

# THE ALASKA PERMANENT FUND DIVIDEND AND MEMBERSHIP IN THE STATE'S POLITICAL COMMUNITY

CHRISTOPHER L. GRIFFIN, JR.\*

## ABSTRACT

*Despite decades of unmitigated administrative success, the Alaska Permanent Fund Dividend (PFD) is not immune from political and legal controversy. The symbolic and financial importance that Alaskans ascribe to their annual dividend checks has generated disputes between ordinary residents and executive agencies over eligibility. Litigation concerning three dominant status requirements – minimum residency, U.S. citizenship, and felony incarceration – reveal not only the extent to which Alaskans will pursue what they believe to be valid claims on their share of natural resource wealth, but also the limits of full political membership in the state. This Comment frames a sample of the Alaska Supreme Court's decisions on PFD eligibility in terms of membership in Alaska's political community. The PFD reflects the Alaska Legislature's opinion about valid beneficiaries from oil revenues, and the state courts police eligibility at the margin. This Comment therefore argues that the Alaska Supreme Court implicitly determines, on the basis of statutory intent and administrative rule interpretations, "insiders" and "outsiders" within the state's political community.*

## INTRODUCTION

Alaskans are separated from their fellow Americans not only by an expanse of British Columbia but also by their enlistment in one of the most generous social welfare programs in the country. Since its inception, Alaskans have received on average \$1,100 per year between 1982 and 2010 from the Permanent Fund Dividend (PFD).<sup>1</sup> Our

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\* Visiting Assistant Professor, Duke University School of Law; Yale Law School, J.D. 2010; University of Oxford, MPhil 2004; Georgetown University, B.S. 2002. The author thanks Jennie Morawetz, Ryan O'Quinn, Nicholas Passarello, and Tom Watterson for their outstanding editorial suggestions and assistance.

1. See *Permanent Fund Dividend Division Applications and Payments*, ALASKA DEPARTMENT OF REVENUE PERMANENT FUND DIVISION,

understanding of the PFD's long-term economic consequences remains sparse, but reliable anecdotal evidence suggests that many of the state's residents are well aware of their annual benefits.<sup>2</sup> Alaskans await their dividend payments before making important household purchases, and businesses engage in observable price competition for a larger share of consumer spending with dividend funds.<sup>3</sup>

But the PFD's import is not limited to the extra dollars and cents that accrue to qualified Alaskans each year. A fairly robust conversation conducted by political philosophers and economists about the future of liberal-progressive economic programs surrounds the PFD.<sup>4</sup> Indeed, political economists analyzing asset-based welfare systems<sup>5</sup> have long shown interest in the PFD, especially as a blueprint for similar initiatives in other parts of the world.<sup>6</sup> Because the program's administration is relatively straightforward and uncontroversial, however, legal scholarship includes relatively little discussion of the PFD.<sup>7</sup> This underrepresentation among legal academics and practitioners is both lamentable and ripe for correction given recent debates about the privileges of state residency and national citizenship.<sup>8</sup>

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<http://www.pfd.state.ak.us/appsandpaymnts/> (last visited Dec. 28, 2011).

2. See DAVE ROSE, *SAVING FOR THE FUTURE: MY LIFE AND THE ALASKA PERMANENT FUND 157* (Kent Sturgis 2008) ("Some recipients blow the windfall on vacations or expensive toys. Others save it for education. Many pay off medical bills or otherwise reduce their debt. . . . In rural Alaska, however, the dividend can make a major difference, providing an essential shot of cash to keep subsistence hunters stocked with ammo and spare parts.").

3. SCOTT GOLDSMITH, *THE ALASKA PERMANENT FUND DIVIDEND: A CASE STUDY IN IMPLEMENTATION OF A BASIC INCOME GUARANTEE 9-10* (July 2, 2010) (unpublished manuscript), available at [http://www.iser.uaa.alaska.edu/Publications/bien\\_xiii\\_ak\\_pfd\\_lessons.pdf](http://www.iser.uaa.alaska.edu/Publications/bien_xiii_ak_pfd_lessons.pdf).

4. See, e.g., Jonathan Anderson, *The Alaska Permanent Fund: Politics and Trust*, *PUB. BUDGETING & FIN.*, Summer 2002, at 57; J. Patrick O'Brien & Dennis O. Olson, *The Alaska Permanent Fund and Dividend Distribution Program*, 18 *PUB. FIN. Q.* 139 (1990).

