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**FILE**

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 25, 1994

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The FINANCE Committee considered:

HB 392

HOUSE BILL NO. 392

PERMANENT FUND DIVIDEND PROGRAM

"An Act relating to the confidentiality of permanent fund dividend application information; relating to the permanent fund dividend program; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 392 (FIN)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) REV 3/14/94

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen Maclean</i> Maclean		<i>Mark Hanley</i> Hanley		X	
<i>Ronald Larson</i> Larson	X	<i>Terry Martin</i> Martin	X		
<i>Sean Parnell</i> Parnell	X	<i>Grassendorf</i> Grassendorf		X	
		<i>Therrien</i> Therrien		X	
		<i>Hoffman</i> Hoffman		X	
		<i>Lay Brown</i> Brown			✓

*Ronald Larson* Larson  
 CO-CHAIRMAN'S SIGNATURE  
*Eileen Maclean* Maclean

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CS HB 392 (JUD)

Revision Date: 03-23-94  
Title: Permanent Fund Dividend Program

Dept. Affected: Revenue  
BRU: Permanent Fund Dividend  
Component: Permanent Fund Dividend

Sponsor: Rep. PARI, J.L.  
Requestor: House Judiciary Committee

COMPONENT SERIAL NO. 931

**Expenditures/Revenues:**

(Thousands of Dollars)

	FY95	FY96	FY97	FY98	FY99	FY00
<b>OPERATING</b>						
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE FUND SOURCE:</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF-MHTIA						
Other						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ -0-

**ANALYSIS:**

The Department has worked closely with the sponsor and *strongly supports* this legislation.

Prepared by: Thomas C. Williams  
Division: Permanent Fund Dividend  
Approved by Commissioner: [Signature]  
Agency: Department of Revenue

Phone: 465-2323

Date: 03-23-94

Date: 3/23/94

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Amendments

AMENDMENT ① Failed 3-4

OFFERED IN THE HOUSE  
TO: CSHB 392(JUD)

BY REPRESENTATIVE MARTIN

Page 3, line 27, after "States":

Insert ", or accompanying as a spouse or dependent a resident or nonresident member  
of the military forces of the United States"

AMENDMENT (2)

Failed 2-7

OFFERED IN THE HOUSE  
TO: CSHB 392(JUD)

BY REPRESENTATIVE MARTIN

Page 2, line 6:

Delete "two calendar years before the current dividend year; [AND]"

Insert new material to read:

"(A) two calendar years before the current dividend year; or

(B) four calendar years before the current dividend year if

the individual

(i) was on active duty in the military forces of the United States during that entire period and this state was the home of record for that individual filed with the military upon entry into military service: or

(ii) is a spouse or dependent of a resident or nonresident member of the military forces of the United States who was on active duty during that entire period: [AND]"

465 2022

# 3 adopted

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
**SUGGESTED LANGUAGE FOR A HOUSE FINANCE COMMITTEE**  
**AMENDMENT TO CS HB 392 (JUD)**

As of April 5, 1994

*Amend Section 15, lines 17-19 on page 9 as follows:*

(2) to the federal court system for use in developing a jury list and to the state court system for use in developing a jury list under AS 09.20.050, the names, mailing addresses, <sup>delete</sup> social security numbers, and birth dates of applicants who are United States citizens 18 years old or older who have not been identified by the Department of Corrections as meeting the criteria of AS 43.23.005(d) ;

prepared By  
Revenue

A M E N D M E N T

3

OFFERED IN THE HOUSE  
TO: CSHB 392(JUD)

BY REPRESENTATIVE BROWN

Page 9, line 17, after "system":

Insert "of the state or federal government"

Page 9, lines 17 - 18:

Delete "under AS 09.20.050"

A M E N D M E N T

4 adopted

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 392(JUD)

Page 9, line 11, after "individual.":

Insert "Notwithstanding the fact that information [may not] be subject to public inspection under AS 09.25.110 - 09.25.140, with respect to information related to an individual's application or dividend, the department shall comply with AS 44.99.300 - 44.99.350."

AMENDMENT

*Withdrawn*  
5

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 392(JUD)

Page 9, line 4, through page 10, line 18:

Delete all material.

Renumber the following bill sections accordingly.

Page 11, line 28:

Delete "14, and 16"

Insert "15"

Page 11, line 30:

Delete "18"

Insert "17"

AMENDMENT

#4 passed  
7-2

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 392(JUD)

Page 9, lines 15 - 16:

*moved*

Delete "that does not exceed the actual cost of preparing and copying the information"

Insert "under AS 09.25.110 or 09.25.115"

*[withdrawn]* Page 9, line 16, after "applicants":

Insert "and telephone numbers of applicants if the numbers are published in a current telephone directory"

Back-up

# Alaska State Legislature

REPRESENTATIVE  
SEAN R. PARNELL



716 WEST 4TH AVENUE, SUITE 320  
ANCHORAGE, ALASKA 99501  
(907) 258-8194

While in Juneau  
STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
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## HOUSE OF REPRESENTATIVES

### SPONSOR STATEMENT

#### HOUSE BILL 392

"An Act relating to the confidentiality of permanent fund dividend application information; relating to the permanent fund dividend; and providing for an effective date"

This bill has been developed in coordination with the Permanent Fund Dividend Division to improve, update and place into law some of the current regulations of the program. I encourage passage of this bill quickly because of its PFD eligibility restoration clause affecting two years of PFD's (1992 & 1993) for 1600 Alaskans and the accompanying correction for future eligibility. This clause is necessary because of a recent court decision which interpreted a 1992 legislative action differently than the legislature intended. This eligibility problem stems from the legislature's inadvertent removal of the "piggy back" rule which allows spouses to be absent with their resident spouse, if their resident spouse is absent for an allowable reason. The "piggy back" will be reestablished by redefining allowable absences as eligibility criteria instead of elements of residency.

Additionally, the bill would place many regulations into statute as a means of protecting PFD recipients from the often changing winds of regulations. The most noteworthy of these is the provision protecting a PFD applicants' financial privacy. The bill also places into statute regulations on: allowable absences and six month pre-departure residency requirement; exemption for children from the six month pre-departure residency requirement; requirements for application signatures; and a reaffirmation of the department's authority to establish deadlines.

The bill would update statutes to comply with current law by closing some minor loopholes and clarifying original intent. Specifically, this would be accomplished by:

- (1) closing a loophole so convicted felons cannot receive a PFD;
- (2) closing a loophole related to children born out of state to nonresidents;
- (3) adding a requirement for a verifier on the application;
- (4) allowing collection of duplicate payments without expiration;
- (5) allowing the department limited power to withhold payments if an applicant has an unpaid assessment pending;
- (6) clarifying how much of an individual's dividend is exempt from attachment;
- (7) giving the PFD program priority to recover erroneous payments;
- (8) clarifying that the statutory intent cannot be circumvented by having a judgment assigned to the court only to be distributed to a private party by the court on the assignor's behalf; and
- (9) clarifying other general language and correcting grammatical errors.

This bill will address a pressing need for 1600 Alaskans as well as assist the PFD Division in administering the program more efficiently and effectively. For these reasons I respectfully urge your support of HB 392.

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
SECTIONAL ANALYSIS OF CS HB 392 (JUD)  
As of March 31, 1994

- Section 1.* Updates a reference to correspond to the amendments made in *Section 12*.
- Section 2.* a. Redefines allowable absences as eligibility criteria instead of elements of residency; and  
b. eliminates redundant language.
- Section 3.* a. Closes a loophole for children born out of state to nonresidents; and  
b. exempts children from 6 month pre-departure residency requirement enacted in *Section 5*.
- Section 4.* a. Places into statute what common law currently requires; and  
b. ensures that an individual who was granted a suspended imposition of sentence would still be ineligible if incarcerated for a felony conviction.
- Section 5.* a. Places into statute all absences currently allowable by regulation;  
b. eliminates the department's discretion to add allowable absences; and  
c. moves into statute the 6 month pre-departure regulatory requirement for absences exceeding 180 days during the qualifying year.
- Section 6.* a. Ensures an applicant must sign their application; and  
b. adds requirement for verifier(s).
- Section 7.* Ensures that an individual who was granted a suspended imposition of sentence would still be banned from future program participation and subject to a penalties in AS 43.23.035 if convicted of a crime in connection with making application.
- Section 8.* Allows duplicate payments of dividends to be assessed without a time limit.
- Section 9.* Allows the department to withhold payments if an applicant has an unpaid assessment pending.
- Section 10.* Makes the department's current authority to establish deadlines explicit.
- Section 11.* Clarifies language to correspond to the original intent as administered from the beginning of the program.
- Section 12.* Gives the PFD program priority in recovering erroneous payments before all other levies, executions, garnishments and attachments.

