

Rediscovering Alaska's Right to Housing

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ABSTRACT

In the wake of *Grants Pass v. Johnson*, state constitutions provide an alternative avenue to protect the rights of people experiencing homelessness. While some states contemplate amending their constitutions to encompass a right to housing, this Article argues that such a right already exists in the Alaska Constitution. Article VII, Sections 4 and 5 explicitly direct the legislature to provide for the public health and welfare, and Article I, Section 22 recognizes all Alaskans' fundamental right to privacy. When read together, these provisions provide for a dual right to housing, encompassing both an affirmative right to adequate and affordable housing, and a corollary negative right to self-shelter. To understand how such a right could be recognized today, Part I of this Article provides an overview of the Alaska Supreme Court's methods of constitutional interpretation and rights expansion. Part II then applies these methods to existing provisions of the Alaska Constitution to demonstrate how they encompass a right to housing. Section II.A discusses the history of the Alaska Constitution's Health and Welfare Clauses to illustrate that the text and heritage of the document support a right to adequate and affordable housing. Section II.B then turns to the Privacy Clause to argue that the broader values enshrined in the Alaska Constitution similarly encompass a negative right to self-shelter.

INTRODUCTION

Alaska is facing an unprecedented housing crisis.¹ Rental prices have risen nearly 25% since 2018,² and one in four renters is at or below the poverty line.³ Among these renters, nearly 70% spend more than half of their income on housing, forcing them to live in unstable housing

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¹ See generally Emily Goodykoontz, *Leading Anchorage Homelessness Group Raises Alarm Over 'Affordable Housing Emergency'*, ANCHORAGE DAILY NEWS (March 8, 2025) (discussing Anchorage Coalition to End Homelessness's call for the declaration of an "affordable housing emergency").

² Emily Goodykoontz, *Soaring Rents, Mortgages and Home Prices: What New Data Shows About Anchorage's Housing Crunch*, ANCHORAGE DAILY NEWS (July 6, 2024), <https://www.adn.com/business-economy/2024/07/06/soaring-rents-mortgages-and-home-prices-what-new-data-shows-about-anchorage-housing-crunch/>.

³ ALASKA LEG., HB 262 RESEARCH ALASKA HOUSING COST BURDEN, 33d Leg., 2d Sess. (2024), https://www.akleg.gov/basis/get_documents.asp?session=33&docid=30298 [<https://perma.cc/6JSX-UDFJ>].

situations⁴ and placing them at acute risk of homelessness.⁵ Living without access to housing in Alaska can quickly become a life-threatening experience. Since January 2023, over one hundred people have died while living outside in Anchorage alone.⁶ This is more than the prior five years combined.⁷

Moreover, in *Grants Pass v. Johnson*, the Supreme Court held that the Eighth Amendment does not prohibit local governments from enforcing laws banning sleeping in public, even in instances where there are no available shelter beds.⁸ In the wake of this decision, municipalities in Alaska have begun to forcibly displace or “abate” encampments of people experiencing homelessness, irrespective of whether there is available shelter.⁹ These abatements risk further jeopardizing the lives and health of people experiencing homelessness by separating

⁴ *Id.*

⁵ ANDY JOSEPHSON, HB 262: RESIDENTIAL RENT INCREASE NOTICE SPONSOR STATEMENT, 33d Leg., 2d Sess. (2024), https://www.akleg.gov/basis/get_documents.asp?session=33&docid=30296 [<https://perma.cc/D9LF-7BP9>] (recognizing that for every \$100 increase in median rent, there is a nine percent chance of becoming homeless).

⁶ Michelle Theriault Boots, *Anchorage Hit a Record for Homeless People Dying on the Streets. Then the Deaths Almost Completely Stopped. Why?*, ANCHORAGE DAILY NEWS (Apr. 1, 2024), <https://www.adn.com/alaska-news/anchorage/2024/03/24/anchorage-hit-a-record-for-homeless-people-dying-on-the-streets-then-something-unexpected-happened-the-deaths-almost-completely-stopped-why/> (stating that 52 people died while living outside in Anchorage in 2023); Olivia Nordyke, *Anchorage Police Release Number of Outdoor Deaths in 2024*, ALASKA NEWS SOURCE (Jan. 4, 2025, 1:01 AM), <https://www.alaskasnewssource.com/2025/01/04/anchorage-police-release-number-outdoor-deaths-2024/> (stating that 50 people died while living outside in Anchorage in 2024).

