ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8461 SENATE STATE AFFAIRS

PETITION

(12)

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1		Cathy S Boitz	PO Box 81175241 Wasilla AK 99687			X	
2		Marcus TAVARES	1318 J3 Ave #4 FBKS, AK 99701			X	
3		Tiffany Slaughter	1212 Hampstead AVE FBKS, AK 99701			X	
4		Erin Hill	815 McGrath rd. 2-J FBKS, AK 99712			X	
5		DONALD Owens	2040 Illis Rd APT A-5			X	
6		Diane M Hebert	PO Box 10188 FBKS AK 99710			X	
7		Noma R Johnson	PO BOX 7-333 FBKS, AK 99707			X	
8		SHAUNON BUTLER	POBOX 83661 FBX AK 99708			X	
9		Aaron Malzahn	P.O. Box 70063 FBKS, AK 99707			X	
10		SUSAN RIECKMANN	1200 W. DIMOND HILL#2, Anch, AK 99515			X	
11		Bob Romer	PO Box 103 Kasilof AK 99610			X	
12		James Houston	330 wedgewood dr			X	
13		Cassandra Morris	P.O BOX 58953 FBKS, 99711				X
14		Cathy L Clements	P.O. BOX 2072 / FBKS 99701	X	2		
15		Dora Buchea	PO BOX 853 Slana AK	X	2		
16		Kim Brady	1313 23RD AVE			X	
17		Susan Roehlke	9785 Curtis Ct Sutchit 99674	X	1		
18		Robert M Clayton	1454 Bell Dr Fairbanks 99709				X

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PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Rebecca R. McCauley	Rebecca R. McCauley	915 Joyce Dr Fks 99701			X	
2	Art Saarloos	ART SAARLOOS	P.O. BOX 197 D.J AK 99737			X	
3	Michael G. Ridley	MICHAEL G. RIDLEY	GEN. DELIVERY ESTER AK. 99725			X	
4	Sue G. Yi	Sue G. Yi	1004 Julep Dr. Fks AK				+
5	John A Wilson	John A Wilson	4820 Palo Dr Fks 99701				X
6	Charles Woodruff	Charles Woodruff	Box 2295 Fbks 99707			X	
7	Mee Jung Talak	Mee Jung Talak	1318 23AVE # 99701				X
8	Dave Brenner	Dave Brenner	1038 Pasque St. 99712			X	
9	Sonya Paschal	Sonya Paschal	4427 Mayfield Ct. #1	X	2		
10	Melissa Applelee	Melissa Applelee	1816 Bridgewater 99709			X	
11	Lola Easterling	LOLA EASTERLING	5 KATHRYN				+
12	Candy Dyer	Candy Dyer	1226 20th Ave	X	4		
13	Rod V. Wakefield	Rod V. Wakefield	560 Hilltop Ave Fks				X
14	Charles H Wallace	Charles H Wallace	4651 Mallard Way, Fbks	X	3		
15	JEFFREY J. MILLER	JEFFREY J. MILLER	PSC 5 Box 85 EAFBAK				X
16	Brenda D. Santora	BRENDA D SANTORA	P.O. Box 83583 FBKS AK				X
17	John Burnette	John Burnette	318 Wedgewood 622				X
18	Pearl Johnson	Pearl Johnson	18 15 Kathryn St.			V	

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PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Darlene A Means	Darlene Means	1232 20th Apt #4			X	
2		Robert Berg	1003 Cowles				owner
3		JOHNSON	1505 HASELTON RD				OWNER
4	Sody Rummer	Sody Rummer	1623 Laurence			X	
5	Betty R Johnson	Betty R Johnson	1508 Haselton Rd				owner
6	David E. Pennington	David E Pennington	P.O.B. 425 Healy			X	
7	Teresa L Pennington	Teresa L Pennington	PO 425 Healy			X	
8	Gary W. McQueen	Gary W McQueen	207 Steelhead Rd.	X			
9	Melvin T. Agassingole	Melvin T. Agassingole	P.O. Box 91 Gambell, AK.				X
10	Clement Ungott	Clement Ungott	P.O. Box 75 Gambell, AK				✓
11	Jan Spring	Jan Spring	Box 3914 Palmer, AK				✓
12		GARY W SPRING	" " "				✓
13	Darcy J. Goad	Darcy J. Goad	PO Box 71504 Fbks, Ak			✓	
14		Heidi A Stallman	830 Highlander Way Fbks AK				owner
15	Todd A Irgystad	Todd A Irgystad	524 Craig st. Fbks			✓	
16	Marvin Sluka	MARVIN SLUKA	3450 Airport WAY FBKS	X			
17	Jan A. Dries	JAN A. DRIES	4750 Vronna Ave Fbks			X	
18	Rodney L Hakel	RODNEY L. HAKEL	615 DITCH ST FBKS			X	

PETITION

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We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Marvin L Lund	MARVIN L LUND	3; NORTH POLE KALTAG DR				HOME OWNER
2	Carolyn J Lund	Carolyn J. Lund	3431 Kaltag Dr.				Home Owner
3	Darrell Kshear	DARRELL KSHEAR	352 [illegible]			✓	
4	A Harvey Loyka	A Harvey Loyka	P.O. Box 71093, Fbks 99707				Home Owner
5	David Magar	DAVID MAGAR	P.O. BOX 75251 FBK, AK 99707			✓	
6	Roger L Moore	Roger L. Moore	288 Rambling Rd #26 99712 Fbks	✓	72		
7	Dan Bernardi	DAN BERNARDI	643 Hayes St Fbks 99701	✓	1		Rental Owner
8	James P Sullivan	JAMES P SULLIVAN	125 INA Fbks AK 99701	✓	1		Home Owner
9	Charles A Creamer	CHARLES A. CREAMER	339 CHURCH ST			✓	
10	James J Thomas	JAMES J THOMAS	1939 CROSSON ST				HOME OWNER
11	Jay W Sadler	JAY W SADLER	390 HAMILTON		NONE		HOME OWNER
12	Don Elbert	DON ELBERT	1541 scenic Lp	✓	4		
13	Juliet Shier	JULIET SHIER	[illegible]		12		Manager
14	[illegible]	PETER M SHIER	[illegible] #4		12		Agent
15	Eugene E Reed	EUGENE E. REED	GEN. DEL ESTER	✓	2		
16	S. CLAY CAMPBELL	S. CLAY CAMPBELL	1481 BLACKBERRY	✓	1		
17	Janet A. Thompson	JANET A. THOMPSON	457 Wellhouse Rd.				Home Owner
18	Mark Blong	Mark Blong	1625 Parks Hwy			✓	

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PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Irene K. Hotaling	IRENE K. Hotaling	990 Deere St Fbks			X	
2	Barbara Kerber	BARBARA KERBER	404 Betty				X
3	Karl E. Jones	KARL JONES	1500 Fools Gold Rd				X
4	Ralph Aiken	Ralph Aiken	218 Bently			X	
5	Bob Walsh	BOB WALSH	P.O. Box 70044			X	
6	Woodrow Hill	Woodrow W. Hill	435 2nd Ave Apt #19			X	
7	Rick Mensik	Rick Mensik	462 Carlton	X	2	X	
8	Harold A Johnson	Harold A Johnson	P.O. Box 10440 Fairbanks AK.				X
9	Nelson B. Miles	Nelson B. Miles	P.O. Box 75006 Fairbanks AK 99707	X	1	X	
10	Cindy Armstrong	Cindy Armstrong	4379 Bishop Cir				X
11	Joleen K. Cooper	Joleen Cooper	615 Ginko Rd			X	
12	Dennis V. Smith	Dennis V. Smith	440 old Rich #217			X	
13		Garry Lee Hahn	1910 Turner			X	
14	Wanda L. Davis	Wanda Lee Davis	1910 Turner			X	
15		Rosalind C. Perez	1141 Coppet St 99709 Fbks			X	
16	Daniel Day	DANIEL DAY	440 OLD RICHARDSON HWY.			X	
17	Edward W. Roach	Edward W. Roach	440 Old Richardson Hwy			X	
18	Jeanette Hopson	Jeanette Hopson	440 old Richardson Hwy.			X	

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PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Mike Ricci	Michael Ricci	1732 Tamarack				✓
2	Stacey Eggers	Stacey Eggers	120 Charles St.			✓	
3	Beverley J. Millican	BEVERLEY J. MILLICAN	2765 Gordon Rd.	✓	4		
4	Virginia M. Neel	Virginia Neel	227 Woodridge Dr.			✓	
5	Rose Marie Smith	ROSE MARIE SMITH	3371 STOREY DR	✓			
6	Barbara Moore	Barbara Moore	23B Eureka	✓	2	✓	
7	Jeffrey J. Ball	Jeffrey J. Ball	356 Driveway			✓	
8	Marina M Ball	MARINA G. BALL	356 DRIVEWAY AK			✓	
9	Helen Lugaillo	Helen Lugaillo	97 TimberLand Dr	✓	2		
10	Marie A Bablinskas	MARIE A. BABLINSKAS	P.O. BOX 74043			✓	
11	Dennis P Gallen	DENNIS P GALLEN	2509 LISA ANN DR N. P. AK				✓
12	Pat O'Neill	PORNELLIA O'NEILL	231 CRAIG AVE.	✓	1	✓	✓
13	Wonda Brown	WONDA K BROWN	2343 Bd Rd North Pole	✓			
14							
15							
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PETITION

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#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	Doyle Gabriel	Doyle Gabriel	1904 Pagan	✓	5		
2	Anita C Gabriel	Anita C Gabriel	2058 Dunbar Ave #3			✓	
3	Debra Sinclair	DEBRA SINCLAIR	1048 28th #2			✓	
4	Carlin Ralt	CARLIN RALT.	1270 Rillymond ave.				✓
5	Curtis Chamberlain	Curtis Chamberlain	850 mcgrath Rd			✓	
6	Ruth V Long	RUTH V LONG	P.O. BOX 1 ESTER				✓
7	Kathleen Selmer	KATHLEEN SELMER	P.O. Box 81147			✓	
8	Jeffrey A. Campbell	JEFFREY A. CAMPBELL	508 Monroe st. FBKS AK				
9	Thomas Maher	Thomas Maher	P.O. BOX 70648 Fbks AK 99707	✓	15		✓
10	Juanita Helms	JUANITA HELMS	1524 STACIA ST.	✓	7		
11							
12							
13							
14							
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PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1		Dan Ward	P.O. 10674 - 99710	✓			
2	Denise Tompkins	Denise Tompkins	[illegible] 707			✓	
3	Sharon Mensik	SHARON MENSIK	462 CARLTON DR. 99701	✓	1		
4	Zoe Parrish	Zoe Parrish	1117 26th Ave 99701		44	✓	
5	George K Shriner	GEORGE-K-SHRINER	913-OCONNER RD 99701				✓
6	Vanessha Navarro	Nanessha Navarro	518 "A" st 99701			✓	
7	Meredith A Coats	Meredith A Coats	2546 Talkeetna 99709	✓	20		
8	Myrna Sheets	MYRNA SHEETS	1028 Evergreen St	✓	7		
9							
10							
11							
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(20)

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No.Units	Tenant	Other
1	LaHoma Fleshman	LAHOMA FLESHMAN	440 old Rich Hwy	X	62		
2	Virgil A Hardin	VIRGIL A HARDIN	440 OLD RICH HWY		[redacted]	✓	
3	Ed Kincheloe	Ed Kincheloe	440 OLD Rich Hwy			X	
4	John S. Voytilla	John S. Voytilla	440 Old Rich. Hwy.			X	
5	Wm M Stewart	WM M STEWART	1777 CROSSON ST	✓	450		
6	Bart Wigger	Bart Wigger	440 old Rich			X	
7	Helen Powell	HELEN POWELL	1913 JACK ST	X		X	
8	Mary Deihle	MARY DEIHLE	579 Woodcrest Ln			X	
9	Diane S Emerson	DIANE S EMERSON	[illegible]				X
10	William T. Ellis	William T. ELLIS	440 old Rich Hwy	X		X	
11							
12							
13							
14							
15							
16							
17							
18							

Spenard Community Patrol Incorporated
200 West 34th Avenue, #895 Anchorage, Alaska 99503 (907) 243-3777

March 22, 1993

RE. Senate Bill No. 155

MAR 2 5 1993

Dear Senator Leman

I am pleased that hearings have begun on this important bill that will allow landlords some relief to the problems generated by individuals using business and rental property for illegal purposes. I have participated in attempts to close down numerous illegal businesses fronting for prostitution in Spenard using AS 9.50.170 and can provide you with some valuable information on the course the trial has taken. Some sections of this bill are very well written and will, if implemented, make the closure of illegal businesses a simpler task.

