

COMMITTEE REPORT
HOUSE

FURTHER:

(11)

4/13/83

Date:

4/27/83

Mr. Speaker:

The Committee on FINANCE has had SSHB 56

An Act relating to scholarship loans.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for SSHB 56 (FINANCE) same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

CHAIRMAN

Original sponsors: Lindauer, Uehling,
Furnace and Wendte

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 56 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to scholarship loans; and providing
7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 14.43.120(f) is amended to read:

10 (f) Interest on a loan made [GIVEN] under AS 14.43.090 - 14.43.-
11 160 is at the rate of eight [FIVE] percent a year.

12 * Sec. 2. AS 14.43.120(k)(2) is amended to read:

13 (2) serving a first enlistment period of up to four years
14 on active duty as a member of the armed forces of the United States;

15 * Sec. 3. AS 14.43.125 is repealed and reenacted to read:

16 Sec. 14.43.125. ELIGIBILITY OF STUDENTS. A person may apply for
17 and obtain a scholarship loan if the person

18 (1) is

19 (A) enrolled as a full-time student in a career educa-
20 tion, or associate, or baccalaureate, or graduate degree program;
21 or

22 (B) a graduate of a high school, or the equivalent, or
23 scheduled for graduation from a high school within six months,
24 with sufficient credits to be admitted to a career education
25 program or to an accredited college or university;

26 (2) is not delinquent or in default on a previously awarded
27 scholarship loan; and

28 (3) is a resident of the state at the time of application
29 for the loan. For purposes of this section, a person qualifies as a

1 resident of the state if at the time of application for the loan the
2 person

3 (A) has been physically present in the state for at
4 least two years;

5 (B) is dependent on a parent or guardian for care, and
6 the parent or guardian has been present in the state for at least
7 two years; or

8 (C) has been physically present in the state for at
9 least two years immediately before being absent from the state
10 and the absence is due solely to

11 (i) military service;

12 (ii) volunteer service under the Peace Corps Act;

13 (iii) volunteer service under the Domestic Volun-
14 teer Service Act of 1973;

15 (iv) attending a school as a full-time student;

16 (v) full-time employment by the state or its
17 congressional delegation; or

18 (vi) required medical care for the applicant or
19 the applicant's immediate family.

20 * Sec. 4. AS 14.43.130 is repealed and reenacted to read:

21 Sec. 14.43.130. SELECTION CRITERIA. (a) The selection commit-
22 tee shall grant loans based on total point accumulations under this
23 section with priority going to those applicants with the highest point
24 accumulations, except as provided in (b) of this section. Points
25 shall be awarded according to the following schedule:

26 (1) Alaska high school graduates and continuing undergrad-
27 uate and graduate students with existing Alaska scholarship loans
284 points
29

- 1 (2) continuing undergraduate and graduate students without
2 existing Alaska scholarship loans3 points
3 (3) first year undergraduate students2 points
4 (4) new graduate students without existing Alaska scholar-
5 ship loans1 point
6 (5) students attending Alaska colleges or universities ...-
71 point

8 (b) The selection committee shall award loans to applicants
9 based upon the earliest date of completed applications if the appli-
10 cant has filed a completed application not later than May 15 of the
11 year for which the loan is requested.

12 * Sec. 5. AS 14.43 is amended by adding a new section to read:

13 Sec. 14.43.132. **FEDERALLY INSURED LOANS ENCOURAGED.** Whenever
14 possible scholarship loans made under AS 14.43.090 - 14.43.160 shall
15 be federally insured.

16 * Sec. 6. AS 14.43.160 is amended by adding a new paragraph to read:

17 (9) "committee" means the student financial aid committee
18 of the Alaska Commission on Postsecondary Education.

19 * Sec. 7. If the two-year residency requirement for scholarship loans
20 provided by AS 14.43.125 is declared unconstitutional or otherwise invalid
21 by a court of competent jurisdiction, the Commission on Postsecondary
22 Education shall adopt regulations to impose the most stringent residency
23 requirement allowable under the Constitution of the State of Alaska and the
24 United States Constitution on scholarship loan applicants.

25 * Sec. 8. This Act takes effect July 1, 1984.

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/12, 1983

I. REQUEST

Bill/Resolution No.: CSSSHB 56 (FIN)
 Title: Act Re: Student Loans
 Sponsor: Lindauer
 Requestor: House Loan Committee

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Postsecondary
 BRU, Program of Subprogram(s) Affected: Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL	N.A.	-0-	-0-	(93.5)	(372.5)	(1,562.8)
REVENUE	N.A.	-0-	-0-	93.5	372.5	1,562.8

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	N.A.	-0-	-0-	(93.5)	(372.5)	(1,562.8)
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME	N.A.					
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg Phone: 465-2854
 Division: Commission on Postsecondary Education Date: 4/12/83
 Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

CSSSHB56 (Revised 4/12/83)

IV Analysis:

(a) Increasing interest from 5% to 8%

FY84	\$0	FY87	\$(372.5)
FY85	\$0	FY88	\$(1,562.8)
FY86	\$(93.5)	FY89	\$(3,210.2)

The following individuals are expected to testify on CS
SS HB 56 (Loans):

Representative John Lindauer, prime sponsor

Representative Rick Uehling, Chair, House Special
Committee on Loans

Kerry Romesburg, Executive Director, Alaska Commission
On Postsecondary Education

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SSHB 56 Date on Bill: 2/25/83
 Title: An Act relating to scholarship loans
 Sponsor: Lindauer
 Requestor: House HESS

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Capital		34,195.3	40,656.2	43,845.6	46,943.7	49,273.5
Operating						
Total	N.A.					

b. Revenues:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
Revenue	N.A.	0	0	62.3	248.3	1,041.8

2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

a. Raising interest to 7%: FY 87 \$ 248.3
 FY 88 \$1,041.8
 FY 86 \$62.3 FY 89 \$2,140.1

b. Removing loan maximum: FY 84 \$34,195 FY 87 \$46,943
 FY 85 \$40,656 FY 88 \$49,273
 FY 86 \$43,845 FY 89 \$51,949

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Kerry D. Romesburg Phone: 465-2854
 Division: Commission on Postsecondary Education Date: 3/1/83

Approved by Commissioner: _____ Date: _____
 Department: _____

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
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2/15/83

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSSS HB 56
 Title: An Act Re: Scholarship Loans
 Sponsor: Lindauer
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Postsecondary Comm.
 BRU, Program of Subprogram(s) Affected: Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL	N.A.	52.5	(1,572.7)	(2,190.6)	(3,364.8)	(11,861.9)
REVENUE	N.A.	0	1,647.2	2,066.2	2,955.4	11,061.8

FUNDING: (Thousands of Dollars)

GENERAL FUND	N.A.	52.5	(1,572.7)	(2,190.6)	(3,364.8)	(11,861.9)
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	N.A.					
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg Phone: 465-354
 Division: Commission on Postsecondary Education Date: 3/29/83
 Approved by Commissioner: _____ Date: _____
 Department: _____

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3/8/83

CSSSHB56

IV Analysis:

(a) Increasing interest from 5% to 8%

FY84	\$0	FY87	\$ (372.5)
FY85	\$0	FY88	\$ (1,562.8)
FY86	\$ (93.5)	FY89	\$ (3,210.2)

(b) Reducing forgiveness to 20%

FY84	\$0	FY87	\$ (520.2)
FY85	\$0	FY88	\$ (930.0)
FY86	\$ (214.2)	FY89	\$ (1,491.0)

(c) Allowing for borrowing actual amount of tuition
(based upon attendance of 0.35% of total borrowers)

FY84	\$52.5	FY87	\$110.8
FY85	\$74.5	FY88	\$129.9
FY86	\$89.8	FY89	\$145.0

(d) Reducing grace year to grace period of 120 days
(assuming 13.2% seniors, 12.7% vocational)

FY84	\$0	FY87	\$ (2,582.9)
FY85	\$ (1,647.2)	FY88	\$ (9,499.0)
FY86	\$ (1,972.7)	FY89	\$ (13,419.6)

STATE OF ALASKA
FISCAL NOTE

Revision Date 4/4, 1983

AB 56

I. REQUEST

Bill/Resolution No.: CSSS HB 56
 Title: Act Re: Student Loans
 Sponsor: Lindauer
 Requestor: House Loan Committee

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Postsecondary Comm
 BRU, Program of Subprogram(s) Affected: Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL	N.A.	7,402.5	7,358.9	7,634.0	7,644.4	216.1
REVENUE	N.A.	0	1,742.2	2,318.1	3,874.3	12,735.6

FUNDING: (Thousands of Dollars)

GENERAL FUND	N.A.	7,402.5	7,358.9	7,634.0	7,644.4	216.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	N.A.					
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg Phone: 465-2854
 Division: Commission on Postsecondary Education Date: 4/4/83

Approved by Commissioner: _____ Date: _____
 Department: _____

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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

CSSSHB56 (Revised 4/4/83)

IV Analysis:

(a) Increasing interest from 5% to 8%

FY84	\$0	FY87	\$(372.5)
FY85	\$0	FY88	\$(1,562.8)
FY86	\$(93.5)	FY89	\$(3,210.2)

(b) Reducing forgiveness to 20%

FY84	\$0	FY87	\$(520.2)
FY85	\$0	FY88	\$(930.0)
FY86	\$(214.2)	FY89	\$(1,491.0)

(c) Allowing for borrowing actual amount of tuition
(based upon attendance of 0.35% of total borrowers)

FY84	\$52.5	FY87	\$110.8
FY85	\$74.5	FY88	\$129.9
FY86	\$89.8	FY89	\$145.0

(d) Reducing grace year to grace period of 120 days
(assuming 13.2% seniors, 12.7% vocational)

FY84	\$0	FY87	\$(3,329.0)
FY85	\$(1,742.2)	FY88	\$(10,765.1)
FY86	\$(2,181.8)	FY89	\$(14,204.6)

(e) Room expenses are approximately 65% of total room and board expense, therefore, allowing actual room and tuition and fees would cost about \$1,000 per out-of-state borrower, plus those expenses in (c) above. Room allowance would cost (with 6% inflation):

FY84	\$ 7,350.0	FY87	\$11,755.3
FY85	\$ 9,026.6	FY88	\$13,344.1
FY86	\$10,033.7	FY89	\$15,376.2

New Draft.

Amendment #1 Lindauer

1. Page 1. Line 23. After "Graduate" insert "or equivalent".

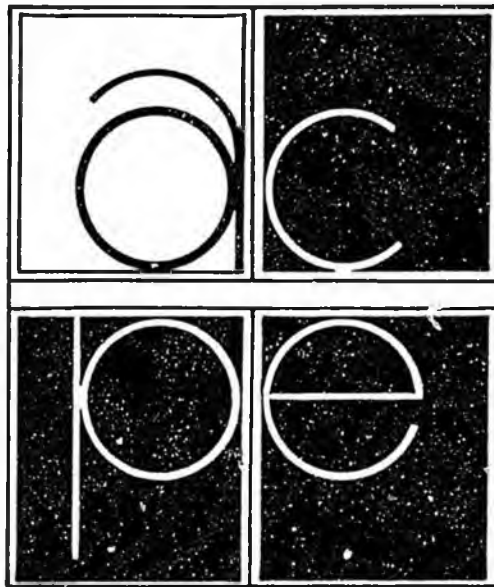
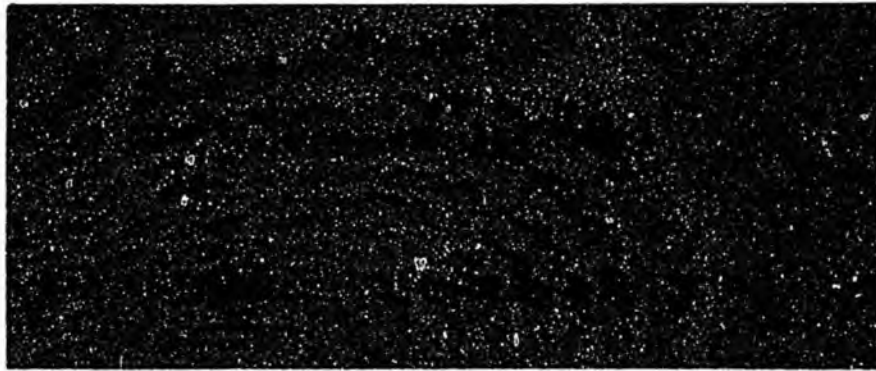
Amendment #2. Lindauer

1. Page 2 line 18

add (VII) Absence due to medical needs or religious activities.

Amendment #3 Grossendorf.

Page 1 - line 14 - Strike "As an enlisted person"



Alaska Commission on Postsecondary Education

ALASKA STUDENT LOANS

Background and Discussion Materials
for the House Finance Committee

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PROGRAM DESCRIPTION

PURPOSES

1. To provide Alaskans with access to postsecondary educational resources through low-interest loans to students.
2. To encourage an educated citizenry through initial access to education and training and through inducements to utilize that education and training in Alaska.

TERMS

1. Undergraduates and vocational students may borrow up to \$6,000 per year of full-time study.
2. Graduate students may borrow up to \$7,000 per year of full-time study.
3. Students may borrow for up to 5 years of undergraduate study, or up to 5 years of graduate study, but for not more than 8 years combined.
4. A student must be a two-year Alaska resident to borrow and must maintain full-time study in good standing to continue borrowing Alaska student loans.
5. Loans may be used for attendance at any approved institution.
6. Proceeds from loans may only be used for the costs of tuition and fees, room and board, and books and supplies.
7. Loan repayment begins one year after the student ceases to be a full-time student (except for approved periods of deferment).
8. Repayment is over a 10-year period with provision for extending to 15 years if necessary.
9. Interest charged on the loans is 5%.

FORGIVENESS

If, upon completion of the program of study for which the loan was granted, the borrower resides in Alaska, a portion of the loan, plus interest, shall be forgiven by the State. That portion, for up to a total of 50%, shall accrue as follows:

1. 2-3 years residence in the state, 10%
2. 3-4 years residence in the state, an additional 10%
3. 4-5 years residence in the state, an additional 10%
4. 5-6 years residence in the state, an additional 10%
5. Over 6 years residence in the state, a final 10%.

This residence must be continuous and must begin within one year of completion of program.

REPAYMENT SCHEDULE

IF YOUR STUDENT LOANS TOTAL:	YOUR MONTHLY PAYMENT FOR 120 MONTHS (10 YRS.) WOULD BE:	TOTAL TO BE REPAYED:		
		5% Interest	Principal	Total
\$1,000.00	\$ 10.61	\$ 273.20	\$1,000.00	\$ 1,273.20
2,000.00	21.21	545.20	2,000.00	2,545.20
3,000.00	31.83	818.40	3,000.00	3,818.40
4,000.00	42.43	1,091.60	4,000.00	5,091.60
5,000.00	53.06	1,363.60	5,000.00	6,363.60
6,000.00	63.64	1,636.80	6,000.00	7,636.80
7,000.00	74.25	1,910.00	7,000.00	8,910.00
8,000.00	84.95	2,182.00	8,000.00	10,182.00
9,000.00	95.46	2,455.20	9,000.00	11,455.20
10,000.00	106.07	2,728.40	10,000.00	12,728.40
15,000.00	159.10	4,092.00	15,000.00	19,092.00
20,000.00	212.13	5,455.60	20,000.00	25,455.60
25,000.00	265.16	6,819.20	25,000.00	31,819.20
30,000.00	318.20	8,184.00	30,000.00	38,184.00
35,000.00	371.23	9,547.60	35,000.00	44,547.60
40,000.00	424.26	10,911.20	40,000.00	50,911.20
45,000.00	477.29	12,274.80	45,000.00	57,274.80
50,000.00	530.33	13,639.60	50,000.00	63,639.60

1982-83 ALASKA STUDENT LOANS

1. Program Status (March 11, 1983)

<u>Student Level</u>	<u>Number</u>	<u>Amount</u>
Freshman	3,844	\$15,200,300
Sophomore	2,631	11,134,250
Junior	1,920	8,273,000
Senior	1,694	7,240,550
Vocational	1,580	7,982,100
<u>Undergraduate</u>	<u>11,669</u>	<u>49,830,200</u>
<u>Graduate</u>	<u>1,137</u>	<u>6,110,550</u>
TOTAL	12,806	\$55,940,750

2. In-State/Out-of-State Attendance by Level (March 11, 1983)

<u>Student Level</u>	<u>Alaska</u>	<u>%</u>	<u>Out-of-State</u>	<u>%</u>
Freshman	2,078	54.1	1,766	45.9
Sophomore	1,268	48.2	1,363	51.8
Junior	872	45.4	1,048	54.6
Senior	789	46.6	905	53.4
Vocational	1,157	73.2	423	26.8
<u>Undergraduate</u>	<u>6,164</u>	<u>52.8</u>	<u>5,505</u>	<u>47.2</u>
<u>Graduate</u>	<u>277</u>	<u>24.4</u>	<u>860</u>	<u>75.6</u>
TOTAL	6,441	50.3	6,365	49.7

3. Percent In-State Previous Year

<u>Year</u>	<u>Undergraduate</u>	<u>Graduate</u>	<u>All Loans</u>
1981-82	47.3	23.8	45.0
1980-81	45.3	17.9	42.3
1979-80	36.1	12.3	33.3
1978-79	35.1	12.0	32.3

4. States of Attendance by Student Level (March 11, 1983)

<u>Freshman</u>	<u>Sophomore</u>	<u>Junior</u>	<u>Senior</u>	<u>Vocational</u>	<u>Undergraduate</u>	<u>Graduate</u>
AK-2,078	AK-1,268	AK- 872	AK- 789	AK-1,157	AK-6,164	AK- 277
WA- 384	WA- 295	WA- 263	WA- 240	CO- 123	WA-1,276	CA- 166
OR- 289	OR- 255	OR- 172	OR- 144	WA- 94	OR- 906	WA- 156
CA- 198	CA- 137	CA- 89	CA- 87	AZ- 48	CA- 552	OR- 124
ID- 120	AZ- 81	AZ- 57	AZ- 50	OR- 46	CO- 366	CO- 33
AZ- 113	CO- 71	UT- 52	ID- 42	CA- 41	AZ- 349	MA- 32
HA- 102	ID- 69	HA- 51	HA- 36	OK- 17	HA- 265	HA- 24
CO- 98	HA- 68	CO- 40	UT- 35	HA- 8	ID- 265	UT- 22
UT- 55	UT- 54	MT- 35	CO- 34	FL- 7	UT- 198	TX- 21
MT- 42	TX- 39	ID- 33	TX- 28	MN- 5	TX- 150	NY- 19
ZZ- 365	ZZ- 294	ZZ- 256	ZZ- 209	ZZ- 34	ZZ-1,178	ZZ- 263
3,844	2,631	1,920	1,694	1,580	11,669	1,137

5. Age Distribution of Borrowers (January 18, 1983)

<u>Age</u>	<u>Number</u>	
60+	24	Age Range: 16-72
50-59	163	Median Age: 22.6
40-49	618	
30-39	2,421	
20-29	8,479	
16-19	1,851	
	13,556	

6. Residency (January 18, 1983)

<u>Student Level</u>	<u>2-Years</u>	<u>3-5</u>	<u>6-10</u>	<u>10+</u>	<u>Total</u>
Freshman	243	763	913	2,313	4,232
Sophomore	82	445	604	1,677	2,808
Junior	78	289	461	1,191	2,019
Senior	61	279	385	1,009	1,734
Vocational	87	339	305	850	1,581
Undergraduate	551	2,115	2,668	7,040	12,374
Graduate	177	293	308	404	1,182
TOTAL	728	2,408	2,976	7,444	13,556

% Breakdown

2 Years	5.4%	6-10 Years	21.9%
3-5 Years	17.8%	10+ Years	54.9%

7. Default: (Computed on June 30)

1971-72	N.A.
1972-73	N.A.
1973-74	N.A.
1974-75	80.0%
1975-76	44.6%
1976-77	24.9%
1977-78	22.3%
1978-79	19.3%
1979-80	14.5%
1980-81	11.5%
1981-82	9.2%

10. Loan Volumes, Collections, Forgiveness (see attached table)

STATE STUDENT LOAN ACTIVITY
 Projected to 1988-89
 (Current Program)

Year	Loan Awards	Loan Volume	Cumulative Total	Average Loan	Loan Collections	Federal Funds	Forgiveness	General Fund
1971-72	1,081	\$ 1,603,158	\$ 1,603,158	\$1,483	\$ -0-	\$ -0-	\$ -0-	\$ 1,603,158
1972-73	1,748	2,870,384	4,473,542	1,642	-0-	-0-	-0-	2,870,384
1973-74	1,665	2,986,176	7,459,718	1,793	-0-	-0-	-0-	2,986,176
1974-75	1,457	2,659,807	10,119,525	1,826	235,476	-0-	703	2,424,331
1975-76	1,719	3,382,997	13,502,522	1,968	465,530	-0-	44,233	2,977,467
1976-77	1,921	3,850,507	17,353,029	2,004	1,141,461	-0-	64,746	2,709,046
1977-78	2,265	4,604,167	21,957,196	2,033	1,191,851	-0-	314,306	3,412,316
1978-79	2,795	6,416,402	28,373,598	2,296	1,391,643	-0-	445,985	5,024,758
1979-80	3,918	9,373,949	37,747,547	2,393	1,603,436	-0-	409,501	7,770,513
1980-81	6,460	15,957,717	53,705,264	2,475	2,225,388	-0-	555,494	13,732,329
1981-82	9,898	40,559,499	94,264,763	4,098	2,779,900	1,000,000	785,769	36,019,599
1982-83*	12,500	56,250,000	150,514,763	4,500	4,604,046	1,200,000	(1,367,555)	54,563,309
1983-84	15,000	73,500,000	224,014,763	4,900	7,591,895	850,000	2,311,210	65,058,105
1984-85	17,741	99,349,600	323,364,363	5,600	11,187,099	675,000	3,458,423	87,487,501
1985-86	19,000	112,100,600	435,464,963	5,900	15,871,653	500,000	4,750,002	95,728,947
1986-87	21,100	124,490,000	559,954,963	5,900	20,742,025	350,000	6,432,819	103,397,975
1987-88	22,489	133,809,550	693,764,513	5,950	24,787,158	225,000	8,113,038	108,797,392
1988-89	24,365	144,971,750	838,736,263	5,950	28,423,931	150,000	10,617,441	116,397,819

*1982-83 through 1988-89 are projections

Revised 3/3/83

TABLE 1

DISTRIBUTION OF YEAR-TO-DATE ALASKA STATE LOANS
FOR STUDENTS ATTENDING IN ALASKA
(February, 1983)