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

**COPY**

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

MEMORANDUM

February 14, 1994

**SUBJECT:** Permanent fund dividend program (HB 392)

**TO:** Representative Al Vezey, Chair  
House State Affairs Committee

**FROM:** Tamara Brandt Cook  
Director

Here is the sectional summary you requested for HB 392.

Sec. 1. The statute dealing with the scholarship loan program is amended to reflect the change made in Sec. 12 in the priority for certain payments made pursuant to collections of debt.

Sec. 2. Adds to the eligibility requirements the requirement that an individual be present in the state during the year preceding the current dividend year or absent only as permitted by a new statute added in Sec. 5 of this bill.

Sec. 3. Requires the parent, guardian or authorized representative who applies for a dividend on behalf of an unemancipated minor or disabled individual to also meet the eligibility requirements for a dividend.

Sec. 4. In the provision making certain individuals convicted of a felony, ineligible for a dividend, a statement is added that the subsection does not apply if the felony conviction is reversed. Suspending imposition of sentence and granting of probation do not constitute reversal of a conviction.

Sec. 5. A new section is added setting out the types of absences that are allowable. In addition to specific allowable absences, an individual may be absent for a reason consistent with the intent to remain a resident if the absence does not exceed certain stated durations. An individual who is otherwise eligible and who is absent for more than 180 days during the calendar year immediately preceding the current dividend year remains eligible only if the individual was a resident of the state for at least 6 consecutive months before leaving the state.

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
SECTIONAL ANALYSIS OF CS HB 392 (JUD)  
As of March 31, 1994

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c. moves into statute the 6 month pre-departure regulatory requirement for absences exceeding 180 days during the qualifying year.
- Section 6.* a. Ensures an applicant must sign their application; and  
b. adds requirement for verifier(s).
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ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
**SECTIONAL ANALYSIS OF CS HB 392 (JUD)**

As of March 31, 1994

- Section 13.* Clarifies language and corrects a grammatical error.
- Section 14.* Adds language to make it clear that the intent of the statute cannot be circumvented by having a judgement assigned to the court only to be distributed to a private party by the court on the assignor's behalf.
- Section 15.*
- a. Explicitly states that PFD applicant information is confidential except as provided in the new section.
  - b. Eliminates the subjective "public interest" test currently in regulation.
  - c. Places into statute the specific conditions under which applicant information can be disclosed as currently listed in the PFD regulations.
- Section 16.*
- a. Deletes the reference to absences in the definition of "state resident" since absences are redefined as eligibility criteria in *Section 2*;
  - b. makes it clear that while absent an individual must maintain at all times an intent to return to remain permanently in order to retain residency; and
  - c. renumbers the section as appropriate.
- Section 17.* Reaffirms the 1992 and 1993 eligibility of individuals accompanying their eligible resident spouse [*Superior Court Dana Fabe's December 16, 1993 decision invalidated the "piggyback" provision of 15 AAC 23.163(c)(15) effective January 1, 1992*].
- Section 18.* January 1, 1994 effective date for sections 1 - 3, 5, 6, 10 - 14, and 16.
- Section 19.* Immediate effective date for sections 1 - 3, 5, 6, and 8 - 18.
- Section 20.* January 1, 1995 effective date for sections 4 and 7.

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Sec. 6. Requires the statement of eligibility and certification of residency to be signed by two people (other than the applicant), or, if the application is being filed on behalf of another, one other person.

Sec. 7. Provides that suspension of a sentence or the granting of probation do not constitute reversal of a conviction for purposes of the penalty section dealing with conviction of a crime in connection with a false statement made on a certification of residency.

Sec. 8. Existing law requires notice of an improperly paid dividend to be sent to the recipient within certain time periods before a proceeding to recover the dividend may be commenced, with some exceptions. This section adds to the exceptions a proceeding to recover a duplicate payment of a dividend.

Sec. 9. Prohibits the department, during the time in which an appeal may be filed or while an appeal is pending, from paying a dividend to an individual who, as a result of a proceeding to recover a dividend, owes money to the state. Requires the department to pay a prior year dividend to an individual who is not the subject of a criminal investigation involving payment of a dividend if the individual has not exhausted appeal rights and if the department has not issued a formal hearing decision by September 30 of the year following the year for which the dividend is declared.

Sec. 10. Requires the department to adopt regulations that establish procedures and time limits for providing missing or additional information in connection with a dividend application.

Sec. 11. Reworded slightly as a technical correction.

Sec. 12. Provides that amounts owed to the state as a result of a dividend improperly paid to an individual are not partially exempt from collection and these obligations have first priority over other obligations of the individual.

Sec. 13. Prohibits the department from accepting an assignment or remedy for the collection of debt applied to a current year dividend before April 1 of the current year.

Sec. 14. Limits assignment of the right to receive a dividend for a debt owed to or administered by a government agency or to a court for a debt owed to the court.

Sec. 15. Makes information related to an individual's application or dividend confidential and sets out information that may be released by the department under certain stated conditions.

Representative Al Vezey, Chair  
February 14, 1994  
Page 3

Sec. 16. Modifies the definition of state resident for purposes of the dividend program.

Sec. 17. Permits certain individuals who applied for the 1992 or 1993 dividend in a timely fashion to receive the dividend despite the provision that the residency of an individual's spouse may not be the principal factor relied upon in determining the residency of the individual.

Sec. 18. Certain sections of the bill are retroactive to the beginning of the 1994 dividend year.

Sec. 19. Certain sections take effect immediately.

Sec. 20. The two sections dealing with reversal of convictions take effect at the beginning of the next dividend year.

TBC:gc  
94-120.glc

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
**1993 DIVIDEND PAYMENTS TO ELIGIBLE APPLICANTS WITH ABSENCES**

As of December 20, 1993

93 Abs Code	Absence Reasons	Applicants			Amount Paid		
		Total	Days Absent		Total	Days Absent	
			91 - 180	≥180		91 - 180	≥180
<i>Adult</i>							
B	Full Time Student	5,892	2,185	3,707	\$5,594,218.32	\$2,074,570.10	\$3,519,648.22
C	Active Duty Armed Forces	3,417	756	2,661	3,244,304.82	717,791.76	2,526,513.06
J	Vacation	2,819	2,540	279	2,676,527.74	2,411,628.40	264,899.34
A	Accompany Eligible Alaskan	2,374	743	1,631	2,254,018.04	705,448.78	1,548,569.26
L	Other Including Business	1,307	1,156	151	1,240,944.22	1,097,575.76	143,368.46
D	Continuous Medical Treatment	397	312	85	376,935.62	296,231.52	80,704.10
K	Seek Employment or Employed	254	217	37	241,162.84	206,032.82	35,130.02
G	Full Time Charitable Service	83	75	8	78,805.18	71,209.50	7,595.68
H	Employed by the State of AK	64	42	22	60,765.44	39,877.32	20,888.12
E	AK Cong Delegation or Staff	51	17	34	48,422.46	16,140.82	32,281.64
F	Full Time Peace Corp Service	25	4	21	23,736.50	3,797.84	19,938.66
I	Custody of the State of AK	1	1	0	949.46	949.46	0.00
<b>Total</b>	<b><u>Eligible Adults with Absences</u></b>	<b><u>14,709</u></b>	<b><u>6,598</u></b>	<b><u>8,111</u></b>	<b><u>13,965,607.14</u></b>	<b><u>6,264,537.08</u></b>	<b><u>7,701,070.06</u></b>
<i>Child</i>							
A	Accompany Eligible Sponsor	5,552	1,649	3,903	5,271,401.92	1,565,659.54	3,705,742.38
B4	Other Reasons	542	346	196	514,607.32	328,513.16	186,094.16
B1	Full Time Student	373	223	150	354,148.58	211,729.58	142,419.00
B3	Vacation	348	311	37	330,412.08	295,282.06	35,130.02
B2	Continuous Medical Treatment	50	35	15	47,473.00	33,231.10	14,241.90
<b>Total</b>	<b><u>Eligible Children with Absences</u></b>	<b><u>6,421</u></b>	<b><u>2,255</u></b>	<b><u>4,166</u></b>	<b><u>6,096,482.66</u></b>	<b><u>2,141,032.30</u></b>	<b><u>3,955,450.36</u></b>
<b>Total</b>	<b><u>Eligible Applicants with Absences</u></b>	<b><u>21,130</u></b>	<b><u>8,853</u></b>	<b><u>12,277</u></b>	<b><u>\$20,062,089.80</u></b>	<b><u>\$8,405,569.38</u></b>	<b><u>\$11,656,520.42</u></b>

Notes: Each row with an absence reason represents the number of applicants who listed that particular absence on their application.

