

Alaska Department of Law

HB 164: **Outline of Potential Issues as a Result of *Schmidt v. State***

March 18, 2013

The constitutionality of the existing senior citizen and disabled veteran property tax exemption statute, AS 29.45.030(e), and its interpreting regulation 3 AAC 135.085, have been called into question by the Anchorage Superior Court holding in *Schmidt et al., v. State & Municipality of Anchorage*, 3AN-10-09519CI (Sept. 2011). In *Schmidt*, the plaintiffs, three same-sex couples who are homeowners in Anchorage, brought a complaint alleging that they were being forced to pay more property taxes than similarly situated married couples in violation of their constitutional rights to equal protection and privacy. The plaintiffs asked the court to require the state and the Municipality of Anchorage (MOA) to apply the tax exemption provided in AS 29.45.030(e) as interpreted under 3 AAC 135.085, as if they were in marriages that the state recognizes.

The court in *Schmidt* broadened the holding of *Alaska Civil Liberties Union v State of Alaska*, 122 P. 3d 781 (Alaska 2005), which found the spousal limitations in the state's and Municipality of Anchorage's employment benefits programs unconstitutional, to hold that any "marital classification facially discriminates based on an individual's sexual orientation" and is therefore invalid as a violation of the equal protection clause. Although the plaintiffs in *Schmidt* did not challenge the exemption's widow/widower classification, the court nevertheless ruled it was unconstitutional. This case is currently on appeal before the Alaska Supreme Court (*State of Alaska et al. v. Schmidt et al.*, Supreme Court Case No. S14521). The case has been fully briefed and argued and is ripe for a decision. The superior court decision and the state's Supreme Court brief are attached.