Institution	1982-83	
	No.	Amount
U of Alaska, Fairbanks	2,266	\$ 6,975,068
U of Alaska, Anchorage	1,560	4,611,230
Anchorage Community College	1,353	4,538,244
U of Alaska, Juneau	340	1,053,425
Kenai Peninsula Community College	326	1,191,593
Alaska Pacific U	198	680,400
Alaska Business College	198	943,887
Alaska Vocational-Technical Center	197	348,741
Tanana Valley Community College	195	731,450
Testing Institute of Alaska	167	761,361
Sheldon Jackson College	138	465,953
Matanuska-Susitna Community College	130	547,800
New Anchorage Beauty School	115	549,450
Gordon Aviation, Inc.	110	549,764
Aero Technical Flight School	80	409,000
Wilburs Flight Operation	53	286,300
Fort Richardson Flying Club	49	249,000
Ketchikan Community College	46	124,250
Trend Setter School of Beauty	42	191,500
Sitka Community College	36	114,400
Headquarters Barber & Beauty Academy	35	171,000
Hutchison Career Center	35	131,200
Flight Training Devices	33	136,800
Academy of Hair Design	32	126,600
Alaska Native Training Institute	29	112,200
A.I.R. Center	24	129,000
Alaska Computer Training Center	21	97,150
Anchorage Alaska School of Barbering	20	96,000
Elmendorf Aero Club	20	90,871
St. Herman's Theological Seminary	19	62,000
Kotzebue Technical Center	19	44,250
Kodiak Community College	15	44,050
North Pacific Business Institute	14	55,050
Alaska Bible College	12	40,950
Fairbanks Beauty School	14	58,100
Peninsula Institute of Welding Technology	11	44,950
Peninsula Hair Styling Academy	11	43,750
Prince William Sound Community College	8	21,531
Kuskokwim Community College	8	18,550
Alaska Piper Sales, Inc.	6	35,900
Birchwood Air Service	4	24,000
University of LaVerne	3	12,750
Chapman College	2	3,000
Far North Bible College	2	2,450
T&H Real Estate Institute	1	6,000
Northwest Community College	1	5,000
Charismatic Bible College	1	4,500
Bar Review	1	4,000
Delta Greely Rural Educational Center	1	3,000
Alaska Media Workshop	1	550
TOTAL	8,002	\$26,648,006

INSTITUTIONS AT WHICH AT LEAST FIFTY ALASKA
STUDENT LOAN BORROWERS ATTENDED 1982-83
(as of February, 1983)

Institution	No.	Amount
*University of Alaska, Fairbanks	2,266	\$6,975,068
*University of Alaska, Anchorage	1,560	4,611,230
*Anchorage Community College	1,353	4,538,244
*University of Alaska, Juneau	340	1,053,425
*Kenai Peninsula Community College	326	1,191,593
Oregon State University	241	1,189,956
University of Oregon	233	1,026,136
University of Washington	205	935,667
*Alaska Business College	198	943,887
*Alaska Pacific University	198	680,400
*Alaska Vocational-Technical Center	197	348,741
*Tanana Valley Community College	195	731,450
Western Washington University	177	767,542
*Testing Institute of Alaska	167	761,311
Brigham Young University (UT)	160	498,630
*Sheldon Jackson College	138	465,953
Arizona State University	135	615,025
*Matanuska-Susitna Community College	130	547,800
Washington State University	124	551,776
University of Hawaii, Manoa	124	381,811
*New Anchorage Beauty School	115	549,450
Gonzaga University (WA)	113	596,450
*Gordon Aviation, Inc.	110	549,764
University of Puget Sound (WA)	103	512,200
University of Hawaii, Hilo	100	276,175
University of Idaho	99	364,950
Willamette University (OR)	95	481,675
Northern Arizona University	90	308,942
Pacific Lutheran University (WA)	87	406,950
University of Arizona	86	329,600
*Aero Technical Flight Service	80	409,000
Seattle Pacific University (WA)	77	344,550
Central Washington University	77	334,900
American Diesel & Automotive School (CO)	77	320,573
Seattle University (WA)	73	333,134
Montana State University	69	254,088
Linfield College (OR)	67	305,100
Colorado State University	60	306,050
Ricks College (OR)	58	139,181
Denver Institute of Technology (CO)	56	204,056
*Wilbur's Flight Service	53	286,300
Eastern Washington University	53	255,267
University of Colorado	52	231,400

*Alaskan School

SAMPLE STUDENT BUDGETS
(1982-83)*

Budget Item	UAF On-Campus	UAF Off-Campus	UAA	UAJ	ACC	Kenai Penn. C.C.	APU On-Campus	SJC On-Campus
Tuition & Fees	\$ 788	\$ 788	\$ 648	\$ 624	\$ 632	\$ 632	\$3,190	\$3,100
Room & Board	2,100	4,800	4,096	4,650	4,608	4,608	3,050	3,000
Books & Supplies	400	400	270	300	270	270	270	250
Subtotal	\$3,288	\$5,988	\$5,014	\$5,574	\$5,510	\$5,510	\$6,510	\$6,350
Transportation	1,000	1,000	640	600	720	1,080	1,080	100
Personal	800	800	768	775	864	864	768	630
Total	\$5,088	\$7,788	\$6,422	\$6,949	\$7,094	\$7,454	\$8,358	\$7,080

Budget Item	Oregon State U On-Campus	U of Oregon On-Campus	Willamette U On-Campus	Linfield College On-Campus	Lewis & Clark College On-Campus	U of Washington On-Campus	Western Washington U On-Campus
Tuition & Fees	\$4,050	\$4,020	\$5,570	\$ 5,555	\$6,444	\$3,255	\$3,210
Room & Board	2,100	2,250	2,350	2,550	2,603	2,601	2,100
Books & Supplies	300	285	250	290	225	300	300
Subtotal	\$6,450	\$6,555	\$8,170	\$ 8,395	\$9,272	\$6,156	\$5,610
Transportation	1,240	1,126	1,800	1,850	1,560	1,525	1,500
Personal	1,320	990	530	715	575	1,041	600
Total	\$9,010	\$8,671	\$10,500	\$10,960	\$11,407	\$8,722	\$7,710

Budget Item	Washington State U On-Campus	Pacific Lutheran U On-Campus	U Puget Sound On-Campus	Gonzaga U On-Campus	Seattle U On-Campus	Arizona State U On-Campus	Northern Arizona U On-Campus
Tuition & Fees	\$3,256	\$ 5,280	\$ 5,480	\$ 4,700	\$ 4,725	\$3,250	\$2,750
Room & Board	2,200	2,370	2,580	2,420	2,493	2,320	1,770
Books & Supplies	330	330	400	330	330	288	275
Subtotal	\$5,786	\$ 7,980	\$ 8,460	\$ 7,450	\$ 7,548	\$5,858	\$4,795
Transportation	1,664	1,600	1,225	1,660	1,736	1,200	1,200
Personal	900	900	700	900	900	1,040	650
Total	\$8,350	\$10,480	\$10,385	\$10,010	\$10,184	\$8,098	\$6,645

*All budgets are for single full-time undergraduate students for a full academic year.

SAMPLE STUDENT BUDGETS
(1982-83)*

Budget Item	U of Hawaii On-Campus	U of Idaho On-Campus	U of Montana On-Campus	Colorado State U On-Campus	U of Colorado On-Campus	U of Denver On-Campus	Stanford U On-Campus
Tuition & Fees	\$ 481	\$2,516	\$2,241	\$4,109	\$ 4,711	\$ 5,790	\$ 8,220
Room & Board	2,837	1,870	2,000	2,700	2,286	2,649	3,423
Books & Supplies	316	300	200	300	230	375	350
Subtotal	\$3,634	\$4,686	\$4,441	\$7,109	\$ 7,227	\$ 8,814	\$11,993
Transportation	1,099	1,450	1,044	1,675	1,716	1,746	1,990
Personal	688	600	500	150	1,417	690	745
Total	\$5,421	\$6,736	\$5,985	\$8,934	\$10,360	\$11,250	\$14,728

Budget Item	Boston U On-Campus	Purdue U On-Campus	Northwestern U On-Campus	Dartmouth College On-Campus	Brigham Young U On-Campus
Tuition & Fees	\$ 7,275	\$3,800	\$ 8,085	\$ 8,190	\$1,100
Room & Board	3,400	2,200	3,060	3,255	1,740
Books & Supplies	310	270	350	1,033	340
Subtotal	\$10,985	\$6,270	\$11,495	\$12,478	\$3,180
Transportation	1,540	1,880	1,560	1,865	1,100
Personal	600	760	650	1,600	200
Total	\$13,325	\$8,910	\$13,705	\$15,943	\$4,480

*All budgets are for single full-time undergraduate students for a full academic year.

FISCAL IMPACTS OF CERTAIN CHANGES
TO THE LOAN PROGRAM

	Additional Interest Income	7%	8%	9%	10%	11%
FY 84		\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
FY 85		-0-	-0-	-0-	-0-	-0-
FY 86		62,300	93,450	124,600	155,750	187,225
FY 87		248,300	372,450	496,600	620,750	744,900
FY 88		1,041,850	1,562,775	2,083,700	2,604,625	3,125,550
FY 89		2,140,150	3,210,225	4,280,300	5,350,375	6,420,450

	Savings By Changing Forgiveness	To 20%	To 10%	To -0-
FY 84		\$ -0-	\$ -0-	\$ -0-
FY 85		-0-	-0-	-0-
FY 86		214,200	285,600	357,000
FY 87		520,200	693,600	867,000
FY 88		930,000	1,240,000	1,550,000
FY 89		1,491,000	1,988,000	2,485,000

All changes would be reflected by reducing the amount of State General Fund money needed by the program. To obtain the result of any combination of the above, simply add the impacts for the appropriate fiscal years. (For example: raising interest to 11% and eliminating forgiveness completely would save \$8.9 million in FY 89.)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

ALASKA COMMISSION ON POSTSECONDARY EDUCATION

POUCH FP
JUNEAU, ALASKA 99811
PHONE: (907) 465-2854

STATEMENT ON ALASKA STUDENT LOANS

The State of Alaska can make no better commitment of resources than investing in the education of its citizens. Direct support of Alaska's public elementary, secondary, and postsecondary school systems is vital to the state's continued growth and development. It is in the best interest of the state to provide access to these educational resources for the citizens of Alaska.

The best method of assuring access and opportunity is through the direct provision of educational services, but this is not always practical or possible, particularly at the postsecondary level. Therefore, the most effective and efficient method of attaining these goals of access and opportunity is through a system of low interest loans which allow the students to choose the educational setting most appropriate for their particular needs.

The Commission endorses and recommends the continuation and full-funding of the Alaska State Student Loan Program. Amendments which restrict access by denying loans to groups of Alaskans, either by design or by default, are vigorously opposed. However, the fiscal climate of the state, as well as increasing costs because of increased demand require that some modifications be made in the present program. Therefore, the Commission recommends:

1. interest rates be increased to 9%, and
2. forgiveness provisions be eliminated.

Additionally, the Commission will, by regulation, eliminate the practice of providing refunds for forgiveness benefits and will revert to the method of crediting the account.

3/2/83

STATE STUDENT LOAN ACTIVITY
 Projected to 1988-89
 (Current Maximums)
 (9% Interest)
 (No Forgiveness)

Year	Loan Awards	Loan Volume	Cumulative Total	Average Loan	Loan Collections	Federal Funds	Forgiveness	General Fund
1971-72	1,081	\$ 1,603,158	\$ 1,603,158	\$1,483	\$ -0-	\$ -0-	\$ -0-	\$ 1,603,158
1972-73	1,748	2,870,384	4,473,542	1,642	-0-	-0-	-0-	2,870,384
1973-74	1,665	2,986,176	7,459,718	1,793	-0-	-0-	-0-	2,986,176
1974-75	1,457	2,659,807	10,119,525	1,826	235,476	-0-	703	2,424,331
1975-76	1,719	3,382,997	13,502,522	1,968	465,530	-0-	44,233	2,977,467
1976-77	1,921	3,850,507	17,353,029	2,004	1,141,461	-0-	64,746	2,709,046
1977-78	2,265	4,604,167	21,957,196	2,033	1,191,851	-0-	314,306	3,412,316
1978-79	2,795	6,416,402	28,373,598	2,296	1,391,643	-0-	445,985	5,024,758
1979-80	3,918	9,373,949	37,747,547	2,393	1,603,436	-0-	409,501	7,770,513
1980-81	6,460	15,957,717	53,705,264	2,475	2,225,388	-0-	555,494	13,732,329
1981-82	9,898	40,559,499	94,264,763	4,098	2,779,900	1,000,000	785,769	36,819,599
1982-83*	12,500	56,250,000	150,514,763	4,500	4,604,046	1,200,000	(1,367,555)	51,813,509
1983-84	15,000	73,500,000	224,014,763	4,900	7,591,895	850,000	2,311,210	65,058,105
1984-85	17,741	99,349,600	323,364,363	5,600	11,187,099	675,000	3,458,423	87,487,501
1985-86	19,000	112,100,600	435,464,963	5,900	15,996,253	500,000	4,393,002	95,604,347
1986-87	21,100	124,490,000	559,954,963	5,900	21,238,625	350,000	5,565,819	102,901,375
1987-88	22,489	133,809,550	693,764,513	5,950	26,870,858	225,000	6,563,038	106,713,692
1988-89	24,365	144,971,750	838,736,263	5,950	32,704,231	150,000	8,132,441	112,117,537

-15-

*1982-83 through 1988-89 are projections

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 14, 1983

The Honorable Rick Uehling
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Andress v. Baxter -
student loan case

Dear Representative Uehling:

This letter is to confirm my advice to your committee that the Department of Law could defend the present requirement of the student loan program that a student must have lived in Alaska for two years at the time of application in order to establish the bona fides of residency. The primary reasons for the ability to defend a two-year requirement in this particular instance include the known and recognized mobility of the student population, the attractiveness of this loan program, and the portability of the loans. Enclosed are the briefs of the state in this matter along with the deposition and affidavits of Dr. Kerry Romesberg which sets forth in more detail the exact basis for our arguments to the court.

On the other hand, I wish to repeat my caution that there are substantial arguments that the two-year requirement is not constitutional. While we believe the Department of Law can defend the requirement, we do not mean to imply that the odds of succeeding in that defense are even 50 percent. Although we believe that the correct legal position that the court should take is that two-years is justifiable under the federal constitution, you should be aware that no court has ever upheld a residency requirement of greater than one-year under circumstances similar to these. On the other hand, no court has ever struck down a two-year requirement under these circumstances. Briefly, we are in uncharted constitutional waters, and there is substantial reason to believe that a court could find the two-year requirement is unconstitutional.

Since the matter is in litigation, I do not believe that it is in the state's interest to give a public assessment of all the strengths and deficiencies of our legal position. Therefore, I did not intend my testimony to either raise hopes that we would win the suit, nor, on the other hand, to exaggerate fears

The Honorable Rick Uehling


April 14, 1983
Page 2

that we would lose. My testimony is intended to be completely neutral on that question.

If you have any questions, please do not hesitate to call.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

RMM:mr

Enclosure

Wilson L. Condon
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Juneau, Alaska 99811
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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)

Plaintiff,)

v.)

FRED J. BAXTER, MILDRED BANFIELD,)
THELMA BUCHHOLDT, LEE DEMMERT,)
THELMA LANGDON, MARY ELIZABETH)
LOMEN, JOHN MALONE, JOHN SHIVELY,)
TERRY STIMSON, DONNIS THOMPSON,)
BLANCHE WALTERS, WALTER WARD,)
KERRY ROMESBERG AND THE ALASKA)
COMMISSION ON POSTSECONDARY)
EDUCATION,)

Defendants.)

No. A82-307 Civ.

MOTION FOR SUMMARY JUDGMENT


Defendants Fred J. Baxter et al., move this court for entry of a summary judgment in their favor under the provisions of Rule 56 of the Federal Rules of Civil Procedure.

This motion is based on the pleadings, deposition, the accompanying memorandum in support, and on the attached Affidavit of Kerry Romesburg. These materials establish that there is no

genuine issue as to any material fact and that defendants are entitled to judgment in their favor as a matter of law.

DATED this 8th day of September, 1982.

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

Wilson L. Condon
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811
(907) 465-3600

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,

Plaintiff,

v.

FRED J. BAXTER, MILDRED BANFIELD,
THELMA BUCHHOLDT, LEE DEMMERT,
THELMA LANGDON, MARY ELIZABETH
LOMEN, JOHN MALONE, JOHN SHIVELY,
TERRY STIMSON, DONNIS THOMPSON,
BLANCHE WALTERS, WALTER WARD,
KERRY ROMESBERG AND THE ALASKA
COMMISSION ON POSTSECONDARY
EDUCATION,

Defendants.

No. A82-307 Civ.

DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

I. INTRODUCTION AND SUMMARY

The question before this court is whether Alaska's student loan program, which is by far the most generous program in the nation, can require two years residency as a condition of application in order "to make virtually certain that students who are not, in fact, bona fide residents of the State, cannot take

advantage of in-state rates." Vlandis v. Kline, 412 U.S. 441, 454 (1973) ("Vlandis") (emphasis added).

Judith Andress contends that the two-year requirement violates the Federal Constitution's Due Process Clause, Equal Protection Clause, Privileges and Immunities Clause, and the Citizenship Clause. Of these challenges, only the equal protection question merits any detailed response.

Denial of a student loan is not the denial of either a fundamental political right (such as voting), or a basic necessity of life (such as welfare or access to medical treatment). Consequently, the equal protection standard to be used is the rational basis test. Hawaii Boating Ass'n v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981) ("Hawaii Boating").

The courts have upheld one-year residency requirements for reduced tuition rates at state schools where all students actually remain in the state to attend school. E.g., Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd mem. 401 U.S. 985 (1971). It is not irrational to require two years of residency where the state is paying out cash and where the recipients may then take the money to attend out-of-state schools for up to eight years.

The rationality of the requirement is further enhanced by the incentive created by the Alaska loan program to come to Alaska solely to take advantage of this state benefit. Unlike loan programs in the rest of the nation, an Alaskan resident does not have to pass a needs test, nor is there a family income

limitation for recipients of loans for waiver of interest while in school. Alaska's loans are available on the same terms to all regardless of either need or family income. In addition, other states' loan programs lend only \$2,500 per year to undergraduates, and \$5,000 to graduates. Alaska lends \$6,000 and \$7,000, respectively. The maximum total allowed in other states is \$12,500 for undergraduates and \$25,000 for graduates (including any undergraduate loans); Alaska's totals are \$30,000 for undergraduates, \$35,000 for graduates, and \$53,000 combined. The interest rate in other states is 9%; Alaska's is 5%. Affidavit of Dr. Romesburg. (Attached as Appendix I.)

Given the tremendous disparity between other states and Alaska, it is not irrational to require two years as a test for the bona fides of a student's residence. The state is lending large amounts of money at extremely preferential rates. It wishes that money to go to persons who presently intend to make Alaska their home after completing their education. It is reasonable to require a two-year residency requirement when money is being lent to students who previously resided out-of-state, where those students will be receiving up to \$53,000 of state money, and when those students can spend that money while attending school out-of-state for up to the next eight years. The state can rationally and constitutionally require a student to meet a two-year residency test in order to show that student's bona fides and to assure the state that this money is going to persons

who intend to return upon completion of their education and make Alaska their home.

II. DESCRIPTION OF THE PROGRAM

AS 14.40.751--14.40.806 sets forth the conditions for the Alaska student loan program. Undergraduates may receive up to \$6,000 per year (AS 14.40.759), while graduates may receive up to \$7,000 per year (AS 14.40.763). Undergraduate students may receive loans for five years (or \$30,000); graduate students may receive loans for five years (or \$35,000); and total undergraduate and graduate loans may be received for eight years (\$53,000). AS 14.40.763(d). The loan is to be repaid at an interest rate of 5% per year for up to ten years. AS 14.40.763(f) and (g). There is no needs test or family income limit.

As the Affidavit of Dr. Kerry Romesburg shows, the Alaska program is the most liberal program in the nation. All other states use the Federal Guaranteed Student Loan (GSL), which requires that students meet a needs test and have family incomes of less than \$30,000 per year for waiver of interest while in school. The GSL lends only \$2,500 per year to undergraduates, and a total of only \$12,500. Graduate students under the GSL can receive \$5,000 per year for a total of \$25,000, but that total includes undergraduate loans. GSL's are to be paid back at an interest rate of 9% per year.

Only four other states have loan programs in addition to the GSL: Alabama, Georgia, Kansas, and Oregon. All of those

programs, however, are at least as restrictive as the GSL. Alabama provides loans for medical and dental study at a 7% interest rate and has no residency restriction. Georgia provides 9% loans for up to \$1,500 per year for study in "critical fields" of study. Kansas provides "loans of last resort" to students. If a student can not qualify for a GSL, loans of up to \$1,500 for a first-time freshman, \$2,500 for other undergraduates, and \$5,000 for graduate students are made available at 9% interest. Oregon provides loans for medical and dental study at 9% interest. The loans are for up to \$2,500 per year. Affidavit of Dr. Romesburg.

In order to qualify for an Alaskan loan, an applicant must: (1) be either a full-time college student, a high school student, or scheduled to graduate from a high school within the next six months; and (2) be a resident of the state for two years at the time of application. AS 14.40.765. AS 14.40.765(b) further provides that:

For purposes of this subsection, a person qualifies as a resident of the state if at the time he applies for the loan the person

(1) has been present in the state for at least two years unless his absence from the state during any part of the two years was due to military service; or

(2) is a person who is dependent on a parent or guardian for his care, and the parent or guardian has been present in the state for at least two years.

It is this two-year requirement which is challenged by Judith Andress as violating the Federal Constitution under the Equal Protection, Privileges and Immunities, Due Process, and

Citizenship Clauses. Since the only serious question arises under the Equal Protection Clause, that issue will be discussed first.

III. ARGUMENT

A. SUMMARY JUDGMENT IS APPROPRIATE.

Rule 56 of the Federal Rules of Civil Procedures provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Although defendants deny a number of Ms. Andress' allegations, even if all of Ms. Andress' factual allegations are correct, defendants are entitled to judgment as matter of law.

The only disputed fact which requires some explanation is Ms. Andress' allegation that her "application is disadvantaged by the priority given applications based on the applicant's length of residency in Alaska as required by AS 14.40.767(a)(2)." That statute provides for the award of points in order to allocate priority among late applications, with some points going for length of residency in Alaska. The Alaska Commission on Post-secondary Education has never applied that statute and will not be applying that statute with this year's applications. Affidavit of Kerry Romesburg. Instead, as Dr. Romesburg's affidavit points out, if because of limited funds priorities were to be

awarded, the awards will go to applications on a first come, first served basis. This course of action has been taken with the advice of the Department of Law. Therefore, the only question before this court is whether or not the two-year durational residency requirement contained in AS 14.40.765(b) is constitutional. For that issue, there are no material issues of fact in dispute, and summary judgment is appropriate.

B. THE TWO-YEAR RESIDENCY REQUIREMENT DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

There is no question "length of residence may . . . be used to test the bona fides of citizenship." Zobel v. Williams, ___ U.S. ___, 50 U.S.L.W. 4613, 4617 (concurring opinion of Justice Brennan). In addition, the state has a legitimate interest in assuring that state money and its preferential interest rates are actually received by students who intend to make Alaska their home. The United States Supreme Court's pronouncements on resident tuition are equally applicable to student loans:

The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates.