⁷ 85 people died while living outside from 2018-2022 (16 in 2018, 9 in 2019, 17 in 2020, 19 in 2021, and 24 in 2022). Michelle Theriault Boots, *Anchorage has Recorded 47 Outdoor Deaths in 2024*, ANCHORAGE DAILY NEWS (Dec. 9, 2024), <https://www.adn.com/alaska-news/anchorage/2024/12/09/anchorage-has-recorded-47-outdoor-deaths-in-2024/>. Boots initially reported that 47 people had died outdoors in 2024; however, by December 31, 2024, the total death toll had risen to 50. See Nordyke, *supra* note 6.

⁸ 603 U.S. 520, 541–43 (2024).

⁹ Emily Goodykoontz & Zachariah Hughes, *In Sign of Policy Change, City Will Clear Midtown Anchorage Homeless Encampment this Week, with More to Come*, ANCHORAGE DAILY NEWS (July 30, 2024), <https://www.adn.com/alaska-news/anchorage/2024/07/30/in-sign-of-policy-change-city-will-clear-midtown-anchorage-homeless-encampment-this-week-with-more-to-come/> (“City officials say the move is the beginning of a new approach to homeless policy, partly as a result of a recent U.S. Supreme Court ruling that has freed the new administration to take a more assertive role in dispersing big camps.”); see also Press Release, Mayor’s Office, Statement from Mayor LaFrance on Feb. 6 ACLU Suit (Feb. 7, 2025) (noting that the Municipality of Anchorage has performed 17 abatements since the Mayor took office on July 1, 2025, less than a week after *Grants Pass v. Johnson* was decided).

them from the property they need to protect themselves from the elements while living outdoors.¹⁰

Other states facing similar housing crises have explored the viability of enshrining a right to housing in their state constitution. For example, in 2023, housing advocates in California proposed adopting a state-constitutional amendment to codify a “fundamental human right to adequate housing for everyone in California.”¹¹ These advocates hoped that incorporating a human right to housing in their state constitution would reinforce the State’s commitment to “address[ing] the root causes of housing insecurity and build[ing] the resilient and inclusive communities [it] need[s].”¹² While the proposal ultimately did not secure a place on the ballot,¹³ Californians continue to advocate for the codification of a state-level right to housing.¹⁴

In Alaska, however, a state-constitutional right to housing already exists. The Alaska Constitution’s provisions on the rights to public health,¹⁵ public welfare,¹⁶ and privacy¹⁷ collectively provide for a dual right to housing.¹⁸

¹⁰ Emily Goodykoontz, *Lawsuit Challenges Anchorage Plan to Tear Down Homeless Encampment*, ANCHORAGE DAILY NEWS (Feb. 7, 2025), <https://www.adn.com/alaska-news/anchorage/2025/02/07/lawsuit-challenges-anchorage-plan-to-tear-down-homeless-encampment/>.

¹¹ Kath Rogers et al., *Fact Sheet - ACA 10 (Haney) - Constitutional Right to Housing*, W. CTR. L. & POVERTY, <https://wclp.org/wp-content/uploads/2023/03/Fact-Sheet-Right-to-Housing-Bill-ACA-10.docx.pdf> (last visited Feb. 27, 2025).

¹² PolicyLink, *Making Housing a Human Right in California: A Townhall*, at 15:14, YOUTUBE (Apr. 15, 2024), <https://www.youtube.com/watch?v=CwAoPloaNmc>.

¹³ See Legislative Counsel’s Digest, ACA 10, Cal. Leg. 2023-2024 Reg. Sess. (June 13, 2024) <https://legiscan.com/CA/text/ACA10/id/3009395/California-2023-ACA10-Amended.html> (amending ACA 10 to remove the language about a fundamental human right to housing).

¹⁴ See ACLU Cal. Action, *Housing is a Human Right*, <https://action.aclu.org/send-message/ca-asm-pass-aca10> (last accessed March 10, 2025).

