir. 1992). Thus, "the discretion to grant declaratory relief is to

be exercised with great circumspection when matters of public moment are involved . . . or when a request for relief threatens to drag a federal court prematurely into constitutional issues that are freighted with uncertainty." Ernst & Young, 45 F.3d at 535 (citations omitted). The defendants do not raise any of these prudential concerns in their motion for summary judgment. Nor does it appear to me that there is cause for the Court to be concerned over them. The only declaratory relief that may be called for in this case is very circumscribed, despite the breadth of the Griffins' request.

With Count VI the Griffins ask the Court to declare that sections 3-B and 5 of the Cutler Harbor Ordinance now in effect are *ultra vires* and unconstitutional. They also take the position that the entire ordinance should be declared null and void because the Town of Cutler has never mapped the Harbor and no one has ever complained that their mooring sites were being invaded. (Pls.'s Opp'n Mem. at 44-46.) This three-page argument is not supported by a single case citation. The Town of Cutler responds that its Harbor Ordinance and all of the amendments to it that occurred during the time period relevant to this lawsuit are consistent with the authority delegated under the Harbor Masters Act and with Maine's home rule precepts. (Mot. Summ J. at 15-17.) There can be no serious dispute concerning the fact that Cutler has the power to regulate Cutler Harbor. Pursuant to Maine law:

Any municipality, by the adoption, amendment or repeal of ordinances or bylaws, may exercise any power or function which the Legislature has power to confer upon it, which is not denied either expressly or by clear implication, and exercise any power or function granted to the municipality by the Constitution of Maine, general law or charter.

30-A M.R.S.A. § 3001. This same statutory provision establishes that "[t]here is a rebuttable presumption that any ordinance enacted under this section is a valid exercise of a municipality's home rule authority." Id. § 3001(2). In addition to this provision of state law, the Maine

Constitution similarly affords local municipalities with the power of "municipal home rule." Me. Const. Art. VIII § 1.²¹ In addition to this presumptive home rule authority, section 7 of the Harbor Masters Act provides that "[n]othing in [the Harbor Masters Act] may be construed to be a limitation on the authority of municipalities to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors." 38 M.R.S.A. § 7. Section 7 goes on to provide a nonexclusive list of harbor matters that may be regulated by ordinance, including procedures for assigning and locating mooring privileges and the establishment of waiting lists. In the face of this authority, the Griffins assert that Cutler cannot lawfully regulate the Harbor at all until such time as it establishes channel lines in accordance with section 3 of the Harbor Masters Act. The relevant portion of section 3 (the first paragraph) addresses the circumstances under which harbor masters must assign or reassign specific mooring locations to vessel owners. The language does nothing to limit the authority of harbor masters to assign specific mooring locations of their own initiative, much less to take away any regulatory power held by the municipality. The contention that the Court should declare the entire Cutler Harbor Ordinance to be unconstitutional presents an utterly hollow legal claim and summary judgment should enter against it in favor of the defendants.²²

What remains of Count VI are the Griffins' more narrow challenges to the prohibition against rental moorings, which is found in section 3-B of the Ordinance, and the prohibition against non-resident commercial use of the municipal boat ramp for any purpose other than

²¹ As for the State's authority to regulate navigable coastal waters, it appears to be generally recognized that the states have concurrent jurisdiction with the federal government over coastal waters within the limits of the submerged continental shelf. Hawaiian Navigable Waters Pres. Soc'y v. State of Haw., 823 F. Supp. 766, 771 (D. Haw. 1993) (discussing the jurisdictional implications of the Submerged Lands Act, 43 U.S.C. § 1311 *et seq.*)

²² The Griffins criticize the defendants' defense of this claim as offering "little to support" their contentions (Pls.' Opp'n Mem. at 46), but it is the Griffins' burden to establish the unconstitutionality of the Cutler Harbor Ordinance. Town of Baldwin v. Carter, 2002 ME 52, ¶ 9, 794 A.2d 62, 66-67, and it can fairly be said that their three-page challenge offers little indeed to support a declaration that the presumptively legal Ordinance is null and void.

launching or hauling out a boat, which is found in section 5. As for the rental mooring issue, the Griffins present no principled argument whatsoever why the prohibition against private renting of mooring privileges or the lending of mooring privileges to another is in violation of any constitutional right. The Ordinance provides that the use of another's mooring may be made by leave of a harbor master based upon extenuating circumstances. This provision is facially neutral with respect to residency status and I fail to see how it is inherently at odds with any constitutional principles. The boat ramp challenge has traction, however, precisely because of the facially discriminatory treatment accorded to nonresidents seeking to use the municipal boat ramp for commercial purposes. Although the section is worded neutrally and fairly in its first five paragraphs, according equal access to the boat ramp to both residents and nonresident for both recreational and commercial use, the final paragraph reads as follows:

Prohibited Commercial Activities: Non-Resident commercial fishing or any other commercial use of the Town of Cutler Boat Ramp is prohibited, excepting for the sole purpose of launching or hauling out a boat.

