

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 JULIE A. SCHMIDT, GAYLE SCHUH,)
5 JULIE M. VOLLIK, SUSAN L.)
6 BERNARD, FRED W. TRABER, and)
7 LAURENCE SNIDER)

8 Plaintiffs)

9 vs.)

10 THE STATE OF ALASKA, and THE)
11 MUNICIPALITY OF ANCHORAGE,)

12 Defendants.)

DAVIS WRIGHT TREMAINE
Date: 7-11-11
Time: 3:50
Logged By DB

Case No. 3AN-10-9519 CI

13 **THE STATE OF ALASKA'S CROSS-MOTION FOR SUMMARY JUDGMENT**

14 Defendant, State of Alaska, pursuant to Rule 56 of the Alaska Rules of
15 Civil Procedure, moves for summary judgment on the Complaint of plaintiffs. There is
16 no dispute as to any material facts and the State is entitled to judgment as a matter of
17 law. This motion is supported by the accompanying memorandum of law, affidavit and
18 exhibits.

19 DATED this 11th day of July, 2011.

20 JOHN J. BURNS
21 ATTORNEY GENERAL

22 By: 

23 Brenda B. Page
24 Assistant Attorney General
25 Alaska Bar No. 0303007

26 By: 

Rachel L. Witty
Assistant Attorney General
Alaska Bar No. 0409052

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11 Defendants.)
12

13 **MEMORANDUM IN SUPPORT OF THE STATE OF ALASKA'S**
14 **CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO**
15 **PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

16 Defendant State of Alaska submits this memorandum in support of its
17 motion for summary judgment and in opposition to plaintiffs' motion for partial
18 summary judgment.

19 **I. INTRODUCTION**

20 This case is about a property tax exemption. The three plaintiff couples
21 challenge the constitutionality of Alaska's senior citizen and disabled property tax
22 exemption. Specifically, the plaintiffs allege that, in certain situations, same-sex couple
23 property owners receive a smaller tax exemption than married property owners, in
24 violation of equal protection and privacy rights under the Alaska Constitution. But, as a
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2 matter of law, the challenged tax exemption is constitutional and plaintiffs' claims
3 should be dismissed.

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5 This case does not involve a fundamental right or suspect classification.
6 Rather, it is a challenge to a relatively minor tax exemption differential that is
7 legitimately based on Alaska's different types of property ownership interests.
8 Although Alaska has a well-developed body of case law analyzing constitutional
9 challenges to tax exemptions, those cases are notably missing from the plaintiffs'
10 briefing. Instead, the plaintiffs directly and repeatedly rely on the decision *Alaska Civil*
11 *Liberties Union v. State* ("*ACLU*"),¹ in which the Alaska Supreme Court held that the
12 state, in its "specific capacit[y]" as a public employer, must make valuable employment
13 benefits for married employees equally available to employees in committed same-sex
14 relationships.² But the state is not acting in its capacity as a public employer here, the
15 tax exemption differential at issue is a minor economic interest rather than a valuable
16 employee benefit, and plaintiffs are not similarly situated to married couples under
17 Alaska's property laws.
18

19 The plaintiffs cannot superimpose the *ACLU* analysis and holding on the
20 situation in this case—it simply does not fit. Because this case involves taxes and
21 property ownership, the equal protection analysis differs significantly from the *ACLU*
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25 ¹ 122 P.3d 781 (Alaska 2005).

26 ² *Id.* at 794.

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2 case. This case must be analyzed for what it is—a challenge to a tax exemption. Under
3 that analysis—the proper one—it is apparent that the exemption is valid.

4
5 **II. BRIEF SUMMARY OF RELEVANT STATUTES AND THEIR APPLICATION**

6 **A. Alaska's Property Statutes**

7
8 The senior citizen and disabled veteran property tax exemption is tied to
9 property ownership. There are two methods for shared ownership of real property in
10 Alaska: tenancy in common and tenancy by the entirety. These different ownership
11 interests are codified in AS 34.15.110, which provides that a conveyance of an interest
12 in land made to two or more persons “shall be construed to create a tenancy in common
13 in the estate,” except for married couples, who “hold the estate as tenants by the
14 entirety,” unless “expressly declared otherwise.”³

15
16 These different tenancies create different types of ownership interests.
17 “Tenants in common are presumed to take equal undivided interests in the property.”⁴
18 This presumption means that a deed conveying property to two owners, on its face,
19 conveys undivided one-half interests in the property to each owner.⁵

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23 ³ AS 34.15.110(a), (b); *see also* AS 34.77, the Community Property Act.

24 ⁴ *D.M. v. D.A.*, 885 P.2d 94, 96 (Alaska 1994).

25 ⁵ *Id.* (holding that the presumption is rebuttable if parties show intent to
26 share ownership in different proportional interest).

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2 In contrast, when property is conveyed to a married couple, there is a
3 “presumption of tenancy in the entirety where the husband and wife hold title.”⁶
4 Tenancy by the entirety evolved from common law as “a unique sort of concurrent
5 ownership that can only exist between married persons. Because of the common-law
6 fiction that the husband and wife were one person at law ... [n]either spouse was
7 considered to own any individual interest in the estate; rather, it belonged to the
8 couple.”⁷ While that common-law fiction no longer applies, tenancy by the entirety
9 survives as the default ownership interest for married couples in Alaska, and carries
10 with it specific rights and obligations.⁸ In short, “[i]n a tenancy by the entirety each
11 tenant holds the entire property together with the other spouse.”⁹
12
13

14 **B. The Tax Exemption at Issue**

15 The plaintiffs challenge the constitutionality of AS 29.45.030(e), which
16 provides a tax exemption for the first \$150,000 of the assessed value of the real property
17
18

19 ⁶ *Afognak Joint Venture v. Old Harbor Native Corp.*, 151 P.3d 451, 457
n. 26 (Alaska 2007).

20 ⁷ *United States v. Craft*, 122 S. Ct. 1414, 1421 (2002)(citations omitted).

21 ⁸ See e.g. *Smith v. Kofstad*, 206 P.3d 441 (Alaska 2009) (holding that
22 judgment creditor could not execute unsevered interest in property that judgment debtor
23 formerly owned as tenant by the entirety following debtor’s death); *Faulk v. Estate of
Haskins*, 714 P.2d 354 (Alaska 1986) (presumption of tenancy by the entirety between
24 married couples resulted in right of survivorship even absent inclusion of marital status
on deed).

25 ⁹ *Hennefeld v. Twp. of Montclair*, 22 N.J. Tax 166, 191 (N.J. Tax 2005),
superseded on other grounds as recognized in *Godfrey v. Spano*, 836 N.Y.S.2d 813
26 (N.Y. Sup. March 12, 2007).

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owned and occupied as the primary residence and permanent place of abode by a resident 65 years of age or older or a disabled veteran. The statute reads:

(e) The real property owned and occupied as the primary residence and permanent place of abode by a resident who is (1) 65 years of age or older; (2) a disabled veteran; or (3) at least 60 years of age and the widow or widower of a person who qualified for an exemption under (1) or (2) of this subsection, is exempt from taxation on the first \$150,000 of the assessed value of the real property. A municipality may, by ordinance approved by the voters grant the exemption under this subsection to the widow or widower under 60 years of age of a person who qualified for an exemption under (2) of this subsection. A municipality may, in case of hardship, provide for exemption beyond the first \$150,000 of assessed value in accordance with regulations of the department. Only one exemption may be granted for the same property, and, if two or more persons are eligible for an exemption for the same property, the parties shall decide between or among themselves who is to receive the benefit of the exemption. Real property may not be exempted under this subsection if the assessor determines, after notice and hearing to the parties, that the property was conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor may be appealed under AS 44.62.560 - 44.62.570.

AS 29.45.030(e). The statute does not include a spousal limitation.

C. The Challenged Regulation

The plaintiffs also apparently challenge the regulation related to the property tax exemption. The applicable regulation defines “ownership” as “possession of an interest in real property”¹⁰ and sets out the application process for the exemption

¹⁰ 3 AAC 135.120(6).

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2 through a municipal assessor's office.¹¹ In addition, the regulation provides eligibility
3 standards for reimbursement by the state to the municipalities for the tax exemptions.¹²
4

5 The reimbursement provision reads:

6 3 AAC 135.085. Eligibility. (a) When an eligible person and
7 his or her spouse occupy the same permanent place of
8 abode, the reimbursement described in AS 29.45.030 (g)
9 applies, regardless of whether the property is held in the
10 name of the husband, wife, or both.¹³

11 (b) A resident widow or widower who is at least 60 years
12 old is eligible for the hardship exemption under
13 AS 29.45.030 (e) if the deceased spouse of the widow or
14 widower was at the time of his or her death

15 (1) a resident of the State of Alaska; and

16 (2) at least 65 years old or a disabled veteran.

17 (c) If property is occupied by a person other than the eligible
18 applicant and his or her spouse, an exemption, to be eligible
19 for reimbursement, applies only to the portion of the
20 property permanently occupied by the eligible applicant and
21 his or her spouse as a place of abode.

22 (d) The real property eligible for reimbursement under this
23 chapter includes only a

24 ¹¹ 3 AAC 135.010-040.

25 ¹² 3 AAC 135.085.

26 ¹³ AS 29.45.030(g) reads: The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement may be made to a municipality for revenue lost to it only to the extent that the loss exceeds an exemption that was granted by the municipality, or that on proper application by an individual would have been granted under AS 29.45.050(a). If appropriations are not sufficient to fully fund reimbursements under this subsection, the amount available shall be distributed pro rata among eligible municipalities.

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2 (1) primary parcel: the entire parcel of real property owned
3 and occupied by an applicant as a permanent place of abode;
4 and

5 (2) subsidiary parcel: a parcel of real property adjacent to
6 the primary parcel described under (1) of this subsection,
7 subject to approval by the department.

8 The reimbursement provision is the only portion of the regulations that specifically
9 mentions spouses or apportionment.

10 **D. Assessment Standards**

11 Local governments within Alaska are responsible for application of the
12 tax exemption. The Alaska Association of Assessing Officers issued a “Standard on
13 Procedural Issues” for application of the senior citizen and disabled veteran exemption
14 in 1996.¹⁴ The guidance addresses partial property ownership, explaining that, because
15 the exemption statute is based on property ownership, in cases of partial ownership, the
16 exemption applies only to that portion of the property owned by the eligible applicant.¹⁵
17 Therefore, if an applicant owns an undivided one-half interest, the property will receive
18 an exemption on 50% of the property’s assessed value, up to \$150,000.¹⁶ Under this
19 guidance, if both co-owners are eligible for the exemption, the property should receive
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23 ¹⁴ Exhibit 1, The State of Alaska’s Responses to Plaintiffs’ First Set of
24 Interrogatories to the State of Alaska, Response Nos. 2, 3 & 10 and attached copy of
25 Alaska Association of Assessing Officers’ Standard.

26 ¹⁵ Ex. 1, p. 19.

¹⁶ *Id.*

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2 an exemption of 100% of the assessed value, up to \$150,000.¹⁷ Although this standard
3 was provided by a private entity, the Alaska Association of Assessing Officers, and is
4 advisory in nature, it indicates that “the position of the State Assessor is that the pro
5 ration of the exemption based upon the percentage of ownership is a valid application of
6 the exemption.”¹⁸
7

8 **E. Application of the Law to the Three Sets of Plaintiffs**

9 **1. The first set of plaintiffs: Schmidt & Schuh**

10 According to the complaint and the affidavit attached to the plaintiffs’
11 motion for partial summary judgment, plaintiffs Julie Schmidt, 67, and Gayle Schuh,
12 62, own a home together in Eagle River, each with a 50% ownership interest.¹⁹ When
13 Schmidt turned 65, she applied for the property tax exemption for senior citizens.²⁰ She
14 received an exemption based on 50% of the assessed value of the home.²¹
15

16 Municipal property tax records from Tax Year 2010 indicate that the value
17 of the property Schmidt and Schuh co-own is \$254,200.²² In 2010, Schmidt received a
18 senior citizen property tax exemption of \$1,994.19, in addition to a residential
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21 ¹⁷ *Id.*

22 ¹⁸ *Id.*

23 ¹⁹ Complaint at ¶¶ 13, 16, Affidavit of Julie Schmidt at ¶2 and Exhibit A.

24 ²⁰ *Id.*

25 ²¹ Affidavit of Julie Schmidt at ¶2 and Exhibit A.

26 ²² Exhibit 2, Municipality of Anchorage’s Response to Request for
Production Nos. 25 & 26, p. 4.

