

Joe P. Josephson, Esq.,
Alaska Bar No. 6102018
Josephson & Associates, P. C.
912 West 6th Avenue
Anchorage, Alaska 99501
Attorney for Plaintiff
Tel. (907) 276-0151
Facsimile (907) 276-0155

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CLYDE BAXLEY, GRACE BROWN,)
EDWARD BYFORD, BILL JAGER,)
AL SUNDQUIST, JAMES WOOLEVER,)
ARLEN ACHARIAS, and DOROTHY)
ANNE ZAPPA,)
)
Plaintiffs,)
)
V.)
)
STATE OF ALASKA,)
)
Defendant.) Case No. 3AN-06-_____Civil
_____)

**COMPLAINT FOR DECLARATORY JUDGMENT
AND FOR PERMANENT INJUNCTION**

Come now plaintiffs, CLYDE BAXLEY, GRACE BROWN, EDWARD BYFORD, BILL JAGER, RAY METCALFE, AL SUNDQUIST, JAMES WOOLEVER, ARLEN ZACHARIAS and DOROTHY ZAPPA, by and through Joe P. Josephson, Alaska Bar Number 6102018, of Josephson & Associates, P. C., 912 West Sixth Avenue, Anchorage, Alaska 99501, allege as follows against the defendant, STATE OF ALASKA:

A. *General Allegations Applicable to All Claims for Relief.*

1. Each of the plaintiffs is a resident and inhabitant of the Municipality of Anchorage.

2. Each of the plaintiffs is a property taxpayer, owning real estate which is on the said Municipality's property tax rolls.

3. The Municipality of Anchorage is a home rule municipality under the laws of Alaska, operating under state law and a home rule charter adopted in 19___, pursuant to a vote of the qualified electorate of the Municipality.

4. AMC 12.15 relates to taxation. AMC 12.15.010A provides that

all real property not exempt under the constitution or laws of the state or the ordinances of the municipality is subject to taxation. When any real property otherwise exempt from taxation pursuant to state or federal law or for any other reason is leased, loaned or otherwise made available to and used by a private person, such person's interest therein shall be taxed.

5. On or about May 9, 2006, the Alaska State Legislature enacted the Senate Committee Substitute for Committee Substitute for House Bill 334 (FIN).

6. On or about May 25, 2006, the Honorable Frank Murkowski, signed the Senate Committee Substitute for Committee Substitute for House Bill 334, thus enacting that

legislation into law as Chapter 44, Session Laws of Alaska (SLA) 2006.

7. Chapter 44, SLA 2006, is scheduled to take effect on or about the 23d day of August, 2006.

8. As originally introduced and passed by the House of Representatives, House Bill 334 related only to one subject, to wit, the optional deferral of municipal property taxes on primary, deteriorated, residences owned and occupied by individuals with incomes at or below federal property guidelines for Alaska.

9. On or about May 5, 2006, an amendment was made in the Senate Finance Committee which added a second subject, to wit, the creation of a new mandatory exemption from local taxation of certain residences owned by a religious organization.

10. The Senate Finance Committee amendment had two principal features. First, it expanded the tax exemption for religious organizations from the residence of their bishops, pastors, priests, rabbis, ministers, or religious orders to also include the residences of educators in private religious or parochial schools, if those residences are owned by religious organizations. Second, it expanded the definition of "minister" to include an individual

"who is

(A) ordained, commissioned, or licensed as a minister according to standards of the religious organization for its ministers or
(B) employed by the religious organization to carry out a ministry of that religious organization."

11. As enacted, Chapter 44, SLA 2006 contains no severability clause by which the invalidation of one section would not impair the application of another section not invalidated.

12. By purporting to exempt the set of properties which are mandatory exempt from local taxation, the State of Alaska has necessarily imposed higher burdens upon the plaintiffs and others similarly situated who are non-exempt local taxpayers, or, in the alternative, reduced the ability of local governments, including but not limited to the Municipality of Anchorage, to provide services to their inhabitants.

13. The First Amendment to the Constitution of the United States provides that Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof. Through the Fourteenth Amendment to the Constitution of the United States, the First Amendment applies to state action. In addition, Article I, section 4, of the Constitution of Alaska provides that "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof."

14. Article VII, section 1, of the Constitution of Alaska provides, in pertinent part, that "No money shall be paid from public funds for the direct benefit of any religions or other private educational institution."

