ALASKA LEGISLATURE COMMITTEE FILES 1983-1984

3097 SSA HB 176 - HB 184 8672

Mass 61, 136 NE 356 (1922). In Mayor of Lynn v Commissioner of Civil Service, 269 Mass 410, 414, 169 NE 502, 503–504 (1929), the Supreme Judicial Court, adhering to the views expressed in its 1896 advisory opinion, sustained this statute against a state constitutional challenge.

Since 1919, the preference has been repeatedly amended to cover persons who served in subsequent wars, declared or

[442 US 267]

undeclared. See 1943 Mass Acts, ch 194; 1949 Mass Acts, ch 642, § 2 (World War II); 1954 Mass Acts, ch 627 (Korea); 1968 Mass Acts, ch 531, § 1 (Vietnam).[15] The current preference formula in ch 31, § 23, is substantially the same as that settled upon in 1919. This absolute preference—even as modified in 1919—has never been universally popular. Over the years it has been subjected to repeated legal challenges, see Hutcheson v Director of Civil Service, supra (collecting cases), to criticism by civil service reform groups, see, e.g., Report of the Massachusetts Committee on Public Service on Initiative Bill Relative to Veterans' Preference, S No. 279 (1926); Report of Massachusetts Special Commission on Civil Service and Public Personnel Administration 37–43 (June 15, 1967) (hereinafter 1967 Report), and, in 1926, to a referendum in which it was reaffirmed by a majority of 51.9%. See id., at 38. The present case is apparently the first to challenge the Massachusetts veterans' preference on the simple ground that it discriminates on the basis of sex.[16]

D

The first Massachusetts veterans' preference statute defined the term "veterans" in gender-neutral language. See

[442 US 268]

1896 Mass Acts, ch 517, § 1 ("a person" who served in the United States Army or Navy), and subsequent amendments have followed this pattern, see, e.g., 1919 Mass Acts, ch 150, § 1 ("any person who has served . . ."); 1954 Mass Acts, ch 627, § 1 ("any person, male or female, including a nurse"). Women who have served in official United States military units during wartime, then, have always been entitled to the benefit of the preference. In addition, Massachusetts, through a 1943 amendment to the definition of "wartime service," extended the preference to women who served in unofficial auxiliary women's units. 1943 Mass Acts, ch 194.[17]

15. A provision requiring public agencies to hire disabled veterans certified as eligible was added in 1922. 1922 Mass Acts, ch 463. It was invalidated as applied in Hutcheson v Director of Civil Service, 361 Mass 480, 281 NE2d 53 (1972) (suit by veteran arguing that absolute preference for disabled veterans was arbitrary on facts). It has since been eliminated and replaced with a provision giving disabled veterans an absolute preference in retention. See Mass Gen Laws Ann, ch 31, § 26 (West 1979). See n 10, supra.

16. For cases presenting similar challenges to the veterans' preference laws of other States, see Ballou v State Department of Civil Service, 75 NJ 365, 382 A2d 1118 (1978) (sustaining New Jersey absolute preference); Feinerman v Jones, 356 F Supp 252 (MD Pa 1973) (sustaining Pennsylvania point preference); Branch v Du Bois, 418 F Supp 1128 (ND Ill 1976) (sustaining Illinois modified point preference); Wisconsin Nat. Organization for Women v Wisconsin, 417 F Supp 978 (WD Wis 1976) (sustaining Wisconsin point preference).

17. The provision, passed shortly after the creation of the Women's Army Auxiliary Corps (WAAC), see n 21, infra, is currently found at Mass Gen Laws Ann, ch 4, § 7, cl 43 (West 1976), see n 8, supra. "Wartime service" is defined as service performed by a member of the "WAAC." A "WAAC" is "any woman

When the first general veterans' preference statute was adopted in 1896, there were no women veterans.[18] The statute, however, covered only Civil War veterans. Most of them were beyond middle age, and relatively few were actively competing for public employment.[19] Thus, the impact of

[442 US 269]

the preference upon the employment opportunities of nonveterans as a group and women in particular was slight.[20]

Notwithstanding the apparent attempts by Massachusetts to include as many military women as possible within the scope of the preference, the statute today benefits an overwhelmingly male class. This is attributable in some measure to the variety of federal statutes, regulations, and policies that have restricted the number of women who could enlist in the United States Armed Forces,[21] and largely to the

who was discharged and so served in any corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States and such woman shall be deemed to be a veteran." Ibid.

18. Small numbers of women served in combat roles in every war before the 20th century in which the United States was involved, but usually unofficially or disguised as men. See M. Binkin & S. Bach, Women and the Military 5 (1977) (hereafter Binkin and Bach). Among the better known are Molly Pitcher (Revolutionary War), Deborah Sampson (Revolutionary War), and Lucy Brewer (War of 1812). Passing as one "George Baker," Brewer served for three years as a gunner on the U. S. S. Constitution ("Old Ironsides") and distinguished herself in several major naval battles in the War of 1812. See J. Laffin, Women in Battle 116–122 (1967).

19. By 1887, the average age of Civil War veterans in Massachusetts was already over 50. Massachusetts Civil Service Commissioners, Third Annual Report 22 (1887). The tie-breaking preference which had been established under the 1884 statute had apparently been difficult to enforce, since many appointing officers "prefer younger men." Ibid. The 1890 statute which established the first valid absolute preference, see supra, at 266, 60 L Ed 2d, at 879, again covered only Civil War veterans. 1896 Mass Acts, ch 517, § 1.

20. In 1896, for example, 2,804 persons applied for civil service positions; 2,031 were men, of whom only 32 were veterans; 773 were women. Of the 647 persons appointed, 525 were men, of whom only 9 were veterans; 122 were women. Massachusetts Civil Service Commissioners, Thirteenth Annual Report 5, 6 (1896). The average age of the applicants was 38. Ibid.

21. The Army Nurse Corps, created by Congress in 1901, was the first official military unit for women, but its members were not granted full military rank until 1944. See Binkin and Bach 4–21; M. Treadwell, The Women's Army Corps 6 (Dept. of Army, 1954) (hereinafter Treadwell). During World War I, a variety of proposals were made to enlist women for work as doctors, telephone operators, and clerks, but all were rejected by the War Department. See ibid. The Navy, however, interpreted its own authority broadly to include a power to enlist women as Yeoman F's and Marine F's. About 13,000 women served in this rank, working primarily at clerical jobs. These women were the first in the United States to be admitted to full military rank and status. See id., at 10.

Official military corps for women were established in response to the massive personnel needs of World War II. See generally Binkin and Bach; Treadwell. The Women's Army Auxiliary Corps (WAAC)—the unofficial predecessor of the Women's Army Corps (WAC)—was created on May 14, 1942, followed two months later by the WAVES (Women Accepted for Voluntary Emergency Service). See Binkin and Bach 7. Not long after, the United States Marine Corps Women's Reserve and the Coast Guard Women's Reserve (SPAR) were established. See ibid. Some 350,000 women served in the four services; some 800 women also served as Women's Airforce Service Pilots (WASPS). Ibid. Most worked in health care, administration, and communications; they were also employed as airplane mechanics, parachute riggers, gunnery instructors, air traffic controllers, and the like.

The authorizations for the women's units during World War II were temporary. The Women's Armed Services Integration Act of 1948, 62 Stat 356, established the women's services on a permanent basis. Under the Act,

simple

[442 US 272]

fact that women have never been subjected to a military draft. See generally Binkin and Bach 4–21.

When this litigation was commenced, then, over 98% of the veterans in Massachusetts were male; only 1.8% were female. And over one-quarter of the Massachusetts population were veterans. During the decade between 1963 and 1973 when the appellee was actively participating in the State's merit selection system, 47,005 new permanent appointments were made in the classified official service. Forty-three percent of those hired were women, and 57% were men. Of the women appointed, 1.8% were veterans, while 54% of the men had veteran status. A large unspecified percentage of the female appointees were serving in lower paying positions for which males traditionally had not applied.[22]

[442 US 271]

On each of 50 sample eligible lists that are part of the record in this case, one or more women who would have been certified as eligible for appointment on the basis of test results were displaced by veterans whose test scores were lower.

At the outset of this litigation appellants conceded that for "many of the permanent positions for which males and females have competed" the veterans' preference has "resulted in a substantially greater proportion of female eligibles than male eligibles" not being certified for consideration. The impact of the veterans' preference law upon the public employment opportunities of women has thus been severe. This impact lies at the heart of the appellee's federal constitutional claim.

II

[1b] The sole question for decision

women were given regular military status. However, quotas were placed on the numbers who could enlist, 62 Stat 357, 360–361 (no more than 2% of total enlisted strength), eligibility requirements were more stringent than those for men, and career opportunities were limited. Binkin and Bach 11–12. During the 1950's and 1960's, enlisted women constituted little more than 1% of the total force. In 1967, the 2% quota was lifted, § 1(9)(E), 81 Stat 375, 10 USC § 3209(b) [10 USCS § 3209(b)], and in the 1970's many restrictive policies concerning women's participation in the military have been eliminated or modified. See generally Binkin and Bach. In 1972, women still constituted less than 2% of the enlisted strength. Id., at 14. By 1975, when this litigation was commenced, the percentage had risen to 4.6%. Ibid.

22. The former exemption for "women's requisitions," see nn 13, 14, supra, may have operated in the 20th century to protect these types of jobs from the impact of the preference. However, the statutory history indicates that this was not its purpose. The provision dates back to the 1896 veterans' preference law and was retained in the law substantially unchanged until it was eliminated in 1971. See n 14, supra. Since veterans in 1896 were a small but an exclusively male class, such a provision was apparently included to ensure that the statute would not be construed to outlaw a pre-existing practice of single-sex hiring explicitly authorized under the 1884 Civil Service statute. See Rule XIX.3, Massachusetts Civil Service Law and Rules and Regulations of the Commissioners (1894) ("In case the request for any . . . certification, or any law or regulation, shall call for persons of one sex, those of that sex shall be certified; otherwise sex shall be disregarded in certification"). The veterans' preference statute at no point endorsed this practice. Historical materials indicate, however, that the early preference law may have operated to encourage the employment of women in positions from which they previously had been excluded. See Thirteenth Annual Report, supra n 20, at 5, 6; Third Annual Report supra n 19, at 23.

on this appeal is whether Massachusetts, in granting an absolute lifetime preference to veterans, has discriminated against women in violation of the Equal Protection Clause of the Fourteenth Amendment.

A

[2-4] The equal protection guarantee of the Fourteenth Amendment does not take from the States all power of classification. Massachusetts Bd. of Retirement v Murgia, 427 US 307, 314, 49 L Ed 2d 520, 96 S Ct 2562. Most laws classify, and many affect certain groups

[442 US 272]

unevenly, even though the law itself treats them no differently from all other members of the class described by the law. When the basic classification is rationally based, uneven effects upon particular groups within a class are ordinarily of no constitutional concern. New York City Transit Authority v Beazer, 440 US 568, 59 L Ed 2d 587, 99 S Ct 1355; Jefferson v Hackney, 406 US 535, 548, 32 L Ed 2d 285, 92 S Ct 1724. Cf. James v Valtierra, 402 US 137, 28 L Ed 2d 678, 91 S Ct 1331. The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility. Dandridge v Williams, 397 US 471, 25 L Ed 2d 491, 90 S Ct 1153; San Antonio School Dist. v Rodriguez, 411 US 1, 36 L Ed 2d 16, 93 S Ct 1278. In assessing an equal protection challenge, a court is called upon only to measure the basic validity of the legislative classification. Barrett v Indiana, 229 US 26, 29-30, 57 L Ed 1050, 33 S Ct 692; Railway Express Agency v New York, 336 US 106, 93 L Ed 533, 69 S Ct 463. When some other independent right is not at stake, see, e.g., Shapiro v Thompson, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322, and when there is no "reason to infer antipathy," Vance v Bradley, 440 US 93, 97, 59 L Ed 2d 171, 99 S Ct 939, it is presumed that "even improvident decisions will eventually be rectified by the democratic process . . . ." Ibid.

[5] Certain classifications, however, in themselves supply a reason to infer antipathy. Race is the paradigm. A racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification. Brown v Board of Education, 347 US 483, 98 L Ed 873, 74 S Ct 686, 53 Ohio Ops 326, 38 ALR2d 1180; McLaughlin v Florida, 379 US 184, 13 L Ed 2d 222, 85 S Ct 283. This rule applies as well to a classification that is ostensibly neutral but is an obvious pretext for racial discrimination. Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 6 S Ct 1064; Guinn v United States, 238 US 347, 59 L Ed 1340, 35 S Ct 926; cf. Lane v Wilson, 307 US 268, 83 L Ed 1281, 59 S Ct 872; Gomillion v Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125. But, as was made clear in Washington v Davis, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040, and Arlington Heights v Metropolitan Housing Dev. Corp. 429 US 252, 50 L Ed 2d 450, 97 S Ct 555, even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.

[442 US 273]

[6, 7] Classifications based upon gender, not unlike those based upon race, have traditionally been the touchstone for pervasive and often

subtle discrimination. Caban v Mohammed, 441 US 380, 395, 60 L Ed 2d 297, 99 S Ct 1760 (Stewart, J., dissenting). This Court's recent cases teach that such classifications must bear a close and substantial relationship to important governmental objectives. Craig v Boren, 429 US 190, 197, 50 L Ed 2d 397, 97 S Ct 451, and are in many settings unconstitutional. Reed v Reed, 404 US 71, 30 L Ed 2d 225, 92 S Ct 251; Frontiero v Richardson, 411 US 677, 36 L Ed 2d 583, 93 S Ct 1764; Weinberger v Wiesenfeld, 420 US 636, 43 L Ed 2d 514, 95 S Ct 1225; Craig v Boren, supra; Califano v Goldfarb, 430 US 199, 51 L Ed 2d 270, 97 S Ct 1021; Orr v Orr, 440 US 268, 59 L Ed 2d 306, 99 S Ct 1102; Caban v Mohammed, supra. Although public employment is not a constitutional right, Massachusetts Bd. of Retirement v Murgia, supra, and the States have wide discretion in framing employee qualifications, see, e.g., New York City Transit Authority v Beazer, supra, these precedents dictate that any state law overtly or covertly designed to prefer males over females in public employment would require an exceedingly persuasive justification to withstand a constitutional challenge under the Equal Protection Clause of the Fourteenth Amendment.

B

[8] The cases of Washington v Davis, supra, and Arlington Heights v Metropolitan Housing Dev. Corp., supra, recognize that when a neutral law has a disparate impact upon a group that has historically been the victim of discrimination, an unconstitutional purpose may still be at work. But those cases signaled no departure from the settled rule that the Fourteenth Amendment guarantees equal laws, not equal results. Davis upheld a job-related employment test that white people passed in proportionately greater numbers than Negroes, for there had been no showing that racial discrimination entered into the establishment or formulation of the test. Arlington Heights upheld a zoning board decision that tended to perpetuate racially segregated housing patterns,

[442 US 274]

since, apart from its effect, the board's decision was shown to be nothing more than an application of a constitutionally neutral zoning policy. Those principles apply with equal force to a case involving alleged gender discrimination.

[9] When a statute gender-neutral on its face is challenged on the ground that its effects upon women are disproportionably adverse, a two-fold inquiry is thus appropriate. The first question is whether the statutory classification is indeed neutral in the sense that it is not gender-based. If the classification itself, covert or overt, is not based upon gender, the second question is whether the adverse effect reflects invidious gender-based discrimination. See Arlington Heights v Metropolitan Housing Dev. Corp., supra. In this second inquiry, impact provides an "important starting point," 429 US, at 266, 50 L Ed 2d 450, 97 S Ct 555, but purposeful discrimination is "the condition that offends the Constitution." Swann v Charlotte-Mecklenburg Board of Education, 402 US 1, 16, 28 L Ed 2d 554, 91 S Ct 1267.

It is against this background of

precedent that we consider the merits of the case before us.

III

A

[1c] The question whether ch 31, § 23, establishes a classification that is overtly or covertly based upon gender must first be considered. The appellee has conceded that ch 31, § 23, is neutral on its face. She has also acknowledged that state hiring preferences for veterans are not per se invalid, for she has limited her challenge to the absolute lifetime preference that Massachusetts provides to veterans. The District Court made two central findings that are relevant here: first, that ch 31, § 23, serves legitimate and worthy purposes; second, that the absolute preference was not established for the purpose of discriminating against women. The appellee has thus acknowledged and the District Court has thus found

[442 US 275]

that the distinction between veterans and nonveterans drawn by ch 31, § 23, is not a pretext for gender discrimination. The appellee's concession and the District Court's finding are clearly correct.