I would recommend the following changes and additions to SB 155

Page 5 line 5 **(1) prostitution; or**

Change to: **(1) prostitution, assignation; or**

Reason: prostitution is a much more difficult standard to prove, most arrests are made under the term assignation. If Anchorage police officers were required to physically engage in sexual contacts with a prostitute, very few if any arrests for "prostitution" would ever occur at any illegal business fronting for prostitution.

(From Chapter 8.14 MOA Definitions:

"Assignation" means the making of an appointment or engagement for prostitution or an act in furtherance of such appointment or engagement.

"Prostitution" means the giving or receiving of the body for sexual conduct for hire.

Page 5 line 16 - 17 In an action brought under AS 09.50.170 (a), the court may consider evidence of reputation within a community to prove the existence of a nuisance.

Change to: (1) In an action brought under AS 09.50.170 (1) (2a) the court may consider evidence of reputation within a community to prove the existence of a nuisance and;

(2) May consider hearsay evidence from the courts own records for previous complaints, arrests or convictions under Federal, State or Municipal laws pertaining to violations for prostitution, assignation or illegal activity involving alcoholic beverages.

Reason: This section provides for the court to consider not only the reputation of the establishment but for example in the on going case "Spenard Action Committee vs Lot 9 Blk 3" the case has dragged on for years in the courts. The fact no current arrests for prostitution have occurred at the properties in question for 3 to 4 years, (this does not mean prostitution no longer takes place at these businesses, simply stated is the fact, that for some reason the Anchorage Police Department has not attempted to make a case in over 4 years) and now makes proving to the court that a nuisance "exists" somewhat a difficult task for some judges. Perhaps adding additional language to line 20 page 5 to include the word **"existed"** and perhaps add some additional language.

The term "exists" has no definition as to length of intervening time from when the act of said assignation occurred on the property to when it no longer exists. (If the girl that was arrested for assignation is fired the next morning, does that purport to mean that prostitution no longer occurs on the property) Perhaps defining along with **"existed"** include **"provided that, the nature or character of the business has not appreciably changed subsequently to the order seeking abatement under AS 09.50.170 was first initiated.**

Page 9 line 31: involving alcoholic beverages, an illegal activity involving a controlled substance, or

Change to: involving **prostitution, assignation,** or an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance, or

Page 11 line 19: Add to Sec. 24 a definition under (22) "prostitution or assignation" means

Reason: By leaving out prostitution and assignation in this section assumes prostitution and assignation is not a problem. when in fact most if not all illegal prostitution operations are now setting up in residential apartment units.

Page 12 line 4: in an illegal activity involving alcoholic beverages, an illegal activity involving a

Change to: in an illegal activity involving **prostitution or assignation,** an illegal activity involving alcoholic beverages, an illegal activity involving a controlled substance,

Also add to Page 12 line 13: **illegal activity involving prostitution, assignation** changes if needed

In closing I would be interested in attending any hearings on SB 155. Please feel free to contact me at 243-7768 anytime or during days I can also be reached at 248-2828. The Spenard Action Committee has redefined AS 09.50.170 over the past 4 years through the Courts. It has been a long and costly experience. Well written laws that judges can understand and interpret saves the court valuable time and the litigants incredible sums of money in attorney fees and court costs. Thanks again Loren for your time and help with our concerns at the Spenard Community Council and the Spenard Community Patrol.

Sincerely,

Dave Erlich

CREDIT SERVICES, INC.

Alaska's TRANS UNION Serviced Credit Bureau

Fairbanks Ph. (907) 456-1749 • Fax (907) 456-6203
Anchorage Ph. (907) 561-7272 • Fax (907) 561-7278

770 8th Avenue, Suite D
P.O. Box 72739
Fairbanks, AK 99707

100 West International Airport Rd.
Suite 207
Anchorage, Alaska 99518

March 23, 1993

Sen. Steve Frank
P.O. Box V
Juneau, AK 99801-1182

RE: Support for SB155

Dear Sen. Frank:

I have read SB155, I have listened to several hundred landlords in Fairbanks, Anchorage and Juneau, I have had discussions with several organizations which help consumers, and I have read the discussions surrounding Sen. Pourchot's bill, SB35. To borrow text from Mr. Clockson, "this letter is submitted by me on my own behalf and on behalf of the thousands of tenants who live in" Alaska and on behalf of the approximately two hundred landlords who use our services.

I support SB155; it is reasonable. Furthermore, SB155 is beneficial to our communities. When tenants understand that their responsibility to their landlords is as important as paying their charge cards, or their automobile, bills on time--and certainly far more important than buying more beer and partying--then perhaps we'll have more civil neighborhoods. As property destruction is reduced, so, too, rents may be reduced because landlords won't have to pay out of pocket for unrecoverable damages. Our communities will become more livable, once again when tenants understand that landlords have been empowered to more quickly respond to tenants' negligent, illegal, or malicious behavior.

I will be available to testify via teleconference at tomorrow's State Affairs Committee hearing and may address further, more substantial, comments in a follow-up letter.

Thank you for your sponsorship and continued support of this bill.

Sincerely,

Douglas W. Isaacson
Alaska Statewide Director

phone 463-5580

MYRON W. KLEIN
3264 PIONEER AVENUE
JUNEAU, ALASKA 99801-1964

March 18, 1993

Honorable Steve Frank
P. O. Box V
Juneau, Alaska 99811

Dear Senator Frank:

I am writing in support of passage of SB 155, an act relating to landlords and tenants. I am in the business of renting apartments, mobile homes, mobile home space and commercial space in Juneau and Anchorage to over 150 tenants.

Prior to 1990, I rented apartments to tenants if the tenant could pay a security deposit of $300. With such a small security deposit, over 70% of the tenants would move out owing unpaid rent, cleaning charges and damages. After applying the security deposit against the unpaid balance the average unpaid balance was about $500. Even after sending the accounts to a collection agency, I am still owed over $50,000 by former tenants.

Beginning in 1990, I required a tenant to pay a security deposit of approximately 1.5 times the monthly rent rate. Tenants who pay these larger deposits exhibit better financial and living conduct while living in my apartments. Tenants with large deposits leave an apartment owing very little rent, cleaning charges or damages. These tenants usually receive most of their security deposit back. I seldom lose money to tenants with large deposits.

Unfortunately for potential tenants, many can not find a place to live because of the large security deposit requirement. My records show that approximately 1 in eighteen callers is able to afford the security deposit and out of the 1 in eighteen callers, only half will qualify for the apartment based on income and rent history.

SB 155 will benefit landlords because it will enable them to protect their assets against losses and will benefit tenants because the amount of security deposit can be reduced. The shorter time cycles to evict non-paying, disruptive or abusive tenants will help reduce the potential loss a landlord may have to incur. Indeed, if a landlord could remove a non-paying, disruptive or abusive tenant as promptly as a hotel can, the amount of security deposit could be drastically reduced from its present level. Any reduction in the amount of time required to remove a non-paying,

disruptive or abusive tenant reduces the cost of doing business. By reducing the cost and risk of doing business, the return on investment for rental property will improve and it will be that much sooner when new rental property is constructed.

A landlord is in the credit granting business because a consumer is allowed to take possession of an asset typically worth up to 100 times the amount of monthly rent. An apartment renting for $850 in Juneau, presently costs about $42,500 to acquire and about $68,000 to build new. There is no other business where a consumer can take possession of such a valuable asset on so little security. A $25,000 rental car can not be rented unless a major credit card is posted as security or a significant cash deposit is made. However, the rental company has a clause in its contract that that treats the unauthorized retention of the car beyond the rental period as a theft. Consequently, the rental car company need only call the police and report the car as stolen to obtain prompt return. If prompt return is not obtained, the rental car company can claim a full loss against its insurance carrier. On the other hand, a landlord with twice as valuable an asset in the possession of a consumer, is required to go to court to repossess his asset. It is ironic that a landlord is the largest consumer credit grantor in the business community, but is denied the legal right to promptly repossess his property when its use is not being compensated for or the property is undergoing daily damage by the possessor.

SB will help reduce that disparity. It will reduce the cost of doing business for landlords. It will improve the opportunity for potential tenants to find affordable living accommodations. Prompt pay, non-disruptive or non-abusive tenants will have better access to housing and will not have to tolerate a noisy disruptive neighbor for as long a period as under present law. A landlord will be able to take quicker action to evict a tenant whose drug or alcohol activity is affecting children in neighboring apartments.

I urge passage of SB 155.

Sincerely,

Myron W. Klein

Myron W. Klein

Helms Properties

1434 Lacey Street
Fairbanks, Alaska 99701
(907) 452-2905

March 7, 1993

SENATOR: STEVE FRANK

I have been a landlord in Alaska for over thirty years. I have come to the conclusion that there needs to be some changes made in the current law to give protection to the landlord. As the law reads now the landlord has basically no rights.

I would like to encourage you to support the working draft introduced by Senator Steve Frank. The proposed changes are fair and reasonable. I hope you would also come to the same conclusion as I and give this proposed bill your enthusiastic support.

Sincerly,

Charles Helms
1434 Lacey St.
Fbks, AK 99701

March 5, 1993

RECEIVED MAR - 8 1993

Senator Steve Frank
State Capitol
Juneau, Alaska 99801-1182

Hon. Frank Alaska State Senator;

I am writing asking your support of the bill dealing with tenant landlord relations.

I along with my son-inlaw and daughter own one hundred and twenty four rental units--located in apartments from a twenty seven unit down to four plexs in the Fairbanks area.

The present law is totally inadequate. Good tenants have no fear of the proposed new law--only the drunks and irresponsible people who create unreasonable situations.

In 1988 I purchased my first 4/plex. It had two tenants and three bitch dogs who had produced thirty-six pups in the apartment that year. After taking possession I hand gave them a ten day eviction notice. With the help of a lawyer and a judge they were finally evicted seventy days after my eviction notice.

The cost to redo the two bedroom apartment extended well over $5,000. Welcome to being a landlord.

I believe this new bill could address some of these problems.

Thanks for your consideration.

Sincerely yours,

Donald R Blanc

Donald R.Blanc
415 5th Ave.
Fairbanks, Alaska 99701

PETITION

We, the undersigned, are supporters of SB155/HB222, as introduced. These bills revise the Landlord Tenant Act to make the laws apply more equally between landlords and tenants.

