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Dear Members of the Alaska Legislature:

The State of Alaska rightly prides itself on its support of the military, especially in allowing for extended absences for military service and the receipt of PFDs. One Department of Revenue Administrative Law Judge (ALJ) declared:

The Department of Revenue supports an individual's choice to serve in the military and does not believe a person should be forced to choose between service to their country and maintaining their Alaska residency for PFD eligibility purposes.¹

However, since AS43.23.008(c) became law during the 20th Legislature in 1998, the state has forced many military personnel to choose between the two. Recently, another ALJ confirmed the significant problems that the "ten-year rule" has caused by stating, "*This statute places career military personnel in the difficult position of choosing between service to country and receiving a PFD.*"²

In 2008, I was denied a PFD because of AS43.23.008(c). For the first time in 18 years, I was placed in the difficult position of continuing service to country and receiving a PFD. With nearly two decades of active military service behind me at that point, I chose service to country. As a result, my 2010, 2011, and 2012 PFD's, and those of my children, have been denied as well.

I hope that my personal story, combined with some thoughts on how AS43.23.008(c) unfairly penalizes those in the military, will help convince you to support House Bill #52. This bill seeks to right the wrong made in 1998 and stop forcing career military Alaskans to choose between service to country and receiving a PFD.

I was born in Anchorage, Alaska, in 1972, and grew up on the Hillside. While in high school, I determined that I wanted to serve our country in the U.S. Armed Forces. I was nominated to the U.S. Naval Academy (USNA) by former Senator Frank Murkowski and current Congressman Don Young. The late Senator Stevens nominated me for the U.S. Military Academy as well, but I chose to attend USNA with a goal of becoming a career U.S. Marine. My temporary, but extended, absence from Alaska began in 1990 when I started school in Annapolis, MD. I graduated USNA and was commissioned into the U.S. Marine Corps in 1994. I have served our country around the world for the last 18+ years, including six overseas deployments. I have served in Operation IRAQI FREEDOM twice. I am currently stationed with my family in Okinawa, Japan.

Since leaving Alaska at age 17 to serve in the military, I have made dozens of well-documented, non-compulsory visits back to the state. In the last five years alone, I have traveled home for over 75 days, well-exceeding the criteria of the state's "72-hour" and "five-year" rules. Most recently, in 2012, I traveled to the state twice, spending over a month in Anchorage taking care of my dying mother, Barbara. I received the first PFD given to Alaskans in 1982 (remember that first \$1000?) and received one every year until denied in 2008. I have possessed a valid Alaska Driver's License since I was 16 years old. I am registered to vote in Alaska and have voted in Alaska elections for over 20 years. I have titled, registered, and licensed every vehicle I have owned in Alaska since my first truck in 1992. My Last Will and Testament will be executed in the state upon my death. In addition to these continuous and extensive "paper ties," I have significant "physical ties." My

¹ See Enclosure (1), OAH No. 09-0400-PFD, pg 2.

² See Enclosure (2), OAH No. 10-0020-PFD, pg 3.

father lives in Alaska and has lived there continuously since 1968. My two brothers live in Alaska. Since 1999, I have also owned real property in Alaska—part ownership in cabins and five acres of land near Glenallen. My wife, kids, and I most recently enjoyed caribou hunting with my Dad and siblings at our property near Lake Louise following my Mom's death in September 2012.

I am currently stationed overseas, but Alaska is, always has been, and always will be, my state of legal residence and my Home of Record. On all of my PFD applications since entering the service in 1990, I have consistently provided adequate documentation to overcome the state's presumptions on loss of residency at five years. In addition, for the past 20 years, I have signed sworn statements on the PFD applications that I have every intention of returning and retiring in Alaska upon the completion of my military career. And yet, for the last four years, I have been denied a PFD because of the "ten-year rule."

AS43.23.008(c) is discriminatory and makes little public policy sense for the following reasons:

1. Current military retirement benefits are only accrued after 20 years of active service, not before. Therefore, if someone leaves the service after 10 years, he or she gets nothing other than the military experience. However, many personnel who complete at least 10 years of service will consider themselves "over the hump" and choose to "go to 20" to capture federal retirement benefits and maximize his or her service to the country. When the state's identified goal is to encourage long-term residency, having a 10-year cap on PFDs actually discourages long-term residency among military personnel, since most are apt to give up their Alaska residency after a decade and establish it elsewhere. Texas or Florida also have large retired and veteran military populations and are very appealing not because of their warm weather but because of their extensive pro-military benefits (tax free federal retirement, free in-state tuition, etc.). Alaska, in other words, is deterring the return of its career veterans which in turn robs the state of valuable experience. Wouldn't you prefer to encourage those military veterans to instead maintain residency in Alaska during their career so that they can bring that knowledge back to the state when they leave the service?