If the impact of this statute could not be plausibly explained on a neutral ground, impact itself would signal that the real classification made by the law was in fact not neutral. See Washington v Davis, supra, at 242, 48 L Ed 2d 597, 96 S Ct 2040; Arlington Heights v Metropolitan Housing Dev. Corp., supra, at 266, 50 L Ed 2d 450, 97 S Ct 555. But there can be but one answer to the question whether this veteran preference excludes significant numbers of women from preferred state jobs because they are women or because they are nonveterans. Apart from the fact that the definition of "veterans" in the statute has always been neutral as to gender and that Massachusetts has consistently defined veteran status in a way that has been inclusive of women who have served in the military, this is not a law that can plausibly be explained only as a gender-based classification. Indeed, it is not a law that can rationally be explained on that ground. Veteran status is not uniquely male. Although few women benefit from the preference, the nonveteran class is not substantially all female. To the contrary, significant numbers of nonveterans are men, and all nonveterans—male as well as female—are placed at a disadvantage. Too many men are affected by ch 31, § 23, to permit the inference that the statute is but a pretext for preferring men over women.

Moreover, as the District Court implicitly found, the purposes of the statute provide the surest explanation for its impact. Just as there are cases in which impact alone can unmask an invidious classification, cf. Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 6 S Ct 1064, there are others, in which—notwithstanding impact—the legitimate noninvidious purposes of a law cannot be missed. This is one. The distinction made by ch 31, § 23, is, as it seems to be, quite simply between veterans and nonveterans, not between men and women.

[442 US 276]

B

The dispositive question, then, is whether the appellee has shown that a gender-based discriminatory purpose has, at least in some measure, shaped the Massachusetts veterans' preference legislation. As did the

District Court, she points to two basic factors which in her view distinguish ch 31, § 23, from the neutral rules at issue in the Washington v Davis and Arlington Heights cases. The first is the nature of the preference, which is said to be demonstrably gender-biased in the sense that it favors a status reserved under federal military policy primarily to men. The second concerns the impact of the absolute lifetime preference upon the employment opportunities of women, an impact claimed to be too inevitable to have been unintended. The appellee contends that these factors, coupled with the fact that the preference itself has little if any relevance to actual job performance, more than suffice to prove the discriminatory intent required to establish a constitutional violation.

1

The contention that this veterans' preference is "inherently non neutral" or "gender-biased" presumes that the State, by favoring veterans, intentionally incorporated into its public employment policies the panoply of sex-based and assertedly discriminatory federal laws that have prevented all but a handful of women from becoming veterans. There are two serious difficulties with this argument. First, it is wholly at odds with the District Court's central finding that Massachusetts has not offered a preference to veterans for the purpose of discriminating against women. Second, it cannot be reconciled with the assumption made by both the appellee and the District Court that a more limited hiring preference for veterans could be sustained. Taken together, these difficulties are fatal.

[10] To the extent that the status of veteran is one that few

[442 US 277]

women have been enabled to achieve, every hiring preference for veterans, however modest or extreme, is inherently gender-biased. If Massachusetts by offering such a preference can be said intentionally to have incorporated into its state employment policies the historical gender-based federal military personnel practices, the degree of the preference would or should make no constitutional difference. Invidious discrimination does not become less so because the discrimination accomplished is of a lesser magnitude.[23] Discriminatory intent is simply not amenable to calibration. It either is a factor that has influenced the legislative choice or it is not. The District Court's conclusion that the absolute veterans' preference was not originally enacted or subsequently reaffirmed for the purpose of giving an advantage to males as such necessarily compels the conclusion that the State intended nothing more than to prefer "veterans." Given this finding, simple logic suggests that an intent to exclude women from significant public jobs was not at work in this law. To reason that it was, by describing the preference as "inherently non neutral" or "gender-biased," is merely to restate the fact of impact, not to answer the question of intent.

To be sure, this case is unusual in

23. This is not to say that the degree of impact is irrelevant to the question of intent. But it is to say that a more modest preference, while it might well lessen impact and, as the State argues, might lessen the effectiveness of the statute in helping veterans, would not be any more or less "neutral" in the constitutional sense.

that it involves a law that by design is not neutral. The law overtly prefers veterans as such. As opposed to the written test at issue in Davis, it does not purport to define a job-related characteristic. To the contrary, it confers upon a specifically described group—perceived to be particularly deserving—a competitive headstart. But the District Court found, and the appellee has not disputed, that this legislative choice was legitimate. The basic distinction between veterans and nonveterans, having been found not gender-based, and the goals of the

[442 US 278]

preference having been found worthy, ch 31 must be analyzed as is any other neutral law that casts a greater burden upon women as a group than upon men as a group. The enlistment policies of the Armed Services may well have discriminated on the basis of sex. See Frontiero v Richardson, 411 US 677, 36 L Ed 2d 583, 93 S Ct 1764; cf. Schlesinger v Ballard, 419 US 498, 42 L Ed 2d 610, 95 S Ct 572. But the history of discrimination against women in the military is not on trial in this case.

2

[11] The appellee's ultimate argument rests upon the presumption, common to the criminal and civil law, that a person intends the natural and foreseeable consequences of his voluntary actions. Her position was well stated in the concurring opinion in the District Court:

"Conceding . . . that the goal here was to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal would freeze women out of all those state jobs actively sought by men. To be sure, the legislature did not wish to harm women. But the cutting-off of women's opportunities was an inevitable concomitant of the chosen scheme—as inevitable as the proposition that if tails is up, heads must be down. Where a law's consequences are *that* inevitable, can they meaningfully be described as unintended?" 451 F Supp, at 151.

This rhetorical question implies that a negative answer is obvious, but it is not. The decision to grant a preference to veterans was of course "intentional." So, necessarily, did an adverse impact upon nonveterans follow from that decision. And it cannot seriously be argued that the Legislature of Massachusetts could have been unaware that most veterans are men. It would thus be disingenuous to say that the adverse consequences of this legislation for women were unintended, in the sense that they were not volitional or in the sense that they were not foreseeable.

[442 US 279]

[12a] "Discriminatory purpose," however, implies more than intent as volition or intent as awareness of consequences. See United Jewish Organizations v Carey, 430 US 144, 179, 51 L Ed 2d 229, 97 S Ct 996 (concurring opinion).[24] It implies that

24. Proof of discriminatory intent must necessarily usually rely on objective factors, several of which were outlined in Arlington Heights v Metropolitan Housing Dev. Corp. 429 US 252, 266, 50 L Ed 2d 450, 97 S Ct 555. The inquiry is practical. What a legislature or any official entity is "up to" may be plain from the results its actions achieve, or the results they avoid. Often it is made clear from what has been called, in a different context, "the give and take of the debate" (Cramer v United States, 325 US 1, 32-33, 89 L Ed 1441, 65 S Ct 918 (Jackson, J

the decisionmaker, in this case a state legislature, selected or reaffirmed a particular course of action at least in part "because of," not merely "in spite of," its adverse effects upon an identifiable group.[25] Yet nothing in the record demonstrates that this preference for veterans was originally devised or subsequently re-enacted because it would accomplish the collateral goal of keeping women in a stereotypic and predefined place in the Massachusetts Civil Service.

To the contrary, the statutory history shows that the benefit of the preference was consistently offered to "any person" who was a veteran. That benefit has been extended to women under a very broad statutory definition of the term veteran.[26] The preference formula itself, which is the focal

[442 US 280]

point of this challenge, was first adopted—so it appears from this record—out of a perceived need to help a small group of older Civil War veterans. It has since been reaffirmed and extended only to cover new veterans.[27] When the totality of legislative actions establishing and extending the Massachusetts veterans' preference are considered, see Washington v Davis, 426 US. at 242, 48 L Ed 2d 597, 96 S Ct 2040, the law remains what it purports to be: a preference for veterans of either sex over nonveterans of either sex, not for men over women.

IV

[1d] Veterans' hiring preferences represent an awkward—and, many argue, unfair—exception to the widely shared view that merit and merit alone should prevail in the employment policies of government. After a war, such laws have been enacted virtually without opposition. During peacetime, they inevitably have come to be viewed in many quarters as undemocratic and unwise.[28] Absolute and permanent pref-

25. [12b] This is not to say that the inevitability or foreseeability of consequences of a neutral rule has no bearing upon the existence of discriminatory intent. Certainly, when the adverse consequences of a law upon an identifiable group are as inevitable as the gender-based consequences of ch 31, § 23, a strong inference that the adverse effects were desired can reasonably be drawn. But in this inquiry—made as it is under the Constitution—an inference is a working tool, not a synonym for proof. When as here, the impact is essentially an unavoidable consequence of a legislative policy that has in itself always been deemed to be legitimate, and when, as here, the statutory history and all of the available evidence affirmatively demonstrate the opposite, the inference simply fails to ripen into proof.

26. See nn 8, 17, supra.

27. The appellee has suggested that the former statutory exception for "women's requisitions," see nn 13, 14, supra, supplies evidence that Massachusetts, when it established and subsequently reaffirmed the absolute preference legislation, assumed that women would not or should not compete with men. She has further suggested that the former provision extending the preference to certain female dependents of veterans, see n 10, supra, demonstrates that ch 31, § 23, is laced with "old notions" about the proper roles and needs of the sexes. See Califano v Goldfarb, 430 US 199, 51 L Ed 2d 270, 97 S Ct 1021; Weinberger v Wiesenfeld, 420 US 636, 43 L Ed 2d 514, 95 S Ct 1225. But the first suggestion is totally belied by the statutory history, see supra, at 267–271, and nn 19, 20, 60 L Ed 2d, at 880–882, and the second fails to account for the consistent statutory recognition of the contribution of women to this Nation's military efforts.

28. See generally Hearings on Veterans' Preference Oversight before the Subcommittee on Civil Service, of the House Post Office and Civil Service Committee, 95th Cong, 1st Sess (1977); Report of Comptroller General, Conflicting Congressional Policies: Veterans' Preference and Apportionment vs Equal Employment Opportunity (Sept. 29, 1977).

erences, as the troubled history of this law demonstrates, have always been subject to the objection that they give the veteran

[442 US 281]

more than a square deal. But the Fourteenth Amendment, "cannot be made a refuge from ill-advised . . . laws." District of Columbia v Brooke, 214 US 138, 150, 53 L Ed 941, 29 S Ct 560. The substantial edge granted to veterans by ch 31, § 23, may reflect unwise policy. The appellee, however, has simply failed to demonstrate that the law in any way reflects a purpose to discriminate on the basis of sex.

The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SEPARATE OPINIONS

Mr. Justice Stevens, with whom Mr. Justice White joins, concurring

While I concur in the Court's opinion, I confess that I am not at all sure that there is any difference between the two questions posed ante, at 274, 60 L Ed 2d, at 884. If a classification is not overtly based on gender, I am inclined to believe the question whether it is covertly gender based is the same as the question whether its adverse effects reflect invidious gender-based discrimination. However the question is phrased, for me the answer is largely provided by the fact that the number of males disadvantaged by Massachusetts' veterans' preference (1,867,000) is sufficiently large—and sufficiently close to the number of disadvantaged females (2,954,000)—to refute the claim that the rule was intended to benefit males as a class over females as a class.

Mr. Justice Marshall, with whom Mr. Justice Brennan joins, dissenting.

Although acknowledging that in some circumstances, discriminatory intent may be inferred from the inevitable or foreseeable impact of a statute, ante, at 279 n 25, 60 L Ed 2d, at 886, the Court concludes that no such intent has been established here. I cannot agree. In my judgment, Massachusetts' choice of an absolute veterans' preference system evinces purposeful

[442 US 282]

gender-based discrimination. And because the statutory scheme bears no substantial relationship to a legitimate governmental objective, it cannot withstand scrutiny under the Equal Protection Clause.

I

The District Court found that the "prime objective" of the Massachusetts veterans' preference statute, Mass Gen Laws Ann, ch 31, § 23, was to benefit individuals with prior military service. Anthony v Commonwealth, 415 F Supp 485, 497 (Mass 1976). See Feeney v Massachusetts, 451 F Supp 143, 145 (Mass 1978). Under the Court's analysis, this factual determination "necessarily compels the conclusion that the State intended nothing more than to prefer 'veterans.' Given this finding, simple logic suggests that an intent to exclude women from significant public jobs was not at work in this law." Ante, at 277, 60 L Ed 2d, at 886. I find the Court's logic neither simple nor compelling.

That a legislature seeks to advantage one group does not, as a matter of logic or of common sense, exclude the possibility that it also intends to

disadvantage another. Individuals in general and lawmakers in particular frequently act for a variety of reasons. As this Court recognized in Arlington Heights v Metropolitan Housing Dev. Corp., 429 US 252, 265, 50 L Ed 2d 450, 97 S Ct 555 (1977), "[r]arely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern." Absent an omniscience not commonly attributed to the judiciary, it will often be impossible to ascertain the sole or even dominant purpose of a given statute. See McGinnis v Royster, 410 US 263, 276, 277, 35 L Ed 2d 282, 93 S Ct 1055 (1973); Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale LJ 1205, 1214 (1970). Thus, the critical constitutional inquiry is not whether an illicit consideration was the primary or but-for cause of a decision, but rather whether it had an appreciable role in shaping a given legislative enactment. Where there is

[442 US 283]

"proof that a discriminatory purpose has been a motivating factor in the decision, . . . judicial deference is no longer justified." Arlington Heights v Metropolitan Housing Dev. Corp., supra, at 265–266, 50 L Ed 2d 450, 97 S Ct 555 (emphasis added).

Moreover, since reliable evidence of subjective intentions is seldom obtainable, resort to inference based on objective factors is generally unavoidable. See Beer v United States, 425 US 130, 148–149, n 4, 47 L Ed 2d 629, 96 S Ct 1357 (1976) (Marshall, J., dissenting); cf. Palmer v Thompson, 403 US 217, 224–225, 29 L Ed 2d 438, 91 S Ct 1940 (1971); United States v O'Brien, 391 US 367, 383–384, 20 L Ed 2d 672, 88 S Ct 1673 (1968). To discern the purposes underlying facially neutral policies, this Court has therefore considered the degree, inevitability, and foreseeability of any disproportionate impact as well as the alternatives reasonably available. See Monroe v Board of Commissioners, 391 US 450, 459, 20 L Ed 2d 733, 88 S Ct 1700 (1968); Goss v Board of Education, 373 US 683, 688–689, 10 L Ed 2d 632, 83 S Ct 1405 (1963); Gomillion v Lightfoot, 364 US 339, 5 L Ed 2d 110, 81 S Ct 125 (1960); Griffin v Illinois, 351 US 12, 17 n 11, 100 L Ed 891 76 S Ct 585, 55 ALR2d 1055 (1956). Cf. Albemarle Paper Co. v Moody, 422 US 405, 425, 45 L Ed 2d 280, 95 S Ct 2362 (1975).

In the instant case, the impact of the Massachusetts statute on women is undisputed. Any veteran with a passing grade on the civil service exam must be placed ahead of a nonveteran, regardless of their respective scores. The District Court found that, as a practical matter, this preference supplants test results as the determinant of upper level civil service appointments. 415 F Supp, at 488–489. Because less than 2% of the women in Massachusetts are veterans, the absolute preference formula has rendered desirable state civil service employment an almost exclusively male prerogative. 451 F Supp, at 151 (Campbell, J., concurring).

As the District Court recognized, this consequence follows foreseeably, indeed inexorably, from the long history of policies severely limiting women's participation in the military.[1]

[442 US 284]

Although neutral in form,

1. See Anthony v Massachusetts, 415 F Supp 485, 490, 495–499 (Mass 1976); Feeney v Massachusetts, 451 F Supp 143, 145, 148 (Mass 1978). In addition to the 2% quota on women's participation in the Armed Forces, see ante, at 270 n 21, 60 L Ed 2d, at 882, enlistment and appointment requirements

the statute is anything but neutral in application. It inescapably reserves a major sector of public employment to "an already established class which, as a matter of historical fact, is 98% male." Ibid. Where the foreseeable impact of a facially neutral policy is so disproportionate, the burden should rest on the State to establish that sex-based considerations played no part in the choice of the particular legislative scheme. Cf. Castaneda v Partida, 430 US 482, 51 L Ed 2d 498, 97 S Ct 1272 (1977); Washington v Davis, 426 US 229, 241, 48 L Ed 2d 597, 96 S Ct 2040 (1976); Alexander v Louisiana, 405 US 625, 632, 31 L Ed 2d 536, 92 S Ct 1221 (1972); see generally Brest, Palmer v Thompson; An Approach to the Problem of Unconstitutional Legislative Motive, 1971 Sup Ct Rev 95, 123.

