



March 27, 2013

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The Honorable Fred Dyson, Chair
The Honorable Cathy Giessel, Vice-Chair
Senate State Affairs Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

via email: Sen.Fred.Dyson@akleg.gov
Sen.Cathy.Giessel@akleg.gov

Re: **Senate Bill 73 – ACLU Review**
Inclusion of Same-Sex Domestic Partners

Chair Dyson and Vice-Chair Giessel:

Thank you for the opportunity to submit written testimony regarding Senate Bill 73, a bill relating to property tax exemptions for the widow or widower of a person who was killed while in the military service.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. SB 73 sensibly and compassionately addresses the special needs of Alaska's military families. However, the ACLU would request that the Senate State Affairs Committee make a minor amendment to this important legislation to recognize those military families headed by same-sex domestic partners.

We would be happy to work with you or the Committee to answer any questions you might have.

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Equal Treatment of Domestic Partners

Pursuant to the Alaska Supreme Court's ruling in *Alaska Civil Liberties Union v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005) ("*AkCLU v. State*"), military families headed by same-sex domestic partners are entitled to those benefits accorded to families headed by opposite-sex married couples.

The Alaska Supreme Court established that same-sex domestic partners must be treated on equal footing with married couples in the provision of government benefits. The Court held that differential treatment violated the Equal Protection Clause of the Alaska State Constitution, since individuals "in committed same-sex relationships are absolutely denied any opportunity to obtain [government] benefits, because [they] are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska." *AkCLU v. State*, 122 P.3d at 788.

Please note that, in reaching this conclusion, the Court found that treating same-sex couples differently from heterosexual married couples with respect to employment benefits was unconstitutional *and did not survive even the most minimal level of constitutional scrutiny*. *Id.* at 783, 786–87.

Authorization for Municipal Exemption of Taxation on \$150,000 of Home's Assessed Value

Under SB 73:

. . . A municipality may by ordinance approved by the voters grant the exemption under this subsection to the widow or widower under 60 years of age of a person who qualified for an exemption under (2) of this subsection or to a resident who is at least 60 years of age and the widow or widower of a person who was killed while in the military service of the United States.

This language should be amended to reflect the Supreme Court's decision in *AkCLU v. State*.

By revising the Bill to include, where applicable, "same-sex domestic partner," the Alaska State Legislature would avoid creating a constitutional conflict with the Alaska Supreme Court's ruling in *AkCLU v. State*. Moreover, the Legislature will appropriately recognize and honor all military families, including those which were headed by couples in committed same-sex partnerships.

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Repeal of “Don’t Ask, Don’t Tell”

Further, following the repeal of “Don’t Ask, Don’t Tell,” the United States military is quickly moving to ensure that all soldiers, sailors, airmen, and Marines – no matter their sexual orientation – are treated with the dignity and respect that their service to country deserves.

We would expect no less from the Alaska Legislature.

Conclusion

We hope that the Senate State Affairs Committee will consider our comments on SB 73.

Please feel free to contact the undersigned should you require any additional information. And, again, we are happy to answer informally any questions that Members of the Committee may have.

Thank you again for the opportunity to share our concerns.

Sincerely,



Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator John Coghill, Sen.John.Coghill@akleg.gov
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