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FRED W. TRABER; and LAURENCE SNIDER

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

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

Plaintiffs)

vs.)

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

Defendants.)
_____)

Case No. 3AN-____-_____ CI

Complaint

Schmidt v. State of Alaska, Case No. 3AN-10-_____

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COMPLAINT

Plaintiffs Julie A. Schmidt, Gayle Schuh, Julie M. Vollick, Susan L. Bernard, Fred W. Traber, and Laurence Snider hereby bring the following causes of action against the State of Alaska and the Municipality of Anchorage (collectively, “Defendants”), as follows:

INTRODUCTION

The Alaska Constitution guarantees all persons in Alaska the natural right to liberty (*see* Art. I, § 1); equal rights, opportunities, and protection under the law (*see id.*); the right to be free from sex discrimination (*see* Art. I, § 3); and the right to privacy (*see* Art. I, § 22). Plaintiffs bring this action because Defendants’ discriminatory taxation of same-sex couples intentionally discriminates against Plaintiffs in violation of these protections guaranteed to them by the Alaska Constitution.

Plaintiffs are three gay and lesbian couples who live together in long-term, committed, interdependent, intimate relationships (“domestic partners”), with the intention of remaining in such relationships for life. Each couple owns a home located within the Municipality of Anchorage, and at least one member of each couple qualifies for an exemption of property taxes under Alaska’s senior citizen and disabled veteran property tax exemption, AS 29.45.030(e) (the “Tax Exemption”). The Tax Exemption exempts qualifying senior citizens and disabled veterans in Alaska from taxation on up to \$150,000 of the assessed value of their homes. However, the Tax Exemption is not made available on equal terms to qualifying individuals who live in same-sex domestic partnerships.

Married couples can claim the full \$150,000 Tax Exemption regardless of whether the property is held in the name of the husband, wife, or both. 3 AAC 135.085(a). In contrast, same-sex domestic partners living together, who are barred from marrying or

1 having their marriages recognized under Alaska law, are entitled, at most, to one-half of
2 the exemption. This is because state regulations, as interpreted by the State and
3 Municipality of Anchorage, deem each member of a same-sex domestic partnership to
4 occupy only one-half of the home (*see* 3 AAC 135.085(c)), despite the fact that they live
5 together in their home as a family, not as roommates occupying separate spaces. Even if
6 both domestic partners qualify, they are still ineligible for the full exemption because
7 under the statute, only one property tax exemption can be claimed for each home.
8 *See* AS 29.45.030(e). For same-sex domestic partners whose property is not held in the
9 name of the qualifying partner, the couple receives no exemption at all.

10 Accordingly, the Tax Exemption discriminates against the Plaintiff couples by
11 denying them access to the Tax Exemption on equal terms as those available to married
12 couples. This discrimination results in the Plaintiff couples having to pay more property
13 taxes on their homes than a couple with a marriage that Alaska law recognizes.

14 By conditioning couples' access to the full Tax Exemption on marriage, from
15 which Alaska law bars same-sex domestic partners, Defendants deprive same-sex couples
16 of equal treatment under the exemption. This unequal treatment on account of the
17 Plaintiffs' same-sex domestic partnerships infringes on Plaintiffs' natural right to liberty
18 (*see* Art. I, § 1); equal rights, opportunities, and protection under the law (*see id.*); the
19 right to be free from sex discrimination (*see* Art. I, § 3); and the right to privacy (*see* Art.
20 I, § 22) in violation of the Alaska Constitution. Plaintiffs are not challenging the
21 exclusion of same-sex couples from marriage. But the Alaska Constitution forbids the
22 State from discriminating against same-sex domestic partners in its application of the Tax
23 Exemption.

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JURISDICTION AND VENUE

- 1. Plaintiffs are residents of the State of Alaska.
- 2. Venue in this action is appropriate in the Third Judicial District at Anchorage under AS 22.10.030 and Rule Three of the Alaska Rules of Civil Procedure.
- 3. This Court has jurisdiction over this action under AS 22.10.020.

GENERAL ALLEGATIONS

The Senior Citizen and Disabled Veteran Property Tax Exemption

- 4. AS 29.45.030(e) provides, in relevant part, that:

The real property owned and occupied as the primary residence and permanent place of abode by a (1) resident 65 years of age or older; (2) disabled veteran; . . . , is exempt from taxation for 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. . . .