Vlandis v. Kline, 412 U.S. 441, 453-454 (1973) ("Vlandis").

Similarly, the issue here is whether a two-year requirement is a reasonable way to make "virtually certain" that an applicant has a present intent to return to the state after completing his or her education. The first inquiry in the equal

protection analysis is whether the requirement is to be analyzed under strict scrutiny or the rational basis test.

The rational basis standard applies since neither a fundamental political right or access to a basic necessity of life is involved. Hawaii Boating Ass'n v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981); Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). Strict scrutiny is involved only when genuinely significant deprivations are involved:

Deprivations which are only uncomfortable are not enough, such as conditioning lower tuitions at state institutions of higher education upon a one-year residency requirement.

Hawaii Boating Ass'n at 665, quoting from Fisher v. Reiser, 610 F.2d 629, 639, n.5 (9th Cir. 1979), cert. denied, 447 U.S. 930 (1980) (Judge Hufstedler dissent). Like student tuition, denial of the right to a state funded student loan is at best an "uncomfortable deprivation." Therefore, the two-year residency requirement need only be rationally related to its purpose of assuring that student loans go only to bona fide residents.

The rational basis test was explained by the United Supreme Court in Dandridge v. Williams, 397 U.S. 471, 485 (1970):

In the area of economics and social welfare, a state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be,

and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426.

That rational basis exists here. First, it should be noted that the choice of the level of scrutiny usually determines the outcome of the analysis. This is particularly evident in durational residency cases. For a period of time there was substantial confusion concerning whether strict scrutiny was always required in durational residency cases or was limited to only those instances where significant deprivations resulted from failure to meet the residency requirements. E.g., Memorial Hospital v. Maricopa County, *supra*, 415 U.S. at 257; Cole v. Housing Authority of City of Newport, 435 F.2d 807 (1st Cir. 1970); Fisher v. Reiser, *supra*. As a result, various courts ruled differently on almost identical issues. E.g., compare Larsen v. Gallogly, 361 F.Supp. 305 (D. Rhode Is. 1973) (two-year residency requirement for divorce subject to strict scrutiny; held unconstitutional) with Mendez v. Heller, 380 F.Supp. 985 (E.D. N.Y. 1974) aff'd on other grounds, 530 F.2d 457 (2d Cir. 1976) (two-year requirement for divorce subject to rational basis test; held constitutional); Bolanewski v. Raich, 330 F. Supp. 724 (D.C. Mich. 1971) (three-year residency requirement for mayor subject to strict scrutiny; held unconstitutional) with Walker v. Yucht, 352 F.Supp. 85 (D.C. Del. 1972) (three-year residency requirement for candidates for General Assembly subject to rational basis test; held constitutional); State v. Wylie, 516 P.2d 142 (Ak.

1973) (one-year residency requirement for state employment subject to strict scrutiny; held unconstitutional) with Cstendorf v. Turner, 411 So.2d 330 (D.C. App. 1982) (five-year residency requirement for homestead exemption subject to rational basis; held constitutional). It is extremely rare for a durational residency requirement to be overturned under the rational basis test, and usually will only occur in outrageous cases. E.g., Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978) (ten-year residency requirement in order to run for state auditor); Massey v. Appolonio, 387 F.Supp. 373, 376-377 (D. Me. 1974) (three-year residency requirement in order to be licensed as a lobsterman). 1/

Establishing bona fide residence, or domicile, occurs when a person both (1) is physically present within the state; and (2) intends to remain and make a home. E.g., State v. Adams, 522 P.2d 1125 (Alaska 1974); Restatement (Second) of Conflict of Laws, §§ 15, 16, 18 (1971). Applying these principles, however, is often extremely difficult -- particularly the determination of intent:

1. The Alaska Supreme Court, for one, until recently held that durational residency requirements always required a compelling state interest. See, Williams v. Zobel, 619 P.2d 449, 451-452 (1980). The Alaska Supreme Court now analyzes durational residency requirements under its intensified scrutiny test, which is an intermediate balancing approach between strict scrutiny and the rational basis test. Id. This "intensified scrutiny" test was set forth in State v. Erickson, 574 P.2d 1 (Alaska 1978). In a May 5, 1981 informal opinion to Representative Don Clocksin, Assistant Attorney General Bruce Botelho stated that he believed that the Alaska Supreme Court would overturn the two-year residency requirement, primarily applying the Erickson balancing test. Upon closer review, this office now believes that the two-year requirement would meet even the stricter Erickson test.

[I]t is known jurisprudential fact that these requisites are deceptively simple, and are much more easily stated than applied. In particular, whether an individual possesses the necessary intent is often a very difficult question to answer.

Stottlemeyer v. Stottlemeyer, 329 A.2d 892, 899 (Pa. 1974).

Moreover, as the United States Supreme Court has expressly recognized, there are particular problems in determining the bona fides of college students "since those students are characteristically transient." Memorial Hospital, supra, 415 U.S. at 260, n.15; Vlandis v. Kline, supra, 412 U.S. at 452. Thus even during the period of uncertainty as to whether strict scrutiny always applied to durational residency cases, it was recognized that one-year residency requirements for in-state tuition were constitutional. E.g., Coleman v. Housing Authority of City of Newport, supra, 435 F.2d at 810, n.9. (D. Me. 1974).

Consequently, it is evident that a one-year residency requirement for student loans would easily pass constitutional muster under the rational basis test. The state can condition the grant of preferential rates for tuition on a one-year residency requirement. Vlandis v. Kline, supra; Hooban v. Boling, 503 F.2d 648 (6th Cir. 1974); Sturgis v. State of Washington, 368 F.Supp. 38 (D.C. Wash. 1973), aff'd mem., 414 U.S. 1057 (1973); Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970), aff'd mem., 401 U.S. 985 (1971). Kirk v. Board of Regents of the University of California, 279 Cal App. 2d 430, 78 Cal. Rptr. 260 (Cal App. 1967) app. dismissed, 396 U.S. 554 (1970); Padgar v. Indiana University, 381 N.E.2d 1274 (Ind. App. 1978). The actual transfer

of cash to a student is at least on par to the tuition cases, if not a more compelling reason in and of itself for the application of a more stringent requirement. In any event, the issue before this court could also be cast as whether it is irrational for the State of Alaska to require two years of residence instead of one year in order to be eligible for a student loan.

The two-year requirement is reasonable. It is not irrational or outrageous. The Alaska student loan program does not require that the student remain in-state to attend school (unlike the resident tuition cases). The student can spend up to \$53,000 in state loan funds for up to eight years attending school in California, Washington, Arizona, or any other state in the Union. Given the judicially recognized "special problems" involved in determining the bona fide residence of college students even when the students will be physically located in the state for their years of school (Memorial Hospital, supra, 415 U.S. at 260, n.15; Vlandis 412 U.S. at 452), even greater problems attend such a determination when an out-of-state student comes in, gets money, and then leaves the state for a substantial period of time. Thus, even if the Alaska loan program were the same as all other states' programs a two-year residence requirement would not be irrational.

In addition, however, the Alaska program is far and away the most attractive education loan program in the United States. All other states use the Federal Guaranteed Student Loan Program (GSL), which is substantially inferior and much more

restrictive than the Alaska program. As pointed out earlier, the GSL is limited to \$2,500 per year for undergraduate, and \$5,000 per year for graduates. Alaska lends \$6,000 and \$7,000 respectively. The maximum total allowed under GSL is \$12,500 for undergraduates and \$25,000 for graduates (including undergraduate loans). Alaska's respective totals are \$30,000 and \$35,000; in addition, combined graduate and undergraduate loans could total up to \$53,000 for eight years of study. The interest rate for GSL's are 9%; Alaska's are 5%. Further, in order for a student who has a family income of \$30,000 or more to receive a fully subsidized GSL loan, that student must demonstrate substantial financial need based upon a standardized needs test. Alaska's loans are open to all irrespective of family income. Affidavit of Dr. Romesburg.

In short, it is not irrational to believe that a two-year residency requirement, rather than a one-year requirement, is a "reasonable criteri[on] for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the state . . . cannot take advantage" of the enormous benefits of Alaska's loan program. Vlandis v. Kline, supra, 412 U.S. at 455 (emphasis added). The two-year residence requirement meets the rational basis test, and does not violate equal protection.

C. THE TWO-YEAR RESIDENCY REQUIREMENT DOES NOT VIOLATE THE DUE PROCESS CLAUSE, THE CITIZENSHIP CLAUSE, OR THE PRIVILEGES AND IMMUNITIES CLAUSE.

Ms. Andress also challenges the two-year residency requirement under the Due Process Clause, the Privileges Immunities Clause, and the Citizenship Clause. These assertions are without merit.

Vlandis settled the due process issue by holding that only "a permanent irrebuttable presumption of non-residence . . . is violative of the Due Process Clause." Vlandis, 214 U.S. at 453. In Vlandis the Court overturned a scheme where if a student was not a resident by a certain date (the date of admission to school), that student could never achieve resident status thereafter. The Court contrasted that scheme with plans that allowed the rebuttal of that presumption after a period of residence:

Minnesota's one-year durational residency requirement, however, differed in an important respect from the permanent irrebuttable presumption of issue in the present case. Under [Minnesota's requirement], a student who applied to the University from out of State could rebut the presumption of non-residency, after having lived in the State for one year, by presenting sufficient other evidence to show bona fide domicile within Minnesota.

Vlandis, 492 U.S. at 453, n.9. In other words, durational residency requirements, since they can be rebutted by a period of residence, do not violate the Due Process Clause.

Ms. Andress' challenges under the Privileges and Immunities Clause and the Citizenship Clause are also without support. Because Ms. Andress claims to be a bona fide Alaska

resident, the Privileges and Immunities Clause is inapplicable. Hawaii Boating, 651 F.2d at 666. Nor does the state see how Ms. Andress' claim falls within the accepted ambit of the Citizenship Clause. E.g., Slaughter-House Cases, 83 U.S. 36 (1873).

Instead, it appears that Ms. Andress is attempting to argue a violation of a fundamental right to interstate travel based upon these clauses, an approach recently argued by Justice O'Connor in her concurrence in Zobel v. Williams, supra, 50 U.S.L.W. at 4616-4620. Whatever the future of that analysis, it is clear that eight out of the nine justices presently reject that approach. Id., at 4615, n.4, 4616-4617 (J. Brennan concurring), 4621, n.3 (J. Rehnquist, dissent). Ms. Andress' arguments on these points will have to await another day -- they are not meritorious under the present state of the law.

IV. CONCLUSION

For the reasons stated in the brief, defendants respectfully request this court to grant their motion for summary judgment.

DATED this 8th day of September, 1982.

WILSON L. CONDON
ATTORNEY GENERAL

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Assistant Attorney General

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)	
)	
Plaintiff,)	
)	
vs.)	
)	
FRED J. BAXTER, MILDRED BANFIELD,)	
THELMA BUCHHOLDT, LEE DEMMERT,)	
THELMA LANGDON, MARY ELIZABETH)	
LOMEN, JOHN MALONE, JOHN SHIVELY,)	
TERRY STIMSON, DONNIS THOMPSON,)	
BLANCHE WALTERS, WALTER WARD,)	
KERRY ROMESBURG AND THE ALASKA)	
COMMISSION ON POSTSECONDARY)	No. A82-307 Civil
EDUCATION,)	
)	
Defendants.)	
)	

AFFIDAVIT OF KERRY ROMESBURG

Kerry Dean Romesburg, being duly sworn, states as follows:

I. Qualifications

I am executive director of the Alaska Commission on Postsecondary Education, Pouch FP, 400 Willoughby Avenue, Juneau, Alaska 99811. As executive director I serve as the chief administrative official for the Alaska commission charged with: administration of the state Division of Student Financial Aid, coordination and planning of the State's postsecondary educational resources including facility and program expansion, review and recommendation of the annual budget requests of public higher education in all institutions, authorization and licensure of institutions to operate in the state, administration of the state's participation in the Western Interstate Commission for Higher Education, administration of the state's veteran's educational program approval, administration of a number of federally-funded programs, and general advisement and counsel to the executive branch and legislature on higher educational matters. The commission has a staff of 59 and an operating budget of 55.3 million dollars (including student loan funds). I received my B.A. from Arizona State University in June of 1967 in Mathematics and Education, I received my M.A. from Arizona State University in June 1968 in Mathematics and Education, and my Ph.D. in Education from Arizona State University in June of 1972. Prior

to being executive director of the Alaska Commission, I was executive director of the Arizona Commission on Postsecondary Education in 1974 to 1975. I am a member of the American Association for Higher Education, the American Association of Professors of Higher Education, the Association for Institutional Research, the National Education Association Higher Education, and the State Higher Education Executive Officers.

I am presently chairman of the Western Interstate Commission on Higher Education, and am a member of the National Advisory Council for United Student Aids Funds. Through my job and my professional associations, I am intimately familiar with both the Alaska Student Loan Program and student loan programs nationwide.

II. Introduction

The Alaska Student Loan Program was established by the Alaska State Legislature in 1971. Prior to that, a loan program did exist, but it was substantially different from the current program, which is based upon the 1971 program. Since 1971, the State of Alaska has awarded nearly 35,000 loans totaling over \$94 million to Alaska borrowers. During the 1981-82 school and loan year 9,898 loans were made, totaling over \$40 million. Of these loans, 45.0 percent were for attendance in Alaska and 55.0 percent were for out-of-state.

III. Terms of Loans

Alaskans can borrow up to \$6,000 per year for undergraduate or vocational study and up to \$7,000 per year for graduate study at any approved postsecondary education institution (including foreign institutions). The loans carry a 5% interest rate, and the borrower has ten years to repay the debt. While a borrower is in school, during the first year after ceasing full-time study (grace year), and during approved deferment periods, the borrower makes no payments and interest is paid by the state on behalf of the borrower. These periods of deferment do not count toward the ten-year repayment cycle. Additionally, if a person encounters difficulty making the regular monthly installments, the repayment period may be extended for up to five more years, for a total of fifteen.

In order to qualify for a loan, an applicant must have been a resident of Alaska (which requires physical presence) for at least two years, and must attend an approved institution.

Although AS 14.40.765(b) sets forth a point system based in part on length of residence, that system has never been used because enough money has been available in the past to fund all students. That point system will not be used either this year or in the future, even if there are insufficient monies to fund all students. Instead, in part on advice from the Department of Law, the Commission will award loans, if necessary, on a first-come first-served basis.

IV. Other States' Programs

During July 1982 each state was surveyed as to the type of student loan program available in that state. It was found that all states participated in the Federal Guaranteed Student Loan Program (GSL), and only the states of Alaska, Alabama, Georgia, Kansas, and Oregon had other student loans available at the state level. Nearly all individual institutions have short-term emergency loans available for students in attendance.

Of those states having programs in addition to the GSL, only Alaska's is non-restrictive by student need and field of study. Alabama provides loans for medical and dental study at a 7% interest rate and has no residency restriction. Georgia provides 9% loans for up to \$1,500 per year for study in "critical fields" of study. Residency is one year. Kansas provides "loans of last resort" to students. If a student can not qualify for a GSL, loans of up to \$1,500 for a first-time freshman, \$2,500 for other undergraduates, and \$5,000 for graduate students are made available at 9% interest. No residency restriction exists. Oregon provides for loans for medical and dental study at 9% interest. The loans are for up to \$2,500 per year and residency required is one year.

Comparing the GSL programs in each of the states becomes difficult, since individual lenders (usually banks) can set individual restrictions on loans. For instance, some lenders require that a borrower be a regular bank customer, others

require a specific grade point average, and some require varying lengths of residency. Since these are private lenders, with only a state and federal guarantee, the terms can be quite restrictive or quite generous depending upon the attitude of the lender.

A comparison of the Alaska program and the general terms of the GSL is provided below. It can be seen that in all ways other than residency and part-time attendance, the Alaska program is more generous to the borrower than the GSL program.

<u>Terms/Conditions</u>	<u>GSL</u>	<u>Alaska Student Loan</u>
1. Amount of Loan, per year		
Undergraduate	\$2,500	\$6,000
Graduate	\$5,000	\$7,000
2. Total indebtedness		
Undergraduate	\$12,500	\$30,000
Graduate	\$25,000	\$35,000
	including under- graduate loans	but, for a combined total of no more than 8 years of loans undergraduate and graduate
3. Needs test required	Yes	No
4. Income cap	\$30,000	None
(a) Effect	loss of interest- waiver while in school	N.A.
5. Interest rate	9%	5%
6. Institutional restrictions	Accredited	Accredited or approved by Commission

7.	Residency required	Varies, usually 1 year	2 years
8.	Partial Cancellation	None	Up to 50%
9.	Loans to part-time students	Yes, Half-time students, or more	No, must be full- time
10.	Scholastic restrictions	Varies, usually "C" average - undergraduate "B" graduate	"C" average - undergraduate "B" average - graduate

V. Other Factors Affecting Loans

The federal program is becoming more restrictive under the current administration. Proposals are to lower the income cap to \$16,000, to charge interest while in school and in deferment, to raise interest to commercial rates, and to eliminate loans to graduate students. This trend toward a more restrictive federal program is creating a new clientele for Alaska loans. Increasingly, prospective students from other states are moving to Alaska to establish residency and borrow under the Alaska Student Loan Program. For many, this is the only way of obtaining access to desired postsecondary education and training.

Additionally, other federal programs such as Basic (Pell) Grants, Supplement Grants (SEOG), Incentive Grants (SSIG or SEIG), and College Work Study have all been targeted for reduction or elimination. This means students must increasingly turn to loans as the only form of financial aid available. When

this is coupled with the federal loan restrictions and fund reductions, Alaska's loan program becomes even more attractive.

VI. Alaska Student Loan Volumes

The Alaska Student Loan Program has experienced dramatic growth the past few years, and this growth is expected to continue. Table 1 below reflects that growth.

TABLE 1
ALASKA STUDENT LOAN ACTIVITY
1979-80 through 1988-89*

Year	Awards	Amount
1979-80	3,918	\$ 9,373,949
1980-81	6,460	\$ 15,957,717
1981-82	9,898	\$ 40,559,499
1982-83	15,000	\$ 59,000,000
1983-84	17,500	\$ 80,500,000
1984-85	19,000	\$ 97,500,000
1985-86	21,000	\$121,800,000
1986-87	23,100	\$136,290,000
1987-88	25,600	\$151,040,000
1988-89	28,500	\$168,150,000

* 1982-83 through 1988-89 are projected.

These totals are based upon projections including current and projected Alaska population, secondary school attendance rates, and in-migration.

VII. Effect of Changing Residency

Should the two-year residency be reduced, the number of

eligible applicants would increase. Certainly, the more the reduction the larger the pool. There are two factors at work: one, those persons already living in Alaska, but having been here for less than two years would be added to the potential borrowing pool; and two, as the residency is reduced, the desirability of moving temporarily into the state for the sole purpose of obtaining a student loan is increased.

Estimates of the increased applicants are listed in Table 2. These estimates are based upon an increased immigration during the 1983-84 year and a leveling from then on.

The effects are quite far-reaching, but the inescapable conclusion is that the program will not be fully funded. Even in the first year of such a residency change, the program will be from six to nine million dollars underfunded. This translates to from 1,500 to 2,200 people who do not receive loans. In future years the number of persons turned away could reach 6,000, 7,000, or more.

If a needs test is employed, the true Alaskan resident will be at a decided disadvantage because of the inflated salaries of the state. This is the problem already encountered with federal programs. Alaskans can not qualify for many programs because of family income, even though the cost-of-living in Alaska is so much higher than other areas of the nation. If an Alaskan resident who has lived and worked in the state for a

number of years, or whose parents have lived or worked in the state for a number of years, is compared on a needs test with an Oregon or Washington resident who has come to the state for only six months or a year, possibly not even worked, the Alaskan must lose. The short-term "resident" would have a distinct advantage with a needs test.

If first-come first-served is used as a criterion, the individual moving to Alaska for the sole purpose of obtaining a loan would probably be wise enough to meet all application dates. Hence, first-come first-served would only result in everyone filing early except that person whose career is suddenly ended and new skills are unexpectedly needed. Again, this would most likely be the long-term resident and the individual that may need assistance most.

In general, opening the loan program to the short-term resident will result in a large number of persons coming to Alaska for the sole purpose of obtaining loans to finance their education. Those persons for whom this program was designed and has operated and served over the last eleven years will be squeezed out by residents of other states, states unwilling to commit resources to education of their citizens in the manner of Alaska.

TABLE 2.
PROJECTED ALASKA STUDENT LOAN RESIDENCY EFFECTS
1982-83 through 1988-89

Two-Year Residency

Loan Year	Awards	Amount
1982-83	15,000	\$ 59,000,000
1983-84	17,500	\$ 80,500,000
1984-85	19,000	\$ 97,850,000
1985-86	21,000	\$121,850,000
1986-87	23,100	\$136,290,000
1987-88	25,600	\$151,040,000
1988-89	28,500	\$168,150,000

One-Year Residency

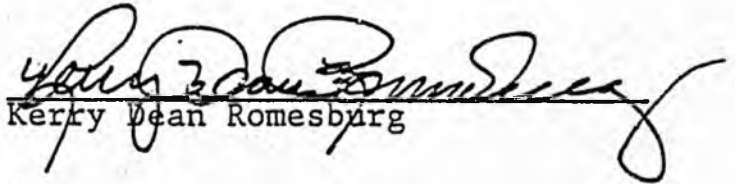
Loan Year	Additional* Awards	Additional* Amount	Total Program
1982-83	1,560	\$ 6,396,000	\$ 65,396,000
1983-84	2,783	\$12,801,800	\$ 93,301,800
1984-85	2,926	\$15,068,900	\$112,918,900
1985-86	3,759	\$21,802,200	\$143,602,200
1986-87	4,712	\$27,800,800	\$164,090,800
1987-88	5,862	\$34,585,800	\$185,625,800
1988-89	7,239	\$42,710,100	\$210,860,100

Six-Month Residency

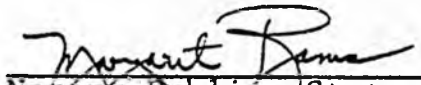
Loan Year	Additional* Awards	Additional* Amount	Total Program
1982-83	2,496	\$10,233,600	\$ 69,233,600
1983-84	4,453	\$20,482,880	\$100,982,880
1984-85	4,828	\$24,864,200	\$122,714,200
1985-86	6,202	\$35,971,600	\$157,771,600
1986-87	7,539	\$44,480,100	\$180,770,100
1987-88	9,379	\$55,336,100	\$206,376,100
1988-89	11,582	\$68,333,800	\$236,483,800

* Additional over two-year residency.

DATED at Tunean, Alaska, this 1st day of
September, 1982.


Kerry Dean Romesburg

SUBSCRIBED AND SWORN to before me this 1st day of
September, 1982.


