

LEG. FINANCE - BILLS 1983 - 1984 1810

SSHB 56 cont.

1810

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 Ostendorf 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:

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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 need or 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.

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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

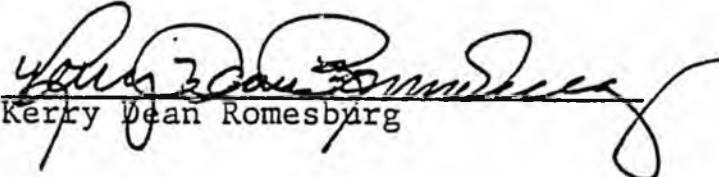
Loan Year	Additional* Awards	Additional* Amount	Total Program
1982-83	1,560	\$ 6,396,000	\$ 65,396,000
1983-84	2,783	\$12,801,800	\$ 93,301,800
1984-85	2,926	\$15,068,900	\$112,918,900
1985-86	3,759	\$21,802,200	\$143,602,200
1986-87	4,712	\$27,800,800	\$164,090,800
1987-88	5,862	\$34,585,800	\$185,625,800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

Six-Month Residency

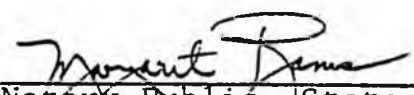
Loan Year	Additional* Awards	Additional* Amount	Total Program
1982-83	2,496	\$10,233,600	\$ 69,233,600
1983-84	4,453	\$20,482,880	\$100,982,880
1984-85	4,828	\$24,864,200	\$122,714,200
1985-86	6,202	\$35,971,600	\$157,771,600
1986-87	7,539	\$44,480,100	\$180,770,100
1987-88	9,379	\$55,336,100	\$206,376,100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

\* Additional over two-year residency.

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

  
Kerry Dean Romesburg

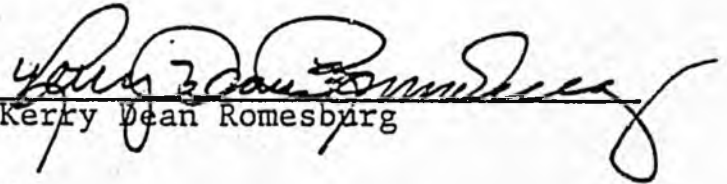
SUBSCRIBED AND SWORN to before me this 1st day of  
September, 1982.

  
Notary Public, State of Alaska  
My commission expires: 7/21/87

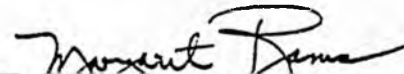
# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

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.

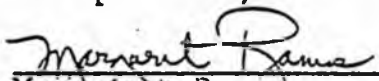
MARGARET RAMOS, being first duly sworn upon her oath,  
deposes and says:

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 8<sup>th</sup> 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, )  
THELMA LANGDON, MARY ELIZABETH )  
LOMEN, JOHN MALONE, JOHN SHIVELY, )  
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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 tuition 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. Address' arguments. E.g., Id. at 39.

Ms. Address is, again, incorrect. Although Ms. Address 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. Address 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. Address 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.

WILSON L. CONDON  
ATTORNEY GENERAL

By:   
Robert M. Maynard  
Assistant Attorney General

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 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 13<sup>th</sup> day of September, 1982.

Kevin Dean Romesburg  
Kevin Dean Romesburg

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of September, 1982.

Robin Stephens  
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.

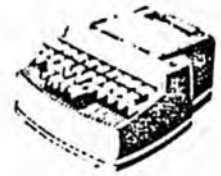
Case No. A82-307 Civil

FRED J. BAXTER, MILDRED BANFIELD,  
THELMA BUCHHOLDT, LEE DEMMERT,  
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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,

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



I-N-D-E-X

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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.

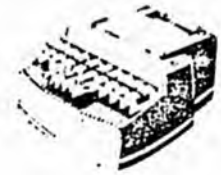
22 A. I think it's -- the two year durational residency  
23 now, the physical presence residency, the senate and the  
24 house went along with it, the legislature passed a couple  
25 years ago, was to deter people from coming to Alaska for



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,



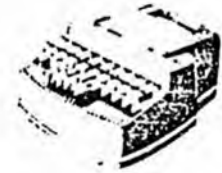
1 but were residents of Alaska, and the loans were directed  
2 to help those residents. Remember those two reasons they  
3 had the program; access and an educated populace. It's  
4 to help the residents in Alaska, not an Oregonian or a  
5 Washingtonian that happens to come up here and put in a  
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