2. More specifically, each year, Alaska's two US Senators and one US Congressman nominate over a dozen Alaskan high school graduates to the US service academies. The application procedures are stringent and the competition is keen. Do we appoint qualified Alaskans to the service academies with the hope that they complete the five-year minimum service and resign at the first opportunity a.k.a. "five and dive?" I trust not. I think you would agree that the State of Alaska desires these appointees to graduate West Point, Annapolis, and Colorado Springs, agree to serve for 20 years or more, retire, and then bring that education and those experiences back to Alaska for the long-term benefit of the state. Ironically, the "ten-year rule" denies PFDs to Alaskans, who in good faith, pursued a lengthy military career, yet eternally awards PFDs to the Congressmen and staff who nominated them!

3. More generally, under Chapter 40, Title 10, US Code, members of the armed forces are entitled to leave at the rate of 2 ½ calendar days for each month of active service, which equates to 30 days of earned leave per year. Except as specifically authorized by the Secretary of Defense, any leave accumulated in excess of 75 days is lost at the end of every fiscal year. Additionally, the maximum amount of leave a military member can take at any point is generally limited to 60 days. This means that because of Federal law, military personnel can never comply with the 180-day in-state requirement of the statute while remaining on active duty, unless the service member is able to get stationed in the State at some point in his or her career. Isn't due process denied when there is no opportunity for compliance? Of course, getting assigned to Alaska seems easy, since...

4. As you know, Alaska has several military bases. In fact, according to its website, over 21,000 military personnel are stationed in Alaskan Command. No doubt, nearly every day, you have seen countless US Army and US Air Force personnel around Anchorage and Fairbanks. Soldiers and Airmen have thousands of opportunities to return to Alaska and get stationed here on a routine basis, allowing them to "reset the ten-year clock" during a 20-year career. Unfortunately, US Marine Corps and Navy personnel have extremely limited opportunities. Over the holidays, you probably saw Marines in Dress Blue uniforms soliciting

for Toys for Tots, but nearly every one of those Marines are reservists. In fact, there are only a handful Navy and Marine Corps personnel actively stationed in Alaska. Simply put, AS43.23.008(c) actually discriminates between branches of the armed forces since, as a Marine, I don't have nearly the same opportunities to fulfill my career in the state as a Soldier or Airman. Isn't the denial of opportunity the very definition of discrimination?

I have spent the last four years fighting against and attempting to change AS43.23.008(c) through the administrative appeals process and the Alaska judicial system. As many of you know, I recently lost my Alaska Supreme Court appeal for my 2009 PFD. A minor setback, I will continue to press forward with the appeals on my 2010, 2011, and 2012 PFDs until the law is changed. I believe strongly that the current statute unfairly penalizes career military personnel for the reasons noted above. For good measure, I have applied for my 2013 PFD and those of my children just as I always have done.

But I could certainly use your help in the legislative arena. Since the judicial branch doesn't seem interested in declaring AS43.23.008(c) unconstitutional, perhaps the distinguished members of the Alaska Legislature could repeal the statute altogether? Recognizing the primacy of legislative action while denying my 2009 PFD appeal, Administrative Law Judge Jeffrey Friedman noted:

Military personnel are federal employees who are serving their country in positions as honorable as those working in Congress. The legislative history does not indicate why Congressional staff and Members of Congress were excluded from subsection (c)... Whatever the reason, deciding which out-of-state residents qualify for a PFD is a policy question that is appropriately left to the legislature to resolve.³

Recently, the state openly acknowledged that certain careers, other than Congressmen, may require an Alaskan resident to remain out of state for a longer duration than 10 years. Lisa Moritz Kirsch, Legislative Counsel, Division of Legal and Research Services in a Memorandum on Constitutional Issues dated March 18, 2011, recently argued:

Members of Congress and active duty military are somewhat unique in that their career choices put them in the position of serving government in a place other than their chosen state of residence. Also, Congressional and military service are more likely to span a term longer than a decade when compared with education or illness related absences.⁴

I hope that you consider my personal story and the information presented above and decide to resolve this policy question in favor of some of us Alaskans with "unique" career choices. Please help stop career military Alaskans from having to choose between service to country and receiving a PFD.

It is the right thing to do.

Sincerely, and Semper Fidelis,



Brian A. Ross
Lifelong Alaskan
US Marine

**** The views expressed in this letter represent the views of a private Alaskan resident who serves as a US Marine and do not constitute official endorsement by the Department of Defense or the US Marine Corps.

³ See Enclosure (2), OAH No. 10-0020-PFD, pg 4.

⁴ See Enclosure (3), HB190 Legal Opinion, pg 2. See also footnote 16 in Enclosure (2), OAH No. 10-0020-PFD, pg 3.