

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

2921 HSA RESIDENCY #1 - RESIDENCY #2

RESIDENCY QUESTIONNAIRE

GENERAL DISCUSSION:

Last year the United States Supreme Court heard arguments on the controversial Permanent Fund dividend distribution plan proposed by the Governor and the Legislature of Alaska (Zobel II & III).

That Court found the proposed legislation to be unconstitutional on several key grounds. First, the dividend plan violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in that it would have distributed unequal dividends to citizens based solely on the number of years each citizen had resided in Alaska.

Secondly, the Supreme Court decision clearly stated that any reward or benefit that was based upon a citizen's contribution to his/her state made in past years, would be in conflict with the U.S. Constitution; regardless of whether that contribution was tangible or intangible.

Taking it one step further, the Court also ruled that no law is acceptable which acts as a bar to free travel between the States or that denies any citizen full access to every privilege or benefit afforded to another citizen.

Finally, the Court did allow that a State may extend certain benefits to its bona fide citizens when a reasonable public purpose for the benefit exists and is so stated in the law.

HOW THE SUPREME COURT DECISION ON THE PERMANENT FUND DIVIDEND AFFECTS OTHER ALASKAN PROGRAMS

Soon after the nationwide publicity and notoriety of the Supreme Court decision regarding residency requirements, attention was focused on numerous other Alaska statutes that contained durational residency requirements. There are currently 53 programs containing some kind of provision based on residency. The most critical of these programs deals with key loan plans such as the Student Loan Program and Fisherman's loans as well as the twin pioneer's programs: the Alaska Longevity Bonus and the Pioneer's Home Program.

FACTORS TO CONSIDER

Every public program administered in Alaska is based on statutes established through the legislative process. Every statute should consider the following factors:

Does the program serve a valid public purpose?

Does it meet the test of law and does it conform to the constitutions of the United States and Alaska?

What are the long-term costs and other potential liabilities?

Some proof of residency is appropriate; however, it is generally-repeat-generally conceded that one (1) year of residency constitutes a valid intent to remain in the state and to be a citizen of it.

Some state benefits or requirements may justify more than one year's residency, but it must be clearly proven that the public purpose is served by a residency requirement exceeding one year. Some benefits or privileges such as for driver's licenses, voting, etc. cannot be justified for even one year.

With this brief information in mind, will you now review the attached questionnaire and give us your ideas and answers. Please don't worry about using a handwritten response. As long as I can read it, all will be well. Use additional paper as you may require. Thank you for your comments.

ALASKA LONGEVITY BONUS

Currently, over 9,000 older Alaskans receive a \$250 monthly bonus check, if they have continuously resided in the State for 25 years or more, are 65 years of age or older, and have established their first residency in the State on or before January 3, 1959 (Statehood).

A class-action suit filed by attorneys for Mr. Rodney Vest in the First Superior Court of Alaska charged that these requirements violated the constitutional rights of Mr. Vest and other older Alaskans. By mutual agreement, the court action has been suspended until the Alaska State Legislature can act during this current legislative session to correct this residency problem.

The Longevity Bonus Program in 1983 will cost the State of Alaska approximately \$28 million dollars. If the 25-year pre-statehood provision is dropped, the program would add about 4,000 more older Alaskans to the current roles. That would in turn swell the yearly cost of the program from \$28 million to almost \$40 million.

Clearly, in light of the U.S. Supreme Court's decision regarding residency and the permanent fund dividend distribution program, the State of Alaska will have to drop its 25-year residency requirement. When this happens, the program will cost almost \$12 million more to operate. Several serious questions need to be addressed.

QUESTIONS

1. Should we continue the longevity bonus program for all persons over the age of 65 who have lived in Alaska at least one year?

Yes _____ No _____

2. Shall we attempt to phase out the program?

Yes _____ No _____

3. Should we establish a limit on the amount of money to be appropriated by the Legislature, and set the monthly bonus amount on total funds available, divided by the number of applicants?

Yes _____ No _____

4. Would you support a new funding source? For example; if we were to use the permanent fund dividend monies as a funding source to establish a major new trust fund for the longevity bonus program. If it were properly invested, where the earnings (interest) could then be distributed to any citizen 65 years of age or older in whatever amounts were permitted by these earnings?

Yes _____ No _____

Comments: _____

5. Other ideas or comments? _____

ALASKA PIONEER'S HOMES

Over 600 Alaskans can be housed in the five Pioneer's homes now currently operating in Alaska. A sixth home, to be built in Juneau, will add another 50 beds or more.

Current requirements call for an applicant to have resided in Alaska for 15 or more consecutive years. The Pioneer home program does not require a resident to be destitute, and it has no needs test.

Monthly costs for residents in the homes are \$225 per month and \$275 per month, depending on the level of care required. Costs to the state to provide the care have been stated as approximately \$1,800 per month. Annual costs to the State now exceed \$20 million dollars.

It is possible that the program as it is now administered, including the 15 year residency requirement may be all right, and left alone. We are leaning toward that position at this time. However, we should think about a fall back position, should the program be adversely affected or found to be at fault with the law.

QUESTIONS

1. Would you support the Pioneer's Home program if the one-year residency requirement is used?

Yes _____ No _____

2. What priorities should be used, if the costs of the program were to increase dramatically because of the lower requirements?

a. Only on physical need? Yes _____ No _____.

b. Only serve the most needy? Yes _____ No _____.

c. Serve all, regardless of needs; first come, first served?

Yes _____ No _____

3. Should the low monthly costs to residents of the home continue as they are now?

a. Yes _____ No _____

or should we:

b. Charge more? Yes _____ No _____

c. Charge less? Yes _____ No _____

4. Any other ideas? _____

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE

APRIL 2, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

STUDENT LOANS

A challenge to the student loan program which is currently under litigation (Andress v. Baxter); is the two (2) year durational residence required to be eligible for a loan of either \$6,000 (undergraduates) or \$7,000 (graduates) maximum each school year.

The student loan program was established in 1971 and since that time has issued over 35,000 loans with a current average per student/year of over \$4,000. These loans carry a 5 per cent interest rate, to be repaid in 10 years, with one five-year extension available.

Added to this, is a significant forgiveness clause that can reduce an applicant's debt by up to 50 percent if he or she returns to Alaska or resides in our state for up to five years after graduation.

QUESTIONS

1. Do you support the Alaska Student Loan Program as it exists now?

Yes _____ No _____

2. Do you believe it is good public policy to forgive or eliminate up to 1/2 of the total amount of the loan in return for having these students back in Alaska?

Yes _____ No _____

3. Do you believe the five (5) percent interest rate on these loans is:

Okay _____

Low _____

High _____

It should be _____ percent.

4. Since the two-year residency requirement is now being challenged in the courts, what should we do?

a. Keep it as it is until the Courts act? Yes _____ No _____.

b. Reduce the residency requirement to one year? Yes _____ No _____.

c. Other alternative? _____

5. Please tell us what methods of control and administration you believe is needed and proper in administering these loans.

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE

APRIL 1, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

LAND DISPOSAL

Many Alaskans have always favored a liberal land distribution plan, and seem to favor some requirements and restrictions that are based on the length of residency.

The current Alaska land distribution plan has not yet been challenged in the courts, but it is indirectly under fire, since it is closely related to the Kenai land disposal plan, which is now under litigation.

QUESTIONS

1. Do you favor continuation of the distribution of public lands to Alaska citizens?

Yes _____ No _____.

2. How would you like to see the land distributed? _____

3. Should the present discount plan be continued?

Yes _____ No _____.

4. Since there may not be enough suitable land for everyone, what priorities do you favor?

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE
APRIL 2, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

FISHERMAN'S LOANS

Several low-interest loan plans now exist that were designed to foster the growth and development of our fisheries. Most of these loans have stipulated a five-year residency requirement.

QUESTIONS

1. Do you support loan plans as an incentive to develop a particular industry, such as fishing, mining, tourism, etc.?

Yes _____ No _____

2. If the five-year residency is declared unconstitutional, what time period do you believe is a proper length of residency, given the migratory lifestyle of commercial fisherman?

_____ Number of years

3. Please tell us what methods of control and administration you believe are needed and proper in administering these various fisheries loans?

Thank you for your cooperation.

WE ASK YOU TO PLEASE RETURN THIS QUESTIONNAIRE TO US BEFORE
APRIL 2, 1983.

Send to: House State Affairs Committee
Pouch V
Juneau, Alaska 99811

HOUSE STATE AFFAIRS COMMITTEE

A STUDY OF ALASKA STATUTES WHERE DURATIONAL RESIDENCY
REQUIREMENTS ARE USED

FINAL REPORT

DRAFT

BY

WILLIAM R. HUDSON
March 22, 1983

HOUSE STATE AFFAIRS COMMITTEE
MEMBERSHIP

HONORABLE MITCH ABOOD
HONORABLE MIKE MILLER
HONORABLE ANTHONY VASKA
HONORABLE JOHN COWDERY
HONORABLE WALT FURNACE
HONORABLE RONALD L. LARSON

ACKNOWLEDGEMENTS

I WISH TO EXPRESS MY APPRECIATION FOR THE COOPERATION AND SUPPORT OF THE CHAIRMANS EXCELLENT STAFF IN THE CONDUCT AND PREPARATION OF THIS STUDY.

I WISH FURTHER TO THANK FORMER ATTORNEY GENERAL AVRUM GROSS AND ATTORNEY RON ZOBEL FOR OFFERING FREELY THEIR COUNSEL ON WAYS TO FASHION LAWS IN ALASKA THAT WILL MEET THE TEST OF OUR U.S. CONSTITUTION AND MINIMIZE THE CHANCES OF COSTLY LITIGATION AND DISRUPTION OF PROGRAMS AFFECTING THE CITIZENS OF THIS STATE.

METHODOLOGY AND PRESENTATION

The performance requirements stipulated in this contract were necessarily broad in nature and general in tone. The extent of application and even more important the scope of the problems simply were not known.

The employment of a Non-Attorney to conduct this search was in the words of the Chairman, "to produce a plain language action plan that can be understood by the common man" . We were benefited in this mission by a list of all Statutory referances wherein some use of Durational Residence was employed. That list was prepared by the Dept. of Law, and served as an invaluable tool.

Chairman Abood wanted the early exploratory phase of this study open to his personal involvement. Almost Daily discussions were held for the first 10 days and priorities were established to maximize the limited time available and the sheer volume of material to review.

The question of Constitutionality that pervaded this broad study required professional counsel from attorneys with experience and knowledge in that complex arena. The Chairman felt that we should go direct to the attorneys with the most direct and recent experience in this field of expertise.. Ron Zobel and former Attorney General Avrum Gross and his assistant Susan Burke. All three Attorneys gave freely and constructively their opinions and guidance in how they felt we should approach this matter. It was very unusual, but invaluable to obtain the perspectives of three persons who only recently had argued both sides of a major case before the U.S. Supreme Court and more so since that decision centered largely around the use of Durational Residence as a requirement for disbursement of millions of dollars to the Alaska public. Surely their input would be relevant . It was!!!!

Input from the general public was seen as a necessity, and given the timeline, we chose to develop a printed set of Questionnaires and limit the mailing to select persons and groups who had a vested interest in major programs under study due to the residence question. Those questionnaires should be returning over the next few weeks and will serve the Committee as they deliberate this study.

With the aid of Attorney Susan Burke, we hope to present a full picture of what the problem is, what needs fixing, what should be left alone and hopefully will leave a guide for future Lawmakers to use in determining how to employ the use of DURATIONAL RESIDENCE as a requirement in a manner that should minimize litigation and comply with the U.S. Constitution.