Clearly, that burden was not sustained here. The legislative history of the statute reflects the Commonwealth's patent appreciation of the impact the preference system would have on women, and an equally evident desire to mitigate that impact only with respect to certain traditionally female occupations. Until 1971, the statute and implementing civil service

[442 US 285]

regulations exempted from operation of the preference any job requisitions "especially calling for women." 1954 Mass Acts, ch 627, § 5. See also 1896 Mass Acts, ch 517, § 6; 1919 Mass Acts ch 150, § 2; 1945 Mass Acts, ch 725, § 2(e); 1965 Mass Acts, ch 53; ante, at 266, nn 13, 14, 60 L Ed 2d, at 879. In practice, this exemption, coupled with the absolute preference for veterans, has created a gender-based civil service hierarchy, with women occupying low-grade clerical and secretarial jobs and men holding more responsible and remunerative positions. See 415 F Supp, at 488; 451 F Supp, at 148 n 9.

Thus, for over 70 years, the Commonwealth has maintained, as an integral part of its veterans' preference system, an exemption relegating female civil service applicants to occupations traditionally filled by women. Such a statutory scheme both reflects and perpetuates precisely the kind of archaic assumptions about women's roles which we have previously held invalid. See Orr v Orr, 440 US 268, 59 L Ed 2d 306, 99 S Ct 1102 (1979); Califano v Goldfarb, 430 US 199, 210–211, 51 L Ed 2d 270, 97 S Ct 1021 (1977); Stanton v Stanton, 421 US 7, 14, 43 L Ed 2d 688, 95 S Ct 1373 (1975);

---

have been more stringent for females than males with respect to age, mental and physical aptitude, parental consent, and educational attainment. M. Binkin & S. Bach, Women and the Military (1977) (hereinafter Binkin and Bach); Note, The Equal Rights Amendment and the Military, 62 Yale LJ 1533, 1539 (1973). Until the 1970's the Armed Forces precluded enlistment and appointment of women, but not men, who were married or had dependent children. See 415 F Supp, at 490; App 55, Dist 95, 99, 100, 114. Sex-based restrictions on advancement and training opportunities also diminished the incentives for qualified women to enlist. See Binkin and Bach 10–17; Beans, Sex Discrimination in the Military, 67 Mil L Rev 19, 59–63 (1975). Cf. Schlesinger v Ballard, 419 US 498, 508, 42 L Ed 2d 610, 95 S Ct 572 (1975).

Thus, unlike the employment examination in Washington v Davis, 426 US 229, 48 L Ed 2d 597, 96 S Ct 2040 (1976), which the Court found to be demonstrably job related, the Massachusetts preference statute incorporates the results of sex-based military policies irrelevant to women's current fitness for civilian public employment. See 415 F Supp, at 496–499

Weinberger v Wiesenfeld, 420 US 636, 645, 43 L Ed 2d 514, 95 S Ct 1225 (1975). Particularly when viewed against the range of less discriminatory alternatives available to assist veterans.[2] Massachusetts' choice of a formula that so severely restricts public employment opportunities for women cannot reasonably be thought gender-neutral. Cf. Albemarle Paper Co. v Moody, supra, at 425, 45 L Ed 2d 280, 95 S Ct 2362. The Court's conclusion to the contrary—that "nothing in the record" evinces a "collateral goal of keeping women in a stereotypic and predefined place in the

[442 US 286]

Massachusetts Civil Service," ante, at 279, 60 L Ed 2d, at 892—displays a singularly myopic view of the facts established below.[3]

II

To survive challenge under the Equal Protection Clause, statutes reflecting gender-based discrimination must be substantially related to the achievement of important governmental objectives. See Califano v Webster, 430 US 313, 316–317, 51 L Ed 2d 360, 97 S Ct 1192 (1977); Craig v Boren, 429 US 190, 197, 50 L Ed 2d 397, 97 S Ct 451 (1976); Reed v Reed, 404 US 71, 76, 30 L Ed 2d 225, 92 S Ct 251 (1971). Appellants here advance three interests in support of the absolute preference system: (1) assisting veterans in their readjustment to civilian life; (2) encouraging military enlistment; and (3) rewarding those who have served their country. Brief for Appellants 24. Although each of those goals is unquestionably legitimate, the "mere recitation of a benign, compensatory purpose" cannot of itself insulate legislative classifications from constitutional scrutiny. Weinberger v Wiesenfeld, supra, at 648, 43 L Ed 2d 514, 95 S Ct 1225. And in this case, the Commonwealth has failed to establish a sufficient relationship between its objectives and the means chosen to effectuate them.

With respect to the first interest, facilitating veterans' transition to civilian status, the statute is plainly overinclusive. Cf. Trimble v Gordon, 430 US 762, 770–772, 52 L Ed 2d 31, 97 S Ct 1459, 4 Ohio Ops 3d 296 (1977); Jimenez v Weinberger, 417 US 628, 637, 41 L Ed 2d 363, 94 S Ct 2496 (1974). By conferring a permanent preference, the legislation allows veterans to invoke their advantage repeatedly, without regard to their date of discharge. As the record demonstrates, a substantial

[442 US 287]

majority of those currently enjoying the benefits of the system are not re-

2. Only four States afford a preference comparable in scope to that of Massachusetts. See Fleming & Shanor, Veterans' Preferences and Public Employment: Unconstitutional Gender Discrimination?, 26 Emory LJ 13, 17 n 13 (1977) (citing statutes). Other States and the Federal Government grant point or tie-breaking preferences that do not foreclose opportunities for women. See id., at 13, and nn 12, 14; ante, at 261 n 7, 60 L Ed 2d, at 877; Hearings on Veterans' Preference Oversight before the Subcommittee on Civil Service of the House Committee on Post Office and Civil Service, 95th Cong, 1st Sess, 4 (1977) (statement of Alan Campbell, Chairman, United States Civil Service Commission).

3. Although it is relevant that the preference statute also disadvantages a substantial group of men, see ante, at 281, 60 L Ed 2d, at 889 (Stevens, J., concurring), it is equally pertinent that 47% of Massachusetts men over 18 are veterans, as compared to 0.8% of Massachusetts women. App 83. Given this disparity, and the indicia of intent noted at 284–285, 60 L Ed 2d, at 891–892, supra, the absolute number of men denied preference cannot be dispositive, especially since they have not faced the barriers to achieving veteran status confronted by women. See n 1, supra.

cently discharged veterans in need of readjustment assistance.[4]

Nor is the Commonwealth's second asserted interest, encouraging military service, a plausible justification for this legislative scheme. In its original and subsequent re-enactments, the statute extended benefits retroactively to veterans who had served during a prior specified period. See ante, at 265–267, 60 L Ed 2d, at 879–880. If the Commonwealth's "actual purpose" is to induce enlistment, this legislative design is hardly well suited to that end. See Califano v Webster, supra, at 317, 51 L Ed 2d 360, 97 S Ct 1192; Weinberger v Wiesenfeld, supra, at 648, 43 L Ed 2d 514, 95 S Ct 1225. For I am unwilling to assume what appellants made no effort to prove, that the possibility of obtaining an ex post facto civil service preference significantly influenced the enlistment decisions of Massachusetts residents. Moreover, even if such influence could be presumed, the statute is still grossly overinclusive in that it bestows benefits on men drafted as well as those who volunteered.

Finally, the Commonwealth's third interest, rewarding veterans, does not "adequately justify the salient features" of this preference system. Craig v Boren, 429 US, at 202–203, 50 L Ed 2d 397, 97 S Ct 451. See Orr v Orr, supra, at 281, 59 L Ed 2d 306, 99 S Ct 1102. Where a particular statutory scheme visits substantial hardship on a class long subject to discrimination, the legislation cannot be sustained unless "'carefully tuned to alternative considerations.'" Trimble v Gordon, supra, at 772, 52 L Ed 2d 31, 97 S Ct 1459, 4 Ohio Ops 3d 296. See Caban v Mohammed, 441 US 380, 392–393, n 13, 60 L Ed 2d 297, 99 S Ct 1760 (1979); Mathews v Lucas, 427 US 495, 49 L Ed 2d 651, 96 S Ct 2755 (1976). Here, there are a wide variety of less discriminatory means by which Massachusetts could effect its compensatory purposes. For example, a point preference system, such as that maintained by many States and the Federal Government,

[442 US 288]

see n 2, supra, or an absolute preference for a limited duration, would reward veterans without excluding all qualified women from upper level civil service positions. Apart from public employment, the Commonwealth, can, and does, afford assistance to veterans in various ways, including tax abatements, educational subsidies, and special programs for needy veterans. See Mass Gen Laws Ann, ch 59, § 5, Fifth (West Supp 1979); Mass Gen Laws Ann, ch 69, §§ 7, 7B (West Supp 1979); and Mass Gen Laws Ann, chs. 115, 115A (West 1969 and Supp 1978). Unlike these and similar benefits, the costs of which are distributed across the taxpaying public generally, the Massachusetts statute exacts a substantial price from a discrete group of individuals who have long been subject to employment discrimination,[5] and who, "because of circumstances totally beyond their control, have

4. The eligibility lists for the positions Ms. Feeney sought included 95 veterans for whom discharge information was available. Of these 95 males, 4 (67%) were discharged prior to 1960. App., pp. 150–151, 169–170.

5. See Frontiero v Richardson, 411 US 677, 685 n 20, 36 L Ed 2d 583, 93 S Ct 1764 (1973); Kahn v Shevin, 416 US 351, 353–354, 40 L Ed 2d 189, 94 S Ct 1734 (1974); United States Bureau of the Census, Current Population Reports, No. [illegible], Money Income and Poverty Status of Families and Persons in the United States: 1976 (Advance Report), Table 7 (Sept. 1977).

[had] little if any chance of becoming members of the preferred class." 415 F Supp. at 499. See n 1, supra.

In its present unqualified form, the veteran's preference statute precludes all but a small fraction of Massachusetts women from obtaining any civil service position also of interest to men. See 451 F Supp. at 151 (Campbell, J., concurring). Given the range of alternatives available, this degree of preference is not constitutionally permissible.

I would affirm the judgment of the court below.

EDITOR'S NOTE

An annotation on "Validity, under equal protection clause of Fourteenth Amendment, of gender-based classifications arising by operation of state law," appears p 1188, infra.

dance with a valid agreement entered into in accordance with AS 23.40;

(3) the use of employee selection methods, including open competitive examinations, when appropriate, that will fairly test the capacity and fitness of the person examined to discharge the duties of the class in which employment is sought;

(4) the establishment and maintenance of eligible lists for appointment and promotion providing the names of eligible candidates in order of their relative performance in the examinations;

(5) the procedure for certifying eligible candidates; the rule adopted under this paragraph may include procedures providing a preference for certifying local residents when appropriate;

(6) promotions from within the state service when there are qualified candidates in the state service; vacancies shall be filled by promotion whenever practicable and in the best interest of the state service and promotion shall be by competitive examination whenever possible; in considering promotions, the applicants' qualifications, performance record, seniority, and conduct shall be evaluated;

(7) a period of probation not to exceed one year before an appointment to a position becomes permanent, except that a permanent employee receiving a promotional appointment retains permanent status in the service and job class from which appointed for the duration of the probationary period and may be demoted to a former class without right of appeal, notwithstanding AS 39.25.170, but if the employee is dismissed from the service the appeal rights under AS 39.25.170 apply;

(8) nonpermanent and emergency appointments to positions in the state service in accordance with AS 39.25.195 — 39.25.200;

(9) provisional appointment without competitive examination when appropriate eligible lists are not available;

(10) transfers from one department to another and from another merit system jurisdiction to the state service;

(11) transfers from one area of the state to another;

(12) the reinstatement of a person who resigns in good standing;

(13) layoffs for reason of lack of money or work, abolition of positions, or material changes in duties or organization; both performance and seniority records shall be considered in the development of layoff orders;

(14) the development, maintenance, and use of employee performance records;

(15) the establishment of disciplinary measures which may include disciplinary suspension without pay;

(16) the procedures for review of disputed personnel actions, for resolving employee and interagency grievances, and for resolving grie-

(17) hours of work for all employees in the state service;

(18) methods and procedures covering overtime work and pay;

(19) the granting of employment preference rights to a veteran not within the area of promotion, when the veteran possesses the necessary qualifications in the job classification applied for under this chapter; in an examination to determine the qualification of applicants for entrance into the classified service under merit system examination, five additional points shall be added to the passing grade of a veteran and ten additional points shall be added to the passing grade of a disabled veteran, but the additional points may be used only the first time the veteran obtains a position in the classified service; if a position in the classified service is eliminated, employees shall be released in accordance with rules which give due effect to all factors; if all job qualifications are equal, the veteran shall be given preference over the nonveteran and the veteran shall be kept on the job; this paragraph may not be interpreted to amend the terms of a collective bargaining agreement; in this paragraph

(A) "veteran" means a person with 181 days or more active service in the armed forces of the United States who has been honorably discharged after having served during any period between April 6, 1917, and December 1, 1919, between September 16, 1940, and December 31, 1947, or between June 27, 1950, and November 7, 1975;

(B) "disabled veteran" means a veteran who is entitled to compensation under laws administered by the United States Veterans' Administration, or a person who was honorably discharged or released from active duty because of a service-connected disability;

(20) the employment of persons in permanent positions on a part-time basis of 15 hours or more a week, including the employment of two persons to fill one permanent full-time position; these employees shall be designated as permanent part-time employees;

(21) the granting of employment preference to severely handicapped persons; this includes the right to provisional appointment without competitive examination for periods up to four months and the granting of eligibility to a severely handicapped person provisionally appointed under the rules who demonstrates ability to perform the job for permanent appointment without competitive examination; provisional employment under this paragraph may not exceed four months during a 12-month period; "severely handicapped" as used in this paragraph means persons certified by the director of the division of vocational rehabilitation to be severely handicapped;

(22) the establishment of programs facilitating the employment of disadvantaged persons;

(23) the delegation, when feasible, of personnel responsibilities and duties to the principal departments of the executive branch;

(24) the establishment of a transition period of up to 12 months for

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL

~~JAY S. HAMMOND, GOVERNOR~~
Bill Sheffield, Governor

3341 FAIRBANKS ST.
ANCHORAGE, ALASKA 99503
PHONE: (907) 279-6141

January 20, 1983

Mr. Wayne J. Pinquoch
Box 315
Wasilla, Alaska 99687

Dear Mr. Pinquoch:

Your name has been on State of Alaska eligible lists with Veteran's Preference Points.

(1) Recent legislative changes to the State Personnel Act have affected the criteria for awarding Veteran's Preference Points. Effective July 1, 1982, the law has been changed to allow points only for first time entry into the classified service. Once an individual is hired into a permanent/probationary position s/he loses all future rights to veteran's points.

Review of your current application indicates you have been previously employed by the State of Alaska. Therefore, in compliance with the law, I have removed your Veterans' Preference Points from all lists on which your name appears.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Michael McCain

Michael McCain
Personnel Technician

MM:aj

cc: Certifications

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1983

Mr. Wayne J. Pinquoch
Box 315
Wasilla, Alaska 99687

Dear Wayne:

Unfortunately, the state personnel law was changed, as had been explained to you in the letter you received from Michael McCain of the Division of Personnel. The language of this new law reads: "...but the additional (veteran's preference) points may be used only the first time the veteran obtains a position in classified service..."

Since you have held a classified position previously, by law, you lose the right to ever use your veteran's preference again.

The situation you presently find yourself in is very unfair, and I will be having a bill drafted that change the language so that a veteran's preference may be used once, but not necessarily the first time a veteran obtains a classified position. This would ensure the veteran's right to use the preference points whenever those points would most benefit the veteran.

I'm sorry that there is nothing I can do to immediately help the situation, but I will do everything possible to correct this unfair law.

Sincerely,

Barbara Lacher
Representative
District 16

Rich Wilson
Re: Accounting
Bld. Inv
276-7742

VETERANS PREFERENCE (HB 176/HB31)

CONTACTS:

FRANK RAY - Director, Personall (Department of Administration) 465-4430
DEANA DISOMONE - Recruitment and Examining

Bert Finley - Employment Security, Department of Labor

1. How many veterans are currently state employees?

   Can this be broken down by what era veteran it was?
   (i.e. VietNam or later, and WWII/Korea etc.)