- 5. AS 29.45.030(i) defines “disabled veteran” to mean a disabled person:

(A) separated from the military service of the United States under a condition that is not dishonorable who is a resident of the state, whose disability was incurred or aggravated in the line of duty in the military service of the United States, and whose disability has been rated as 50 percent or more by the branch of service in which that person served or by the United States Department of Veterans Affairs; or

(B) who served in the Alaska Territorial Guard, who is a resident of the state, whose disability was incurred or aggravated in the line of duty while serving in the Alaska Territorial Guard, and who disability has been rated as 50 percent or more;

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6. The regulations governing the eligibility requirements for the Tax Exemption are located at 3 AAC 135.085.
7. 3 AAC 135.085(a) provides: “When an eligible person and his or her spouse occupy the same permanent place of abode, the reimbursement described in AS 29.45.030(g) applies, regardless of whether the property is held in the name of the husband, wife, or both.”
8. 3 AAC 135.085(c) provides: “If property is occupied by a person other than the eligible applicant and his or her spouse, an exemption, to be eligible for reimbursement, applies only to the portion of the property permanently occupied by the eligible applicant and his or her spouse as a place of abode.”
9. The Office of the State Assessor and the Assessor for the Municipality of Anchorage have both explained the term “spouse” applies to only those persons in marriages recognized by the State of Alaska and that individuals living in same-sex domestic partnerships (who cannot marry or have their marriages recognized under Alaska law) are each deemed to occupy half of the property and, thus, eligible individuals living in domestic partnerships are only entitled to half of the exemption available to married couples.

The Plaintiff Couples

Julie Schmidt and Gayle Schuh

10. Plaintiffs Julie Schmidt and Gayle Schuh, who are sixty-seven and sixty-two years old, respectively, have lived together in a long-term, committed, interdependent, intimate relationship for thirty-two years and intend for their relationship to be permanent. Schmidt and Schuh have built their

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lives around their relationship and take care of and support one another physically, emotionally and financially. Schmidt and Schuh have also supported one another through illnesses, surgery and rehabilitation. In 2002, Schmidt was scheduled to undergo a double-knee replacement but postponed that surgery when Schuh was diagnosed with breast cancer and had to undergo her own surgery and treatment. Schmidt took care of Schuh during her recovery. Later in the year, Schuh helped Schmidt through knee rehabilitation following her surgery. The couple share joint finances, including joint savings, checking, and money market accounts, and jointly owns their home and an investment property. Schmidt and Schuh list each other as the primary beneficiary on both of their wills and have medical and durable powers of attorney for one another. In an expression of their permanent commitment to one another, in 2007, Schmidt and Schuh were married in Vancouver, Canada.

- 11. Both Schuh and Schmidt are retired schoolteachers and now spend their time volunteering for organizations, including the Anchorage Concert Association.
- 12. Schmidt and Schuh have lived in Alaska since 2003.
- 13. Schmidt and Schuh jointly purchased their house in Eagle River in 2006. Together they have spent the past four years remodeling much of the house to make it their home.
- 14. For the 2010 tax year, Schmidt and Schuh’s home has been assessed with a value in excess of \$150,000.00.
- 15. As a full-time resident of Alaska, and having attained the age of sixty-five, Schmidt qualifies for the Tax Exemption.

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16. Schmidt applied for the Tax Exemption on January 4, 2008. Schmidt has not received the full Tax Exemption available to couples with a marriage recognized by Alaska.

Julie Vollick and Susan Bernard

17. Plaintiffs Julie Vollick and Susan Bernard, who are forty-five and forty-one, respectively, have lived together in a long-term, committed, interdependent, intimate relationship for seven years and intend for their relationship to be permanent.

18. Vollick and Bernard’s family also includes their four children, two each from previous relationships of Vollick and Bernard.

19. Vollick and Bernard take care of and support one another and all of their children physically, emotionally and financially. Their finances are intermingled, with the couple sharing a joint savings account and owning a home, car and camper together.

20. Vollick retired from the United States Air Force after twenty years of service. She served in Kuwait, Saudi Arabia, Afghanistan and Pakistan. Bernard is a surgical technologist.

21. Bernard and Vollick have lived in Alaska for fifteen and seven years, respectively. They have volunteered together with Veterans of Foreign Wars, and are active in community sporting events.

22. They jointly purchased their house in Eagle River in 2004. Together they have created a home for themselves and their children. They have decorated their children’s rooms to reflect their respective interests. They

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have also spent the past six years completing major home improvement projects.

23. In 2010, the assessed value of their home exceeds \$150,000.00.

24. After a series of injuries in the line of duty, Vollick is classified by the Department of Veterans Affairs as 70% permanently disabled.

25. As a full-time Alaska resident and a disabled veteran, Vollick qualifies for the Tax Exemption.

26. Vollick applied for the Tax Exemption on May 13, 2008. Vollick has not received the full Tax Exemption available to couples with a marriage recognized by Alaska.

Fred Traber and Laurence Snider

27. Plaintiffs Fred Traber and Laurence Snider, who are sixty-two and sixty-nine, respectively, have lived together in a long-term, committed, interdependent, intimate relationship for twenty-eight years and intend for their relationship to be permanent.