5. For a discussion on asset-based welfare programs in the United Kingdom, where the phrase originated, see Will Paxton, *Progressive Asset-Based Welfare*, in *EQUAL SHARES?: BUILDING A PROGRESSIVE AND COHERENT ASSET-BASED WELFARE POLICY* (Will Paxton ed., 2003).

6. See, e.g., EXPORTING THE ALASKA MODEL: ADAPTING THE PERMANENT FUND DIVIDEND FOR REFORM AROUND THE WORLD (Karl Widerquist & Michael Howard eds., forthcoming 2012).

7. But see Laurence A. Smith, Note, *A Proposed Solution to the Federal Taxation of Alaska Permanent Fund Dividend Payments*, 11 *ALASKA L. REV.* 97 (1994) (arguing for a repurposing of dividend payments as rebates for personal fuel outlays to avoid federal income taxation).

8. Texas Governor Rick Perry, for example, withstood significant criticism during the 2011 Republican presidential debates for suggesting that the children of illegal immigrants should be allowed to attend state universities at the lower in-state tuition rate. See Ross Ramsey, *On Immigrant Tuition, Texans See It Perry's*

This Comment connects the PFD's economic salience to broader points about the relationship between law and membership in a political community. On its face, the PFD's enacting legislation simply confers monetary benefits on a well-defined portion of Alaska's population. Dividend payments carry no strings; they are disbursed on a means-independent basis, and the state takes no stance on how residents spend the money. Thus, the program is almost completely universal in coverage and neutral with respect to use. Probing a bit more deeply, though, we should understand the PFD both as the United States' most significant experiment with a universal asset policy and as a signifier of full participation in the state polity. Evidence for the latter appears in several judicial decisions demarcating the often-shifting boundary between eligible and non-eligible recipients. Resolving these disputes may have a negligible effect on overall PFD outlays, but the answers provided partially suggest who "counts" as full members of the state's political community. To that extent, what might appear as marginal choices about membership in this community might actually say a great deal about its fundamental norms and values.

This Comment is organized as follows. Part I briefly explains the PFD's history, structure, and performance. Part II reviews state court decisions on three barriers to receiving dividend payments: the minimum residency requirement, American citizenship, and felony incarceration. In all three cases, the Alaska Supreme Court has declined to recognize constitutional and statutory violations for failure to receive dividend payments when the plaintiff does not meet the status requirement. Part III considers the extent to which these judicial opinions reveal a broader understanding of who the state considers full participants in the political community. On this reading, receipt of dividends does not necessarily signify an individual's direct participation in political decision-making. Rather, this Comment argues that it entrenches a notion that political citizenship "runs with the land." Only those who legally call Alaska territory home for a sufficient period of time will reap the abundant benefits from the ground beneath their feet.

## I. A BRIEF OVERVIEW OF THE PFD

The PFD sprung to life in 1980 through legislation spearheaded by Governor Jay Hammond. An institution known as the Alaska Permanent Fund (APF) was created in the preceding decade, but the APF had no overarching purpose.<sup>9</sup> It was partially a state-run investment vehicle and partially a source of capital funds for large-scale development projects.<sup>10</sup> Hammond's intervention was indispensable for reorienting the Fund toward its current trajectory. A protracted debate between those who one insider called "loan crazies"—stakeholders pushing for applying APF monies toward significant capital development—and the arguably more prudent preferences of Governor Hammond played out in the last three years of the 1970s and effectively ended with the 1980 legislative session.<sup>11</sup>

Governor Hammond's personal philosophy regarding the proper use of the state's bounty ultimately carried the day. As a self-described political outsider, Hammond remained skeptical of concentrating wealth in the government's hands.<sup>12</sup> Believing that "the money could be used better by individuals than spent on government programs or invested in development projects," the bill he shepherded set the first dividend payment at fifty dollars and conferred on each adult one dividend per year of residency since 1959.<sup>13</sup> The final codified version, which controls dividend payments to the present day, stipulates that: 1) potential recipients apply to the Department of Revenue; 2) be state residents on the date of application and during the qualifying year; 3) be physically present in the state for at least seventy-two consecutive hours during the two years preceding the current dividend year; and 4) meet certain qualifications pertaining to immigration status.<sup>14</sup> The statute also spells out further restrictions on the residency requirement.<sup>15</sup> The amount of the dividend each year depends on a complex statutory formula but one that has led to reasonably predictable annual payments.<sup>16</sup>

The Alaska Constitution explicitly commands the prudent use of

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9. See ROSE, *supra* note 2, at 185.