2. How many times was ~~is the~~ veterans preference ~~[redacted]~~ the deciding point in who gets the job? (ie. when test scores are within three points of each other, you can assume that the five point veterans preference was the deciding factor)

3. What percentage of the vets applying for state jobs are white men? White women? Minority women/men?

4. What percentage of vets are denied veterans preference because of a less than honorable discharge (ie. "bad paper") and are these vets primarily VietNam era and later?

5. What percentage of state jobs are decided by less than five points? → PARALLEL above

6. Does the state use any other preference points? (ie. local hire, minorities, etc.) employee credits.

7. 5+5 if they worked in the Dept.

MONDAY 8/15/83 - SPOKE WITH DEANA DISOMONE. SHE WILL ANSWER ABOVE QUESTIONS (EXCEPT FOR #4) IN WRITING. EXPECT LETTER BY ~~XXXX~~ FIRST WIEEK IN SEPTEMBER.
GD

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF PERSONNEL

BILL SHEFFIELD, GOVERNOR

POUCH C – 0201
JUNEAU, ALASKA 99811
PHONE:
(907) 465-4430

(SB 51)
HB174

September 15, 1983

Ms. Ginger Banes
Senator Fisher's Office
221 E. 7th Avenue, #204
Anchorage, AK 99501

Dear Ms. Banes:

I will try to answer some of the questions you asked over the telephone last month about veteran's preference. I am sorry it has taken so long, and that I cannot fully answer all your questions. A lot of the information you asked for in questions one and three is not available except through a manual files search of tens of thousands of records, and I do not have the staff to do that. The following is the incomplete information we have on our applicant computer records.

1. How many State employees are veterans?

   I can only tell you how many employees, who have also applied for a classified State job within the past two years, are veterans. There are 470 veterans in that group. As a comparison, we have 7,005 employees on our applicant files, so veterans are 6.7% of the total. However, excluded from this figure are those employees who have not applied for a classified State job within the past two years. This would mean that long-term employees are probably underrepresented in that percentage.

2. What percentage of veterans applying for State jobs are female?

   Eight percent of veterans who have applied for a classified State job are female.

3. How many times are the top five ranks separated by fewer than five points from the sixth rank?

   Without an extensive manual search I cannot answer this question. Most individual candidates on certifications appear to be separated by fewer than five points, however, I cannot give a definitive answer without further research.

4. Does the Division of Personnel give other numerical preference points to groups other than veterans?

   Yes, to permanent State employees as provided by union contract and long-standing practice. These employee credits are variable according to length and quality of State service.

Thank you for your patience in waiting for this letter. Let me know if you have questions about the information I provided.

Sincerely,

Diane DeSimone

Diane DeSimone
Chief, Recruitment & Examining

DD/je
O/CD1/0914-18

Senator Vic Fischer
Alaska State Legislature
Pouch V • Juneau, Alaska 99811 • (907) 465-4954

June 20, 1983

Mr. Mike Hennessey
2500 Leawood Drive
Anchorage, Alaska 99502

Dear Mike:

I'm not sure ~~why people are under the impression~~ you say that I don't consider HB 176 "important." ~~That's simply~~ not true.

It is true that there are numerous bills in the Senate State Affairs Committee, which I chair, and several of them deal with employment preferences including veterans. None of these bills was included in the House or Senate priority list of legislation that must be voted on this session.

That certainly doesn't mean that anyone thinks the bill isn't "important." In fact, its absence from the priority lists could just as easily mean its sponsors believe that it's too important to push through without ample public hearings. There are currently over 700 bills pending in the Legislature and less than 50 are on the priority lists. Obviously, many bills that address important and critical issues are not going to be heard this year. There simply isn't time.

I, or my staff, would be happy to speak to you about this bill, either in my Juneau office (if we are still in session) 465-4954, or in Anchorage at 278-3654. (Call collect.)

Best regards,

Senator Vic Fischer

June 20, 1983

Mr. Mike Hennessey
2900 Leawood Drive
Anchorage, Alaska 99502

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Best regards,

Senator Vic Fischer

6/8/83, JUNE, ANC LIO, MSNG 23825

TO: SENATOR V. FISCHER

FROM: MIKE HENNESSEY, 2900 LEAWOOD DRIVE, ANCHORAGE, AK 99502
H- 243-5167 W- 272-7587

WHAT DO YOU MEAN THAT HB 176 IS NOT IMPORTANT?

Employment preference/Veterans
Been in SSA since 4/22
passed H-36-0-4

Dear.....

I'm not sure why people are under the impression that I don't consider HB 176 "important". That's simply not true.

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I, or my staff, would be happy to speak to you about this bill, either in my Juneau office (if we are still in session) 465-4954, or in Anchorage at 278-3654. (call collect)

/gb

Alaska Airlines
The BOARD ROOM

P.O. Box: 68900, Seattle, WA. 98188

VETERAN'S PREFERENCE SURVEY

Sheet number/ date

veteran yes no	veteran yes no
sex	sex
age	age
classification	classification
length of employment	length of employment
pay	pay
race	race
veteran's preference used	veteran's preference used

veteran yes no	veteran yes no
sex	sex
age	age
classification	classification
length of employment	length of employment
pay	pay
race	race
veteran's preference used	veteran's preference used

veteran yes no	veteran yes no
sex	sex
age	age
classification	classification
length of employment	length of employment
pay	pay
race	race
veteran's preference used	veteran's preference used

A Survey of Veterans' Preference Legislation in the States

By Charles E. Davis

FOR NEARLY 40 YEARS, the American military veteran has benefited from governmental personnel policies designed to provide compensation for services rendered and disrupted career plans.[1] The Veterans' Preference Act of 1944, for example, boosted employment opportunities of veterans seeking jobs in the federal government by adding individuals honorably discharged from active duty in the armed services or their dependents to the list of those eligible for preference.

Benefits ranged from absolute preference for selected positions (e.g., guards, elevator operators, messengers and custodians) to the addition of five points to any nondisabled veteran achieving a passing score on a civil service exam. It also provided preferential treatment for veterans in any subsequent reductions-in-force. Under the Veterans' Readjustment Act of 1966, these privileges were extended to peacetime veterans serving as little as six months of military service. The impact of these laws is illustrated by some recent statistics cited by Alan K. Campbell. Although veterans comprise only one fourth of the eligible workers in the United States, they make up 50 percent of the federal work force and hold 65 percent of the top civil service positions.[2]

Despite the continuing importance of veterans' preference legislation (hereafter referred to as VPL) in affecting the recruitment, selection, promotion and tenure of federal public employees, state-related developments have received little attention from personnel analysts or students of the administrative process. These trends merit a further look for two principal reasons. While much of the state veterans' preferential legislation is patterned after federal initiatives, there is, nevertheless, considerable diversity in the number and variety of benefits offered. For example, most states require reemployment rights for veterans in their premilitary vocation, preferred status vis-a-vis nonveteran public employees should reduction-in-force become necessary, and absolute preference for selected jobs usually associated with a bureau or division of veterans' affairs. In addition, however, a few states have granted bonus points for promotional considerations or employment privileges for the spouse of a nondisabled veteran as well as various idiosyncratic practices scattered throughout the country.

It is evident that state policymakers will be faced with serious questions regarding the compatibility of already generous VPL with an increasing number of women and minorities seeking public employment. Information about the kinds of benefits available to veterans in various states would better enable public officials to balance such differing values as "reward for prior military sacrifice and/or service" with "equity" and "merit" in the process of making personnel-related decisions. The central purpose of this article is to provide a brief analysis of state laws affecting the employment prospects of veterans. Of particular concern is the relative generosity of each state in awarding preference benefits to veterans and the sociodemographic characteristics which differentiate more liberal states from those providing fewer benefits.

Findings

To make valid comparisons about the relative strength of veterans' preference legislation, an index was constructed for each state (see Table 1). The criteria used in the calculation of these indices included appointment or promotional preference for nondisabled veterans in selected jobs (1 point), absolute preference or bonus points for all or most jobs under classification (2 points), and bonus points for promotions in all or most civil service jobs (2 points). A like number of points were also awarded in each category if the spouse of a nondisabled veteran were granted similar privileges. The cumulative scores ranged from no points (Delaware) to six points (Indiana and New Jersey), and a slight majority of the states (26) emerged with a three-point total.

The next step was to determine whether states providing generous veterans' preference benefits had any distinctive political or demographic features. As Table 2

Charles E. Davis is Assistant Professor in the Department of Public Management at Suffolk University in Boston.

indicates, the strength of the state VPL index was somewhat more pronounced in the Midwest and Northeast, while Western states were least likely to provide veterans with statutory advantages for public employment. For example, Arizona and New Mexico give preference to veterans seeking employment in their respective bureaus of veterans' affairs, but do not extend these privileges to include jobs classified under state civil service. No Western states awarded absolute preference or bonus points for promotions within the state civil service, and only Montana permitted the addition of bonus points to the test scores of a veteran's family members. A small number of Northeastern and Midwestern states, on the other hand, were inclined to adopt these measures.

Of equal importance are the socioeconomic and demographic characteristics of state governmental jurisdictions. States ranking high on the VPL index tend to be more populous, wealthier on a per capita basis, and less receptive to the influence of interest groups (see Table 2). These results would appear to contradict the more commonsensical view that military life and the well-being of its personnel have always been held in greater esteem in the more traditional parts of the country—i.e., the South and the West. One might presume that veterans would benefit not only from the good will and political support of Southern legislators wielding positions of authority in the armed services committees of the U.S. House of Representatives and the Senate, but also a favorable political climate which has resulted in the disproportionate allocation of federal military installations in the South.[3] Under these circumstances, politically conservative state legislators would perceive veterans' preference benefits not as social welfare legislation but as the just rewards for individual military service or sacrifice.

A more plausible interpretation of these findings, however, directs attention to the perception of veterans by state legislators as a significant political constituency. The negative relationship found between interest group strength in the states and the provision of generous veterans' preference benefits suggests that legislative success does not result from the organizational or lobbying skills of veteran organizations, such as the American Legion, the Veterans of Foreign Wars or the Disabled Veterans. As Levitan and Cleary have indicated, these groups have tended to play a more passive role in the legislative process, preferring to rely on the judgment of elected policymakers for the appropriate level of benefits received.[4] It thus appears that support for VPL may be less a function of group mobilization than the realization by individual political candidates of the electoral benefits to be gained from appeals to the interests of veterans and their families.

Discussion

The survey results indicate that the number and variety of veterans' preference laws in the states are affected by such demographic factors as population size, region, per capita income and interest group strength. Veterans seeking employment in state government are likely to compete with relatively greater advantage in the more populous, wealthier states of the Midwest and the Northeast.

Although it is beyond the scope of this paper to provide a detailed analysis of the interrelationships between veterans' preference and other personnel issues of concern to state decision-makers, a number of policy implications and suggestions for further research bear mention. Veterans' preference affects nearly all phases of personnel management, but it is obviously the selection of public employees which has provoked the most serious controversy. All states classified as "medium" or "high" on the VPL index gave nondisabled veterans at least a five-point bonus on civil service exams—a practice which is viewed with a measure of disdain by civil service reformers favoring strict adherence to merit principles as well as supporters of affirmative action programs who feel that minorities and women have long been excluded from responsible government jobs. An additional irritant to affirmative action proponents is the awarding of bonus points to veterans for promotional purposes by a few of the more generously inclined states. Clearly, more research on the impact of veterans' preference laws on the proportion of minorities and women hired by state government (in relation to their numbers in the general population or relevant labor markets) would be of interest to elected public officials as well as manpower analysts.[5]

To a lesser degree, state VPL is of concern to nonveteran members of public unions or employee associations. Any advantages enjoyed by ex-veteran public employees in regard to promotions or reductions-in-force may be viewed as contrary to the seniority principle, which is viewed by many labor officials as the fairest method of deciding who benefits (as well as who loses—a point often made by affirmative action proponents). Ultimately, policymakers hoping to achieve the allocation of human resources in an equitable and efficient manner will have to confront the necessity of trade-offs. The reconciliation of such diverse values as "reward," "merit," "equity," and "organizational tenure" into an integrated policy framework is an undertaking deserving a prominent place on the research agenda of the 1980s.

Notes

1. The most concise treatment of veterans' preference legislation in the federal government is found in O. Glenn Stahl, *Public Personnel Administration*, 6th ed. (New York, N.Y.: Harper & Row, 1971), pp. 137-43.

2. Alan K. Campbell, "Civil Service Reform: A New Commitment," *Public Administration Review*, 38 (March/April 1978), pp. 99-103.

3. Nicholas Henry, *Public Administration and Public Affairs*, 2nd ed. (Englewood Cliffs, N.J.: Prentice-Hall, 1980), p. 420.

4. Sar Levitan and Karen A. Cleary, *Old Wars Remain Unfinished: The Veterans' Benefit System* (Baltimore, Md.: Johns Hopkins University Press, 1973), p. 15.

5. The author has begun such a task in an exploratory fashion; see, e.g., Charles E. Davis, "Veterans' Preference, Affirmative Action, and Public Employment," a paper presented at the 1980 annual meeting of the Southwest Political Science Association in Houston.

Table 1
THE RELATIVE STRENGTH OF STATE VETERANS' PREFERENCE LEGISLATION

States (a)	Veterans' Preference Benefits						
	Selected positions			Civil Service positions			
	Appointment preference or bonus points	Appointment preference or bonus points (veteran's relatives)	Preference or bonus points for promotions	Appointment preference or bonus points	Preference or bonus points (veteran's relatives)	Preference or bonus points for promotion	Total points (b)
Alabama	1	1	..	2	..	..	4
Arizona	..	..	..	2	..	..	2
Arkansas	..	..	..	2	..	..	2
California	1	..	..	2	..	..	3
Colorado	1	..	..	2	..	..	3
Connecticut	..	..	..	2	2	..	4
Delaware	..	..	..	..	..	..	0
Florida	1	..	..	2	..	..	3
Georgia	1	1	..	2	..	..	4
Idaho	1	..	..	2	..	..	3
Illinois	1	..	1	2	..	..	4
Indiana	1	1	..	2	2	..	6
Iowa	1	..	..	2	..	2	5
Kansas	1	..	..	2	..	..	3
Kentucky	1	..	..	2	..	..	3
Louisiana	1	..	..	2	..	..	3
Maine	1	..	..	2	2	..	5
Maryland	1	..	..	2	..	..	3
Massachusetts	1	..	..	2	..	..	3
Michigan	1	..	..	2	..	..	3
Minnesota	1	..	..	2	..	..	3
Mississippi	1	..	..	2	..	..	3
Missouri	1	..	..	2	..	..	3
Montana	1	..	..	2	2	..	5
Nebraska	1	..	..	..	..	..	1
Nevada	1	..	..	2	..	..	3
New Hampshire	1	..	..	2	..	..	3
New Jersey	1	..	1	2	2	..	6
New Mexico	1	..	..	..	..	..	1
New York	1	..	..	2	..	2	5
North Carolina	1	..	..	2	..	2	5
North Dakota	1	..	..	2	..	..	3
Ohio	1	1	..	2	..	..	4
Oklahoma	1	..	..	2	..	..	3
Oregon	1	..	..	2	..	..	3
Pennsylvania	1	..	..	2	..	..	3
Rhode Island	1	..	..	2	..	..	3
South Carolina	1	..	..	2	..	..	3
South Dakota	1	..	..	2	..	2	5
Tennessee	1	..	..	2	..	..	3
Texas	1	..	1	2	..	..	4
Utah	1	..	1	2	..	..	4
Vermont	..	..	..	2	..	..	2
Virginia	..	..	..	2	..	..	2
Washington	1	..	..	2	..	..	3
West Virginia	1	..	..	2	..	..	3
Wisconsin	1	..	..	2	..	..	3
Wyoming	1	..	..	2	..	..	3

Source: U.S. Congress, Committee on Veterans' Affairs, *State Veterans' Laws*, House Committee Print No. 6, 96th Congress, 1st sess., 1979.

(a) Alaska and Hawaii were excluded from the analysis. Their politics are imbued with cultural and ethnic strains not typical of the contiguous United States, and their experience with veterans' preference legislation is comparatively recent.

(b) The criteria used in the calculation of these indexes included appointment or promotional preference for nondisabled veterans in selected jobs (one point), absolute preference or bonus points for all or most jobs under classification (two points), and bonus points for promotions in all or most civil service jobs (two points). A like number of points was also awarded in each category if the spouse of a nondisabled veteran were granted similar privileges. The decision to assign one point or two for a given benefit was based on the number of people likely to be affected by such legislation; for example, a statute reserving the directorship of a state veterans bureau for military veterans would have little impact and thus be assigned one point.