INTRODUCTION

The use of durational residence as a requirement in Alaska Statutes have been found in 53 separate authorities. Durational residence exists in Statutes pertaining to HOLDING PUBLIC OFFICE, NUMEROUS LOAN PROGRAMS, SOME REGULATORY AND ADVISORY BOARDS AND COMMISSIONS, FOR SOME OCCUPATIONAL LICENSES, TO VOTE IN ALASKA, TO OBTAIN A RESIDENT FISHING AND HUNTING LICENSE, TO SELL ALCOHOLIC BEVERAGES, TO OBTAIN AND GAIN PREFERENCE FOR LOW COST HOUSING, TO PARTICIPATE IN LAND LOTTERIES, TO RECEIVE PARTIAL FORGIVENESS OF DEBT OWED THE STATE FOR LOANS ON LAND PURCHASED AND STUDENT AID GIVEN, TO OBTAIN RESIDENCE IN ONE OF THE FIVE PIONEERS' HOMES AND TO RECEIVE THE LONGEVITY BONUS AND FINALLY THE DIVIDEND FROM THE PERMANENT FUND EARNINGS.

Length of residence used throughout the Statutes vary from 30 days to 30 years. Benefits authorized by these laws represent millions of dollars and affect the lives of thousands of Alaskas' citizens. For this reason alone, it is right to give them careful scrutiny.

When the notorious ZOBEL v WILLIAMS U.S. Supreme Court decision came down last June 14, 1982, many doubts surfaced over the fate of other state Statutes that used durational residence as a prime requirement.

The House State Affairs Committee has been given the task to review all such Statutes and to recommend changes that are needed to reduce or minimize the states potential liability in these residence based matters.

Chairman Abood has contracted for the services of this consultant to assist the Committee determine what Statutes use durational residence, to develop a methodology to use as a measure of each statute against the U.S. Constitution and to recommend action required to bring the laws in conformance with the Constitution of the United States of America.

Attorney Susan Burke has been hired under separate contract to prepare a draft bill on Bona Fide Residence. The work of attorney Burke is to be coordinated with this consultant and should compliment my findings.

The report that follows will attempt to satisfy the above obligations.

EXECUTIVE SUMMARY

- A. TASK: The task of this report was to determine the extent of use in Alaska Statutes and Executive policy of DURATIONAL RESIDENCE as a requirement.

To search all available pertinent court documents and legal briefs that centered around length of residence requirements to develop CRITERIA that could be applied to existing and future Statutes to make them Constitutional, or as nearly so as possible.

To report the findings to the Chairman, House State Affairs Committee in a "Plain Language Format" and to recommend action deemed necessary by this study.

- B. PENDING LITIGATION: We need be aware that three directly related law suits are now in the courts and involve the State as defendants or have other indirect affect. All three cases involve DURATIONAL RESIDENCE REQUIREMENTS and are mentioned here to alert the Committee that they may wish to abstain from comment or action pending the outcome in the courts...

LITIGATION

ANDRESS v BAXTER: Alaska District Court No. A82-307civil

Judith Andress challenges the two year durational requirement in the application for Student Loans (AS 14.40.765(b) and the selection criteria for applicants that provides Priority to applicants based on the number of continuous years residency in Alaska. (AS 14.40.767(a)(2)
Status - Pending

GJLMAN v MARSH: Alaska Supreme Court No. 5937

The State has submitted a Supplemental Brief of Amicus Curiae and the outcome will be seen as a ruling on parallel land distribution plans operated by the State. The suit involves a challenge to a Kenai Borough land disposal program. It would affect the State land lottery program (AS38.05.058) the one year residence provision to qualify for the lottery (AS 38.05.057) and the discount of 5% in price for every year of residency up to 50%. (AS 38.05.058)

Status -Pends. Results expected any time now!!!

VEST v SCHAFER: Superior Court No. 1JU-82-1103 civil

This suit challenged the 25 year, pre-statehood

residence requirement in the Alaska Longevity Bonus program.

Status - Court action consummated in a settlement agreement that Stayed all actions and proceedings through and including the date of ADJOURNMENT of the first regular session of the 13th ALASKA LEGISLATURE or JUNE 30th, 1983 whichever comes first.

In this agreement the court ordered the Legislative Council to use its best efforts to secure enactment of legislation that would in effect open the program to all bona fide residents of one year during this session.

C. CONSTITUTIONAL TEST (MEASUREMENTS): The development of standards or measurement tests that could logically be applied to present and future Statutes where a DURATIONAL RESIDENCE REQUIREMENT is to be used, has been the most difficult task of this study.

The question "What is a resident" has obviously never been established before at least in Alaska. Durations of residency run from 30 days to 30 years, and I could find little relationship to the Purpose of the Statute in many cases..

As a Layman (Non-Attorney) I have sought the council of several attorneys, including Legislative Legal Council and have been informed repeatedly that it is impossible to set forth a definition of what constitutes a BONA FIDE RESIDENT that would satisfy the many complex applications found in the Statutes, and would bear up under test of the Constitution of the the United States of America.

One look at the U.S. Constitution, specifically the XIVth Amendment that is most used in determining acceptance or rejection of a residence requirement may tell us what the authors intended but not what a RESIDENT is. To determine this we have to go to a library of Court documents for the interpretations handed down over the years by the High court Justices.

I concur with the Attorney General in that we must make some effort at establishing the Bona Fides of residency. To accomplish this, I have recommended and the Chairman has concurred that Juneau Attorney Susan Burke be hired to prepare a Draft Bill on Bona Fides of Residence and present same to the Legislature for their consideration.

Because of the complexity of developing any uniform standards, I have penned by findings and reasoning in separate form, attached as Appendix B.

D. RECOMMENDED ACTIONS: Mr. Chairman, I am recommending you consider the following actions: All references are related to the master list included in this report.

That list was prepared by someone (its unsigned) in the office of the Attorney General and has been used extensively throughout this study. The comments of that Office will be useful and for this reason, I have included the original list provided as an Attachment.

DURATIONAL RESIDENCE REQUIREMENTS

ACTIONS...

1. PUBLIC OFFICERS (A)

FINDINGS: That substantial reason exists to justify the use of longer terms of residence in determining qualifications to hold major Public Office.

RECOMMENDATIONS: Take no action. the Statutes and Constitutional references are likely in compliance with the U.S. Constitution..

2. BOARDS AND COMMISSIONS (B)

FINDINGS: That the durations currently used are inconsistent with the Purpose stated in several of these Statutes, and serve no valid public interest. Further that any duration beyond one year could be challenged and may be found invalid.

RECOMMENDATIONS: That you consider repealing the existing durational residence requirements in all of these laws and substitute the Bona Fide residence required to be prepared by Attorney Susan Burke.

That the Statutes be amended to require Bona Fide residence and a reasonable number of years experience in the two laws relating to the Board of Registration for Architects, Engineers and Land Surveyors and the Guides Licensing and Control Board. Some exceptional experience appears useful and defensible.

3. OCCUPATIONAL LICENSES (C)

FINDINGS: That the courts have already struck down the use of any duration of residence as a requirement. (NOLL v BAR ASSOCIATION) for the attorneys license; and only simple residence is permitted. A thorough review of the records indicate little tolerance by the courts for the use of any length of residence that might bar the employment of ones occupational skill between the several states..

RECOMMENDATIONS: That Statutory authority listed in 1 thru 8 be amended to repeal the present residence requirements and substitute " Simple Residence".

Susan Burke should be able to define " Simple Residence" to use in this case and others I will recommend.

For OTHER LICENSES listed under this category, such as the ALCOHOLIC BEVERAGE LICENSE AND THE RESIDENT FISH AND GAME LICENSE I recommend you repeal the present durational residence requirements and substitute as follows: For the Alcohol License-- replace with simple residence. There appears to be no reason for duration in the state except to serve as a Bar to the license. For the Resident Fish and Game license, I recommend you substitute Bona Fide Residence.

4. PUBLIC RIGHTS AND BENEFITS (D)

FINDINGS: That the 30 day requirement to vote in Alaska is probably constitutional and should stand.

That the one year requirement for the other 5 programs appear excessive, especially the LOW COST HOUSING PREFERENCE which the courts would likely construe as a "BASIC NECESSITY OF LIFE" wherein no durational residence has been permitted in the courts.

RECOMMENDATIONS: That no change is necessary for AS 15.05.010. Unless you want to substitute simple residence, and require 30 days to handle the registration process.

That the other laws be modified to simple residence.

That the Legislature consider repealing AS 43.26.095(b)(3) and AS 16.35.130 (INDUSTRIAL INCENTIVE TAX CREDIT AND BOUNTIES FOR CERTAIN ANIMALS) neither of these programs have been active for years.

5. LAND DISPOSAL PROGRAMS (E)

FINDINGS: The State is currently before the courts alongside the Kenai Peninsula Boro on this matter and probably should make no changes pending settlement.

RECOMMENDATIONS: That your committee take no action until the court decision is in hand.

6. SPECIAL OLD AGE PROGRAMS (F)

FINDINGS: The greatest problem with durational residence before the Legislature rests with the twin Pioneers' programs: the ALASKA LONGEVITY BONUS PROGRAM AND THE PIONEERS' HOME PROGRAM.

The settlement reached last August 25, 1982 is

a mandate for the Legislature to take corrective action or the Courts will. Clearly with regards to the ALB the 25 year durational residence with the requirement that it commence before Statehood is lost. A one year duration of residence appears to be an acceptable replacement.

With regards to the PIONEERS' HOME PROGRAM, I concur with the opinion rendered by former Attorney General Wilson Condon that the program is probably defensible with its unique 15 year residency requirement. It is not established as a welfare home and it does not deny anyone needing such care from receiving it thru other programs offered by the state.

Fifteen years is reasonable to use as a measure of attachment to the state by citizens who must be 65 years old and the average age of which is 82 years old. The Homes are just that Homes for elderly Alaskans who would likely be forced to leave their state were it not for the Pioneers' Home. Certainly a measure of attachment and Allegiance for these category folks would not be met with a simple one or two year requirement. The last 15 years before one has to face this go or no go decision is a bona fide measure.

I have found that the SPECIAL ASSESSMENT AND FISHING LICENSE EXEMPTIONS ARE probably not well founded and would not stand up under a test.

RECOMMENDATIONS: That you call for the repeal of the 25 year ,Pre-Statehood eligibility requirements and substitute the Bona Fide residence requirement in Susan Burkes Bill draft.

That the Legislature consider carefully the future of this important program. I believe there may be other FUNDING SCENARIOS beyond those 10 listed in Jon Tillinghasts report to the Senate Judiciary Committee. I have ideas that may aid in finding a good long term solution. Though it falls outside the terms of my contract, I would be pleased to work with whatever body is designated to handle this problem and opportunity.

I recommend no immediate changes to the PIONEERS' HOME program. Rather we need to develop a fall back plan in case it suffers from some action by the courts similiar to the ALB.

That the ASSESSMENT AND FISHING LICENSE exemptions be determined by Bona Fide Residence requirements being developed by Susan Clark.

7. LOAN AND GRANT PROGRAMS (G)

FINDINGS: That there is a great deal of inconsistency in the established requirements for residency in these 41 programs. That many programs require no residency, that one even states that it is open to Nonresidents and that I was not able to find documentation to affirm the justification for many of these varying durations of residence.

That the STUDENT LOAN PROGRAM is pending in ANDRESS v BAXTER and should be left alone until the courts are done with the case. However I will present a separate paper on these issues as relate to the forgiveness clause and application of the low interest provisions. This will be outside of this report.

That THE FISHING LOAN PROGRAMS now probably require excessive, non-defensible durations of residence, but that the one year Bona Fide residence requirement may not provide adequate measure of these MIGRATORY applicants. I tend to agree with the Director of Legislative Legal Council, that a more rational duration would be two years.

That programs listed in No. 4,5,6,7,8 and 10 will likely be best served to use the Bona Fide Residence Requirement. That residence requirements for REFUND OF POLITICAL CONTRIBUTION AND CHILD CARE EXPENSES most likely fall in SIMPLE RESIDENCE requirement, since they fall under the category of POLITICAL RIGHTS AND BASIC NECESSITIES OF LIFE, and the courts do not support durational residency in these matters..

RECOMMENDATIONS: 1. That no action be taken on the Student Loan programs until the courts conclude.

2. That you consider repealing the present 5 year residence requirements in the Fisheries Loan programs and substitute a 2 year residence requirement.