10. See *id.*

11. See *id.* at 151.

12. *Id.* at 158.

13. *Id.* at 158–59.

14. ALASKA STAT. § 43.23.005(a) (2010).

15. *Id.* § 43.23.008 (setting out the conditions under which yearly absences may not exceed 180, 120, or 45 days depending on the nature of those absences).

16. *Id.* § 43.23.025. Although the dividend amount depends on the formula in this section, the outcome invariably will fluctuate since the formula inputs include the number of eligible residents and accounting for underpayments that accrued in previous years. See *id.*

the state's natural resources for the general welfare of its residents.<sup>17</sup> Article VIII, Section 2 of the Alaska Constitution requires the legislature to utilize, develop, and conserve the state's natural resources "for the maximum benefit of its people."<sup>18</sup> Moreover, the 1976 amendments to the Alaska Constitution formally enshrined the new APF.<sup>19</sup> By nearly all accounts, the PFD has been a success and followed through on the constitutional promise to use Alaska's natural resources for the greater good:

[In 2011,] [t]he Permanent Fund had an outstanding fiscal year, returning just over 20 percent and ending slightly above \$40 billion. This is the first time the Fund's year-end value has closed at over \$40 billion and only the third time the returns have broken the 20 percent threshold. . . .

. . . .

. . . Since the Fund was created 35 years ago by Alaska voters, it has paid out \$19.2 billion in dividends, more than the \$15.6 billion in mineral revenues and other deposits it has taken in, and was still worth \$40.1 billion on June 30.

Another way to measure success is the recognition that the Permanent Fund has received from its peers and outside groups. A few years ago, the Peterson Institute ranked the Alaska Permanent Fund as the most transparent of all of the sovereign wealth funds . . . . When the International Monetary Fund led the discussion with other sovereign wealth funds to draft the Santiago Principles for transparent governance, much of the document was based on the Alaska Permanent Fund Corporation's current practices.<sup>20</sup>

Much of this success has been tied to the creation of the Permanent Fund Corporation (PFC), also launched in 1980,<sup>21</sup> which has contributed significant additional transfers to the Fund. The PFC serves as the

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17. See ALASKA CONST. art. VIII, § 2.

18. *Id.*

19. *Id.* art. IX, § 15 ("At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.").

20. ALASKA PERMANENT FUND CORP., YESTERDAY, TODAY & TOMORROW: 2011 ANNUAL REPORT 3 (2011), available at [http://www.apfc.org/\\_amiReportsArchive/APFC%20Annual%20Report%202011.pdf](http://www.apfc.org/_amiReportsArchive/APFC%20Annual%20Report%202011.pdf); see also Anderson, *supra* note 4, at 60–63 (documenting the evolution of the PFD).

21. ALASKA PERMANENT FUND CORP., *supra* note 20, at 25.

investment strategist for the Fund and may only invest revenues in income-producing vehicles according to the prudent investor rule.<sup>22</sup> The most significant tension exists, then, not with the structure or management of the APF but with the divide between residents' interpretations about valid claims under the PFD statute and those of the centralized administration under the Department of Revenue. These disputes have been resolved, usually in favor of the state government, through a series of court rulings dating back to the 1990s. It is those cases that this Comment argues help shape the contours of state citizenship.

## II. JUDICIAL DETERMINATIONS OF PFD ELIGIBILITY

Although most of the disputes finding their way onto the state court docket concern the minimum residency requirement, the specific legal issues within that category span a variety of circumstances.<sup>23</sup> Moreover, before the Alaska Legislature formally amended the PFD statute to exclude illegal aliens and certain incarcerated prisoners, complaints often surfaced to challenge denial of dividend payments on these grounds. The following sections review noteworthy court rulings about eligibility for clues into how the judiciary polices the boundary between full and partial participants in the state polity.