Table 2
THE STRENGTH OF VETERANS' PREFERENCE LEGISLATION, INCOME RANK, POPULATION RANK, REGION, AND INTEREST GROUP LEVERAGE

States	Strength of veterans' preference legislation (a)	Income rank (b)	Population rank (b)	Region (c)	Interest group leverage (d)
Alabama	strong	46	21	3	high
Arizona	weak	26	32	4	high
Arkansas	weak	50	33	3	high
California	moderate	7		4	high
Colorado	moderate	12		4	low
Connecticut	strong	3	24	1	low
Delaware	weak	15	48	1	medium
Florida	moderate	14	8	3	high
Georgia	strong	37	14	3	high
Idaho	moderate	36	41	4	
Illinois	strong	8	5	2	medium
Indiana	strong	29	12	2	low
Iowa	strong	22	25	2	high
Kansas	moderate	20	31	2	medium
Kentucky	moderate	43	23	3	high
Louisiana	moderate	49	26	3	high
Maine	strong	44	38	1	high
Maryland	moderate	4	18	3	medium
Massachusetts	moderate	16	10	1	medium
Michigan	moderate	17	7	2	high
Minnesota	moderate	19	19	2	high
Mississippi	moderate	51	29	3	high
Missouri	moderate	33	15	2	low
Montana	strong	31	43	4	high
Nebraska	weak	27	35	2	high
Nevada	moderate	6	47	4	medium
New Hampshire	moderate	32	42	1	
New Jersey	strong	5	9	1	low
New Mexico	weak	42	37	4	high
New York	strong	11	2		medium
North Carolina	strong	41	11		high
North Dakota	moderate	9	46	2	
Ohio	strong	24	6	2	medium
Oklahoma	moderate	39	27	3	high
Oregon	moderate	21	30	4	high
Pennsylvania	moderate	30	4	1	medium
Rhode Island	moderate	25	39	1	low
South Carolina	moderate	45	26	3	high
South Dakota	strong	35	45	2	medium
Tennessee	moderate	42	17	3	high
Texas	strong	34	3	3	high
Utah	strong	38	36	4	medium
Vermont	weak	40	49	1	medium
Virginia	weak	18	13	3	medium
Washington	moderate	13	22	4	high
West Virginia	moderate	47	34	3	medium
Wisconsin	moderate	10	16	2	high
Wyoming	moderate	23	50	4	low

(a) The following criteria were employed to classify states as "weak," "moderate," or "strong": the allocation of appointment preference to nondisabled veterans or their relatives for selected jobs (1 point), the allocation of preference or bonus points to nondisabled veterans or their relatives for promotions in selected jobs (1 point), the allocation of appointment preference or bonus points to veterans and their relatives for jobs classified under state civil service (2 points), and the allocation of preference or bonus points for promotions to nondisabled veterans for civil service jobs (2 points). States receiving a cumulative score of two points or less were classified as "weak," those with three points were termed "moderate," and the "strong" states had more than three points.

(b) These figures were obtained from the *1977 City and County Data Book* (Washington, D.C.: Bureau of the Census).

(c) States were grouped into four regional categories: 1—Northeast, 2—Midwest, 3—South, 4—West. The classification scheme was adopted from studies conducted by the Center for Political Studies at the University of Michigan.

(d) The measure of interest group strength used here is actually a composite index based on three variables—strength of party competition, legislative cohesion, and the socioeconomic variables of the urban population (including per capita income and the percentage of the population employed in occupations other than agriculture, forestry, and fishing). This index was adopted from L. Harmon Zeigler and Hendrick van Dalen, "Interest Groups in the American States," in Herbert Jacob and Kenneth N. Vines, eds., *Politics in the American States*, 2nd edition (Boston, Mass.: Little, Brown & Co., 1971), p. 127.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

ALASKA DIVISION

April 1981

To: Members of the Senate State Affairs
From: Susan R. Clark, Legislative Chair, Alaska Division of the American Association of University Women
1109 C Street, Juneau, Alaska 99801 (586-6952)

Re: Veterans' Preference for State Employment (SB 193, SB 104)

I would like to begin first with an acknowledgement to Sen. Bradley, because I know that his hard work in this area has been done in good faith and out of a sincere concern for the welfare of those men and women who made personal sacrifices for the sake of our country's safety.

I also want to point out that I personally grew up in the military. My father, godfather, and father-in-law were all career officers in the armed services, and my husband and brother were both active in the military during the Vietnam war. I had planned at one time to make the Navy a career. I also wnat to point out that the new Alaska division president of A.A.U.W. is herself a vetran.

A.A.U.W. feels that we must bring to the attention of the legislature that while the goals of preference are legitimate, and while the current state statute may not have been enacted for the purpose of discriminating against women, the exclusionary impact upon women is so severe as to require the state to further its goals through a more limited form of preference.

Looking at the current law as too broad, please consider who is covered: a person with a minimum of 90 (181 is a change currently being proposed) days active service serving during World War I, World War II, and Vietnam or Korea who has been honorably discharged. According to the Veterans' Preference Act of 1944, such preference was designed to reward veterans for the sacrifice of military service, to ease the transition from military to civilian life, to encourage patriotic service, and to attract loyal and well disciplined people to civil service occupations. In terms of the last reason, it should be pointed out that preference itself has little if any relevance to actual job performance. The first two reasons for preference seem the most pertinent to Alaska - reward for sacrifice and ease of transition into civilian life. Both reasons are valid, but as lifetime preferences, they are subject to the objection that they give the veteran more than a square deal. Certainly, upon returning to civilian status, a veteran should have access to his or her job, and perhaps for 5 years or so after returning, preference could be given as reward and help for veterans, but there should be some sort of limit on the length of time one can reap rewards for what can be a brief and unhazardous term of service.

Because the extent to which the status of veteran is one that few women have been permitted to achieve, every hiring preference for veterans, however modest or extreme, must admit inherent gender-bias, and therefore legislated preference must be considered with due caution and careful consideration. The 5 points for veterans and 10 points for disabled veterans comes directly from the 1944 Federal Veterans' Preference Act. These points are added to a veteran's score after other writen tests are administered. In Alaska where mere hundreths of a single point can separate job applicants, the system is overly weighted, especially when compared with other handicapped, disadvantaged or suspect classes of people.

Conceding that the goal here is to benefit the veteran, there is no reason to absolve the legislature from awareness that the means chosen to achieve this goal reserves a major sector of public employment to an already established class, which, as a matter of historical fact, is already 80% male in catagories other than the clerical and para-professional jobs. The current point system and lifetime preference, only compounds and contributes to sex bias in all levels of state employment.

Women have been overtly excluded from the military, and not just by tradition and culture. During WW I for example "a variety of proposals were made to enlist women for work in the Army as doctors, telephone operators, and clerks, but all were rejected by the War Dept." Navy women did achieve military rank and status during this time, and were the first women to do so. While the Army Nurse Corps was the first official military unit for women, they were not granted full military rank until 1944 - forty-three years later. During the Second World War several temporary women's units were formed including WAAC (Women's Army Auxiliary Corps), WAVES (Women Accepted for Voluntary Emergency Service), and WASP (Women Airforce Pilots). These women, however, were in fact civilians and had no regular military status, and thus no veteran status. In fact, although the WASP personnel were filling some of the most hazardous of flying jobs, that of towing targets for air gunnery practice, and testing planes fresh out of repair depots, they were denied commissions based on the fact that "the authority of the act of September 1941, to make temporary appointments as officers in the U.S. Army 'from among qualified persons' refers to and contemplates men exclusively, and may not be regarded as authority for commissioning women as officers...." These women finally won their hard earned veterans' status in September 1976, but other women who had been active in the war have not.

Women's services were finally established on a permanent basis in 1948, however quotas were placed on the numbers that could enlist. Women were not to exceed 2% of the total enlisted strength, their eligibility requirements were more stringent than were those for men, and career opportunities were also limited. In addition women were involuntarily removed from service for pregnancy, parenthood, and even marriage. These strictures have carried on into the '60's and '70's. Not until 1967 was the 2% quota lifted, and the many restrictive policies concerning women's participation in the military were not modified or eliminated until the 1970's. Amazingly, or perhaps not so, once the barriers were down women joined in large numbers.

In just three years from 1973-1975 the percentage of enlisted women in the military had doubled.

There are two ways to ameliorate the effects of the veterans' preference on women and minorities. One is to modify the point system and to place a time limit on prefential access to jobs. The other solution is to look to expanding what is considered by the word veteran, and thereby include in this law others who have served their country every bit as well and as patriotically as have those on "military active duty". Other states include language that recognizes nurses and other women who were discharged and so served in any "corps or unit of the United States established for the purpose of enabling women to serve with, or as auxiliary to, the armed forces of the United States..." Language should also recognize those who underwent severe hardship because of the war. In WW II both the Aleut Americans and the Japanese Americans were uprooted and forced into relocation camps. We have never rewarded their sacrifices with jobs or appeasements of any sort. In expanding the concept of who is a veteran, we need also to look at the men and women who served in civil defense jobs, with the American Red Cross, the Civil air patrol, as war correspondants, and in the merchant marine (who incidentally were in the same waters as navy destroyers and also under attack, but receive no reward in terms of their patriotism, personal sacrifice and danger).

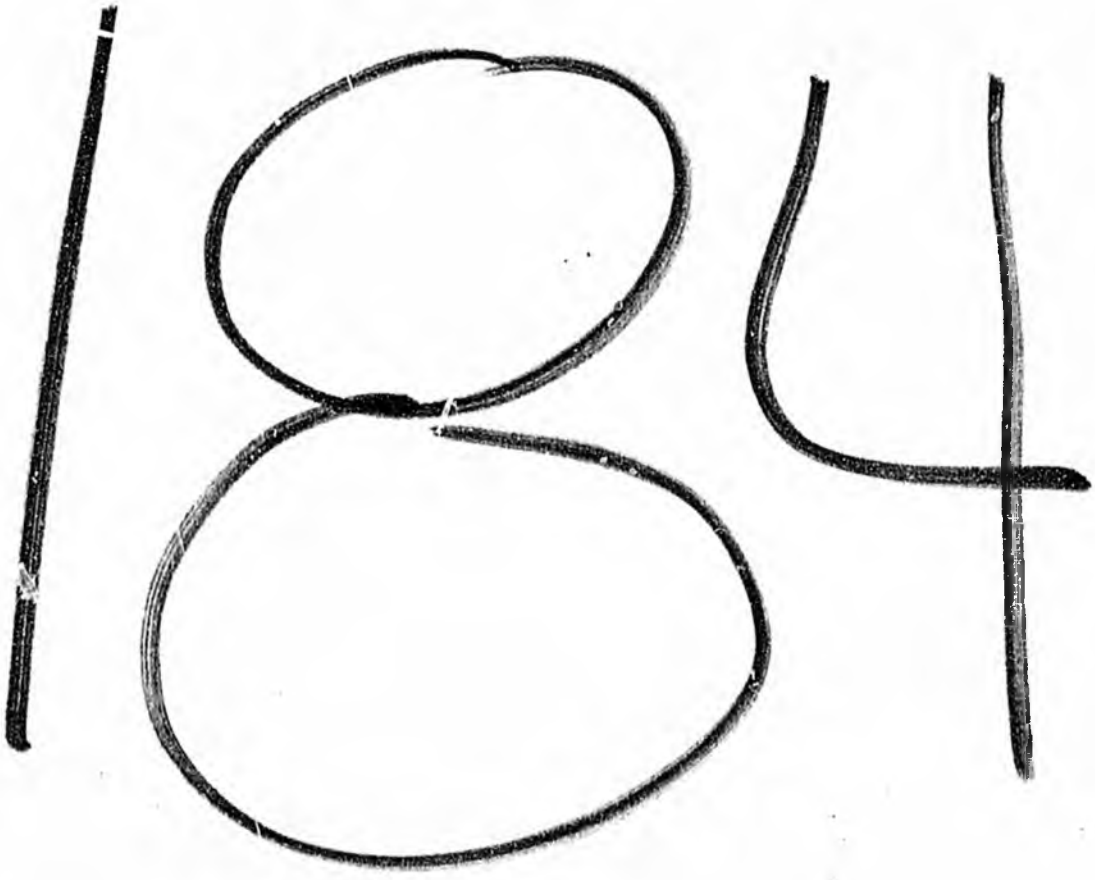
Looking again at the contributions of women to the war effort, we are but slightly aware of the sacrifices and contributions of over 2 million World War II women who took the places of the absent men working in the American war industries: in shipyards, aircraft plants, ammunition plants. The call to "inlist" in the factories was every bit as organized and strong as for men in the armed forces. Concern about dangerous working conditions and long hours took a back seat to America's call to keep up the production to supply the war with weapons, and ammunition. For the short-handed women in the farm communities, the call was to get out the crops to feed the troops. If personal sacrifice, patriotism and danger is a standard for preference, then these women deserve veterans' status every bit as much as the service veterans. One amazing statistic of which you may be unaware is that during the war period "more deaths occurred from industrial accidents than from combat." Where was and is their reward? For their commitment and patriotism, they received not preferred lifetime access to civil service jobs, but firings. No one helped them with their transition back into "civilian" jobs. For many minority women who were even then the major financial support for their families, this transition meant leaving highly skilled, well paying jobs to go back to the dead end drudgery and poverty wages of domestic work.

It is interesting to note that the Federal Veterans' Preference Act of 1944 included in its preference the wives of disabled service personnel and the unmarried widows of deceased ex-service personnel. We tend to look at patriotic service and personal sacrifice as being a military male perogative, but I feel we need to look hard at the patriotism and sacrifice of the service personnel spouses who held the country and family together as essentially single parents, frequently having to hold down another job to

support their families because the salary range for enlisted personnel in the military is so low that those families qualify for government assistance. Vietnam vets, in addition, currently have the highest divorce rate of any class of Americans. a rate that is generally high among all military personnel. This means, for example, that those women who held families together during the father's service, and who now must have full time employment to support themselves and their children (of whom women still usually have custody), who traditionally are not educated for well paying jobs, and who have traditionally been denied many levels of employment advancement, now in addition find that the men to whom they gave support are receiving preferential treatment in the jobs the women need to support their families.

As you can see, equitable expansion of the term veteran would be a formitable legislative task, but should be attempted so that families of veterans and those who served alongside veterans can be recognized. As it now stands, the Alaska statute exacts a substantial price from a group of individuals who have long been subject to employment discrimination, and who, because of circumstances totally beyond their control, have had little if any chance of becoming members of the preferred class. Admitting that any hiring preference for veterans does at this time have a severe impact on the public employment opportunities of women, we nevertheless recognize the sacrifice and hardship of military veterans must not be ignored. Through workable modifications in the law, we can strive together to discover solutions that recognize the needs, sacrifices, and contributions of both the military veteran groups and the groups of minorities and women which are so impacted by historical discrimination.


HB


1884

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REGULATIONS RELATING TO MOTOR VEHICLES

Prepared By: THE DIVISION OF MOTOR VEHICLES
ALASKA DEPARTMENT OF PUBLIC SAFETY

DECEMBER 1982

Published under authority of AS 28.05.031. Contains a reprint of the sections of Title 13, Alaska Administrative Code which pertain to motor vehicles. Also included are the sections of Title 17, Alaska Administrative Code which pertain to vehicle weight, load and dimension restrictions.

KENNETH Y. SIMPSON
REGISTRAR

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF MOTOR VEHICLES

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MOTOR VEHICLE LAWS

of

ALASKA

Statutes

1982 Edition

KENNETH Y. SIMPSON
REGISTRAR

Bill Walker
503-3877

← what is the discrepancy?

Titles ineffective?

Commissioner
- Written
- AG's Office
- return to division
- comment period

D

1) kit do ~~be~~ to be able to get reg.

Problem

28.10.201

initial
- off rd. vehicles not subject to registration or title.
- not sub. to reg. can't get title.
- Wally wanted trucks to be able to get title w/out reg.

DMV - gave title only to Mobile Homes.

AFTER court. Decision before legis. ; only Mobile home

(1) DMV WOULD continue issue title
(2) Suggested ~~DMV~~ BANKS get UCC lien at same time to protect themselves.

N.S. PROBLEM

(3) ~~WC~~
N.S. workers wanted to get title for equip. but not register equip.
1) couldn't get loan
2) insurance
DMV responded: register vehicles and then you can get title.

(4) Wally Kubley talked to Ken Simpson on problem.
Bill should take care of mobile homes and vehicles operated on private ~~prop~~ property.

(1)

Sec 2: (7) allow you to get title for it parked on house.