The number of applications for individuals absent 91-180 days during 1992 plus the number of applications for individuals absent 181 or more days during 1992 equals the total number of applications with each listed absence.

The total number of adults with absences will always be less than or equal to the sum of column of the individual adult absences because some adults have more than one absence reason. Similarly, the total number of children with absences will always be less than or equal to the sum of column of the individual child absences because some children have more than one absence reason.

The total number of adults with absences plus the total number of children with absences equals the total number of applicants with absences.

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

information, payment amount and payment date for the dividends issued that week. In January, the PFD Division creates and sends the DPA a complete payment file containing the same data along with the warrant numbers.

E. Department of Labor. Division of Administrative Services. Research and Analysis Section (DOL)

1. Determining compliance with resident hire requirements, determining work force demographics, and identifying unemployment insurance fraud

Each June, the PFD Division creates and sends the DOL a magnetic tape file containing the name, address, date of birth, social security number, household packet key, sponsor information, eligibility information, military indicator, absence data, sex and fraud indicator for all current year applicants.

F. Department of Law. Civil Division. Anchorage Collections Section (DL)

1. Submitting dividend attachments and garnishments

Each June, the PFD Division creates and sends the DL a disk file containing the name, address, date of birth, social security number, and record key for all current year adult applicants. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

2. Submitting dividend assignments made under the Rules of Court

Each June, the PFD Division creates and sends the DL a magnetic tape file containing the name, address, date of birth, social security number, and record key for all current year adult applicants. The DL uses this file to ensure individuals who are required to assign their dividend have actually applied for a dividend. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

G. Department of Natural Resources. Division of Land and Water Management (DLWM)

1. Verifying residency qualifications for land discount programs

Each June, the PFD Division creates and sends the DLWM a magnetic tape file containing the name, address, date of birth, and social security number for all current year adult applicants.

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

H. Department of Public Safety (DPS)

1. Identifying and locating individuals

The PFD Division provides on-line access to the name, address, date of birth, social security number, birth state, birth name and packet application information for all applicants via the *PFD Information System* to 17 Alaska State Troopers staff and 2 Fish and Wildlife Protection staff.

I. Department of Revenue, Child Support Enforcement Division (CSED)

1. Identifying and locating individuals

The PFD Division provides on-line access to the name, address, date of birth, social security number, birth state, birth name and packet application information for all applicants via the *PFD Information System* to 80 CSED staff.

2. Submitting dividend attachments and garnishments

Each June, the PFD Division creates and sends the CSED a magnetic tape file containing the name, address, date of birth, social security number and record key for all current year adult applicants. Prior to October the CSED returns a tape file that contains a copy of the record the PFD Division supplied, with an appended garnishment amount and case number. The CSED also supplies a printout of the tape and a document certifying that the garnishments are accurate and legal. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

J. Department of Revenue, Income & Excise Audit Division (IEAD)

1. Identifying and locating individuals

The PFD Division provides on-line access to the name, address, date of birth, social security number, birth state, birth name and packet application information for all applicants via the *PFD Information System* to 9 IEAD staff, including Unclaimed Property Section staff.

K. Office of the Lt. Governor, Division of Elections (DE)

1. Conducting voter registration drives

Upon request, the PFD Division creates and sends the DE a magnetic tape file containing the name, address, date of birth, and social security number for all current year applicants who are over eighteen years old.

## Agencies and Institutions Receiving PFD Data

As of February 18, 1993

### L. University of Alaska. Advanced College Tuition (ACT) Program

#### 1. Administering the ACT program

Each month, the PFD Division creates and sends the UOA a diskette containing the name, address, social security number and date of birth of applicants who have elected to contribute half of their PFD to the ACT program.

## II. FEDERAL GOVERNMENT AGENCIES

### A. Internal Revenue Service (IRS)

#### 1. Identifying and locating individuals

Upon request, the PFD division provides copies of applications to the IRS as well as copies of the front and back of redeemed warrants. The division blanks out all direct deposit account information appearing on 1993 and subsequent year applications.

Prior to 1993, each July the PFD Division also provided two microfilm copies of each application along with microfiche copies of a record of each applicant's name, social security number, date of birth and PFD Division Document Locator Number (DLN) sorted alphabetically by last name. Since disclosure of applicants' direct deposit account information contained on the face of the application is precluded by the confidentiality requirements of 15 AAC 23.253(c), in 1993 the PFD Division discontinued sending the IRS microfilm copies of all applications.

#### 2. Submitting levies of dividends

Each June, the PFD Division creates and sends the IRS a magnetic tape file containing the applicant's name, address, date of birth, social security number and record key for all current year applicants. Prior to October the IRS returns a tape file that contains a copy of the record the PFD Division supplied, with an appended levy amount and case number. The IRS also supplies a single levy and a document certifying that the tape file is correct and that the levy of each dividend contained on the file is accurate and legal. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

Agencies and Institutions Receiving PFD Data

As of February 18, 1993

3. Ensuring compliance with federal income tax reporting requirements

Each January, the PFD Division sends the IRS a magnetic tape file containing the applicant's name, address, social security number, the amount paid and the amount withheld for all applicants paid during the prior calendar year in an IRS Form 1099 format as required by federal law.

B. Selective Service Commission (SSC)

1. Ensuring compliance with draft registration requirements

Upon request, the PFD Division creates and sends the SSC a magnetic tape file containing the name, address, date of birth, and social security number for all current year male applicants between seventeen and twenty-eight years old.

### III. MUNICIPAL GOVERNMENTS

A. Municipality of Anchorage (MOA)

1. Submitting dividend attachments and garnishments and dividend assignments made under the Rules of Court

Each June, the PFD Division creates and sends the MOA a magnetic tape file containing the name, address, date of birth, social security number and record key for all current year adult applicants. The MOA includes the applicant's record key on all paper services sent to the PFD Division.

### IV. FINANCIAL INSTITUTIONS

A. Participating Alaska Financial Institutions (PAFI)

1. Ensuring requesting PFD applicants qualify for direct deposit

Each June, the PFD Division creates and sends each of the PAFIs a magnetic tape or disk file containing the applicant's name, address, date of birth, social security number, and account number for all current year adult and child applicants who have requested to have their dividend directly deposited into a PAFI account. The PAFIs use the information verify that the applicant qualifies for direct deposit in accordance with 15 AAC 23.223(b)(4).

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
**AGENCIES AND INSTITUTIONS RECEIVING PFD DATA**  
As of February 18, 1993

*I. STATE OF ALASKA AGENCIES*

A. Alaska Court System (ACS)

1. Preparing jury lists

Each September, as required by AS 09.20.050(b), the PFD Division creates and sends the ACS a magnetic tape file containing the name, address, date of birth, and social security number for all current year applicants who will be over seventeen years old by March, are U.S. citizens, and have an Alaska address.

B. Department of Administration, Division of Finance (DOF)

1. Accounting for PFD warrants

Each week, the PFD Division creates and sends the DOF a magnetic tape file containing the name, warrant issue amount, warrant date, warrant number and social security number for each dividend warrant issued that week. The DOF inputs the information into the state accounting system where it controls the redemption of the PFD warrants and establishes an accounting audit trail.

C. Department of Education, Alaska Commission on Postsecondary Education (ACPE)

1. Submitting dividend attachments and garnishments

Each June, the PFD Division creates and sends the ACPE a magnetic tape file containing the name, address, date of birth, social security number, and record key for all current year filers over sixteen years old. Prior to October the ACPE returns a tape file that contains a record for each dividend they wish to attach. The ACPE's file contains a copy of the record the PFD Division supplied, with an appended garnishment amount and case number. The ACPE also supplies a printout of the tape and a document certifying that the garnishments are accurate and legal. The PFD Division makes payment on the garnishments as the dividends are processed for payment.