3. That you consider applying a Bona Fide requirement for all other loan programs as a normal course of action, except where the program relates to "Basic Necessities" or "Political Rights".

CLOSING STATEMENT

In closing Mr. Chairman, permit me to say that I am prepared to work with Ms Burke, your staff or any other body you wish me to in preparing the Legislation you wish to present. I am available for hearings or other meetings you desire me to attend.

I have gathered volumes of court record, statistical information and other correspondence which I will tender to you with this report.. I have enjoyed working with you and believe you will do future Legislators a favor by guiding them in these matters, by way of this report.

Respectfully Submitted

William R. Hudson

DURATIONAL RESIDENCE REQUIREMENT

STATEMENT: The following list constitutes a complete listing of all DURATIONAL RESIDENCE REQUIREMENTS set by state law.

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
<u>PUBLIC OFFICERS</u>		
1. GOVERNOR	7yr	AK CONST.art. 111,ss 2
2. LT GOVERNOR	7yr	AK CONST.art. 111,ss 2&7
3. LEGISLATOR	3yr	AK CONST.art. 11,ss2
4. SUP. COURT JUSTICE	5yr	AS 22.05.070
5. COURT OF APPEALS JUDGE	5yr	AS 22.07.040
6. SUP. COURT JUDGE	5yr	AS 22.10.090
7. DIST. COURT JUDGE	5yr	AS 22.15.160(a)
8. MAGISTRATE	6mo	AS 22.15.160(b)
9. OMBUDSMAN	3yr	AS 24.55.030
10. BOROUGH MAYOR	to 3yr	AS 29.23.130(b)
11. BOROUGH ASSEMBLYMAN	to 3yr	AS 29.23.050
12. CITY MAYOR	to 3yr	AS 29.23.250(a)
13. CITY COUNCIL	to 3yr	AS 29.23.200(b)
14. MUNI CHARTER COMM.	3yr	AS 29.13.010
15. BOARD OF ED MEMBER	3yr	AS 14.07.075

BOARDS AND COMMISSIONS

GENERAL:

1. RURAL AFF. COMM.	5yr	AS 44.19.102
2. BOARD OF FISHERIES	1yr	AS 16.05.221 AS 16.05.940
3. BOARD OF GAME	1yr	AS 16.05.221 AS 16.05.940
4. JUDICIAL QUAL. COMM.	10yr practice in Alaska	AK CONST. ART.1V ss 10
5. MUNI BOND BANK AUTH	30 days	AS 44.85.030
6. PERSONNEL BOARD	30 days	AS 39.25.060
7. ALASKA POWER AUTH.	30 days	AS 44.83.020

OCCUPATIONAL:

1. PUBLIC ACCOUNTING BD	1 yr	AS 08.04.020
2. BD OF CHIROPRACTIC EXAM.	2 yr	AS 08.20.020
3. BD OF DENTAL EXAMINERS	5 yr	AS 08.36.010
4. BD OF REGIS. FOR ARCHIT., ENGINEERS, AND LAND SUR- VEYORS	3 yr	AS 08.48.031
5. GUIDE LIC.&CONTROL BD.	10 yr	AS 08.54.010
6. BD OF PHARMACY	3 yr pract. in Alaska	AS 08.80.010
7. BD OF OPTOMETRY EXAM.	3 yr	AS 08.72.040
8. BD OF VET. EXAMINERS	5yr practice in Alaska	AS 08.98.010

DURATIONAL RESIDENCE REQUIREMENT (CONT.)

<u>LICENSES</u>	<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
OCCUPATIONAL:			
1.	PUBLIC ACCOUNTANT	1yr	AS 08.04.280
2.	ATTORNEY	Residence	Bar Rule 5(1)(a)
3.	COLLECTION AGENCIES	1yr	AS 08.24.110
4.	MORTICIANS	1yr in state appren.	AS 08.42.110
5.	GUIDES.....		
	Master	Residence plus 10 hunt exp.	AS 08.54.100
	Registered	Resident	AS 08.54.110
	Class A Asst.	20 yr exp. in dist.	AS 08.54.120
	Assistant	Resident	AS 08.54.140
	Transporter	Resident	AS 08.54.142
6.	JUNK DEALER, ETC.	Resident defined but not required	AS 08.60.030
7.	REAL EST. BROKERS AND SALESMEN	Resident	AS 08.88.171
8.	INSUR. BROKERS, AGENTS & SOICITORS	1 yr	AS 21.27.090 AS 21.06.250 AS 21.27.220

OTHER LICENSES

1.	ALCOHOLIC BEVERAGE LIC.	1 yr	AS 04.11.390
2.	RES. FISH AND GAME LIC.	12 consec. mo.	AS 16.05.940

PUBLIC RIGHTS AND BENEFITS

GENERAL:

1.	VOTING	30 days	AS 15.05.010 AK CONST.art.V sec. 1.
2.	ANNULMENT OF MARRAIGE	1 yr	AS 09.55.130
3.	LO COST HOUSING PREF.	1 yr	AS 18.55.330 AS 18.55.470(4)
4.	VOCATIONAL SUB. PROG.	1 yr	AS 39.25.155(g)
5.	INDUST. INCENT. TAX CRED.	% of one yr res.	AS 43.26.095(b)(3)
6.	BOUNTIES FOR CERT. ANIM.	1yr abode in game unit, plus cont. maintained res. in Alaska	AS 16.35.130

LAND DISPOSAL PROGRAMS

1.	BY LOTTERY	1yr	AS 38.05.057(b)(2)
2.	PRICE DISCOUNT PROG.	5% disc.per year of residence	AS 38.05.058
3.	HOMESITE ENTRY PROG.	3yr or 20yr earlier Prior. to longest res.	AS 38.08.030(a)(2) AS 38.08.040(b)
4.	REMOTE PARCEL LEASING	1 yr	AS 38.08.077(i)(2)

DURATIONAL RESIDENCE REQUIREMENT (CONT'D)

<u>TITLE</u>	<u>DURATION</u>	<u>AUTHORITY</u>
<u>SPECIAL OLD AGE PROGRAMS</u>		
1. LONGEVITY BONUS (ALB)	25yrs, with res. est. pre statehood	AS 38.08.030(a)(2)
2. PIONEERS' HOMES	15 yrs immed. before application, or 30 yrs cumulative	AS 47.25.020(a) AS 47.25.035
3. SR CIT. SPEC. ASSESSMENT EXEMPTION	12 mo.	AS 29.63.065(d)(1)
4. FISHING LIC. EXEMPTION	30 yr. total res.	AS 16.05.400

LOAN AND GRANT PROGRAMS

1. FISHERMAN NOTE AND MORTGAGE	5 yr	AS 16.10.680(a)
2. COMMERCIAL FISHING LOAN	5 yr	AS 16.10.310(a)
3. LIMITED ENTRY PERMIT LOAN	5 yr	AS 44.81.220(a)(20)
4. AGRIC. & FISHING (CFAB)	1 yr	POLICY REQUIREMENT
5. AHFC VETS 1% rate reduc.	1 yr	AS 18.56.101
6. VETERANS LOANS	5 yr	AS 26.15.130(1)
7. MINING BUSINESS LOANS	Residency and 5yr mining experience in Alaska	AS 27.09.020
8. MEMORIAL SCHOLARSHIP	No dur. resid. reqd. one fifth of loan forgiven for each yr emp. in spec. field.	AS 14.40.825(e)

STUDENT LOAN PROGRAM

9. ELIGIBILITY TO APPLY	2 yrs	AS 14.40.765(b)
FORGIVNESS (1/10 OFF FOR EACH YR OF RESID. AFTER COMPLETING EDUC. MAX. 50 PERCENT FORGIVEN....		AS 14.40.763(i)
PREFERANCE (SYSTEM OF GIVING PRIORITY OF AWARDING)	1Point-2-5yr res. 2Point-5-10 years 3Point-10 plus yr.	AS 14.40.767
10. AK EDUC. INCENTIVE GRANT	2 yrs	APPLIC. FORM
11. CHILD CARE EXPENSE REFUND	30 days	FORM DR600
12. POLITICAL CAMP. CONTRIB. CR.	30 days	FORM DR600

JON K. TILLINGHAST REPORT DATED MARCH 8, 1983.

ALTERNATIVES SUBMITTED:

- Admin. 1. Expand the Alaska Longevity Bonus Program to include all elderly Alaskans with one-year's residency.
- Admin. 2. Phase out the Alaska Longevity Bonus Program by gradually reducing benefits.
- Admin. 3. Phase out the Alaska Longevity Bonus Program by gradually reducing benefits, while contemporaneously raising the eligibility limits for general state assistance.
- Admin. 4. Providing a minimal base payment under the Alaska Longevity Bonus Program based solely on one-years residency, with supplemental payments made on the basis of need.
- Admin. 5. Phase out the Alaska Longevity Bonus Program by increasing the age eligibility each year.
- J.T. 6. Create an annuity plan, with the annuity corpus consisting of Permanent Fund Distributions. This option would necessitate a transition program for those persons 40 years and older.
- J.P. 7. Fund the Alaska Longevity Bonus Program through a "Pay as you go" social security system, funded by approximately 25% of the existing permanent fund distribution distributions.
- J.T. 8. Replacing the Alaska Longevity Bonus Program with a comprehensive health insurance program for elderly Alaskans.
- J.T. 9. Condition eligibility for a longevity bonus upon a demonstration of hardship which would be suffered by being unable to continue Alaska residency .
- J.T. 10. Open the Alaska Longevity Bonus Program to all one-year residents, and terminate the program--giving Fy84 recipients a grandfather right to continued bonuses.

distributes income derived from its natural resources to the adult citizens of the state in varying amounts, based on the length of each citizen's residency, does not involve the kind of discrimination which the privileges and immunities clause of the United States Constitution Art IV, § 2, cl 1) was designed to prevent, that clause being designed to insure to a citizen of one state who ventures into another state the same privileges which the citizens of the second state enjoy.

Constitutional Law § 316 — equal protection — unequal distribution of benefits — scrutiny

3. When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the equal protection clause of the Fourteenth Amendment; generally, a law will survive that scrutiny if the distinction it makes rationally furthers a legitimate state purpose, but some particularly invidious distinctions are subject to more rigorous scrutiny.

Constitutional Law § 320 — equal protection

SYLLABUS BY REPORTER OF DECISIONS

After Alaska amended its Constitution to establish a Permanent Fund into which the State must deposit at least 25% of its mineral income each year, the state legislature in 1980 enacted a dividend program to distribute annually a portion of the Fund's earnings directly to the State's adult residents. Under the plan, each adult resident receives one dividend unit for each year of residency subsequent to 1959, the first year of Alaska's statehood. Appellants, residents of Alaska since 1978, brought an action in an Alaska state court challenging the statutory dividend distribution plan as violative of, *inter alia*, their right to equal protection guaranteed. The trial court granted summary judgment in appellant's favor, but the Alaska Supreme Court reversed and upheld the statute.

Held: The Alaska dividend distribution plan violates the guarantees of the

Equal Protection Clause of the Fourteenth Amendment — right to travel — residency requirements

4a, 4b. The right to travel protects persons against the erection of actual barriers to interstate movement and, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer-term residents; in reality, right to travel analysis refers to little more than a particular application of equal protection analysis.

Statutes § 38.5 — invalidation of portion of statute — effect on validity of whole statute

5. Invalidation of a portion of a statute does not necessarily render the whole invalid unless it is evident that the legislature would not have enacted the legislation without the invalid portion; the United States Supreme Court need not speculate as to the intent of a state legislature where the legislation expressly provides that invalidation of any portion of the statute renders the whole invalid.

Equal Protection Clause of the Fourteenth Amendment.

(a) Rather than imposing any threshold waiting period for entitlement to dividend benefits or establishing a test of bona fides of state residence, the dividend statute creates fixed, permanent distinctions between an ever-increasing number of classes of concededly bona fide residents based on how long they have lived in the State. *Sosna v. Iowa*, 419 US 393, 42 L Ed 2d 532, 95 S Ct 553; *Memorial Hospital v. Maricopa County*, 416 US 250, 39 L Ed 2d 306, 94 S Ct 1076; *Dunn v. Blumstein*, 406 US 330, 31 L Ed 2d 274, 92 S Ct 996; and *Shapiro v. Thompson*, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322, distinguished. When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause, and generally a law will survive that

scrutiny if the distinctions rationally further a legitimate state purpose.