"Special mobile equipment"

1) no other option for titling except through DMV,

2) now banks file UCC new

-CIT says that now people would be able to get title free and clear, forcing us to go to court.

-what are you going to take to get title on vehicle.

Same as for other vehicles,

1) Manufacturers certificate of origin,

or, other state title.

or. AS 28.10.216 Post a bond.

AS 28.35.200 Def of vehicle.

NOTE:

When not subject to regulation, cannot get title.

well drilling equip - definition is nebulous!

it is not easy to decide if motor vehicle.

28.10.181 (B) 2(K)
occasional users of highways
$15. registration
what difference does it make to only have 1 vehicles to so register.

One option:
take special ~~mobile home~~ mobile equip. out of 184.
[(7) of section 2)
(place occasional use)

* PROBLEM: Well drillers not subject to registration now ~~so~~ can get title.

Before: well drillers didnt want to register vehicles. got themselves and "special mobile equipment (13. AAC 10.010 (52).) exempt from registration. Which meant they couldnt get title either. They wanted to be able to get title so—

Kris

PROPOSED

① Delete 3
special mobile equipment not subject to registration. cannot get title.

Only well boring equipment wants titles

② amend AS 28.10.181k
take out "Department may not issue more than 2 to any single person."

would affect [illegible] boring

③ department should amend 3 AAC 40.010.(52)) to delete well boring equipment.

a) back into the situation where not sub. to registration not subj. to title.

subject to title not registration
- Mobile Homes (12 in HB 184)
add - Not connected (11) (Kubley)
- special mobile equipment (3) [not subj. to tit. regist. nor could issue title]
- private property

process

1) Wally Kubley wanted to allow trucks to get title w/out registration.
2) d&r sion wanted to include private property & mobile homes.
3) don't know where "special mobile equipment." was added.

occas. use

N. Slope truckers

mobile homes

special mobile equip

(well boring) special equip 6/28/79

private property

Title only prior 1982

could get title only through affidavit

didn't care weren't treated as vehicles

could get title only if wanted (could be grouped w/ truckers or special mobile equip)

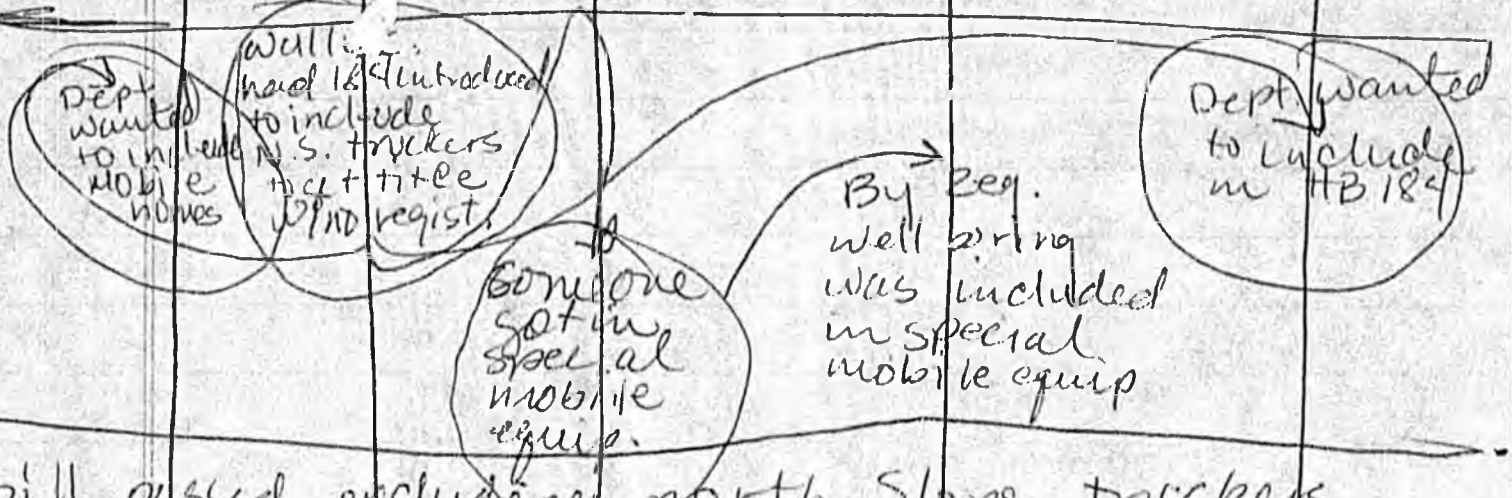
title only

Decision came out 6/18/82

7. Who was subject to registration & issuance & priority of title.

related 28.10.201 if not subject to registration, you shall not apply & dept. shall not issue title. (except sodiers & sailors)

Notification of Banks, Dept. will still issue mobile home title. Get VA loan. Will no longer issue title to other vehicles



Bill passed excluded north Slope truckers timber Haulers, affects all truckers w/in Port System

State happy got to title mobile Homes

Banks are very unhappy. Because

well borers are happy banks unhappy

State happy

Banks want special mobile equipment to to get title only. ~~by subject to~~ they want that if subject to registration then only then can you get title.

aproposed solution as outlined on page 3

amend AS 28.10.201(b) 1) mobile homes-title only
2) private property-title only
3) special mobile equipment MUST register to get title use.

4) well borers register to get title so anyone elsible can get occasional use.

talk to:

— Bill Granger,
— well drilling people (alaska truckers)

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

MEMORANDUM State of Alaska

TO: William R. Nix
Commissioner
Department of Public Safety

DATE: July 13, 1982

FILE NO:

TELEPHONE NO: 269-5551

FROM: Robert J. Rowan, Director
Division of Motor Vehicles
Department of Public Safety

SUBJECT: Vehicle Title, Mobile Homes

This division has always, since I've been with it, issued title for mobile homes as the lending institutions found this an easy method of securing their lien interest and for recording ownership. It didn't significantly effect our workload so we had no problem with this method. We recognized that a problem existed after AS 28 was changed by the 1978 Legislature. We attempted to address this by submitting a suggested change to the law. This was in SB-319 Section 10, however this bill never got out of committee.

After I read the attached recent supreme court decision, I met with Assistant's Attorney General Joseph Balfe and Diane Olson to discuss the ramifications of this opinion. They were unanimous in suggesting that we stop titling mobile homes immediately.

Because this action will undoubtably result in some adverse reaction from the lending institutions, I thought it best if you looked at the opinion and the proposed letter before I go any further.

Basically I would request your approval or disapproval of sending this letter at this time.

Attached is a draft of the proposed letter and a copy of the Alaska Supreme Court decision.

attachments (2)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

P. O. BOX 960
ANCHORAGE, ALASKA 99510

DRAFT

July 13, 1982

To: All Lending Institutions

A recent Alaska Supreme Court opinion, Leslie Newell v National Bank of Alaska, No. 2518, June 18, 1982, has brought to our attention a discrepancy under the most recent revised motor vehicle code, Alaska Title 28, which prohibits us from issuing title or registration to certain vehicles not normally moved upon the highways.

Of particular interest to you may be the prohibition of titling vehicles "driven or parked on private property". This would include mobile homes and similar vehicles.

It is the division's opinion that all such vehicles described above may not be titled and any such title issued since October , 1978, to a vehicle driven or parked on private property which attempted to perfect a security interest is ineffective under the Alaska Motor Vehicle Code.

The division has attempted unsuccessfully to correct the noted discrepancy by legislative action and will continue to do so during the Thirteenth Session of the Alaska State Legislature. In the meantime, commencing immediately the division will no longer issue title to vehicles driven or parked on private property and would suggest that you review your records for any such titled vehicles so that you may perfect your security interest under the Uniform Commercial Code or a similar method.

If you have questions concerning this matter do not hesitate to contact my office at your convenience.

Robert J. Rowan, Director

cobj

THE SUPREME COURT OF THE STATE OF ALASKA

LESLIE NEWELL,

Appellant,

v.

NATIONAL BANK OF ALASKA

Appellee.

File No. 5437

OPINION

[No. 2518 - June 18, 1982]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, Judge.

Appearances: M. Ashley Dickerson, Anchorage, for Appellant. Thomas B. Tatka, Anchorage, for Appellee.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Dimond, Senior Justice.* (Compton, Justice, not participating.)

DIMOND, Senior Justice.
BURKE, Chief Justice, concurring.

Appellant Leslie Newell brought this action against Ray and Samantha Charlton, the National Bank of

*Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the Constitution of Alaska, and Alaska R. Admin. P. 23(a).

Alaska (NBA), and one other party in connection with the default by the Charltons on a promissory note which they had executed in favor of Newell when they purchased his mobile home or house trailer[1] in 1978. The suit against the Charltons sought judgment against them on the note, and asserted a lien against the mobile home which, Newell contended, served as security on the promissory note. NBA was later joined as a party in the suit when Newell learned that NBA also claimed a security interest in the mobile home.

The sole issue between Newell and NBA concerns which party has the superior security interest. NBA sought to perfect its interest by filing the requisite documents with the Motor Vehicle Division, according to the certificate of title provisions of the Motor Vehicle Code. Newell sought to perfect his interest by filing the promissory note with the Anchorage district recorder several months later.[2] Each party claims that its method of filing its respective security interest was the exclusive method of perfecting a security interest in the mobile home. Summary judgment was granted in favor of NBA, and Newell has appealed.

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1. Newell, throughout his brief, refers to the mobile home as a trailer or house trailer.

2. Although the validity of Newell's security interest, a promissory note, was challenged by NBA in the superior court, this issue is not raised on appeal.

Perfection of security interests and priority of perfected interests in personal property and fixtures is generally governed by the provisions of the Uniform Commercial Code - Secured Transactions.[3] Under the UCC, the filing of a financing statement to perfect a security interest in property covered by the code would properly be made at the office of the recorder in the recording district of the debtor's residence, or in the case of fixtures, in the office where a mortgage on the real estate concerned would be filed or recorded. AS 45.09.401 (former AS 45.05.768).

There are certain exceptions to the filing provisions of the UCC. AS 45.09.302 (former AS 45.05.734) provides in part:

> (c) The filing provisions of AS 45.09.101-45.09.507 do not apply to a security interest in property subject to a statute
>
> . . . .
>
> (2) of this state which provides for central filing of, or which requires indication on a certificate of title of, the security interests in the property, unless the property is inventory held for sale by a dealer, which has not been previously sold at retail and for which no certificate of title has been issued.

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3. At the time of the transactions in question, UCC - Secured Transactions was set out in AS 45.05.690-.794. The article has since been renumbered and is now AS 45.09.-101-.307.

(d) A security interest in property covered by a statute described in (c) of this section can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate of a certificate of title by a public official.

The Alaska Motor Vehicle Act which was in effect prior to October 1978 former AS 28.10.010-.660, provided a comprehensive scheme for registration, certification of title and perfection of security interests in vehicles subject to the act.[4] The act provided that the owner of a vehicle subject to registration must apply for a certificate of registration and title to the vehicle. Former AS 28.10.-040, .050, .060, .270.

Liens or encumbrances on a vehicle which was registered or subject to registration were not valid against a subsequent encumbrancer without notice unless the filing requirements of the chapter were complied with. Former AS 28.10.470. The filing provisions required that instruments

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4. AS 28.10.010-.660 (short title: Alaska Motor Vehicle Act) was repealed and a new AS 28.10 was enacted by ch. 178, § 7, SLA 1978, which became effective in October 1978. In 1976, Newell purchased the mobile home, and a certificate of title was issued for it pursuant to the Alaska Motor Vehicle Act. The later sale of the mobile home to the Charltons, and the negotiation and filing of the two security agreements, took place between May and August 1978. Because these transactions took place before the effective date of the new legislation, the repealed provisions of AS 28.10 are applicable to this case. See AS 01.10.100(a).

creating or evidencing liens or encumbrances be filed with the Department of Public Safety. Former AS 28.10.480. A certificate of title was issued containing a statement of liens and encumbrances certified to the department as existing against the vehicle. Former AS 28.10.510. Filing was the exclusive method of giving constructive notice of liens or encumbrances on registered vehicles. Such liens or encumbrances were exempt from other provisions of law such as the UCC requiring or relating to the recording or filing of instruments creating or evidencing liens or encumbrances upon a registered vehicle. Former AS 28.10.530.

If the mobile home or house trailer was a vehicle subject to registration under the Alaska Motor Vehicle Act, filing with the department and notation of the security interest on the certificate of title was clearly the exclusive method of perfecting a security interest in the mobile home. Applicability of the registration requirements of the Alaska Motor Vehicle Act in this case turns on whether the mobile home or trailer was properly subject to registration when Newell purchased it. Once the vehicle was properly

registered, and a certificate of title issued, the act provided the method for transfer of title.[5]

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5. See former AS 28.10.350(a), .360 and .370. AS 28.10.350(a) required the owner of a registered vehicle to endorse an assignment of warranty of title on the certificate of title for the vehicle, including a statement of all liens and encumbrances, and deliver the certificate of title and registration to the transferee. The transferee then presented the endorsed certificate of title, the certificate of registration, and an application for registration and title to the department. The department then reregistered the vehicle and issued the transferee a new certificate of title. AS 28.10.360-.370. Transfer of title to a registered vehicle was generally not deemed complete absent compliance with these statutes. Harbor Ins. Co. v. U.S. Fidelity & Guar. Co., 350 F. Supp. 723 (D. Ala. 1972); Christian v. State, 513 P.2d 664 (Alaska 1973).

Newell and Charlton complied with these provisions when Newell sold the mobile home to Charlton; a new certificate of title was issued in Charlton's name.

When Newell purchased the mobile home in 1976, he filed with the Motor Vehicle Division of the Department of Public Safety an "Application for Certificate of Title and Motor Vehicle Registration". The record shows that he was issued a "Certificate of Title to a Motor Vehicle" covering the mobile home, but no registration certificate appears in the record on appeal. Similarly, when the Charltons purchased the mobile home in April 1978, they executed an "Application for Title and Registration", showing NBA as the lienholder. A new certificate of title was issued in the names of the Charltons, but again the record does not show that a registration certificate was issued.

The absence of registration certificates in the record does not necessarily mean that they were not issued. But even if this were the case, it is of no consequence. The important point is that the records of the Division of Motor Vehicles showed NBA as having a security interest in the mobile home. As we have mentioned, the filing of notice of the existence of such security interest was the exclusive method of giving constructive notice of the existence of such an encumbrance on the mobile home. Former AS 28.10.-530.

Newell[5] maintains that the trial court was incorrect in granting the bank's cross-motion for summary judgment because the mobile home was exempt from registration requirements under the statutes in effect prior to October 1978.[6]

Former AS 28.10.040, which was in effect at the time the various transactions in this case took place, described the vehicles subject to and exempt from registration under the Alaska Motor Vehicle Act. That section provided:

> Every motor vehicle, trailer, and semi-trailer when driven or moved or parked upon a highway or in a public parking place is subject to the registration provisions of this chapter except
>
> (1) a motor vehicle, trailer, or semi-trailer which is driven or moved upon a highway only to cross the highway from one property to another;
>
> (2) an implement of husbandry which is only incidentally operated or moved upon a highway;

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6. Newell mentions in his brief that he relied completely on the UCC in making his argument for summary judgment below. The sections of the UCC he refers to deal with Commercial Paper (AS 45.03.101-.805, former AS 45.03.-246-.402), and seller's rights upon buyer's failure to pay the price of goods as it becomes due. (AS 45.02.709, former AS 45.05.710).

These sections may have been applicable to a dispute between Newell and Charlton, but they do not apply to the dispute between Newell and NBA. Here, the validity of Newell's security interest is presumed. It is the method of perfecting interests, and the priority of competing interests, which are at issue.

(3) special mobile equipment;

(4) a vehicle for which permanent identification plates and an identification certificate have been issued under § 125 of this chapter, when the vehicle is being driven or moved upon a highway for the primary purpose of historical exhibition or for a similar purpose;

(5) a motor vehicle used in relation to fishing, mining, hunting or farming operations and which is used only occasionally upon a highway, and for which a license has been issued under § 127 of this chapter;

(6) snow vehicles, automobiles and motorcycles which are permitted to race under AS 05.35.