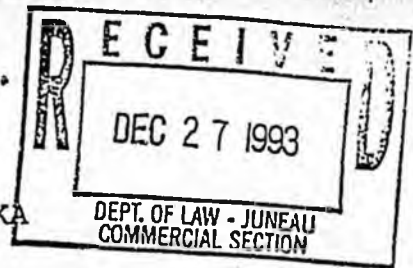
D. Department of Health and Social Services, Division of Public Assistance (DPA)

1. Administering the Hold Harmless program

Each week, the PFD Division creates and sends the DPA a magnetic tape file containing the name, address, date of birth, social security number, sponsor

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

GLORIA LYNN ZEILER, JANELLE )  
BOLLS, JOHN B. HOWELL, and )  
SANDRA BROADNAX, on Behalf )  
of Themselves and Others )  
Similarly Situated, )

Plaintiffs, )

vs. )

STATE OF ALASKA, DEPARTMENT )  
OF REVENUE, PERMANENT FUND )  
DIVIDEND DIVISION, )

Defendants. )

Filed In the Trial Courts  
STATE OF ALASKA, THIRD DISTRICT  
Clerk of the Trial Courts

DEC 16 1993

By [Signature] Deputy

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JAN 10 1994

STATE OF ALASKA  
DEPT. OF REVENUE  
PFD DIVISION

Case No. 3AN-92-1567 Civil

ORDER

Defendant in this case has moved for summary judgment and dismissal, asserting the validity of Department of Revenue regulations that deny Permanent Fund Dividends (hereafter "Dividends") to residents who accompany their nonresident spouses out of state on allowable absences and that create presumption of nonresidency for applicants whose spouses are nonresidents. In response, plaintiffs move for summary judgment that the regulations have been invalid.

I. FACTUAL AND PROCEDURAL BACKGROUND

The following facts do not appear to be disputed for purposes of resolving the cross-motions before the court. Plaintiffs Gloria Lynn Zeiler, Janelle Bolles, and Sandra Broadnax were all established Alaska residents when they married their

nonresident military spouses stationed in Alaska. Each plaintiff's spouse was subsequently transferred out of state by the military, and each plaintiff accompanied her spouse on the transfer. Plaintiffs Zeiler and Bolls returned to Alaska several years after the out-of-state transfer; plaintiff Broadnax remains in New Jersey. Defendant State of Alaska issued Dividends to plaintiffs Zeiler and Bolls during the period that they were out of state,<sup>1</sup> and later asked for repayment of those Dividends.<sup>2</sup> Plaintiff Broadnax has not been issued a Dividend since she left Alaska in 1986.

The remaining plaintiff, John Howell, was an Alaska resident who married in 1969. Howell's spouse moved to Hawaii for medical reasons in 1985, and Howell visited her there periodically.<sup>3</sup> In 1991, the Permanent Fund Dividend Division placed Howell on review status, but awarded him a Dividend after a delay of several months.

Plaintiffs brought this action alleging that the denial or delay of Dividend awards to state residents who accompany their nonresident spouses on allowable absences violates equal

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<sup>1</sup> Zeiler left the state in 1982 and returned in 1989 after her spouse's repeated requests for reassignment to Alaska. Bolls left in 1985 and returned in 1988.

<sup>2</sup> The State also demanded of Bolls that she repay a Dividend issued to her during the first year of her return to Alaska in 1988.

<sup>3</sup> Howell's spouse apparently is a nonresident for purposes of Dividend eligibility.

protection under the state and federal constitutions and is illegal under the governing Alaska statutes. All of these issues are currently before the court on cross-motions for summary judgment.

## II. EVOLUTION OF THE REGULATORY SCHEME

Although the parties have not addressed this complication,<sup>4</sup> the Department of Revenue has issued at least six generations of regulations having potential applicability to the Dividend eligibility of plaintiffs during the periods in question. These variants have usually overlapped with one another; for example, three then-existing versions of the regulations were repealed on April 1, 1989,<sup>5</sup> and two more versions were repealed on January 1, 1993.<sup>6</sup> It is ambiguous, therefore, which regulations were actually applied to any given Dividend decision in dispute in this case, particularly when the parties have not indicated specifically which Dividend issuances and non-issuances are contested. The effective dates and dates

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<sup>4</sup> Both defendant and plaintiffs have made their argument under the assumption that the disputed regulations in this case are 15 AAC 23.130 and 15 AAC 23.150, as replaced in 1993 by 15 AAC 23.143 and 15 AAC 23.163. As explained in the text, however, these two sets of regulations have been effective only since April 1, 1989, and would not have applied to Dividends for years prior to 1989.

<sup>5</sup> 15 AAC 23.030 and .040; 15 AAC 23.450 and .460; and 15 AAC 23.655 and .665.

<sup>6</sup> 15 AAC 23.130 and .150; 15 AAC 23.175.

of repeal of the various potentially applicable regulations are given below:

<u>Regulation No.</u>	<u>Effective</u>	<u>Repealed</u>
15 AAC 23.030 and .040	4/30/80	4/1/89
15 AAC 23.450 and .460	7/1/82	4/1/89
15 AAC 23.655 and .665	5/12/83	4/1/89
15 AAC 23.130 and .150	4/1/89	1/1/93
15 AAC 23.175	3/31/90	1/1/93
15 AAC 23.143 and .163	1/1/93	-----

As it happens, the most recent two of the three versions in effect prior to April 1, 1989 contained identical relevant provisions, as follows:

DEFINITION OF A STATE RESIDENT. (a) A state resident is an individual physically present in the state who intends to remain permanently in the state, or, if not physically present in the state, was a resident immediately before departure from the state, intends to return to the state, is absent for one or more of the allowable reasons set out in [the ALLOWABLE ABSENCES section], and demonstrates at all times during an absence an intent to return to the state and remain permanently in the state. An individual may not claim a dividend payment if during the six months immediately preceding his or her application the individual was absent from the state for one or more reasons not included as an allowable absence under [the ALLOWABLE ABSENCES section].

\* \* \*

(e) The spouse of an individual who is not a state resident as defined in this

section is not a state resident unless the spouse meets the requirements of (a) and (b) of this section and provides with his or her application documentation of his or her intent to remain permanently in the state despite the nonresidency of his or her spouse.

ALLOWABLE ABSENCES. ... (b) Absence from the state for active service in a branch of the armed forces of the United States is an allowable absence.

\* \* \*

(1) Absence from the state by a spouse ... of an individual state resident who is absent for reasons allowed by (a)-(j) of this section is an allowable absence, if the spouse... was a resident of the state immediately before departure and has not established residence elsewhere. The absence of the spouse... must be related to the absence of the resident who is absent for the reasons allowed by subsections (a)-(j).

Two major implications of these provisions are apparent: (1) there is a presumption against finding an individual to be a state resident when that individual's spouse is a nonresident<sup>7</sup>; and (2) a resident who accompanies a resident spouse on an allowable absence will maintain Dividend eligibility.<sup>8</sup> With respect to plaintiffs' claims arising prior to April 1, 1989, therefore, it is these implications that are in dispute.

Plaintiffs' claims arising on or after April 1, 1989, and before March 31, 1990, are brought against regulations 15 AAC

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<sup>7</sup> This is the basis of plaintiff Howell's claims.

<sup>8</sup> This is the basis of the claims of plaintiffs Zeiler, Bolls, and Broadnax.

23.130 and 15 AAC 23.150, the only versions in effect during that period. While these regulations kept in place the presumption against finding spouses of nonresidents to be state residents, see 15 AAC 23.130(g), two notable changes to the prior versions were made. First, it was now an allowable absence for a resident to accompany an "eligible applicant", rather than a "resident", spouse on an allowable absence.<sup>9</sup> Second, a new provision was added under the allowable absences section:

If a resident spouse, child, or dependent's primary reason for an absence is to accompany a resident of another state, that absence is not allowed.

15 AAC 23.150(g). The effect of this new provision was to confirm the negative of the prior rule that residents accompanying resident spouses on allowable absences could keep their eligibility; accompanying nonresident spouses on such absences was not allowed.

On March 31, 1990, a new version of the allowable absence regulation became effective. See 15 AAC 23.175. This new version contained no provision analogous to the concurrently effective 15 AAC 23.150(g), but was otherwise identical to the previous version in relevant respects.

On January 1, 1993, all previous versions of the regulations were repealed, and a new version became effective. See 15 AAC 23.143 and 15 AAC 23.163. The major change under the

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<sup>9</sup> This change has no apparent significance to the resolution of the issues presently before the court.

current regulations is that it is no longer permissible to presume that an applicant is not a resident, when the sole basis for the presumption is the fact that the applicant's spouse is a nonresident.<sup>10</sup> 15 AAC 23.143(j). This change apparently reverses the rule under all previous generations of the regulations.