15. Article IX, section 4, of the Constitution of Alaska provides exemption from ad valorem property taxation for "property used exclusively for non-profit religious charitable, cemetery, or educational purposes, as defined by law." It also provides that "(o)ther exemptions of like or different kind may be granted by general law."

16. The Fourteenth Amendment to the Constitution of the United States requires each state to provide Equal Protection under the law. Article I, section 1, of the Constitution of Alaska declares that "all persons are equal and entitled to equal rights, opportunities, and protection under the law" and that "all persons have corresponding obligations to the people and to the State."

B. First Claim for Relief; "One Subject" Rule.

17. Plaintiffs incorporate by reference each and every allegation set forth above in paragraphs 1 through 16, as if the same were expressly reiterated herein.

18. Chapter 44, SLA 2006, deals with two subjects, the deferral of property taxation on deteriorated property and the creation of new mandatory exemptions for certain

residences owned by religious organizations.

19. Therefore, Chapter 44, SLA 2006, is invalid, and should be declared to be invalid, because Article II, Section 13, of the Constitution of Alaska requires that "every bill shall be confined to one subject", with certain exceptions not relevant here.

20. The history of Chapter 44 is an illustration of the purpose of Article II, Section 13 of the Constitution of Alaska, because the original measure underwent substantial change, including the introduction of a whole new subject, in a committee, where an amendment was adopted without advance notice to members of the public or affected local governments and without public hearing and an opportunity for members of the public or local officials to testify or even to comment.

C. Second Claim for Relief; Equal Protection of the Law.

21. Plaintiffs incorporate by reference each and every allegation set forth in paragraphs 1 through 20, as if the same were expressly reiterated herein.

22. Chapter 44, SLA 2006, contravenes the federal and state constitutional guarantees of Equal Protection. The purpose of those provisions is to prohibit unjust distinctions between persons. A "minister" is, by definition, a Protestant clergyman, although some Protestant denominations, notably, e.g., Episcopalians, do not refer to

their clergy as "ministers". Section 1 of Chapter 1, amending AS 29.45.030(b), broadens the definition only of the word "minister", but leaves in place the pre-existing definition of the words "bishop", "pastor", "priest", and "rabbi". Thus, those Protestant religious denominations which have ministers can claim tax exemptions for a broader set of individuals than those religious denominations, Protestant or otherwise, which do not have ministers.

D. Third Claim for Relief; Establishment Clauses.

23. Plaintiffs incorporate by reference each and every allegation set forth above in paragraphs 1 through 22, as if the same were expressly reiterated herein.

24. Chapter 44, SLA 2006, violates the Establishment Clauses of the federal and state constitutions because it (1) has no non-secular purpose, (2) advances religion, and (3) fosters an excessive entanglement of government with religion. Furthermore, the effect of Chapter 44, SLA 2006, unless it is invalidated, will be to adversely affect non-exempt property taxpayers, such as plaintiffs, either by compelling them to pay more than their fair share of property taxes or by denying to municipal governments funding for community and public purposes and facilities as a result of the unfunded mandate embodied in Chapter 44.

E. Fourth Claim for Relief: Vagueness.

25. Plaintiffs incorporate by reference each and every allegation set forth above in paragraphs 1 through 24, as if the same were expressly reiterated herein.

26. The terms of Chapter 44, SLA 2006, are so vague as to convey no definite meaning to those whose duty it will be to administer it. For example, local taxing officials are religious or parochial school, and, in dealing with Protestant denominational claims for tax exemptions, who is a "minister" under the broadened definition describing a "minister" as including all those persons who "carry out a ministry". In addition, local taxing officials will be required to review, consider and apply each religious organization's "standards" for ordaining, commissioning or licensing its "ministers", to determine whether a specific property is or is not taxable. Presumably, determinations may need to be made and reconsidered from time to time, or even frequently, as individual occupants move in and out of affected property, or as "standards" change.

WHEREFORE, plaintiffs respectfully petition the court for entry of an order, a decree, a permanent injunction barring enforcement of Chapter 44, SLA 2006,, and a declaratory judgment invalidating it to be illegal, void, and without effect, for the reasons set forth above, and awarding to plaintiff their costs and attorney fees incurred herein,

together with such other, further, or different relief as the Court may find just and proper.

DATED this ____ day of June, 2006, at Anchorage, Alaska.

Respectfully Submitted:

Joe P. Josephson
Alaska Bar No. 6102018
Attorney for Plaintiffs
Josephson & Associates, PC
912 West Sixth Avenue
Anchorage, Alaska 99501
Tel. (907) 276-0151
Facsimile (907) 276-0155