(b) Alaska has shown no valid state interests that are rationally served by the distinctions it makes between citizens who established residence before 1959 and those who have become residents since then. Neither the State's claimed interest in creating a financial incentive for individuals to establish and maintain residence in Alaska nor its claimed interest in assuring prudent management of the Permanent Fund is rationally related to such distinctions. And the State's interest in rewarding citizens for past contributions is not a legitimate state purpose. Alaska's rea-

soning could open the door to state apportionment of other rights, benefits, and services according to length of residency, and would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible. 619 P2d 448, reversed and remanded.

Burger, C. J., delivered the opinion of the Court, in which Brennan, White, Marshall, Blackmun, Powell, and Stevens, JJ., joined. Brennan, J., filed a concurring opinion, in which Marshall, Blackmun, and Powell, JJ., joined. O'Connor, J., filed an opinion concurring in the judgment. Rehnquist, J., filed a dissenting opinion.

APPEARANCES OF COUNSEL

Mark A. Sandberg argued the cause for appellants.
Avrum M. Gross argued the cause for appellees.

OPINION OF THE COURT

Chief Justice Burger delivered the opinion of the Court.

[1a] The question presented on this appeal is whether a statutory scheme by which a State distributes income derived from its natural resources to the adult citizens of the State in varying amounts, based on the length of each citizen's residence, violates the equal protection rights of newer state citizens. The Alaska Supreme Court sustained the constitutionality of the statute. *Williams v Zobel*, 619 P2d 448 (Alaska 1980). We noted probable jurisdiction and stayed the distribution of dividend funds, 450 US 908 (1981), 67 L Ed 2d 331, 101 S Ct 1344. We reverse.

1. Alaska Department of Revenue, Revenue Sources FY 1981-1983 (1981). (Includes General Fund unrestricted petroleum revenues of \$3.7 billion and petroleum revenues directly deposited in the Permanent Fund in the amount of \$400 million. An additional \$900 million was transferred from the General

Fund to the Permanent Fund in the 1981 fiscal year.) The 1980 revenue reports that Alaska's adult population is 250,265, per capita its 1981 oil revenues amount to \$13,000 for each adult resident. Petroleum revenues now amount to 89% of the State's total government revenue. *Ibid*

6

RONALD M. ZOBEL and PATRICIA L. ZOBEL, Appellants,

v

THOMAS WILLIAMS, Commissioner of Revenue, and ALASKA

— US —, 72 L Ed 2d 672, 102 S Ct —

[No. 80-1146]

Argued October 7, 1981. Decided June 14, 1982.

Decision: Alaska statute distributing income derived from state's natural resources to state's citizens in varying amounts based on length of each citizen's residency, held to violate equal protection clause.

SUMMARY

Alaska adopted a constitutional amendment establishing a fund into which the state must deposit at least 25 percent of its mineral income each year. The Alaska legislature enacted a dividend program to distribute annually a portion of the fund's earnings directly to the state's adult residents. Under the plan, each citizen 18 years of age or older would receive one dividend unit for each year of residency subsequent to 1959, the first year of statehood. Plaintiffs, residents of Alaska since 1978, brought suit challenging the dividend distribution plan. The Superior Court for Alaska's Third Judicial District granted summary judgment in favor of the plaintiffs, holding that the plan violated the rights of interstate travel and equal protection. The Supreme Court of Alaska reversed and upheld the statute (619 P2d 448).

On appeal, the United States Supreme Court reversed and remanded. In an opinion by BURGER, Ch. J., joined by BRENNAN, WHITE, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., it was held that the Alaska dividend distribution plan violated the equal protection clause of the Fourteenth Amendment, since the state had shown no valid state interests which were rationally served by the distinction it made between citizens who established residency before 1959 and those who have become residents since then.

BRENNAN, J., joined by MARSHALL, BLACKMUN, and POWELL, JJ., con-

curring, expressing the view that the right to travel—or, more precisely, the federal interest in free interstate migration—was affected by the Alaska dividend-distribution law, and that this threat to free interstate migration provided an independent rationale for holding that law unconstitutional.

O'CONNOR, J., concurred in the judgment, expressing the view that the Alaska law should be measured against the principles implementing the privileges and immunities clause, and that this analysis supplies a needed foundation for many of the "right to travel" claims discussed in the court's prior opinions.

REHNQUIST, J., dissented, expressing the view that the Alaska distribution scheme was rationally based, and that the Fourteenth Amendment gives the federal courts no power to impose upon the states their view of what constitutes wise economic or social policy.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Constitutional Law § 326 — equal protection — benefits based on length of residency

1a-1c. A state statute by which a state distributes income derived from its natural resources to the adult citizens of the state in varying amounts, based on the length of each citizen's residency, violates the equal protection clause of the Fourteenth Amendment, where the state has shown no valid state interests which are rationally served by the distinction it makes between citizens who established residency before a certain year and those

who have become residents since then, and where the only apparent justification for the retrospective aspect of the program, favoring established residents over new residents, is constitutionally unacceptable, the state's objective to reward citizens for past contributions not being a legitimate state purpose. (Rehnquist, J., dissented from this holding).

Constitutional Law § 349 — privileges and immunities — benefits based on length of residency

2a, 2b. A state statute by which a state

TOTAL CLIENT-SERVICE LIBRARYSM REFERENCES

16A Am Jur 2d, Constitutional Law § 773

USCS, Constitution, 14th Amendment

US L Ed Digest, Constitutional Law § 326

L Ed Index to Annos, Domicil or Residence; Equal Protection of the Laws; Travel

ALR Quick Index, Equal Protection of Law: Travel

Federal Quick Index, Domicil and Residence; Equal Protection of the Laws; Travel

ANNOTATION REFERENCE

Federal constitutional right of interstate travel. 27 L Ed 2d 662.

Permanent Fund into which the State must deposit at least 25% of its mineral income each year. Alaska Const, Art IX, § 15. The amendment prohibits the legislature from appropriating any of the principal of the fund but permits use of the fund's earnings for general governmental purposes.

In 1980, the legislature enacted a dividend program to distribute annually a portion of the Fund's earnings directly to the State's adult residents. Under the plan each citizen 18 years of age or older receives one dividend unit for each year of residency subsequent to 1959, the first year of statehood. The statute fixed the value of each dividend unit at \$50 for the 1979 fiscal year; a one-year resident thus would receive one unit, or \$50, while a resident of Alaska since it became a State in 1959 would receive 21 units, or \$1,050. The value of a dividend unit will vary each year depending on the income of the Permanent Fund and the amount of that income the State allocates for other purposes. The State now estimates that the 1985 fiscal year dividend will be nearly four times as large as that for 1979.

Appellants, residents of Alaska since 197 , brought this suit in 1980 challenging the dividend distribution

2. The infusion of Permanent Fund earnings into state general revenues also led the Alaska legislature to enact a statute giving residents a one-third exemption from state income taxes for each year of residence; this operated to exempt entirely anyone with three or more years of residency. The Alaska Supreme Court, again by a 3-2 vote, held that this statute violated the State Constitution's equal protection clause. *Williams v Zobel*, 619 P2d 422 (Alas 1980). Chief Justice Rabinowitz,

plan as violative of their right to equal protection guarantees and their constitutional right to migrate to Alaska, to establish residency there and thereafter to enjoy the full rights of Alaska citizenship on the same terms as all other citizens of the State. The Superior Court for Alaska's Third Judicial District granted summary judgment in appellants' favor, holding that the plan violated the rights of interstate travel and equal protection. A divided Alaska Supreme Court reversed and upheld the statute.²

II

[1b] The Alaska dividend distribution law is quite unlike the durational residency requirements we examined in *Sosna v Iowa*, 419 US 393, 42 L Ed 2d 532, 95 S Ct 553 (1975); *Memorial Hospital v Maricopa County*, 415 US 250, 39 L Ed 2d 306, 94 S Ct 1076 (1974); *Dunn v Blumstein*, 405 US 330, 31 L Ed 2d 274 92 S Ct 995 (1972); and *Shapiro v Thompson*, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322 (1969). Those cases involved laws which required new residents to reside in the State a fixed minimum period to be eligible for certain benefits available on an equal basis to all other residents.³ The asserted purpose of the durational residency requirements was to

the dividend distribution plan, could "be perceived as a penalty imposed on a person who chooses to exercise his or her right to move into Alaska." 619 P2d, at 458.

3. In the durational residency cases, we examined state laws which imposed waiting periods on access to divorce courts, *Sosna v Iowa*, supra; eligibility for free non-emergency medical care, *Memorial Hospital v Maricopa County*, supra; voting rights, *Dunn v Blum-*

assure that only persons who had established bona fide residence received rights and benefits provided for residents.

The Alaska statute does not impose any threshold waiting period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Alaska Stat § 43.23.010.⁴ Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State.

[2a] Appellants established residence in Alaska two years before the dividend law was passed. The distinction they complain of is not one

4. Section 43.23.010(b) provides:

"For each year, an individual is eligible to receive payment of the permanent fund dividends for which he is entitled under this section if he

(1) is at least 18 years of age; and

(2) is a state resident during all or part of the year for which the permanent fund dividend is paid.

The remainder of § 43.23.010 establishes the number of dividend units residents are entitled to receive and the method of payment. Section 43.23.010(f) provides that a resident entitled to benefits under subsection (b) who was a resident for less than a full year is entitled to a dividend prorated on the basis of the number of months of state residence.

5. The Alaska statute does not simply make distinctions between native born Alaskans and those who migrate to Alaska from other states; it does not discriminate only against those who have recently exercised the right to travel, as did the statute involved in *Shapiro v Thompson*, supra. The Alaska statute discriminates

which the State makes between those who arrived in Alaska after the enactment of the dividend distribution law and those who were residents prior to its enactment. Appellants instead challenge the distinctions made within the class of persons who were residents when the dividend scheme was enacted in 1980. The distinctions appellants attack include the preference given to persons who were residents when Alaska became a State in 1959 over all those who have arrived since then, as well as the distinctions made between all bona fide residents who settled in Alaska at different times during the 1959 to 1980 period.⁵

[3, 4a] When a State distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.⁶ Generally,

born in the State in 1960. Of course the native Alaskan born in 1962 would also receive \$100 less than the person who moved to the State in 1960.

[2b] The statute does not involve the kind of discrimination which the Privileges and Immunities Clause of Art. IV was designed to prevent. That Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v Witsell*, 334 US 395, 395, 92 L Ed 1469, 68 S Ct 1156 (1948). The Clause is thus not applicable to this case.

6. [4b] The Alaska courts considered whether the dividend distribution law violated appellants' constitutional right to travel. The right to travel and to move from one state to another has long been accepted, yet both the nature and the source of that right has remained obscure. See *Jones v Helms*, 439 US 591, 594 (1979).

US 412. —————
21

CORRECTION

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Permanent Fund into which the State must deposit at least 25% of its mineral income each year. Alaska Const, Art IX, §15. The amendment prohibits the legislature from appropriating any of the principal of the fund but permits use of the fund's earnings for general governmental purposes.

In 1980, the legislature enacted a dividend program to distribute annually a portion of the Fund's earnings directly to the State's adult residents. Under the plan, each citizen 18 years of age or older receives one dividend unit for each year of residency subsequent to 1959, the first year of statehood. The statute fixed the value of each dividend unit at \$50 for the 1979 fiscal year; a one-year resident thus would receive one unit, or \$50, while a resident of Alaska since it became a State in 1959 would receive 21 units, or \$1,050. The value of a dividend unit will vary each year depending on the income of the Permanent Fund and the amount of that income the State allocates for other purposes. The State now estimates that the 1985 fiscal year dividend will be nearly four times as large as that for 1979.