The current regulations continue, however, to deny eligibility to residents moving from Alaska "to accompany a nonresident spouse unless the Alaska resident is on an allowable absence". 15 AAC 23.143(d)(11). No provision is made for an allowable absence to accompany a nonresident or ineligible spouse. See 15 AAC 23.163. Consequently, in this respect, the effect of the latest version of the regulations is the same as it has always been: to deny Dividend eligibility to residents accompanying nonresident spouses on allowable absences.

After reviewing the various permutations of the applicable regulations, this court finds that the issues of the

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<sup>10</sup> The court notes, however, that there is an apparent conflict between 15 AAC 23.143(j) and 15 AAC 23.173(e). The latter provides:

An individual whose spouse is not a resident eligible for a dividend must provide documentation that demonstrates an intent to remain permanently in Alaska despite the nonresidency of the spouse. The department will, in its discretion, require additional proof of the individual's intent to remain in Alaska.

The court's decision is premised on the presumption that the specific language of 15 AAC 23.143(j) controls, to the extent that 15 AAC 23.173(e) is inconsistent.

case may be resolved despite minor variations among the regulations in effect during the periods in which plaintiffs' claims arose. As noted, the effect of the regulations has always been the same, except that as of January 1, 1993, a presumption no longer exists that Dividend applicants are not residents if their spouses are not residents. See 15 AAC 23.143(j). Plaintiff Howell's claim arose prior to this date, however, and the remaining plaintiffs always have had the same claim that the Alaska Administrative Code denied Dividend eligibility for residents who accompanied nonresident spouses out of state on allowable absences, while eligibility was maintained for residents who accompanied resident spouses on allowable absences.

### III. EQUAL PROTECTION

Plaintiffs have alleged that denying Dividends to state residents who accompany their nonresident spouses out of state, and delaying Dividend awards to residents with nonresident spouses, when the nonresidency status of the spouse is the sole reason for the denial or delay, contravene the equal protection clauses of the federal and state constitutions.

As a preliminary matter, it must be noted that the Alaska legislature has indicated the purposes underlying the Alaska permanent fund dividend program:

- (1) to provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth derived from the development and production of the natural resources belonging to them, as Alaskans;

(2) to encourage persons to maintain their residence in Alaska and to reduce population turnover in the state; and

(3) to encourage increased awareness and involvement by the residents of the state in the management and expenditure of the Alaska permanent fund....

1980 Alaska Sess. Laws, ch. 21, § 1(b). The inquiry under both the federal and state constitutions, therefore, must focus on the relationship between any of the above purposes of the Dividend program and (1) a presumption against finding an individual to be a resident solely because that individual's spouse is not a resident, and (2) a regulatory exception to the general rule that persons living out-of-state shall not be eligible to receive Dividends, where the exception permits a resident individual to maintain Dividend eligibility while accompanying the individual's spouse on allowable absences from the state, but only so long as the spouse is a resident.

A. There is no Violation of the Federal Equal Protection Clause

In State v. Cosio, S. Ct. No. S-4344, slip op. at 2 (Alaska, August 20, 1993), the Alaska Supreme Court applied an equal protection analysis to determine the federal and state constitutionality of the State's exclusion of illegal aliens from eligibility for Dividends. With regard to plaintiffs' equal protection claim under the Fourteenth Amendment to the United States Constitution, the supreme court first held that, because

a dividend is a matter of grace, a "governmental 'benefit' indistinguishable from other forms of social welfare,"... the State's dividend eligibility requirement only warrants rational basis review.

Id. at 11 (quoting Plyer v. Doe, 457 U.S. 202, 221 (1982)). The court noted that a rational basis standard also was appropriate because plaintiffs were "accountable for their disabling status", and the deprivation of a Dividend would not leave plaintiffs "irretrievably stigmatized". Id. (distinguishing Plyer, which involved alien children denied public school funding).

Cosio is distinguishable, however, because plaintiffs in that case sought equal protection from their differential treatment as illegal aliens. The court in Cosio proceeded from the premise that the United States Supreme Court had recognized "that illegal aliens, as a class, merit merely rational basis review." Cosio, slip op. at 10. The Alaska Supreme Court, after deciding that no cause existed for heightened scrutiny, then applied rational basis review to the case before it. Id. at 11. Here, plaintiffs share the common characteristic that their Dividends were denied, demanded to be returned, or delayed solely because plaintiffs were married to nonresidents.

There are two circumstances when more than rational basis review may be applied in an equal protection analysis under federal law: (1) when a suspect classification is involved; or (2) when a fundamental constitutional right is burdened. Cosio, slip op. at 9. Alienage falls under the "suspect classification"

analysis. Id. In this case, by contrast, the fundamental rights to marriage and to travel are implicated.<sup>11</sup> The federal equal protection analysis with respect to each of these rights is discussed below.

1. There is no Violation of the Right to Marry

In Loving v. Virginia, 388 U.S. 1, 12 (1966), the United States Supreme Court held that

[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men....[M]arriage is one of the "basic civil rights of man," fundamental to our very existence and survival.

The question here, then, is whether there is sufficient interference with the right to marry to trigger heightened scrutiny under the Equal Protection Clause. In Loving itself, the Supreme Court relied on the right to marry in striking down a state statute that prohibited white people from marrying nonwhites. Id. Similarly, in Zablocki v. Redhail, 434 U.S. 374, 388 (1978), the Court applied intermediate scrutiny to a statute requiring state residents owing support to noncustodial children to obtain court approval before marrying. The Zablocki Court also held, however, that

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<sup>11</sup> Plaintiffs also argue that the right to "join the military" is impinged. If there is a right to be a member of the armed forces, however, it certainly is not a fundamental right for purposes of the United States Supreme Court's equal protection analysis.

{b}y reaffirming the fundamental character of the right to marry, we do not mean to suggest that every state regulation which relates in any way to the incidents of or prerequisites for marriage must be subjected to rigorous scrutiny. To the contrary, reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed.

Id. at 386 (emphasis added). By way of illustration, the Court in Zablocki cited to a decision it had handed down one year previously, Califano v. Jobst, 434 U.S. 47 (1977).

Califano involved the constitutionality of a Social Security Act provision that permitted continuation of insurance benefits for disabled dependent children who married persons eligible for social security benefits, but did not allow such continuation of benefits for disabled dependent children who married persons ineligible for social security benefits. Id. at 49. The Court in Califano held that "[t]he favored treatment of marriages between secondary beneficiaries does not violate the principle of equality embodied in the Due Process Clause of the Fifth Amendment." Id. at 58. The Court explained:

Congress could reasonably take one firm step toward the goal of eliminating the hardship caused by the general marriage rule without accomplishing its entire objective in the same piece of legislation. Even if it might have been wiser to take a larger step, the step Congress did take was in the right direction and had no adverse impact on persons like the [plaintiffs].

Id. at 57. See also Bowen v. Gilliard, 483 U.S. 587, 601-02 (1987) (holding that legislation having effect of providing

incentive for AFDC benefit recipients to move children out of home not grounds for heightened scrutiny).

It is clear that Califano controls the case at bar, insofar as federal constitutional analysis is concerned. The disputed Dividend regulations are analogous in all material aspects to the Social Security Act provisions in Califano; in both cases the government chose to create an exception to a general rule by awarding a benefit to some but not all married persons, depending on whether their spouses also qualified under the benefit program. The Court held that in such a situation, any interference with the right to marry did not give rise to more than rational basis scrutiny under federal equal protection analysis.<sup>12</sup>

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<sup>12</sup> Puzzlingly, neither party discusses the implications of Califano, instead focusing on an opinion of the United States Court of Appeals for the District of Columbia Circuit, Women Involved in Farm Economics v. United States Dept. of Agriculture, 876 F.2d 994 (D.C. Cir. 1989), cert. denied, 110 S. Ct. 717 (1990), and its lower court precursor, 682 F.Supp. 599 (D.D.C. 1988). The circuit court's opinion, issued by a three-judge panel including current Supreme Court Justice Ruth Bader Ginsburg, addressed the constitutionality of a regulation that treated husbands and wives as one person for purposes of a farm support payment limitation under two pieces of agricultural legislation. 876 F.2d at 995. With respect to a challenge on equal protection grounds that the regulation interfered with the right to marry, the court held:

We think the district court was quite correct in concluding that heightened scrutiny of the husband-wife rule is inappropriate because the rule does not "interfere directly and substantially with the right to marry." The rule neither "place[s] [a] direct legal obstacle in the path of persons desiring to get married,"

Because, as discussed below, the regulations survive rational basis review, plaintiffs' federal equal protection claim with respect to the right to marry must fail.