#	Signature	Print Name	Address	Landlord	No. Units	Tenant	Other
1	Holley Hoff	HOLLY HOFF	1050 Salmon Ct N 99801 JUNEAU	✓	26		
2		DOUGLAS W. ISAACSON	PO BOX 72739 FBK 99707				✓
3	cathy crawford	cathy crawford	8085 Glacier Hwy #103				
4	Jim W Wilcox	JIM W. WILCOX SR	194 Churchill St 99801	✓	200		
5	Victoria Wilson	Victoria Wilson	P.O. Box 210427	✓	2		✓
6	Maria Mattson	Maria Mattson	8800-219 Glacier Hwy	✓	100		
7	John Williams	John Williams	" " " "	✓			
8		Marty Holmberg	7833 N. Douglas Hwy	✓	9		
9		J. Linger	1193 Columbia Blvd.				✓
10	Dale R. Mazzei	DALE R. MAZZEI	1717 Douglas Hwy #10	✓	10		
11	Cindy K. Flanigan	Cindy K. Flanigan	8363 Old Dairy Rd				✓
12	Lorilyn E Swanson	Lorilyn E Swanson	" " "		75		✓
13	Donald R Schultz	DONALD R. SCHULTZ	P.O. Box 34662, JUNO 99803	✓	300		
14	Judy Schultz	JUDY SCHULTZ	P.O. Box 34662, JUN 99803				✓
15							
16							
17							
18							

MAR 23 '93 09:06 CREDIT SERVICES INC P.2

March 19, 1993

Senator Steve Frank
State Capitol
Juneau, AK 99801-1182

Dear Senator Frank:

I am in support of SB155 to change the landlord/tenant laws. These changes are not meant to hurt the good tenant, but would help support the landlords in keeping their apartments in good shape for all tenants when and if there is one bad apple in the bunch. As it stands right now, the good tenants are also in jeopardy when there is someone that is being obnoxious and knows that the landlord can't do anything legally to evict them.

The new changes are not meant to help the landlord have the upper hand but to make the laws more equal, both for the good tenant and the landlord. I do not believe that these laws are too outrageous as most other states have similar and sometimes stricter laws to protect the landlord from vandlism, violence and non-payment of rent.

Sincerely,

Cheryl A. Stahl

Cheryl A. Stahl
P.O.B 56627
North Pole, AK 99705

March 9, 1993

Mr. Steve Frank
Alaska State Legislature
P.O. Box V
Juneau, Alaska

Dear Mr. Frank,

I understand that you are going to introduce a landlord-tenant bill. As you know Mr. Pouchot introduced SB-35 in the last session, which unfortunately died in the house in the last days of the session.

Landlords need help with the delinquent, disturbing, and destructive type of tenant, and we hope that your bill will pass. I would like to see a copy of your proposal.

Enclosed are two copies of newspaper articles pertaining to bad tenants.

Sincerely,

Charles Fippitt
2203 McKinley Ave.
Spenard, Alaska

03/24/93 09:48:32 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 30398 SCHEDULED FOR:03/24/93 09:30 TO 11:00
SPONSOR: SENATE STATE AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: D. EHRLICH & KRIS GRATRIX HAVE CHNGS

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office - (907) 452-4448 Fax - (907) 456-3346

c/o

TO: Gail Hill FAX: _____ PHONE: _____

FROM: Glen Hill PHONE: _____

INSTRUCTIONS: _____

Written Comments from S. STATE AFFAIRS
Cmte teleconference 3/24/93

RECEIVED: Date _____ Time _____

SENT: Date 3/24/93 Time _____

DISPOSAL OF ORIGINAL: Discard ___ Hold for Pickup ✓

NUMBER OF PAGES: 1 (Not counting cover sheet)

SENT BY: Chris

Please forward to Committee

Alaska State Legislature

Please enter into the record my testimony to the STATE AFFAIRS/JUDICIARY committee name

committee on SB 155/URLTA bill/subject, dated 3/10/93 (3/23/93).

PLEASE ADD TO MY TESTIMONY THE FOLLOWING PROPOSED AMMENDMENTS:

1) A CHANGE IN WORDING, WHEREVER FIVE DAYS IS PROPOSED TO REPLACE 10 DAYS, CHANGE FIVE DAYS TO FIVE WORKING DAYS.

THIS CHANGE WOULD SAFEGUARD FAIR NOTIFICATION BY LANDLORD TO TENANT BY AVOIDING NOTIFICATION PRIOR TO A WEEKEND OR EXTENDED HOLIDAY.

2) A CHANGE IN WORDING OF SEC. 23 (p.11 Line 17) FROM "MAY" (the party "may" be entitled) TO "SHALL."

THIS CHANGE WOULD CLARIFY FOR THE JUDGE THE INTENT OF THIS BILL FOR DAMAGE RECOVERY ENTITLED TO THE LANDLORD. (HOWEVER DISREGARD THIS CHANGE IF THE LANGUAGE IS CONSTRUED TO BE AN AMMENDMENT TO COURT PROCEDURES).

Signed: DOUGLAS ISAACSON
Testifier

SELF / TENANT WATCH (CREDIT SERVICES INC)
Representing (Optional)

PO BOX 72739 FBKS 99707
Address

456-1749
Phone No.

STATE AFFAIRS MEETING - WEDNESDAY, MARCH 24

---

1. Call meeting to order at 9:00 am sharp if we can !!

2. If have majority, take up **SB 168, Newspaper bill,** first and ask for motion to move STA CS for SB 168 out of Committee with individual recommendations (draft CS was distributed yesterday afternoon)

3. Take up SB 158, Relating to Exemption amounts (we have a draft STA CS pending). Changes were requested by Dept. of Labor, and Representatives from Labor will be there to answer questions.

AT 9:30 AM, go to SB 155, Landlord-Tenant Act, for testimony and teleconference.

4. SB 155 - Testimony in Juneau:

   a. Senator Steve Frank or David, Senator Frank's Office

   b. Jack Chenoweth, Legislative Legal

   c. Teleconference and public testimony

5. ~~If have time, go back to SB 158, Exemption Amounts Bill.~~

6. Distribute draft STA bills (two) that you would like the members to review and get back to your office if anyone has questions or problems.

7. Announce schedule for next week.

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Alaska State Legislature

Official Business

SENATE STATE AFFAIRS COMMITTEE

State Capitol
Juneau, AK 99801-1182

COMMITTEE SCHEDULE

STATE AFFAIRS — BUTROVICH ROOM

Monday, March 29 — **9:00 AM**

No Meeting Scheduled

Wednesday, March 31 — **9:00 AM**

**** Confirmation Hearing ****
Sigurd E. Murphy, Jr.

SB 33, Grants For Local Emergency Planning

SB 161, Relating to Interest Rates, Taxes, Royalties, Net Profit Shares

Bills Previously Heard

Friday, April 2 — **9:00 AM**

Bills Previously Heard

SB155

Myrna Sheets
1028 Evergreen St. #1
Fairbanks, Alaska 99709

April 2, 1993

APR 13 1993

Dear Senator Loren Leman,

I would like to take this opportunity to say I strongly support SB155/HB222.

As a Landlord, I feel the laws should be altered to give the Landlords equality with the Tenants.

The small percentage of bad Tenants really make it hurtful for the good Tenants as well as the Landlords.

This bill does not hurt good Tenants and takes nothing away from Tenants as a whole.

To sit by and watch a Tenant do grave damage to your property or be unable to collect rents due to the Landlord, with such long waiting periods to evict, is just plain senseless.

Please consider the investment the Landlord has made, and we should be able to protect that investment.

Your support for this bill will be greatly appreciated.

Respectfully,

Myrna Sheets

Myrna Sheets
Taku Apartments
Owner/Manager

P.O. Box 21997
Juneau, Alaska 99802
247 South Franklin Street
Telephone (907) 789-4159

April 12, 1993

APR 12 1993

TO: SENATORS AND REPRESENTATIVES OF THE STATE OF ALASKA:

Re: House Bill 222 and Senate Bill No. '5:

"Relating to landlords and tenants, etc."

This Bill is similar to one which was introduced two years ago, with the addition of Alcohol to the reasons to terminate a rental agreement. That does not happen to be MY concern. What I AM concerned about, is the termination period for being late with rent. In this State, with all the weather problems which can interfere with delivery of Social Security checks, and other sources of support, a 10 day "grace" period for payment of rent is reasonable. I have no objection to a fee being attached to the late rent(a "reasonable" fee), but DO object to the time being shortened to 5 days.
I am aware that this Bill(s) is aimed at illegal drug/alcohol use, but am concerned that some other, innocent, folks can be affected, the way it is written.
Since I run a homeless shelter, perhaps I am a bit more aware of what conditions precipitate the homeless situation.
I am in symphathy with those landlords who do not know how to screen prospective tenants well enough to avoid these situations, but feel the time of 10 days for late rent is the most reasonable time period for this state.
I am a bit concerned about the financial arrangements, since this puts more work on law enforcement officers, in that they are required to go look up owners, etc.
Please address these concerns.

Thankyou, and God Bless You,

Ellen Northrup

Executive Director

A Service of the Juneau Cooperative Christian Ministry
The GLORY HOLE
food ♡ shelter ❤ hospitality

Alaska State Legislature

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
(907) 452-3421

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3709
Capitol Rm. 417

Senate

SPONSOR STATEMENT FOR SB 155

TO: Senator Loren Leman, Chair
Senate State Affairs Committee

FROM: Senator Steve Frank, Co-Chair
Senate Finance Committee

DATE: 15 March, 1993

SB 155, based in part on SB 35 from the 1992 session of the 17th Legislature, addresses several aspects of the landlord-tenant relationship. This bill was prepared in response to widespread concern that current law is excessive in its protection of the rights of abusive tenants.

SB 155 has three principal purposes. First, the bill amends the forcible entry and detainer statutes to expedite [illegible]d's ability to evict a tenant who has committed certain violations of [illegible]l agreement (failing to pay rent when due, damaging the premises, or holding the premises without a rental agreement or upon expiration of the lease). Second, the bill makes the tenant's responsibility to maintain the dwelling unit more stringent and adds to the ability of a landlord to seek removal of an abusive tenant. Third, the bill amends the nuisance abatement statutes to include relief from criminal offenses involving alcohol or drugs and also to provide a landlord with the opportunity to recover possession of premises under the forcible entry and detainer remedy for such criminal activity by the tenant.

This bill would serve to protect landlords and responsible tenants from the damage caused by abusive tenants. I strongly urge you to support SB 155.

STEVE FRANK

119 N. Cushman, Rm. 213
Fairbanks, Alaska 99701
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DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM March 12, 1993

SUBJECT: Senate Bill 155. amending the state's landlord-tenant laws (AS 34.03) and the related civil remedy of forcible entry and detainer (AS 09.45.060 - 09.45.160), and making related changes (Work Order No. 8-LS0376\K)

TO: Senator Steve Frank
ATTN: David Skidmore

FROM: Jack Chenoweth
Legislative Counsel

Senate Bill 155 duplicates and extends changes proposed by the Senate-passed version of last session's Senate Bill 35 (CSSB 35 [Judiciary]).

This memo is by way of response to your request for a sectional analysis of the bill.

* * *

The bill has three principal purposes, all applicable to the landlord-tenant relationship:

First, the measure substantially amends statutes applicable to the forcible entry and detainer remedy (AS 09.45.060 - 09.45.160) to expedite a landlord's ability to evict a tenant for failure to pay rent when due and for a tenant's damage to the landlord's property.

Second, provisions of the bill revise the obligation of a tenant under the state's Uniform Residential Landlord and Tenant Act (AS 34.03) and add to the ability of a landlord to seek removal of an abusive tenant.

Third, the measure amends the state's nuisance abatement statutes (AS 09.50.170 - 09.50.240) expanding that remedy to cover the identified criminal offenses involving alcohol or drugs, allowing persons

> to seek redress under the nuisance abatement law for criminal activity in premises that constitutes a nuisance. As a supplemental remedy, the measure amends statutes to give a landlord the opportunity to recover possession under the forcible entry and detainer remedy for that criminal activity by the tenant.

I propose to address the measure's provisions topically rather than sequentially.

EXPEDITED EVICTION OF TENANT FOR FAILURE TO PAY RENT WHEN DUE:

Proposed bill section 2 amends AS 09.45.090 in part as follows: The amendment to (1)(A) reduces from ten days to five days the period in which a landlord must wait after making written demand for possession of rented premises to commence forcible entry and detainer proceedings to secure a tenant's eviction in the event the tenant fails to pay rent when due. No notice separate from that required to be given under the Uniform Residential Landlord and Tenant Act (AS 34.03), as amended by bill section 21, is required.

Bill sections 3 and 4 make related changes. These sections, read together, carry forward the current requirement of allowing three days additional notice if, under the forcible entry and detainer remedy, notice to the tenant to quit is provided by mail.