As applied to this case, the section required registration of a trailer[7] if it were to be moved upon a highway, unless movement of the trailer was within one of the exemptions set out in the section. Newell acknowledges that the mobile home was moved once, from the lot where it was purchased to the trailer space where he and his wife occupied it. The act did not provide for a temporary license or temporary

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7. Former AS 28.10.650(16) defined "trailer" as

> a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Appellant does not argue that the mobile home involved in this case was not a trailer as defined by this section. For the purposes of this case we therefore assume that to be true.

registration for transfer of a mobile home or trailer. Therefore, unless the movement of the mobile home or house trailer came within an exemption, it was a vehicle subject to registration when purchased by Newell.[8]

Subsection (1) of AS 28.10.040 exempted from registration requirements "a . . . trailer . . . driven or moved upon a highway only to cross the highway from one property to another." Newell contends that this subsection exempted a house trailer or mobile home without an engine which was moved upon a highway solely for delivery to a space in a trailer park. He apparently construes "cross the highway" to cover movement along the highway as long as it is only to move a vehicle such as a trailer from one property to another.

As to the proper interpretation of AS 28.10.-040(1), NBA maintains that the ordinary meaning of the

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8. The only alternatives to registration were identification plates and certificates for historic vehicles (former AS 28.10.125), and licenses for owners of vehicles used in relation to fishing, mining, hunting or farming operations which were used only occasionally upon the highway (former AS 28.10.127). Historic vehicles and the vehicles named in AS 28.10.127 were exempt from registration under AS 28.10.040(4) and (5). There were no provisions in the act for the transportation of vehicles under a dealer's plate.

word "cross" should be applied,[9] and that the section should be interpreted to cover only those vehicles which cross from one side of the road to the other. In support of this construction, NBA cites a California case which read a similar statute to mean "crossing the highway from one property to another on the opposite side of the roadway." Connolly v. State, 164 P.2d 60, 63 (Cal. App. 1945).

We believe this is a reasonable construction of the statute. The case and the annotation[10] which Newell cites in support of his interpretation of the subsection do not suggest a different result. Both deal with exceptions for farm vehicles which are moved temporarily along highways in the course of farming operations. There is no discussion

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9. See State, Dept. of Revenue v. Debenham Elec. Supply Co., 612 P.2d 1001, 1002 (Alaska 1980)(citation omitted): "Unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage." The definition of "cross" when used as a verb is "to intersect . . . to extend from one edge or corner to the other: traverse . . . to go from one side to the opposing side (cross a street, . . . to transfer (as from one side to another). . . ." Webster's Third New Int'l Dictionary 540-41 (1963). Issues of the definition of the word "cross" have been annotated at 10A West, Words and Phrases 228-30 (1968): "Cross means to pass or extend from one side to the other of, as to cross a stream. People v. Hawkins, 124 P.2d 691, 692 [(Cal. App. 1942)]. To cross means to pass from side to side of. . . . Atchison, T. & S.F. Ry. Co. v. Kansas City, M. & O. Ry. Co., 70 F. 939, 940 [(Kan. 1902)]."

10. Allred v. J. C. Engleman, Inc., 61 S.W.2d 75 (Tex. 1933); Annot., 91 A.L.R. 422 (1934).

in either the case or the annotation of an exemption similar to the one in subsection (1). Nor is there a need to make comparison of or distinction between crossing and moving along the highway.

The trial court concluded that former AS 28.10.-040(1) did not exempt the mobile home from registration. The court's order to this effect stated in part:

> The issue presented for consideration is thus a purely legal one. Does the phrase "cross the highway from one property to another" apply to a mobile home purchased for use as a residence with the intent to maintain it in a mobile home park where the mobile home is transported on the highway from its place of acquisition to one mobile home park and thereafter to another? Defendant Bank suggests that the exemption is limited to movement of a trailer from one piece of property across the road to another and does not exempt vehicles that on rare occasions are moved along the highway from one locale to another.

The court concluded that NBA's interpretation of the exemption was correct, and awarded summary judgment in its favor.

Newell has interpreted the quoted language to mean that the trial court based its decision on the assumption that the mobile home had been moved twice.[11] He concedes

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11. The trial court apparently concluded that the mobile home had been moved twice because the certificate of title issued to Newell listed his address as 4110 DeBarr Road, and the location of the mobile home at the time of sale to Charlton was shown as 7800 DeBarr Road. Newell claimed that the mobile home had been moved from the dealer's to 7800 DeBarr Road, and that 4110 DeBarr Road was only his mailing address.

that the mobile home was moved once, from the dealer's lot to the mobile home park, but denies that it was moved again. He contends that the court improperly granted summary judgment to the bank because of this dispute as to the number of times the mobile home was moved.

The trial court's decision was not based on the number of times the mobile home was moved. It was based on the conclusion that the exemption for vehicles which "cross the highway" applied only to vehicles which crossed from one side of the road to the other. Therefore, there was no genuine issue of fact concerning the number of times the mobile home was moved.

The trial court reasonably concluded that the mobile home was a vehicle subject to registration under the Alaska Motor Vehicle Act. Therefore, the filing and notation on certificate of title provisions of the act were the exclusive method of perfecting a security interest in the mobile home. NBA followed these procedures. Newell did not. The trial court was correct in granting summary judgment in favor of NBA.

The judgment is AFFIRMED.

STATE OF ALASKA
FISCAL NOTE

Revision Date 5-9- , 1983

I. REQUEST

Bill/Resolution No.: CS HB 184 (State Affairs)
Title: An Act relating to issuing a cert.
Sponsor: Bussell
Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Prop. Pr
BRU, Program of Subprogram(s) Affected: Driver/Vehicle Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	
PART-TIME						
TEMPORARY						

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

Zero fiscal impact on Division of Motor Vehicles.

IV. ANALYSIS: Attach a separate page for any Analysis (See attached comment)

Prepared: Bill Brown Phone: 465-4335
Division: Motor Vehicles Date: 3-17-83

Approved by Commissioner: Date: 3/18/83
Department: Public Safety

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

3/8/83

FISCAL NOTE
CS HB 184 (State Affairs)

COMMENT:

Prefer Section 1 indicate: "(12) a mobile home as defined by regulation.", or, to be more specific: "(12) a mobile home as defined in 13 AAC 40. 010(27).".

Reason: We are not sure the definition contained in the statute, specifically AS 45.30.100, will allow issuance of titles for trailers used for plan reviews, equipment storage, etc., at job sites. The regulation definition is more specific. Banks and construction company owners do want the Division of Motor Vehicles to be able to title this type equipment.

13 AAC 40.0'0(28) states: ""mobile home" means a trailer in excess of either 28 feet in length or eight feet in width that is designed, constructed, and equipped for use as a dwelling or as a place of business, storage or other off-highway purpose".

Original sponsor: Bussell

IN THE HOUSE BY THE RULES COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 184 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to issuing a certificate of title for vehicles exempt from registration and exempting mobile homes from registration."

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

* Section 1. AS 28.10.011 is amended by adding a new paragraph to read:

(12) a mobile home as defined by regulation.

* Sec. 2. AS 28.10.201(b) is amended to read:

(b) The owner of a vehicle described in AS 28.10.011 as being exempt from registration and the owner of a snowmobile or off-highway vehicle may not apply for, nor may the department issue, a certificate of title for such a vehicle. However, the department may issue a certificate of title to the owner of a vehicle exempt from registration under AS 28.10.011(3), (7) or (12) only [AS 28.10.011(6),] upon application by that owner.

Special mobile equip.

STATE OF ALASKA
DIVISION OF MOTOR VEHICLES
FISCAL SERVICES
ANCHORAGE, ALASKA

YEAR	PASSENGER	TRUCK	OTHER	TRAILER	COMMERCIAL TRAILER	MOTOR-CYCLE	SNOW MACHINES	TOTAL
1947	7,870	4,209	--	--	--	82	--	12,161
1948	10,094	5,636	--	--	--	131	--	15,861
1949	14,087	7,578	--	--	--	164	--	21,829
1950	17,945	8,707	--	--	--	213	--	26,865
1951	25,979	10,638	157	--	--	260	--	37,034
1952	30,460	13,818	862	--	--	274	--	45,414
1953	35,252	15,529	882	--	--	309	--	51,972
1954	38,511	16,674	877	--	--	356	--	56,418
1955	41,847	16,528	823	--	--	415	--	59,613
1956	45,661	16,554	810	--	--	544	--	63,569
1957	49,115	17,233	800	--	--	653	--	67,801
1958	47,642	16,760	630	--	--	724	--	65,756
1959	51,102	18,804	602	--	--	837	--	71,345
1960	68,452	11,905	659	--	--	908	--	81,924
1961	71,965	13,012	633	--	--	1,030	--	86,640
1962	58,231	20,449	2,369	5,584	--	1,051	--	87,684
1963	59,569	22,112	2,452	6,032	--	1,293	--	91,458
1964	63,543	25,212	2,557	6,588	--	2,213	--	100,113
1965	66,997	28,341	2,585	7,412	--	3,326	--	108,661
1966	72,655	27,448	3,178	8,701	1,916	4,319	--	118,217
1967	75,108	28,798	3,379	9,846	1,986	4,770	--	123,887
1968	78,556	30,982	4,182	11,755	2,219	5,607	1,820	135,121
1969	89,205	35,437	3,896	12,322	2,613	6,376	6,362	156,211
1970	93,563	40,978	6,323	16,875	3,375	9,310	5,412	175,836
1971	99,902	45,367	6,835	18,602	3,186	10,513	5,591	189,996
1972	103,269	48,629	5,637	19,929	3,640	10,684	5,329	197,117
1973	111,476	53,029	4,379	23,073	4,006	11,428	5,194	212,585
1974	133,608	66,359	7,918	25,918	5,621	12,981	4,751	257,156
1975	141,019	77,340	4,581	25,733	7,804	12,809	4,469	273,755
1976	153,143	86,437	6,713	27,593	8,165	13,322	--	295,373
1977	171,058	97,545	1,091	30,392	11,510	14,279	3,797	329,672
1978	168,738	94,576	868	30,606	7,154	12,736	3,539	318,217
1979	159,918	91,655	1,134	27,842	7,091	9,842	4,618	302,100
1980	161,936	85,529	1,138	27,334	6,994	8,888	1,102	292,921
1981	185,942	102,254	1,298	30,237	9,178	10,706	2,522	341,637
1982	217,719	126,212	1,357	37,999	10,079	14,504	--	407,870

Revenue Activity - Comparative Analysis

FY 82/83/84

	Monthly						Year-To-Date				
	FY82	FY83	% Diff (82/83)	FY84	% Diff (83/84)		FY82	FY83	% Diff (82/83)	FY84	% Diff (83/84)
July	1291205.25	1596304.75	23.6	1573707.64			1291205.25	1596304.75	23.6	1573707.64	
Aug.	1412148.52	1795707.20	28.1	2,002,396.86			2693353.77	3392,211.95	25.9	3576104.50	
Sept	1161475.52	1402 51457	20.8	1774,119.00			3854829.29	4794726.52	24.4	5,350,223.50	
Oct	1557136.20	1454.575.02	(6.6)				5411.765.49	6249301.54	15.5		
Nov	1550373.29	1864218.55	20.2				6962,338.78	8113520.09	16.5		
Dec	1728033.04	1935477.61	12.0				8690371.82	10048997.70	15.6		
Jan	1410986.22	1595927.66	13.1				10101358.04	11644925.36	15.3		
Feb	1182353.14	1238075.84	4.7				11283711.18	12883,021.20	14.2		
Mar	1592049.33	1809085.84	13.6				12875.75151	14692107.04	14.1		
Apr	1667006.40	2032997.80	22.0				14542,757.1	16725704.84	15.0		
May	1715473.16	1826776.00	6.5				16258231.07	18552,080.84	14.1		
June	1845071.13	2434658.99	32.0				18103302.20	20986,73983	15.9		
Totals	18103302.20	20986.73983	15.9								

ALASKA VEH .E REGISTRATION
CALENDAR YEAR 1982

LOCATION	PASSENGER	MOTOR CYCLE	COMM. TRAILER	TRAILER	COMM. TRUCK	PICKUP	BUS	TOTAL	% OF TOTAL
	7	5	3	6	5	6	2	7	
Anchorage	107,263	5,509	5,066	15,315	8,639	38,201	389	180,382	44.23
Fairbanks	33,863	2,870	1,258	6,295	2,900	19,050	178	66,414	16.28
Palmer	10,494	752	227	2,594	803	6,625	20	21,515	5.27
Juneau	11,642	659	125	1,688	592	5,239	42	19,987	4.90
Eagle River	8,157	558	130	2,029	376	4,126	86	15,462	3.79
Ketchikan	6,156	520	136	1,082	500	3,548	19	11,961	2.93
Kenai	5,115	310	274	1,472	410	3,227	1	10,809	2.65
Soldotna	4,448	322	188	1,573	409	3,076	18	10,034	2.46
Homer	3,531	301	95	1,155	267	2,954	7	8,310	2.04
Kodiak	3,474	295	129	467	519	2,589	10	7,483	1.83
Sitka	2,634	330	26	223	189	1,533	29	4,964	1.22
Delta Junction	1,290	122	69	478	250	1,136	29	3,374	.83
Valdez	1,504	156	43	421	133	1,030	18	3,305	.81
Seward	1,442	116	34	317	98	1,041	1	3,049	.75
Glennallen	1,027	98	46	359	151	907	17	2,605	.64
Cordova	874	93	22	192	104	981	4	2,270	.56
Petersburg	932	116	10	83	73	969	6	2,189	.53
Trapper Creek	800	69	14	256	59	672	21	1,891	.46
Haines	709	98	28	229	72	706	3	1,845	.45
Bethel	777	127	5	28	111	771	5	1,824	.45
Wrangell	701	67	10	79	83	671	9	1,620	.40
Nome	563	134	23	47	160	650	9	1,586	.39
Tok	508	63	18	187	53	531	8	1,368	.34
Dillingham	433	100	20	26	79	517	9	1,184	.29
Nenana	337	42	21	101	44	326	6	877	.22
Skagway	354	55	7	49	25	329	7	826	.20
Unalaska	222	73	3	10	79	258	3	648	.16
Kotzebue	183	34	6	22	45	242	2	534	.13
Naknek	127	12	5	11	35	204	-0-	394	.10
Yakutat	156	3	0	9	34	181	2	391	.10
Barrow	165	10	1	8	27	130	-0-	341	.08
Galena	42	-0-	1	2	5	38	-0-	88	.02
Other	7,796	490	2,033	1,192	2,037	4,393	399	18,340	4.49
TOTAL	217,719	14,504	10,079	37,999	19,361	106,851	1,357	407,870	100%

These statistics are compiled by zip code location.

Statewide Title Activity

	FY78	FY79	FY80	FY81	FY82	FY83	FY84	FY85	FY86	FY87	
July	15914	13,044	12527	13358	15200	16149	16984				
Aug	21,193	15,021	13 768	12968	14305	16891	19057				
Sept	18,880	11,993	11056	12436	14783	14758	16811				
Oct	21,233	10,641	11720	13190	13259	14,284					
Nov	17,793	8827	8696	9391	10840	12,573					
Dec	13,578	8,120	6310	8071	10292	11599					
Jan	8725	8223	7918	9644	9612	11903					
Feb	8107	6842	8203	8986	9862	11,425					
March	12 651	10074	10119	12393	13704	15 462					
Apr	13461	11,754	13076	15120	15905	16 868					
May	15,968	15,641	13,277	15159	16386	18092					
June	17,047	14,852	13030	16638	17657	19906					
Total	184570	135032	129723	147364	161745	179991					

Statewide Registration Activity

	FY78	FY79	FY80	FY81	FY82	FY83	FY84	FY85	FY86	FY87	
July	23171	14469	27191	27783	31150	36229	32553				
Aug	26363	12976	24887	27511	25441	36840	41709				
Sept	35641	10062	21544	26478	24786	28480	34739				
Oct	39843	6111	20657	26059	29670	29088					
Nov	20886	4992	17896	18038	25571	31456					
Dec	24285	4461	21695	22946	19892	27663					
Jan	12292	13275	19795	23362	22013	25312					
Feb	14820	24058	23897	22713	23651	25194					
Mar	66338	53661	28009	32532	33794	37222					
Apr	49236	41621	34457	38911	35634	39471					
May	64532	49678	32225	36721	35926	41656					
June	57936	65338	32730	36337	38067	49663					
Total	435343	305,702	304983	339371	345,515	408274					

MEMORANDUM 5279 State of Alaska 1418

TO: William R. Nix
Commissioner
Department of Public Safety

DATE: July 13, 1982

FILE NO:

TELEPHONE NO: 269-5551

FROM: Robert J. Rowan, Director
Division of Motor Vehicles
Department of Public Safety

SUBJECT: Vehicle Title, Mobile Homes

269-5551

This division has always, since I've been with it, issued title for mobile homes as the lending institutions found this an easy method of securing their lien interest and for recording ownership. It didn't significantly effect our workload so we had no problem with this method. We recognized that a problem existed after AS 28 was changed by the 1978 Legislature. We attempted to address this by submitting a suggested change to the law. This was in SB-319 Section 10, however this bill never got out of committee.