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2 exemption of \$313.00.²³ Schmidt's total property tax liability for the property in 2010
3 was \$1,680.40.²⁴ As indicated in the attached Affidavit of the State Assessor, Steve
4 Van Sant, if plaintiffs Schmidt and Schuh were married, Schmidt would pay an
5 estimated \$359.31 less in property taxes to the Municipality of Anchorage.²⁵
6

7 **2. The second set of plaintiffs: Vollick & Bernard**

8 The complaint alleges that the second set of plaintiffs, Julie Vollick, 45,
9 and Susan Bernard, 41, co-own a home in Eagle River, each with a 50% ownership
10 interest.²⁶ Vollick has a service-related permanent disability from her service in the
11 U.S. Air Force.²⁷ Vollick has applied for the property tax exemption as a disabled
12 veteran and received an exemption based on 50% of the home's assessed value.²⁸
13

14 Municipal property tax records from Tax Year 2010 indicate that the value
15 of the property Vollick and Bernard co-own is \$232,600.²⁹ In 2010, Vollick received a
16 disabled veteran property tax exemption of \$1,824.74, in addition to a residential
17 exemption of \$313.00.³⁰ Vollick's total property tax liability for the property in 2010
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19
20 ²³ *Id.*
21 ²⁴ *Id.*
22 ²⁵ Affidavit of Steve Van Sant at ¶6 and Exhibit 1.
23 ²⁶ Complaint at ¶¶17 and 22.
24 ²⁷ *Id.* at 24.
25 ²⁸ Affidavit of Julie Vollick at ¶2, Exhibit A.
26 ²⁹ Ex. 2, p. 6.
³⁰ *Id.*

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2 was \$1,510.95.³¹ As indicated in the attached Affidavit of the State Assessor, Steve
3 Van Sant, if plaintiffs Vollick and Bernard were married, Vollick would pay an
4 estimated \$528.76 less in property taxes to the Municipality of Anchorage.³²
5

6 **3. The third set of plaintiffs: Traber & Snider**

7 The complaint alleges that the third set of plaintiffs, Fred Traber, 62, and
8 Larry Snider, 69, co-occupy an Anchorage condominium, but the condominium is
9 solely in the name of Traber, who is neither a senior citizen nor a disabled veteran.³³ He
10 therefore does not qualify for the property tax exemption in AS 29.45.030(e), and would
11 not even if he were married.³⁴
12

13 **III. ARGUMENT**

14 **A. Summary Judgment for the State Is Warranted**

15 Because the challenged tax exemption does not violate Alaska's
16 Constitution, this case should be dismissed in its entirety with prejudice. Therefore, the
17 state's opposition also includes a cross-motion for summary judgment. Summary
18 judgment is appropriate when there is no genuine issue of material fact, and the moving
19 party is entitled to judgment as a matter of law.³⁵
20
21

22 31 *Id.*
23 32 Affidavit of Steve Van Sant at ¶7 and Exhibit 2.
24 33 Complaint at ¶¶ 27, 31.
25 34 Affidavit of Steve Van Sant at ¶8.
26 35 *ACLU*, 122 P.3d at 785.

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2 In their motion, the plaintiffs are requesting that the Court “enter partial
3 summary judgment declaring that defendants’ application of the Tax Exemption is
4 unconstitutional” with regard to plaintiffs Schmidt, Schuh, Vollick, and Bernard.³⁶ “A
5 party raising a constitutional challenge to a statute bears the burden of demonstrating
6 the constitutional violation. A presumption of constitutionality applies, and doubts are
7 resolved in favor of constitutionality.”³⁷ The plaintiffs have not met their burden and
8 their summary judgment motion should be denied.
9

10 On cross motion for summary judgment, the state requests dismissal of all
11 claims brought against the state by all plaintiffs in this matter. There are no genuine
12 issues of material fact here—the arguments are legal, not factual. Because application
13 of the tax exemption does not violate Alaska’s Constitution, summary judgment should
14 be granted on behalf of the state and this case should be dismissed in its entirety, with
15 prejudice.
16

17 **B. The State Equal Protection Clause Cannot Override the More**
18 **Specific Provision in the Alaska Constitution, the Marriage**
19 **Amendment**

20 As set forth above, under Alaska’s property laws, married persons are
21 entitled to unique benefits, such as being able to hold property as tenants by the entirety
22 and, in this case, the benefit of an un-apportioned property tax exemption. The
23 plaintiffs are not arguing that all co-owners of property should receive the same full

24 ³⁶ Pls. Br. at 2.

25 ³⁷ *State, Dep’t of Revenue v. Andrade*, 23 P.3d 58, 71 (Alaska 2001)
26 (quotation omitted).

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2 exemption, but rather, they are arguing that they should be treated as married persons
3 and receive the full exemption. In essence, the plaintiffs are seeking one of the
4 “benefits of marriage” under Alaska property laws.³⁸ But providing one of the benefits
5 of marriage to plaintiffs would conflict with Alaska Constitution article 1, section 25,
6 the Marriage Amendment, which states that “[t]o be valid or recognized in this State, a
7 marriage may exist only between one man and one woman.” As the Court noted in the
8 *ACLU* case, the court must give effect to every word, phrase, and clause of the Alaska
9 Constitution and “seemingly conflicting parts are to be harmonized, if possible, so that
10 effect can be given to all parts of the constitution.”³⁹ In *ACLU*, the court was careful to
11 characterize the plaintiffs’ case as “a dispute about employment benefits.”⁴⁰ Here the
12 benefit that plaintiffs seek squarely falls within the bundle of unique property rights that
13 are attached to the institution of marriage. And the state equal protection clause cannot
14 override the more specific Marriage Amendment provision of the Alaska Constitution.⁴¹
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23 ³⁸ AS 25.05.013, “a same-sex relationship may not be recognized by the
24 state as being entitled to the *benefits of marriage*” (emphasis added).

25 ³⁹ *ACLU*, 122 P. 3d at 786 (quotation omitted).

26 ⁴⁰ *ACLU*, 122 P. 3d at 786.

⁴¹ *Id.* at 787.

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2 **C. The Property Tax Exemption Does Not Violate the Alaska**
3 **Constitution's Equal Protection Clause**

4 The challenged property tax exemption does not violate the plaintiffs'
5 equal protection rights.⁴² Alaska utilizes a three-step, sliding scale to determine the
6 appropriate level of review for equal protection challenges.⁴³ Under the sliding scale
7 test, the Court first determines the weight of the individual interest impaired by the
8 disputed classification.⁴⁴ Second, the Court examines the importance of the purposes
9 underlying the government's action.⁴⁵ And third, the Court evaluates the means
10 employed to further those goals to determine the closeness of the means-to-end fit.⁴⁶ It
11 is not necessary to even reach the sliding scale analysis, however, where the plaintiffs
12 have not shown that the law facially or intentionally discriminates against them or have
13 not demonstrated that "the challenged law treats similarly situated persons
14 differently."⁴⁷

15
16
17 In this case, the plaintiffs fail at each step of the analysis. First, the law
18 under challenge is not facially discriminatory and the plaintiffs have made no showing
19 of intentional discrimination against same-sex couples in application of the law.

20
21 ⁴² The plaintiffs challenge only the portions of the exemption that apply to
22 senior citizens and disabled veterans.

23 ⁴³ *Katmailand, Inc. v. Lake and Peninsula Borough*, 904 P.2d 397, 401 n. 6
24 (Alaska 1995).

25 ⁴⁴ *Malabed v. North Slope Borough*, 70 P.3d 416, 421 (Alaska 2003).

26 ⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *ACLU*, 122 P.3d at 787-78.

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2 Second, plaintiffs—who are tenants in common—are not similarly situated to married
3 couples—who under Alaska’s property laws hold property as tenants by the entirety.
4 Finally, even if the plaintiffs were similarly situated to married couples, under Alaska’s
5 sliding-scale analysis, the tax exemption does not violate equal protection.
6

7 **1. The plaintiffs have not shown intent to discriminate against**
8 **same-sex couples**

9 In their own words, the plaintiffs seek a declaratory judgment “that
10 defendants’ *application* of the Tax Exemption is unconstitutional.”⁴⁸ Despite plaintiffs’
11 attempt to also argue facial discrimination, the actual challenge here is to the application
12 of the relevant statute and regulation. The statute at issue, AS 29.45.030(e), is not
13 facially discriminatory against same-sex couples. It makes no mention of same-sex
14 couples, marriage, or spouses, and contains no “spousal limitation.” The regulation at
15 issue, 3 AAC 135.085, also is not facially discriminatory against these plaintiffs. The
16 regulation applies to reimbursement to the municipalities by the state for the tax
17 exemptions but does not set out any method of apportionment to be applied to the
18 property owners themselves.⁴⁹ Because this is not a facial challenge but a challenge to
19 the law and regulation *as applied*, the plaintiffs should be required to show that the
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23 ⁴⁸ Pls. Br. at 2 (emphasis added).

24 ⁴⁹ See 3 AAC 135.085(a) (“When an eligible person and his or her spouse
25 occupy the same permanent place of abode, **the reimbursement described in**
26 **AS 29.45.030 (g) applies**, regardless of whether the property is held in the name of the
husband, wife, or both.”) (emphasis added).

1
2 application of the law was motivated by an intent to discriminate against same-sex
3 couples.

4
5 With federal equal protection claims, a law that is facially neutral violates
6 the equal protection clause only if, as applied, it has a disparate impact on the plaintiff
7 group and if that disparate impact “can be traced to a discriminatory purpose.”⁵⁰
8 “Absent a discriminatory purpose, a law that is [] neutral on its face does not violate the
9 Federal Equal Protection Clause, even if the impact is disparate.”⁵¹ The same analysis
10 should be applied to state equal protection claims.

11
12 The plaintiffs have offered no evidence that the application of the tax
13 exemption is motivated by discriminatory animus toward same-sex couples. The tax
14 exemption is based on property ownership. In cases of co-ownership, where only one
15 owner is eligible for the exemption, the exemption applies to the portion of the property
16 owned by the eligible party. This ownership apportionment applies to all co-owners.
17 When it is applied to married couples, however, because by default, they are tenants by
18 the entirety under Alaska law, each of them owns the entire property. Therefore, their
19 ownership interest is not apportioned.

20
21 Apportionment of the exemption simply tracks the different types of
22 property ownership under the law. It was not designed to discriminate against same-sex
23 couples or any other tenants in common. Therefore, even if the application of the law

24 ⁵⁰ *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 956 (Alaska 2005)
25 (quotation omitted).

26 ⁵¹ *Id.* at 957.

1
2 has a disparate impact on same-sex couples, because it has no discriminatory purpose, it
3 does not violate equal protection.
4

5 **2. The plaintiffs, as tenants in common, are not similarly situated**
6 **to married couples, who, by default, own property by the**
7 **entirety**

8 Unmarried co-owners of property in Alaska, including same-sex couples,
9 are not similarly situated to married couples for purposes of the tax exemption. In
10 “clear cases” the Alaska Supreme Court will apply “in shorthand the analysis
11 traditionally used in [its] equal protection jurisprudence.”⁵² If two classes are not
12 similarly situated, this conclusion “necessarily implies that the different legal treatment
13 of the two classes is justified by the differences between the two classes.”⁵³

14 In this case, the different classes are based on types of property
15 ownership—a legal relationship that must be considered in determining appropriate
16 legal treatment. Unmarried co-owners are tenants in common and are considered to
17 have ownership interest in a portion of the property. Married couples, by default, are
18 tenants by the entirety and are considered to have ownership interest in the entire
19 property. The tax exemption does not create the different classes—they are the result of
20 Alaska’s property ownership laws. The different types of ownership have different
21 legal ramifications and cannot be considered similarly situated classes.
22
23

24
25 ⁵² *Id.*

26 ⁵³ *Id.*

1
2 This case differs significantly from the *ACLU* employee benefits case,
3 which compared the ability of same-sex couples and opposite sex couples to obtain
4 employment benefits through marriage.⁵⁴ In contrast with the *ACLU* case, here the
5 proper comparison is between unmarried property co-owners and married property co-
6 owners—not between same-sex couples and opposite-sex couples. In this case, a wide
7 array of co-owners, not just same-sex couples, are precluded from having the same tax
8 exemption application as married couples.
9

10 Moreover, many of these co-ownership arrangements may be made to
11 enable senior citizens and disabled veterans to remain in their homes and in Alaska. For
12 example, an eligible individual may share property ownership and occupancy with an
13 ineligible adult child or grandchild, or with a sibling or same-gender friend—to share in
14 care and expenses. If only one of the co-owners is eligible for the tax exemption, then
15 these co-owners face the exact same situation as same-sex couples—they will receive an
16 exemption only on the portion of the property owned by the eligible co-owner. And—
17 as with same-sex couples—none of these individuals have the option of marrying.
18

19 Again, in contrast with the *ACLU* case, owners have options to be eligible
20 for the full exemption other than marriage. If both co-owners are eligible—which will
21 be the case for plaintiffs Schmidt and Schuh in less than three years when Schuh turns
22 65—they will receive the exemption on the full value of the property. Additionally, if
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26 ⁵⁴ *ACLU*, 122 P.3d at 786-88.