Bill section 5 adds authority by which, at the end of a forcible entry and detainer action, the court may enter an order to vacate against the tenant and, at the same time, may provide a landlord who requests a writ of assistance to recover possession of the premises.

As has been previously noted, a related change is made in the Uniform Residential Landlord and Tenant Act (AS 34.03) by bill section 21. The change made to AS 34.03.220(b) conforms the number of days in which the tenant must pay rent after receiving written notice of rent nonpayment.

REVISION OF TENANT OBLIGATIONS:

I

Several bill sections are included to respond to your concern that a tenant be held "responsible for damage done by him/her or by his/her guests." Current law--AS 34.03.120--assigns certain responsibilities in the landlord-tenant relationship to the tenant. Among them are the duty to use facilities and appliances in a reasonable manner, and the duty not to deliberately or negligently abuse the premises or to knowingly allow others to do so. Changes to AS 34.03.120 made by bill section 18

make the tenant's obligations more stringent by eliminating the qualifying adjectives from AS 34.03.120.

Additionally, making the tenant's obligations more stringent implicates the definition of "damages" for purposes of ascertaining whether or not a tenant is due a refund of all or any portion of a security deposit. "Damages" is, in current law, a term whose definition is divided between AS 34.03.070(b) and AS 34.03.360(18). Bill section 15 reworks the definition of "damages," and bill section 26 repeals AS 34.03.360(18). As a result, if this bill passes in this form, no one need worry about whether a tenant acted intentionally or negligently. Rather, if the tenant caused any damage beyond wear and tear due to "normal, nonabusive living," the tenant may be held responsible for damages.

II

Per instruction, the bill incorporates a checklist approach "that lists the items in the apartment and describes the condition of these items and of the apartment itself." It distinguishes between a premises condition statement and a contents inventory. Bill section 14 gives the landlord the right to require preparation of these documents and indicates how the documents may be made part of the rental agreement. Bill section 16 gives the landlord the right to require the tenant to execute a statement and inventory before making possession of the premises available. At the same time, the landlord is required to indicate to the tenant how the information on the statement/inventory may be used. Bill section 23 establishes the statement/inventory as "presumptive evidence of the condition of the premises and its contents at the commencement of the term of the period of occupancy" in order to support any later claim for damages. Bill section 17 addresses the status of a statement/inventory in the event a landlord sells to a purchaser leaving the tenant in residence.

III

As to the landlord's having the ability to seek summary eviction, see the revision of AS 34.03.220(a) in bill section 20 and the addition made to AS 09.45.110(2) in bill section 5. The changes to AS 34.03.220(a) made by bill section 20 reflect the toughening of the tenant obligation requirements of current AS 34.03.120--it becomes AS 34.03.120(a) by this bill--so that any noncompliance with an element of the rental agreement or of a requirement set down in AS 34.03.120(a) would allow the landlord to commence proceedings to recover tenancy on minimal notice, replacing the 20 day notice of current law. The tenant has an opportunity to take corrective action to remedy the breach but the remedies need not be just "adequate" but, instead, must "satisfy the landlord."

NUISANCE ABATEMENT:

Bill section 8 revises AS 09.50.170. It deletes in that section outdated references to "lewdness, assignation, . . . or any other immoral act"--currently part of the existing basis for nuisance abatement relief--retaining the reference in the current law to "prostitution" and adding an illegal activity involving alcoholic beverages, a controlled substance, or an imitation controlled substance as grounds for relief under the nuisance abatement statutes.

Bill section 9 defines the three additional criminal activities that may trigger nuisance abatement relief, cross-referencing them to the meanings of those terms set out in the Uniform Residential Landlord and Tenant Act.

Following the California statutory model recommended to me while the bill was under consideration during the 17th Legislature, I have included bill section 10, a new section, AS 09.50.175, that would allow the court to consider evidence of reputation within a community if relief is sought under the expanded version of the nuisance abatement relief statute.

Bill section 11 recasts existing law under which a court may issue a nuisance abatement order. The principal substantive change adds the underlined material in (a)(1) and directs the termination of the lease or rental agreement on premises subject to the abatement order if the tenant has been given notice of the nuisance abatement proceedings.

The substantive change made by bill section 12 adds flexibility in the abatement remedy by giving the court latitude to determine the amount of bond with sureties necessary when premises under abatement are to be returned to the owner rather than maintaining the requirement that the value of that bond reflect the full value of the property. The provision also adds, as a new subsection (c), a statement to clarify that, if an abatement order is subsequently canceled because of compliance with (a) of that section, the related lease or rental agreement--terminated with the issuance of the abatement order under the authority of AS 09.50.210(a)(1) [bill section 10]--is not automatically revived.

Bill section 22 directs that, under the Uniform Residential Landlord and Tenant Act, an order of abatement entered by the court terminates the related rental agreement.

Bill section 24 identifies the particular activities involving alcoholic beverages, controlled substances, and imitation controlled substances that warrant relief under the expanded nuisance abatement provisions. Generally, these statutes identify sales and possession with intent to sell in violation of law. The measure uses reference to "a violation" of one of the criminal statutes cited.

FORCIBLE ENTRY AND DETAINER REMEDY AS ALTERNATIVE OR SUPPLEMENT TO NUISANCE ABATEMENT:

Proposed bill section 2 amends AS 09.45.090 in part as follows:

-- The amendment made to subparagraph (1)(B) sets five days as the period in which a landlord must wait after giving notice to quit and making written demands for possession of rented premises to commence a forcible entry and detainer proceeding in the event the tenant has violated provisions of the Uniform Residential Landlord and Tenant Act against knowing engagement in certain illegal activities involving alcohol or drugs on premises or for violation of a similar provision in rented premises not covered by that Act.

-- The amendment made to paragraph (3) authorizes the landlord to use the forcible entry and detainer remedy to enforce an order of abatement. Under the provision, the landlord may, after obtaining the abatement order under AS 09.50.-210(a), seek immediate relief.

A related provision, bill section 7, a new section, authorizes the use of an abatement order, obtained at the end of a trial under the nuisance abatement statute, to serve as prima facie evidence of unlawful holding of premises by force for purpose of the hearing required by the forcible entry and detainer process.

OTHER RELATED CHANGES:

Bill sections 1 and 13, adding AS 04.21.075 and AS 17.30.160, respectively, impose on peace officers the requirement to notify a landlord when a tenant has been arrested for violation of one of the identified criminal offenses involving alcohol or drugs.

Proposed bill section 2 amends AS 09.45.090 in part as follows: The addition of material in (2)(B) is included in order to authorize a landlord to recover premises after a notice to quit is given for the tenant's breach of a condition or covenant **other than** nonpayment of rent or engaging in identified criminal activity involving alcohol or drugs.

Bill section 19 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

The measure's bill section 25 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a

basis for seeking relief through the nuisance abatement process and, as with bill section 22 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

* * *

JBC:pl
93-190.plm

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

130 Seward Street, Suite 409
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LEGAL SECTIONAL

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Bill section 19 adds as a tenant's duty the obligation of the tenant not to engage in illegal activities on rented premises or to knowingly allow others in the premises to do so.

The measure's bill section 25 adds a codified section, proposed AS 34.05.100, extending to tenancies not covered by the Uniform Residential Landlord and Tenant Act the provisions establishing the duty on the tenant not to use the rented premises for illegal activities. Under this new section, noncompliance with the provision is a

basis for seeking relief through the nuisance abatement process and, as with bill section 22 above, an order of abatement covering a premises that falls within this section terminates the rental agreement.

* * *

JBC:pl
93-190.plm

Fairbanks
April 5, '93

APR 8 1993

Senator Leman,

<u>think about it</u> and I'm sure you'll agree ——

the only persons who object To or want to ammend SB-155 are <u>greedy</u> Lawyers who want Job security and high legal Fees.

<u>Please Help!!</u>

Please Support <u>SB-155</u>

thank you,

MR. JERRY HASSEL
-P.O.-BOX 49
ESTER, AK 99725-0049

Jerry

(a landlord seeking equal rights.)

KEVIN G. CLARKSON
ATTORNEY AT LAW

PERKINS COIE
1029 WEST THIRD AVENUE, SUITE 300 • ANCHORAGE, AK 99501
TELEPHONE (907) 279-8561 • FACSIMILE (907) 276-3108
BELLEVUE • PORTLAND • SEATTLE • WASHINGTON, D.C.

February 16, 1994

Senator Loren Lehman
716 W. 4th Ave.
Anchorage, AK 99501

Re: Swanner v. Anchorage Equal Rights Comm'n
Anchorage Municipal Code 5.20.020
AS 18.80.240

Dear Senator Lehman:

Enclosed is a copy of the Alaska Supreme Court's recent decision in Swanner v. Anchorage Equal Rights Comm'n, Slip Op. 4049 (Alaska February 11, 1994). By this decision the Court (1) interpreted the provisions of the Anchorage Municipal Code and the Alaska Statutes which prohibit discrimination against individuals based upon their marriage status to provide civil rights protection to single individuals who choose to cohabitate (live together in a sexual relationship outside of marriage), and (2) refused to grant a Christian landlord an exemption, based upon his constitutional right to free exercise of religion, from being required to rent his property to single individuals who choose to cohabitate.

In essence, the Court determined that it is illegal for a Christian individual, church, or organization which rents property to refuse to rent the property to individuals who desire to live in that property in a relationship which the Christian individual, church or organization believes is sinful. The Court, in its amazing wisdom, calls the Christian landlord's conduct "discrimination based upon **irrelevant characteristics**" and an "independent **social evil.**" Swanner, Slip Op. at pp. 16-18 (emphasis added). In other words, the Court tells us to forget the break down of family and moral values because the real "evil" in our society is people with Christian beliefs and moral conviction.

By our court's reasoning, a sincere Christian landlord cannot decline to facilitate conduct which he believes is sinful (sexual relations outside the marriage relationship); our wise Court's response to the Christian landlord is "if you don't want to rent to unmarried cohabitators then either forfeit your livelihood and get out of the rental business or

forfeit your religious convictions and shut up." I also believe that it is not too far fetched to anticipate that, by our Court's reasoning, it will decide that it is illegal for a Christian landlord to refuse to rent property to a homosexual couple because that constitutes discrimination based upon marriage status; i.e., that would be discrimination based upon "irrelevant characteristics" (such as the fact that the couple is unmarried and of the same sex). According to our Court, that Christian landlord's conduct would constitute an "independent social evil."

Because the Alaska Supreme Court refuses to protect the right of Alaska's citizens to the free exercise of religion, perhaps the Alaska Legislature should. I believe that Title 18 should be amended to correct the Supreme Court's absurd and outrageous decision in Swanner. I request that you take action to introduce legislation to amend Title 18 to correct this situation; for example, by exempting from the State anti-marriage status discrimination law those individuals with religious convictions against cohabitation or by amending the statute's definition of "marriage status" to not include "cohabitation" or "homosexuality" (after all, wasn't the primary focus of this law to protect single parent families from discrimination in housing and single individuals from discrimination in employment?)

I would also appreciate hearing from you as to how I might assist in rectifying this situation. Is there a member of the Anchorage Municipal Assembly that will lend a friendly ear to a request that AMC 5.20.020 be amended? Thank you for your consideration.

this, I believe is the approach easier to pass - we need to draft an amendment to a bill that is moving (ie, SB155)

Yours truly,

Kevin Clarkson

Kevin G. Clarkson

Cheryl Clemenson
Bob Bell
Craig Campbell

KGC:ljk

Free Exercise

Notice: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, AK 99501.

THE SUPREME COURT OF THE STATE OF ALASKA

TOM SWANNER, d/b/a WHITEHALL PROPERTIES, Appellant, vs. ANCHORAGE EQUAL RIGHTS COMMISSION, PAUL L. CONNERTY, EXECUTIVE DIRECTOR, ex rel. JOSEPH BOWLES, WILLIAM F. HARPER, and DEE MOOSE, Appellees.	Supreme Court No. S-5362 Superior Court No. 3AN-91-1898 CI O P I N I O N [No. 4049 - February 11, 1994]

On Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karen L. Hunt, Judge.