(Cutler Harbor Ordinance § 5, Ex. P32, Docket No. 56.) The Ordinance thus closes with a prohibition that is flatly discriminatory against nonresidents seeking to use the boat ramp for commercial purposes, after according unrestricted commercial access to the ramp for residents. As a municipal asset, the Town of Cutler's boat ramp most logically belongs in the second category of equal protection cases outlined above, those in which the state is conditioning access to something the state has a proprietary interest in. There can be little doubt that the Town may condition the use of its own boat ramp by imposing licensing requirements and fee requirements on those who would use the ramp. See, e.g., Packet Co. v. Keokuk, 95 U.S. 80, 84-86 (1877) (addressing a commerce clause claim challenging the fees charged for use of a public wharf and observing that it is "something imposed by virtue of sovereignty" (such as the right to exclude

others) that is "prohibited" in these circumstances, not the imposition of reasonable fees). In this case the Griffins have not been excluded entirely from using the boat ramp. Instead, they are restricted in their ability to use the ramp for certain activities related to commercial use of the Harbor. This treatment arises exclusively from their residency status and the prohibition is plainly discriminatory. There is nothing in the Ordinance that relates the restriction to any rational justification. The only rationale potentially afforded in the Ordinance is found in the Ordinance's statement of purpose, which is stated in terms of providing "for best use of the harbor for local activities" and promoting "availability and use of valuable public resources." Although the later rationale makes reference to the availability and use of resources, it does not provide any rationale for excluding nonresidents, such as for fisheries conservation. Nor does it appear from the record that the State of Maine has linked municipal harbor management authority to any state initiative to preserve the coastal fisheries.²³ All that remains is the mere purpose of prohibiting nonresident commercial use for the purpose of discriminating against nonresident commercial fishermen. Based on the cases discussed in the foregoing discussion of the Griffins' equal protection claim, that rationale is insufficient and cannot support an entry of summary judgment for the municipal defendants. Nevertheless, it would be appropriate for the Court to uphold the discriminatory provision provided that there exists some conceivable state of facts that could provide a rational basis for disparate treatment of commercial fishermen. The Town of Cutler was not required to articulate the rationale for its classifications in its Ordinance. Heller v. Doe, 509 U.S. 312, 320-21 (1993). "Instead, a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Id. at 320 (quoting FCC v. Beech Communications, 508

²³ The State has licensed the Griffins to engage in commercial lobster fishing in the coastal zone off Cutler. (DSMF ¶ 139.)

U.S. 307, 313 (1993)). It is the burden of the challenger to "negative every conceivable basis which might support it." Id. (citation omitted). In other words, the Court is not required to engage in fact finding to determine this dispute. It may simply use its reason to judge the parties' arguments. The trouble in this case, however, is that the Town of Cutler has failed to articulate any rationale whatsoever to support the prohibition. Thus, even though the Griffins must negative all rational justifications for the prohibition at issue, it is still expected that the defendant will articulate some rational basis for the plaintiff to contend with. At least I do not interpret the standard set forth in Heller v. Doe to mean that the defendant can remain silent, forcing the defendant to anticipate every possible argument that might occur to the Court. The defendant must at least participate in the legal analysis, even if it does not have to shoulder any evidentiary burdens. Unfortunately, in this case the defendant s have essentially disregarded the boat ramp matter. In their motion for summary judgment they merely deny that the Griffins have been denied use of the ramp.²⁴ (Mot. Summ. J. at 10 n.7 & 11.) In their reply (Docket No. 64), the Town makes no reference whatsoever to the boat ramp prohibition in question, despite the fact that the Griffins make specific reference to this discriminatory Ordinance provision. In effect, the Town nowhere articulates any rationale related to the disparate treatment imposed on nonresident commercial users of its boat ramp. Instead, it seems intent to pretend the issue does not exist. In my view, the result is that the Court cannot avoid finding for purposes of summary judgment that discrimination against commercial nonresidents, pure and simple, is the only reason for this particular Ordinance provision. Although I can think of many valid reasons why a town might want to prohibit or restrict the use of the municipal boat ramp for commercial purposes, I cannot think of any reason why residents would contribute any less to the harm

²⁴ The challenge to the Ordinance's boat ramp provision is a facial challenge to its legality. The Griffins need not attempt to make a prohibited use of the boat ramp in order to support this legal claim. Russo, 93 F. Supp. at 558-59.

sought to be avoided than would nonresidents. In the absence of any presentation whatsoever (and without imposing any burden of production on the Town), I do not see how it would be appropriate to grant summary judgment to the Town on this limited aspect of Count VI.

Accordingly, I recommend that the Court deny summary judgment on Count VI to the extent that the Griffins are requesting that the Court declare unconstitutional the final paragraph of section 5 of the Cutler Harbor Ordinance which prohibits only nonresidents from making commercial use of the municipal boat ramp for any purpose other than launching or hauling out a boat and grant summary judgment to the Town on all other aspects of the count.