### A. Residency Requirements

Perhaps the easier cases involve bona fide Alaska residents who fail to satisfy the statutory minimum for days spent in the state.<sup>24</sup> A leading example arose in *Church v. State*, where the plaintiff claimed equal protection and substantive due process violations for failure to receive

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22. For an overview of the PFC's investment guidelines, see ALASKA PERMANENT FUND CORP., AN ALASKAN'S GUIDE TO THE PERMANENT FUND 14-23 (2009), available at <http://www.apfc.org/home/Media/publications/2009AlaskansGuide.pdf>. For a discussion of the prudent investor rule, see John H. Langbein, *The Uniform Prudent Investor Act and the Future of Trust Investing*, 81 IOWA L. REV. 641, 645-54 (1996).

23. See, e.g., *Eagle v. State*, 153 P.3d 976, 977 (Alaska 2007) (rejecting plaintiff's argument that a federal law pertaining to the civil rights of servicepersons preempted Alaskan law); *State v. Gazaway*, 793 P.2d 1025, 1025 (Alaska 1990) (holding that children's absence was not temporary under the PFD statute and upholding denial of dividend payments).

24. See, e.g., *Schikora v. State*, 7 P.3d 938, 942 (Alaska 2000) (plaintiff claiming PFD despite exceeding the statutory absence requirement in part because he had lived in Alaska since 1945); *Underwood v. State*, 881 P.2d 322, 324 (Alaska 1994) (plaintiff claiming that he would not have moved from Texas to Alaska as early as he did but for the dividend payment).

his 1993 payment.<sup>25</sup> Patrick Church was present in the state for only 91 days, well short of the 185-day minimum required under the PFD statute. The reason seemed facially legitimate: to care for his ailing mother who lived in another jurisdiction.<sup>26</sup> Because of this exigency, Church contended that any bright line cutoff (e.g., the 180-day maximum absence) was unreasonable and unconstitutional.<sup>27</sup> More specifically, under his reading the administrative rules accompanying the PFD statute remove necessary flexibility and discretion beyond cases enumerated in the regulations.<sup>28</sup>

The court summarily dismissed Church's attack using its precedent in *Brodigan v. Alaska Department of Revenue*.<sup>29</sup> The issue in *Brodigan* was even closer than that in *Church*. The married couple whose dividend applications had been rejected spent the fall and winter months in the lower forty-eight states because of John Brodigan's vascular health issues.<sup>30</sup> On the advice of physicians, the Brodigans believed that avoiding the much colder Alaska climate during these seasons was in John's best interest.<sup>31</sup> The Department of Revenue's regulations unsurprisingly included a medical exemption to the residency requirement.<sup>32</sup> However, the Department disagreed that seasonal residency changes fell within the medical exemption, and the court accepted that interpretation.<sup>33</sup> What ultimately mattered was the relationship between the directives of qualified physicians and the intent to reside in Alaska.<sup>34</sup> Thus, in *Church* the Alaska Supreme Court also deferred to the Department's judgment that Alaskans must reside in the state for at least half the year since "the purpose of [the statutory residency requirement] is to ensure that PFDs are only given to

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25. 973 P.2d 1125, 1127 (Alaska 1999).

26. *Id.* At the time the Alaska Supreme Court decided *Church* the original PFD statute had been amended precisely to exempt absences for medical leave. *Id.* at 1127 n.1.

27. *Id.* at 1128.

28. *Id.*

29. 900 P.2d 728 (Alaska 1995).

30. *Id.* at 729-30.

31. *Id.* at 729.

32. That regulation now appears formally in the PFD statute. ALASKA STAT. § 43.23.008(a)(5) (2010) ("[A]n otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent . . . receiving continuous medical treatment recommended by a licensed physician or convalescing as recommended by the physician who treated the illness if the treatment or convalescence is not based on a need for climatic change."). This language seems to have been inserted specifically with the Brodigans' case in mind.

33. *Brodigan*, 900 P.2d at 731.

34. *Id.*

*permanent* residents and a legitimate function of corresponding regulations is to ease the administrative burdens of determining eligibility.”<sup>35</sup>

As a comparison, many other laws—the Family and Medical Leave Act (FMLA) of 1993<sup>36</sup> in particular—impose their own attachment mandates, i.e., threshold levels of continuous connection with or service for an entity granting statutory benefits.<sup>37</sup> For example, simply working for an employer with at least fifty employees at the time one seeks FMLA benefits does not suffice. The petitioning employee must have worked for her employer for at least 12 months prior to the leave period and for 1,250 hours during the most recent 12 months.<sup>38</sup> Just as with the PFD residency requirement, employees have litigated numerous cases challenging their status as covered individuals under the FMLA.<sup>39</sup> In these courtroom jousts over eligibility, one observes a unique exchange between citizens and courts regarding legislative prerogatives and what benefits constitute the core of citizenship.