Appearances: Stephen S. DeLisio, Staley DeLisio & Cook, Anchorage, for Appellant. Constance E. Livsey, Faulkner, Banfield, Doogan & Holmes, Anchorage, for Appellees.

Before: Moore, Chief Justice, Rabinowitz, Burke, Matthews, and Compton, Justices.

BURKE, Justice.
MOORE, Chief Justice, dissenting.

Swanner, d/b/a Whitehall Properties, appealed the superior court's decision which affirmed the Anchorage Equal Rights Commission's (AERC) order that Swanner's policy against renting to unmarried couples constituted unlawful discrimination based on marital status. Swanner disputes the decision and contends that

enforcing the applicable statute and municipal ordinance violates his constitutional right to free exercise of his religion under the United States and Alaska Constitutions. Swanner claims the AERC deprived him of due process by adopting the hearing examiner's recommended decision and proposed order without itself conducting an independent review of the case on its merits and by failing to notify him that it would do so.

We hold that Swanner discriminated against the potential tenants based on their marital status. We further hold that enforcing the fair housing laws does not deprive him of his right to free exercise of his religion. The proceedings of the AERC did not deprive Swanner of his right to due process of law. We affirm the AERC and superior court decisions.

I. FACTS AND PROCEEDINGS BELOW

Joseph Bowles, William F. Harper, and Dee Moose filed three separate complaints of marital status discrimination in the rental of real property in Anchorage. The complainants alleged that Tom Swanner, doing business as Whitehall Properties, violated municipal and state anti-discrimination laws, Anchorage Municipal Code (AMC) 5.20.020 and AS 18.80.240. Swanner refused to rent or allow inspection of residential properties after learning that each complainant intended to live with a member of the opposite sex to whom he or she was not married.

While Swanner did not specifically recall having conversations with Bowles, Harper, or Moose, he readily admitted having a policy of refusing to rent to any unmarried couple who

intend to live together on the property. Swanner's refusal to rent or show property to unmarried couples is based on his Christian religious beliefs. Under Swanner's religious beliefs, even a non-sexual living arrangement by roommates of the opposite sex is immoral and sinful because such an arrangement suggests the appearance of immorality. It is undisputed that Swanner rejected each complainant as a tenant because of this policy and for no other reason.

A. Proceedings before the Anchorage Equal Rights Commission

The AERC consolidated the three cases for hearing and appointed Robert W. Laudau as hearing examiner on April 6, 1990. Laudau conducted a hearing on October 9 and 11, 1990 and issued a 25-page Recommended Decision and proposed order in favor of the complainants on January 7, 1991. He served the recommended decision to Swanner's counsel and the AERC on January 7, 1991.

Pursuant to the AERC's administrative rules of procedure in effect at the time, each party had ten days after receipt of the recommended decision to submit written objections. AMC 5.10.015(A). When the AERC receives objections, the regulations provide for its review of the record and modification of the recommended decision where appropriate. AMC 5.10.015(B). If the parties fail to object, the proposed decision automatically becomes final. AMC 5.10.015(A). Neither Swanner nor the AERC submitted written objections. On January 23, 1991, the AERC issued a memorandum stating that, pursuant to AMC 5.10.015(A), the parties' failure to object to the hearing examiner's recommended

decision resulted in his proposed order becoming final on January 22, 1991. On January 31, 1991, Cheri C. Jacobus, AERC Chairperson, issued a Notice of Final Order which affirmed that the proposed order became final on January 22, 1991.

B. Proceedings before the Superior Court

Swanner appealed to the superior court on March 8, 1991. Judge Karen L. Hunt heard oral argument on May 15, 1992 and issued a written decision and order on August 31, 1992. She affirmed the AERC's decision, holding that (a) Swanner's conduct constituted unlawful discrimination based upon marital status; (b) enforcement of the state and municipal anti-discrimination laws does not violate Swanner's constitutional rights, pursuant to the U.S. Supreme Court's decision in Employment Division, Department of Human Resources v. Smith, 494 U.S. 872 (1990), and our decisions in Frank v. State, 604 P.2d 1068 (Alaska 1979) and Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293 (Alaska 1982); and (c) the automatic finalization of the AERC's decision did not violate Swanner's due process rights.

C. Proceedings before this Court

Swanner appealed to this court on September 18, 1992. He contends that the superior court erred in finding that he discriminated against the complainants on the basis of marital status. He claims that he does not discriminate based on marital status, but even if he does, he is excused from compliance with the anti-discrimination laws because of his fundamental right to the free exercise of his religion, guaranteed by the Alaska and

United States Constitutions. He also claims that the automatic finalization of the AERC's decision violates his due process rights under the Alaska and United States Constitutions.[1]

II. DISCUSSION

A. Swanner Violated AMC 5.20.020 and AS 18.80.240 by Discriminating Based on Marital Status

Swanner argues that he does not discriminate against individuals based on their marital status because he will rent to people who are single, married, widowed, divorced, or separated. However, he will not rent to those whom he expects will engage in conduct repugnant to his religious beliefs, namely cohabitation outside of marriage. Swanner considers such cohabitation to be fornication and immoral.

The AERC responds that the laws at issue do not recognize a distinction between "marital status" and "cohabitation." The AERC claims the statutes' plain language demonstrates that "marital status" includes cohabitating couples.

In Foreman v. Anchorage Equal Rights Comm'n, 779 P.2d 1199, 1201-03 (Alaska 1989), we looked at the plain language of

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[1] Each issue involves the interpretation and construction of laws and regulations. On questions of law arising on appeal which do not involve particularized agency expertise, this court is to apply its own independent judgment. Kodiak Island Borough v. State of Alaska, Dep't of Labor, 853 P.2d 1111, 1113 (Alaska 1993); Alaska Transp. Comm'n v. Airpac, Inc., 685 P.2d 1248, 1252 (Alaska 1984). Thus, as the superior court found and both parties agree, the substitution of judgment standard is the appropriate standard of review on the issues Swanner has raised.

AS 18.80.240[2] and AMC 5.20.020[3] and reviewed the intent behind the

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[2] AS 18.80.240 states:

Unlawful practices in the sale or rental of real property. It is unlawful . . .

> (1) to refuse to sell, lease, or rent the real property to a person because of sex, marital status, changes in marital status,
>
> . . .
>
> (3) to make a written or oral inquiry or record of the sex, marital status, changes in marital status . . . of a person seeking to buy, lease or rent real property;
>
> . . .
>
> (5) to represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse to allow a person to inspect real property because of the . . . marital status, change in marital status . . . of that person . . . .

[3] AMC 5.20.020 provides:

> Except in the individual home wherein the renter or lessee would share common living areas with the owner, lessor, manager, agent or other person, it is unlawful. . .
>
> A. To refuse to . . . rent the real property to a person because of . . . marital status . . .;
>
> . . .
>
> C. To make a written or oral inquiry or record of the . . . marital status . . . of a person seeking to . . . rent real property;
>
> . . .
>
> E. To represent to a person that real property is not available for inspection . . . [or] rental . . . when in fact it is available, or

(continued...)

anti-discrimination laws. In Foreman, a landlord who refused to rent to an unmarried couple argued that the laws did not protect the interests of unmarried couples. Id. at 1201. We held that the landlord's policy against renting to unmarried couples unlawfully discriminated on the basis of marital status. Id. at 1203. We reasoned that because the landlord would have rented to the prospective tenants had they been married, and he refused to rent the property only after learning the couple was not married, "[t]his constitutes unlawful discrimination based on marital status." Id. The same reasoning applies here. Because Swanner would have rented the properties to the couples had they been married, and he refused to rent the property only after he learned they were not, Swanner unlawfully discriminated on the basis of marital status.[4]

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[3](...continued)
to refuse a person the right to inspect real property, because of the . . . marital status . . . of that person . . . ;

[4] Swanner agrees that the laws at issue forbid discrimination on the basis of marital status. However, he contends that he did not discriminate against anyone on the basis of his or her marital status. Instead, he asserts that he discriminates on the basis of conduct, which is not prohibited by the statutes.

The definition of "cohabit" demonstrates that marital status and conduct are inextricably combined. "Cohabit" means "to live together in a sexual relationship when not legally married." The American Heritage Dictionary 259 (1980). Swanner cannot reasonably claim that he does not rent or show property to cohabitating couples based on their conduct (living together outside of marriage) and not their marital status when their marital status (unmarried) is what makes their conduct immoral in his opinion. The undisputed facts demonstrate that Swanner would have rented to the prospective tenants if they were married.
(continued...)

B. Enforcement of AMC 5.20.020 and AS 18.80.240 Does Not Violate Swanner's Constitutional Right to the Free Exercise of His Religion Under the United States Constitution

Swanner contends that enforcement of AMC 5.20.020 and AS 18.80.240 against him has a coercive effect on the free exercise of his religious beliefs. He believes that compliance with these laws forces him to choose between his religious beliefs and his livelihood. He requests that we accommodate his religious beliefs by creating an exemption to the statute and ordinance. The AERC responds that "it is not Swanner's religious beliefs per se which run afoul of our anti-discrimination laws, but rather his actions and conduct in a commercial setting."

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." U.S. Const. amend. I. The Free Exercise Clause applies to the states by its incorporation into the Fourteenth Amendment. See Cantwell v. Connecticut, 310 U.S. 296, 303 (1940). It grants absolute protection to freedom of belief and profession of faith, but only limited protection to conduct dictated by religious belief. See Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872 (1990) (narrowing the scope of religious exemptions under the Free Exercise Clause by upholding a statute

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[4](...continued)
Swanner's argument that he discriminated against the prospective tenants based on their conduct and not their marital status is without merit.

that criminalized peyote use, as applied to Native American religious ceremonies).

Swanner claims that we should apply the "compelling state interest" test set forth in Sherbert v. Verner, 374 U.S. 398 (1963) to determine whether the laws at issue violate his right to free exercise of religion under the United States Constitution.[5] However, in Smith, the United States Supreme Court expressly rejected applying the Sherbert test where the law being challenged is generally applicable, or, in other words, where the law is not directed at any particular religious practice or observance.[6] Smith, 494 U.S. at 885. "[A] law that is neutral and of general applicability need not be justified by a compelling governmental

---

[5] Under this balancing test, a law that incidentally burdens a religious practice must be justified by a compelling governmental interest. See Sherbert, 374 U.S. at 403, 406.

[6] The Court stated:

> We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling" -- permitting him, by virtue of his beliefs, "to become a law unto himself," -- contradicts both constitutional tradition and common sense.

494 U.S. at 885 (citations and footnote omitted).

interest even if the law has the incidental effect of burdening a particular religious practice." Church of Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217, 2226 (1993) (citing Smith, 494 U.S. 872 (1990)).[7] "Neutrality and general applicability are interrelated. . . . [F]ailure to satisfy one requirement is a likely indication that the other has not been satisfied. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." Id. at 2226.

The first step in determining whether a law is neutral is whether it discriminates on its face. "A law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context." Id. at 2227. Neither the ordinance nor the statute contain any language singling out any religious group or practice.

Even when a law is facially neutral, however, it may not be neutral if it is crafted to impede particular religious conduct. Id. These laws clear that hurdle as well. The purpose of AMC 5.20.020 and AS 18.80.240 is to prohibit discrimination in the

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[7] In Church of Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217 (1993), the Court used the Free Exercise Clause to strike down city ordinances that regulated animal sacrifice, but effectively prohibited only sacrifice practices of the Santeria religion. The Court held the ordinances failed to satisfy the Smith requirements because they were not neutral, generally applicable, nor narrowly tailored, and did not advance compelling governmental interests.

rental housing market.[8] Swanner does not claim that the purpose of the laws is to discriminate against people based on religion; in fact, he contends that the laws do not even cover this kind of discrimination. Therefore, the laws satisfy the requirement of neutrality.