Notary Public, State of Alaska
My commission expires: 7/21/88

Wilson L. Condon
Attorney General
State of Alaska
Pouch K
Juneau, Alaska 99811
(907) 465-3600

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)
)
Plaintiff,)
)
v.)
)
FRED J. BAXTER, MILDRED BANFIELD,)
THELMA BUCHHOLDT, LEE DEMMERT,)
THELMA LANGDON, MARY ELIZABETH)
LOMEN, JOHN MALONE, JOHN SHIVELY,)
TERRY STIMSON, DONNIS THOMPSON,)
BLANCHE WALTERS, WALTER WARD,)
KERRY ROMESBERG AND THE ALASKA)
COMMISSION ON POSTSECONDARY)
EDUCATION,)
)
Defendants.)

No. A82-307 Civ.

AFFIDAVIT OF MAILING

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT)

ss.

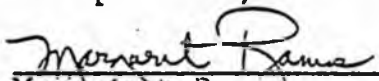
MARGARET RAMOS, being first duly sworn upon her oath,
deposes and says:

That she is employed as a legal secretary with the
Attorney General's Office, Pouch K, Juneau, 99811, and that on

the 8th day of September, 1982 she mailed the 1) Motion for Summary Judgment, 2) Defendants' Memorandum in Support of Summary Judgment, and 3) Affidavit of Kerry Romesburg by DHL Courier Express Service to the following:


Ronald G. Zobel
Hellen and Partnow
425 "G" St., Suite 710
Anchorage, Alaska 99501

DATED this 8th day of September, 1982.



Margaret Ramos

Subscribed and sworn to me this 8th day of
September, 1982.



Notary Public, State of Alaska
My commission expires 9/8/82

Wilson Condon
Attorney General
State of Alaska
Pouch K
Juneau, AK 99811

(907) 465-3600
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)

Plaintiff,)

vs.)

FRED J. BAXTER, MILDRED BANFIELD,)
THELMA BUCHHOLDT, LEE DEMMERT,)
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LOMEN, JOHN MALONE, JOHN SHIVELY,)
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BLANCHE WALTERS, WALTER WARD,)
KERRY ROMESBURG AND THE ALASKA)
COMMISSION ON POSTSECONDARY)
EDUCATION,)

Defendants.)

No. A82-307 Civil

DEFENDANTS' REPLY BRIEF

INTRODUCTION

Ms. Andress' opening brief makes a number of errors. This reply brief will only concentrate on the five most important general errors made by Ms. Andress. The first general error made

by Ms. Andress is her attempt to characterize the issue before this court as one concerning the validity of a two-year residency requirement in the abstract. Rather, the issue before this court is whether a two-year residency requirement is rational for the specific purpose of applying for the Alaska Student Loan Program. Ms. Andress ignores the problem of student mobility, the attractiveness of this particular loan program, and the ability of a student to take this cash subsidy anywhere in the world to go to school. These known, established facts are directly relevant to rationality of the residency requirement; they are ignored by Ms. Andress.

Second, Ms. Andress either states or implies that all durational residency requirements are subject to an intensive equal protection review. This is incorrect. Unless a significant deprivation, like access to medical treatment, welfare, or voting is involved, the normal "rational basis" test is used. Hawaii Boating Ass'n v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981). Under at least this minimal review, the two-year standard is rational.

Third, under the impression that the two year requirement was imposed in 1981, Ms. Andress relies extensively on statements made in the twelfth legislature 1981 session for the purposes underlying the two year requirement. Ms. Andress is wrong. The two-year requirement has been in existence since 1971. The 1981 session only added a clarification to the term "resident" to clarify the meaning of physical presence; the two-year residency requirement came much earlier. The 1981 floor statements are

only relevant to that clarification, and not to the rationality of using a length of two years.

Fourth, Ms. Andress states or implies that by moving to Alaska she has become disqualified from receiving any other significant financial aid. As a result, she argues, there is the spectre of some "absolute deprivation" of an education. This theme underlies most of her arguments. Again, Ms. Andress is incorrect. By moving to Alaska Ms. Andress has lost nothing. Alaska residents of less than two years are still eligible for the Federal Guaranteed Student Loan (GSL), as well as other federal and institutional loans. See Second Affidavit of Kerry Romesburg (attached). The GSL, as pointed out in our opening brief, is the only local loan program available to students in 45 states, including California (Ms. Andress' previous residence). The GSL is also available in Alaska in addition to Alaska's own student loan program. Ms. Andress and all less than two-year residents are qualified for the Alaska GSL program. Ms. Andress has lost nothing by moving to Alaska. Furthermore, if the Alaska Student Loan Program did not have a stringent test for bona-fide residents, then loan shoppers, too, would lose nothing by temporarily moving to Alaska. This, again, underscores the need for an effective and stringent "bona fide" residency test for Alaska's Student Loan Program.

Finally, Ms. Andress mischaracterizes the residency requirement as intending to deter or inhibit interstate migration. The state has the right to grant its subsidies only to bona fide residents: those persons physically present in the

state who intend to make Alaska their home. Even a totally accurate test of that intent would have the same effect of preventing "loan shoppers" from coming to Alaska solely to get student loans. This is the effect of all valid tests of bona fide residency: to prevent some state benefits from going to those who do not intend to be citizens of that state. As a result, the intent of all bona fide residency requirements could also be characterized as intending to prevent those who do not intend to make that state their home from coming to that state solely to take advantage of a state benefit. Ms. Andress' restatement of the intent to determine bona fide residency as a deterrence to "loan shoppers" does not render the requirement an unlawful interference with interstate migration.

Alaska wants students to come to Alaska; it wants to give money to persons who, upon completion of their education intend to make Alaska their home. Alaska does not want to give money to persons who do not intend to make Alaska their home. Those goals are legitimate, and the two-year residency requirement is, for the Alaska Student Loan Program, a rational test to determine the bona fides of residency.

ARGUMENT

A. The Two Year Requirement Must Be Viewed In Relation to this Particular Program

The question before this Court is whether a two-year residency requirement is an irrational tool to use in determining

the bona fide's of a student's Alaskan citizenship for the purpose of qualifying for Alaska's Student Loan Program. Defendants agree that some bona fide residents, like Ms. Andress, will be denied a student loan because of this requirement. Defendants wish that there was a magic test to determine intent to remain in Alaska; a test that could exactly sort those applicants who do and do not intend to make Alaska their home.

Unfortunately, that magic test does not exist. Just as unfortunately, it is known that without an effective bona fide residency test, students would come to this state and apply for loans with no intention of returning after their education is completed. As Dr. Romesburg stated during his deposition:

[D]on't forget, the loans are totally portable. These loans can be used anywhere, and in fact, not in the nation, anywhere in the world as long as its an approved institution. And students are very mobile as a class of people. I am sure you are aware of that. Certainly I am, and certainly anyone involved in financial aid is, or higher education today, is aware of the mobility of the modern student. They will travel between states if they can find a better opportunity for loans or aid. In fact, in the west, they shop--they shop quite blatantly between states under different areas of support.

Romesburg Deposition at 16.

Because of the magnitude of the subsidy, the state wished to make "virtually certain that students who are not, in fact, bona fide residents of the state, cannot take advantage" of this generous program. Vlandis v. Kline, 412 U.S. 441, 454 (1973). And, like the residency requirement for in-state student tuition, a durational residency requirement is a traditional tool for sorting student residents from those who do not intend to make Alaska their home. Because of the mobility of students, the ability to take the loan out of state, and the magnitude of the state benefit (up to \$53,000 over eight years), a stricter test for determining residency than that in use for qualifying for in-state student tuition was believed by the Legislature to be necessary. Unlike the subsidy given for instate tuition, not only was the amount of the subsidy given much greater, and not only was the award given in cash, but also the student did not have to remain in state in order to receive the benefit.

The period chosen was two years. It is recognized that some number of bona fide residents, like Ms. Andress, may be denied student loans as a result of this requirement. But,

"[a] state does not violate the Equal Protection -
- Clause because the classifications made by its laws are imperfect . . . "or because in practice it results in some inequality." "The problems of government are practical ones and may justify, if they do not require, rough accommodations."

Dandridge v. Williams, 397 U.S. 471, 485 (1970) (Citations omitted).

Given both the known mobility of students and the incentive for students who do not intend to remain to come to Alaska for a student loan, the two-year requirement is rational. The people affected by the requirement are those who previously resided outside the state. These recent arrivals are applying for up to \$53,000 of state funds. They may take that money back out of state for up to eight more years. It is surely reasonable to require some substantial residence test as an element in checking the bona fides of these new arrivals. The question is whether two years is irrational for this student loan program. We urge this Court to hold that it is a rational requirement; that even though it has an unfortunate effect on some individuals, like Ms. Andress, it is not an irrational method of assuring that Alaska student loan money goes to those persons who intend to make Alaska their home.

B. Ms. Andress Misstates the Standard of Review

Ms. Andress also mischaracterizes the applicable standard of review by implying or stating that some intensified review is or should be applied in this case. Recent case law establishes that the normal "rational basis" equal protection test applies.

As was mentioned in our opening brief, until Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), there was substantial confusion concerning whether strict scrutiny was always required in durational residency cases, or was limited to only those instances where significant deprivations (like denial of

welfare, medical treatment, or voting) resulted from failure to meet the residency requirements. E.g., Memorial Hospital, supra, 415 U.S. at 257, Cole v. Housing Authority of City of Newport, 435 F.2d 807, 810, n.9 (First Circuit 1970); Williams v. Zobel, 619 P.2d 448 (1980). As a result, for a period of time many courts assumed that strict scrutiny always applied regardless of the right infringed or the deprivation involved.

It was not until Memorial Hospital that the present test evolved -- a two tier test which depended upon the nature of the deprivation caused by the denial of "bona fide" resident status. As a result, the rational basis test applies to most durational residency requirements. Hawaii Boating Ass'n v. Water Transportation Facilities, 651 F.2d 661 (9th Cir 1981) ("Hawaii Boating").

Ms. Andress fails to recognize this period of confusion. Consequently, Ms. Andress misstates the applicable test when she asserts that a state must always have "an especially weighty interest in an objective proof of bona fide residency" [Plaintiff's Memorandum at 14], that "[a]ny durational residency requirement brought to a court for constitutional scrutiny will carry a heavy burden" [Id. at 10], or otherwise implies that all durational residency requirements require the application of some intensified test.

Also, as a result, Ms. Andress is able to make such statements as "No court has upheld a two-year durational residency requirement in these circumstances [referring to the statutes at issue in this case]." Id. at 15. That is true. It is also true

that no court applying the rational basis test has struck down a two-year durational residency requirement in these circumstances. Since the test was clarified eight years ago, there simply have not been any cases directly on point one way or the other.

Again, this is not to say that the two-year requirement is valid for all programs, or that the two-year requirement would be valid under strict scrutiny. But that is not the test nor the question before this court. The test is the rational basis test, and the question is whether or not this particular program can rationally require a two-year residency requirement for its applicants.

Because of the apparent confusion on Ms. Andress' part, the Ninth Circuit Court of Appeal's most recent statement on the applicable test bears some extended quotation:

The right to travel is a fundamental right, and it has been recognized that durational residency requirements - because they disadvantage a class of persons who have recently exercised the right to travel - may, in certain circumstances, unduly infringe upon this right. In Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600

- (1969), the Court held unconstitutional a one-year durational residency requirement for welfare assistance. The Court stated, however:

"We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote,

eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." [Id. at 638, n. 21]

The Court held, in Dunn v. Blumstein, 405 U.S. 330, (1972), and Memorial Hospital v. Maricopa County, [415 U.S. 250 (1974)], that durational residency requirements which involved deprivations of the right to vote and free nonemergency medical care triggered strict scrutiny. In Maricopa County, however, the Court noted that "The amount of impact required to give rise to the compelling-state-interest test [has] not been made clear." [Id. at 256-7] (Footnote omitted). In Fisher v. Reiser, 610 F.2d 629 (CA9 1979) cert. denied, [447 U.S. 930 (1980)], we noted the importance of the "nature of the benefit denied." Id. at 635. In fact, Judge Hufstedler, dissenting in Fisher, after reviewing the right to travel cases, commented that "The Court [has] indicated that the 'penalty' required to invoke strict scrutiny involves a genuinely significant deprivation, such as a denial of the basic 'necessities' (as in

Shapiro), or the denial of a 'fundamental political right' (as in Dunn).'' Id. at 639 (footnote omitted) (emphasis added). Judge Hufstedler also noted that "Deprivations which are only uncomfortable are not enough, such as conditioning lower tuition at state institutions of higher education upon a one-year residency requirement." Id. at 639, n. 5.

The district judge found that strict scrutiny was not applicable because the durational residency requirement for preferential rates for mooring privileges in recreational boat harbors was not a significant penalty on the right to travel. To use Judge Hufstedler's terminology, this "deprivation" was merely "uncomfortable." The district judge found that this case was more like the college tuition cases, which stand for the proposition that "conditioning lower tuition at state institutions of higher education upon a one-year residency requirement" does not impose a "penalty" on the right to travel justifying invoking strict scrutiny. We agree with the district judge that the "deprivation" involved in this case - the failure to provide a berth in a recreational boat harbor at the same rate as a resident - does not operate as a significant "penalty" on the right to travel.

Hawaii Boating Ass'n at 664-665 (emphasis in original).

Like in-state tuition, and unlike the right to vote, denial of a student loan is not a significant enough deprivation to trigger intensified review. Consequently, the rational basis test is the appropriate test.

C. The Two-Year Residency Requirement Has Been In Existence Since 1971.

Ms. Andress relies extensively on quotes from the Senate and House floor during the 1981 session in attempting to establish the purpose behind the two year length. Ms. Andress claims that those debates are relevant because she believes that

In 1981 the Twelfth Legislature amended the Alaska Student Loan Program to include the two year durational residency requirement . . .

Plaintiffs Memorandum at 7.

Ms. Andress is wrong. The two-year requirement has been in effect since 1971. § 1, Ch 98 SLA 1971 established the loan program, provided that an applicant must be "a resident of Alaska" and, in the original AS 14.40.773, defined "resident" as meaning

a person domiciled in Alaska who has resided in Alaska for at least two years before making an application for a student loan.

What the Twelfth Legislature did do was move the two year requirement from the definitional section (AS 14.40.773) to the qualification section itself (AS 14.40.751). § 10, Ch 89 SLA

1981. But the 1981 Legislature did not impose the two year length. Therefore, the statements of the 1981 Legislature are not relevant to the issue of the purpose or the intent of picking two years as the required length of residence rather than some other test or some other period of time.

The Twelfth Legislature did add a clarification to the two year requirement by providing for types of actual physical presence as the means for determining whether somebody had been a resident for two years. § 10 Ch 89 SLA 1981. The reason for this clarification was that the legislature had received evidence that persons who did not intend to make Alaska their home had come up for summer jobs two years in a row, applied for student loans, and had then taken the money out of state for school. Dr. Romesburg explained this statutory clarification and the reasons for the action in his deposition:

A. . . . The Statute that was changed, again, it was -- I think it was two years ago that the change went through, says that the person has to be physically present for two years before filing.

Q. The applicant can have all of these other indicators of residency --

A. Right.

Q. -- uniformly..

A. That's correct.

Q. They have not been present for two years, they're disqualified.

A. That's correct, unless they are a minor and their parents have been physically present for two years. There are some things like that. But even if they've been outside to school -- and I'm giving you what the Statute says now -- if you've been outside to school you have to have been physically present for two years before you went to school. If you're in the military, you have to have been physically present for two years before you entered the military. This was an attempt by the legislature to tighten down what they meant by physically present, and I'll even go beyond that to tell you who they were aiming at. They weren't aiming at the general person here. They were aiming at a group of people that were purportedly obtaining student loans that were, in fact, not residents, and those were individuals that would come to Alaska, work in the summer, go outside to school during the fall, to a school that didn't have a tuitional differential so they didn't have to declare themselves as a resident or non-resident at the particular

institution, come back, work a second summer, go out again to school and then they said, "I am a resident. I've put in, in fact, maybe six months, two summers, but I have been there -- I've been in school the rest of the time. I've only been outside the state except for educational purposes. I qualify under the loan program," and we were giving them loans.

The senate got very upset about this when they were informed. And they were informed, you could go back and check the senate records. Some students appeared and testified, students from the University of Alaska testified that this was happening and they got upset and said, "We don't want you giving those people those loans, and we want to tighten this thing down," and that's when they put two years.

Romesburg Deposition at 13-15.

Therefore, the Twelfth Legislature did not impose the two-year durational residency requirement. Instead, that legislature only clarified the definition of residence to take care of a problem that was brought to their attention. That problem

reemphasized the rationality of the original purpose of the program -- to assure that Alaska student loans went to students who intended to make Alaska their home. Simply stating that two years residence was required had not been enough; a further definition of residence to include certain types of physical presence was required in addition. The legislature, both in 1971 and 1981, was not reacting to a hypothetical fear - they were taking a course of action based on real and present problems. Their solutions were rational.

D. Ms. Andress Has the Same Loan Programs Available to Her as are Available to Students in 45 Other States.

Ms. Andress bases many of her arguments on the assumption that the Alaskan Student Loan Program is the sole source of funds for persons who are physically present in Alaska from one day to two years. For example, she states that

If the plaintiff is to get any governmental assistance from the State of Alaska to get a legal education, it is going to have to be through the Alaska Graduate Student Loan Program. (Romesburg Deposition at 9-11). The plaintiff's bona-fide Alaska residency prevents her from getting any financial assistance from any other state and makes it necessary for her to pay-out-of-state tuition in California.

Plaintiff's Memorandum at 3. It is on that assumption that Ms. Andress asserts, for example, that

defendant Romesburg makes it very clear that the denial of assistance from the State of Alaska through the Alaska Student Loan Program is an absolute denial of any State assistance for a wide range of graduate education. The plaintiff and all others like her are going to have to get assistance from the State of Alaska or not get a graduate education at all.

Plaintiff's Memorandum at 6 (emphasis added). This "absolute denial" argument underlies many of Ms. Andress' arguments. E.g., Id. at 39.

Ms. Andress is, again, incorrect. Although Ms. Andress is not qualified for the Alaska Student Loan Program, she is qualified for the Alaska version of the Federal Guaranteed Student Loan (GSL) Program. Second Affidavit of Kerry Romesburg. The funding and terms available under this program were described in our opening brief at page 4 and in the (First) Affidavit of Kerry Romesburg.

Although it is technically true that Ms. Andress is not qualified for any other state-funded programs, there are only four other non-GSL state programs in the nation. These are the more restrictive programs in Alabama, Georgia, Kansas and Oregon. (First) Affidavit of Kerry Romesburg at 5. All other states participate in the Graduate Student Loan Program, and, unlike Alaska, do not offer any independently funded state loans.

In particular, Ms. Andress is no worse off than if she had remained in California, since California is not one of the

four states with a separate state-funded student loan program. In addition, Ms. Andress, like all other students nationwide, is eligible for National Direct Student Loans (a federally administered loan program, loaning up to \$2,500 at five percent interest) or the much smaller institutional loans (available at specific colleges). Second Affidavit of Kerry Romesburg.

Therefore, except for students in four other states, Ms. Andress is eligible for the exact same loan programs as are available to any other student in the nation. Remaining equal to almost all other students can hardly be termed "an absolute denial of a graduate education." Plaintiff's Memorandum at 39.

Instead, Ms. Andress is simply being prevented from receiving an additional benefit: the benefit of the much more generous Alaska Student Loan program. She has lost nothing by moving to Alaska.

Further, this again emphasizes the rationality of the fear of "loan shoppers"--those who temporarily come to Alaska solely to receive a student loan and do not have the present intent of making Alaska their home. If there was not a stringent residency test, then the "loan shoppers" would also remain eligible for those federal loans by coming to Alaska. They, too, would have nothing to lose. It is necessary to have some substantial and effective test for determining which of the recently arrived students have the present intent to remain in Alaska. The two-year residence requirement is rationally related to that purpose.

E. The Purpose of the Two Year Residency Requirement is not to Deter In-State Migration.

Finally, Ms. Andress consistently mischaracterizes the residency requirement as a deterrent to interstate migration. She repeatedly states that the "intent is to prevent people from coming to Alaska." Plaintiff's Memorandum at 19. Ms. Andress is mistaken. The purpose of the program is not to prevent students who intend to remain in Alaska from coming to Alaska. Rather, it is to prevent persons who do not intend to remain and make Alaska their home from receiving student loans. The only effect hoped for is to deter "loan shoppers" - persons who do not intend to make Alaska their home, and who are not bona fide residents - from receiving student loan money.

The requirement is not intended to prevent those wishing to make Alaska their home from coming to Alaska. In fact, as explained above, newly arrived students will remain eligible for some loans as are available in most of the rest of the nation (the GSLs). Thus it is doubtful that the two year requirement for the Alaska Student Loan Program will deter any student wishing to make Alaska his or her home from coming to the state.

Ms. Andress misstates the record when she makes statements like the following:

The concern in this record is not whether a person is a bona fide resident, because defendant Romesburg admits that there are many bona fide residents who would otherwise be qualified. The concern in this record is with

stopping migration and Romesburg's testimony shows that is exactly the effect that the statute has.

Id. at 23.

First, the purpose of any test of bona fide residence is to prevent people who do not intend to remain in the state from receiving a state benefit. Even if there were an exact test, one which could unerringly classify bona fide residents from transients, even that test would still deter those person who do not intend to make Alaska their home from traveling here solely to take advantage of the state benefit. This result would not render a totally accurate test unconstitutional. It does not render this residency requirement unconstitutional, either.

It is the intent of these statutes, shown in the record, to only sort out those persons who want to take the money and run. For example, the following exchange occurred during the deposition, beginning with a question from Ms. Andress' attorney, Mr. Zobel:

- Q. So this two year durational residency requirement is enforced to deter people from coming to the state, claiming Alaska residency, taking up residence here and applying for a loan.
- A. I would disagree. I would disagree with some of the terms you used, if I can.
- Q. Sure.

A. I think it's -- the two year durational residency now, the physical presence residency, the senate and the house went along with it, the legislature passed a couple years ago, was to deter people from coming to Alaska for the sole purpose of obtaining a student loan. The way you posed it, you said, coming up here, establishing residency and so on. If residency means two years residency, then I'd have to disagree. What the purpose of that was to make sure that people didn't come up here just to get a student loan and then take that loan -- don't forget, the loans are totally portable. These loans can be used anywhere, and in fact, not in the nation; anywhere in the world as long as it's an approved institution. And students are very mobile as a class of people. I'm sure you're aware of that. Certainly I am, and certainly anyone involved in financial aid is, or higher education today, is aware of the mobility of the modern student. They will travel between states if they can find a better opportunity for loans or aid. In fact, in the west, they shop --

they shop quite blatantly between states under different areas of support.

Q. So you want to deter those people from coming to Alaska to participate in the program?

A. I think the true -- the true wording that should be used, and I guess you could -- if you want to interpret this as deterring, I guess that's up to you, but the purpose was, to insure that the loans were used by the people that were truly eligible; that were truly Alaska residents and were residents and not just for loan purposes, but were residents of Alaska, and the loans were directed to help those residents. Remember those two reasons they had the program; access and an educated populace. It's to help the residents in Alaska, not an Oregonian or a Washingtonian that happens to come up here and put in a couple of months in the summer or maybe one year or a short period of time, take the money and go south and maybe never return.