Tortious Interference (Count VII)

The Griffins level their "tortious interference" claim against Drouin, Feeney, Cates and Taylor, individually. "Tortious interference" is a shorthand reference to the commercial tort that is more properly described as "interference with advantageous economic relationships" or "interference with advantageous business relationships." See James v. MacDonald, 1998 ME 148, ¶¶ 6-7, 712 A.2d 1054, 1057; Donald N. Zillman et al., Maine Tort Law § 11.09 (1994). In order to succeed with such a claim, the plaintiff must demonstrate "the existence of a valid contract or prospective economic advantage, interference with that contract or advantage through fraud or intimidation, and damages proximately caused by the interference." James, 1998 ME 148, ¶ 7, 712 A.2d at 1057 (quoting Barnes v. Zappia, 658 A.2d 1086 (Me. 1995)). A prospective economic advantage includes ongoing business relationships that are not bound by a legally enforceable contract. Id. The defendants focus their challenge to this claim on the allegation that they interfered with plans for the Griffins to purchase the Fitzhenry wharf. (Mot. Summ. J. at 17-18.) The Griffins respond that the claim is supported by the alleged cutting of

their trap lines, by the defendants' efforts to get the Griffins "barred from the Fitzhenry pier," and by all of the various administrative measures undertaken by the defendants in their official capacities to prevent the Griffins from obtaining moorings and making effective use of Cutler Harbor and its boat ramp. (Pls.' Opp'n Mem. at 46-47.)

Contrary to what is asserted by the Griffins in their third amended pleading at paragraph 124, the allegations concerning the defendants' complicity in the cutting of the Griffins' traps do not have any tendency to support a claim for tortious interference with an advantageous business relationship. The alleged cutting of the Griffins' traps cannot support a claim for interference with a business relationship because the cutting of traps is not material to the undoing of the Griffins' business relationship with any other business entity. The conduct complained of is really a species of conversion, not interference. For a similar reason, the tort is not made out by a showing that the defendants wrongfully prevented the Griffins from obtaining permits and utilizing the Harbor and boat ramp. Such conduct did not amount to fraud or intimidation and it did not undermine any relationship the Griffins had with another business entity. As for the Griffins' contention that the interference claim is supported by the circumstances surrounding the falling-through of their plans to purchase the Fitzhenry wharf, the record indicates that Mr. Fitzhenry did not call off the deal due to fraud or intimidation, but that the Griffins decided not to go forward with it based on the logical deduction that they could not depend on the patronage of resident lobster fisherman and could not generate sufficient business from nonresident fishermen. Although I believe the Court should foreclose these more curious aspects of the Griffins' tortious interference claim, I believe the Court should deny the motion for summary judgment because the record is capable of supporting a finding that defendants Feeney and Taylor used intimidation to pressure Mr. Fitzhenry to discontinue his longstanding business

relationship with the Griffin brothers (supplying bait, affording mooring privileges and buying lobsters) and that the severance of this relationship resulted in economic harm for the Griffins. However, I see no reason why summary judgment should be denied to defendants Drouin and Cates because there is no evidence in the record linking them to such intimidating conduct. Accordingly, it is my recommendation that summary judgment be granted in favor of defendants Drouin and Cates on Count VII, but denied with regard to defendants Feeney and Taylor.

Unfair Trade Practices (Count VIII)

The Griffins have abandoned their unfair trade practices claim. (Pl.'s Opp'n Mem. at 47.) I therefore recommend that the Court grant the defendants' motion for summary judgment against Count VIII.

Conclusion

For the reasons stated herein, I recommend the following disposition of the defendants' motion for summary judgment:

- (1) *Rule 80B petition (Counts I, II & III)*: DENY the motion in regard to Count I; GRANT it in regard to Count II; and DENY it in regard to Count III.
- (2) *Section 1983 (Counts IV & V)*: GRANT the motion, IN PART, by entering judgment in favor of the defendants on the Commerce Clause theory and DENY the motion with respect to the equal protection theory.
- (3) *Declaratory judgment (Count VI)*: GRANT the motion, IN PART, by entering judgment against all aspects of this claim other than the request that the Court declare unconstitutional the final paragraph of section 5 of the Cutler Harbor Ordinance.
- (4) *Tortious interference (Count VII)*: GRANT the motion in favor of John Drouin and Robert Alan Cates, but DENY summary judgment to Patrick Feeney and Alan Taylor.
- (5) *Unfair trade practices (Count VIII)*: GRANT summary judgment against this claim.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/Margaret J. Kravchuk
U.S. Magistrate Judge

September 15, 2006

GRIFFIN et al v. TOWN OF CUTLER et al

Assigned to: JUDGE JOHN A. WOODCOCK, JR

Case in other court: Washington County Superior Court,
AP-04-00005

Cause: 28:1441 Notice of Removal

Date Filed: 03/25/2005

Jury Demand: Plaintiff

Nature of Suit: 440 Civil Rights:
Other

Jurisdiction: Federal Question

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