Additionally, these laws are generally applicable. They apply to all people involved in renting or selling property, and do not specify or imply applicability to a particular religious group. Therefore, at least under the general rule, no compelling state interest is necessary.

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[8] AS 18.80.200 states the purpose of the anti-discrimination laws:

> (a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety and general welfare of the state and its inhabitants.
>
> (b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation, in housing accommodations and in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood.

Smith provides one ground for judicial exemptions from compliance with neutral laws of general applicability. A court may exempt an individual from a law where the facts present a hybrid situation where an additional constitutionally protected right is implicated. Smith, 494 U.S. at 881-82. Like the appellant in Smith, Swanner does not contend that the laws in question here infringe on any constitutional right other than his right to free exercise of religion. Consequently, this case does not present such a "hybrid" situation.

We conclude that enforcing AMC 5.20.020 and AS 18.80.240 against Swanner does not violate his right to free exercise of religion under the United States Constitution.

C. Enforcement of AMC 5.20.020 and AS 18.80.240 Does Not Violate Swanner's Constitutional Right to the Free Exercise of His Religion Under the Alaska Constitution

Swanner does not dispute that the ordinance and statute are generally applicable and neutral under Smith, but asserts that "this decision does not mandate use of a less restrictive standard by state courts in interpreting state constitutional protection."

Swanner is correct in asserting that a state court may provide greater protection to the free exercise of religion under the state constitution than is now provided under the United States Constitution. See, e.g., Roberts v. State, 458 P.2d 340, 342 (Alaska 1969) ("We are not bound in expounding the Alaska Constitution's Declaration of Rights by the decisions of the United States Supreme Court, past or future, which expound identical or closely similar provisions of the United States Constitution.").

Thus, even though the Free Exercise Clause of the Alaska Constitution is identical to the Free Exercise Clause of the United States Constitution, we are not required to adopt and apply the Smith test to religious exemption cases involving the Alaska Constitution merely because the United States Supreme Court adopted that test to determine the applicability of religious exemptions under the United States Constitution.[9] We will apply Frank v. State, 604 P.2d 1068 (Alaska 1979), to determine whether the anti-discrimination laws violate Swanner's right to free exercise under the Alaska Constitution.[10]

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[9] Although the Smith decision is presently valid in analyzing free exercise challenges under the United States Constitution, legal scholars have criticized the decision. See Douglas Laycock, The Remnants of Free Exercise, 1990 Sup. Ct. Rev. 1.

In the recently enacted Religious Freedom Restoration Act of 1993, 107 Stat. 1488 (1993), the United States Congress stated that in Smith, the "Supreme Court virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral toward religion" and that "the compelling interest test in prior Federal court rulings is a workable test."

[10] Swanner notes that two jurisdictions have held that a landlord may refuse to rent to unmarried couples because of his/her religious beliefs. He cites to decisions from Minnesota and California for the proposition that enforcement of the anti-discrimination laws against him violates his right to free exercise. In Minnesota v. French, 460 N.W.2d 2 (Minn. 1990), the Minnesota Supreme Court held that a landlord's refusal to rent to an unmarried couple did not violate Minnesota's anti-discrimination laws and enforcing such laws would violate the landlord's free exercise right. However, in French, the anti-discrimination laws at issue did not define or otherwise explain the term "marital status." The court concluded that the Minnesota Legislature did not intend to include unmarried couples in the definition. Cf. Foreman, 779 P.2d at 1203 (holding unmarried couples are included within the state and municipal prohibitions against discrimination based on marital status). Moreover, the Minnesota court relied on

(continued...)

In Frank v. State, we adopted the Sherbert test to determine whether the Free Exercise Clause of the Alaska Constitution requires an exemption to a facially neutral law.[11] 604 P.2d at 1070. We held that to invoke a religious exemption, three requirements must be met: (1) a religion is involved, (2) the conduct in question is religiously based, and (3) the claimant is sincere in his/her religious belief. Id. at 1071 (citing Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972)). Once these three requirements are met, "[r]eligiously impelled actions can be forbidden only 'where they pose some substantial threat to public

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[10](...continued)
the criminal anti-fornication statute then in effect. In contrast, Alaska's fornication provision was repealed well before the discriminatory conduct giving rise to this case occurred. Compare French, 460 N.W.2d at 10, with Foreman, 779 P.2d at 1202. Further, the French court relied on the Minnesota Constitution, article I, section 16, which contains very different language from the Alaska Constitution. See French, 460 N.W.2d at 9.

In Donahue v. Fair Employment Housing Comm'n, 2 Cal. Rptr. 2d 32 (Cal. App. 1991), review granted and opinion superseded, 825 P.2d 766 (Cal. 1992), dismissed as improvidently granted, No. S-024538 (Oct. 1, 1993), the California Court of Appeal held that although the landlords' conduct did constitute prohibited marital status discrimination, the landlords were entitled to an exemption from the anti-discrimination laws because of their religious beliefs. The court based its decision "on independent state constitutional grounds." 2 Cal. Rptr. 2d at 40. However, the California Supreme Court depublished the court of appeal's opinion, thereby rendering the decision uncitable.

Neither case provides this court with meaningful guidance in interpreting the Free Exercise Clause of the Alaska Constitution.

[11] In Seward Chapel, Inc. v. City of Seward, this court held, "Our ruling in Frank establishes that there are situations in which the Alaska Constitution requires the state or a municipality to except from a facially neutral law persons whose religious beliefs dictate that they not comply with the law." 655 P.2d 1293, 1301 (Alaska 1982) (footnote omitted).

safety, peace or order, or where there are competing governmental interests 'of the highest order and . . . [are] not otherwise served. . . .'" Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293, 1301 n.33 (Alaska 1982) (quoting Frank, 604 P.2d at 1070).

Swanner clearly satisfies the first and third requirements to invoke an exception to the laws under the Free Exercise Clause. No one disputes that a religion is involved here (Christianity), or that Swanner is sincere in his religious belief that cohabitation is a sin and by renting to cohabitators, he is facilitating the sin. However, the superior court held that he did not meet the second requirement that his conduct was religiously based because "[n]othing in the record permits a finding that refusing to rent to cohabiting unmarried couples is a religious ritual, ceremony or practice deeply rooted in religious belief." Swanner's claim that the superior court misinterpreted Frank v. State as limiting free exercise rights only to ritual or ceremony has merit. In Frank, we determined that the action at issue was a practice deeply rooted in religion. 604 P.2d at 1072-73. However, we did not intend to limit free exercise rights only to actions rooted in religious rituals, ceremonies, or practices. To meet the second requirement, a party must demonstrate that the conduct in question is religiously based; this determination is not limited to actions resulting from religious rituals. Swanner's refusal to rent to unmarried couples is not without an arguable basis in some tenets of the diverse Christian faith, and therefore, his conduct is sufficiently religiously based to meet our

constitutional test. Although Swanner meets the three preliminary requirements to invoke an exception to the anti-discrimination laws, the analysis does not end here.

As discussed previously, a religious exemption will not be granted if the religiously impelled action poses "some substantial threat to public safety, peace or order or where there are competing state interests of the highest order." Frank, 604 P.2d at 1070. The question is whether Swanner's conduct poses a threat to public safety, peace or order, or whether the governmental interest in abolishing improper discrimination in housing outweighs Swanner's interest in acting based on his religious beliefs.

In our view, the second part of the test adopted in Frank is applicable here. Under this part of the Frank test, we must determine whether "a competing state interest of the highest order exists." "The question is whether that interest, or any other, will suffer if an exemption is granted to accommodate the religious practice at issue." Frank, 604 P.2d at 1073. The government possesses two interests here: a "derivative" interest in ensuring access to housing for everyone, and a "transactional" interest in preventing individual acts of discrimination based on irrelevant characteristics. Most free exercise cases, including Frank, involve "derivative" state interests. In other words, the State does not object to the particular activity in which the individual would like to engage, but is concerned about some other variable that the activity will affect. This can be contrasted with a

"transactional" interest in which the State objects to the specific desired activity itself.

For example, in Frank, this court exempted a Central Alaska Athabascan Indian needing moose meat for a funeral potlatch from state hunting regulations. The State did not object to killing moose per se (indeed, it expressly allows moose hunting in season); the State's derivative interest was in maintaining healthy moose populations. In the instant case, the government's derivative interest is in providing access to housing for all. One could argue that if a prospective tenant finds alternative housing after being initially denied because of a landlord's religious beliefs, the government's derivative interest is satisfied. However, the government also possesses a transactional interest in preventing acts of discrimination based on irrelevant characteristics regardless of whether the prospective tenants ultimately find alternative housing.

We look to Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1943), as an analogy. In Prince, the United States Supreme Court refused to grant an exemption to child labor laws for children distributing religious literature. As in this case, the state had a transactional interest: preventing exploitation of children in employment. Thus, the state objected to child labor, the particular activity at issue, per se, not to an effect of that activity. The state legislature had prohibited children from working under certain conditions. Therefore, permitting any child to work under such conditions resulted in harming the government's

transactional interest. This transactional government interest does not involve a numerical cutoff below which the harm is insignificant unlike in Frank.

Similarly, in the instant case, the legislature and municipal assembly determined that housing discrimination based on irrelevant characteristics should be eliminated. See Hotel, Motel, Restaurant, Etc. Union Local 879 v. Thomas, 551 P.2d 942, 945 (Alaska 1976) ("[T]he statutory scheme constitutes a mandate to the agency to seek out and eradicate discrimination in . . . the rental of real property."); Loomis Electronic Protection, Inc. v. Schaefer, 549 P.2d 1341, 1343 (Alaska 1976) (recognizing the Alaska Legislature's "strong statement of purpose in enacting AS 18.80, and its avowed determination to protect the civil rights of all Alaska citizens."); see also AS 18.80.200; AMC 5.10.010. The existence of this transactional interest distinguishes this case from Frank and most other free exercise cases where courts have granted exemptions. The government's transactional interest in preventing discrimination based on irrelevant characteristics directly conflicts with Swanner's refusal to rent to unmarried couples. The government views acts of discrimination as independent social evils even if the prospective tenants ultimately find housing. Allowing housing discrimination that degrades individuals, affronts human dignity, and limits one's opportunities results in harming the government's transactional interest in preventing such discrimination. Under Frank, this interest will

clearly "suffer if an exemption is granted to accommodate the religious practice at issue."

The dissent attempts to prove that the state does not view marital status discrimination in housing as a pressing problem by pointing to other areas in which the state itself discriminates based on marital status. However, those areas are easily distinguished. The government's interest here is in specifically eliminating marital status discrimination in housing, rather than eliminating marital status discrimination in general. Therefore, the other policies which allow marital status discrimination are irrelevant in determining whether the government's interest in eliminating marital status discrimination in housing is compelling.

In the examples the dissent cites, treating married couples differently from unmarried couples is arguably necessary to avoid fraudulent availment of benefits available only to spouses. The difficulty of discerning whose bonds are genuine and whose are not may justify requiring official certification of the bonds via a marriage document. That problem is not present in housing cases: as this case demonstrates, if anything, an unmarried couple who wish to live together are at a disadvantage if they claim to be romantically involved.

It is important to note that any burden placed on Swanner's religion by the state and municipal interest in eliminating discrimination in housing falls on his conduct and not his beliefs. Here, the burden on his conduct affects his commercial activities. In United States v. Lee, 455 U.S. 252

(1982), the United States Supreme Court stated the distinction between commercial activity and religious observance:

> When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith, are not to be superimposed on the statutory schemes which are binding on others in that activity.

Id. at 261.

Swanner complains that applying the anti-discrimination laws to his business activities presents him with a "Hobson's choice" -- to give up his economic livelihood or act in contradiction to his religious beliefs. A similar argument was advanced in Seward Chapel, where Seward Chapel argued that applying the city zoning ordinances to prohibit construction of a parochial school impermissibly burdened the chapel's free exercise rights. 655 P.2d at 1299. We concluded that "there has been no showing of a religious belief which requires members of Seward Chapel to locate in [a specific place]. . . . [T]he inconvenience and economic burden of which Seward Chapel now complains is caused largely by the choice to build in [a specific place]. . ." Id. at 1302 (footnote omitted).