So I'm not sure -- in fact, I would say that the program is not used in a way to

deter anyone from coming here. I don't think that's the intent at all. It's to -- that residency isn't a deterrent. It's more, I think, an encouragement for those people that are truly Alaskans and it's just a test to make sure that in fact, they are Alaskan and qualify. And by "Alaskans." I mean truly a resident of Alaska, not just someone here to qualify for a loan and leave. I don't know if we're saying the same thing in different ways or not.

Romesburg Deposition at 15-17.

Therefore, the loan program cannot be characterized as an intent to prevent in-state migration. Again, it's purpose is solely to assure that only bona fide residents receive a generous state subsidy.

Second, simply because the test is inexact, and will deny benefits to some bona fide residents, does not mean that its purpose must be something other than a test for bona fide residency. As stated earlier, it is unfortunate that there is no magic test to exactly sort those who have the requisite intent from those who do not. In addition, the state is not required to employ massive armies of bureaucrats to perform individualized intent tests on all applicants for all programs. Absent such a test or requirement, there will always be, for any test, many bona fide residents who will be included within the assumed class

of non-bona fide residents. But the existence of that inherent inexactness does not mean that the purpose of the program is something other than to assure that only bona fide residents will receive student loan money.

We have stipulated that Ms. Andress is a bona fide resident. But because she is denied a student loan does not mean that the purpose is to deter persons who wish to reside in Alaska for making Alaska their home. This point was clearly made at Dr. Romesburg's deposition. In fact, the following exchange presents the heart of this whole dispute:

Q. You've stated that you have no reason to believe that my client came to Alaska for the purpose, the sole purpose of participating in the loan program.

A. Correct.

Q. Is it designed to make persons such as my client, who is a -- You've said, am I not correct, that she is a bona fide resident?

A. I said, I have no reason to believe she's not.

- Q. - Okay.

And you said you have no reason to believe that she came to Alaska solely for the purpose of participating in the graduate student loan program?

A. Correct.

Q. Is the durational residency requirement designed to deter persons such as my client from coming to Alaska?

A. No.

Q. But it will deny her a loan.

A. Yes.

Q. And for what reason? What -- what purpose does the classification, the requirement serve in that instance?

A. If you're asking, is your client a victim of a two year residency requirement, when for all purposes she might otherwise be eligible, the answer would be yes, she is a victim of that residency requirement. When you impose any kind of a requirement -- I'm not a legislature -- legislator -- when you impose any kind of a requirement on a class of people you're going to treat all those people within the class as if they're the same, and I think quite often the outcome can be unfortunate. In her case it may be unfortunate. But if the legislature says we have to pick -- somehow -- again, let's go back to the beginning. We have a very mobile class of people, students, very mobile. Look at the age of them. Look at the income.

it's a mobile group of people. We know they shop. We know they shop in the Northwest, I know they do. I can give you testimony from other states that students shop. They shop loan programs; they shop WICHI support; they shop tuitions; they'll move around. But we're saying, in this state what the legislature's been saying for years is, "We are willing to support our students. We want to support them to pursue their educational goals and we want to have an educated populace." The State of Washington, the State Oregon, Idaho, don't support their students at the level we do. They don't. They don't have the same kind of program, and they seem to be unwilling to, or maybe unable to, but the point is, they don't. So the Alaska Legislature says, "We want to do this for our people."

Now we have to make sure, though, that they are, indeed, our people. We don't want to create a loan program and given -- and by all means, when you're talking five percent you're talking about a


subsidized program. We don't want to have a five percent program for Washington students, residents of Oregon. we want it for Alaskans. And we think two years is reasonable. That's what the legislature has said through statute to us.

Romesburg Deposition at 43-45.

The legislature was correct. The two year requirement is reasonable test for determining the bona fides of residency for applicants for the Alaska Student Loan Program. It should be upheld.

DATED this 15th day of September, 1982.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS;

Plaintiff,

vs.

FRED J. BAXTER, MILDRED BANFIELD,
THELMA BUCHHOLDT, LEE DEMMERT,
THELMA LANGDON, MARY ELIZABETH
LOMEN, JOHN MALONE, JOHN SHIELY,
TERRY STIMSON, DONNIS THOMPSON,
BLANCHE WALTERS, WALTER WARD,
KERRY ROMESBURG AND THE ALASKA
COMMISSION ON POSTSECONDARY
EDUCATION,

Defendants.

No. A82-307 Civil

SECOND AFFIDAVIT OF KERRY ROMESBURG

Kerry Dean Romesburg, being duly sworn, states as follows:

STATEMENT ON STUDENT LOAN AVAILABILITY

An Alaskan college student wishing to borrow funds for collegiate attendance has four options, in most cases. These four loan types include: Alaska State Student Loans, Guaranteed Student Loans, National Direct Student Loans, and special institutional loans.

Institutional Loans are available at most schools and are usually for short-term only and for very small amounts. Loans are obtained at the school.

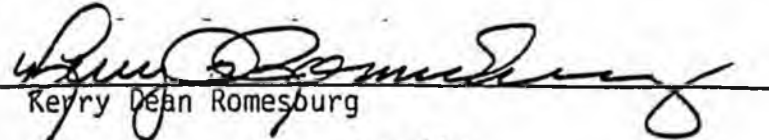
National Direct Student Loans are available at most accredited schools. These are loans from the federal government; carry 5% interest; are for \$1,500 or \$2,000 for undergraduate and graduate loans, respectively; are need-based; are available through the school financial aid office; and have no residency requirement.

Guaranteed Student Loans are available to Alaskans through: Alaska Municipal Employees Federal Credit Union, Alaska USA Federal Credit Union, Matanuska Valley Federal Credit Union, National Bank of Alaska, and directly from United Student Aid Funds. These loans are for \$2,500 and \$5,000; carry 9% interest; are need-based for interest subsidy; and have no residency requirement. (Referenced in Baxter Opening Brief, page 4).

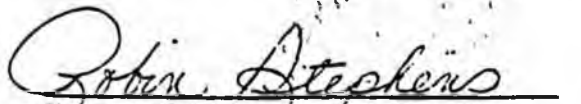
Alaska State Student Loans are available directly from the State of Alaska. These loans are for \$6,000 and \$7,000 for undergraduate and graduate loans, respectively; carry 5% interest; have no needs test; and require a two-year residency.

Any student wishing to borrow funds for collegiate attendance (except those already at borrowing maximums or already in default on a previous loan) is eligible to obtain a loan to attend school. If they are two-year residents, they are eligible for the Alaska State Loan Program or the federal Guaranteed Student Loan Program, as well as potentially eligible for other programs. If they are less than two-year residents, they are eligible for the federal Guaranteed Student Loan Program, as well as potentially eligible for other programs.

DATED at Juneau, Alaska this 13th day of September, 1982.


Keyry Dean Romesburg

SUBSCRIBED AND SWORN to before me this 13th day of September, 1982.


Notary Public in and for the
State of Alaska
My commission expires: 1/24/84

Wilson Condon
Attorney General
State of Alaska
Pouch K
Juneau, AK 99811

(907) 465-3600
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)

Plaintiff,)

vs.)

FRED J. BAXTER, MILDRED BANFIELD,)
THELMA BUCHHOLDT, LEE DEMMERT,)
THELMA LANGDON, MARY ELIZABETH)
LOMEN, JOHN MALONE, JOHN SHIVELY,)
TERRY STIMSON, DONNIS THOMPSON,)
BLANCHE WALTERS, WALTER WARD,)
KERRY ROMESBURG AND THE ALASKA)
COMMISSION ON POSTSECONDARY)
EDUCATION,)

Defendants.)

No. A82-307 Civil

AFFIDAVIT OF MAILING

STATE OF ALASKA)

: ss.)

FIRST JUDICIAL DISTRICT)

Rebecca MacDonald, being first sworn, deposes and says:

I am a citizen of the United States of America, over the age of 19 years, and not a party to this proceeding; I am a legal secretary in the Office of the Attorney General, Juneau, Alaska; on September 15, 1982, I mailed a correct copy of the Defendants' Reply Brief, and Second Affidavit of Kerry Romesburg in this proceeding to the following:

Ronald G. Zobel
Hellen and Partnow
425 "G" St., Suite 710
Anchorage, Alaska 99501

U.S. District Court
701 "C" Street
Anchorage, Alaska 99513

by depositing same in the DHL Courier Express Service.

Ronald G. Zobel

SUBSCRIBED AND SWORN TO before me this 15th day of
September, 1982.

Dorothy Warner

Notary Public, State of Alaska
My commission expires: 1/5/86



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,

Plaintiff,

v.

Case No. A82-307 Civil

FRED J. BAXTER, MILDRED BANFIELD,
THELMA BUCHHOLDT, LEE DEMMERT,
THELMA LANGDON, MARY ELIZABETH
LOMEN, JOHN MALONE, JOHN SHIVELY,
TERRY STIMSON, DONNIS THOMPSON,
BLANCHE WALTERS, WALTER WARD,
KERRY ROMESBURG AND THE ALASKA
COMMISSION ON POSTSECONDARY
EDUCATION,

Defendants.

DEPOSITION OF KERRY ROMESBURG

Friday, August 27, 1982, 10:15 A. M.

Anchorage, Alaska



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,

Plaintiff,

v.

Case No. A82-307 Civil

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BLANCHE WALTERS, WALTER WARD,
KERRY ROMESBURG AND THE ALASKA
COMMISSION ON POSTSECONDARY
EDUCATION,

Defendants.

DEPOSITION OF KERRY ROMESBURG,

taken on behalf of the plaintiff pursuant to notice, at
the law offices of Hellen & Partnow, 425 G Street, Suite 710,
Anchorage, Alaska, before Barbara Rossi, Registered Professional
Reporter and Notary Public for the State of Alaska.



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A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff: HELLEN & PARTNOW
 Attorneys at Law
 BY: RON ZOBEL, ESQ., and
 ADRIENNE FEDOR, ESQ.
 425 G Street, Suite 710
 Anchorage, Alaska 99501

For the Defendants: STATE OF ALASKA
 BY: ROBERT M. MAYNARD, ASSISTANT
 ATTORNEY GENERAL
 State Capitol, Room 410
 Pouch K
 Juneau, Alaska 99811

Reported BY: Barbara Rossi, RPR



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Examination by:

Mr. Zobel

Page

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Exhibits:

No. 1	A copy of a one-page document entitled, RESIDENCE STATUS GUIDELINES FOR LOAN PURPOSES UNDER THE ALASKA STUDENT LOAN PROGRAM	11
No. 2	A newspaper, Section A of the "ANCHORAGE DAILY NEWS," dated Friday, August 6, 1982	22
No. 3	A copy of a six-page document, pages from the University of Alaska, Anchorage 1982-83 Catalog	29
No. 4	A copy of a six-page letter, from Bruce M. Botelho, to The Honorable Donald E. Clocksin, dated May 5, 1981	34
No. 5	A copy of a one-page document entitled, TABLE 2, PROJECTED ALASKA STUDENT LOAN RESIDENCY EFFECTS, 1982-83 through 1988-89	52



1 ANCHORAGE, ALASKA, Friday, August 27, 1982, 10:15 A. M.

3 KERRY ROMESBURG,

4 called as a witness herein on behalf
5 of the plaintiff, being duly sworn by
6 Barbara Rossi, Notary Public, was ex-
7 amined and testified as follows:

8 EXAMINATION

9 BY MR. ZOBEL:

10 Q. What is your name?

11 A. Full name? Kerry Dean Romesburg.

12 Q. Mr. Romesburg, my name's Ron Zobel. I am counsel
13 for the plaintiff in a lawsuit in Federal Court where you
14 are a defendant.

15 Have you ever had your deposition taken before?

16 A. No.

17 Q. You should be advised that you are under oath and
18 this is the same as testimony that would be given in a court
19 of law.

20 At some time during the deposition, your counsel
21 may make objections for the record and then I may insist that
22 you answer the questions.

23 What is your address?

24 A. Home address or business?

25 Q. Both.



1 A. Okay. My home address is 308 Distin, that's,
2 D-i-s-t-i-n, Juneau, Alaska. And my business address is at
3 the Commission on Postsecondary Education, that's Pouch FP,
4 400 Willoughby Avenue in Juneau.

5 Q. And what is your present position?

6 A. I'm the executive director for the Commission.

7 Q. What are your responsibilities in that position?

8 A. As the executive director, I'm the chief officer
9 for the organization and we have a 13 member Board that is,
10 in fact, the Commission. I'm the officer, executive officer
11 for the staff. We have a staff now of 59 people and we
12 administer a number of programs, one of which is the student
13 loan program.

14 Q. What is your educational background?

15 A. I've got a bachelor's degree and a master's degree
16 in math and education, and I have a PhD in higher education,
17 all of those from Arizona State University. I've taught and
18 I've worked in administration for -- you're talking about
19 higher ed. now. I also taught secondary ed., but I've taught
20 and I've been in higher ed., I guess, for about 11, 12 years
21 now.

22 Q. When you say you've been in higher ed., in what
23 positions?

24 A. Okay. I was a professor, assistant professor for
25 higher education in the Center for the Study of Higher



1 Education at Arizona State. Then I worked also in Institutional
2 Research and Budget Office, which is administrative arm at
3 Arizona State University. Then I worked at the Governing
4 Board, which is the Arizona Board of Regents, and also I worked
5 as the director, a comparable position to what I have now,
6 for the Arizona Commission on Postsecondary Education when
7 it was first established. Then I came here and I've been
8 in this position, in November it will be seven years. So
9 I've been here for almost seven years.

10 Q. So through this experience with the Commission and
11 your educational background, you're familiar with higher
12 education in the State of Alaska?

13 A. Yes. In fact, I -- since that's what I have my
14 doctorate in, I hope I'm familiar with it and higher education
15 in general, throughout the United States and in fact, in some
16 international.

17 Q. The Alaska Commission of PostSecondary Education
18 you said administers a student loan program; is that correct?

19 A. Correct.

20 Q. Does that program include both graduates and
21 undergraduates?

22 A. Yes. And I'll go beyond that, if you don't mind.

23 Q. Explain the program to us, please.

24 A. It includes -- When you say, "graduates and
25 undergraduates," you're putting it in academic terms. We



1 also give loans to vocational students. Would you like just
2 an overview of the loan program?

3 Q. Yes, please.

4 A. Okay. The student program provides low interest
5 loans, and those are five percent simple interest loans for
6 students attending institutions of postsecondary education,
7 not just higher education, making that differential. An
8 undergraduate or a vocational student can borrow up to \$6,000
9 per year for up to five years as an undergraduate, and a
10 graduate student can borrow up to \$7,000 per year for
11 a total of up to five years of graduate borrowing, but
12 not more than a total combined of eight years borrowing
13 under the program.

14 The repayment is over a ten-year period with
15 the provision to kick it up to 15 if they have trouble
16 making the payments, and there is a very attractive cancellation,
17 or forgiveness feature which says that, if a student,
18 after borrowing, comes back -- for instance, if they've
19 left or if they've stayed here, if they reside in Alaska
20 after completing their study, which means getting the
21 degree or certificate or whatever they're after, that
22 we will cancel ten percent per year for up to 50 percent
23 of what they've borrowed. Interest doesn't accrue while
24 they're in school. It doesn't accrue while they're under
25 certain kinds of deferments such as military or Peace Corps,



1 unemployment deferment, some things like that. It's a very,
2 very generous program. In fact, the most generous loan
3 program in the United States for students.

4 Q. The plaintiff in this lawsuit is a law student.
5 You said that you were familiar with higher education
6 in the State of Alaska. Are there any law schools in
7 the State of Alaska?

8 A. No.

9 Q. Are there any medical schools in the State of Alaska?

10 A. No.

11 Q. What other graduate programs are not available
12 in the State of Alaska?

13 A. Oh, goodness. We could start naming programs
14 and name them throughout most of the afternoon.

15 Q. Let's name a few of them.

16 A. If you're talking about professional schools,
17 which is what -- when you're talking about professional
18 education such as law or medicine, of course, they're not
19 available in the state. We don't have a program in vet
20 medicine. We don't have a program in optometry. We don't
21 have a program in occupational therapy. I'm looking at
22 the health fields right now. Public health. We don't have
23 an architecture program. We don't have programs in nuclear
24 physics. We don't have a PhD program in math. The list
25 could go on and on. We have a very developing higher education



1 system, largely because of the youngness of it and the population
2 base. When you're looking at really specialized programs,
3 Alaska doesn't have very much.

4 Q. So one of the purposes for this student loan program
5 is to provide assistance for persons who want to go to a
6 program that wouldn't be available in the State of Alaska.

7 A. Actually, the legislature -- and you'd have to
8 go back to the 1971 legislative records -- but when they
9 established the program there were two -- I'm taking a
10 little exception to what you just said on this, Mr. Zobel.

11 Q. Fine. Go ahead.

12 A. There were two purposes that the legislature stated:
13 One was to provide access for higher educational programs,
14 and to say it's programs that aren't available in the state
15 is not correct. It's to provide access to any program.
16 Even if there's a comparable program in the state a student
17 can borrow money to go outside. The reason I make that
18 differential is because three or four years ago -- and trust
19 on memory on this, I don't know which. We could look it
20 up -- at that time, Representative Charlie Parr tried to
21 change the loan program to say that you could only use it
22 for programs unavailable in Alaska and it was unsuccessful.
23 The legislature wouldn't go for it. So it is to provide
24 access. That's one purpose. The other had to provide for
25 an educated populace, and that's why they have the forgiveness



1 feature to encourage people to remain in Alaska to use their
2 education here. So really, those two purposes.

3 Q. If my client is to get any governmental assistance
4 in getting a legal education, it has to be through -- Strike
5 that.

6 If my client is to get any governmental assistance
7 from the State of Alaska to get a legal education, it's
8 going to have to be through this graduate loan program,
9 isn't it?

10 A. That's correct.

11 (Exhibit No. 1 was marked
12 for identification.)

13 BY MR. ZOBEL.

14 Q. I'm going to show you Exhibit No. 1. Would you
15 tell me what that document is?

16 A. Well, it's headed Residency Status Guidelines
17 and it is a document that we do -- meaning the Postsecondary
18 Commission -- does make available to students as guidelines
19 for determination of residency, which is an eligibility
20 requirement under this loan program. There aren't many
21 requirements under this loan program as -- I assume you're
22 familiar with. Maybe I shouldn't assume that. And I should
23 put it on the record, this loan program does not have a
24 needs test, which is one of the very few in the nation that
25 does not have a needs test. We loan for full-time study



1 only, and the only really require -- only requirement there
2 is is -- there's really two: They can only use the program
3 for certain expenses; that's, tuition and fees, room and
4 board, books and supplies, those three items. They have
5 to go to an accredited or approved institution, and to get
6 the money they have to be a two-year resident, and that's
7 it. And this addresses -- this addresses the two year Alaska
8 residence, the 24 months, and this tries to define what
9 we mean by residence. And that's what the document labeled
10 Exhibit No. 1 is.

11 Q. In the second paragraph, would you -- would you
12 just read the second -- first sentence of the second paragraph,
13 please?

14 A. Aloud?

15 Q. Yes.

16 A. "True domicile is indicated by numerous things
17 such as physical presence, voter registration, income tax
18 returns, home ownership, location of employment, driver's
19 license, home of record for a military person, parents'
20 domicile in case of a minor, etc."

21 Q. And those are the things which the Alaska Commission
22 on Postsecondary Education would look at in determining
23 whether a person was a bona fide resident?

24 A. That's correct. Except -- let me -- may I add
25 one thing? The legislature did define residence two years



1 ago. This was a change, to tighten it up. And this was --
2 I'm using Charlie Parr again. This was again Charlie Parr,
3 when he was in the senate, that was the sponsor for this
4 particular bill and at that time, they defined it and the
5 law describes what physical presence means now. They really
6 tightened that down. So there's that. It says here, "such
7 as physical presence." We would have interpreted it
8 differently a couple years ago than we do now. We have
9 to define and look at physical presence as it is defined
10 in State Statute now, but yes, those are the things that
11 we look at, you're correct.

12 Q. So if a person, an applicant for this student
13 loan program was physically present in Alaska and voted
14 in Alaska and filed income tax returns, owned a home here,
15 was employed in the State of Alaska, had an Alaska Driver's
16 license, that person would not qualify as a resident for
17 this program if they had not been present in the State of
18 Alaska for two years.

19 A. That's -- Is that a question?

20 Q. That's a question.

21 A. Okay. That's correct, by the -- again, we're
22 referring to that change in the Statutes. The Statute that
23 was changed, again, it was -- I think it was two years ago
24 that that change went through, says that the person has
25 to be physically present for two years before filing.



1 Q. The applicant can have all of these other indicators
2 of residency --

3 A. Right.

4 Q. -- uniformly.

5 A. That's correct.

6 Q. They have not been present for two years, they're
7 disqualified.

8 A. That's correct, unless they are a minor and their
9 parents have been physically present for two years. There
10 are some things like that. But even if they've been outside
11 to school -- and I'm giving you what the Statute says now --
12 if you've been outside to school you have to have been
13 physically present for two years before you went to school.
14 If you're in the military, you have to have been physically
15 present for two years before you entered the military. This
16 was an attempt by the legislature to tighten down what they
17 meant by physically present, and [I'll even go beyond that
18 to tell you who they were aiming at. They weren't aiming
19 at the general person here. They were aiming at a group
20 of people that were purportedly obtaining student loans
21 that were, in fact, not residents, and those were individuals
22 that would come to Alaska, work in the summer, go outside
23 to school during the fall, to a school that didn't have
24 a tuition differential so they didn't have to declare themselves
25 as a resident or non-resident at that particular institution,



1 come back, work a second summer, go out again to school
2 and then they said, "I am a resident. I've put in, in fact,
3 maybe six months, two summers, but I have been there --
4 I've been in school the rest of the time. I've only been
5 outside the state except for educational purposes. I qualify
6 under the loan program," and we were giving them loans.

7 The senate got very upset about this when they
8 were informed. And they were informed, you could go back
9 and check the senate records. Some students appeared and
10 testified, students from the University of Alaska testified
11 that this was happening and they got upset and said, "We
12 don't want you giving those people those loans, and we
13 want to tighten this thing down," and that's when they put
14 two years.)

15 Q. So this two year durational residency requirement
16 is enforced to deter people from coming to the state claiming
17 Alaska residency, taking up residence here and applying
18 for a loan.

19 A. I would disagree. I would disagree with some
20 of the terms you used, if I can.

21 Q. Sure.

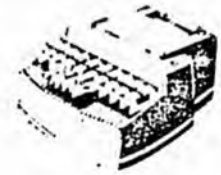
22 A. I think it's -- the two year durational residency
23 now, the physical presence residency, the senate and the
24 house went along with it, the legislature passed a couple
25 years ago, was to deter people from coming to Alaska for



1 the sole purpose of obtaining a student loan. The way you
2 posed it, you said, coming up here, establishing residency
3 and so on. If residency means two years residency, then
4 I'd have to disagree. [What the purpose of that was to
5 make sure that people didn't come up here just to get a
6 student loan and then take that loan -- don't forget, the
7 loans are totally portable. These loans can be used anywhere,
8 and in fact, not in the nation; anywhere in the world as
9 long as it's an approved institution. And students are
10 very mobile as a class of people. I'm sure you're aware
11 of that. Certainly I am, and certainly anyone involved
12 in financial aid is, or higher education today, is aware
13 of the mobility of the modern student. They will travel
14 between states if they can find a better opportunity for
15 loans or aid. In fact, in the west, they shop -- they shop
16 quite blatantly between states under different areas of
17 support.]