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plan as violative of their right to equal protection guarantees and their constitutional right to migrate to Alaska, to establish residency there and thereafter to enjoy the full rights of Alaska citizenship on the same terms as all other citizens of the State. The Superior Court for Alaska's Third Judicial District granted summary judgment in appellants' favor, holding that the plan violated the rights of interstate travel and equal protection. A divided Alaska Supreme Court reversed and upheld the statute.²

II

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the dividend distribution plan, could "be perceived as a penalty imposed on a person who chooses to exercise his or her right to move into Alaska." 610 P2d, at 458.

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assure that only persons who had established bona fide residence received rights and benefits provided for residents.

The Alaska statute does not impose any threshold waiting period on those seeking dividend benefits; persons with less than a full year of residency are entitled to share in the distribution. Alaska Stat §43.23.010.⁴ Nor does the statute purport to establish a test of the bona fides of state residence. Instead, the dividend statute creates fixed, permanent distinctions between an ever increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State.

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5. The Alaska statute does not simply make distinctions between native born Alaskans and those who migrate to Alaska from other states; it does not discriminate only against those who have recently exercised the right to travel, as did the statute involved in *Shapiro v Thompson*, supra. The Alaska statute also discriminates among long-time residents and even native born residents. For example, a person born in Alaska in 1962 would have received \$100 less than someone who was

which the State makes between those who arrived in Alaska after the enactment of the dividend distribution law and those who were residents prior to its enactment. Appellants instead challenge the distinctions made within the class of persons who were residents when the dividend scheme was enacted in 1980. The distinctions appellants attack include the preference given to persons who were residents when Alaska became a State in 1959 over all those who have arrived since then, as well as the distinctions made between all bona fide residents who settled in Alaska at different times during the 1959 to 1980 period.⁵

[3, 4a] When a State distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.⁶ Generally,

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6. [4b] The Alaska courts considered whether the dividend distribution law violated appellants' constitutional right to travel. The right to travel and to move from one state to another has long been accepted, yet both the nature and the source of that right has remained obscure. See *Jones v Helms*, 462 US 412, ----- and on 12 and 13, 60 L Ed 2d 118, 101 S Ct 2431 (1980); *Shapiro v Thompson*, supra, 394 US, at 629-631, 22 L Ed 2d 600, 89 S Ct 1322; *United States v Guest*, 383 US 745, 757-759, 16 L Ed 2d 239, 86 S Ct 1170; (1966). See also *Z. Chafetz*, *Three Human Rights in the Constitution* 198-199

law will survive that scrutiny if the distinction it makes rationally furthers a legitimate state purpose. Some particularly invidious distinctions are subject to more rigorous scrutiny. Appellant claims that the distinctions made by the Alaska law should be subjected to the higher level of scrutiny applied to the durational residency requirements in *Shapiro v Thompson*, supra and *Memorial Hospital v Maricopa County*, supra. The State, on the other hand, asserts that the law need only meet the minimum rationality test. In any event, if the statutory scheme cannot pass even the minimal test proposed by the State, we need not decide whether any enhanced scrutiny is called for.

A

The State advanced and the Alaska Supreme Court accepted three purposes justifying the distinc-

56). In addition to protecting persons against the erection of actual barriers to interstate movement, the right to travel, when applied to residency requirements, protects new residents of a state from being disadvantaged because of their recent migration or from otherwise being treated differently from longer-term residents. In reality, right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer-term residents. See *Memorial Hospital v Maricopa County*, supra; *Du in v Blumstein*, supra; *Shapiro v Thompson* supra. This case also involves distinctions between residents based on when they arrived in the State and is therefore also subject to equal protection analysis.

7. These purposes were enumerated in the first section of the act creating the dividend distribution plan, 21 Alaska Stat. Laws § 1(b): "(b) The purposes of this Act are (1) to provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth derived

tions made by the dividend program: (a) creation of a financial incentive for individuals to establish and maintain residence in Alaska; (b) encouragement of prudent management of the Permanent Fund; and (c) apportionment of benefits in recognition of undefined "contributions of various kinds, both tangible and intangible, which residents have made during their years of residency." 619 P2d, at 458.⁷

As the Alaska Supreme Court apparently realized, the first two state objectives—creating a financial incentive for individuals to establish and maintain Alaska residence, and assuring prudent management of the Permanent Fund and the State's natural and mineral resources—are not rationally related to the distinctions Alaska seeks to make between newer residents and those who have been in the State since 1959.⁸ Assuming arguendo that granting increased dividend benefits for each

from the development and production of the natural resources belonging to them as Alaskans;

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

(3) to encourage increased awareness and involvement by the residents of the state in the management and expenditure of the Alaska permanent fund (art IX, sec 15, state constitution)."

Thus we need not speculate as to the objectives of the legislature.

8. In response to the argument that the objectives of stabilizing population and encouraging prudent management of the Permanent Fund and of the State's natural resources did not justify the application of the dividend program to the years 1959 to 1980, the Alaska Supreme Court maintained that the retrospective aspect of the program was justified by the objective of rewarding state citizens for past contributions. 619 P2d, at 461-462 n 37. See also dissenting opinion of Justice Diamond, 619 P2d, 469-471.

year of continuance. Alaska residence might give some residents an incentive to stay in the state in order to reap increased dividend benefits in the future, the State's interest is not in any way served by granting greater dividends to persons for their residency during the 21 years prior to the enactment.⁹

Nor does the State's purpose of furthering the prudent management of the Permanent Fund and the state's resources support retrospective application of its plan to the date of statehood. On this score the state's contention is straightforward:

"[A]s population increases, each individual share in the income stream is diluted. The income must be divided equally among increasingly large numbers of people. If residents believed that twenty years from now they would be required to share permanent fund income on a per capita basis with the large population that Alaska will no doubt have by then, the temptation would be great to urge the legislature to provide immediately for the highest possible return on the investments of the permanent fund principal, which would require investments in riskier ventures."

Williams v Zobel, supra, 619 P2d, at 462. The State similarly argues that equal per capita distribution would encourage rapacious development of natural resources. *Ibid.* Even if we

9. In fact, newcomers seem more likely to become dissatisfied and to leave the State than well-established residents; it would thus seem that the State would give a larger, rather than a smaller, dividend to new residents if it wanted to discourage emigration. The separation of residents into classes hardly seems a likely way to persuade new Alaskans

assume that the state interest is served by increasing the dividend for each year of residency beginning with the date of enactment, is it rationally served by granting greater dividends in varying amounts to those who resided in Alaska during the 21 years prior to enactment? We think not.

The last of the State's objectives—to reward citizens for past contributions—alone was relied upon by the Alaska Supreme Court to support the retrospective application of the law to 1959. However, that objective is not a legitimate state purpose. A similar "past contributions" argument was made and rejected in *Shapiro v Thompson*, supra, 394 US, at 632-633, 22 L Ed 2d 600, 29 S Ct 1322:

"Appellants argue further that the challenged classification may be sustained as an attempt to distinguish between new and old residents on the basis of the contributions they have made to the community through the payment of taxes. . . . Appellant's reasoning would permit the State to apportion all benefits and services according to the past tax [or intangible] contributions of its citizens. *The Equal Protection Clause prohibits such an apportionment of state services.*" (Emphasis added.)

Similarly, in *Vlandis v Kline*, 412 US 441, 37 L Ed 2d 63, 93 S Ct 2230

that the State welcomes them and wants them to stay.

Of course, the State's objective of reducing population turnover cannot be interpreted as an attempt to inhibit migration into the State without encountering insurmountable constitutional difficulties. See *Shapiro v Thompson*, supra, 394 US, at 629, 22 L Ed 2d 600, 29 S Ct 1322.

973), we noted that "apportionment] of tuition rates on the basis of old and new residency . . . would give rise to grave problems under the Equal Protection Clause of the Fourteenth Amendment." 412 US, at 49-450 and n 6, 37 L Ed 2d 63, 93 S Ct 2230.¹⁰

If the States can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? Could States impose different taxes based on length of residence? Alaska's reasoning could open the door to state apportionment of other rights, benefits and services according to length of residency.¹¹ It would permit the states to divide citizens into expanding numbers of permanent classes.¹² Such a

result would be clearly impermissible.¹³

B

[5] We need not consider whether the State could enact the dividend program prospectively only. Invalidation of a portion of a statute does not necessarily render the whole invalid unless it is evident that the legislature would not have enacted the legislation without the invalid portion. *Buckley v Valeo*, 424 US 1, 108, 46 L Ed 2d 659, 93 S Ct 612 (1976); *United States v Jackson*, 390 US 570, 585, 20 L Ed 2d 138, 88 S Ct 1209 (1968); *Champlin Ref. Co. v Commission*, 286 US 210, 234, 76 L Ed 1062, 52 S Ct 559 (1932). Here, we need not speculate as to the intent of the Alaska legislature; the legislation expressly provides that invalidation of any portion of the statute renders the whole invalid:

"Sec 4. If any provision enacted

10. Even if the objective of rewarding past contributions were valid, it would be ironic to apply that rationale here. As Representative Randolph noted during debate in the state legislature on the dividend statute:

The pipeline is the entity that has allowed us all this latitude to do all the things we're considering doing, not only today but throughout the session. And without . . . newcomers, we couldn't have built that pipeline . . . without their skill, without their money, the pipeline wouldn't be there. So I get a little bit tired of—and I've got a hunch and awful lot of people who have been here five or six or seven or ten years, whatever we knock off as newcomers, get a little bit tired of being hazarded and penalized and discriminated against for having not been born here or not even here 30 or 40 or 50 years."

11. Apportionment would thus be prohibited only when it involves "fundamental rights" and services deemed to involve "basic necessities of life." See *Memorial Hospital v Maricopa County*, supra, 415 US, at 259, 39 L Ed 2d 306, 94 S Ct 1076.

12. "Such a power in the States could produce nothing but discord and mutual irritation, and they very clearly do not possess it." *The Passenger Cases*, 7 How 283, 49, 12 L Ed 702 (1849) (Chief Justice Taney, dissenting).

13. *Starns v Malkerson*, 326 F Supp 234 (D Minn 1970), affirmed, 401 US 985, 28 L Ed 2d 527, 91 S Ct 1231 (1971) cannot be read as a contrary decision of this Court. First, summary affirmance by this Court is not to be read as an adoption of the reasoning supporting the judgment under review. *Fusari v Steinberg*, 419 US 379, 391, 42 L Ed 2d 521, 95 S Ct 533 (1975) (concurring opinion). See also *Colorado Springs Amusement Ltd. v Hizzo*, 428 US 913, 920-921, 49 L Ed 2d 1222, 96 S Ct 3226 (1976) (Brennan, J., dissenting); *Edelman v Jordan*, 415 US 651, 671, 39 L Ed 2d 662, 94 S Ct 1347 (1974). Moreover, as we pointed out in *Vlandis v Kline*, supra, at 452-453, n 9, 37 L Ed 2d 63, 93 S Ct 2230, we considered the Minnesota one-year residency requirement examined in *Starns* a test of bona fide residence, not a return on prior contributions to the commonwealth.

in sec 2 of this Act (which included the dividend distribution plan in its entirety) is held to be invalid by the final judgment, decision or order of a court of competent jurisdiction, then that provision is nonseverable, and all provisions enacted in sec 2 of this Act are invalid and of no force or effect."

1980 Alaska Sess Laws Chap 21, § 4. However, it is of course for the Alaska courts to pass on the severability clause of the statute.

III

[1c] The only apparent justification for the retrospective aspect of the program, "favoring established

residents over new residents," is constitutionally unacceptable. *Vlandis v Kline*, supra, 412 US, at 450, 37 L Ed 2d 63, 93 S Ct 2230. In our view Alaska has shown no valid state interests which are rationally served by the distinction it makes between citizens who established residence before 1959 and those who have become residents since then.

We hold that the Alaska dividend distribution plan violates the guarantees of the Equal Protection Clause of the Fourteenth Amendment. Accordingly, the judgment of the Alaska Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

Reversed and Remanded.