2. There is no Violation of the Right to Travel

Plaintiffs Zeiler, Bolls, and Broadnax argue that their constitutional right to travel is impinged by the regulations at issue in this case, because plaintiffs are consequently "financially penalized" by accompanying their spouses out-of-state. The right to travel "has long been recognized as a basic right under the Constitution." United States v. Guest, 383 U.S. 745, 758 (1966). Furthermore, "the right to travel achieves its most forceful expression in the context of equal protection analysis." Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 902 (1986). The United State Supreme Court in Soto-Lopez held:

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nor significantly discourages marriage. As such, our inquiry is limited to asking whether "the legislation classif[ies] the persons it affects in a manner rationally related to legitimate government objectives."

Id. at 1004 (citations omitted). The court then proceeded to find that a conceivable rational basis for the regulation existed, and upheld the regulation's constitutionality. Id. at 1005, 1007.

While plaintiffs argue that the W.I.F.E. decisions are merely persuasive authority, those decisions apply existing Supreme Court case law. The upshot of the W.I.F.E. decisions and the Supreme Court jurisprudence is that regulations that invoke the married status of the recipient as a basis for benefit determinations rarely demand heightened scrutiny under federal equal protection analysis.

A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses "any classification which serves to penalize the exercise of that right."

Id. at 903 (citations omitted). Under the Equal Protection Clause, such laws are subjected to "intensified" scrutiny. Id. at 904.

The Soto-Lopez Court also recognized, however, that

"A bona fide residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents. Such a requirement...[generally] does not burden or penalize the constitutional right of interstate travel, for any person is free to move to a State and to establish residence there. A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents."

Id. at 903 n.3 (quoting Martinez v. Bynum, 461 U.S. 321, 328-29 (1983)). At issue here is one such "bona fide residence requirement". As discussed below, the apparent reason for the distinction between individuals accompanying nonresident spouses on allowable absences and individuals accompanying resident spouses on allowable absences is to maintain Dividend eligibility only for those individuals who are most likely to return to and remain permanently in Alaska. The regulations therefore are one aspect of the State's overall system for determining who is a bona fide resident of Alaska and who is not. The regulations are

not "durational, fixed date, [or] fixed point residence requirements" which implicate the right to travel. Id. at 903 n.3. Under the analysis of the United States Supreme Court, therefore, no heightened scrutiny is demanded in this case by an infringement on the right to travel.

3. The Regulations Bear a Rational Relationship to the Purposes of the Dividend Program

Plaintiff Howell alleges that, although he finally received a Dividend, he suffered inconvenience and a delay of six months due to the presumption against finding him to be a resident because his wife was a nonresident, and that the presumption was therefore "improper". The other plaintiffs argue that there is no rational relationship between the regulations and the purposes of those regulations because: (1) it is not equitable to allow individuals accompanying resident spouses to maintain Dividend eligibility while simultaneously denying that opportunity to individuals accompanying nonresident spouses; (2) the regulations' distinction does not encourage people to stay in Alaska when the military has effectively removed any element of choice by demanding the out-of-state transfer of their spouses; and (3) the regulations do not encourage awareness of and involvement in the management of the Dividend program by excluding plaintiffs from eligibility, when plaintiffs would be

as concerned as any other Alaskans about the well-being of the program.<sup>13</sup>

Despite plaintiffs' contentions, this court finds that there is a rational relationship between the expressed legitimate purposes of the Dividend program, on the one hand, and, on the other, a presumption against finding an applicant to be a resident based on the nonresidency of the applicant's spouse and for denying an "allowable absence" exception to residents who accompany their nonresident spouses on allowable absences. The Dividend program is intended to equitably distribute wealth derived from natural resources "to the people of Alaska". 1980 Alaska Sess. Laws, ch. 21, § 1(b)(1). The allowable absence exceptions, instituted pursuant to AS 43.23.095, extend the scope of the term "state resident" to include certain classes of people whose absence from the state is "temporary and...consistent with an intent to return to Alaska and remain permanently in the state." 15 AAC 23.150(c); see also AS 43.23.095; 15 AAC 23.163(c)(16). It is reasonable to allow residents to

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<sup>13</sup> Plaintiffs at oral argument raised the additional contention that the Alaska Supreme Court in State v. Cosio, No. 3998, slip op. (Alaska, Aug. 20, 1993), held that all Alaska voters should be eligible for Dividends and that, because plaintiffs in this case could vote under Alaska law, plaintiffs could not be excluded from Dividend eligibility. Even assuming arguendo that plaintiffs are indeed able to vote in Alaska, this argument is unfounded. The supreme court in Cosio did not so much as suggest that all voters are eligible for Dividends, but merely noted that the State has an interest in limiting Dividends to voters. See Cosio, slip op. at 14. Nothing in Cosio indicates that the State may not distinguish among voters for purposes of Dividend eligibility.

"piggyback" onto an allowable absence of a resident spouse, because the fact that the spouse is still a resident is a factor tending to show "an intent to return to Alaska and remain permanently in the state". That factor does not exist for residents who accompany nonresident spouses out of state. For the same reason, it is reasonable to require additional proof of intent from a Dividend applicant whose spouse is not a resident. Therefore, the disputed regulations are rationally related to the purposes of the Dividend program.

Because the regulations have a rational basis, defendant's motion on the federal equal protection issue is GRANTED, and plaintiffs' corresponding cross-motion is DENIED.

B. There is no Violation of the Alaska Constitution's Equal Protection Clause

Alaska employs a "sliding scale" equal protection analysis under the state constitution. The Alaska Supreme Court, applying this analysis in Cosio, found that minimal scrutiny was appropriate to the facts before it because: (1) Dividends, as mere economic interests, were entitled only to minimal protection; and (2) there was no reason that a classification of illegal aliens should receive greater than minimal equal protection scrutiny. Id. at 17.<sup>14</sup>

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<sup>14</sup>While acknowledging that minimal scrutiny under the state equal protection analysis required a "fair and substantial", rather than merely rational, relationship between the disputed regulation and the legitimate government objective, the court in Cosio nevertheless upheld the State's exclusion of illegal aliens from Dividend eligibility on the same grounds as

The question becomes whether there is a "fair and substantial" relationship between the legitimate government interest behind the regulations and the regulations themselves. Plaintiffs argue that "more obvious and commonsensical" regulations would have maintained Dividend eligibility for residents accompanying any spouse, resident or nonresident, on military absences, and would have done away with the presumption that delayed plaintiff Howell's Dividend award. Given that the purpose of the regulations has been to distinguish residents likely to return to and remain in Alaska, however, it is unclear how plaintiffs' solution would create a more fair and substantial relationship with that purpose--in fact, the nexus would be less substantial than it has been under the challenged regulations.<sup>15</sup>

Plaintiffs Zeiler, Bolls, and Broadnax argue in the alternative that residents accompanying spouses on military absences should be afforded individual hearings to determine

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under the federal analysis. Id. at 17-18.

<sup>15</sup> Plaintiffs make the related arguments that using marital status as the sole basis for review is "improper", as is denying Dividend eligibility on the basis of an applicant's spouse's residency status. Again, however, the regulations have merely granted an exception to the general residency rule to people who exhibited an objective manifestation of intent to return to and remain in Alaska by virtue of the fact that their spouses were Alaska residents who were themselves on allowable absences. This assumption clearly is rational, even if it may not be true in every case. Because it does not burden a suspect classification or impinge a fundamental right, as discussed above, it passes constitutional muster.

whether they intend to return to and remain in Alaska.<sup>16</sup> No doubt this procedure would more accurately gauge the intentions of the absent residents than has the "bright line" test established by the regulations. However, because the test is whether there is a "fair and substantial" relationship between the State's means used to reach its legitimate ends, and because a "least restrictive alternative" analysis is not appropriate, the State has met its burden. Consequently, defendant's motion on the state constitution equal protection issue is GRANTED, and plaintiffs' corresponding cross-motion is DENIED.