Swanner has made no showing of a religious belief which requires that he engage in the property-rental business. Additionally, the economic burden, or "Hobson's choice," of which he complains, is caused by his choice to enter into a commercial activity that is regulated by anti-discrimination laws. Swanner is voluntarily engaging in property management. The law and ordinance regulate unlawful practices in the rental of real

property and provide that those who engage in those activities shall not discriminate on the basis of marital status. See AS 18.80.240; AMC 5.20.020. Voluntary commercial activity does not receive the same status accorded to directly religious activity. Cf. Frank v. State, 604 P.2d at 1075 (exempting an Athabascan Indian from state hunting regulations "to permit the observance of the ancient traditions of the Athabascans.")

"As [James] Madison summarized the point, free exercise should prevail in every case where it does not trespass on private rights or the public peace." Michael W. McConnell, Free Exercise Revisionism and the Smith Decision, 57 Chi. L. Rev. 1109, 1145 (1990) (citation omitted). Because Swanner's religiously impelled actions trespass on the private right of unmarried couples to not be unfairly discriminated against in housing, he cannot be granted an exemption from the housing anti-discrimination laws. Therefore, we conclude that enforcement of AMC 5.20.020 and AS 18.80.240 against Swanner does not violate his right to free exercise of religion under the Alaska Constitution.

D. The AERC Did Not Deprive Swanner of Due Process of Law

1. AMCR 5.10.015(A) is not an unconstitutional delegation by the AERC.

Anchorage Municipal Code 5.10.040 authorizes the AERC: (a) to hold public hearings; (b) to administer oaths and issue subpoenas; (h) to delegate to its executive director all powers and duties except the power to hold hearings and issue orders; and (i) to adopt procedural and evidentiary rules necessary to fulfill the intent of Title 5. AMC 5.10.040. The AERC's power to "adopt

procedural and evidentiary rules" is effectuated by promulgating municipal regulations.

Anchorage Municipal Code of Regulations (AMCR) provides the scope of the hearing examiner's recommendation.

> The hearing examiner . . . shall rule on the admissibility of evidence and other procedural matters. On any question which would be determinative of the jurisdiction of the commission or of the culpability of any party, the hearing examiner . . . may only make recommendations to the full commission.

AMCR 5.10.013(C)(2).[12] Additionally, "[a]ll recommendations of the hearing examiner . . . shall be consistent with commission decisions and regulations." AMCR 5.10.013(C)(4).

AMCR 5.10.015(A) states:

> After a party . . . receives the hearing examiner's . . . proposed findings of fact, conclusions of law and proposed order, that person or his/her representative may, within 10 days or such other time fixed by the chair, present written objections to the commission. If no party files an objection within ten days, the proposal shall become final.

Swanner claims that AMCR 5.10.015(A) directly conflicts with AMCR 5.10.013(C)(2) because "[Section] 5.10.015 appears to permit the commission to adopt the hearing examiner's recommendations without ever considering its content, rationale or rectitude." He interprets AMCR 5.10.013(C)(2) as authorizing only "the full commission" to determine a question which is

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[12] On February 16, 1993, the AERC repealed AMCR 5.10.013 and 5.10.015. See AMCR 5.60.003(F), 5.60.012(C), (D) for the new regulations replacing these sections.

We apply the regulations as they existed when Swanner's case began at the agency level.

determinative of jurisdiction or of the culpability of a party; Swanner asserts that his culpability in housing discrimination was at issue. He contends that the AERC abdicated its responsibility by adopting the hearing examiner's recommendation, and, therefore, the AERC violated AMCR 5.10.013.

Swanner is correct that the hearing examiner did not have the authority to determine Swanner's culpability. Instead he had the authority to make a recommendation, which is exactly what he did. Hearing Examiner Landau made a recommendation to the AERC and the AERC decided to adopt it. Therefore, no conflict exists between AMCR 5.10.013(C)(2) and AMCR 5.10.015(A), and the AERC followed its own regulations in adopting the hearing examiner's recommendation.[13]

2. The regulations do not require an independent review by the AERC.

Swanner finds fault with this process and complains that the AERC's regulations do not grant it authority to approve a hearing examiner's decision without conducting an independent review. No rule of procedure provides that the AERC must independently review the hearing examiner's recommendations. AMCR 15.10.015(B) expressly provides for the AERC's review of the hearing examiner's recommendations after a party timely files an

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[13] Where an agency interprets its own regulations, a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue. Rose v. Commercial Fisheries Entry Comm'n, 647 P.2d 154, 161 (Alaska 1982) (citing Kenneth C. Davis, Administrative Law Treatise § 7.22, at 105-08 (2d ed. 1979)).

objection. Swanner did not file an objection; therefore, the regulations required no independent review by the AERC.

3. Due process did not require that the AERC personally notify Swanner that it would adopt the hearing examiner's recommendation absent an objection within ten days.

Swanner claims the AERC's adoption of the hearing examiner's recommendation violated his constitutional right to due process of law. Both the Alaska and United States Constitutions provide that a person shall not be deprived of "life, liberty, or property, without due process of law." Alaska Const., Art. 1, § 7; U.S. Const. amend. XIV, § 1. "Due process requires 'that deprivation of life, liberty or property by adjudication be proceeded by notice . . . appropriate to the nature of the case.'" Wickersham v. State Com. Fisheries Entry Comm'n, 680 P.2d 1135, 1144 (Alaska 1984) (quoting Mullane v. Central Hanover Bank and Trust Co., 229 U.S. 306, 313 (1950)). This court held "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action." Aguchak v. Montgomery Ward Co., Inc., 520 P.2d 1352, 1356 (Alaska 1974) (adopting Mullane language for analysis under the Alaska Constitution).

Swanner states that he did not receive notice that his failure to object to the hearing examiner's recommended decision would result in the AERC making the decision final. He claims that he became aware of the AERC's intent to approve the hearing

examiner's recommended decision the day after objections to the proposed order were due, when the AERC issued a memorandum stating the proposed order became final. Therefore, he claims he was not given "notice reasonably calculated, under all the circumstances, to apprise [him] of the pendency of the action, as required by Alaska law."

Swanner cannot claim that he was unaware of the pendency of this action. The actual hearing in this matter occurred on October 9 and 11, 1990, and Swanner participated in seven months of formal pre-hearing procedures and discovery. Swanner was clearly aware of the "pendency of this action." Moreover, AMCR 5.10.015 was readily available to Swanner and the public from both the AERC and the State Law Library. Accordingly, the AERC did not deny Swanner due process.

III. CONCLUSION

We hold that Swanner impermissibly discriminated against Bowles, Harper, and Moose because he would not rent to them based on their marital status. The Free Exercise Clause of the United States and Alaska Constitutions do not permit Swanner to disobey the state and municipal anti-discrimination laws by entitling him to an exemption. The AERC did not deny Swanner his right to due process by following its procedural regulations.

The AERC's final order and the superior court's opinion are AFFIRMED.

MOORE, Chief Justice, dissenting.

Article I, section 4 of the Alaska Constitution declares that "[n]o law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." As the majority correctly recognizes, this provision may provide greater protection of free exercise rights than is now provided under the United States Constitution. Opinion at 12-13. Accordingly, while the United States Supreme Court has adopted a new test to analyze free exercise claims such as the one at issue here,[1] the majority agrees that we will continue to apply the compelling interest test in interpreting the free exercise clause of the Alaska Constitution. Opinion at 13.

Our decision in Frank v. State, 604 P.2d 1068 (Alaska 1979), sets forth the framework from which we must determine whether AMC 5.20.020 and AS 18.80.240 violate Swanner's right to the free exercise of his religion. As we stated in Frank, "[n]o value has a higher place in our constitutional system of government than that of religious freedom." 604 P.2d at 1070. For this reason, a facially neutral statute or ordinance which interferes with religious-based conduct must be justified by a compelling state interest. Id. Absent such an interest, our constitution requires an exemption from the laws at issue to accommodate religious practices. Id. at 1070-71.

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[1] See Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872, 884-90 (1990).

The majority acknowledges that Swanner's actions fall within the ambit of the free exercise clause. Swanner has shown that his refusal to rent apartments to unmarried individuals who plan to live with a member of the opposite sex is based on his Christian faith, which strictly proscribes such cohabitation. No one questions the sincerity of his religious belief that he facilitates a sin by renting to unmarried individuals such as the complainants in this case. See Opinion at 15-16. For this reason, Swanner's religiously impelled conduct must be protected under Alaska law unless the AERC can show that the conduct poses "some substantial threat to public safety, peace or order," or that there exist competing governmental interests "of the highest order" which are not otherwise served without limiting Swanner's conduct. Frank, 604 P.2d at 1070 (citing Wisconsin v. Yoder, 406 U.S. 205, 215 (1972) and Sherbert v. Verner, 374 U.S. 398, 403 (1963)); Seward Chapel, Inc. v. City of Seward, 655 P.2d 1293, 1301 n.33 (Alaska 1982). I do not believe the AERC has met its burden in this case. I would therefore grant Swanner an exemption to accommodate his religious beliefs.

First, I note that in determining that the governmental interest in this case is "of the highest order," the majority announces an entirely new and unnecessary test examining the state's "transactional" and "derivative" interests. Opinion at 16-17. Under this analysis, the majority concludes that the state has a transactional, or per se, interest in preventing "individual acts of discrimination based on irrelevant characteristics" which

overrides Swanner's free exercise rights in this case. Because the interest is "transactional," the majority concludes that no evidentiary basis is required to show that rental housing for unmarried couples has become scarce. However, before the court would enforce the state's "derivative" interest in "ensuring access to housing for everyone," the AERC apparently would have to make an evidentiary showing that cohabitating couples have experienced hardship in finding available housing, i.e., that Swanner's conduct poses a "substantial threat to public safety, peace or order." Frank, 604 P.2d at 1070.

In my opinion, this amorphous analysis of the state's interests ultimately will prove to be useless in resolving future free exercise cases. Even in this case, I do not believe it provides a useful distinction of the interests at issue. For example, the majority determines that the state has a per se objection to marital status discrimination in housing which overcomes Swanner's free exercise rights. The majority defines this interest as that in "preventing acts of discrimination based on irrelevant characteristics." Opinion at 17. Such an articulation of the state's interest poses myriad questions. Who is to determine what is an "irrelevant" characteristic? Obviously, marital status is not "irrelevant" to Swanner. It is central to the question whether he will be committing a sin under the dictates of his religion. Is the legislative branch the final arbiter of relevancy or irrelevancy? Further, the discrimination at issue here is not based on innate "characteristics" but rather

on the conduct of potential tenants. While this conduct is worthy of some protection, it does not warrant the same constitutional protection given to religiously compelled conduct. I am not willing to place the right to cohabitate on the same constitutional level as the right to freedom from discrimination based on either innate characteristics -- such as race or gender -- or constitutionally protected belief, such as freedom of religion.

In addition, it remains unclear to me how the state's "derivative" interests are to be identified. Here, that interest is defined with little explanation as being the state's interest in "providing access to housing for all." Opinion at 17. Does this mean the state has no per se objection to the fact that some individuals may have limited access to housing? In Frank, could it not be said that the state had a per se interest in enforcing its hunting regulations?

In Frank, this court set forth a workable and sufficient guide to determine whether a governmental interest is sufficiently compelling to overcome an individual's free exercise rights. 604 P.2d at 1070. It seems to me that the majority's effort to expand this analysis adds little to the actual analysis of interests at stake. To the contrary, I see the majority's expansion of Frank as little more than a strained effort to distinguish Frank from the present situation when such a distinction is not logically justified. In this effort, the majority totally ignores the record in this case, and it engages in a game where the

"transactional" or "derivative" label attached to any given state interest predetermines the outcome of the case.

There is no governmental interest "of the highest order" to justify the burden on Swanner's fundamental rights.