1
2 the property is valued at over \$300,000, they will receive the maximum exemption
3 amount.

4
5 In sum, the proper comparison here is between unmarried co-owners and
6 married co-owners. Because married property owners, as tenants by the entirety, each
7 have a property interest in the entire property and unmarried co-owners, as tenants in
8 common, have a partial ownership interest, they are not similarly situated for purposes
9 of the tax exemption and there is no equal protection violation.

10
11 **3. The tax exemption apportionment does not violate equal
12 protection even if the plaintiffs are similarly situated to
13 married co-owners**

14 Even if the plaintiffs could meet the threshold requirement of
15 demonstrating that they are similarly situated to married co-owners, apportionment of
16 the tax exemption does not violate equal protection because it is legitimate and
17 significantly related to the law's purpose.

18 The Alaska Supreme Court takes a multi-step, sliding-scale approach to
19 equal protection analysis.⁵⁵ First, the court determines "the importance of the individual
20 interest impaired by the challenged enactment."⁵⁶ The importance the court attaches to
21 the individual interest dictates the level of importance of the state interest—from mere
22 legitimacy to a compelling interest—that will satisfy equal protection.⁵⁷ Next, the court

23
24 ⁵⁵ *L.D.G, Inc. v. Brown*, 211 P.3d 1110, 1131 (Alaska 2009) (citing
Wilkerson v. State, 993 P.2d 1018, 1022-23 (Alaska 1999)).

25 ⁵⁶ *Id.*

26 ⁵⁷ *Id.*

1
2 examines “the importance of the state interest underlying the enactment, that is, the
3 purpose of the enactment.”⁵⁸ Finally, the court examines “the nexus between the state
4 interest and the state's means of furthering that interest.”⁵⁹ The importance of the
5 individual interest also controls the required degree of nexus, from substantial
6 relationship to least restrictive means.⁶⁰

7
8 The Alaska Supreme Court has consistently held that “[p]urely economic
9 interests, such as ‘freedom from disparate taxation’” fall at “the low end of the
10 continuum of interests protected by the equal protection clause” and so are subject to
11 the most relaxed scrutiny in our sliding scale.”⁶¹ The court explained that “[u]nder this
12 relaxed scrutiny, [it] will uphold laws if they serve a legitimate public purpose and
13 impose only classifications that bear a fair and substantial relationship to that
14 purpose.”⁶²

15
16 **a. The interest to be free from disparate taxation is**
17 **afforded little weight in the equal protection analysis**

18 The individual interest impaired by the challenged enactment in this case
19 is not one of relative importance. Despite the plaintiffs’ attempts to transform this case

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58 *Id.*

22 59 *Id.*

23 60 *Id.*

24 61 *Lot 04B & 5C, Block 83 Townsite v. Fairbanks North Star Borough*, 208
P. 3d 188, 192 (Alaska 2009) (quoting *Stanek v. Kenai Peninsula Borough*, 81 P. 3d
268, 270 (Alaska 2003)).

25 62 *Id.* (quoting *Katmailand*, 904 P.2d at 401 n. 6 and *Stanek*, 81 P.3d at 270
26 (internal quotation marks omitted)).

1
2 into something else, it is a challenge to a property tax exemption and must be treated as
3 one. While the plaintiffs acknowledge that they dispute a “disproportionate tax
4 burden,”⁶³ they ignore Alaska’s body of case law governing constitutional challenges to
5 disproportionate taxes. But those tax cases are dispositive and stand for the proposition
6 that “[a]ssuming that individual plaintiffs’ interests as taxpayers actually are impaired
7 ... these interests are not interests afforded much weight under our equal protection
8 analysis.”⁶⁴ The appropriate analysis for equal protection therefore is the lowest end of
9 the sliding scale – “mere legitimacy.”⁶⁵
10

11
12 **b. The State has an important interest in protecting the**
13 **ability of disabled veterans and senior citizens to remain**
14 **in their homes**

15 In the second step of the sliding-scale equal protection test, the Court
16 examines “the importance of the state interest underlying the enactment, that is, the
17 purpose of the enactment.”⁶⁶ The state’s interest in granting a property tax exemption to
18 disabled veterans or seniors is to help this segment of the population remain in their
19 homes despite the probability that they live on a fixed income and have a reduced

20 ⁶³ Pls. Br. at 15.

21 ⁶⁴ *Matanuska-Susitna Borough Sch. Dist.*, 931 P. 2d 391, 398 (Alaska
22 1997); *see also Lot 04 B & 5C*, 208 P.3d at 192 (applying most relaxed scrutiny to
23 challenge to disparate taxation); *Katmailand*, 904 P.2d at 401 (“[t]he interests involved
24 in taxation challenges lie at the low end of the continuum of interests protected, and thus
25 are reviewed under relaxed scrutiny”); *Atlantic Richfield Co. v. State*, 705 P.2d 418,
26 437 (Alaska 1985) (holding that freedom from disparate taxation is not afforded much
weight under equal protection analysis).

⁶⁵ *L.D.G, Inc.*, 211 P.3d at 1131 (citing *Wilkerson*, 993 P.2d at 1023).

⁶⁶ *Id.*

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2 ability to earn more money as property values increase.⁶⁷ Extending the exemption to
3 the full value of the property for married couples enhances this purpose because spouses
4 are likely to be economically intertwined with, and possible caretakers for, these
5 citizens. If a disabled veteran or a senior who is married is not able to take the
6 exemption on the full value of the property, the exemption will be less effective in
7 fulfilling its goal.
8

9 In addition, apportionment of the exemption based on property ownership
10 interest serves a legitimate public interest. Because eligibility for the tax exemption is
11 based on ownership and occupancy, it makes sense to apportion the exemption based on
12 percentage of ownership and to account for the different types of property ownership
13 under Alaska law.
14

15 **c. The application of the tax exemption bears a fair and**
16 **substantial relationship to its purpose**

17 The final prong in the sliding scale analysis is a means-to-end fit—
18 whether the state’s objective is legitimate, and whether the means for achieving the
19 objective bear a “fair and substantial relationship” to the accomplishment of the
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23 ⁶⁷ “[A]lthough the rationale underlying the legislation should be logically
24 plausible, there is no requirement that it be proved in court.” *L.D.G., Inc.*, 211 P.3d at
25 1132 (quoting *C.J. v. State, Dep’t of Corrs.*, 151 P.3d 373, 379 (Alaska 2006)); *see also*
26 *Public Employees’ Retirement Syst. v. Gallant*, 153 P.3d 346, 352 (Alaska 2007) (the
main purpose of cost of living adjustment for state retirement benefits is to assist
retirees who elect to remain in the state to defray the higher cost of living in Alaska).

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2 objective.⁶⁸ The state's objective in providing property tax relief to seniors and disabled
3 veterans is obviously legitimate; these citizens are important to a vibrant community
4 and tailoring tax burdens to protect more vulnerable segments of the population is an
5 appropriate governmental action. Further, application of the tax exemption to allow
6 married couples to take the full exemption bears a fair and substantial relationship to the
7 purpose of providing this relief, as discussed above, because their inclusion improves
8 the ability of these citizens to afford the costs of their residences.
9

10 Providing the same relief to some same-sex partners would further this
11 purpose as well, but the law's failure to include them does not render the law
12 unconstitutional. To survive an equal protection challenge, the tax classifications do not
13 need to be "the most protective of taxing equality," but need only to be "close
14 enough."⁶⁹ Under a minimum scrutiny analysis the Alaska Supreme Court does "not
15 determine if a regulation is perfectly fair to every individual to whom it is applied," and
16 does not require "a perfect fit between a legislative classification and the government
17 objective it is intended to further."⁷⁰ In equal protection challenges involving taxes,
18 "less important government objectives will suffice and a greater degree of over/or
19 underinclusiveness in the means-to-end fit will be tolerated."⁷¹
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23 ⁶⁸ *L.D.G., Inc.*, 211 P.3d at 1132 (quoting *Evans ex rel. Kutch v. State*, 56
P.3d 1046, 1053 (Alaska 2002)).

24 ⁶⁹ *Mat-Su Borough Sch. Dist.*, 931 P.2d at 399.

25 ⁷⁰ *C.J.*, 151 P.3d at 380-81 (quotation omitted).

26 ⁷¹ *Katmailand*, 904 P.2d at 401, (quoting *Ostrosky*, 667 P.2d at 1193).

1
2 The underinclusiveness of the tax exemption law is not so significant to
3 not make it insubstantially related to the government's purpose, for several reasons.
4 First, tax exemptions must be interpreted narrowly. The Alaska Supreme Court has
5 explained that "tax exemptions should be narrowly construed to the end that
6 disturbances to ... equality in the distribution of this common burden upon all property
7 which is the object and aim of every just system of taxation be minimized."⁷² The
8 Supreme Court thus recognizes the public policy of "providing a broad base of
9 taxation,"⁷³ which arises from the Alaska Constitution. The Constitution expressly
10 gives government the power to tax and the power to set property tax assessment and
11 appraisal standards.⁷⁴ And in the same section guaranteeing equal protection under the
12 law, the Constitution provides that "all persons have corresponding obligations to the
13 people and to the State."⁷⁵ "One of the corresponding obligations is that of paying taxes
14 should the legislature impose them."⁷⁶ The Constitution also "mandates that a liberal
15 construction be given to the powers of local government and this applies to the taxing
16 authority of local governments."⁷⁷
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21 ⁷² *Stanek*, 81 P.3d at 274 (quotation omitted).

22 ⁷³ *Sisters of Providence in Washington v. Munic. of Anchorage*, 672 P.2d
23 446, 452 (Alaska 1983).

24 ⁷⁴ Alaska Const. art. IX, §§ 1, 3.

25 ⁷⁵ Alaska Const. art. I, § 1.

26 ⁷⁶ *Cogan v. State*, 657 P.2d 396, 398 (Alaska 1983).

⁷⁷ *Stanek*, 81 P.3d at 273 (citing Alaska Const. art. X, § 1).

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2
3 Moreover, apportionment of the exemption based on ownership interests
4 furthers the policy of having a broad tax base with limited exemptions. "It is obvious
5 that the statute intends to exempt only that portion of the property owned by the eligible
6 applicant, consequently, a partial ownership should result in a partial exemption."⁸⁰
7 Because most married couples own property as tenants in the entirety, allowing an
8 exemption on the full value of the property simply tracks the ownership interest.
9 Although some married couples may choose to hold property as tenants in common,
10 some overinclusiveness in the means-to end fit will be tolerated.

11
12 Finally, the means-to-fit analysis in this case does not include the element
13 that was critical to the court's analysis in the *ACLU* decision, the government's role as a
14 public employer. In *ACLU*, the court found that "because the [benefit] programs at
15 issue govern the governments' actions *in their specific capacities as public employers,*
16 *rather than in their broader governmental capacities,* the programs' marital preferences
17 would have difficulty meeting the means-to end-fit requirement unless they had a fair
18 and substantial relationship *to the governments' roles as public employers.*⁸¹ When the
19 state acts as an employer, it is subject to the overarching constitutional principles
20 guaranteeing Alaskans "the rewards of their own industry" and requiring public
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24 ⁸⁰ Standard on Procedural Issues for the Application of the Senior
25 Citizen/Disabled Veteran Property Tax Exemption Program in Accordance with Alaska
26 Statute 29.49.030(e)-(1), Ex. 3, p. 6.

⁸¹ 122 P.3d at 794 (emphasis added).

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2 employment to be based on merit.⁸² The court concluded in *ACLU* that “[p]rograms
3 allowing the governments to give married workers *substantially greater compensation*
4 than they give, for identical work, to workers with same-sex partners cut against these
5 constitutional principles yet further no legitimate goal of the governments as public
6 employers.”⁸³
7

8 In contrast, in this case the state is not acting as a public employer and the
9 interest at stake here is slight—a tax exemption differential of only a few hundred
10 dollars a year. Such a small differential cannot be compared to the employment benefits
11 in the *ACLU* decision. It is not a source of income “that individuals depend on to
12 supply the basic necessities of life,” but instead is comparable to an economic interest in
13 a permanent fund dividend or a foster child stipend—a “quite different kind of
14 economic interest” from one involving the right to engage in an economic endeavor
15 such as employment.⁸⁴
16

17 Although the economic interest implicated by a tax exemption clearly falls
18 on the lowest end of Alaska’s sliding-scale equal protection analysis, the law in this
19 case would survive a constitutional challenge at the middle and higher end of the scale
20 as well. Under Alaska’s middle scrutiny standard, “[l]egislation that impacts important
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24 ⁸² *Id.*

25 ⁸³ *Id.*

26 ⁸⁴ *C.J.*, 151 P.3d at 379 (quoting *Wilkerson*, 993 P.2d at 1023 n. 18).