## B. Immigration Status

In addition to direct statutory language on the requisite number of days one must reside in the state, the Alaska Legislature authorized the Commissioner of the Department of Revenue to promulgate supplementary regulations about minimum U.S. citizenship requirements. The most important case decided on immigration status occurred before the PFD statute was amended explicitly to exclude illegal aliens. In *State v. Cosio*, the Alaska Supreme Court upheld the Commissioner’s reading of the original statute’s intention-based

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35. *Church v. State*, 973 P.2d 1125, 1129 (Alaska 1999) (emphasis added).

36. Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. §§ 2601-2654 (2012)).

37. The Author has argued elsewhere that family and medical leave laws, both state and federal, reflect judgments about the universal affirmative rights that should accrue to all covered by the relevant legislature. Christopher L. Griffin, Jr., *Medical Leave-Taking After the FMLA: An Empirical Analysis of Affirmative Employment Rights* 13-16 (Nov. 22, 2011) (unpublished manuscript), available at <http://ssrn.com/abstract=1974572>.

38. 29 U.S.C. § 2611(2)(A) (2012).

39. See, e.g., *Pirant v. U.S. Postal Serv.*, 542 F.3d 202 (7th Cir. 2008) (rejecting plaintiff’s argument that she should be “entitled to credit for the three to five minutes she spent each workday putting on and removing her gloves, shoes, and work shirt” toward the necessary 1250 hours under the FMLA); *Engelhardt v. S.P. Richards Co.*, 472 F.3d 1 (1st Cir. 2006) (denying FMLA coverage to an employee claiming that her employer included two integrated companies, which would have met the statutory minimum of fifty employees within seventy-five miles).



language.<sup>40</sup> Specifically, the law at the time of *Cosio* merely defined “‘state resident’ as ‘an individual who is physically present in the state with the intent to remain indefinitely in the state.’”<sup>41</sup> Arturo and Tomas Cosio lived in the United States illegally but averred that “they were physically present in Alaska and intended to remain.”<sup>42</sup> At issue were payments received in 1985 and 1986 and denied in 1987, the period during which the Cosios lived in Alaska.<sup>43</sup> The Department stood firm against sending the final dividend and demanded the remitter of the previous two dividends.<sup>44</sup> Its legal basis was a regulation under which “[a]n alien *with resident alien status* . . . is eligible to receive a permanent fund dividend.”<sup>45</sup>

The Alaska Supreme Court, in another nod to the presumed superior authority and expertise of administrative agencies, focused as it did with the *Church* case on the relevancy of permanent residency.<sup>46</sup> In other words, it is no coincidence that the *Permanent Fund Dividend* has been understood as properly accruing to individuals living continuously and legally within the state’s borders. The PFD statute and associated regulations undoubtedly must, as a matter of fundamental fairness, reflect line-drawing exercises that distinguish valid residents from others free-riding on the beneficence of the state. Whether the courts should have deferred less to agency discretion when effectuating that goal, for example by taking subjective intent to self-identify as an Alaskan into account, is a question this Comment does not take up. But the answer to it certainly underscores the importance of the likelihood that someone will live in Alaska permanently and legally before receiving dividend payments.

### C. Incarcerated Felons

Alaskans who have been convicted of felonies and reside in prison are legally excluded from receiving PFD payments. In response, some prisoners have lodged complaints that the PFD statute and agency rules violate both the U.S. and Alaska Constitution’s Equal Protection

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40. 858 P.2d 621 (Alaska 1993). For a case uncomplicated by statutory amendment in the immigration context, see *State v. Andrade*, 23 P.3d 58 (Alaska 2001).

41. *Cosio*, 858 P.2d at 623 (quoting ALASKA STAT. § 43.23.095(7) (2010)).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.* (quoting ALASKA ADMIN. CODE tit. 15, § 23.615(d) (1988) (repealed 1989)) (emphasis added).

46. *Id.* at 627.

Clauses. In the first major case to reach the Alaska Supreme Court, *State v. Anthony*, the court denied that exacting levels of scrutiny applied to the purely economic interest represented by the PFD and held that the legislature had acted reasonably in denying PFDs to incarcerated felons.<sup>47</sup> At the heart of the equal protection claim was the reasonableness of treating the incarcerated differently than persons who may have committed similar crimes but for some stroke of luck are not behind bars.