IV. VALIDITY OF THE REGULATIONS UNDER ALASKA STATUTES

A. The Department of Revenue Properly Interpreted "Military Service"

Plaintiffs Zeiler, Bolls, and Broadnax argue that, as spouses of individuals on active military duty, they themselves are engaged in "military service" as that term is used in AS 43.23.095(8)(C):

"state resident" means an individual who...  
is absent only for any of the following  
reasons:

\* \* \*

(C) military service....

Plaintiffs admit that no definition exists in Alaska law for "military service", except that the regulations have established an allowable absence for members on active duty in the U.S. armed

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<sup>16</sup> Interestingly, it is the delay associated with such an individual determination that plaintiff Howell challenges.

forces. See 15 AAC 23.163(c)(6); 15 AAC 23.150(b)(7); 15 AAC 23.665(b). At the same time, plaintiffs argue, spouses of military members effectively engage in military service, in light of the facts that the military pays spouses' moving expenses and allows them to take advantage of military benefits and that spouses lend familial support to the military members. Plaintiffs have not set forth sufficient grounds for this court to overturn the Department of Revenue's interpretation of the term "military service". Therefore, defendant's motion on this issue is DENIED, and plaintiffs' corresponding cross-motion is GRANTED.

B. The 1992 Amendment to AS 43.23.015(a) Renders Subsequent Inconsistent Regulatory Provisions Invalid

Asserting standing under AS 44.62.300,<sup>17</sup> plaintiffs challenge the validity of the current and former regulations in light of AS 43.23.015(a). Prior to 1992, the statute read:

The commissioner shall adopt regulations under the Administrative Procedure Act (AS 44.62) for determining the eligibility of individuals for permanent fund dividends. The commissioner may require an individual to provide proof of eligibility, and the commissioner may use other information available from other state departments or agencies to determine the eligibility of an individual.

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<sup>17</sup> AS 44.62.300 provides that "[a]n interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court."

AS 43.23.015(a). The 1992 amendments added to the end of this provision the following sentences:

The commissioner shall consider all relevant circumstances in determining the eligibility of an individual. However, the residency of an individual's spouse may not be the principal factor relied upon by the commissioner in determining the residency of the individual.

Id. (emphasis added). Contrary to plaintiffs' contention, the legislative history does not show that the 1992 amendment to AS 43.23.015(a) was intended to merely clarify what had been the intent behind the law all along. Consequently, the amendment may not be considered by this court in evaluating the merits of plaintiffs' claims for Dividends issued or due for the periods prior to when the amendment took effect.

Subsequent to the 1992 amendment, the residency of an applicant's spouse was "the principal factor" in determining the residency of an applicant until the presumption against the Dividend eligibility of an applicant with a nonresident spouse was done away with by 15 AAC 23.143(j) on January 1, 1993. Any use of the presumption after the 1992 amendment became effective, therefore, violated AS 43.23.015(a), and any regulations requiring the presumption were and are invalid and ineffective under AS 44.62.030.<sup>18</sup> Furthermore, because the residency of an applicant's spouse has been and continues to be "the principal

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<sup>18</sup> To the extent that it is inconsistent with 15 AAC 23.143(j), current 15 AAC 23.173(e) is invalid under the 1992 amendment. See supra note 10.

factor" in determining the residency of an applicant resident seeking to accompany that spouse on an allowable absence, regulation 15 AAC 23.163(c)(15) and its functionally equivalent predecessors are and were invalid as of the date that the 1992 amendment of AS 43.23.015(a) took effect.<sup>19</sup>

Consequently, this court GRANTS defendant's motion with respect to the regulations in effect prior to the effective date of the 1992 amendment of AS 43.23.015(a), and DENIES plaintiffs' corresponding cross-motion; however, defendant's motion with respect to regulations issued after the 1992 amendment became effective is DENIED, and plaintiffs' corresponding cross-motion is GRANTED.

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<sup>19</sup> Plaintiffs also argue that the regulations have been inconsistent with pre-1992 statutory authority. In particular, plaintiffs cite to AS 43.23.095(8), which provides:

"state resident" means an individual who is physically present in the state with the intent to remain permanently in the state or ...intends to return to the state and is absent only for any of the following reasons:

\* \* \*

(F) other reasons which the commissioner may establish by regulation....

Plaintiffs argue that, because the regulations "may exclude individuals who would otherwise be included" under the definition of "state resident", the regulations are invalid and ineffective under AS 43.62.030. Plaintiffs do not indicate, however, how the regulations would have excluded anyone who otherwise would have been included.

DATED at Anchorage, Alaska this 16 day of December,  
1993.

*Dana Fabre*

\_\_\_\_\_  
DANA FABRE  
SUPERIOR COURT JUDGE

I certify that on 12/20/93,  
a copy of the above was mailed to each  
of the following at their address of  
record:

*[Signature]* K. Kirk / V. Usese  
Secretary/Deputy Clerk

ALASKA DEPARTMENT OF REVENUE  
PERMANENT FUND DIVIDEND DIVISION  
**HISTORY OF CONFIDENTIALITY PROVISIONS OF HB 392**

As of April 5, 1994

From the beginning of the PFD program in 1982 until the passage of Chapter 200 SLA 90 [HB 405] the Department of Revenue operated under the advice from the Attorney General that everything contained in the Permanent Fund Dividend file, except an applicant's name, could be kept confidential. Since Article I, Section 22 of the Alaska State Constitution provides that "the right of the people to privacy is recognized and shall not be infringed," the Department operated from the premise that general access to PFD applicant information should be protected from disclosure.

The most recent Attorney General's opinion on this subject is dated July 15, 1987. In that opinion, the Department of Law stated that "the names of PFD applicants are not protected under the constitution" and that the Department of Revenue must analyze each public record request on a case by case basis, balancing the privacy rights of the individual against the public interest in disclosure."

Consistent with the Department of Law's advise, the Department adopted 15 AAC 23.250 effective April 1, 1989, establishing a formal guideline for the division's disclosure of PFD applicant information. Under that regulation, the department disclosed only the name of an applicant, unless the Department determined that the "public interest" of disclosure outweighed the constitutional privacy interests of the applicant.

When Chapter 200 SLA 90 [HB 405] was enacted, the Department of Law advised the Department of Revenue that the only effect of the new law on the PFD program was that the Department of Revenue would be required to routinely disclose to the general public the mailing address in addition to name contained in the Permanent Fund Dividend files. Accordingly, when the Department repealed all existing PFD regulations and adopted new regulations to correspond to the significant program changes enacted in Chapter 4, SLA 1992 [SB 327], a provision allowing for the public release of mailing address was included in new regulation 15 AAC 23.253(b)(1).

The Department also operated on the assumption that only the 1991 and subsequent year files are covered by the amendments made by Chapter 200 SLA 90 [HB 405] and not the approximately six million 1982 - 1990 records. Applicants have filed in the past with the assurance of the state that personal information provided would remain confidential.

**Summary** The Permanent Fund Dividend applicant file is the most comprehensive state file regarding Alaskan residents. Even with the current limitations to public access, the Department is still receiving an ever increasing number of requests for information. For example, the Department has already received 19 requests for the entire 1993 name and address file. In addition, the Department receives numerous inquiries from groups that want an extract of the PFD applicant information for a variety of business or survey purposes, arguing that their need for file access is critical to their operations. However, the function of the PFD Division is the effective and efficient administration of the PFD program. It is not to serve as a broad based convenient information gathering service for the public or for business interests.

## M E M O R A N D U M

STATE OF ALASKA

DEPARTMENT OF REVENUE

TO: Distribution  
Permanent Fund Dividend Division  
Alaska Department of Revenue

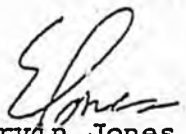
DATE: October 29, 1990

FILE NO: 7653G

TELEPHONE NO: (907) 465-2323

THRU:

SUBJECT: PFD CONFIDEN-  
TIALITY; HB405

  
FROM: Ervin Jones, Director  
Permanent Fund Dividend Division  
Alaska Department of Revenue

As many of you are aware, the effective date of CH200, SLA90 (HB405) was September 25, 1990. Under previous oral advice of the Attorney General, the only change the legislation brings to the AG opinion of July 17, 1987 is that the PFD Division will now provide name and address information when requested as opposed to just name.

Recently, a question arose over the effective date and whether it would compel PFD to disclose information (beyond name) from applications filed in 1990, 1989, 1988, etc. There is a provision in the new law that requires an agency to inform the public that the information they submit will be subject to public disclosure. As you know, in the 1990 and earlier PFD booklets, we promise the public that all PFD information, except name, would be kept confidential. We intend to notice the public of the new rules in the 1991 booklet.