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2 rights must have a close relationship to an important state interest.”⁸⁵ In order for a law
3 to survive Alaska’s strict scrutiny standard, the classification created must be narrowly
4 tailored to promote a compelling governmental interest and be the least restrictive
5 means available to vindicate that interest.⁸⁶ To be narrowly tailored, there must be a
6 sufficient nexus between the stated governmental interest and the classification created
7 by the law.⁸⁷ Here the tax exemption meets both standards.

8
9 The law has a close relationship to an important state interest and is
10 narrowly tailored to promote the ability of senior citizens and disabled veterans to stay
11 in their homes while also providing a broad tax base and narrow exemptions. Any less
12 restrictive means will not properly vindicate that interest. Extending the full exemption
13 only to same-sex couples, but not other co-owners, would create its own inequities by
14 creating new-subset of unmarried co-owners. If the full tax exemption were extended to
15 include all co-owners it would invite fraud by allowing an exemption to any number of
16 co-owners regardless of ownership interest or eligibility and it would undermine the
17 public policy of broad taxation.
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24 ⁸⁵ *Schiel v. Union Oil Co. of California*, 219 P. 3d 1025, 1030 (Alaska 2009)
(quotation omitted).

25 ⁸⁶ *Treacy v. Municipality of Anchorage*, 91 P. 3d 252, 266 (Alaska 2004).

26 ⁸⁷ *Id.* at 266.

1
2 similar attempts to assert that taxes violate the right to privacy or impinge on
3 fundamental rights.⁸⁹

4
5 The plaintiffs fail to cite any legal authority to support their claim that this
6 tax differential amounts to a substantial infringement on a fundamental right. The cases
7 that the plaintiffs do cite are inapposite here as they all involve laws that contain
8 outright prohibitions affecting the exercise of a fundamental right. In *Ravin v. State*, the
9 statute at issue prohibited the possession of marijuana by an adult for personal
10 consumption at home, which the court found intruded into a citizen's right to privacy.⁹⁰
11 *Planned Parenthood I* involved a regulation that denied funding for medically necessary
12 abortions.⁹¹ *Lawrence v. Texas* concerned a statute criminalizing same-sex intimacy.⁹²
13 And *Alaska Gay Coal. v Sullivan* involved the denial of a gay organization's right to
14 publish in the municipal guide.⁹³ Even if plaintiffs were able to demonstrate that these
15 fundamental rights or interests are somehow burdened by the tax exemption differential,
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21 ⁸⁹ *Cogan*, 657 P.2d at 398 (Alaska 1983) (holding that state income tax did
22 not impermissibly infringe on taxpayer's constitutionally protected natural right to life,
23 liberty, pursuit of happiness and the rewards of his own industry or invade his right to
24 privacy).

25 ⁹⁰ 537 P.2d. 494, 500, 503-04 (Alaska 1975).

26 ⁹¹ 28 P. 3d 904, 906-7 (Alaska 2007).

⁹² 539 U.S. 558 (2003).

⁹³ 578 P. 2d 951, 959 (Alaska 1978).

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2 the burden on their fundamental rights must be direct.⁹⁴ The plaintiffs cannot show a
3 direct burden.

4
5 **2. The tax exemption does not create a constitutionally suspect
6 classification system**

7 The plaintiffs also seek to elevate this tax classification to heightened
8 scrutiny by asserting that the classification discriminates based on sexual orientation.⁹⁵
9 As set forth above, however, the marriage classification contained in 3 AAC 135.085(c)
10 for apportionment purposes classifies according to ownership interests, not sexual
11 orientation. Moreover, neither the Alaska Supreme Court nor the United States
12 Supreme Court have recognized sexual orientation as a suspect class.

13 **E. The Tax Exemption Does Not Discriminate Based on Gender; Men
14 And Women Fare Equally Under the Statute.**

15 The plaintiffs argue that the tax exemption discriminates on the basis of
16 sex, in violation of article I, section 3 of the Alaska Constitution.⁹⁶ The tax exemption
17 does not discriminate on the basis on sex—either facially, in purpose, or in effect. The
18 law treats men and women the same.

19 Acknowledging that this Court has never addressed this issue, the
20 plaintiffs rely on two cases from other courts, *Perry v. Schwarzenegger*, 704 F.Supp. 2d

21
22 ⁹⁴ *Lyng v. Castillo*, 477 U.S. 635, 638 (1986) (holding that heightened
23 scrutiny (i.e., scrutiny higher than the “rational basis” test) based upon a claim on
24 infringement of a fundamental right is appropriate only if the classification “directly and
substantially” burdens the right).

25 ⁹⁵ Pls. Br. at 16-17.

26 ⁹⁶ Pls. Br. at 21-22.

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2 921 (N.D. Cal. 2010) and *Baehr v. Lewin*, 852 P.2d 44, 67 (Haw. 1993), *superseded by*
3 Haw. Const. Art. I, § 23. But these cases are not well reasoned, and other courts faced
4 with this issue have not adopted their analyses.

5
6 The district court judge in *Perry* found that California's Proposition 8, a
7 voter-enacted amendment to the California Constitution that prohibits same-sex
8 marriage, discriminates on the basis of gender.⁹⁷ The judge reasoned that discrimination
9 based on sexual orientation and discrimination based on sex are the same thing:

10 Proposition 8 targets gays and lesbians in a manner specific
11 to their sexual orientation and, because of their relationship
12 to one another, Proposition 8 targets them specifically due
13 to sex. Having considered the evidence, the relationship
14 between sex and sexual orientation and the fact that
15 Proposition 8 eliminates a right only a gay man or a lesbian
16 would exercise, the court determines that plaintiffs' equal
17 protection claim is based on sexual orientation, but this
18 claim is equivalent to a claim of discrimination based on
19 sex.⁹⁸

20 The logic of this explanation is muddled. A law that grants benefits only to married
21 couples does not discriminate against an individual based on his or her gender; it
22 discriminates against both men and women in their choice of partners, which is sexual
23 orientation. The *Perry* judge attempted to explain why sex and sexual orientation are
24 the same—as do the plaintiffs in their brief—by looking at how the law affects a single
25 individual:

26 [F]or example, Perry is prohibited from marrying Stier, a

⁹⁷ 704 F.Supp.2d at 996.

⁹⁸ *Id.*

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2 woman, because Perry is a woman. If Perry were a man,
3 Proposition 8 would not prohibit the marriage. Thus,
4 Proposition 8 operates to restrict Perry's choice of marital
5 partner because of her sex.⁹⁹

6 But saying that the law discriminates against Perry because she is a
7 woman does not mean that the law discriminates against women vis-à-vis men.
8 Proposition 8 discriminates against Perry because her partner is of the same gender, and
9 therefore discriminates against the couple rather than the individual. Identifying the
10 affected class as a couple rather than as an individual does not accord with the
11 traditional analysis of constitutional claims. In any event, Proposition 8 in fact treats
12 men and women exactly the same – neither can form a same-sex partnership in marriage
13 in California.

14 The other case that the plaintiffs cite —*Baehr v. Lewin*,¹⁰⁰—has not been
15 followed by other courts in its nearly 20-year existence. In *Baehr* a plurality of the
16 Hawaii Supreme Court relied on the U.S. Supreme Court case *Loving v. Virginia*,¹⁰¹ to
17 reject the concept that a prohibition on same-sex marriage does not unconstitutionally
18 discriminate based on sex.¹⁰² In *Loving*, the Supreme Court held that Virginia's
19 antimiscegenation statute was invalid even though the law appeared to treat the races
20 equally. The law was facially nondiscriminatory, as neither African-Americans nor
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23 99 *Id.*
24 100 852 P.2d 44.
25 101 388 U.S. 1 (1967).
26 102 *Baehr*, 852 P.2d at 67-68.

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2 Caucasians could form an interracial marriage, yet the Court found that the statute
3 violated equal protection by impermissibly basing the right to marry on distinctions
4 drawn according to race.¹⁰³ The Court determined that, while facially neutral, the
5 purpose of the antimiscegenation statute was racial discrimination because the state's
6 concern in these statutes, as expressed in the words of the 1924 Act's title, 'An Act to
7 Preserve Racial Integrity,' extend[e] only to the integrity of the white race."¹⁰⁴ While
8 the law prohibited "whites from marrying any nonwhite (subject to the exception for the
9 descendants of Pocahontas), Negroes, Orientals, and any other racial class [could]
10 intermarry without statutory interference."¹⁰⁵ The Court thus concluded that "the fact
11 that Virginia prohibits only interracial marriages involving white persons demonstrates
12 that the racial classifications must stand on their own justification, as measures designed
13 to maintain White Supremacy."¹⁰⁶

14
15
16 The basis of the Court's holding in *Loving*—that the purpose of the
17 antimiscegenation statute was racial discrimination—is not analogous to sex
18 discrimination in the context either of a prohibition on same-sex marriage or of the tax
19 exemption in this case. Neither law has the intent of discriminating against men in
20 favor of women or against women in favor of men. The facial neutrality of the sexes in
21 these laws reflects their purposes and effect; while in effect they may favor opposite-sex
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23 103 *Id.* at 11.

24 104 *Id.*

25 105 *Id.* n.11.

26 106 *Id.*

1
2 couples over same-sex couples, they are not meant to, and do not, favor either men or
3 women.

4
5 And other courts have rejected the argument that laws limiting same-sex
6 marriage impermissibly discriminate on the basis of sex. See, e.g., *Conway v. Deane*,
7 932 A.2d 571, 598 (Md. 2007) (holding that a statute prohibiting same-sex marriage did
8 not draw an impermissible sex-based distinction in violation of the Maryland Equal
9 Rights Amendment: “[t]he limitations on marriage effected by [the law] do not separate
10 men and women into discrete classes for the purpose of granting to one class of persons
11 benefits at the expense of the other class.”); *Anderson v. King County*, 138 P.3d 963,
12 988 (Wash. 2006) (“Men and women are treated identically under [Defense of
13 Marriage Act]; neither may marry a person of the same sex. [The Defense of Marriage
14 Act] therefore does not make any ‘classification by sex,’ and it does not discriminate on
15 account of sex.”); *Baker v. Vermont*, 744 A.2d 864, 881 (1999) (rejecting the argument
16 that a statute limiting marriages to those between a man and woman constitutes sex-
17 based discrimination: “[t]he difficulty here is that the marriage laws are facially neutral;
18 they do not single out men or women as a class for disparate treatment, but rather
19 prohibit men and women equally from marrying a person of the same sex.”); *Hernandez*
20 *v. Robles*, 855 N.E.2d 1, 6, (N.Y. App. Div. 2006), (“By limiting marriage to opposite-
21 sex couples, [the state] is not engaging in sex discrimination. The limitation does not put
22 men and women in different classes, and give one class a benefit not given to the other.
23 Women and Men are treated alike—they are permitted to marry people of the opposite
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2 sex, but not people of their own sex.”); *In re Kandu*, 315 B.R. 123 (Bankr. W.D. Wash.
3 2004) (upholding the constitutionality of the federal Defense of Marriage Act: “[t]here
4 is no evidence, from the voluminous legislative history or otherwise, that [Defense of
5 Marriage Act’s] purpose is to discriminate against men or women as a class.”); *Wilson*
6 *v. Ake*, 354 F.Supp.2d 1298, 1307-08 (M.D. Fla. 2005) (“[The Defense of Marriage Act]
7 does not discriminate on the basis of sex because it treats women and men equally.”);
8 *Cf. Baker v. Nelson*, 191 N.W.2d 185, 187 (Minn. 1971) (“[I]n commonsense and in a
9 constitutional sense, there is a clear distinction between a marital restriction based
10 merely upon race and one based upon the fundamental difference in sex”).


11 12 IV. CONCLUSION

13
14 For all of the foregoing reasons, the state requests that this Court deny
15 plaintiffs’ motion for partial summary judgment and grant the state’s motion for
16 summary judgment, dismissing this lawsuit in its entirety, with prejudice.