Even applying the framework announced by the court in analyzing whether the state's interest is "of the highest order," I cannot agree with the court's reasoning and resulting decision. In essence, the majority's conclusion is that marital status discrimination constitutes such an affront to human dignity that the state has a per se obligation "of the highest order" to prevent it. Based on my analysis of free exercise jurisprudence and the issues surrounding marital status discrimination, I cannot conclude that eradication of marital status discrimination in the rental housing industry constitutes a governmental interest of such high order as to justify burdening Swanner's fundamental constitutional rights.[2]

There can be no question that the state has a compelling interest in eradicating discrimination against certain

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[2] Significantly, the majority cites no cases to support the proposition that the state has a compelling interest in eradicating marital status discrimination, particularly when the discrimination at issue must be balanced against interests of constitutional magnitude. Both Loomis Elec. Protection, Inc. v. Schaefer, 549 P.2d 1341 (Alaska 1976), and Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union Local 879 v. Thomas, 551 P.2d 942 (Alaska 1976), cite the general purpose statement of AS 18.80.200; however, neither case does so to establish the existence of a compelling state interest. Both cases involved gender discrimination, the eradication of which has been held to be a compelling interest, as I discuss infra. Neither case is applicable to the instant case, where marital status discrimination is involved and where the discriminating party is asserting a core constitutional freedom.

historically disadvantaged groups. See, e.g., Bob Jones University v. United States, 461 U.S. 574, 593-95 (1983) (racial discrimination); Roberts v. United States Jaycees, 468 U.S. 609, 625 (1984) (gender discrimination). This compelling interest has been found to exist based on a determination that the discrimination at issue is so invidious to personal dignity and to our concept of fair treatment as to warrant strict protection. There is no question that Swanner's right to freely exercise his religion could and should be burdened if he engaged in such discrimination as a result of his religious beliefs.

This fact does not mean, however, that every form of discrimination is equally invidious or that the state's interest in preventing it necessarily outweighs fundamental constitutional rights. Rather, the cases which have upheld an imposition on free exercise have articulated certain specific reasons that some forms of discrimination are of particular governmental interest and deserving of heightened judicial scrutiny. In Bob Jones University v. United States, 461 U.S. 574 (1983), for example, the Supreme Court refused to grant tax-exempt status to schools that maintained racially discriminatory policies under their interpretation of the Bible. In doing so, the Court discussed this nation's long history of officially sanctioned racial segregation and discrimination in education. It further noted that, since the late 1950s, every pronouncement of the Supreme Court and myriad Acts of Congress and Executive Orders attested to a national policy prohibiting such discrimination. Id. at 594-

95, 604. It therefore concluded that "[t]here can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice." Id. at 592. Accordingly, the government's interest in eradicating racial discrimination in education was found to be compelling.

Similarly, in Roberts v. United States Jaycees, 468 U.S. 609 (1984), the Supreme Court declared that the state's compelling interest in eradicating discrimination against its female citizens justified any minimal interference with an all-male organization's freedom of expressional association. In analyzing the weight of the state's interest, the Court discussed the invidious nature of gender bias, stating:

> [D]iscrimination based on archaic and overbroad assumptions about the relative needs and capacities of the sexes forces individuals to labor under stereotypical notions that often bear no relationship to their actual abilities. It thereby both deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life.

Id. at 625 (citations omitted). The Court also observed that society generally had recognized the importance of removing "the barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women." Id. at 626. Based on these conclusions, it was no stretch to find that the state possessed a compelling interest in eradicating gender discrimination, and that this interest was sufficient to overcome the Jaycees' First Amendment claim. Id. at 626-29.

The majority today avoids engaging in any similar analysis of marital status discrimination to explain why or how it is so damaging to human dignity to become of such governmental import as to overcome a fundamental constitutional right.[3] This analysis is critical. The majority cites no evidence that marital status classifications have been associated with a history of unfair treatment that would warrant heightened governmental protection.[4] To the contrary, I believe the law is clear that marital status classifications have been accorded relatively low import on the scale of interests deserving governmental protection. For instance, the government itself discriminates based on marital status in numerous regards, and there is no suggestion that this

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[3] While the majority contends that its decision today affects only Swanner's conduct, not his religious beliefs, Opinion at 19-20, I do not believe that the Alaska Constitution distinguishes so clearly between religious belief and religious conduct. See Frank, 604 P.2d at 1070 (because of the close relationship between conduct and belief, and because of the high value we assign to religious beliefs, religiously impelled actions can be forbidden only where they are outweighed by a compelling governmental interest). See also Wisconsin v. Yoder, 406 U.S. 205, 220 (1972) ("[B]elief and action cannot be neatly confined in logic-tight compartments."); Smith, 494 U.S. at 893 (O'Connor, J., concurring) ("Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must therefore be at least presumptively protected by the Free Exercise Clause."). I would hold that conduct that is motivated by sincere religious belief is presumptively protected by Article I, section 4.

[4] The majority pronounces that "the government views acts of discrimination as independent social evils. . . ." Opinion at 18. This analysis ignores the specific issue here: discrimination in housing based on marital status. Had Swanner's religious beliefs compelled him to discriminate based on characteristics such as race or gender, I clearly would vote to deny an exemption. However, I am not convinced that marital status discrimination is or should be treated as comparable in any way to race or gender discrimination.

practice should be reexamined. Alaska law explicitly sanctions such discrimination. See, e.g., AS 13.11.015 (intestate succession does not benefit unmarried partner of decedent); AS 23.30.215(a) (workers' compensation death benefits only for surviving spouse, child, parent, grandchild, or sibling); Alaska R. Evid. 505 (no marital communication privilege between unmarried couples); Serradell v. Hartford Accident & Indemn. Co., 843 P.2d 639, 641 (Alaska 1992) (no insurance coverage for unmarried partner under family accident insurance policy).

In addition, marital status classifications have never been accorded any heightened scrutiny under the Equal Protection Clause of either the federal or the Alaska Constitutions. Disparate treatment of individuals based on classifications such as race, on the other hand, are reviewed under the highest scrutiny. See, e.g., Korematsu v. United States, 323 U.S. 214 (1944) (restrictions curtailing the civil rights of a single racial group are immediately suspect and deserve strict scrutiny analysis). Gender-based classifications are similarly analyzed under a heightened level of scrutiny at the federal level. See, e.g., Wengler v. Druggists Mut. Ins. Co., 446 U.S. 142, 150 (1980) (gender-based discrimination must serve important governmental objectives and the discriminatory means employed must be substantially related to the achievement of those objectives). The sliding scale approach to equal protection analysis under the Alaska Constitution similarly applies a heightened level of scrutiny to laws burdening racial minorities or other suspect

classifications. See State v. Ostrosky, 667 P.2d 1184, 1193 (Alaska 1983) ("[L]aws which embody classification schemes that are more constitutionally suspect, such as laws discriminating against racial or ethnic minorities, are more strictly scrutinized."); State v. Erickson, 574 P.2d 1, 11-12 (Alaska 1978) (where fundamental rights or suspect categories are involved, equal protection analysis under the Alaska Constitution requires a compelling state interest).

At the federal level, the eradication of marital status discrimination in the housing context clearly has not been treated as a compelling interest.[5] Neither the Federal Fair Housing Act, 42 U.S.C. § 3604 (1988), nor the Federal Civil Rights Act, 42 U.S.C. §§ 1981 and 1982 (1988), would prohibit the precise form of marital status discrimination at issue here, unless it was being used as a pretext for a more egregious form of discrimination, such as that based on race. See Marable v. H. Walker & Assocs., 644 F.2d 390, 397 (5th Cir. 1981) (finding a violation of the fair housing and civil rights statutes only after concluding that, although the landlord asserted that he refused to rent housing based on the applicant's marital status, this excuse was a mere pretext for racial discrimination); see also James A. Kushner, The Fair Housing Amendments Act of 1988: The Second Generation of Fair

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[5] While I recognize that Alaska's antidiscrimination legislation is not substantially similar to comparable federal laws -- see, e.g., Hotel, Motel, Restaurant, Constr. Camp Employees and Bartenders Union Local 879 v. Thomas, 551 P.2d 942, 945 (Alaska 1976) -- the majority's failure to cite any authority for a compelling interest at the state level in this case leads me to make this comparison for further guidance.

Housing, 42 Vand. L. Rev. 1049, 1106 (1989) (the Fair Housing Act does not protect unmarried couples from a landlord's refusal to rent unless a case can be made that the marital status discrimination is merely a pretext for racial, ethnic, religious or gender-based discrimination).

My research has not revealed a single instance in which the government's interest in eliminating marital status discrimination has been accorded substantial weight when balanced against other state interests, let alone fundamental constitutional rights. I find nothing to suggest that marital status discrimination is so invidious as to outweigh the fundamental right to free exercise of religion.

The majority comments that its result today is justified because Swanner's right to the free exercise of his religious beliefs must be accorded less weight since he has entered the commercial arena. Opinion at 19-21. As discussed above, it is well-accepted that an individual's right to religious freedom will not and cannot always override other interests. See, e.g., United States v. Lee, 455 U.S. 252, 261 (1982) (rejecting Amish employer's claim that imposition of social security taxes violated his free exercise rights). However, neither Lee nor any other case of which I am aware stands for the proposition that individuals like Swanner altogether waive their constitutional right to the free exercise of religion simply because a conflict between their religious faith and some legislation occurs in a commercial context. To the contrary, the Lee Court recognized that, even in a commercial

setting, the state must justify its limitation on religious liberty by showing the limitation is "essential to accomplish an overriding governmental interest." Id. at 257-58. The AERC has simply failed to meet that burden here.

The majority suggests that Swanner's constitutional rights must be accorded lesser weight because he voluntarily engages in the property management industry, and his right to engage in that business is not entitled to judicial protection. Opinion at 20-21. However, this court has stated that "the right to engage in an economic endeavor within a particular industry is an 'important' right for state equal protection purposes." State v. Enserch Alaska Constr., Inc., 787 P.2d 624, 632 (Alaska 1989) (citing Commercial Fisheries Entry Comm'n v. Apokedak, 606 P.2d 1255, 1266 (Alaska 1980)). The ability to participate in a particular industry, such as rental property management, is therefore entitled to more protection under our state constitution than the majority acknowledges.

The majority incorrectly relies on Seward Chapel to arrive at its contrary conclusion. Unlike the present case, Seward Chapel did not involve a forced decision between giving up one's livelihood or violating one's religious beliefs. In Seward Chapel, we merely found that no religious belief required an exception to city zoning laws prohibiting the location of a parochial school on a specific site. 655 P.2d at 1302. No activity was totally prohibited; only the place in which it could be conducted was being regulated. I believe that there is a significant difference

between the inconvenience placed upon Seward Chapel and the total abrogation of Mr. Swanner's right to earn a living in his chosen profession while abiding by his sincerely held religious beliefs.

There is no basis in the record to conclude that an exemption in this case would create a substantial threat of harm.

In Frank, this court required that the state establish precisely how its interest would suffer if an exemption was granted to accommodate the religious conduct at issue. 604 P.2d at 1073. Thus, even accepting that the government has a strong interest in assuring available housing, the AERC must show how this interest will suffer in real terms if an exemption is granted to Swanner.

I see no evidence whatsoever in the record to suggest that Swanner's conduct poses a substantial threat to public safety, peace or order such that the burden on Swanner's rights is justified. For this reason, I fail to see why an exemption to accommodate Swanner's religious beliefs is not warranted. Mere speculation that housing for unmarried couples may become scarce if an exemption is granted is insufficient to establish a compelling governmental interest. In Frank, we specifically criticized the state for speculating, without any supporting data, that an exemption to moose hunting regulations for an Athabascan funeral potlatch would open the flood gates to widespread poaching. Id. at 1074. We stated: "'Justifications founded only on fear and apprehension are insufficient to overcome rights asserted under the First Amendment.'" Id. (quoting Teterud v. Burns, 522 F.2d 357, 361-62 (8th Cir. 1975)). We further found that, since the