SEPARATE OPINIONS

Justice Brennan, with whom Justice Marshall, Justice Blackmun, and Justice Powell join, concurring.

I join the opinion of the Court, and agree with its conclusion that the retrospective aspects of Alaska's dividend-distribution law are not rationally related to a legitimate state purpose. I write separately only to emphasize that the pervasive discrimination embodied in the Alaska distribution scheme gives rise to constitutional concerns of somewhat larger proportions than may be evinced on a cursory reading of the

Court's opinion. In my view, these concerns might well preclude even the prospective operation of Alaska's scheme.

I

I agree with Justice O'Connor that these more fundamental defects in the Alaska dividend-distribution law are, in part, reflected in what has come to be called the "right to travel."¹ That right—or, more precisely, the federal interest in free interstate migration—is clearly, though indirectly, affected by the

1. What is notably at stake in this case, and what clearly must be taken into account in determining the constitutionality of this legislative scheme, is the national interest in a fluid system of interstate movement. It may be that national interests are not always easily translated into individual rights, but where the "right to travel" is involved, our cases leave no doubt that it will trigger intensified equal protection scrutiny. See, e.g., *Memorial Hospital v Maricopa County*, 415 US

250, 39 L Ed 2d 306, 94 S Ct 1076 (1974); *Dunn v Blumstein*, 405 US 330, 31 L Ed 2d 274, 92 S Ct 995 (1972); *Shapiro v Thompson*, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322 (1969). As the Court notes, the "right to travel" is implicated not only by "actual barriers to interstate movement," but by "state distinctions between newcomers and longer-term residents." Ante, at —, n 6, 72 L Ed 2d 677-678.

Alaska dividend-distribution law, and this threat to free interstate migration provides an independent rationale for holding that law unconstitutional. At the outset, however, I note that the frequent attempts to assign the right to travel some textual source in the Constitution seem to me to have proven both inconclusive and unnecessary. Justice O'Connor plausibly argues, post, at ———

———, 72 L Ed 2d 689-690, that the right prelates the Constitution and was carried forward in the Privileges and Immunities Clause of Article IV. But equally plausible, I think, is the argument that the right resides in the Commerce Clause, see *Edwards v California*, 314 US 160, 173, 86 L Ed 119, 62 S Ct 164 (1941), or in the Privileges and Immunities Clause of the Fourteenth Amendment, see *id.*, at 177-178, 86 L Ed 119, 62 S Ct 164 (Douglas, J., concurring). In any event, in light of the unquestioned historic recognition of the principle of free interstate migration, and of its role in the development of the Nation, we need not feel impelled to "ascribe the source of this right to travel interstate to a particular constitutional provision." *Shapiro v Thompson*, 394 US 618, 630, 22 L Ed 2d 600, 89 S Ct 1322 (1969). It suffices that:

"The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

" . . . [T]he right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the

stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution." *Id.* at 630-631, 22 L Ed 2d 600, 89 S Ct 1322, quoting *United States v Guest*, 383 US 745, 757-758, 16 L Ed 2d 239, 86 S Ct 1170 (1966).

As is clear from our cases, the right to travel achieves its most forceful expression in the context of equal protection analysis. But if, finding no citable passage in the Constitution to assign as its source, some might be led to question the independent vitality of the principle of free interstate migration, I find its unmistakable essence in that document that transformed a loose confederation of States into one Nation. A scheme of the sort adopted by Alaska is inconsistent with the Federal structure even in its prospective operation.

A State clearly may undertake to enhance the advantages of industry, economy, and resources that make it a desirable place in which to live. In addition, a State may make residence within its boundaries more attractive by offering direct benefits to its citizens in the form of public services, lower taxes than other States offer, or direct distributions of its munificence. Through these means, one State may attract citizens of other States to join the numbers of its citizenry. That is a healthy form of rivalry: It inheres in the very idea of maintaining the States as independent sovereigns within a larger framework, and it is fully—indeed, necessarily—consistent with the Framers' further idea of joining these independent sover-

eigns into a single Nation. But a State cannot compound its offer of direct benefits in the inventive manner exemplified by the Alaska distribution scheme: For if each State were free to reward its citizens incrementally for their years of residence, so that a citizen leaving one State would thereby forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

II

The Court today reaffirms the important principle that, at least with respect to a durational-residency discrimination, a State's desire "to reward citizens for past contributions" is "clearly not a legitimate state purpose." *Ante*, at ———, 72 L Ed 2d 679. I do not think it "odd," post, at —, 72 L Ed 2d 685, that the Court disclaims reliance on the "right to travel" as the source of this limitation on state power. In my view, the acknowledged illegitimacy of that state purpose has a different heritage—it reflects not the structure of the Federal Union but the idea of constitutionally protected equality. See *Shapiro v Thompson*, 394 US, at 632-633, 22 L Ed 2d 600, 89 S Ct 1322 ("The Equal Protection Clause prohibits such an apportionment of state services."); *Vlandis v Kline*, 412 US 441, 450, n 6, 37 L Ed 2d 63, 93 S Ct 2230 (1973). The

Constitution places the recently naturalized immigrant from a foreign land on an equal footing with those citizens of a State who are able to trace their lineage back for many generations within the State's borders. The eighteen year old native resident of a State is as much a citizen as the fifty-five year old native resident. But the Alaska plan discriminates against the recently naturalized citizen, in favor of the Alaska citizen of longer duration; it discriminates against the eighteen year old native resident, in favor of all residents of longer duration. If the Alaska plan were limited to discriminations such as these, and did not purport to apply to migrants from sister States, interstate travel would not be noticeably burdened—yet those discriminations would surely be constitutionally suspect.

The Fourteenth Amendment guarantees the equal protection of the law to anyone who may be within the territorial jurisdiction of a State. That Amendment does not suggest by its terms that equal treatment might be denied a person depending upon how long that person has been within the jurisdiction of the State. The Fourteenth Amendment does, however, expressly recognize one elementary basis for distinguishing between persons who may be within a State's jurisdiction at any particular time—by setting forth the requirements for state citizenship. But it is significant that the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship only with simple residence.² That

2. "[A] citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State." *Slaughter-House Cases*, 16 Wall 36,

80, 21 L Ed 394 (1873). See *id.*, at 112-113, 21 L Ed 394 (Bradley, J., dissenting) ("A citizen of the United States has a perfect constitutional right to go to and reside in any State

Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence.³ And the Equal Protection Clause would not tolerate such distinctions. In short, as much as the right to travel, equality of citizenship is of the essence in our republic. As the Court notes, States may not "divide citizens into expanding numbers of permanent classes." Ante, at —, 72 L Ed 2d 680.

It is, of course, elementary that the Constitution does not bar the States from making reasoned distinctions between citizens: Insofar as those distinctions are rationally related to the legitimate ends of the State they present no constitutional difficulty, as our equal protection jurisprudence attests. But we have never suggested that duration of residence vel non provides a valid justification for discrimination. To the contrary, discrimination on the basis of residence must be supported by a valid state interest independent of the discrimination itself. To be sure, allegiance and attachment may be rationally measured by length of residence—length of residence may, for example, be used to test the bona fides of citizenship—and allegiance and attachment may bear some rational relationship to a very limited number of legitimate state purposes. Cf. *Chimento v Stark*, 353 F Supp 1211 (D NH), affirmed, 414 US 802, 38 L Ed 2d 39, 94 S Ct 125 (1973) (seven year citizenship requirement to run for governor); U. S. Const, art

I, § 2, cl 2, § 3, cl 3; art IV, § 1, cl 4. But those instances in which length of residence could provide a legitimate basis for distinguishing one citizen from another are rare.

Permissible discriminations between persons must bear a rational relationship to their *relevant* characteristics. While some imprecision is unavoidable in the process of legislative classification, the ideal of equal protection requires attention to individual merit, to individual need. In almost all instances, the business of the State is not with the past, but with the present: to remedy continuing injustices, to fill current needs, to build on the present in order to better the future. The past actions of individuals may be relevant in assessing their present needs; past actions may also be relevant in predicting current ability and future performance. In addition, to a limited extent, recognition and reward of past public service has independent utility for the State, for such recognition may encourage other people to engage in comparably meritorious service. But even the idea of rewarding past public service offers scarce support for the "past contribution" justification for durational residence classifications since length of residence has only the most tenuous relation to the *actual* service of individuals to the State.

Thus, the past contribution rationale proves much too little to provide a rational predicate for discrimination on the basis of length of

residence. But it also proves far too much, for "it would permit the State to apportion all benefits and services according to the past . . . contributions of its citizens." *Shapiro v Thompson*, 394 US, at 632-633, 22 L Ed 2d 600, 89 S Ct 1322. In effect, then, the past-contribution rationale is so far-reaching in its potential application, and the relationship between residence and contribution to the State so vague and insupportable, that it amounts to little more than a restatement of the criterion for discrimination that it purports to justify. But while duration of residence has minimal utility as a measure of things that are, in fact, constitutionally relevant, resort to duration of residence as the basis for a distribution of state largesse does closely track the constitutionally untenable position that the longer one's residence, the worthier one is of the State's favor. In my view, it is difficult to escape from the recognition that underlying any scheme of classification on the basis of duration of residence, we shall almost invariably find the unstated premise that "some citizens are more equal than others." We rejected that premise and, I believe, implicitly rejected most forms of discrimination based upon length of residence, when we adopted the Equal Protection Clause.

Justice O'Connor, concurring in the judgment.

The Court strikes Alaska's distri-

bution scheme, purporting to rely solely upon the Equal Protection Clause of the Fourteenth Amendment. The phrase "right to travel" appears only fleetingly in the Court's analysis, dismissed with an observation that "right to travel analysis refers to little more than a particular application of equal protection analysis." Ante, at —, n 6, 72 L Ed 2d 677-678. The Court's reluctance to rely explicitly on a right to travel is odd, because its holding depends on the assumption that Alaska's desire "to reward citizens for past contributions . . . is not a legitimate state purpose." Ante, at —, 72 L Ed 2d 679. Nothing in the Equal Protection Clause itself, however, declares this objective illegitimate. Instead, as a full reading of *Shapiro v Thompson*, 394 US 618, 32 L Ed 2d 600, 89 S Ct 1322 (1969), and *Vlandis v Kline*, 412 US 441, 37 L Ed 2d 63, 93 S Ct 2230 (1973), reveals, the Court has rejected this objective only when its implementation would abridge an interest in interstate travel or migration.

I respectfully suggest, therefore, that the Court misdirects its criticism when it labels Alaska's objective illegitimate. A desire to compensate citizens for their prior contributions is neither inherently invidious nor irrational. Under some circumstances, the objective may be wholly reasonable.⁴ Even a generalized de-

1. A State, for example, might choose to divide its largesse among all persons who previously have contributed their time to volunteer community organizations. If the State graded its dividends according to the number of years devoted to prior community service, it could be said that the State intended "to reward citizens for past contributions." Alternatively, a State might enact a tax credit for citizens who contribute to the State's ecology

by building alternative fuel sources or establishing recycling plants. If the State made this credit retroactive, to benefit those citizens who launched these improvements before they became fashionable, the State once again would be rewarding past contributions. The Court's opinion would dismiss these objectives as wholly illegitimate. I would recognize them as valid goals and inquire only whether their

he chooses, and to claim citizenship therein, and an equality of rights with every other citizen.")

3. The American aversion to aristocracy developed long before the Fourteenth Amendment and is, of course, reflected elsewhere in the Constitution. See art I, § 3, cl 3 ("No title

of Nobility shall be granted by the United States."). See also Virginia Bill of Rights (1776), Rutland, *The Birth of the Bill of Rights*, App A ("no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services").

I

Our opinions teach that Article IV's Privileges and Immunities Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v Witsell*, 334 US 385, 395, 92 L Ed 1460, 68 S Ct 1156 (1948). The Clause protects a nonresident who enters a State to work, *Hicklin v Orbeck*, 437 US 518, 57 L Ed 2d 397, 98 S Ct 2482 (1978), to hunt commercial game. *Toomer*, supra, or to procure medical services, *Doe v. Bolton*, 410 US 179, 35 L Ed 2d 201, 93 S Ct 739 (1973).⁴ A fortiori, the Privileges and Immunities Clause should protect the "citizen of State A who ventures into State B" to settle there and establish a home.