17 Dated this 11th day of July, 2011.

18
19 JOHN J. BURNS
ATTORNEY GENERAL

20 By: 
21 Brenda B. Page
22 Assistant Attorney General
Alaska Bar No. 0303007

23
24 By: 
25 Rachel L. Witty
Assistant Attorney General
26 Alaska Bar No. 0409052

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JULIE A. SCHMIDT, GAYLE SCHUH,)
JULIE M. VOLLIK, SUSAN L.)
BERNARD, FRED W. TRABER, and)
LAURENCE SNIDER)

Plaintiffs)

vs.)

THE STATE OF ALASKA, and THE)
MUNICIPALITY OF ANCHORAGE,)

Defendants.)

Case No. 3AN-10-9519 CI

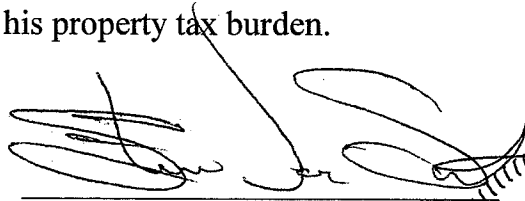
AFFIDAVIT OF STEVE VAN SANT

Steve Van Sant, being first duly sworn upon oath, deposes and says:

1. I am the State Assessor for the State of Alaska and have been in this position for a little over eighteen (18) years.
2. I am responsible for determining the full and true value of all cities and boroughs in the State of Alaska. I am also responsible for monitoring all assessment offices in the state to assure they conduct their business in accordance with state, federal, and local laws. In this capacity I monitor valuations, exemptions, assessments, and assessment practices.
3. I have reviewed the plaintiffs' applications for the senior citizen and disabled veteran property tax exemption under AS 29.45.030(e) and 3 AAC 135.085 and the documents relating to the property tax


records of the plaintiffs produced by the Municipality of Anchorage (“MOA”) in conjunction with this lawsuit.

4. Although administering the senior citizen and disabled veteran property tax exemption is done at the local level, I have calculated the estimated difference in tax burden for the plaintiffs using their property tax records from 2010.
5. My calculations are attached to this affidavit as Affidavit Exhibits 1 & 2.
6. As indicated in Exhibit 1, if Plaintiffs Schmidt and Schuh were married, they would pay roughly \$359.31 less in property taxes to the MOA.
7. As indicated in Exhibit 2, if Plaintiffs Vollick and Bernard were married, they would pay roughly \$528.76 less in property taxes to the MOA.
8. Because Plaintiff Traber is the sole property owner, but he is not 65 or disabled, he does not qualify for the exemption. If he were married, he would pay the same amount of property taxes. There would be no difference in his property tax burden.



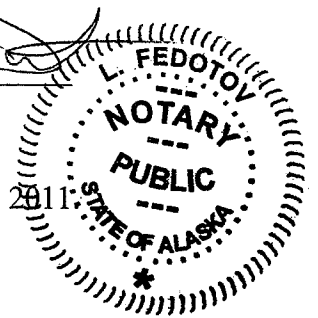
Steve Van Sant

SUBSCRIBED AND SWORN TO before me this 27th day of JUNE, 2011.



Notary Public In and For Alaska

My Commission expires: WITH OFFICE



Schmidt Property

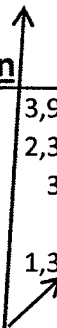
Tax scenario denying full exemption due to no recognized marriage

| YEAR | ASSESSED VALUE | Taxes | Calculated Mill Rate |
|------|----------------|-------------|----------------------|
| 2010 | \$ 254,200 | \$ 3,988.39 | 0.01569 |
| | SC Exemp | \$ 1,994.20 | 50% ownership |
| | Res Exemp | \$ 313.80 | \$ 20,000 |
| | | \$ 1,680.40 | Tax Due |

Tax scenario allowing full exemption

| | | | |
|------|------------|-------------|----------------|
| 2010 | \$ 254,200 | \$ 3,988.39 | 0.01569 |
| | SC Exemp | \$ 2,353.50 | 100% ownership |
| | Res Exemp | \$ 313.80 | \$ 20,000 |
| | | \$ 1,321.09 | Tax Due |

Difference in two scenarios \$ 359.31



Vollick Property

Tax scenario denying full exemption due to no recognized marriage

| YEAR | ASSESSED VALUE | Taxes | Calculated Mill Rate |
|-------------|---------------------------|--------------|-----------------------------|
| 2010 | \$ 232,600 | \$ 3,649.49 | 0.01569 |
| | DAV Exemp | \$ 1,824.74 | 50% ownership |
| | Res Exemp | \$ 313.80 | \$ 20,000 |
| | | \$ 1,510.95 | Tax Due |

Tax scenario allowing full exemption

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|------|------------|-------------|----------------|
| 2010 | \$ 232,600 | \$ 3,649.49 | 0.01569 |
| | DAV Exemp | \$ 2,353.50 | 100% ownership |
| | Res Exemp | \$ 313.80 | \$ 20,000 |
| | | \$ 982.19 | Tax Due |

Difference in two scenarios \$ 528.76

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JULIE A. SCHMIDT, GAYLE SCHUH,)
JULIE M. VOLLIK, SUSAN L.)
BERNARD, FRED W. TRABER, and)
LAURENCE SNIDER)

Plaintiffs)

vs.)

THE STATE OF ALASKA, and THE)
MUNICIPALITY OF ANCHORAGE,)

Defendants.)

Case No. 3AN-10-9519 CI

**THE STATE OF ALASKA'S RESPONSES TO
PLAINTIFFS' FIRST SET OF INTERROGATORIES
TO THE STATE OF ALASKA**

Defendant, State of Alaska, by and through the Office of the Attorney
General, objects and responds to Plaintiffs' First Set of Discovery Requests as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all persons whom you
believe have knowledge or information relevant to the subject matter of or defenses to
the Complaint in this action, including, but not limited, the requirements of
AS 29.45.030, whether helpful to your defenses or not. Include in your answer each
individual's name, present address, telephone number and a summary of each person's
knowledge, including the specific area(s) of knowledge and the source of that
knowledge or information.

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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ANSWER:

Steve Van Sant, State Assessor
Division of Community and Regional Affairs
Department of Commerce, Community, and Economic Development
c/o Rachel L. Witty
Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
(907) 269-5100

Mr. Van Sant may have knowledge and information regarding the State's interpretation of the statute and regulation at issue in this case.

Don Martin McGee, Municipal Assessor
Property Appraisal Division
Municipality of Anchorage
c/o Pamela Weiss
Office of the Municipal Attorney
632 W 6th Avenue, Suite 730, Anchorage, AK 99501
Anchorage, AK 99519
(907) 343-4545

Mr. McGee may have knowledge and information regarding the Municipality's interpretation of the statute and regulation at issue in this case.

Patrick Carlson, Borough Assessor
Fairbanks North Star Borough
Administrative Center, 1st Floor
809 Pioneer Road
Fairbanks, AK 99701-28131

Mr. Carlson may have knowledge and information regarding the Fairbanks North Star Borough's interpretation of the statute and regulation at issue in this case.

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Ron Brown (Former Assistant State Assessor)
Ketchikan Gateway Borough Assessor's Office

Physical address:
White Cliff Building
1900 First Avenue, Suite 219
Ketchikan Alaska
(907) 228-6640 phone
(907) 228-6655 fax

Mailing address:
1900 First Avenue, Suite 219
Ketchikan Alaska 99901

Mr. Brown served as Assistant State Assessor and may have knowledge and information regarding the state's interpretation of the statute and regulation at issue in this case.

INTERROGATORY NO. 2: What is the State policy regarding applications from individuals who live with same-sex partners for the property tax exemption under AS 29.45.030(e)?

ANSWER: The state does not have a policy relating to applications from individuals who live with same-sex partners. The state does not administer the property tax exemption under AS 29.45.030(e). The exemptions are administered by local governments.

To the extent the state has provided any guidance in the administration of the tax exemption in AS 29.45.030(e) in general, that guidance is contained in 3 AAC 135.085 and the Alaska Association of Assessing Officers' Standard on Procedural Issues for the Application of the Senior Citizen / disabled Veteran Property Tax Exemption Program in Accordance with Alaska Statute 29.45.030(e)-(i) attached

1
2 to the state's initial disclosures.

3 **INTERROGATORY NO. 3:** What are the State's procedures for
4 applying the property tax exemption under AS 29.45.030(e) to individuals who live
5 with same-sex partners, including but not limited to the State's procedures for
6 calculating the amount of the exemption for such applicants?
7

8 **ANSWER:** The state does not have procedures for applying the
9 property tax exemption under AS 29.45.030(e) to individuals living with same sex
10 partners. The tax exemptions are applied by local governments. To the extent the
11 state has provided any guidance in the administration of the tax exemption in
12 AS 29.45.030(e) in general, that guidance is contained in 3 AAC 135.085 and the
13 Alaska Association of Assessing Officers' Standard on Procedural Issues for the
14 Application of the Senior Citizen / disabled Veteran Property Tax Exemption Program
15 in Accordance with Alaska Statute 29.45.030(e)-(i) attached to the state's initial
16 disclosures.
17

18 **INTERROGATORY NO. 4:** What is the maximum exemption under
19 AS 29.45.030(e) for eligible individuals who live with a same-sex partner and no
20 additional persons?
21

22 **ANSWER:** The maximum property tax exemption for any eligible
23 individual under AS 29.45.030(e) is \$150,000 of the assessed value of the eligible
24 individual's property.

25 **INTERROGATORY NO. 5:** Identify any and all State interests that
26

1
2 are served by denying eligible individuals who live with a same-sex partner the full
3 property tax exemption under AS 29.45.030(e) and 3 AAC 135.085 that is available to
4 individuals who live with a spouse in a marriage that is recognized under Alaska law?

5 **ANSWER:** The state objects to this interrogatory in that the term “State
6 interests” is vague and ambiguous. If “state interests” is being defined as a legal
7 element under the equal protection analysis applied under the Alaska Constitution, the
8 state objects to this interrogatory as calling for a legal argument or conclusion.

9
10 **INTERROGATORY NO. 6:** What are the State’s procedures for
11 determining whether a person is a legal “spouse” of an applicant, as provided in
12 3 AAC 135.085(c), for purposes of the property tax exemption under AS 29.45.030(e),
13 including but not limited to any proof the State requires to establish legal “spouse”
14 status?
15

16 **ANSWER:** The state does not have any procedures for determining a
17 legal “spouse” of an applicant for the property tax exemption under AS 29.45.030(e).
18 Martial status of an applicant is determined at the local government level.

19 **INTERROGATORY NO. 7:** Please identify the person(s), official(s),
20 employee(s), division(s), department(s), agent(s), representative(s), agency(ies), who
21 made the decision to deny eligible individuals who live with a same-sex partner the
22 full exemption under AS 29.45.030(e) available to individuals who live with a spouse
23 in a marriage that is recognized under Alaska law.
24

25 **ANSWER:** The state objects to this interrogatory as vague and
26

1
2 ambiguous in its use of the term "decision." To the extent that the term "decision"
3 may refer to the decision to draft or adopt regulation 3 AAC 135.085(c), the state has
4 reviewed the regulations file and has not been able to find any information responsive
5 to this interrogatory.

6
7 **INTERROGATORY NO. 8:** Please identify all present and past
8 internal and public State forms pertaining to the property tax exemption under
9 AS 29.45.030(e) and eligibility for and the process for calculating the amount of that
10 property tax exemption.

11 **ANSWER:** The state objects to this interrogatory on the basis that the
12 term "forms" is vague and ambiguous. Subject to and without waiving that objection,
13 the state responds that municipalities develop their own forms for administering
14 property taxes. The state has, however, provided some sample general forms to
15 smaller local government units. A sample form is being produced in response to the
16 requests for production.

17
18 **INTERROGATORY NO. 9:** Please identify all persons, agents,
19 representatives, entities, divisions, departments, committees, or other persons or
20 entities that review applications and/or determine the eligibility for and calculate the
21 amount of the tax exemption under AS 29.45.030(e) for real property owned in the
22 State.

23
24 **ANSWER:** The state does not review applications, determine
25 eligibility, or calculate the amount of property tax exemptions under AS 29.45.030(e).
26

1
2 This is done at the municipal level by local assessors.

3 **INTERROGATORY NO. 10:** Please identify all persons, agents,
4 representatives, entities, divisions, departments, committees, or other persons or
5 entities that determine whether and/or how AS 29.45.030(e) is applied to property in
6 the State.

7
8 **ANSWER:** The state objects to this interrogatory in that the state does
9 not apply the property tax exemptions under AS 29.45.030(e). This is done at the
10 municipal level by local assessors. Subject to, and without waiving the foregoing
11 objection, to the extent the state has provided any guidance in the application of the tax
12 exemption in AS 29.45.030(e) in general, that guidance is contained in
13 3 AAC 135.085 and the Alaska Association of Assessing Officers' Standard on
14 Procedural Issues for the Application of the Senior Citizen / disabled Veteran Property
15 Tax Exemption Program in Accordance with Alaska Statute 29.45.030(e)-(i) attached
16 to the state's initial disclosures.