18 Q. So you want to deter those people from coming
19 to Alaska to participate in the program?

20 A. [I think the true -- the true wording that
21 should be used, and I guess you could -- if you want to
22 interpret this as deterring, I guess that's up to you, but
23 the purpose was, to insure that the loans were used by the
24 people that were truly eligible; that were truly Alaska
25 residents and were residents and not just for loan purposes,



1 but were residents of Alaska, and the loans were directed
2 to help those residents. Remember those two reasons they
3 had the program; access and an educated populace. It's
4 to help the residents in Alaska, not an Oregonian or a
5 Washingtonian that happens to come up here and put in a
6 couple of months in the summer or maybe one year or a short
7 period of time, take the money and go south and maybe never
8 return.

9 So I'm not sure -- in fact, I would say that the
10 program is not used in a way to deter anyone from coming
11 here. I don't think that's the intent at all. It's to --
12 that residency isn't a deterrent. It's more, I think, an
13 encouragement for those people that are truly Alaskans and
14 it's just a test to make sure that in fact, they are Alaskan
15 and qualify. And by "Alaskans," I mean truly a resident
16 of Alaska, not just someone here to qualify for a loan and
17 leave. I don't know if we're saying the same thing in different
18 ways or not.

19 Q. It is possible for a person to migrate to Alaska,
20 be physically present here, meet all of these criteria that
21 we read just a short time ago and intend to remain here,
22 but come here for the purpose of participating in the program;
23 isn't that true? There can be such an applicant.

24 A. Yes, certainly could be.

25 Q. And the -- if I understood what you said before,



1 this requirement is enforced by you and your agency to select
2 out those people that would come to Alaska to participate
3 in this program.

4 A. To select them out. I'm confused.

5 Q. To make them ineligible, make them ineligible
6 so they won't come to Alaska to participate in the graduate
7 student loan program.

8 MR. MAYNARD: Mr. Zobel, are you testifying
9 or are you asking a question?

10 MR. ZOBEL: I'm asking a question.

11 MR. MAYNARD: Can you say it again as a question?
12 I kind of got lost halfway through it.

13 MR. ZOBEL: Okay. I'll restate it.

14 Q. One of the reasons that this durational residency
15 requirement is enforced by yourself and your agency is
16 to make persons who come to this state and come for the
17 purpose of participating in the graduate loan program,
18 ineligible.

19 A. Okay. You just made a statement and I assume
20 that's a question.

21 Q. That's a question.

22 A. I thought you said, one of the purposes is. You're
23 saying, is that one of the purposes or -- I don't think --

24 Q. Excuse me.

25 A. I'm not playing word games.



1 Q. Is one of the purposes for this durational
2 residency requirement to make persons who come to Alaska
3 for the purpose of participating in this graduate program
4 ineligible?

5 A. I would say the purpose of the durational residence
6 is to try to insure that the people that receive the loans
7 are bona fide residents, bona fide as defined under the
8 Statute now. In other words, I would say it in a positive
9 way. You're saying it in a different fashion. I wouldn't
10 use those terms, no. I would say, the durational residence
11 imposed by the legislature is to insure that the people
12 that receive the loans are bona fide residents as defined
13 by the Statute.

14 Q. Which defines it as two years.

15 A. Which defines it as --

16 Q. Physical presence.

17 A. Physical presence, two years, that's correct.

18 Q. What would --

19 A. In fact --

20 Q. What would occur if the durational residency requirement
21 of two years did not exist?

22 A. And --

23 Q. In your opinion.

24 A. And it were something less or something more or
25 just none?



1 Q. Let's start out with none. There was a bona fide
2 residency requirement, but no two year waiting period.

3 A. I think we would have a very increased number
4 of applicants. I think we would have a large number of
5 people coming to this state, as I said, shopping students
6 coming to the state strictly to get student loan money and
7 using that money to attend the institution of their choice.
8 I think the out -- the final outcome of that -- let me go
9 beyond --

10 Q. Just a moment. Let me --

11 MR. MAYNARD: No, he has a right to finish
12 his answer. He's still answering the question.

13 THE WITNESS: Yeah, I haven't finished it.

14 BY MR. ZOBEL:

15 Q. Okay.

16 A. Because you said, what would happen. Not only
17 would we have that increased number, the result of that
18 increased number would be, there would not be enough money
19 in the program to fund all applicants. Hence, somebody
20 would be turned away. You'd have to turn some students
21 away. We haven't turned people away in this program. In
22 the past, they've been fully funded. We're going to turn
23 them away this year. But we'd have to turn them away. So
24 the result is, if there were no durational residency, what
25 would happen, there wouldn't be enough money to fund some



1 people. Some people would be turned away. That's what
2 would happen.

3 Q. So one of the reasons which this -- Strike that.

4 So the reason that this durational residency
5 requirement is enforced, is to stop that from happening.

6 A. The reason -- No, the reason that the durational
7 residency is enforced is because that it's State Statute
8 and the legislature has clearly shown that intention. They
9 wanted these loans to be used for a certain bona fide --
10 a group of people, full-time students. bona fide Alaska
11 residents. They came to us and said, "How many people are
12 there going to be like that?" We give them an estimate
13 based on a mathematical model we used for projections based
14 on the population, blah, blah, blah, and then they fund
15 that amount.

16 Now without the durational residency, we would
17 have different projection for them, to be sure. So what
18 they're saying is, "Here are the people we want to fund.
19 You tell us how many -- how much this would cost us." We
20 tell them, they fund it. And when you say why are we enforcing
21 it, we're enforcing it because that's the way the program
22 has been set up since 1971. It's the intention of the
23 legislature that it be continued that way. And it's --
24 I think we have no choice but to enforce it.

25 Q. Let me show you a couple of --



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Let's mark this Exhibit 2.

(Exhibit No. 2 was marked
for identification.)

(Discussion off the record.)

BY MR. ZOBEL:

Q. I'm showing you what has been labeled as Exhibit
2. Would you tell us what it is, please?

A. Right. It's a newspaper article out of "Anchorage
Daily News," dated Friday, August 6, 1982, and written by
Sheila Toomey and entitled, "Suit challenges student loan
requirements."

Q. You'll see the third column where your name appears?

A. Yes.

Q. Would you read that sentence where your name appears,
please?

A. The article says that "The administrator of the
student loan program said Thursday that the two-year residency
requirement will remain in effect," and then it quotes,
"until the program is actually determined to be
unconstitutional."

Q. Go ahead.

A. "Kerry Romesburg, executive director of the Commission
on Post Secondary Education said elimination of the residency
rule would draw large numbers of loan seekers to Alaska from the
Lower 48, where loan money for college is drying up fast."



1 Q. Is -- Did you say that?

2 A. It's -- did I -- I probably said something similar
3 to this, and the only part that's actually in quotes in
4 that particular paragraph that I read you says, "until the
5 program is actually determined to be unconstitutional, "
6 and then that's directly in quotes. And if I were to guess
7 at what, exactly, I said, since I'm sure this was not recorded,
8 I'm sure I told Sheila, which is the reporter, that it was
9 our intention to enforce this until we were told to do
10 otherwise.

11 Q. I'm asking you about the statement that "elimination
12 of the residency rule," durational residency rule, "would
13 draw large numbers of loan seekers to Alaska"; is that an
14 accurate statement of --

15 A. Yes. Again, that's not in quotes and that's probably
16 not the exact way I said it, but it's not an unfair
17 representation of what I said, no.

18 Q. So the elimination of the durational residency
19 rule would, in your opinion, bring people to the State of
20 Alaska?

21 A. For the sole purpose of seeking student loans,
22 yes, especially -- Now, in fact, I went beyond that. What
23 I said, and I do know what I said on that because I've said
24 the same thing to a number of reporters, that if it were
25 reduced, if it were eliminated or reduced, it would bring



1 a large number of students, depending on how far it were
2 reduced. If it went to one year, we have an estimate as
3 to what the impact would be. If it went to six months,
4 we have an estimate what that would be. If it were eliminated
5 entirely, we haven't made such an estimate. I would just
6 say that I think it would bring just tremendous numbers
7 of people up here for the program.

8 Q. And that's the reason why the durational residency
9 rule should be maintained.

10 A. Is that what you're saying?

11 Q. I'm asking -- I'm sorry. I will have to make
12 it clear that there's a question mark at the end of my questions.
13 Excuse me.

14 MR. MAYNARD: Ron, first of all, I just want
15 to make one thing clear: You're asking, in his opinion.
16 The problem obviously is, it's the legislature and it's
17 their intent that's really at -- as to the real reasons
18 behind it. He's not a legislator and he's not a --

19 MR. ZOBEL: I understand that. I also understand --

20 MR. MAYNARD: My objections to relevancy
21 and competence are all waived -- saved by Rule 30, but I
22 just want to make sure you understand that.

23 MR. ZOBEL: I also understand that he is
24 the public official that enforces this requirement and the --
25 it would be my position that the reason why the rule is



1 enforced is very relevant. This is, after all, a civil
2 rights lawsuit and the reason for why the public official's
3 enforcing the law is very relevant.

4 MR. MAYNARD: Could we go off record for
5 a second? Off record for a second?

6 MR. ZOBEL: Yeah.

7 (Discussion off the record.)

8 THE WITNESS: Do you want to restate your
9 question?

10 BY MR. ZOBEL:

11 Q. Is the reason why you and the Commission enforce
12 the durational residency requirement, to eliminate the
13 possibility of people coming to Alaska for the sole purpose
14 of applying for a graduate student loan?

15 A. No.

16 Q. Is that consistent with what you just said to
17 the newspapers?

18 A. Yes.

19 Q. Ex -- If I recall, you stated that the -- the
20 statement in the newspaper that the "elimination of the
21 residency rule would draw large numbers of loan seekers
22 to Alaska from the Lower 48," was an accurate statement.

23 A. That's correct.

24 Q. And if that is an accurate statement, then how
25 is that consistent with your statement that you do not enforce



1 that rule for that reason?

2 A. The reason we enforce the two year residence,
3 the durational residency requirement, the reason that I
4 do, administratively, and the reason the Commission does,
5 is that it is State Statute and it is legislative intent; that
6 we have not been told that it's unconstitutional. We've
7 been told that it might be difficult to defend. We've never
8 been told that it's unconstitutional. We have no reason
9 to believe that it's unconstitutional. In fact, I have
10 no reason to believe that it is. As long as there is nothing
11 wrong with it in terms of the legality, and it's what the
12 legislature wants and it's what they're funding, it's our
13 duty to enforce it.

14 Q. You have been told that it will be difficult to
15 defend?

16 A. We were told it would be more difficult to --
17 In fact, if you want to know exactly what we've been told,
18 we've been told it would be two years -- and I can't give
19 you the exact -- but two years would be less defensible
20 than one year, for instance. That's what we were told.
21 We were told that, the Commission was told that; less easily
22 defended. Again, the reason we enforce it has nothing to
23 do with what the result would be if it's eliminated. Those
24 two things don't necessarily have to -- one doesn't necessarily
25 have to follow the other.



1

(Recess taken.)

2

(Ms. Fedor left the deposition

3

at this time.)

4

BY MR. ZOBEL:

5

Q. Let's take another look at Exhibit 1, which you
6 have in front of you.

7

A. M-hm.

8

Q. You'll see where it says in these guidelines,
9 "Termination of Alaska resident status for loan purposes
10 results when the person, colon"; you see that statement?

11

A. Yes.

12

Q. And do you see the sentence or phrase that is
13 labeled no. 2?

14

A. (Witness nods head.)

15

Q. Would you read that for us, please?

16

A. To give continuity, let me start with "Termination
17 of Alaska resident status for loan purposes results when
18 the person: Pays resident tuition at a public institution
19 outside" of "Alaska." I stuck in "of."

20

"Exception: Payment of resident tuition is a
21 courtesy extended by the institution under special circumstances.
22 Institution must provide written proof that this courtesy
23 does not qualify the student as a State resident and in
24 no way interferes with the student's Alaska residence."

25

Q. If an applicant for a student loan had paid resident



1 tuition at the University of Washington for the purposes
2 of this program, you would consider them to be a resident
3 of Washington.

4 A. That's correct. And I need to explain. It's
5 been our advice that a person can be domiciled in only one
6 state at a time. You can have residence in many, but you
7 can be domiciled in only one. When you accept in-state
8 tuition at an institution of higher education, on that admissions
9 form, at least with every institution that I'm aware of,
10 it says right on there that you are, when you're accepting
11 that tuition in-state rate, that you are a resident of that
12 state and that is a document that the person knowingly signs
13 and dates. If they do that, then we say that they have
14 given up Alaska residence. And let me say, we have had
15 a number of cases where students have been on our student
16 loans for a couple of years have absolute -- maybe lifelong
17 Alaskans, and decided they could get a break by changing
18 and getting that in-state tuition rate, particularly in
19 the State of California where you can get it easily. As
20 soon as they sign that they're a resident of that state
21 and take the tuition at an in-state rate, we stop the student
22 loan and it's unfortunate but it does happen.

23 Q. The reason you do that is because by paying resident
24 tuition at the University of Washington, for example, you
25 would consider them to be -- they claimed Washington residency;



1 isn't that correct?

2 A. We do it exactly -- if they are claiming to be
3 a resident of that state and at that time, disavowing their
4 continued intent to remain a resident of the State of Alaska,
5 that's correct.

6 Q. So if a person went to the University of Nebraska
7 and paid resident tuition at the University of Nebraska,
8 you would consider them to be a resident of Nebraska?

9 A. We would consider them not to be a resident of
10 the State of Alaska for these loan purposes. There may
11 be a fine difference there and I don't want to be -- to
12 lead you astray.

13 Q. I have some xeroxes here of what I want out of
14 this.

15 (Discussion off the record.)

16 (Exhibit No. 3 was marked
17 for identification.)

18 BY MR. ZOBEL:

19 Q. I'll show you -- I'll just give you this to look
20 at.

21 A. M-hm.

22 Q. Would you please tell us what that document is
23 I have just given you?

24 A. This is the catalog for the University of Alaska,
25 Anchorage, it's the 1982-'83 catalog that's given to students.



1 Q. And are you familiar with the educational system
2 at the University of Alaska?

3 A. Yes.

4 Q. Would you turn to page 33, please?

5 A. All right.

6 Q. Would you tell us what's on that page, please?

7 A. This is the beginning of the section of the catalog
8 that deals with fees, charges and tuitions. The first portion
9 states: "Residency for Purposes of Tuition"; the second
10 portion on this page is the "Summary of Semester Charges."

11 Q. Are you familiar with how long my client has been
12 a resident of the State of Alaska?

13 A. I only have the document that she submitted for
14 a student loan and at that time, she indicated that the
15 date it was signed, it was one year and one month. What
16 it is today, I'd have to compute backwards.

17 Q. And if my client -- if the plaintiff in this lawsuit
18 could attend the University of Alaska and get a legal
19 education, she would be charged what kind of tuition?

20 A. Depending on -- Are you asking me, would it be
21 resident or non-resident?

22 Q. Well, what does it say on that page?

23 A. All right. Well, that's another question, then.
24 On this question it says, "For purposes of nonresident tuition,
25 a resident is any person who has been physically present



1 in Alaska for one year," except vacations, and then it goes
2 on from there. So what you're asking is, would your client
3 be considered to be a resident for tuition purposes at the
4 University of Alaska, and the answer is yes, in accordance
5 with the policy stated on page 33 of the catalog.

6 Q. So if I understood your previous answers, if a
7 person paid resident tuition at the University of Washington,
8 for the purposes of this program they'd be considered to be a
9 resident of Washington. My client, the plaintiff in this
10 lawsuit is eligible, as you stated, for in-state tuition
11 at the University of Alaska.

12 MR. MAYNARD: Mr. Zobel, I think you
13 mischaracterized his testimony in his previous answer. If
14 you want it read back, you may.

15 BY MR. ZOBEL.

16 Q. Well, correct me. What did I say that was inaccurate?

17 A. You asked me, specifically in reference to --
18 you used the example of the University of Nebraska, and
19 you said, would I consider them a Nebraska resident. I
20 said, "No, I'd consider them not an Alaska resident."

21 Q. So for the purposes of the University of Alaska,
22 University of Alaska would accord my client residence tuition;
23 is that correct?

24 A. That's correct.

25 Q. And the University of Alaska does not purport



1 to give in-state tuition to non-state residents, does it?

2 A. It defines residency as we saw on page 33, for
3 tuition purposes.

4 Q. Let me restate the question. I don't think you've
5 answered it. The University of Alaska is not giving
6 in-state tuition to people who are non-residents.

7 A. By their definition, correct.

8 Q. Why is it that the Alaska Commission on
9 Postsecondary Education is not satisfied that my client
10 is a resident of the State of Alaska for purposes of the
11 loan program if the University of Alaska would consider
12 her to be a resident for tuition purposes?

13 MR. MAYNARD: I'm going to have to object
14 to that question. You're still saying, is the Commission,
15 they have a two year statutory requirement. You may ask
16 the legislature or the Commissioner why he feels, in his
17 opinion as an expert in whatever may be his knowledge of
18 the legislature, why the legislature believed it was necessary,
19 but it's a statutory requirement there.

20 MR. ZOBEL: I think I've qualified him as
21 an expert in higher education, and I'm asking him what
22 educational reason would justify the difference.

23 THE WITNESS: I would say that there's no
24 reason to believe that the two are related, any more than --
25 you know and I know that there are many tests for residency,



1 in this state and in many other states. There's a different
2 test for tuition; there's a different test for whether you
3 can hunt or fish; there's a different test for voting. We're
4 simply saying, there'a also a different test for whether
5 or not you can qualify for a student loan, and the fact
6 that these two seem to be different, I don't think is
7 surprising.

8 BY MR. ZOBEL:

9 Q. Were you involved in the 1981 amendments to the
10 Statute that's now being challenged?

11 A. I testified at hearings for them.

12 Q. And you were familiar with the legislative history
13 relating to those amendments?

14 A. Yes.

15 Q. Would you tell me in what way you are familiar
16 with that history? You said you testified. Were you --

17 A. Anytime any bill comes up dealing with the student
18 loan program, I'm invited to go over and testify and I always
19 have, we -- if we have a position on a particular program.
20 I don't have the luxury of having a position. On behalf
21 of the Commission. I will refer it to the Commission and
22 they will take a formal action whether or not they'll support
23 or not support certain kinds of legislation. But I will
24 testify and I serve as the expert witness, the expert in
25 the field of higher education and in student loans, to give



1 them advice as to whether or not a certain piece of legislation
2 is worded correctly or whether or not I think that it's
3 appropriate.

4 I should also hasten to say, quite often the
5 legislature does not take my advice.

6 MR. ZOBEL: I'd like to have this marked
7 as Exhibit 4.

8 (Exhibit No. 4 was marked
9 for identification.)

10 BY MR. ZOBEL:

11 Q. I've just shown you what we have marked as Exhibit
12 No. 4. Are you familiar with that document?

13 A. Yes.

14 Q. Would you tell us in what way you're familiar
15 with it?

16 A. This is a letter from Bruce Botelho, who is an
17 Assistant Attorney General and also serves as counsel for
18 our agency, for the Commission, and it's a letter from Mr.
19 Botelho to Representative -- State Representative Don Clocksin
20 and it deals with the constitutionality of durational residency
21 requirement for student loans, and he even has a file number,
22 J-66-727-31.

23 Q. What is the date of that document?

24 A. May 5, 1981.

25 Q. Do you know, from your personal knowledge, what



1 the position of Don Clocksin at that time was?

2 A. His position?

3 Q. Yes.

4 A. With regard to this, or do you mean his position
5 in terms of the legislature or --

6 Q. I mean, his position in the legislature.

7 A. At that time, he was chairman of the House HESS
8 Committee.

9 Q. Which was dealing with the amendments to the 19 --
10 the 1981 amendments to this Statute?

11 A. That's correct. They were looking at the student
12 loan program in general.

13 Q. Would you tell us what the -- Would you please
14 read for us the -- this paragraph here?

15 A. The paragraph reads -- again, this is to
16 Representative Clocksin from Bruce Botelho. It says, "It
17 is our view," "our" meaning the Department of Law, I would
18 assume in this case, since it's on Department of Law
19 stationery, "It is our view that the two-year durational
20 residency requirement could not withstand constitutional
21 scrutiny under either state or federal standards."

22 Q. Were you familiar with this letter at the time
23 that it was written?

24 A. I was familiar with the letter when I got a copy
25 of it.



1 Q. Which was when?

2 A. Which was shortly after it was written. Don Clocksin
3 sent me a copy, as did Bruce.

4 Q. You said Bruce Botelho was the Attorney General
5 who advises the Commission?

6 A. That's correct.

7 Q. Has he advised you that this is unconstitutional
8 act?

9 A. No.

10 Q. That letter indicates that he had advised Representative
11 Clocksin that it was unconstitutional. He gave you contrary
12 advice?

13 A. He's never advised us whether it was constitutional
14 or not, as a matter of fact. He's indicated that it might
15 be difficult to defend, but even at times after this, I've
16 got documentation from him where he was clarifying language
17 for our regulations that refers directly to the two year
18 residency. That was, 24 month physical presence. That
19 was not struck down. So, no, he has never advised us. And
20 I should add, nor has the Commission ever asked him for
21 that advice. We haven't said, "Is this a constitutional
22 provision?" The question has not been raised. Apparently,
23 Don Clocksin raised it.

24 Q. Wouldn't you think that that would be a logical thing
25 for you to do if you were aware of this letter?



1 MR. MAYNARD: Objection. What's the relevance
2 of this, Ron? I mean, I'm not --

3 MR. ZOBEL: The relevance is, that --

4 MR. MAYNARD: I mean, we'll be glad to stipulate
5 that Bruce, you know -- the public record speaks for itself
6 in terms of his advice to the legislature before they passed
7 the Statute and, you know, it's -- any -- you know, it speaks
8 for itself. I mean -- and for purposes of the constitutionality
9 of two years, we'll see whether or not Bruce's opinion is
10 right or not. But I'm curious as to where you're going
11 with regard to, you know, whether or not the Commission
12 had a duty to affirmatively ask Bruce, you know, about something
13 when they never asked before or, you know -- or whatever.
14 I mean, I just -- I'm curious. I mean, I don't see the
15 relevance to --

16 MR. ZOBEL: I think it's relevant to notice
17 and knowledge of the unconstitutionality of the Statute.

18 MR. MAYNARD: For what purposes in your Complaint?
19 I mean, I --

20 MR. ZOBEL: The unconstitutionality of it
21 as applied. It is the duty of public officials not to enforce
22 unconstitutional acts. And if they're on notice that they
23 are unconstitutional, then that is very relevant in a civil
24 rights case.