28. Traber and Snider take care of and support one another physically, emotionally and financially. In 1997, when Snider had a major heart attack and was unable to work for nearly nine months, Traber took care of his partner. A year later, it was Snider's turn to be the caregiver when Traber underwent major gastric surgery. Traber and Snider are financially interdependent, having joint checking, savings, and credit card accounts and owning their vehicles jointly. Traber and Snider list each other as the primary beneficiary in their wills. And Snider is a beneficiary for Traber's benefits from his 15 years of employment with the Municipality of

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Anchorage. To express their permanent commitment to one another, Traber and Snider got married in California in 2008. Approximately seventy-five family members and friends attended the ceremony. Traber and Snider also held a reception in Alaska at which approximately 200 people helped them celebrate their union.

29. Snider has been the CEO for the Consumer Credit Counseling Services of Alaska for more than 10 years. Traber retired from the Municipality of Anchorage, where he held a number of positions, including four years as chief financial officer of Anchorage Telephone Utility. He retired in 1999. Since his retirement, Traber has done contract work for the Alyeska Pipeline Company and several Alaska Native corporations.

30. Traber and Snider have been residents of Alaska since 1975 and 1974, respectively.

31. Traber and Snider currently live in a condominium in Anchorage. The condominium is held in Traber's name, but the couple has made it their home together and both partners view the home as belonging to both of them.

32. The condominium has an assessed value exceeding \$150,000.00.

33. As a full-time resident of Alaska, and having attained the age of sixty-five years old, Snider qualifies for the Tax Exemption. However, because the home he shares with Traber is in Traber's name, and the couple is not in a marriage that the State of Alaska recognizes, Snider and Traber have been unable to claim any part of the Tax Exemption. If Snider and Traber were a married couple under Alaska law, the full tax exemption would apply

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regardless of whether the house were in Traber’s name, Snider’s name, or held jointly between them.

VIOLATION OF ARTICLE I, SECTIONS 1, 3 AND 22 OF THE ALASKA CONSTITUTION

- 34. Plaintiffs incorporate herein by reference the allegations made in paragraphs 1 through 33 above.
- 35. If the Plaintiff couples were in marriages the State of Alaska recognized, they would be entitled to the maximum \$150,000.00 Tax Exemption under AS 29.45.030
- 36. However, because each Plaintiff shares his or her primary residence with a same-sex domestic partner, the State and Municipality of Anchorage treat them differently. For plaintiffs Schmidt and Schuh, and Vollick and Bernard, the exemption is cut in half. Plaintiffs Traber and Snider get no exemption at all.
- 37. Qualifying heterosexuals who live in unmarried domestic partnerships have the option of marrying and taking full advantage of the Tax Exemption, should they wish to do so.
- 38. Because Defendants limit access to the full Tax Exemption to couples in marriages that the State of Alaska recognizes, and because state law does not recognize same-sex marriages, Defendants discriminate against same-sex domestic partners in violation of the Alaska Constitution.
- 39. Defendants’ discriminatory interpretation and application of the Tax Exemption, as applied to the Plaintiff couples, is unlawful under Article I, section 1 of the Alaska Constitution, which guarantees that “all persons are

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equal and entitled to equal rights, opportunities, and protection under the law.”

40. The discriminatory Tax Exemption is also unlawful under Article I, section 1 of the Alaska Constitution, which guarantees that “all persons have a natural right to life, liberty, [and] the pursuit of happiness.”

41. The discriminatory Tax Exemption is further unlawful under Article I, section 3 of the Alaska Constitution, which provides that “no person is to be denied the enjoyment of any civil or political right because of race, color, creed, sex, or national origin.”

42. The discriminatory Tax Exemption is also unlawful under Article I, section 22 of the Alaska Constitution, which provides for a “right of privacy of the people [of the State of Alaska that] is recognized and shall not be infringed.”

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment in their favor and against Defendants as follows:

1. For a declaratory judgment under applicable Alaska law declaring that AS 29.45.030(e), AAC 135.085(c), and the interpretation of those provisions by the State of Alaska and the Municipality of Anchorage as providing for a diminished Tax Exemption for same-sex domestic partners, violates the Plaintiffs’ rights under Article I, sections 1, 3, and 22 of the Alaska Constitution.
2. For a permanent injunction requiring the State and Municipality of Anchorage to apply the Tax Exemption to the Plaintiff couples on terms

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identical to those that would apply to the Plaintiff couples if they were in marriages the State of Alaska recognized.

- 3. For a declaration that the Plaintiffs are “constitutional” and/or public interest litigants under AS 09.60.010(c) and Alaska Civil Rule 82.
- 4. For an order that Defendants pay Plaintiffs’ attorneys’ fees and costs associated with bringing this action.
- 5. For such other and further relief as the Court deems just and appropriate.

DATED this 3rd day of August, 2010.

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