In this case, Alaska forces nonresidents settling in the State to accept a status inferior to that of old-timers. In its first year of operation, the distribution scheme would have given \$1050 to an Alaskan who had lived in the State since statehood. A resident of ten years would have received \$500, while a year resident would have received only \$50. In effect, therefore, the State told its citizens: "Your status depends upon the date on which you established residence here. Those of you who migrated to the State cannot share its bounty on the same basis as those who were here before you." Surely this scheme imposes one of

the "disabilities of alienage" prohibited by Article IV's Privileges and Immunities Clause. See *Paul v Virginia*, 8 Wall 168, 180, 19 L Ed 357 (1869).

It could be argued that Alaska's scheme does not trigger the Privileges and Immunities Clause because it discriminates among classes of residents, rather than between residents and nonresidents. This argument, however, misinterprets the force of Alaska's distribution system. Alaska's scheme classifies citizens on the basis of their former residential status, imposing a relative burden on those who migrated to the State after 1959. Residents who arrived in Alaska after that date have a less valuable citizenship right than do the oldtimers who preceded them. Citizens who arrive in the State tomorrow will receive an even smaller claim on Alaska's resources. The fact that this discrimination unfolds after the nonresident established residency does not insulate Alaska's scheme from scrutiny under the Privileges and Immunities Clause. Each group of citizens who migrated to Alaska in the past, or chooses to move there in the future, lives in the State on less favorable terms than those who arrived earlier. The circumstance that some of the disfavored citizens already live in Alaska does not negate the fact that "the citizen of State A who ventures into [Alaska]" to establish a home later

wholly illegitimate? Will an "illegitimate" purpose survive review if it becomes "important" or "compelling"?² These ambiguities in the Court's analysis prompt me to develop my own approach to Alaska's scheme.

Alaska's distribution plan distinguishes between long-term residents and recent arrivals. Stripped to its essentials, the plan denies non-Alaskans settling in the State the same privileges afforded longer-term residents. The Privileges and Immunities Clause of Article IV, which guarantees "[t]he Citizens of each State . . . all Privileges and Immunities of Citizens in the several States," addresses just this type of discrimination.³ Accordingly, I would measure Alaska's scheme against the principles implementing the Privileges and Immunities Clause. In addition to resolving the particular problems raised by Alaska's scheme, this analysis supplies a needed foundation for many of the "right to travel" claims discussed in the Court's prior opinions.

This Court has found that "the terms 'citizen' and 'resident' are 'essentially interchangeable' . . . for purposes of analysis of most cases under the Privileges and Immunities Clause." *Hicklin v Orbeck*, 437 US 518, 524, n 8, 57 L Ed 2d 397, 98 S Ct 2482 (1978) (quoting *Austin v New Hampshire*, 420 US 656, 662, n 8, 43 L Ed 2d 630, 95 S Ct 1191 (1975)). This opinion, therefore, will refer to "nonresidents" of Alaska, as well as to "noncitizens" of that State.

It is settled that the Privileges and Immunities Clause does not protect corporations. See *Paul v Virginia*, 8 Wall 168, 19 L Ed 357 (1869). The word "Citizens" suggests that the Clause also excludes aliens. See, e.g., *Id.*, at 177, 19 L Ed 357 (dictum); *L. Tribe, American Constitutional Law* § 6-33, at 411, n 18 (1976). Any prohibition of discrimination aimed at aliens or corporations must derive from other constitutional provisions.

sire to reward citizens for past endurance, particularly in a State where years of hardship only recently have produced prosperity, is not innately improper. The difficulty is that plans enacted to further this objective necessarily treat new residents of a State less favorably than the longer-term residents who have past contributions to "reward." This inequality, as the Court repeatedly has recognized, conflicts with the constitutional purpose of maintaining a Union rather than a mere "league of States." See *Paul v Virginia*, 8 Wall 168, 180, 19 L Ed 357 (1869). The Court's task, therefore, should be (1) to articulate this constitutional principle, explaining its textual sources, and (2) to test the strength of Alaska's objective against the constitutional imperative. By choosing instead to declare Alaska's purpose wholly illegitimate, the Court establishes an uncertain jurisprudence. What makes Alaska's purpose illegitimate? Is the purpose illegitimate under all circumstances? What other state interests are

implementation infringed any constitutionally protected interest.

2. The Court's conclusion that Alaska's scheme lacks a rational basis masks a puzzling aspect of its analysis. By refusing to extend any legitimacy to Alaska's objective, the Court implies that a program designed to reward prior contributions will never survive equal protection scrutiny. For example, the programs described in *n 1, supra*, could not survive the Court's analysis even if the State demonstrated a compelling interest in rewarding volunteer activity or promoting conservation measures. The Court's opinion, although purporting to apply a deferential standard of review, actually insures that any governmental program depending upon a "past contribution" rationale will violate the Equal Protection Clause.

3. While the Clause refers to "Citizens,"

4. See generally *Ward v Maryland*, 12 Wall 418, 430, 20 L Ed 440 (1871) (the Clause "plainly and unmistakably secures and protects the right of a citizen of one state to pass into any other state of the Union for the

purpose of engaging in lawful commerce, trade or business, without molestation, to acquire personal property, land to take and hold real estate. . . .")

under a continuous disability.⁵

If the Privileges and Immunities Clause applies to Alaska's distribution system, then our prior opinions describe the proper standard of review. In *Baldwin v Fish & Game Commission*, 436 US 371, 56 L Ed 2d 54, 98 S Ct 1852 (1978), we held that States must treat residents and nonresidents "without unnecessary distinctions" when the nonresident seeks to "engage in an essential activity or exercise a basic right." *Id.*, at 387, 56 L Ed 2d 354, 98 S Ct 1852. On the other hand, if the nonresident engages in conduct that is not "fundamental" because it does not bear upon the vitality of the Nation as a single entity," the Privileges and Immunities Clause affords no protection. *Id.*, at 387, 383, 56 L Ed 2d 354, 98 S Ct 1852.

Once the Court ascertains that discrimination burdens an "essential activity," it will test the constitutionality of the discrimination under a two-part test. First, there must be "something to indicate that non-citi-

zens constitute a peculiar source of the evil at which the statute is aimed." *Hicklin v Orbeck*, 437 US 518, 525-526, 57 L Ed 2d 397, 98 S Ct 2482 (1978) (quoting *Toomer v Witsell*, 334 US 385, 398, 92 L Ed 1460, 68 S Ct 1156 (1948)). Second, the Court must find a "substantial relationship" between the evil and the discrimination practiced against the noncitizens. *Id.*, at 527, 57 L Ed 2d 397, 98 S Ct 2482.

Certainly the right infringed in this case is "fundamental." Alaska's statute burdens those nonresidents who choose to settle in the State.⁶ It is difficult to imagine a right more essential to the Nation as a whole than the right to establish residence in a new State. Just as our federal system permits the States to experiment with different social and economic programs, *New State Ice Co. v Liebmann*, 285 US 262, 311, 76 L Ed 747, 52 S Ct 371 (1932) (Brandeis, J., dissenting), it allows the individual to settle in the State offering those programs best tailored to his or her tastes.⁷ Alaska's encumbrance on the

such an age-based scheme objectionable.

6. The "burden" imposed on nonresidents is relative to the benefits enjoyed by residents. It is immaterial, for purposes of the Privileges and Immunities Clause, that the nonresident may enjoy a benefit in the new State that he lacked completely in his former State. The Clause addresses only differences in treatment; it does not judge the quality of treatment a State affords citizens and noncitizens.

7. See also *Baldwin v G.A.F. Seelig, Inc.*, 294 US 611, 623, 79 L Ed 1032, 55 S Ct 497 (1935) (the Constitution "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division"); *Paul v Virginia*, 8 Wall 168, 180, 19 L Ed 367 (1869) ("Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them

right of nonresidents to settle in that State, therefore, must satisfy the dual standard identified in *Hicklin*.

Alaska has not shown that its new residents are the "peculiar source" of any evil addressed by its disbursement scheme. The State does not argue that recent arrivals constitute a particular source of its population turnover problem. Indeed, the State urges that it has a special interest in persuading young adults, who have grown to maturity in the State, to remain there. Brief for Appellees 35, n 24. Nor is there any evidence that new residents, rather than old, will foolishly deplete the State's mineral and financial resources. Finally, although Alaska argues that its scheme compensates residents for their prior tangible and intangible contributions to the State, nonresidents are hardly a peculiar source of the "evil" of partaking in current largesse without having made prior contributions. A multitude of native Alaskans—including children and paupers—may have failed to contribute to the State in the past. Yet the State does not dock paupers for their prior failures to contribute, and it awards every person over the age of 18 dividends equal to the number of years that person has lived in the State.

Even if new residents were the peculiar source of these evils, Alaska

equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists"; *Edwards v California*, 314 US 160, 173, 86 L Ed 119, 62 S Ct 164 (1941) (Constitution prohibits "attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders").

has not chosen a cure that bears a "substantial relationship" to the malady. As the dissenting judges below observed, Alaska's scheme gives the largest dividends to residents who have lived longest in the State. The dividends awarded to new residents may be too small to encourage them to stay in Alaska. The size of these dividends appears to give new residents only a weak interest in prudent management of the State's resources. As a reward for prior contributions, finally, Alaska's scheme is quite ill-suited. While the phrase "substantial relationship" does not require mathematical precision, it demands at least some recognition of the fact that persons who have migrated to Alaska may have contributed significantly more to the State, both before and after their arrival, than have some natives.

For these reasons, I conclude that Alaska's disbursement scheme violates Article IV's Privileges and Immunities Clause. I thus reach the same destination as the Court, but along a course that more precisely identifies the evils of the challenged statute.

II

The analysis outlined above might apply to many cases in which a litigant asserts a right to travel or migrate interstate.⁸ To historians,

8. Any durational residency requirement, for example, treats nonresidents who have exercised their right to settle in a State differently from longer-term residents. This is not to say, however, that all such requirements would fail scrutiny under the Privileges and Immunities Clause. The durational residency requirement upheld in *Sann v Iowa*, 419 US 393, 42 L Ed 2d 522, 95 S Ct 557 (1975) (one year to obtain divorce, for example, would

is would come as no surprise. Article IV's Privileges and Immunities Clause has enjoyed a long association with the rights to travel and migrate interstate.

The Clause derives from Article I of the Articles of Confederation. The latter expressly recognized a right of "free ingress and regress to and from any other State," in addition to guaranteeing "the free inhabitants of each of these states . . . the privileges and immunities of free citizens in the several states."⁹ While the Framers of our Constitution omitted the reference to "free ingress and regress," they retained the general guaranty of "privileges and immunities." Charles Pinckney,

who drafted the current version of Article IV, told the Convention that this Article was "formed exactly upon the principles of the 4th article of the present Confederation." 3 M. Farrand, *Records of the Federal Convention* 112 (1934). Commentators, therefore, have assumed that the Framers omitted the express guaranty merely because it was redundant, not because they wished to excise the right from the Constitution.¹⁰

Early opinions by the Justices of this Court also traced a right to travel or migrate interstate to Article IV's Privileges and Immunities Clause. In *Corfield v Coryell*, 6 F Cas 546, 552 (No. 3,230) (CC ED Pa

have survived under the analysis outlined above. In *Sosna* the State showed that nonresidents were a peculiar source of the evil addressed by its durational residency requirement. Those persons could misrepresent their attachment to Iowa and obtain divorces that would be susceptible to collateral attack in other States. Iowa adopted a reasonable response to this problem by requiring nonresidents to demonstrate their bona fide residency for one year before obtaining a divorce. I am confident that the analysis developed in *Hicklin v Orbeck*, *supra*, will adequately identify other legitimate durational residency requirements.