25 MR. MAYNARD: It's relevant to punitive damages



1 actions perhaps. That's where I'm having some problem.
2 We are stipulating we are going to go ahead and give her
3 the money and we will be doing so, and it was on the
4 understanding that --

5 MR. ZOBEL: I think it goes beyond the issue
6 of punitive damages.

7 I would like -- would you read back the question
8 that I asked now?

9 (Record read by the reporter
10 as follows:)

11 "Question: Wouldn't you think that that
12 would be a logical thing for you to do if
13 you were aware of this letter?"

14 MR. MAYNARD: Answer the question.

15 THE WITNESS: I don't want you to think I
16 am being flippant or hostile or anything when I answer this,
17 Mr. Zobel. But you're asking me a question of logic, and
18 my logic may differ from yours. My logic tells me, and
19 you asked for my logic so I'm going to give it to you, my
20 logic tells me that the court determines the constitutionality
21 on an issue like this and if we were challenged, that we
22 would have to find out what the court said and that, apparently,
23 in Bruce's opinion, it would be very difficult to defend.
24 But did that mean we should ask for his opinion? No.

25 ***



1 BY MR. ZOBEL:

2 Q. You don't regard it as your duty as a public official
3 to inquire if the constitutionality of a statute is raised
4 by the attorney that advises you?

5 MR. MAYNARD: I object, 'cause you're assuming
6 that he has raised the two year requirement to Kerry.

7 MR. ZOBEL: He stated that he saw the letter.
8 He's certainly on notice as to the opinion of the attorney
9 that advises him.

10 THE WITNESS: My answer to you is, then,
11 no. I don't feel that being copied -- receiving a copy
12 of a letter from the attorney that happens to advise us,
13 as well as other people, to an individual in the legislature
14 who asked him a specific question, commits us to anything.
15 In fact, if it did, I would think that that attorney --
16 again, we're talking logic and I would ask -- you know,
17 I'm not in a position to ask you, but I would think logic
18 would say that that attorney, if he truly felt it were
19 unconstitutional and could not withstand any test, that
20 he would advise us not to enforce that Statute and he never
21 has done so.

22 (Discussion off the record.)

23 BY MR. ZOBEL:

24 Q. You stated that you were familiar with my client's
25 application?



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A. Yes.

Q. For an Alaska student loan?

A. Yes.

Q. Is there anything on that application that would indicate that she is not a resident of the State of Alaska, other than the durational period?

A. No. There's no question we ask other than the durational period. We ask if they're registered to vote and where, and she said she's registered in Alaska to vote here. That's really the only other question. We don't say, "Do you have a driver's license? Do you have these other things?"

Q. And she, because of the durational residency requirement, is ineligible solely because of that durational period?

A. That's correct.

Q. Is the durational period enforced so as to deny someone like my client, who has come to Alaska and, as you said, has every other indicator of residency, a graduate student loan so that people will not come here to get those loans?

A. No, I'm going to differ with you two places. One, I didn't say she had every other indicator, 'cause you said did she have any on that application. The answer I gave you was no, another application, and I haven't really pursued



1 with her whether or not she has the other ones. I assume
2 she does. I think you're probably right. But you said --
3 but the real question you're asking is, are we enforcing
4 it to keep people like that from getting loans. I'm saying,
5 we enforce it to make sure that people who do get the loans
6 meet the requirements. And again, I'm just rephrasing it,
7 putting it in a positive approach. We want to make sure
8 that whoever receives a loan, in fact, is eligible to receive
9 that loan and meets the requirements as set forth by the
10 legislature. We're not out to deny loans to anybody. We're
11 out to insure that those that get them are eligible for
12 them. And I think there is a distinction.

13 Q. Is there any reason for you to believe that my
14 client is one of those persons that you have described earlier
15 as having come to Alaska for the purpose of getting a graduate
16 student loan?

17 A. No. No reason whatsoever.

18 Q. But the durational residency requirement will
19 deny her a loan.

20 A. She is ineligible, that's correct.

21 Q. And if the durational residency requirement did
22 not exist or was reduced to one year, for example, such
23 as the University of Alaska uses, in your opinion, would
24 that attract people to Alaska such as my clients?

25 MR. MAYNARD: That's two questions there.



1 One, attract to Alaska, and the second one, such as your
2 client. Do you want to ask both of them or -- I object
3 that it's a compound question.

4 MR. ZOBEL: I'll see if I can rephrase it
5 so as to just not have any trouble with the objection. It
6 seems like they go together but --

7 MR. MAYNARD: Well, I'll explain my objection,
8 Ron. We are not -- from Kerry's answer, he's not denying
9 that she would get a student loan or that she may be a bona
10 fide resident, but I think his prior answers have always
11 said that, you know, we're not trying to stop people like
12 Judith Andress; they're trying to stop people who come up
13 who don't intend to remain, who come up here solely for
14 the student loan. He has just answered he does not believe
15 Judith Andress came up here solely for the student loan, and
16 I think there's a distinction between the two. And that's
17 where my objection is. You're not -- you're asking two
18 separate questions, or a compound question on that.

19 BY MR. ZOBEL:

20 Q. Is the durational residency requirement designed
21 to stop someone such as my client from coming to Alaska,
22 taking up residency here and applying for a graduate student
23 loan?

24 A. No. I think the intention of the durational residency,
25 and I believe I gave you this before, my understanding is,



1 the intention of that residency is to insure that the people
2 that get the loans are bona fide residents, true Alaskans,
3 two year residents. That means it's -- yes, it does exclude
4 people that come up here for only those purposes and
5 unfortunately, it may exclude some very eligible people,
6 people who would be otherwise eligible, such as your client.
7 But the purpose of that is to insure that whoever gets it
8 meets this test. You have to cut somewhere and that's where --
9 that's where the legislature has chosen to cut. But if
10 you say --

11 Q. Mr. Romesburg, I think we could always say that
12 a requirement is imposed to make sure that they meet the
13 requirement. I'm not -- that's very circular. That's not
14 the question I'm asking. The question I'm asking is, is
15 the durational residency requirement aimed at making people
16 such as my client ineligible?

17 A. It is aimed at making anyone that is not a two
18 year resident ineligible, yes.

19 Q. You've stated that you have no reason to believe
20 that my client came to Alaska for the purpose, the sole
21 purpose of participating in the loan program.

22 A. Correct.

23 Q. Is it designed to make persons such as my client,
24 who is a -- You've said, am I not correct, that she is
25 a bona fide resident?



1 A. I said, I have no reason to believe she's not.

2 Q. Okay.

3 And you said you have no reason to believe that
4 she came to Alaska solely for the purpose of participating
5 in the graduate student loan program?

6 A. Correct.

7 Q. Is the durational residency requirement designed
8 to deter persons such as my client from coming to Alaska?

9 A. No.

10 Q. But it will deny her a loan.

11 A. Yes.

12 Q. And for what reason? What -- what purpose does
13 the classification, the requirement serve in that instance?

14 A. If you're asking, is your client a victim of a
15 two year residency requirement, when for all purposes she
16 might otherwise be eligible, the answer would be yes, she
17 is a victim of that residency requirement. When you impose
18 any kind of a requirement -- I m not a legislature --
19 legislator -- when you impose any kind of a requirement
20 on a class of people you're going to treat all those people
21 within that class as if they're the same, and I think quite
22 often the outcome can be unfortunate. In her case it may
23 be unfortunate. Eut if the legislature says we have to
24 pick -- somehow -- again, let's go back to the beginning.
25 We have a very mcbile class of people, students, very mobile.



1 Look at the age of them. Look at the income. It's a mobile
2 group of people. We know they shop. We know they shop
3 in the Northwest, I know they do. I can give you testimony
4 from other states that students shop. They shop loan programs;
5 they shop WICHI support; they shop tuitions; they'll move
6 around. But we're saying, in this state what the legislature's
7 been saying for years is, "We are willing to support our
8 students. We want to support them to pursue their educational
9 goals and we want to have an educated populace." The State
10 of Washington, the State of Oregon, Idaho, don't support
11 their students at the level we do. They don't. They don't
12 have the same kind of program, and they seem to be unwilling
13 to, or maybe unable to, but the point is, they don't. So
14 the Alaska legislature says, "We want to do this for our
15 people."

16 Now we have to make sure, though, that they are,
17 indeed, our people. We don't want to create a loan program
18 and give -- and by all means, when you're talking five percent
19 you're talking about a subsidized program. We don't want
20 to have a five percent program for Washington students,
21 residents of Oregon, we want it for Alaskans. And we think
22 two years is reasonable. That's what the legislature has
23 said through statute to us. Now if you're asking me if
24 I think it's reasonable, that's a whole other question.
25 I think it's defensible and I think it's their intention.



1 Q. I'm trying to get at -- it's irrelevant what I'm
2 trying to get at. Let me just ask the the questions.

3 You just stated that the purpose of this program
4 was to make sure that it aids, quote, "our people," unquote.
5 Isn't that what you just said?

6 A. Did I say that? The true Alaskan; if that means
7 our people.

8 Q. And a true Alaskan is not someone who has been
9 here less than two years.

10 A. That's not true. The true Alaskan is -- depending
11 on what program you're talking about. In this case, the
12 Alaskan is the person that has been here, physically present
13 for two years that hasn't just come up here for the purpose
14 of the student loan, that's been here two years. That's
15 what the legislature has defined it as. Now if you ask
16 me to define a true Alaskan --

17 Q. And you don't want the people to come from the
18 State of Washington, move to the State of Alaska and apply
19 for a student loan.

20 A. I don't think that's a correct statement.

21 Q. Well, correct it then.

22 A. If I were going to try to correct it, I would
23 say, the legislature does not want a person to come from
24 another state for the sole purposes of obtaining a student
25 loan and be able to obtain it without putting in some time



1 in Alaska, and that time being 24 months. I would say that's
2 the purpose.

3 Q. What's the purpose of that time period?

4 A. Again, I'm interpreting the legislative intent
5 and I sat there, so I would say the purpose of that is
6 to insure that they are reaching the group of people that
7 they intend to reach, and that is, the Alaskan citizen,
8 the Alaska resident, and understand, resident for educational
9 purposes is different than the resident for hunting purposes
10 or resident for voting purposes.

11 Q. And for the purposes of this program -- Strike
12 that.

13 The purpose of this student loan program is to
14 aid, I believe you said, the true Alaskan; is that correct?

15 A. That's correct. Defined by them, understand.
16 Don't ask me to define --

17 Q. And a true Alaskan --

18 A. -- true Alaskan.

19 Q. And a true Alaskan under this program cannot be
20 someone who has been here less than two years.

21 A. They are not in that group that it's aimed -- it's
22 directed at, that's right, and if you --

23 Q. They're not true Alaskans.

24 A. Well, now you're playing games.

25 Q. No, I'm not playing games. I'm trying to find



1 out who the Commission regards as a true Alaskan.

2 A. Oh. Oh, that's a different question entirely.
3 If you ask --

4 Q. What are the Al -- Strike -- Let's --

5 What is the Alaskan who has lived here between
6 one and two years and wishes to attend a law school or medical
7 school or any of the other graduate programs that you said
8 were not available in Alaska, what is that Alaskan supposed
9 to do?

10 A. They either have to borrow from federal sources,
11 they have to pay their own way or they'll have to put in
12 additional time until they have their two years to qualify
13 for this. Now understand, we're not saying to that person,
14 "You are not a true Alaskan. You're not an Alaska resident."
15 We're saying, "You're not a resident for this loan program.
16 You're not a true Alaskan," if you want to use the phrase
17 and I did use it, "for this program, but that doesn't mean
18 you're not an Alaskan. It doesn't mean you're not a resident
19 'cause clearly, you can vote. Clearly you can have property.
20 You can pay taxes." We're not denying that --

21 Q. You can participate in many other parts of Alaska
22 society --

23 A. That's correct.

24 Q. -- you can be employed here?

25 A. (Witness nods head.)



1 Q. Is that correct?

2 A. That's correct.

3 Q. Have people benefit from your skills?

4 A. Absolutely.

5 Q. But you can -- you will not be eligible to be
6 assisted in your education by the State of Alaska.

7 A. Until you've been here 24 months.

8 Q. In your opinion, do you have any estimates of
9 the number of persons that will come to the State of Alaska
10 if the durational residency requirement were reduced to
11 one year?

12 A. Yes. Can I refer to a table that I have?

13 Q. Yes.

14 A. We were asked to put some of this stuff together.
15 I don't want to give you something and then have something
16 else appear later.

17 We -- and I'll tell you where I got my estimate
18 so you'll understand. Right now, we know that ten point
19 four percent of the applicants are exactly two year residents
20 so we have -- they're applying. They are two but less than
21 three, all right? We have no reason to believe that there
22 aren't that many people sitting in the state right now that
23 are one year resident but less than two. There may be,
24 in fact, more; they're may be less, but we assume it's the
25 same, assume it's stable 'cause two to three is pretty stable,



1 too. So that would be ten point four percent. So for the
2 first year it would mean as many as 1500 to 1600 loans the
3 first year. Those are people that are here now that meet
4 this class, that are between one and two years. The impact
5 of people coming in from outside obviously couldn't be
6 felt this first year, and in effect, couldn't be felt the
7 next year. We'd have to come down the line.

8 Q. So, if I may interrupt at the moment --

9 A. 1500 to --

10 MR. ZOBEL: Can I ask a follow-up question
11 to what he's just testified to?

12 MR. MAYNARD: I don't think he was done yet.
13 Or if he was done, it's fine.

14 THE WITNESS: I'm done.

15 MR. MAYNARD: All right. That's fine.

16 BY MR. ZOBEL:

17 Q. I just want to clarify what this 1500 figure is,
18 whatever the figure you gave us.

19 A. That's our best guess as to how many people right
20 now would be in the state 12 months but less than 24 that
21 would potentially borrow --

22 Q. Those are people who are residents now who are
23 not eligible

24 A. Those are people, that's correct, that are in
25 that -- that have been in the state 12 months but less than



1 24. That's our best guess; 1500 to 1600.

2 Q. Okay. Go ahead with what you were saying then.

3 I'd like to make that a part of the record.

4 MR. MAYNARD: Sure.

5 THE WITNESS: I've got little pencil marks
6 on it.

7 Well, that's really -- I also have one for six
8 months down here, too, where we guessed that. What I was
9 saying in terms of the impact of reducing the residency,
10 the next year there would be a number -- there would be
11 an increase, and we figured that there would be an influx
12 of people coming in to meet that residency requirement.
13 It wouldn't affect anything this year. It couldn't. It
14 could start affecting next year. You'd probably have a
15 bulge and then it would level out and continue on a percentage
16 basis from then on, and so we have projections forward through
17 1988-'89, and it gets up to be -- amount to quite a bit
18 of money; six million the first year up to as much as 42
19 million in the -- in eight, nine years from now. But I'm
20 glad to give you this.

21 BY MR. ZOEBEL:

22 Q. And this cost that you're talking about is cost
23 that would occur by migrants, new migrants coming to Alaska
24 and applying for this loan program?

25 A. Well, the initial cost is not by new migrants.



1 Those are people that are already here.

2 Q. I understand that.

3 A. And there would be --

4 Q. The latter figure.

5 A. The latter figure, that's correct, that's correct.

6 Now what percentage of those would be attracted solely because
7 of the student loan, we don't know but we've got some figures
8 in here where -- like I say, we have a bulge in here for
9 about, they kicked it up to where it would be about a five
10 percent increase over the previous year. Those are guesses.

11 Q. The residency requirement keeps those -- keeps
12 that from happening; keeps people from coming to Alaska
13 to apply for this loan.

14 A. Oh, I think it does keep people from coming to
15 Alaska solely to apply for a loan on a 12 month basis. If
16 people want to come here and sit for two years and apply
17 for the loan, they can do that. It doesn't keep them from
18 doing that. We know they're doing it now. Some are. They
19 tell us they are, anyway.

20 MR. ZOPEL: I think I'm through.

21 (Exhibit No. 5 was marked
22 for identification.)

23 (Proceedings concluded at
24 11:45 a. m.)

25

KERRY ROMESBURG

ALASKA STENOTYPE REPORTERS

420 "L" STREET
SUITE 501
ANCHORAGE, ALASKA 99501



REPORTER'S CERTIFICATE

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I, BARBARA ROSSI, Registered Professional Reporter,
hereby certify:

That I am a Registered Professional Reporter and Notary
Public for the State of Alaska; that the foregoing proceedings
were taken by me in Stenotype Shorthand and thereafter
transcribed under my direction; that the transcript
constitutes a full, true and correct record of said
proceedings taken on the date and at the time indicated
therein.

Further, that I am a disinterested person to said
action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand
and affixed my official seal this 1st day of September,
1982.

Barbara Rossi

BARBARA ROSSI

My Commission expires: 3-16-86

CHAIRMAN
HOUSE SPECIAL COMMITTEE
ON STATE LOANS
VICE-CHAIRMAN
HOUSE RESOURCES COMMITTEE
HOUSE LABOR AND COMMERCE COMMITTEE
MEMBER
JOINT GAS PIPELINE COMMITTEE
HOUSE FINANCE SUBCOMMITTEE ON
ADMINISTRATION, REVENUE
AND THE GOVERNOR'S OFFICE

Alaska State Legislature



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MEMORANDUM

TO: Representative Rick Uehling
FROM: William Lovell, Staff *Wheeler*
DATE: April 13, 1983

RE: Loans Committee Substitute for House Bill 56

The Loans Committee Substitute for House Bill 56 includes the following elements:

Section 1 raises the fixed interest rate on student loans from the present level of 5% to 8%.

Section 2 limits the existing deferment on repayment of student loans due to military service to a first enlistment period of up to four years and to enlisted personnel only.

Section 3 unifies the current scholarship loan program eligibility requirements under the following criteria:

- (1) the borrower must be enrolled as a full-time student in a career education or associate, baccalaureate, or graduate degree program;
- (2) the borrower must be a graduate of a high school or scheduled for graduation within six months, with sufficient credits to be admitted to a career education program or to an accredited college or university;
- (3) the borrower must be a resident of the state at the time of application for the loan and must qualify for said residency under the conditions described in the following:
 - (a) physically present for at least two years,
 - (b) dependent upon a parent or guardian who has been physically present in the state for at least two years, or
 - (c) has been physically present in the state for at least

Committee substitute for House Bill 56
April 13, 1983
Page two

two years immediately before becoming absent from the state and the absence is due solely to:

- (i) military service,
- (ii) volunteer service in the Peace Corps,
- (iii) volunteer service under the Domestic Service Volunteer Service Act of 1973,
- (iv) attendance at school as a full-time student, or
- (v) full-time employment by the state or its congressional delegation.

Section 4 eliminates unconstitutional elements of the existing loan selection criteria by eliminating the preference given to those Alaskans with longer in-state residency.

Section 5 encourages scholarship loans to be federally insured whenever possible.

Section 6 sets a July, 1984 effective date.

/wtl

cc: Representative John Lindauer
Finance Committee staff

Article 3. Free Tuition and Fees for Dependents.

Section

80. Free tuition and fees at state-supported educational institutions

Revisor's notes. — This article derived from AS 14.40.920 and was renumbered by the revisor of statutes under AS 01.05.031.

Collateral references. — 15A

Am.Jur.2d Colleges and Universities, §§ 19, 20.

14 C.J.S. Colleges and Universities, §§ 27, 28.

Sec. 14.43.080. Free tuition and fees at state-supported educational institutions. (a) Any dependent of a bona fide Alaska resident who, while serving during the hostilities involving the United States forces in Southeast Asia, was listed by the United States Department of Defense as a prisoner of war or missing in action in Southeast Asia may attend any state-supported educational institution without payment of tuition and fees.

(b) As used in this section, "dependent" means a dependent spouse or child. (§ 1 ch 176 SLA 1972; AS 14.40.920)

Article 4. Scholarship Loan Program.

Section

90. Scholarship revolving loan fund
95. Financial aid committee
100. Applications
105. Administration of program
110. Undergraduate loans
115. Graduate loans
120. Conditions of loans

Section

125. Eligibility of students
130. Selection criteria
135. Discrimination prohibited
140. Enforceability of certain contracts with minors
160. Definitions

Revisor's notes. — This article derived from AS 14.40.751 — 14.40.806 and was renumbered by the revisor of statutes under AS 01.05.031.

Collateral references. — 15A Am.Jur.2d Colleges and Universities, §§ 19, 20.

14 C.J.S. Colleges and Universities, §§ 27, 28.

Absence from, or inability to attend, school or college as affecting liability for, or right to recover back payments on account of, tuition or board. 69 ALR 714.

Validity and application of provisions governing determination of residency for purposes of fixing fee differential for out-of-state students in public college. 56 ALR3d 641.

Increase in tuition as actionable in euit by student against college or university. 99 ALR3d 885.

Absence from, or inability to attend, school or college as affecting liability for, or right to recover back payments on account of, tuition or board. 69 ALR 714.

Sec. 14.43.090. Scholarship revolving loan fund. (a) There is created a scholarship revolving loan fund. The fund shall be used to make scholarship loans to students selected under AS 14.43.090 — 14.43.160. All repayments of principal and interest on scholarship loans shall be paid into the scholarship revolving fund shall be used to make new scholarship loans. If estimated funds available from scholarship loans repayments are inadequate to fully fund estimated scholarship loans for any fiscal year, additional funding from the general fund may be requested and appropriated for that year.

(b) Repealed by § 31 ch 59 SLA 1982.

(c) Repealed by § 31 ch 59 SLA 1982. (§ 1 ch 98 SLA 1971; am § 1 ch 156 SLA 1972; am §§ 1, 2 ch 136 SLA 1974; am § 1 ch 136 SLA 1975; am § 31 ch 59 SLA 1982; AS 14.40.751)

Revisor's notes. — In subsection (a), AS 14.43.090 — 14.43.160 was substituted for a reference to AS 14.40.751 — 14.40.806 to conform to the renumbering of those sections by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The 1982 amendment repealed subsection (b), which provided for a tuition grant fund, and sub-

section (c), which provided for the transfer of unobligated funds in the tuition grant fund to the scholarship revolving loan fund.

Legislative history reports. — For report on ch. 98, SLA 1971 (CSHB 415 [Finance] am S), see 1971 House Journal, p. 935.

Sec. 14.43.095. Financial aid committee. (a) The student financial aid committee is composed of the members of the Alaska Commission on Postsecondary Education. The commission may delegate its functions under AS 14.43.090 — 14.43.160 to a committee of its members, with augmented membership as the commission considers appropriate. The executive officer of the commission is the executive secretary of the committee. The Alaska Commission on Postsecondary Education shall administer the program established by AS 14.43.090 — 14.43.160.

(b) Members of the committee serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions.

(c) The committee shall make an annual report reviewing the work of the committee to the governor, the legislature and the private colleges and universities where students receiving tuition grants are enrolled.