I was advised today by Assistant Attorney General Jeffrey Bush that this new law would not apply to years earlier than 1991. The notice requirement is controlling.

On a related matter, please note that in accordance with 6AAC95.040, the division is exercising its option to require all requests for addresses to be made in writing. If it is a simple request, the requestor may make the request of the Dividend Information Office. If it is a volume request, it should be made to the Division Director. This includes requests for electronic or tape access.

If you have any questions regarding this implementation of this policy, please let me know.

cc: Royce Weller, Assistant Commissioner  
Alaska Department of Revenue

Deborah Vogt, Senior Hearing Officer  
Alaska Department of Revenue

Darryl Rexwinkel  
Commissioner Dept. Revenue  
Juneau, AK.

3/11/94

RECEIVED  
DEPARTMENT OF REVENUE  
MAR 17 1994

COMMISSIONER'S OFFICE

Dear Mr. Rexwinkel,

Enclosed please find a list of 60 individuals who oppose the Dept. of Revenue providing names/addresses to people who request them. Their reasons are as follows:

- 1) safety issues: people simply don't wish to provide such info indiscriminately; and
- 2) waste issues: people object to receiving junk mail generated by selling such lists.

I have collected several hundred names and could easily collect thousands if I were inclined. I wish to inform you that a vast majority of people I speak with strongly object to this practice. They feel their privacy is violated.

At this time I would ask you for your personal response, and suggestions for how people who wish their names/addresses be kept private can have this basic request honored. Thanks for your time.

Sincerely,  
Darryl Rexwinkel

John D. Lyle  
Box 83715 FSKS AK  
99708

We the undersigned voice strong objections to the AK Dept. of Revenue giving away the permanent fund address list to anyone who requests it. It is being used to generate needless, wasteful direct (junk) mail lists. We expect the Interior Delegation and AK Dept. of Revenue to stop this practice. (Call 1-800-478-3290 to voice objections to this + other wasteful state practices)

1. [unclear]
2. [unclear]
3. Carrie Tur [unclear]
4. Ron STANLEY [unclear]
5. Margot Monhollen [unclear]
6. LANAWANG [unclear]
7. Damon Bender Damon Bender
8. Eva Saulitis Eva Saulitis
9. Paul Monhollen Paul Monhollen
10. [unclear]
11. [unclear]
12. Toby Burke Toby A. Burke
13. Melaine [unclear]
14. [unclear]
15. Amy Wise Amy [unclear]
16. David Albert
17. BRONAN [unclear]
18. [unclear]
19. [unclear]
20. RACHEL MORRIS Rachel Morris
21. [unclear]
22. Darcy J. Johnson
23. [unclear]
24. Wendy Coates Wendy Coates
25. [unclear]
26. [unclear]
27. [unclear]
28. Helissa L. TURNER Helissa L. Turner
29. [unclear]
30. [unclear]
31. [unclear]
32. Cynthia Restrepo
33. Jeffrey Conaway
34. [unclear]
35. [unclear]
36. [unclear]
37. [unclear]
38. Verith Fromfield Verith Fromfield
39. Amy Wise Amy Wise
40. [unclear]
41. [unclear]
42. [unclear]
43. [unclear]
44. [unclear]
45. [unclear]
46. [unclear]
47. [unclear]
48. [unclear]
49. [unclear]
50. [unclear]
51. [unclear]
52. [unclear]
53. Brian Collins Brian Collins
54. Richard E. Benner Richard E. Benner
55. [unclear]
56. [unclear]
57. [unclear]
58. Rebecca Dykes Rebecca Dykes
59. [unclear]
60. [unclear]

Please return completed forms to Blue Box, 83715 Fairbanks, AK 99708

Tom - 3/7  
P.L.S. DRAFT FOR  
ADDRESS - ADDRESS  
LISTS *Ref. RD*  
CC: *Romet*

James D. Nordale

Attorney at Law  
P. O. Box 866  
Soldotna, Alaska 99669-0866  
(907) 262-2805

RECEIVED  
ALASKA DEPARTMENT OF REVENUE

MAR 7 - 1994

February 16, 1994

COMMISSIONER'S OFFICE

Commissioner Darrel J. Rexwinkel  
Alaska Department of Revenue  
P.O. Box S  
Juneau, Alaska 99810-0400

R E C E I V E D

MAR 09 1994

STATE OF ALASKA  
DEPT. OF REVENUE  
PFD DIVISION

Dear Commissioner:

I am very upset by the enclosed letter from the Northern Credit Services, Inc. of Juneau. The letter advises of a bad debt owed to Alaskan Cable Net. The letter is addressed to "Kathleen Marquette" at a North Pole address. There is no Kathleen at that address, but there is a Katherine Marquette. Katherine Marquette is my granddaughter who is age 6 yrs. Obviously this is not her obligation.

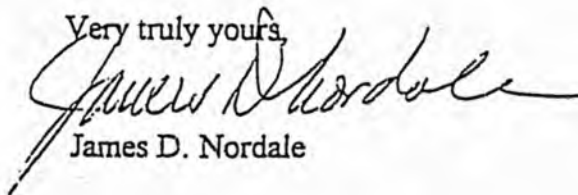
Inquiry by her father to the credit agency revealed that the obligation had been incurred for service rendered in Juneau, where she has never resided, not at her home in North Pole, where service is not available from Alaskan Cable Net. It was further disclosed to her father that her name and address had been obtained from a list of Alaska Permanent Fund applicants which had been purchased from your department or from some other business which had done so for the sum of \$250.

What is most distressing is the fact that a State agency is so cavalier in its approach to the important concept of individual privacy. This is a right held in high regard by most Alaskans, as evidenced by the fact that they ratified Art. I, Sec. 22 of the Constitution by way of a specific amendment. It may be that the bureaucrats who populate the state government are not similarly sensitive. To subject every citizen of the state to the possibility of unwanted and unwarranted harassment as a penalty for applying for a permanent fund dividend which is his or her right is unacceptable. The letter my granddaughter received is a clear indication that the information certainly finds its way into the hands of people who, at best, can be described as careless.

I fully understand the legitimate uses for the information which the State obtains from the applications and the propriety of laying claim to the dividend funds for unpaid obligations to the State as specifically provided for by the Legislature. Perhaps the Legislature did not understand that by specifically naming the obvious and sensible "state purpose" uses for the information it would be assumed that all that information would be disclosed anyway. I urge you to consider a regulation which would limit the disclosure of the names and addresses of applicants for the dividend to matters of legitimate state interest. I doubt that disclosure to every bill collector or catalog distributor or other vulture falls within that class.

I am sending copies of this letter to some members of the Legislature in the hope that they will express their views to you and to me. If I am off- base I would like to know that. If my concern is justified, I would expect to have the situation remedied. In the meantime I intend to bend my best efforts to see that my granddaughter's credit record is not besmirched before she has attained the age where it will mean something to her.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James D. Nordale".

James D. Nordale

Copy to:

Sen. Suzanne Little

Sen. Mike Miller

Sen. Bert Sharp

Rep. Joe Sirton

Rep. Tom Brice

Rep. Gene Therriault

Rep. Jeannette James

Rep. Mike Navarre

Rep. Gary Davis

Rep. Al Vezey

Northern Credit Services, Inc.

NORTHERN CREDIT SERVICES, INC.  
2211 N. JORDAN AVENUE  
JUNEAU, AK 99801  
(907) 789-0098

DATE 02-09-94

P114739 D-14  
KATHLEEN MARQUETTE  
3032 SUPER CLUB LN  
NORTH POLE, AK 99705

AMOUNT DUE: \$139.78

PAGE 1

S O M E T H I N G   W R O N G   ?

Sometimes unexpected circumstances arise that upset well laid plans. If circumstances will not permit you to remit the full balance due on this account now, please call at this office, telephone or write us explaining your circumstances and outline your best possible plan for payment.

If there is anything we can do to help you our careful and courteous consideration will be give. Perhaps between the two of us we can work out a plan whereby you can liquidate your indebtedness.

Won't you contact us please? We will be glad to help you.

Any information obtained from this notice is for the purpose of collecting a debt.

ACCT #	CREDITOR	PRINCIPAL	INTEREST	COSTS	RECEIVED	BALANCE
138242	ALASKAN CABLE NET	127.56	12.22	0.00	0.00	139.78

H  
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