¹⁵ ALASKA CONST. art. VII, § 4 (“The legislature shall provide for the promotion and protection of public health.”).

¹⁶ ALASKA CONST. art. VII, § 5 (“The legislature shall provide for public welfare.”).

¹⁷ ALASKA CONST. art. I, § 22 (“The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.”).

¹⁸ The Alaska Supreme Court has already recognized the duality of other types of rights held by all Alaskans. For example, in *Hootch v. Alaska State-Operated School System*, the Court recognized the “dual aspect” of the right to education, holding that it both “imposes a duty upon the state legislature, and it confers upon Alaska school age children a right to education.” 536 P.2d 793, 799 (Alaska 1975) (interpreting ALASKA CONST. art. VII, § 1). This latter right to education encompasses the negative right to be free from laws that unduly interfere with a child’s

First, implicit within the rights to public health and welfare, the Alaska Constitution enshrines an affirmative right to adequate and affordable housing. The Alaska Constitution directly states that the “legislature *shall* provide” for the public health and welfare.¹⁹ Neither the right to public health nor the right to public welfare can be fully enjoyed without access to stable housing. Indeed, records from the Alaska Constitutional Convention demonstrate that the drafters of the Alaska Constitution *intended* for these provisions to encompass a similar legislative directive for housing.²⁰

Second, implied within the Alaska Constitution’s broad protection of the right to privacy is a corollary negative right to self-shelter via the use of blankets and/or temporary encampments, particularly in the absence of available government-operated shelter. The Alaska Supreme Court has consistently interpreted the right to privacy to encompass the “right to be left alone.”²¹ This libertarian vision of the right to privacy necessarily includes one’s right to establish ad hoc self-sheltering spaces in instances where the government has failed to provide such spaces itself.²²

ability to access education. *See e.g.*, Breese v. Smith, 501 P.2d 159, 174 (Alaska 1972) (holding that a hair-length restriction unduly infringed upon a child’s right to education and broader liberty interests). In short, the right to education encompasses both an affirmative right (the legislature’s obligation to provide for education) and a negative right (the child’s right to access education without undue government infringement). *See Hootch*, 536 P.2d at 799. This Article argues the same is true of the right to housing.

¹⁹ ALASKA CONST. art. VII, §§ 4–5. Indeed, prior Alaska case law has already interpreted these provisions to provide affirmative rights to public health and welfare. *See Dunleavy v. State*, No. 3AN-19-10903 CI, 2020 WL 2115476 at *15 (Alaska Super. Ct. Jan. 29, 2020) (“The Alaska Constitution, unlike the United States Constitution, provides affirmative rights to its citizens in the areas of health, education, and welfare.”) (citing ALASKA CONST. art. VII, §§ 1, 4, 5).

²⁰ *See infra* Section II.A.

²¹ *Ravin v. State*, 537 P.2d 494, 515 (Alaska 1975) (Boochever, J., concurring) (explaining that the right to privacy “includes not only activities within the home and values associated with the home, but also the right to be left alone”); *Myers v. Alaska Psych. Inst.*, 138 P.3d 238, 249 (Alaska 2006) (“[T]he basic premise of the right to privacy is the freedom to decide whether we prefer to be helped, or to be left alone.”) (quoting *In re K.K.B.*, 609 P.2d 747, 751 (Okla. 1980)).

²² Credit for this terminology of “ad hoc self-sheltering spaces” is due to Eric Glatt. Telephone Interview with Eric Glatt, Founder, Borealis Legal Servs. (Feb. 13, 2024).

In order to illustrate how the Alaska Supreme Court could recognize this dual right to housing—encompassing both an affirmative right to adequate and affordable housing, and a corollary negative right to self-shelter—this Article progresses in two Parts. First, Part I discusses the Alaska Supreme Court’s methods of constitutional interpretation and rights expansion. In past cases, the Court has weighed not only Alaska’s constitutional history and text, but also the broader values enshrined within the Alaska Constitution to determine whether to recognize a purported right. Part II then applies these methods to existing provisions of the Alaska Constitution to demonstrate how a right to housing could be recognized today. Section II.A discusses the history of the Alaska Constitution’s Health and Welfare Clauses to illustrate that the text and heritage support a right to adequate and affordable housing. Section II.B then turns to the Privacy Clause to argue that the broader values enshrined in the Alaska Constitution similarly encompass a negative right to self-shelter.