17
18 **INTERROGATORY NO. 11:** Please describe all communications,
19 whether with individuals or city, municipal or borough governments, agencies,
20 representatives, departments, or divisions, about how the property tax exemption under
21 AS 29.45.030(e) applies to individuals living with same-sex partners, including but not
22 limited to communications about eligibility and calculating the amount of the
23 exemption for such individuals.

24
25 **ANSWER:** The state objects to this interrogatory as overbroad in that it
26

1
2 does not contain any temporal limitations. The state also objects to this interrogatory
3 in that it may call for information protected by the attorney client or deliberative
4 process privilege, or confidential attorney work product information. Subject to and
5 without waiving this objection, to the extent that this interrogatory refers to any
6 communications with the state assessor's office prior to this litigation, the state
7 assessor's office was contacted by Jeffrey Mittman of the ACLU regarding the
8 application for a property tax exemption by and individual with a same sex partner in
9 the Fairbanks North Star Borough. Copies of all communications with Mr. Mittman
10 are being produced in response to the plaintiff's requests for production along with
11 these interrogatory response.
12

13 **INTERROGATORY NO. 12:** Identify each person you intend to use
14 as an expert witness in this lawsuit, stating the subject matter on which each expert is
15 expected to testify, the substance of the facts and opinions to which each expert is
16 expected to testify, and a summary of the grounds for each opinion.
17

18 **ANSWER:** Objection, this litigation is in the early stages and the time
19 for identifying expert witnesses has not yet expired. Subject to, and without waiving
20 this objection, the state responds that it has not identified any expert witnesses at this
21 time. The state will supplement this response should an expert be identified at a later
22 stage of this litigation.
23

24 **INTERROGATORY NO. 13:** For each expert identified, if he or she
25 has ever testified in a prior lawsuit, deposition, or other proceeding, state the parties,
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the court (or other forum), any identifying number of the action, and the date of the testimony, and describe the subject matter of the testimony.

ANSWER: N/A. See answer to interrogatory No. 12.

INTERROGATORY NO. 14: If the State contends Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to exhaust administrative remedies, please state the basis for such contention, including identifying all facts, documents, departments, divisions, agencies, and persons with knowledge in support of such contention.

ANSWER: This litigation is in its early stages. The state is not aware of what efforts the plaintiffs made to challenge their denial of the exemption they are claiming at the local level. The state reserves its right to supplement this answer at a later date or withdraw its affirmative defense.

INTERROGATORY NO. 15: If the State contends Plaintiffs Traber and Snider lack standing, please state the basis for such contention, including identifying all facts, documents, departments, divisions, agencies, and persons with knowledge in support of such contention.

ANSWER: Plaintiffs' complaint fails to establish that Mr. Snider owns the property he occupies. The complaint also fails to establish that Mr. Traber is 65 or older or a disabled veteran. Therefore, neither Traber nor Snider would qualify for an exemption under AS 29.45.030(e) regardless of marital or same-sex partnership status.

INTERROGATORY NO. 16: If the State contends Plaintiffs Traber

1
2 and Snider fail to state a claim upon which relief may be granted, please state the basis
3 for such contention, including identifying all facts, documents, departments, divisions,
4 agencies, and persons with knowledge in support of such contention.


5 **ANSWER:** Plaintiffs' complaint fails to establish that Mr. Snider owns
6 the property he occupies. The complaint also fails to establish that Mr. Traber is 65 or
7 older or a disabled veteran. Therefore, neither Traber nor Snider would qualify for an
8 exemption under AS 29.45.030(e) regardless of marital or same-sex partnership status

9 **INTERROGATORY NO. 17:** If the State contends its conduct was
10 privileged by statute, protected by sovereign immunity, or authorized by law, please
11 state the basis for such contention, including identifying all facts, documents,
12 departments, divisions, agencies, and persons with knowledge in support of such
13 contention.
14

15 **ANSWER:** Objection. This interrogatory calls for a legal argument.
16

17 DATED this 7th day of February, 2011.
18

19 JOHN J. BURNS
20 ATTORNEY GENERAL

21 By: 
22 Rachel L. Witty
23 Assistant Attorney General
24 Alaska Bar No. 0409052

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VERIFICATION

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

Steve Van Sant, being first duly sworn, on oath deposes and says that she/he is the State Assessor for the State of Alaska, defendant herein; that she/he is authorized to, and hereby does, make this verification for and on behalf of the State of Alaska; and that she/he has read the within and foregoing Responses to Plaintiffs' First Set of Interrogatories to State of Alaska, knows the contents thereof, and believes the same to be true.



SUBSCRIBED AND SWORN TO before me this 4th day of February, 2011.

Erin Gora
Notary Public in and for Alaska
My commission expires: with office

Notary Public
State of Alaska
Erin Gora

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 268-6100

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

JULIE A. SCHMIDT, GAYLE SCHUH,)
JULIE M. VOLLIK, SUSAN L.)
BERNARD, FRED W. TRABER, and)
LAURENCE SNIDER)

Plaintiffs,)

VS.)

STATE OF ALASKA, and THE)
MUNICIPALITY OF ANCHORAGE,)

Defendants.)

Case No. 3AN-10-09519CI

CERTIFICATE OF SERVICE

This is to certify that on this date, a true and correct copy of **THE STATE OF ALASKA'S RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES TO THE STATE OF ALASKA** and this **CERTIFICATE OF SERVICE** in this proceeding was served by U.S. mail on the following:

Thomas Stenson
ACLU of Alaska Foundation
1057 W. Fireweed Lane, #207
Anchorage, AK 99503

Ryan Derry, Esq.
865 S. Figueroa Street #2400
Los Angeles, CA 99501

David Oesting
Davis Wright Tremaine LLP
701 W. Eighth Avenue
Anchorage, AK 99501

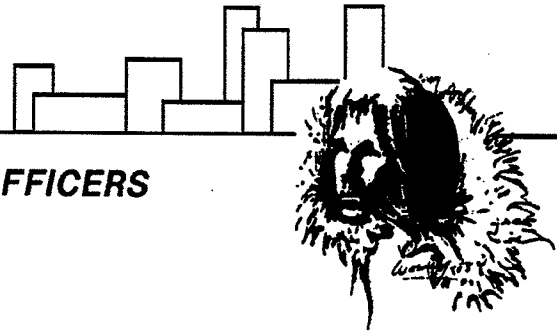
Roger Leishman, Esq.
Davis Wright Tremaine LLP
1201 3rd Avenue #2200
Seattle, WA 98101-3045

Pam Weiss
Office of the Municipal Attorney
PO Box 196650
Anchorage, AK 99519

Leslie Cooper
ACLU LGBT & AIDS Project
125 Broad St., 18th Floor
New York, NY 10004

 2/7/11
Signature Date

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100



**STANDARD ON PROCEDURAL ISSUES FOR THE
APPLICATION OF THE SENIOR CITIZEN /
DISABLED VETERAN PROPERTY TAX
EXEMPTION PROGRAM IN ACCORDANCE WITH
ALASKA STATUTE 29.45.030(e)-(i)**

Approved: 11-18-96

Alaska Association of Assessing Officers

The assessment standards set forth herein represent a consensus of thought within the assessment profession in the State of Alaska. The standard has been reviewed and adopted by the Executive Board of the Alaska Association of Assessing Officers (AAAO) with the objective of providing a means by which assessing officers can improve and standardize the operations of their respective offices. The standard presented here is advisory in nature and the use of, or compliance with this standard, while recommended by the AAAO, is advisory.

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1. Scope

This standard provides information and recommendations regarding the senior citizens / disabled veterans property tax exemption program authorized by AS 29.45.030(e)-(i). Any change to the statutes as reflected in this standard could necessitate a change to this standard.

2. Introduction

The State of Alaska mandates an exemption from property taxes for senior citizens and disabled veterans for property which is owned and occupied as the primary residence and permanent place of abode. There are areas within the statutes which are vague or ambiguous and, in many cases, the assessor is required to spend an inordinate amount of time checking with other municipalities to assure that the approach he/she has utilized is consistent with other areas of the state. This standard is intended to set forth guidelines which assessors should follow for consistency in administering this program.

3. History

The State of Alaska enacted the first statewide senior citizen property tax exemption in 1972 and it became effective on January 1, 1973. The original program was limited to those individuals with an annual income of less than \$10,000, however, the maximum income requirement was removed in 1974. An assessed value limitation was added to the program in 1976, however, this was also removed the following year and made retroactive to the year of its enactment. Disabled veterans, limited to those who had suffered a 50% service connected disability, were added to the program for the 1985 assessment year. The program exempted the total assessed value of eligible applicants from property taxes and the property taxes which local municipalities lost due to the enactment of this program were totally reimbursed by the state until 1986. In the program's beginning, the total amount requested by municipalities for reimbursement was slightly more than \$197,000. However, the popularity of the program grew along with the number of applicants until 1985 when the total reimbursement request was over \$4,000,000. In 1986 the request from municipalities grew to over \$6.3 million and the Alaska Legislature failed to fund the program at 100%. The funding for this program has failed to meet the requested amount every year since 1986. The total funding amount was at 100% from 1973 through 1985 but has dropped from 79.53% in 1986 to only 6.2% in 1995. In 1987, the program was changed to mandate only the first \$150,000 of assessed value to be exempt from property taxes, although municipalities still retain the authority to exempt individuals over that amount in cases of financial hardship or, for all program recipients, if approved by the voters.

The reduction in funding from the state and the ever increasing growth of this program has caused local municipalities to scrutinize the program more closely and assure themselves that only those individuals who truly qualify, participate in the program. Some of the ambiguities of the statutory language is also under scrutiny. It is for these reasons that this standard is necessary in addition to giving assessors consistent procedures to utilize when approving applications for the program.

There are five primary issues which this standard will address, they are **(1) primary residence and permanent place of abode (and the need for residency requirements), (2) partial property ownership by program participants, (3) multiple ownership within a multiple unit property, (4) multiple parcel ownership by program participants, and (5) the date when the exemption attaches and what criteria must be met by that date.**

PRIMARY ISSUES

I. Primary Residence/Permanent Place of Abode - Residency Requirement

State law which exempts the property of senior citizens and disabled veterans simply states that “The real property owned and occupied as the primary residence and permanent place of abode...” (emphasis added) is exempt from property taxes. The statute does not define permanent place of abode nor whether the applicant must reside on the property for the entire year or only a portion of the year in order to continue to receive the exemption.

The problem of the primary residence arises predominately in those occasions when individuals maintain more than one residence in multiple states. In some cases the individuals maintain a residence in Alaska for only the summer months and return to other, warmer climates during the winter. In a few of the extreme cases, the individuals have purchased property around popular tourist areas such as the Kenai River, placed a travel trailer on blocks there and claimed that as their permanent place of abode.

At the present time, there are two other state senior programs which have residency requirements. They are the longevity bonus program and the pioneer home program.

Longevity Bonus Program

Due to the high cost of living in Alaska, the longevity bonus program was enacted to assist senior citizens in maintaining their residency in Alaska. This program distributes a monthly payment to eligible seniors of up to \$250 and is currently being phased out. However, eligible applicants are required to maintain continuous residency in the state

for one year in order to be eligible. After the eligibility period, the applicants cannot have an absence from the state for longer than 90 days. If they do experience absences of more than 90 days, they are disqualified from receiving bonuses for the next twelve months.

Pioneer Home Program

The Pioneer Homes operate to assist those seniors who need care with housing. This program is available to all seniors who have maintained a 15 year residency in Alaska. There is a waiting list maintained for this program and once an individual is added to the list, he/she must maintain continuous residency while on that list. They must reside within the state for 185 days during the year or they may be disqualified for the program. They may have absences from the state for more than 180 days for medical reasons, schooling, governmental appointments outside the state, or other reasons which have been listed.

Both programs require continuous residency to maintain eligibility. There should be no less requirement for the property tax exemption program.