(d) The committee shall meet at least once a year. The meetings shall be held at the call of the chairman or upon petition by two members. (§ 1 ch 98 SLA 1971; am § 2 ch 156 SLA 1972; am § 5 ch 78 SLA 1974; am § 3 ch 136 SLA 1974; AS 14.40.753)

Revisor's notes. — The amendments of AS 14.43.095(a) by § 5, ch. 78, SLA 1974 and § 3, ch. 136, SLA 1974, are in conflict, the first act rewriting the subsection to provide that the Alaska Commission on Postsecondary Education will act as the financial aid committee, the second act changing the name and term of members of the existing financial aid selection committee. It is considered, on the basis of the legislative history, apparent legislative intent, and later effective date of the first

act, that the re-enactment by ch. 78, SLA 1974 should prevail.

The last part of subsection (c) of this section is obsolete since the tuition grant program was repealed by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

In subsection (a), AS 14.43.090 — 14.43.160 was substituted for a reference to AS 14.40.751 — 14.40.806 to conform to the renumbering of those sections by the revisor of statutes under AS 01.05.031.

Sec. 14.43.100. Applications. (a) Applications shall be submitted to the executive secretary of the committee.

(b) A person whose loan or grant application is not recommended or presented to the committee by the executive secretary may appeal to the committee through the chairman of the committee and the committee shall consider the application. (§ 1 ch 98 SLA 1971; am § 3 ch 156 SLA 1972; am § 4 ch 136 SLA 1974; AS 14.40.755)

Revisor's notes. — The reference to "grant application" in subsection (b) of this section is obsolete in light of the repeal of

the tuition grant program by Chapter 94, SLA 1980 and Chapter 59, SLA 1982.

Sec. 14.43.105. Administration of program. The executive secretary shall administer the programs subject to review by the committee and in accordance with the regulations prescribed by the committee. The promulgation of these regulations is subject to the Administrative Procedure Act (AS 44.62), and a summary of the regulations shall be distributed to each applicant. (§ 1 ch 98 SLA 1971; am § 5 ch 136 SLA 1974; AS 14.40.757)

Sec. 14.43.110. Undergraduate loans. The committee may make a loan, not to exceed \$6,000 in any one school year, to an undergraduate student eligible under AS 14.43.125. (§ 1 ch 98 SLA 1971; am § 6 ch 136 SLA 1974; am § 1 ch 153 SLA 1978; am § 1 ch 89 SLA 1981; AS 14.40.759)

Revisor's notes. — AS 14.43.125 was substituted for AS 14.40.765 to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The 1978 amendment increased the maximum

amount of the loan from \$2,500.00 to \$3,000.00.

The 1981 amendment substituted "\$6,000" for "\$3,000" following "not to exceed."

Sec. 14.43.115. Graduate loans. The committee may make a loan, not to exceed \$7,000 in any one school year, to a graduate student who is eligible under AS 14.43.125 and is pursuing an advanced degree. (§ 1 ch 98 SLA 1971; am § 7 ch 136 SLA 1974; am § 2 ch 89 SLA 1981; AS 14.40.761)

Revisor's notes. — AS 14.43.125 was substituted for AS 14.40.765 to conform to the renumbering of that section by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The 1981 amendment substituted "\$7,000" for "\$5,000" following "not to exceed."

Sec. 14.43.120. Conditions of loans. (a) Proceeds from scholarship loans may only be used for books, tuition and required fees, and for room and board.

(b) The loans may only be used to attend a career education program or a college or university approved by the commission, and, if the loans are federally insured, by the United States Commissioner of Education.

(c) To maintain a loan the student must continue to be enrolled as a full-time student in good standing in a career education program, college or university designated under (b) of this section. The commission shall adopt regulations defining "good standing" for purposes of this subsection.

(d) Scholarship loans may not be made to a student

(1) for more than five years of undergraduate study;

(2) for more than five years of graduate study;

(3) for more than a total of eight years of undergraduate and graduate study.

(e) Loans are interest bearing while a student is enrolled under (c) of this section or is receiving a deferment of payments under (k) of this section; however, a student is entitled to have a portion of the interest paid in accordance with (1) of this section.

(f) Interest on a loan given under AS 14.43.090 — 14.43.160 is at the rate of five per cent a year.

(g) Repayment of the principal and interest on the loan begins no later than one year after the borrower's studies are terminated. The loan shall provide for repayment of the total amount owed in periodic installments in not more than 10 years from the commencement of repayment, except as provided in (k) and (m) of this section. If the commission and the borrower agree to a different repayment schedule, the borrower shall repay the loan in accordance with the agreement. A borrower may make payments earlier than required by this subsection.

(h) Security may not be required for the loans; however, provision shall be made for payment of attorney fees and costs of court if either or both are incurred in collection of the amount owed on the loan.

(i) If a loan is in default, the commission shall notify the borrower that repayment of the remaining balance is accelerated and due by sending the borrower a notice by registered or certified mail.

(j) A portion of a loan shall be paid on behalf of the borrower by the state if, upon completion of the course of study for which the loan was granted, the borrower is a resident of the state for at least two years. The portion of the loan that shall be paid by the state is the following percentages of the total loan received plus interest up to a total of 50 percent of the total loan:

- (1) two — three years residence in the state, 10 percent;
- (2) three — four years residence in the state, an additional 10 percent;
- (3) four — five years residence in the state, an additional 10 percent;
- (4) five — six years residence in the state, an additional 10 percent;
- (5) over six years residence in the state, an additional 10 percent.
- (k) Periodic installments of principal shall be deferred, but interest shall accrue and be paid unless the student is eligible for interest payment benefits under (1) of this section during any of the following:
- (1) return to student status as provided in (c) of this section;
- (2) serving on active duty as a member of the armed forces of the United States;
- (3) serving, for up to three years, as a full-time volunteer under the Peace Corps Act;
- (4) serving, for up to three years, as a full-time volunteer under the Domestic Volunteer Service Act of 1973;
- (5) for a one-time period up to 12 months in which the borrower is seeking and unable to find employment in the United States; or
- (6) if the borrower becomes 50 percent or more disabled as certified by competent medical authority.
- (l) The state will pay the interest on that portion of a loan that is not federally insured during
- (1) the period before the beginning of the repayment period of the loan; and
- (2) deferments under (k) of this section.
- (m) In case of hardship, the committee may extend repayment of a loan for an additional period of up to five years in increments no longer than 12 months each.
- (n) Repealed by § 11 ch 89 SLA 1981.
- (o) The provisions of (j) of this section do not apply to a loan to a borrower named in a complaint as a defendant in an action by the state or by the commission to secure payment of the unpaid balance of a loan made under AS 14.43.110 or 14.43.115.
- (p) For purposes of this section, a person qualifies as a resident if the person is physically present in the state with the intent to remain permanently in the state or, if not physically present in the state, the person intends to return to the state and is absent due to military service. (§ 1 ch 98 SLA 1971; am § 4 ch 156 SLA 1972; am § 6 ch 78 SLA 1974; am § 8 ch 136 SLA 1974; am §§ 1—4 ch 99 SLA 1977; am §§ 3 — 8 ch 87 SLA 1979; am §§ 3 — 9, 11 ch 89 SLA 1981; AS 14.40.763)

Revisor's notes. — In ch. 98, SLA 1971, AS 14.43.120(j)(2) read "four — five years" This was a typographical error occurring for the first time in the enrolled version of the bill (CSHB 415 [Finance am

SI] and has been corrected here.

Effect of amendments. — The 1979 amendment deleted "approved by the commission" following "career education program" and substituted the language

beginning "approved by the commission" for "accredited by the accreditation association for the region in which the college or university is located" in subsection (b), substituted "interest" for "non-interest" in subsection (e), added the language beginning "however, a student shall be entitled" to the end of subsection (e), rewrote subsection (g), and in subsection (j), substituted "paid on behalf of the borrower by the state" for "considered a grant," "borrower" for "grantee," and "three years" for "two years" in the first sentence, substituted "paid by the state" for "regarded as a grant" and "interest for up to a total of 40 percent" for "accrued interest" in the introductory language of the second sentence, and substituted "an additional 10 percent" for "20 percent" in paragraph (2), for "30 percent" in paragraph (3), and for "40 percent" in paragraph (4). The amendment also rewrote subsection (k) and added subsections (l), (m), and (n).

The 1981 amendment, added the second sentence of subsection (c). In subsection (d), the amendment added paragraphs (1) and (2) and in paragraph (3), substituted "a total of eight" for "six" preceding "years" and added "of undergraduate and graduate study" following "years." In subsection (i), the amendment substituted "shall" for "may" and "borrower" for "student." In subsection (m), the amendment substituted "12" for "six" preceding "months" and deleted "within the 15-year requirement of (g) of this section" following "months each." The amendment also rewrote subsections (g) and (j), added subsections (o) and (p) and repealed subsection (n) which read "Each year spent

attending a college or university in Alaska qualifies as a year of employment and residency under (j) of this section, if the borrower resides no less than three years in Alaska after completion of the course for which the loan was granted, and has a total Alaskan residency of ten years time."

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.-5.031(c) and § 4, Chapter 58, SLA 1982.

Section 8, ch. 99, SLA 1977 provides: "The change in the repayment period of student loans set out in AS 14.40.763(g) [now 14.43.120(g)] as amended by sec. 3 of this Act and the additional basis for granting a deferment of repayment of a student loan set out in AS 14.40.763(k) [now 14.43.120(k)] as enacted by sec. 4 of this Act shall, upon request of the loan recipient, be applied retroactively to the outstanding balance of principal of and accrued interest on loans made under AS 14.40.751 — 14.40.806 [now 14.43.090 — 14.43.160] as they read before the effective date of this Act."

Section 12 of ch. 89, SLA 1981, provides: "The reenactment of AS 14.40.763(j) [now 14.43.120(j)] in sec. 7 of this Act applies to any student who has obtained a scholarship loan under AS 14.40.751 — 14.40.806 [now 14.43.090 — 14.43.160] since July 1, 1971."

Legislative history reports. — For a report of legislative intent concerning the loan forgiveness provisions of ch. 89, SLA 1981 (FCCSSB 120), see 1981 Senate Journal p. 1560, 1580; 1981 House Journal p. 2289.

Sec. 14.43.125. Eligibility of students. (a) A person may apply for and obtain a scholarship loan if the person

- (1) is a resident of the state at the time of application for a scholarship loan;
- (2) meets the requirements of (b) of this section; and
- (3) is
 - (A) enrolled as a full-time student in a career education or associate or baccalaureate or graduate degree program; or
 - (B) a graduate of a high school, or scheduled for graduation from a high school within six months, with sufficient credits to be admitted to a career education program or to an accredited college or university.

(b) In addition to the requirements of (a) of this section, to obtain a scholarship loan a person must have been a resident of the state for at least two years at the time of application for the loan. For purposes of

this subsection, a person qualifies as a resident of the state if at the time of application for the loan the person

(1) has been present in the state for at least two years unless an absence from the state during any part of the two years was due to military service; or

(2) is a person who is dependent on a parent or guardian for care, and the parent or guardian has been present in the state for at least two years. (§ 1 ch 98 SLA 1971; am § 10 ch 89 SLA 1981; AS 14.40.765)

Effect of amendments. — The 1981 amendment rewrote this section.

remove personal pronouns in conformity with AS 01.05.031(c) and § 4, ch. 58, SLA 1982.

Editor's notes. — This section was redrafted by the revisor of statutes to

Sec. 14.43.130. Selection criteria. (a) The selection committee shall grant loans based on total point accumulations under the subsection with priority going to those applicants with the highest point accumulations, except as provided in (b) of this section for loan applications completed before May 15 of each year. Points shall be awarded to applicants based upon student status and continuous Alaskan residency, according to the following schedule:

(1) student status:

- (A) continuing undergraduate and graduate students with existing Alaska scholarship loans 4 points
- (B) continuing undergraduate and graduate students without existing Alaska scholarship loans 3 points
- (C) freshmen 2 points
- (D) new graduate students without existing Alaska scholarship loans 1 point

(2) continuous Alaskan residency:

- (A) students with continuous Alaskan residency of 10 years or more 3 points
- (B) students with continuous Alaskan residency of at least 5 years and less than 10 years 2 points
- (C) students with continuous Alaskan residency of more than 2 years and less than 5 years 1 point
- (3) students attending Alaska colleges or universities . . . 1 point

(b) In awarding loans the selection committee shall award loans to applicants based upon the earliest date of completed applications if

(1) the applicant has accumulated at least 5 points under (a) of this section; and

(2) the applicant has filed a completed application not later than May 15 of the year for which the loan is requested. (§ 1 ch 98 SLA 1971; am § 2 ch 87 SLA 1979; AS 14.40.767)

Effect of amendments. — The 1979 amendment rewrote this section.

1979 provides: "The legislature determines that

Editor's notes. — Section 1, ch. 87, SLA

"(1) there are no incentives in the

student loan program for residents of Alaska to attend colleges and universities in Alaska as compared with colleges and universities outside Alaska;

"(2) the result of this lack of incentives is that 64.9 per cent of all undergraduate student loans and 92.9 percent of graduate student loans go to students attending colleges and universities outside Alaska;

"(3) the amount of the average loan to undergraduate students attending colleges and universities in Alaska is lower

than the average of similar loans in all but one of the 10 western states and the amount of the average loan for graduate students is the lowest in the West;

"(4) the funds spent on education in Alaskan colleges and universities go further than when the funds are spent out of state; and

"(5) it would be an aid to the Alaskan economy if the funds in the student loan program were spent for education in Alaskan colleges and universities."

Sec. 14.43.135. Discrimination prohibited. The student loan program shall be carried out without regard to the race, creed, sex, color, ancestry, national origin, or membership in fraternal or political organizations of the student applying for the loan. (§ 1 ch 98 SLA 1971; AS 14.40.769)

Sec. 14.43.140. Enforceability of certain contracts with minors. A written obligation entered into by a minor at least 16 years of age, evidencing a loan or other assistance received by the minor from any person for the purpose of furthering the minor's education in a career education program or an institution of higher learning, is enforceable against the minor with the same effect as if the minor were, at the time of its execution, 19 years of age, if the person making the loan has before making the loan a certification from the institution that the minor is enrolled in the institution or has been accepted for enrollment. (§ 1 ch 98 SLA 1971; AS 14.40.771)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, ch. 58, SLA 1982.

Sec. 14.43.160. Definitions. In AS 14.43.090 — 14.43.160

(1) "career education" means a course or program in vocational-technical training or education approved by the commission;

(2) "full-time student" means an undergraduate or career education student who is enrolled and is in regular attendance at classes for at least 12 semester hours of credit or the equivalent during the semester or a graduate student who is enrolled and is in regular attendance at classes for at least nine semester hours of credit or the equivalent; any combination of semester hours of credit, or the equivalent, aggregating to the requisite number of semester hours and undertaken during a semester at two or more public or private institutions of higher education operating under a consortium constitutes full-time student status;

(3) "part-time student" means a student who is enrolled and is in regular attendance at classes for at least three but less than the semester hours of credit required for full-time student status under (2) of this section during the semester;

(4) Repealed by § 11 ch 89 SLA 1981.

(5) "school year" means the period from September 1 of one year through August 31 of the following year;

"commission" means the Alaska Commission on Postsecondary Education;

(7) Repealed by § 7 ch 246 SLA 1976.

(8) "federally insured" means a loan covered by the provisions of the Guaranteed Student Loan Program of Title IV, Part B, of the Higher Education Act of 1965 (P.L. 89-329), as amended. (§ 5 ch 156 SLA 1972; am § 8 ch 78 SLA 1974; am §§ 18 — 20 ch 136 SLA 1974; am § 5 ch 136 SLA 1975; am § 7 ch 246 SLA 1976; am §§ 5 — 7 ch 99 SLA 1977; am § 9 ch 87 SLA 1979; am § 11 ch 89 SLA 1981; AS 14.40.806)

Revisor's notes. — Part-time student is defined in paragraph (3) above but is not used in the statutes.

AS 14.43.090 — 14.43.160 was substituted for AS 14.40.751 — 14.40.806 to conform to the renumbering of those sections by the revisor of statutes under AS 01.05.031.

Effect of amendments. — The 1979 amendment added paragraph (8).

The 1981 amendment repealed paragraph (4) which defined "resident."

Editor's notes. — Title IV, Part B of the Higher Education Act of 1965, referred to in paragraph (8), may be found in 20 U.S.C. §§ 1071 et seq.

Article 5. Memorial Scholarship Revolving Loan Fund.

Section

- 250. Declaration of purpose
- 255. Fund created
- 300. Limits on, conditions of loans
- 305. Repayment of loans

Section

- 310. Selection
- 315. Discrimination prohibited
- 320. Administering authority
- 325. Funding

Revisor's notes. — This article derived from AS 14.40.810 — 14.40.845 and was

renumbered by the revisor of statutes under AS 01.05.031.

Sec. 14.43.250. Declaration of purpose. (a) The legislature may pay tribute to the memory of Alaskans who, by the example of their lives, or by their distinguished contribution and service to this state, their community or their profession, exemplified the best that is the challenge of "The Great Land" by the creation of memorial scholarships as a part of a general memorial scholarship revolving loan fund, setting out the purpose for which each is created, and the conditions applicable to each scholarship.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 29, 1983

SUBJECT: Scholarship loans
(CSHB 56 (Finance))

TO: Representative Albert P. Adams
Chairman, House Finance Committee

FR' : Keith B. Levy *KBL*
Legislative Counsel

Enclosed is a Finance Committee Substitute for CSHB 56 (Loans). The request I received from your office included changes on page 2, lines 5 and 8 of the bill. The language of these changes was, in my opinion, redundant without adding substantively to the bill. Specifically, the additional language provides that a loan applicant must have been present in the state for two years "immediately prior to applying". However, page 2, line 2 of the bill already states that the residency requirements must be met "at the time of application". For this reason, I excluded the language from the text of the Finance Committee Substitute.

You also should be aware of a practical problem raised by another change made by the Finance Committee Substitute. By adding an exemption to the residency requirement for people that have been out of the state for "religious activities" and "medical needs", you are opening up a wide range of potential exemptions. Because this type of exemption is very difficult to verify and "religious activities" covers a broad spectrum of conduct, these exemptions may be subject to abuse.

If I may be of further assistance, please advise .

KBL:ljb

Enclosure
17/007

ORIGINAL memo on proposed
CS - CS work draft in
your file represents changes
made as a result of
this memo.

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

Introduced: 2/25/83
Referred: Health, Education and
Social Services, House Special
Committee on State Loans and Finance

1 IN THE HOUSE

BY LINDAUER

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 56
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to scholarship loans."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 14.43.110 is repealed and reenacted to read:

9 Sec. 14.43.110. UNDERGRADUATE LOANS. The committee may make a
10 loan for a school year to an undergraduate student eligible under
11 AS 14.43.125. A loan made under this section may not exceed \$6,000
12 except when necessary to cover the actual cost of

- 13 (1) books;
14 (2) tuition and required fees;
15 (3) room and board; and
16 (4) other necessary student expenses as determined by the
17 committee.

18 * Sec. 2. AS 14.43.115 is repealed and reenacted to read:

19 Sec. 14.43.115. GRADUATE LOANS. The committee may make a loan
20 for a school year to a graduate student eligible under AS 14.43.125.
21 A loan under this section may not exceed \$7,000 except when necessary
22 to cover the actual cost of

- 23 (1) books;
24 (2) tuition and required fees;
25 (3) room and board; and
26 (4) other necessary student expenses as determined by the
27 committee.

28 * Sec. 3. AS 14.43.120(a) is amended to read:

29 (a) Proceeds from scholarship loans may only be used for books,

1 tuition and required fees, [AND FOR] room and board, and other neces-
2 sary student expenses as determined by the committee.

3 * Sec. 4. AS 14.43.120(f) is amended to read:

4 (f) Interest on a loan given under AS 14.43.090 - 14.43.160 is
5 at the rate of seven [FIVE] percent a year.

6 * Sec. 5. AS 14.43.120(g) is amended to read:

7 (g) Repayment of the principal and interest on the loan begins
8 [NO LATER THAN] one year after the borrower's studies are terminated.
9 The loan shall provide for repayment of the total amount owed in
10 periodic installments in not more than 10 years from the commencement
11 of repayment, except as provided in (k) and (m) of this section. If
12 the commission and the borrower agree to a different repayment sched-
13 ule, the borrower shall repay the loan in accordance with the agree-
14 ment. A borrower may make payments earlier than required by this
15 subsection.

16 * Sec. 6. AS 14.43 is amended by adding a new section to read:

17 Sec. 14.43.132. **FEDERALLY INSURED LOANS ENCOURAGED.** Whenever
18 possible scholarship loans made under AS 14.43.090 - 14.43.160 shall
19 be federally insured.

20 * Sec. 7. AS 14.43.160 is amended by adding a new paragraph to read:

21 (9) "committee" means the student financial aid committee
22 of the Alaska Commission on Postsecondary Education.

Offered: 4/4/83
Referred: House Special
Committee on State Loans
and Finance

Original sponsor: Lindauer

1 IN THE HOUSE BY THE HEALTH, EDUCATION, AND
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 56 (HESS) SOCIAL SERVICES COMMITTEE
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL
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19 * Sec. 3. AS 14.43.120(f) is amended to read:
20 (f) Interest on a loan made [GIVEN] under AS 14.43.090 - 14.43.-
21 160 is at the rate of eight [FIVE] percent a year.
22 * Sec. 4. AS 14.43.120(g) is amended to read:
23 (g) Repayment of the principal and interest on the loan begins
24 no later than 120 days [ONE YEAR] after the borrower's studies are
25 terminated. The loan shall provide for repayment of the total amount
26 owed in periodic installments in not more than 10 years from the
27 commencement of repayment, except as provided in (k) and (m) of this
28 section. If the commission and the borrower agree to a different
29 repayment schedule, the borrower shall repay the loan in accordance

1 with the agreement. A borrower may make payments earlier than re-
2 quired by this subsection.

3 * Sec. 5. AS 14.43.120(j) is amended to read:

4 (j) A portion of a loan shall be paid on behalf of the borrower
5 by the state if, upon completion of the course of study for which the
6 loan was granted, the borrower is a resident of the state for at least
7 two years. The portion of the loan that shall be paid by the state is
8 the following percentages of the total loan received plus interest up
9 to a total of 20 [50] percent of the total loan:

10 (1) two - three years residence in the state, 10 percent;

11 (2) over three [- FOUR] years residence in the state, an
12 additional 10 percent [;

13 (3) FOUR - FIVE YEARS RESIDENCE IN THE STATE, AN ADDITIONAL
14 10 PERCENT;

15 (4) FIVE - SIX YEARS RESIDENCE IN THE STATE, AN ADDITIONAL
16 10 PERCENT;

17 (5) OVER SIX YEARS RESIDENCE IN THE STATE, AN ADDITIONAL 10
18 PERCENT].

19 * Sec. 6. AS 14.43 is amended by adding a new section to read:

20 Sec. 14.43.132. FEDERALLY INSURED LOANS ENCOURAGED. Whenever
21 possible scholarship loans made under AS 14.43.090 - 14.43.160 shall
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