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Gerald McBeth, chair of the political science department at the University of Alaska Fairbanks

Alaska Residency Issues

Scott Sterling, interviewer

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Scott Sterling said they will be discussing the Alaska residency and the issues that are raised by the residency requirements in light of the recent United States Supreme Court decision in the Zobel case. Residency issues are important in Alaska today because of rising oil revenues and the number of state benefits that are being distributed because of those revenues. They will be discussing the legal and constitutional background behind residency requirements.

Sterling asked Dr. McBeth what the purpose of residency requirements is. McBeth said there are several purposes of residency requirements. It depends if you are talking about the federal level or the state level. State systems tend to separate between members of the state and non-members. They tend to require certain evidence of membership in the state. The usual criteria that is used is length of time if one has lived in that place without leaving it for a long length of time. The purpose served by this distinction is to encourage that not everyone is protected who is not affiliated with the place and you have some basis to use when assigning benefits and protections to individuals. At the federal level and the state level over the last one hundred years there has been a great deal of change in what residency means. Formerly it meant citizenship. Increasingly that has eroded to mean the difference between citizen and the resident alien. Currently there is talk about members of the community as residents in it whether they are citizens or non-citizens. Sterling asked if residency is one of the purposes for requirements for running for office. McBeth said when the United States Constitution was written it was decided that residency requirements would be decided at the state level. For federal offices especially at the presidency level there are requirements to be a naturally born citizen of the United States. There are requirements at the House and Senate level to establish minimum periods of residency in the jurisdiction from which they come. The states were left with the issue of how they should go about allocating citizenship for residency in their state. Some of the states require long years of residency before a citizen could vote. All required that members of the state assemblies or state legislatures had lived in the state for a certain period of time and state offices such as governorship be held by individuals who were either native residents of that state or had been there for a longer period of time. This pattern of letting the states determine residency requirements were judged by the United States Supreme Court to be unconstitutional in a series of decisions made in the 1960s. The decisions said the state could establish a minimum period of residency in a state for purposes of voting in that state, but the state had to demonstrate some reason or purpose being served in a period of residency that was longer than 30 days. After that states throughout the United States adjusted their residency requirements. They did leave intact special requirements such as those running for office still being required to live in the state for a longer period than 30 days.

Sterling asked how the U.S. Constitution address residency. McBeth said the American Constitution set residency in terms of two jurisdictions. One is being a resident of a state of the United States and of the

United States itself. The federal constitution does not allow states to exclude individuals from residency in a given state and the reason behind this is for states to exclude individuals from residency denies that individual the freedom of travel.

Sterling asked if the state of Alaska's constitution addresses residency in any significant way. McBeth said it declares a thirty-day requirement for residency for voting in the state. Other than this the constitution has little to say about residency. Sterling said it establishes minimum age and residency for those wishing to run for public office. McBeth said residence issues in Alaska have developed from 1970 to the present and primarily as a consequence of the state's oil wealth, the question of huge resources and the question of how to distribute it within the population of the state.

Sterling talked about the equal protection clause in the United States Constitution. He asked McBeth what it means and how it would apply in the state of Alaska. McBeth said it comes from the Fourteenth Amendment of the constitution. It assures that individual rights would be guaranteed against infringement on the part of state government. It has had a substantial influence on state citizen relations throughout the United States especially in the previous twenty years. The state government must afford all citizens in the state equal protection of the laws. This does not imply that they may not discriminate, but if they do discriminate in terms of either benefits, services, and protection they must do so in a way that furthers a legitimate purpose of the state. Sterling said it is important to understand a legitimate purpose of the state. McBeth said it means a state legislature must demonstrate that what they propose is linked to a purpose of the state. The problem in the state of Alaska is actions of the legislature in the past haven't been clearly and directly linked to legitimate state purposes. Sterling commented on the privileges and immunities clause. McBeth said the privileges and immunities clause is from Article Four of the federal constitution. It says states will not deny individuals from other states the full privileges and immunities of that state's citizenship when they come into that state. The purpose of the clause is to make it possible for individuals to move from one part of the country to another. The intent of the founding fathers was to make one nation and not thirteen, fifty or one hundred different nations. It was imperative that states did not erect obstacles to free movement. McBeth said Alaska is constitutionally prohibited from setting up a class of citizens called pioneer Alaskans who are different from five, ten or fifteen year residents.

Sterling discussed the Zobel decision from the previous year (1982) and how it created distinctions among Alaskans to determine how much money they would each receive. McBeth said there are several ways to look at it. The state legislature was looking at how to distribute the wealth from the oil revenues and how to best distribute it. There were several suggestions. The legislature recommended and the voters approved the creation of the Permanent Dividend Fund as one way of dealing with the wealth management. A certain percentage of the funds would be distributed. The dividend distribution plan was regarded as the most satisfactory that the legislators had come up with because it appeared to distribute wealth evenly throughout the state. There were objections to the program at that time on the part of individuals who had come to the state recently and saw under the distribution scheme they would get less than individuals who had been here since 1959. The legislature had created this program with the idea in mind that those who had been in the state longest had given the state the greatest benefits and it was one way of providing for them. The objection was this seemed to set up several classes of citizens in the state of Alaska. Zobel, an Anchorage lawyer, challenged the scheme based on its constitutionality. The state supreme court said it was justifiable for three reasons. They advanced the argument that individuals living in the state for a longer period of time had made a stronger contribution

to the state development and thus should get a greater benefit than those who had arrived in the state recently. They further implied no individual would be discriminated against in the sense of being denied benefits. There would be a differential rate or structure to the benefits. Zobel appealed the decision to the Supreme Court of the United States. It was decided last July (1982) and reversed the state Supreme Court decision. The decision by the United States Supreme Court cannot be reduced to one simple point. There were three separate opinions written. The major decision joined in by the majority of justices was that the state dividend distribution scheme violated the Fourteenth Amendment and the equal protection clause. There was a second opinion written by Brennan stating the distribution plan violated the privileges and immunities clause. The third opinion written by Justice O'Connor stating the basic problem violated the fundamental right of travel. McBeth said there are legitimate state interests that allow the state to discriminate. For example, states are expected to be different. The state for the purpose of making itself richer can decide to set up programs that advance that particular interest. He said states can discriminate between residents and nonresidents as far as hunting is concerned. It is almost universal throughout the United States. The state cannot make it impossible for nonresidents to hunt within the state. It would violate the freedom for other hunters to come from other states and hunt. States can discriminate between resident and nonresident students when charging tuition at state universities.

Sterling commented on the Zobel decision and its impact on other state programs. McBeth said the short-term effect is to make all these residency programs ambiguous and subject to legal challenge. It will make it difficult for the legislature to set up new programs that discriminate on years of residency and to continue funding those already existing. There is also the question of the Pioneer Homes which give substantial benefits for those that have established fifteen years of residency in the state. There are also questions of land disposal and land costs for residents as well as other programs. He said some other criteria will have to be used for distributing benefits than residency.