THE FOLLOWING STANDARDS APPLY ONLY TO THE PROPERTY TAX EXEMPTION AUTHORIZED BY AS 29.45.030(e)

STANDARD 1.(a)

In order to continue to be eligible for the senior citizen/disabled veteran property tax exemption program, applicants must occupy, as the primary residence and permanent place of abode, the property for at least 185 days per calendar year within the State of Alaska after the first year application period. Failure to maintain the required residency in the prior calendar year will be cause for the denial of the individual's application for the program for the current year. Absences from the state for more than 180 days per year will not disqualify the individual for the tax exemption program if they are for the following reasons:

(1) pursuit of a formal course of study under the supervision of an established primary or secondary school, college, university, vocational school, or professional school, or performance of an internship or residency necessary to establish a professional specialty, if the person returned to Alaska within 60 days after completion of the course of study, internship, or residency;

(2) medical treatment upon the recommendation of a licensed physician or psychologist if

- (A) the absence did not include a permanent change of residence; and
- (B) the person returned to Alaska within 60 days after completion of the treatment and any recommended convalescence period;
- (3) service in the United States Army, Navy, Air Force, Marines, or Coast Guard, or the Alaska National Guard or Naval Militia, if the person
 - (A) enlisted or was drafted while a resident of Alaska; and
 - (B) returned to Alaska within 60 days after discharge, retirement, or completion of the out-of-state duty;
- (4) employment by the State of Alaska in a location outside of the state if the person returned to Alaska within 60 days after termination of that employment;
- (5) service in the U.S. Congress as a representative or senator for the State of Alaska, or service on the staff of such a representative or senator, if the person returned to Alaska within 60 days after the service ended;
- (6) service as a presidential appointee as a cabinet member or as an ambassador, or service on the staff of such an appointee, if the person returned to Alaska within 60 days after the service ended;
- (7) confinement in an out-of-state correctional institution by order of a court, if the person
 - (A) was a resident of Alaska before the confinement began; and
 - (B) returned to Alaska within 60 days after release from the institution;
- (8) medical necessity of a nonresident spouse, parent, dependent, or sibling required the applicant to be out of the state to provide care for the parent, spouse, dependent, or sibling, if the applicant
 - (A) was a resident of Alaska when the medical necessity arose; and
 - (B) returned to Alaska within 60 days after the medical necessity ended;
- (9) family necessity required the applicant, whose relationship with another state resident was that of a parent, spouse, dependent, or sibling, to accompany that individual who was absent for reasons allowed by (1) - (8), and (10) of this subsection, if the applicant
 - (A) was a resident of Alaska when the necessity to accompany the absent individual arose; and
 - (B) returned to Alaska within 60 days after the end of the family necessity;
- (10) admission to a licensed long-term care facility outside Alaska upon the recommendation of a licensed physician issued no later than the date of departure from Alaska, if the applicant
 - (A) continuously maintained residency in Alaska while temporarily absent from the state; and
 - (B) returned to Alaska within 60 days after discharge from a licensed long-term care facility.

II. Partial Property Ownership by Program Participants

For a variety of reasons, some properties owned by seniors are not owned solely by those seniors, but have a shared ownership. Consequently, the entire property may not be eligible for the property tax exemption offered by AS 29.45.030(e). This statute reads in part that "...the property owned and occupied..." (emphasis added) will be eligible for the property tax exemption. It is obvious that the statute intends to exempt only that portion of the property owned by the eligible applicant, consequently, a partial ownership should result in a partial exemption. Prior to 1982 the Alaska Administrative Code 19 AAC 35.080 (c) read "When the standard of eligibility is met, the exemption is that portion of the tax equal to the percent of ownership of the eligible owner or owners." This code was in effect from 1974 through 1981 and was repealed in 1982. The reason for the repeal is unknown and the Office of the State Assessor is researching records in an attempt to see what reasoning, if any, was used in the repeal. Regardless of the 1982 repeal of this section of the code, the position of the State Assessor is that the pro ration of the exemption based upon the percentage of ownership is a valid application of the exemption

STANDARD 1.(b)

The standard for the determination of the exemption when partial property ownership exists is that the exemption is equal to only the percent of property ownership of the eligible applicant. The first exception to this standard is when an eligible applicant and his or her spouse own the same permanent place of abode, the exemption applies to the entire value of the property irrespective of that percentage of ownership of the applicant. The second exception to this standard occurs when the ownership of the property is shared with individuals who are eligible for the exemption program and also occupy the property as their primary residence and permanent place of abode. The exemption applies to the entire value, subject to statutory limitations.

STANDARD 1.(b) comment/example:

If an applicant owns an undivided one-half interest, that is, John Doe and Jerry Public both are shown on the deed as owners, and John Doe is the applicant, the property will receive an exemption of 50% of the assessed value, up to \$150,000. However, if Jerry Public also meets the necessary criteria for eligibility, the property should receive an exemption of 100% of the assessed value, up to \$150,000.

III. Multiple Ownership within a Multiple Unit Property

There are instances when individuals who are eligible for the property tax exemption program find themselves partial owners of multiple units of residential property, such as duplexes, tri-plexes, etc.. They share the ownership with others who sometimes, are also individuals who are eligible for the exemption. The statutes, however, limit the number of exemptions to one for the same property. Past practice has been to limit the exemption to the percentage of ownership of one of the eligible applicants and only allow one exemption per property. This practice usually does not allow the entire exemption limitation, \$150,000 to be met and fails, in our opinion, to meet the intent of the law.

STANDARD 1.(c)

If the ownership and occupancy of a multiple unit property is shared by persons who are eligible for the exemption program, the assessor may accept only one application for the property and exempt the property up to the maximum exemption of \$150,000. If only one unit of the property is occupied by an eligible individual, an exemption proration will occur based upon the ownership percentage or actual occupancy percentage, if it is greater than the ownership percentage.

STANDARD 1.(c) comment/example:

For example, if two eligible individuals **own and occupy** a duplex, each in a separate unit, with an assessed value of \$ 150,000, the entire amount (up to the statutory limitation) will be exempted. If, however, only one individual is eligible for the program, the exemption will be prorated on his/her percent of ownership (**Standard 1.(a)**) or, if the percent of ownership and percent of actual occupancy differ, the percent of occupancy. For example, if the eligible individual owns 50% of the property but his unit (occupancy) actually consists of 75% of the property, then the exemption will be 75% or, \$112,500. However, the exemption will still be subject to the statutory limitation of \$150,000. If an eligible applicant owns 50% of a four plex and occupies one of the units, his/her exemption percentage will be 25%, assuming all four units are approximately equal in size.

IV. Multiple Parcel Ownership

In many instances, participants in the homeowners exemption program own more than one parcel of property and want to claim that as part of the residence so the exemption will also attach to those properties. And, in many cases, it is proper to include those properties in the exemption program. There have been instances where an owner of a large tract of land has subdivided the property into many small lots and expects to keep those lots exempted until they have been sold. The statutes are silent to the number of parcels an individual may have in the program, however, the existing regulations do attempt to address this issue. **Eligibility** in chapter **19 AAC 35.085** of the regulations currently read, in part:

- (d) The real property eligible for reimbursement under this chapter includes only a
- (1) primary parcel: the entire parcel of real property owned and occupied by an applicant as a permanent place of abode; and
 - (2) subsidiary parcel: a parcel of real property adjacent to the primary parcel described under (1) of this subsection, subject to approval by the department.

Within **Definitions** in chapter **19 AAC 35.120** of the regulations permanent place of abode is defined as:

- (4) "permanent place of abode" means a dwelling, or a dwelling unit in a multiple dwelling, including lots and outbuildings, or an appropriate portion thereof, which are necessary to convenient use of the dwelling unit;

The two cites actually work hand in hand with each other. The definition includes, not only the lot where the dwelling is located, but also other lots which are necessary for the convenient use of the dwelling. This would include such uses as a well or septic system, garage, perhaps a barn or green house, etc. The eligibility (reimbursement) cite allows for reimbursement of the dwelling parcel and a parcel adjacent to the dwelling which needs to be approved by the department (Department of Community & Regional Affairs). The approval should hinge on the necessity of the subsidiary parcel for convenient use of the primary parcel, therefore rendering this section of the code meaningless. The reasoning of the inclusion of the subsidiary parcel language in the code is not clear and ,perhaps, no approval should be given by the department for reimbursement of subsidiary parcels, since any lot which is necessary for convenient use of the primary parcel should have been included in the primary parcel.

There are instances when a residential improvement has been built across two lots, or even as many as three lots, if they are smaller lots. It should not matter the number of lots or parcels which are exempted, what should be the primary factor of whether or not the lots should be included in the exemption is the use of the property. If lots or parcels

are necessary for the convenient use of the dwelling unit, then they should be included in the exemption, up to the limit of \$150,000.

STANDARD 1.(d)

The total number of parcels included in the exemption amount will not be limited by any given number other than the \$150,000 limit placed upon the assessed value. However, parcels will only be included in the exempted amount if they are adjacent to, integrally related to, and deemed necessary for the convenient use of the primary dwelling unit parcel. These uses include, but are not limited to, multiple lots under the dwelling structure, well and septic use, garage, shops or outbuildings (for private use), greenhouses, gardens and airplane hangers. Parcels which have been separated from the primary parcel without the owners initiation, for example, involuntary splitting of the property by roads or map pages shall not constitute a separate parcel for purposes of this exemption.

VI. Exemption Date

As with all other exemption determinations, the determination of the senior citizen/disabled veteran exemption must be made as of a date certain. However, in order for the exemption to attach, certain criteria must be met before that date. The criteria which must be met includes age, ownership, residency, all which should be verified prior to January 1, of the assessment year for which the exemption is sought.

STANDARD 1.(e)

The date for determination of eligibility for the senior citizen/disabled veteran property tax exemption program is January 1, of the assessment year for which the exemption is sought. In order for a senior citizen to participate in the program, they must attain the age of 65 prior to January 1. A disabled veteran must be certified as being at least 50% disabled prior to January 1, and both the senior and veteran must own and occupy the property as their residence prior to January 1 of the assessment year. (See Standard 1.(a) for residency requirements)

VII. Partial Non-Exempt Use

There are times when a senior citizen or disabled veteran will use their exempt property for a use which is not the same as their permanent residence. Examples of this are uses for a commercial activity, such as an office, commercial shop space or rental of a portion of the property for either commercial use or use as a B&B. If the entire property is rented for any of these purposes, the exemption does not attach. But, if only a portion of the property is rented, the matter needs to be addressed somewhat differently.

To be consistent throughout the state, the following standard requires that the use and portion of property being used for non-exempt purposes be determined first. The exemption can then be applied to the portion of the property which is being used for an exempt purpose, up to the maximum \$150,000. For example, if 1/3 of a \$300,000 property is used for a non-exempt purpose, the exemption will attach to only the remainder value of the property, i.e., \$200,000, for a total \$150,000 exemption. By the same reasoning, if 1/4 of a \$160,000 property is used for non-exempt purposes, the exemption can only apply to the remaining \$120,000.

STANDARD 1.(f)

If a property which is otherwise exempt under AS 29.45.030(e), is used in part for purposes other than that as a permanent place of abode of an applicant, the assessor will first allocate a percentage of use for both the exempt and non-exempt portions of the property. The percentage of exempt usage of the property will be applied to the entire mandated \$150,000 exemption.

STANDARD 1.(f) comment/example:

The percentage use of a property must first be determined in order to calculate the eligible exemption. For example, if a portion of a property is rented out, the portion used as a rental must first be determined and a use percentage calculated. If the use is calculated at, say 27% then the remainder of the property may be exempted, up to the maximum of \$150,000. If the total property value were, say \$205,000 the non-exempt portion of the property is valued at \$55,350 ($205,000 \times .27$). The remainder value of the property, \$149,650 ($205,000 - 55,350$) would be eligible for the exemption. The percentage (27%) is NOT multiplied by the mandated exemption amount (\$150,000). The appropriate value of the property which is used for the exempt purpose (\$149,650) has the exemption attach, up to the maximum amount.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JULIE A. SCHMIDT, GAYLE SCHUH,)
JULIE M. VOLLIK, SUSAN L. BERNARD,)
FRED W. TRABER, and)
LAURENCE SNIDER,)

Plaintiffs,)

vs.)

THE STATE OF ALASKA, and THE)
MUNICIPALITY OF ANCHORAGE,)

Defendants.)

) Case No. 3AN-10-9519 CI

MUNICIPALITY OF ANCHORAGE'S RESPONSE
TO REQUEST FOR PRODUCTION NOS. 25 & 26

Defendant Municipality of Anchorage ("Municipality"), pursuant to agreement of the parties, responds to Plaintiffs' Second Set of Requests for Production, Requests for Production Nos. 25 & 26. Responses to the remaining Requests for Production will be provided separately at a later date. Defendant responds as follows:

Request for Production No. 25: Please produce all documents for the last five years that are contained in the tax assessment file or files for Real Property Number 050-053-70-000, Eagle Glenn East Blk 4 Lt 29. Documents included in this Request include, but are not limited to, all Real Property Assessments, Tax Notices, and any correspondence with the recorded owners during the last five years.