8. Even before adoption of the Articles, a few of the colonies explicitly protected freedom of movement. The Rhode Island Charter gave members of that colony the right "to press and repass with freedom, into and through the rest of the English Colonies, upon their lawful and civil occasions." Z. Chafee, *The Human Rights in the Constitution of 1787*, p. 177 (1956) (hereinafter Chafee). The Massachusetts Body of Liberties provided: "Every man of or within this Jurisdiction shall have free liberty, not with standing any Civil power, to remove both himself and his familie at their pleasure out of the same, provided there be no legal impediment to the contrary." *Id.*, at 178. Massachusetts showed some of the same liberality to foreigners entering the colony:

true Christian Religion shall flee to us from the Tyranny or oppression of their persecutors, or from famine, warres, or the like necessary and compulsarie cause, They shall be entertayned and succoured among us, according to that power and prudence god shall give us." *Ibid.*

These attitudes contrasted with the more restrictive views prevailing in seventeenth century Europe. See generally *id.*, at 163-171.

10. See, e.g., Chafee, *supra*, at 185; Note, *The Right to Travel and Exclusionary Zoning*, 26 *Hastings L.J.* 849, 858-859 (1975); Comment, *The Right to Travel: In Search of a Constitutional Source*, 65 *Neb L. Rev.* 117, 119-120, n. 14 (1976); Comment, *A Strict Scrutiny of the Right to Travel*, 22 *UCLA L. Rev.* 1129, 1130, n. 7 (1975).

See also *Austin v New Hampshire*, 420 US 656, 661, 43 L. Ed 2d 530, 95 S Ct 1191 (1975) (Article IV of the Articles of Confederation was "carried over into the comity article of the Constitution in briefer form but with no change of substance or intent, unless it was to strengthen the force of the Clause in fashioning a single nation"); *United States v Wheeler*, 254 US 291, 294, 65 L. Ed 2d 270, 41 S Ct 133 (1920) ("the text of Article IV, § 2, of the Constitution, makes manifest that it was drawn with reference to the corresponding clause of the Articles of Confederation and was intended to perpetuate its limitations; and . . . that view has been so conclusively settled as to leave no room for controversy").

1823), for example, Justice Washington explained that the Clause protects the "right of a citizen of one state to pass through, or to reside in any other state." Similarly, in *Paul v Virginia*, 8 Wall 168, 180, 19 L. Ed 357 (1869), the Court found that one of the "undoubt[ed]" effects of the Clause was to give "the citizens of each State . . . the right of free ingress into other States, and egress from them. . . ." See also *Ward v Maryland*, 12 Wall 418, 430, 20 L. Ed 449 (1871). Finally, in *United States v Wheeler*, 254 US 281, 297-298, 65 L. Ed 270, 41 S Ct 133 (1920), the Court found that the Clause fused two distinct concepts: (1) "the right of citizens of the States to reside peacefully in, and to have free ingress into and egress from" their own States, and (2) the right to exercise the same privileges in other States.

History, therefore, supports assessment of Alaska's scheme, as well as other infringements of the right to travel, under the Privileges and Immunities Clause. This Clause may not address every conceivable type of discrimination that the Court previously has denominated a burden on interstate travel. I believe, however, that application of the Privileges and Immunities Clause to controversies involving the "right to travel" would at least begin the task of reuniting this elusive right with the constitutional principles it embodies. Because I believe that Alaska's distribution scheme violates the Privileges and Immunities Clause of Article IV, I concur in the Court's judgment insofar as it reverses the judgment of the Alaska Supreme Court.

Justice Rehnquist, dissenting.

Alaska's dividend distribution scheme represents one State's effort to apportion unique economic benefits among its citizens. Although the wealth received from the oil deposits of Prudhoe Bay may be quite unlike the economic resources enjoyed by most States, Alaska's distribution of that wealth is in substance no different from any other State's allocation of economic benefits. The distribution scheme being in the nature of economic regulation, I am at a loss to see the rationality behind the Court's invalidation of it as a denial of equal protection. This Court has long held that state economic regulations are presumptively valid, and violate the Fourteenth Amendment only in the rarest of circumstances:

"When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. See, e.g., *Lehnhausen v Lake Shore Auto Parts Co.*, 410 US 356 [35 L. Ed 2d 371, 93 S Ct 1091] (1973). Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude." *New Orleans v Duke*, 427 US 297, 303, 49 L. Ed 2d 511, 96 S Ct 2513 (1975). See

also *Minnesota v. Clover Leaf Creamery Co.*, 449 US 456, 66 L. Ed 2d 659, 101 S. Ct 715 (1981); *United States Railroad Retirement Board v. Fritz*, 449 US 166, 66 L. Ed 2d 368, 101 S. Ct 453 (1980); *Hughes v. Alexandria Scrap Corp.*, 426 US 794, 49 L. Ed 2d 220, 96 S. Ct 2488 (1976).

Despite the highly deferential approach which we invariably have taken toward state economic regulations, the Court today finds the restrictive aspect of the Alaska distribution scheme violative of the Fourteenth Amendment. The Court concludes that the State's first two justifications are not rationally related to the retroactive portion of the distribution scheme, and that the third justification—the reward of citizens for their past contributions—is not a legitimate state objective. But the illegitimacy of a State's recognizing the past contributions of its citizens has been established by the Court only in certain cases considering an infringement of the right to travel,¹ and the majority itself rightly de-

clines to apply the strict scrutiny analysis of those right-to-travel cases. See ante, at — and n 6, 72 L. Ed 2d 677–678. The distribution scheme at issue in this case impedes no person's right to travel to and settle in Alaska; if anything, the prospect of receiving annual cash dividends would encourage immigration to Alaska. The State's third justification cannot, therefore, be dismissed simply by quoting language about its legitimacy from right-to-travel cases which have no relevance to the question before us.

So understood, this case clearly passes equal protection muster. There can be no doubt that the state legislature acted rationally when it concluded that dividends retroactive to the year of statehood would "recognize the 'contributions of various kinds, both tangible and intangible,' which residents have made during their years of state residency." *Williams v. Zobel*, 619 P2d 448, 458 (Alas 1980). Nor can there be any doubt that Alaska, perhaps more than any other State in the Union, has good reason for recognizing such contributions.² Because the distribu-

travel cases, see *Memorial Hospital v. Maricopa County*, 415 US 250, 286–287, 39 L. Ed 2d 306, 94 S. Ct 1076 (1974) (Rehnquist, J., dissenting); *Vlandis v. Kline*, 412 US, at 468–469, 37 L. Ed 2d 63, 93 S. Ct 2230 (same), there is no need to rely upon that dissenting position here. The majority does not analyze this as a right-to-travel case. Compare ante, at — and n 6, 72 L. Ed 2d 677–678, with *Memorial Hospital v. Maricopa County*, 415 US, at 261–262, 39 L. Ed 2d 306, 94 S. Ct 1076, and *Shapiro v. Thompson*, 394 US, at 634, 638, 22 L. Ed 2d 600, 89 S. Ct 1322.

2. As the Alaska Supreme Court noted, those who have lived in Alaska from the year of its statehood have borne unusual expenses and hardships:

"A government such as the one embodied in the Alaska constitution, . . . with its complete range of governmental services, was expen-

sion scheme is thus rationally based, I dissent from its invalidation under the guise of equal protection analysis.³ In striking down the Alaskan scheme, the Court seems momentarily to have forgotten "the principle that the Fourteenth Amendment

gives the federal courts no power to impose upon the States their view of what constitutes wise economic or social policy." *Dandridge v. Williams*, 397 US 471, 486, 25 L. Ed 2d 491, 90 S. Ct 1153 (1970).

sive for a State with limited sources of taxation. Alaska could only boast a couple of pulp mills. . . . The State's business enterprises were small and catered mostly to local needs. In addition, Alaska's population was modest and hardly amounted to more than that of a medium-sized city in the continental United States.

Accordingly, revenues were small. Yet, the demands were great. The State government had to provide all the governmental services and social overhead required by modern American society. For instance, it would have been relatively simple to build a few roads, furnish normal police protection, and establish the customary school facilities. But nothing was normal in Alaska; it was and remains a land of superlatives. Subarctic engineering is relatively new, but the State would have to face the problem of permafrost conditions that frequently cause the road to buckle and heave. Police protection would have to be provided for an area one-fifth the size of the forty-eight United States but with very few roads available. Flying would become a way of life for law enforcement officials as well as other Alaskans—an expensive way of life. "Bush schools" scattered along the Aleutian chain, through the Yukon Valley, and on the Seward Peninsula and the islands of southeastern Alaska were expensive to maintain. It

was not until the discovery of oil on a large scale that the picture changed." *Williams v. Zobel*, 619 P2d 448, 462, n 37 (1980) (quoting C.M. Naska, *An Interpretive History of Alaskan Statehood* 169–170 (1973)).

3. I also disagree with the suggestion of Justice O'Connor that the Alaska distribution scheme contravenes the Privileges and Immunities Clause of Art. IV of the Constitution. That Clause assures that nonresidents of a State shall enjoy the same privileges and immunities as residents enjoy: "It was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell*, 334 US 385, 395, 92 L. Ed 1460, 68 S. Ct 1156 (1948). We long ago held that the Clause has no application to a citizen of the State whose laws are complained of. "The constitutional provision there alluded to did not create those rights, which it called privileges and immunities of citizens of the States. It threw around them in that clause no security for the citizen of the State in which they were claimed or exercised. Nor did it profess to control the power of the State governments over the rights of its own citizens." *The Slaughter-House Cases*, 16 Wall 36, 77, 21 L. Ed 394 (1873).

STATEMENT ON STUDENT LOAN AVAILABILITY

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

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

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

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

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

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

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

Kevin Dean Romesburg
Kevin Dean Romesburg

SUBSCRIBED AND SWORN to before me this 13th day of

September, 1982.

Robin Stephens
Notary Public in and for the

State of Alaska

My commission expires: 1/24/84

Resi-
dency
#2

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

No. A82-307 Civ.

MOTION FOR SUMMARY JUDGMENT

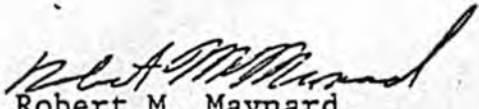
Defendants Fred J. Baxter et al., move this court for entry of a summary judgment in their favor under the provisions of Rule 56 of the Federal Rules of Civil Procedure.

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

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

DATED this 8th day of September, 1982.

WILSON L. CONDON
ATTORNEY GENERAL

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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JUDITH ANDRESS,)

Plaintiff,)

v.)

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

Defendants.)

No. A82-307 Civ.

DEFENDANTS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT

I. INTRODUCTION AND SUMMARY

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

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

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

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

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

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

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

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

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

II. DESCRIPTION OF THE PROGRAM

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

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

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

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

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

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

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

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

It is this two-year requirement which is challenged by Judith Andrass 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 economic 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:

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; Hocban 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.

WILSON L. CONDON
ATTORNEY GENERAL

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Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

No. A82-307 Civ.

AFFIDAVIT OF MAILING

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

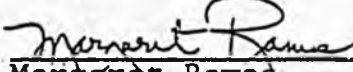
MARGARET RAMOS, being first duly sworn upon her oath,
deposes and says:

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

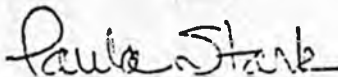
the 8th day of September, 1982 she mailed the 1) Motion for Summary Judgment, 2) Defendants' Memorandum in Support of Summary Judgment, and 3) Affidavit of Kerry Romesburg by DHL Courier Express Service to the following:

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

DATED this 8th day of September, 1982.


Margaret Ramo

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


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

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

RECEIVED
FEB 28 1983

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

Defendants.

No. A82-307 Civil

DEFENDANTS' REPLY BRIEF

INTRODUCTION

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

[D]on't forget, the loans are totally portable. These loans can be used anywhere, and in fact, not in the nation, anywhere in the world as long as it's 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.

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

Ronesburg 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 in-state 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."

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 profes-
sion, 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 im-
pact 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, com-
mented that "The Court [has] indicated that the
'penalty' required to invoke strict scrutiny in-
volves 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 pre-

sent 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.