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COMMITTEE REPORT
SENATE

FURTHER: FINANCE

Date _____

Mr. President

The Committee on JUDICIARY considered S3 385

relating to the Alaska Commission on Postsecondary education, et al.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SA 345 (2)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

Senator Fritz Pettyjohn

PROPOSED AMENDMENT TO
CS FOR SENATE BILL NO. 385 (HESS)

page 3, line 10, insert a new subsection (4)

- (4) has not failed to register with the Selective Service Administration as may be required by Federal law.

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 27, 1984

SUBJECT: Scholarship loan eligibility
(CSSB 385 (Judiciary))

TO: Senator Bill Ray
Chairman, Senate Judiciary Committee

FROM: Keith B. Levy *KBL*
Legislative Counsel

You have requested an amendment to CSSB 385 (Jud) that would make registration for the military draft an eligibility requirement for the scholarship loan program. A federal court recently held that a similar eligibility requirement for federal financial assistance is probably unconstitutional as a bill of attainder and a violation of the Fifth Amendment privilege against self incrimination. Your amendment probably violates these constitutional provisions as well as the equal protection clause of the state constitution.

In Doe v. Selective Service System, 557 F. Supp 937 (D.Minn 1983), a number of students challenged sec. 1113 of the Department of Defense Authorization Act of 1983 (50 U.S.C.App. 462(f)). That case has been appealed and is now pending before the United States Supreme Court. Section 1113 provides that a student who fails to register for the draft as required by 50 U.S.C.App. 453 is ineligible to receive federal assistance under Title IV of the Higher Education Act of 1965. The court granted the students a preliminary injunction prohibiting enforcement of sec. 1113, ruling that the students have a high probability of succeeding in their challenge of the section as unconstitutional. The reasoning the court used in reaching this conclusion applies equally to your amendment.

The first argument raised by the students is that the bill is an unconstitutional bill of attainder. Bills of attainder are prohibited by Article I, section 9, clause 3 of the United States Constitution and Article I, section 15

of the Constitution of the State of Alaska. The court in Doe noted

A bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable group without the protections of a judicial trial.

Doe, supra, at 941. The purpose of the proscription against bills of attainder is to prevent legislative exercise of the judicial function. The court concluded that sec. 1113 determines the guilt of those students unable to prove that they have registered for the draft and punishes them by denying them access to financial aid. The court noted that the bill punishes those who have intentionally neglected to register and those who have inadvertently failed to register without distinguishing between the two groups. This amounts to a determination of guilt under the registration law without the safeguards of a trial. Accordingly, the court concluded, sec. 1113 is a bill of attainder and therefore unconstitutional.

Your amendment is open to the same challenge. It makes the determination that students who have failed to register for the draft are guilty of violating the federal law and punishes them summarily, without the right to a fair trial. It fails to take into account the possibility that a student may be unable to provide evidence of registration and yet may not be guilty of violating the law, because the failure to register was not intentional. Thus, the amendment is probably unconstitutional as a bill of attainder.

The students also challenged the draft registration requirement as a violation of the Fifth Amendment privilege against self incrimination. Article I, section 9 of the Constitution of the State of Alaska also provides for the privilege against self incrimination. The court in Doe concluded that sec. 1113 is unconstitutional because it compels the students to act as witnesses against themselves. Doe, supra, at 950. The bill punishes those who assert the privilege by choosing not to supply the required registration information, since it denies them financial aid on this basis. Accordingly, the court said,

. . . students who need financial assistance are forced to participate in an administrative process, perhaps even a hearing, where they are asked to assist the

government in its investigation of their registration status.

Doe, supra, at 949. Compelling students to provide this potential link in the chain of evidence in a possible prosecution against them violates the privilege against self incrimination. Since your amendment would have the same effect as sec. 1113, it too is probably unconstitutional.

In addition to the constitutional problems raised in the Doe case, the amendment may also violate the equal protection clauses of the state and federal constitutions. The Alaska Supreme Court has stated that if legislation creates an identifiable class to be treated differently from others not in the class, under the equal protection clause, the classification

. . . must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Moreover, the object of the legislation must be a legitimate governmental purpose.

Your amendment creates a class of loan applicants who have failed to register for the military draft and denies them student loans on that basis. The object of the legislation is apparently to encourage compliance with the federal draft laws and to punish those who fail to comply. The means used to achieve this object is the denial of student financial aid. The necessary fair and substantial relationship between the means used and the goal of the legislation is lacking. There is virtually no rational connection between compliance with federal draft laws and the denial of state financial aid to students. Accordingly, the amendment probably violates the state equal protection clause.

Even if there were some connection between state financial aid and the military draft laws, the state would also have to show that encouraging compliance with the draft laws is a legitimate state governmental purpose. Since the federal government already provides sanctions for violation of the draft laws and the state has no power in regard to federal military affairs, the legitimacy of the purpose of the

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amendment is doubtful. Thus, the amendment probably violates the equal protection clause.

In conclusion, the constitutional validity of this amendment to CSSB 385 (Jud) is doubtful. Under the reasoning of the federal court in Doe, supra, the amendment violates the constitutional proscription against bills of attainder and the privilege against self incrimination. Since the Doe case is now before the United States Supreme Court on appeal, the federal constitutional issues are as yet unresolved. However, even if the Court finds the draft registration requirement valid under the federal constitution, your amendment may violate the equal protection clause of the state constitution.

I will refrain from adding this amendment to CSSB 385(Jud) until I hear from your office. If I may answer any questions on this issue, please feel free to contact me.

KBL:ojb
J5/016