Response: Objection. The request is vague with respect to the term "file or files" as the Property Appraisal Division does not maintain a comprehensive paper or

**MUNICIPALITY
OF
ANCHORAGE**

OFFICE OF THE
MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

computerized file for each parcel. Rather, information is stored in various databases accessible by the Property appraisal division. Further, the request is vague and ambiguous as it does not identify the time period relevant for determining the "recorded owners."

Notwithstanding the foregoing objections, attached hereto at MOA Bates Nos. 264-267 are documents concerning application for exemption on the subject parcel; attached hereto at MOA Bates Nos. 268-298 are printouts from the Municipality's Computer Assisted Mass Appraisal (CAMA) system; attached hereto at Bates Nos. 299-301 are copies of the available Tax Notices; attached hereto at Bates Nos. 302-303 are photographs from the Landisc Database; and attached hereto at Bates No. 304 is a property sketch from the APEX Database.

Request for Production No. 26: Please produce all documents for the last five years that are contained in the tax assessment file or files for Real Property Number 067-073-50-00010, Parkview Terrace East #2 Blk 4 Lt 17. Documents included in this Request include, but are not limited to, all Real Property Assessments, Tax Notices, and any correspondence with the recorded owners during the last five years.

Response: Objection. The request is vague with respect to the term "file or files" as the Property Appraisal Division does not maintain a comprehensive paper or computerized file for each parcel. Rather, information is stored in various databases accessible by the Property Appraisal Division. Further, the request is vague and

**MUNICIPALITY
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Telephone: 343-4545
Facsimile: 343-4550

MOA's Response to Request for Production Nos. 25 & 26
Schmidt-Schuh v. MOA, Case No. 3AN-10-9519 CI
Case No. 3AN-10-9519 CI

Page 2 of 3

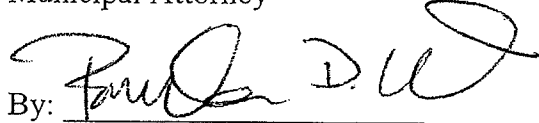
Exhibit 2
Page 2 of 7

ambiguous as it does not identify the time period relevant for determining the "recorded owners."

Notwithstanding the foregoing objections, attached hereto at MOA Bates Nos. 305-306 are documents concerning application for exemption on the subject parcel; attached hereto at MOA Bates Nos. 307-333 are printouts from the Municipality's Computer Assisted Mass Appraisal (CAMA) system; attached hereto at Bates Nos. 334-336 are copies of the available Tax Notices; attached hereto at Bates Nos. 337-338 are photographs from the Landisc Database; and attached hereto at Bates No. 339 is a property sketch from the APEX Database.

Respectfully submitted this 8th day of April, 2011.

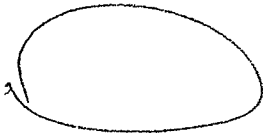
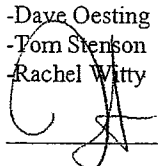
DENNIS A. WHEELER
Municipal Attorney

By: 

Pamela D Weiss
Assistant Municipal Attorney
Alaska Bar No. 0305022

Certificate of Service
I hereby certify that on 4/8/11 I mailed
a true and correct copy of the foregoing to:

-Dave Oesting
-Tom Stenson
-Rachel Witt



**MUNICIPALITY
OF
ANCHORAGE**

OFFICE OF THE
MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

MOA's Response to Request for Production Nos. 25 & 26
Schmidt-Schuh v. MOA, Case No. 3AN-10-9519 CI
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Page 3 of 3



Home Residents Businesses Government Visitors Departments Public Safety

Departments > Finance > Property Appraisal > New Search > results

[Back](#) [Taxes](#) [Comparable Sales](#)

Public Inquiry Parcel Details

[Show Parcel on Map](#)

Parcel: 067-073-50-000 Residential Single Family 04/04/11

SCHMIDT JULIE A 50% & PARKVIEW TERRACE EAST #2
 SCHUH GAYLE P 50% BLK 4 LT 17
 18631 Gibens Circle
 Eagle River AK 99577 Site 18631 Gibens Cir

Lot Size: 5,314 ---Date Changed--- ----Deed Changed----
 Zone : RLASL Owner : 06/27/06 Stateid: 2006 / 0037692
 Tax Dist: 050 Address: 06/27/06 Date : 06/09/06
 Grid : SW0154 Hra # : Plat : 92-0085
 GRW: PIWR REF #:

ASSESSMENT HISTORY

| | ---Land-- | --Building- | ---Total--- | |
|---------------------|-----------|-------------|-------------|----------------|
| Appraised Val 2009: | 85,400 | 173,800 | 259,200 | |
| Appraised Val 2010: | 85,400 | 168,800 | 254,200 | --Exemption--- |
| Appraised Val 2011: | 86,600 | 173,800 | 260,400 | -----Type----- |
| Exempt Value 2011: | 0 | 0 | 0 | |
| State Credit 2011: | | | 130,200 | SENIOR CITIZEN |
| Resid Credit 2011: | | | 20,000 | RESIDENTIAL |
| Taxable Value 2011: | | | 110,200 | |

Liv Units: 001 Common Area: Leasehold: Insp Dt: 06/09 Land Only
 07/10
 /

IMPROVEMENT DATA

| | | |
|---------------------|------------------------|----------------------------|
| Style : Bi-Level | Story Ht : 1.0 | Exterior Walls: Wood |
| Year Built : 1996 | Remodeled: | Effective Year: 1996 |
| Total Rooms: 07 | Bedrooms : 03 | Recreation Rms: 0 |
| Full Baths : 2 | Half Bths: 0 | Add't Fixtures: 0 |
| Heat Type : Central | Fuel Type: Natural Gas | Sys Heat Type : Forced Air |
| Fp: Stacks : | Openings : | Free Stand : |
| Extra Value: | Extra Val: | E-Z Set Firepl: 1 |
| Condo Style: | Condo Flr: | Condo Com Prop: |
| Grade : Average | Cst/Desgn: | Condition : Average |

IMPROVEMENT AREA

| | | | | | | |
|-------------|-------|-------------|-----|---------------|-------|--------|
| Basement : | 960 | FIN/BSMT : | 480 | Basement Gar: | 2 Car | Living |
| 1st Floor : | 1,108 | 2nd Floor : | 0 | 3rd Floor : | 0 | Area: |
| Half Floor: | 0 | Attic Area: | 0 | FIN DEEP BSM: | | 1588 |

ADDITIONAL FEATURES

| | | | | |
|-----------|-------------------|------------|------------|-------|
| Basement: | 1st Floor: | 2nd Floor: | 3rd Floor: | Area: |
| | Cov'rd Open Porch | | | 24 |
| | Wood Deck | | | 60 |
| | Wood Deck | | | 9 |

Feedback E-mail: wwfiaz@muni.org



MUNICIPALITY OF
ANCHORAGE

Home Residents Businesses Government Visitors Departments Public Safety

Departments > Finance > Property Appraisal > New Search > results

◀ Back

Taxes

Comparable Sales

Public Inquiry Parcel Details

Show Parcel on Map

Parcel: 050-053-70-000 Residential Single Family 04/04/11

VOLLICK JULIE M 50% & EAGLE GLENN EAST
 BERNARD SUSAN L 50% BLK 4 LT 29
 16315 Jackson Hole Court
 Eagle River AK 99577 Site 16315 Jackson Hole Ct

Lot Size: 6,000 ---Date Changed--- ----Deed Changed----
 Zone : R1 Owner : 11/12/04 Stateid: 2004 / 0076693
 Tax Dist: 050 Address: 11/12/04 Date : 10/12/04
 Grid : NW0251 Hra # : Plat : 82-0390
 GRW: PIWR REF #:

ASSESSMENT HISTORY

| | ---Land-- | --Building- | ---Total--- | |
|---------------------|-----------|-------------|-------------|----------------|
| Appraised Val 2009: | 64,300 | 170,300 | 234,600 | |
| Appraised Val 2010: | 64,300 | 168,300 | 232,600 | --Exemption--- |
| Appraised Val 2011: | 68,100 | 168,600 | 236,700 | -----Type----- |
| Exempt Value 2011: | 0 | 0 | 0 | |
| State Credit 2011: | | | 116,350 | VETERANS |
| Resid Credit 2011: | | | 20,000 | RESIDENTIAL |
| Taxable Value 2011: | | | 98,350 | |

Liv Units: 001 Common Area: Leasehold: Insp Dt: 06/09 Land Only
 12/10
 07/05 Desk Edit

IMPROVEMENT DATA

| | | |
|---------------------|------------------------|----------------------------|
| Style : Bi-Level | Story Ht : 1.0 | Exterior Walls: Wood |
| Year Built : 1983 | Remodeled: | Effective Year: 1983 |
| Total Rooms: 06 | Bedrooms : 03 | Recreation Rms: 0 |
| Full Baths : 2 | Half Bths: 0 | Add't Fixtures: 0 |
| Heat Type : Central | Fuel Type: Natural Gas | Sys Heat Type : Forced Air |
| Fp: Stacks : | Openings : | Free Stand : |
| Extra Value: | Extra Val: | E-2 Set Firepl: 1 |
| Condo Style: | Condo Flr: | Condo Com Prop: |
| Grade : Average | Cst/Desgn: | Condition : Average |

IMPROVEMENT AREA

| | | | |
|-------------------|----------------|---------------------|--------|
| Basement : 1,008 | FIN/BSMT : 432 | Basement Gar: 2 Car | Living |
| 1st Floor : 1,068 | 2nd Floor : 0 | 3rd Floor : 0 | Area: |
| Half Floor: 0 | Attic Area: 0 | FIN DEEP BSM: | 1500 |

ADDITIONAL FEATURES

| | | | | |
|-----------|-----------------|------------|------------|-------|
| Basement: | 1st Floor: | 2nd Floor: | 3rd Floor: | Area: |
| | Wood Deck | | | 552 |
| | Entrance Canopy | | | 24 |

OTHER BUILDING AND YARD IMPROVEMENTS

| Type | Qty | Yrblt | Size | Grade | Condition |
|-----------------|-----|-------|------|---------|-----------|
| Tall Wood Fence | 1 | 03 | 100 | Average | Average |

Feedback E-mail: wwtqa@muni.org

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 JULIE A. SCHMIDT, GAYLE SCHUH,)
5 JULIE M. VOLLIK, SUSAN L.)
6 BERNARD, FRED W. TRABER, and)
LAURENCE SNIDER)

7 Plaintiffs)

8 vs.)

9 THE STATE OF ALASKA, and THE)
10 MUNICIPALITY OF ANCHORAGE,)

Case No. 3AN-10-9519 CI

11 Defendants.)
12 _____)

13 ORDER

14 THIS COURT, having considered Plaintiffs' Motion for Partial Summary
15 Judgment and Defendant State of Alaska's cross motion for summary judgment, any
16 opposition thereto, and the evidentiary record,
17

18 HEREBY ORDERS that the State's Motion is GRANTED. The
19 Plaintiffs' Motion is DENIED. Plaintiffs' cause of action is DISMISSED WITH
20 PREJUDICE.
21

22 DATED this _____ day of _____ 2011.
23
24

25
26 _____
The Honorable Frank Pfifner
Judge of the Superior Court

1
2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 JULIE A. SCHMIDT, GAYLE SCHUH,)
5 JULIE M. VOLLIK, SUSAN L.)
6 BERNARD, FRED W. TRABER, and)
7 LAURENCE SNIDER)

8 Plaintiffs,)

9 VS.)

10 STATE OF ALASKA, and THE)
11 MUNICIPALITY OF ANCHORAGE,)

12 Defendants.)

Case No. 3AN-10-09519CI

13 **CERTIFICATE OF SERVICE**

14 This is to certify that on this date, a true and correct copy of **THE STATE**
15 **OF ALASKA'S CROSS-MOTION FOR SUMMARY JUDGMENT,**
16 **MEMORANDUM IN SUPPORT OF THE STATE OF ALASKA'S CROSS-**
17 **MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS'**
18 **MOTION FOR PARTIAL SUMMARY JUDGMENT, AFFIDAVIT OF STEVE**
19 **VAN SANT, EXHIBITS, [PROPOSED] ORDER, and this CERTIFICATE OF**
20 **SERVICE** in this proceeding was served by hand delivery on the following:


21
22 Thomas Stenson
23 ACLU of Alaska Foundation
24 1057 W. Fireweed Lane, #207
25 Anchorage, AK 99503

26 David Oesting
Davis Wright Tremaine LLP
701 W. Eighth Avenue
Anchorage, AK 99501

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And by U.S. first class mail on the following:

Pam Weiss
Office of the Municipal Attorney
PO Box 196650
Anchorage, AK 99519


Signature Date 7/11/11

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100