The *Anthony* court sided with the state, especially its assertion that the purpose of excluding prisoners from PFD payments was “to compensate the state partially for the cost of incarcerating felons.”<sup>48</sup> In addition to accepting the reimbursement justification for withholding PFD payments, the court also recognized restitution as a valid purpose.<sup>49</sup> No doubt swayed by prudential considerations, the court artfully disentangled – and destroyed – the equal protection claim:

It is possible that a felon may have his dividend taken by the state even though he has already paid restitution to his victim. . . . There are, however, at least two reasons why individual restitution orders may be inadequate: (1) a felon who owes a victim restitution might not even apply for a permanent fund dividend since he or she will not benefit from it; and (2) since many felons do not have the means to pay restitution, victims must depend on the crime victim’s compensation fund. . . . [E]qual protection does not require perfection. We are persuaded that those felons who are sentenced to serve time in prison are more likely than those who are not sentenced to incarceration to have seriously harmed others.<sup>50</sup>

Thus, the court decided the legislature’s judgment that incarcerated felons do not deserve PFD payments corresponded to an equally legitimate assumption that an incarcerated felon has committed a more blameworthy crime. By exceeding the scope of the prison maintenance cost-saving rationale, the *Anthony* ruling manifests the state judiciary’s view about the relative position of the imprisoned in the political community. Simply stated, that position is inferior.

Other constitutional arguments that incarcerated felons have adopted, albeit unsuccessfully, allege that denying dividend benefits amounts to an ex post facto punishment or violation of double jeopardy

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47. 810 P.2d 155 (Alaska 1991).

48. *Id.* at 159.

49. *Id.* at 161.

50. *Id.* (footnotes omitted).

protections.<sup>51</sup> Because the Commissioner's decision to withhold payment does not itself follow from a criminal statute, the Alaska Supreme Court found one inmate's ex post facto complaint to be without merit.<sup>52</sup> The same conclusion led the court to reject his double jeopardy claim since the denial of PFD resources was not a separate punishment from the plaintiff's forty-year murder sentence.<sup>53</sup>

The equal protection jurisprudence is the weakest that the Alaska Supreme Court has proffered in the PFD context to uphold the Department of Revenue's payment denials. In lieu of outright forfeiture, incarcerated felons could have their dividends held in trust, just as the oil revenue source is held in trust by the state, until their release. Moreover, the court's answer to the arbitrariness of withholding PFDs from felons over misdemeanants and incarcerated felons over non-incarcerated felons does not resonate as well as it could. Although one might criticize the 180-day residency requirement as arbitrary even without standing in the shoes of Patrick Church and the Brodigans, the indiscriminate felon incarceration standard rests on particularly shaky grounds. First, even if one were to admit that the average misdemeanant has committed a less heinous crime, there is no empirical evidence—at least none to which the courts have pointed—to suggest that felons outside of prison pose less risk to society than their incarcerated counterparts. Second, the goal of compensating crime victims, which the court in *Anthony* held valid, is distinct from defraying the costs of administering state prisons. Putting aside the court's discussion of restitution, if the controlling rationale has become compensating *victims* instead of the *penal system*, then withholding PFDs to the imprisoned makes little sense. The court cannot guarantee that the withheld funds will reach the intended beneficiary under a victims' rights theory. At least if the goal were to "pay into" the prison system, one could be sure that the PFD money either remains in the state's hands or offsets the tax bill of the average citizen through higher PFD check amounts.

### III. THE RELATIONSHIP BETWEEN JUDICIAL DECISIONS AND POLITICAL MEMBERSHIP

The decisions reviewed in Part II uniformly indicate that individual challenges to the PFD's enacting statutory text and associated

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51. Such legal reasoning mirrors strategies pursued unsuccessfully by released felons subject to sexual offender registration and notification programs. See *Smith v. Doe*, 538 U.S. 84 (2003).

52. *Hertz v. Storer*, 943 P.2d 725, 726 (Alaska 1997) (citing *State v. Anthony*, 816 P.2d 1377 (Alaska 1991)).