After I read the attached recent supreme court decision, I met with Assistant's Attorney General Joseph Balfe and Diane Olson to discuss the ramifications of this opinion. They were unanimous in suggesting that we stop titling mobile homes immediately.

Because this action will undoubtably result in some adverse reaction from the lending institutions, I thought it best if you looked at the opinion and the proposed letter before I go any further.

Basically I would request your approval or disapproval of sending this letter at this time.

Attached is a draft of the proposed letter and a copy of the Alaska Supreme Court decision.

attachments (2)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

P. O. BOX 960
ANCHORAGE, ALASKA 99510

DRAFT

July 13, 1982

To: All Lending Institutions

A recent Alaska Supreme Court opinion, Leslie Newell v National Bank of Alaska, No. 2518, June 18, 1982, has brought to our attention a discrepancy under the most recent revised motor vehicle code, Alaska Title 28, which prohibits us from issuing title or registration to certain vehicles not normally moved upon the highways.

Of particular interest to you may be the prohibition of titling vehicles "driven or parked on private property". This would include mobile homes and similar vehicles.

It is the division's opinion that all such vehicles described above may not be titled and any such title issued since October , 1978, to a vehicle driven or parked on private property which attempted to perfect a security interest is ineffective under the Alaska Motor Vehicle Code.

The division has attempted unsuccessfully to correct the noted discrepancy by legislative action and will continue to do so during the Thirteenth Session of the Alaska State Legislature. In the meantime, commencing immediately the division will no longer issue title to vehicles driven or parked on private property and would suggest that you review your records for any such titled vehicles so that you may perfect your security interest under the Uniform Commercial Code or a similar method.

If you have questions concerning this matter do not hesitate to contact my office at your convenience.

Robert J. Rowan, Director

Northern Oil Service, Inc. v. Coff
HB 154

THE SUPREME COURT OF THE STATE OF ALASKA

LESLIE NEWELL, Appellant, v. NATIONAL BANK OF ALASKA Appellee.	File No. 5437
	O P I N I O N
	[No. 2518 - June 18, 1982]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, James K. Singleton, Judge.

Appearances: M. Ashley Dickerson, Anchorage, for Appellant. Thomas R. Tatka, Anchorage, for Appellee.

Before: Rabinowitz, Chief Justice, Connor, Burke and Matthews, Justices, and Dimond, Senior Justice.* (Compton, Justice, not participating.)

DIMOND, Senior Justice.
BURKE, Chief Justice, concurring.

Appellant Leslie Newell brought this action against Ray and Samantha Charlton, the National Bank of

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*Dimond, Senior Justice, sitting by assignment made pursuant to article IV, section 11 of the Constitution of Alaska, and Alaska R. Admin. P. 23(a).

Alaska (NBA), and one other party in connection with the default by the Charltons on a promissory note which they had executed in favor of Newell when they purchased his mobile home or house trailer[1] in 1978. The suit against the Charltons sought judgment against them on the note, and asserted a lien against the mobile home which, Newell contended, served as security on the promissory note. NBA was later joined as a party in the suit when Newell learned that NBA also claimed a security interest in the mobile home.

The sole issue between Newell and NBA concerns which party has the superior security interest. NBA sought to perfect its interest by filing the requisite documents with the Motor Vehicle Division, according to the certificate of title provisions of the Motor Vehicle Code. Newell sought to perfect his interest by filing the promissory note with the Anchorage district recorder several months later.[2] Each party claims that its method of filing its respective security interest was the exclusive method of perfecting a security interest in the mobile home. Summary judgment was granted in favor of NBA, and Newell has appealed.

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1. Newell, throughout his brief, refers to the mobile home as a trailer or house trailer.

2. Although the validity of Newell's security interest, a promissory note, was challenged by NBA in the superior court, this issue is not raised on appeal.

Perfection of security interests and priority of perfected interests in personal property and fixtures is generally governed by the provisions of the Uniform Commercial Code - Secured Transactions.[3] Under the UCC, the filing of a financing statement to perfect a security interest in property covered by the code would properly be made at the office of the recorder in the recording district of the debtor's residence, or in the case of fixtures, in the office where a mortgage on the real estate concerned would be filed or recorded. AS 45.09.401 (former AS 45.05.768).

There are certain exceptions to the filing provisions of the UCC. AS 45.09.302 (former AS 45.05.734) provides in part:

> (c) The filing provisions of AS 45.09.101-45.09.507 do not apply to a security interest in property subject to a statute
>
> . . . .
>
> (2) of this state which provides for central filing of, or which requires indication on a certificate of title of, the security interests in the property, unless the property is inventory held for sale by a dealer, which has not been previously sold at retail and for which no certificate of title has been issued.

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3. At the time of the transactions in question, UCC - Secured Transactions was set out in AS 45.05.690-.794. The article has since been renumbered and is now AS 45.09.-101-.507.

> (d) A security interest in property covered by a statute described in (c) of this section can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate of a certificate of title by a public official.

The Alaska Motor Vehicle Act which was in effect prior to October 1978 former AS 28.10.010-.660, provided a comprehensive scheme for registration, certification of title and perfection of security interests in vehicles subject to the act.[4] The act provided that the owner of a vehicle subject to registration must apply for a certificate of registration and title to the vehicle. Former AS 28.10.-040, .050, .060, .270.

Liens or encumbrances on a vehicle which was registered or subject to registration were not valid against a subsequent encumbrancer without notice unless the filing requirements of the chapter were complied with. Former AS 28.10.470. The filing provisions required that instruments

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4. AS 28.10.010-.660 (short title: Alaska Motor Vehicle Act) was repealed and a new AS 28.10 was enacted by ch. 178, § 7, SLA 1978, which became effective in October 1978. In 1976, Newell purchased the mobile home, and a certificate of title was issued for it pursuant to the Alaska Motor Vehicle Act. The later sale of the mobile home to the Charltons, and the negotiation and filing of the two security agreements, took place between May and August 1978. Because these transactions took place before the effective date of the new legislation, the repealed provisions of AS 28.10 are applicable to this case. See AS 01.10.100(a).

creating or evidencing liens or encumbrances be filed with the Department of Public Safety. Former AS 28.10.480. A certificate of title was issued containing a statement of liens and encumbrances certified to the department as existing against the vehicle. Former AS 28.10.510. Filing was the exclusive method of giving constructive notice of liens or encumbrances on registered vehicles. Such liens or encumbrances were exempt from other provisions of law such as the UCC requiring or relating to the recording or filing of instruments creating or evidencing liens or encumbrances upon a registered vehicle. Former AS 28.10.530.

If the mobile home or house trailer was a vehicle subject to registration under the Alaska Motor Vehicle Act, filing with the department and notation of the security interest on the certificate of title was clearly the exclusive method of perfecting a security interest in the mobile home. Applicability of the registration requirements of the Alaska Motor Vehicle Act in this case turns on whether the mobile home or trailer was properly subject to registration when Newell purchased it. Once the vehicle was properly

registered, and a certificate of title issued, the act provided the method for transfer of title.[5]

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5. See former AS 28.10.350(a), .360 and .370. AS 28.10.350(a) required the owner of a registered vehicle to endorse an assignment of warranty of title on the certificate of title for the vehicle, including a statement of all liens and encumbrances, and deliver the certificate of title and registration to the transferee. The transferee then presented the endorsed certificate of title, the certificate of registration, and an application for registration and title to the department. The department then reregistered the vehicle and issued the transferee a new certificate of title. AS 28.10.360-.370. Transfer of title to a registered vehicle was generally not deemed complete absent compliance with these statutes. Harbor Ins. Co. v. U.S. Fidelity & Guar. Co., 350 F. Supp. 723 (D. Alaska 1972); Christian v. State, 513 P.2d 664 (Alaska 1973).

Newell and Charlton complied with these provisions when Newell sold the mobile home to Charlton; a new certificate of title was issued in Charlton's name.

When Newell purchased the mobile home in 1976, he filed with the Motor Vehicle Division of the Department of Public Safety an "Application for Certificate of Title and Motor Vehicle Registration". The record shows that he was issued a "Certificate of Title to a Motor Vehicle" covering the mobile home, but no registration certificate appears in the record on appeal. Similarly, when the Charltons purchased the mobile home in April 1978, they executed an "Application for Title and Registration", showing NBA as the lienholder. A new certificate of title was issued in the names of the Charltons, but again the record does not show that a registration certificate was issued.

The absence of registration certificates in the record does not necessarily mean that they were not issued. But even if this were the case, it is of no consequence. The important point is that the records of the Division of Motor Vehicles showed NBA as having a security interest in the mobile home. As we have mentioned, the filing of notice of the existence of such security interest was the exclusive method of giving constructive notice of the existence of such an encumbrance on the mobile home. Former AS 28.10.-530.

Newell maintains that the trial court was incorrect in granting the bank's cross-motion for summary judgment because the mobile home was exempt from registration requirements under the statutes in effect prior to October 1978.[6]

Former AS 28.10.040, which was in effect at the time the various transactions in this case took place, described the vehicles subject to and exempt from registration under the Alaska Motor Vehicle Act. That section provided:

> Every motor vehicle, trailer, and semi-trailer when driven or moved or parked upon a highway or in a public parking place is subject to the registration provisions of this chapter except
>
> (1) a motor vehicle, trailer, or semi-trailer which is driven or moved upon a highway only to cross the highway from one property to another;
>
> (2) an implement of husbandry which is only incidentally operated or moved upon a highway;

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6. Newell mentions in his brief that he relied completely on the UCC in making his argument for summary judgment below. The sections of the UCC he refers to deal with Commercial Paper (AS 45.03.101-.805, former AS 45.05.-246-.402), and seller's rights upon buyer's failure to pay the price of goods as it becomes due. (AS 45.02.709, former AS 45.05.210).

These sections may have been applicable to a dispute between Newell and Charlton, but they do not apply to the dispute between Newell and NBA. Here, the validity of Newell's security interest is presumed. It is the method of perfecting interests, and the priority of competing interests, which are at issue.

(3) special mobile equipment;

(4) a vehicle for which permanent identification plates and an identification certificate have been issued under § 125 of this chapter, when the vehicle is being driven or moved upon a highway for the primary purpose of historical exhibition or for a similar purpose;

(5) a motor vehicle used in relation to fishing, mining, hunting or farming operations and which is used only occasionally upon a highway, and for which a license has been issued under § 127 of this chapter;

(6) snow vehicles, automobiles and motorcycles which are permitted to race under AS 05.35.

As applied to this case, the section required registration of a trailer[7] if it were to be moved upon a highway, unless movement of the trailer was within one of the exemptions set out in the section. Newell acknowledges that the mobile home was moved once, from the lot where it was purchased to the trailer space where he and his wife occupied it. The act did not provide for a temporary license or temporary

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7. Former AS 28.10.650(16) defined "trailer" as

a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Appellant does not argue that the mobile home involved in this case was not a trailer as defined by this section. For the purposes of this case we therefore assume that to be true.

registration for transfer of a mobile home or trailer. Therefore, unless the movement of the mobile home or house trailer came within an exemption, it was a vehicle subject to registration when purchased by Newell.[8]

Subsection (1) of AS 28.10.040 exempted from registration requirements "a . . . trailer . . . driven or moved upon a highway only to cross the highway from one property to another." Newell contends that this subsection exempted a house trailer or mobile home without an engine which was moved upon a highway solely for delivery to a space in a trailer park. He apparently construes "cross the highway" to cover movement along the highway as long as it is only to move a vehicle such as a trailer from one property to another.

As to the proper interpretation of AS 28.10.-040(1), NBA maintains that the ordinary meaning of the

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8. The only alternatives to registration were identification plates and certificates for historic vehicles (former AS 28.10.125), and licenses for owners of vehicles used in relation to fishing, mining, hunting or farming operations which were used only occasionally upon the highway (former AS 28.10.127). Historic vehicles and the vehicles named in AS 28.10.127 were exempt from registration under AS 28.10.040(4) and (5). There were no provisions in the act for the transportation of vehicles under a dealer's plate.

word "cross" should be applied,[9] and that the section should be interpreted to cover only those vehicles which cross from one side of the road to the other. In support of this construction, NBA cites a California case which read a similar statute to mean "crossing the highway from one property to another on the opposite side of the roadway." Connolly v. State, 164 P.2d 60, 63 (Cal. App. 1945).

We believe this is a reasonable construction of the statute. The case and the annotation[10] which Newell cites in support of his interpretation of the subsection do not suggest a different result. Both deal with exceptions for farm vehicles which are moved temporarily along highways in the course of farming operations. There is no discussion

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9. See State, Dept. of Revenue v. Debenham Elec. Supply Co., 612 P.2d 1001, 1002 (Alaska 1980)(citation omitted): "Unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage." The definition of "cross" when used as a verb is "to intersect . . . to extend from one edge or corner to the other: traverse . . . to go from one side to the opposing side (cross a street) . . . to transfer (as from one side to another). . .." Webster's Third New Int'l Dictionary 540-41 (1963). Issues of the definition of the word "cross" have been annotated at 10A West, Words and Phrases 228-30 (1968): "Cross means to pass or extend from one side to the other of, as to cross a stream. People v. Hawkins, 124 P.2d 691, 692 [(Cal. App. 1942)]. To cross means to pass from side to side of. . . . Atchison, T. & S.F. Ry. Co. v. Kansas City, M. & O. Ry. Co., 70 P. 939, 940 [(Kan. 1902)]."

10. Allred v. J. C. Engleman, Inc., 61 S.W.2d 75 (Tex. 1933); Annot., 91 A.L.R. 422 (1934).

that the mobile home was moved once, from the dealer's lot to the mobile home park, but denies that it was moved again. He contends that the court improperly granted summary judgment to the bank because of this dispute as to the number of times the mobile home was moved.

The trial court's decision was not based on the number of times the mobile home was moved. It was based on the conclusion that the exemption for vehicles which "cross the highway" applied only to vehicles which crossed from one side of the road to the other. Therefore, there was no genuine issue of fact concerning the number of times the mobile home was moved.

The trial court reasonably concluded that the mobile home was a vehicle subject to registration under the Alaska Motor Vehicle Act. Therefore, the filing and notation on certificate of title provisions of the act were the exclusive method of perfecting a security interest in the mobile home. NBA followed these procedures. Newell did not. The trial court was correct in granting summary judgment in favor of NBA.

The judgment is AFFIRMED.

in either the case or the annotation of an exemption similar to the one in subsection (1). Nor is there a need to make comparison of or distinction between crossing and moving along the highway.

The trial court concluded that former AS 28.10.-040(1) did not exempt the mobile home from registration. The court's order to this effect stated in part:

> The issue presented for consideration is thus a purely legal one. Does the phrase "cross the highway from one property to another" apply to a mobile home purchased for use as a residence with the intent to maintain it in a mobile home park where the mobile home is transported on the highway from its place of acquisition to one mobile home park and thereafter to another? Defendant Bank suggests that the exemption is limited to movement of a trailer from one piece of property across the road to another and does not exempt vehicles that on rare occasions are moved along the highway from one locale to another.

The court concluded that NBA's interpretation of the exemption was correct, and awarded summary judgment in its favor.

Newell has interpreted the quoted language to mean that the trial court based its decision on the assumption that the mobile home had been moved twice.[11] He concedes

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11. The trial court apparently concluded that the mobile home had been moved twice because the certificate of title issued to Newell listed his address as 4110 DeBarr Road, and the location of the mobile home at the time of sale to Charlton was shown as 7800 DeBarr Road. Newell claimed that the mobile home had been moved from the dealer's to 7800 DeBarr Road, and that 4110 DeBarr Road was only his mailing address.

that the mobile home was moved once, from the dealer's lot to the mobile home park, but denies that it was moved again. He contends that the court improperly granted summary judgment to the bank because of this dispute as to the number of times the mobile home was moved.

The trial court's decision was not based on the number of times the mobile home was moved. It was based on the conclusion that the exemption for vehicles which "cross the highway" applied only to vehicles which crossed from one side of the road to the other. Therefore, there was no genuine issue of fact concerning the number of times the mobile home was moved.

The trial court reasonably concluded that the mobile home was a vehicle subject to registration under the Alaska Motor Vehicle Act. Therefore, the filing and notation on certificate of title provisions of the act were the exclusive method of perfecting a security interest in the mobile home. NBA followed these procedures. Newell did not. The trial court was correct in granting summary judgment in favor of NBA.

The judgment is AFFIRMED.