53. *Id.*

regulations find little favor with the Alaska Supreme Court. One account explaining this outcome could be the high level of judicial deference to legislative and administrative bodies. Another could involve more fundamentally the fact that claimants believe themselves (genuinely or not) to be situated at the margins of eligibility and seek declaratory relief that pushes them into the category of valid PFD recipients. With enough residents believing that they qualify after a Department of Revenue denial of payment, the odds surely increase that some proportion of these suits will be frivolous.

These cases express something deeper about Alaska's political fabric. Some observers might surmise, as the *Anthony* court so clearly expressed,<sup>54</sup> that the PFD is a vestige of economic citizenship rather than a badge of political inclusion. Yet this view loses force in any jurisdiction that relies so deeply on natural resources for economic subsistence and, further, where the population identifies itself with the land as Alaskans do. Although economic rights usually are considered subsets within larger bundles,<sup>55</sup> the fiscal blends almost completely with the political under the PFD system. The residency, citizenship, and incarceration cases to varying degrees reflect the combined views of the legislature and the bench about who "counts" as a full member of the state by tying legal status to economic benefits. To be sure, many state and federal transfers also depend on satisfying legal requirements (e.g., Medicaid receipts and immigration status). But the PFD transfer symbolizes something much more fundamental. Given the history of the program and the political branches' desire to preserve the state's natural resources for current and future generations, the individual's stake in the physical commons parallels her stake in the political unit.

Furthermore, the affirmative orientation of the PFD system supports a conception of judicial and administrative eligibility determinations as reaching the core of political membership. "Affirmative" rights express a positive grant by the government to the advantage of the recipient.<sup>56</sup> A narrower definition might also require that the beneficiary take some prescribed action before the transfer

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54. *Anthony*, 810 P.2d at 162 ("An individual's interest in a permanent fund dividend, like other economic interests, is entitled to minimum scrutiny.").

55. See, e.g., Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347 (1967); J.E. Penner, *The "Bundle of Rights" Picture of Property*, 43 UCLA L. REV. 711 (1996).

56. See, e.g., Laurence H. Tribe, *Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Government Services*, 90 HARV. L. REV. 1065, 1066 (1977) (predicting the emergence of a doctrine "that recognizes . . . rights to decent levels of affirmative governmental protection in meeting the basic human needs of physical survival and security, health and housing, employment and education").

accrues, as is the case for PFD recipients. Because receipt depends on an individual affirmatively applying for the dividend, the program remains universal—in accord with the constitutional directive—but forces Alaskans to petition for their share of the oil revenue stream. This characteristic signals deeper normative judgments about *who* should receive the pro rata share of natural resource wealth, not just *how much* a qualifying beneficiary receives. The reason is that the government asks residents to step forward and claim their shares. Just as appearing in the voting booth to cast a ballot symbolizes civic participation across the country, so too does filing personal applications for the PFD in Alaska. Since the state compels Alaskans to take affirmative action, denied dividends potentially represent a more deeply negative judgment about one's place in the political order. "Outsiders" will be turned away, while "insiders" will collect their checks. Such border policing admittedly occurs through a very simple mechanism, the modest annual PFD sum. As a result, one might scoff at this attempt to equate a bureaucratic decision with one's fundamental political identity. But when the benefit embodies the sort of intergenerational bequest that the PFD does, particularly when secured by the good fortune of plentiful natural resources (rather than taxes on wealth, income, or consumption), its availability partially defines the set of full participants in the society.

## CONCLUSION

The Alaska PFD serves as a beacon for political economists seeking to implement asset-based welfare programs in other parts of the United States and around the world. Despite close to three decades of unmitigated achievement, the PFD is not without controversy within the state's borders. Various claims to dividend shares have been rejected by the Department of Revenue and the state's highest court because the claimants have not met the legal definition of qualified recipients. The responses from Alaska residents, also of varying probative value, present real disputes over constitutional and statutory interpretation. Consequently, the endgame is not just the final judgment in a particular litigation matter. The court's discussions, grappling as they have with deference to administrative agencies, reasonableness, and the relative contributions (or free-riding) of potential beneficiaries, engage questions of profound legal importance. And those legal questions blend often seamlessly with political ones, namely who shares fully in civil society. No evidence currently implies forthcoming amendments to the PFD statute that would expand the eligibility provisions, and thus the boundaries of political inclusion, beyond their current location. However, should future innovations in APF administration arise, from

recalculating the dividend amount to organizing larger public investment projects, such developments will affirm whatever vision that generation of Alaskans holds for the composition of its political community.