I. Constitutional Interpretation and Rights Expansion in the Alaska Supreme Court

State supreme courts employ several modes of interpretation when analyzing their constitutions.²³ These modes of interpretation can be organized along a spectrum from reactive to self-reliant approaches.²⁴ Reactive state-constitutional interpretation largely “responds to, criticizes, and amends the relevant federal doctrine.”²⁵ Conversely, a state supreme court engages in self-reliant interpretation when it “focuses on the state constitution as an independent source

²³ For academic literature surveying the modes of interpretation used by state supreme courts, see, for example, *Developments in the Law – The Interpretation of State Constitutional Rights*, 95 HARV. L. REV. 1324 (1982) [hereinafter *Developments in the Law*]; Rachel A. Van Cleave, *State Constitutional Interpretation and Methodology*, 28 N.M. L. REV. 199 (1998); G. Alan Tarr, *State Constitutional Design and State Constitutional Interpretation*, 72 MONT. L. REV. 7 (2011).

²⁴ *Developments in the Law*, *supra* note 23, at 1362–66.

²⁵ *Id.* at 1362.

of rights to be interpreted on its own terms.”²⁶ This latter type of methodology is particularly common with provisions that lack a federal analogue²⁷ or that involve fundamental rights.²⁸

The Alaska Supreme Court often adopts a self-reliant approach when interpreting the Alaska Constitution. In *Baker v. City of Fairbanks*, the Court explained its approach with respect to the recognition of fundamental rights:

While we must enforce the minimum constitutional standards imposed upon us by the United States Supreme Court’s interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution *if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage.*²⁹

While the Court frames its interpretation with reference to the federal floor, its decision to go beyond that floor is largely informed by Alaska-specific considerations. Namely, the Court considers the text and history of the Alaska Constitution, as well as the “basic values”³⁰ and “character of life”³¹ that define the state as a whole. The latter considerations become particularly relevant when the litigants are asking the Court to recognize an unenumerated right.

A. Adherence to Alaska’s Constitutional Text and Heritage

Analysis of the Alaska Constitution must “begin with, and remain[] grounded in, the words of the provision itself.”³² The Alaska Supreme Court employs a plain-meaning approach to interpreting its Constitution;³³ however, such a reading does not occur in a vacuum. Rather,

²⁶ *Id.* at 1364.

²⁷ *Id.* at 1365.

²⁸ *Id.* at 1429, 1448–49.

²⁹ 471 P.2d 386, 401–02 (Alaska 1970) (emphasis added).

³⁰ *Breese v. Smith*, 501 P.2d 159, 169 (Alaska 1972).

³¹ *Ravin v. State*, 537 P.2d 494, 503–04 (Alaska 1975).

³² *State v. Alaska Leg. Council*, 515 P.3d 117, 123 (Alaska 2022) (quoting *Hickel v. Cowper*, 874 P.2d 922, 927 (Alaska 1994)).

³³ *Id.* (“Constitutional provisions should be given a reasonable and practical interpretation in accordance with common sense. [We] . . . look to the plain meaning and purpose of the provision and the intent of the framers.”). *But*

the Alaska Supreme Court contextualizes each provision within the broader constitutional document. The Alaska Constitution “is meant to be read as a whole with each section in harmony with the others.”³⁴ As such, terms must be presumed to have consistent meanings throughout, and provisions must be read in conjunction with one another.³⁵

The Alaska Constitutional Convention also provides useful insights into the meaning of the constitutional text. The Convention was held from November 1955 to February 1956 as part of Alaska’s movement for statehood.³⁶ The drafted Constitution was subsequently approved by Alaskan voters in a special referendum in April 1956 and took effect in January 1959 when Alaska became a state.³⁷

The Alaska Supreme Court gives particular weight to the records and context of the Convention when interpreting Alaska’s Constitution. As the Court once explained:

In determining the scope of a constitutional right, . . . [w]e must look to the intent of the framers of the constitution concerning the nature of the right itself, the problems which they were addressing and the remedies they sought. While prior practice and the framers’ purposes are not necessarily conclusive, an historical perspective is essential to an enlightened contemporary interpretation of our constitution.³⁸

Most frequently, the Court considers the records of the Constitutional Convention itself to evaluate this history and determine the scope of the right asserted.³⁹ At the Convention, the

see State v. Alex, 646 P.2d 203, 208 n.4 (Alaska 1982) (discussing the fraught history of plain meaning in the Alaska Supreme Court in the late twentieth century).

³⁴ Alaska Leg. Council, 515 P.3d at 123–24.

³⁵ Forrer v. State, 471 P.3d 569, 585 (Alaska 2020).

³⁶ VICTOR FISCHER, ALASKA’S CONSTITUTIONAL CONVENTION 3 (1975).

³⁷ *Id.*

³⁸ Hootch v. Alaska State-Operated Sch. Sys., 536 P.2d 793, 800 (Alaska 1975).

³⁹ Unlike many other states, Alaska maintains voluminous records (including verbatim transcripts) of its Constitutional Convention. *See generally* ALASKA CONST. CONVENTION, TRANSCRIPT OF PROCEEDINGS (1955) (on file with the Alaska Legislature), <https://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Proceedings/Proceedings%20-%20Complete.pdf> [<https://perma.cc/4C3B-AE34>]. Former Convention Delegate Tom Stewart highlighted the value of these records in his reflections, noting that they “have been of substantial use, not only for students of the constitution, but by the courts in their study of the meaning to be given to the language of the document.” Thomas Metzloff, *Preparing the*

initial drafting responsibilities were divided up amongst themed committees, who then circulated proposed Articles to the full Convention for review and debate.⁴⁰ Records from both phases of the drafting process have been considered by the Alaska Supreme Court. For example, to understand the scope of the Article VII right to education, the Court turned to the proposals introduced by the drafting committee⁴¹ and the full Convention transcripts.⁴² Similarly, to determine whether to imply a right of public access to state legislative meetings, the Court examined the Convention debates around whether its own meetings would be open to the public.⁴³

The Alaska Supreme Court also examines the historical context preceding and following the Constitutional Convention in order to assess the problems the Alaska Constitution sought to remedy: “Legislative history and the historical context, including events preceding ratification, help define the [C]onstitution.”⁴⁴ For example, the Court has cited to policy disputes that preceded the Constitutional Convention in order to determine the rationale behind a constitutional provision.⁴⁵ The Court has also cited policies that post-dated the Convention in order to understand the types of remedies or approaches the framers intended to craft for

Way: Tom Stewart’s Recollections on the Alaska State Constitutional Convention, 35 ALASKA L. REV. 289, 303 (2018).

⁴⁰ For a more in-depth discussion of the Convention’s drafting procedures, see FISCHER, *supra* note 36, at 56–59.

⁴¹ *Hootch*, 536 P.2d at 800, 801 n.25 (citing 6 Proceedings of the Alaska Constitutional Convention, Appendix V, 68 (Committee Proposal No. 7, December 15, 1955)).

⁴² *Id.* at 800–01, 801 n.26 (reviewing the Convention Transcripts regarding terminology changes in the Education Clause).

⁴³ *Abood v. League of Women Voters of Alaska*, 743 P.2d 333, 341–43 (Alaska 1987) (“We begin by seeking to determine the intent of the framers. We find evidence of such intent in the debate at the Constitutional Convention over the question of the public’s access to the Convention’s own committee meetings.”).

⁴⁴ *State v. Ketchikan Gateway Borough*, 366 P.3d 86, 90 (Alaska 2016).

⁴⁵ See e.g., *Hootch*, 536 P.2d at 800 (considering how “[t]he problem of creating a viable, unified system of public education in this state confronted the framers of our constitution” and thus informed the intent underlying the Education Clause).

particular issues.⁴⁶ In this way, the broader legislative and historical context of the Alaska Constitution has been used to better understand the scope of its provisions.

However, it should be noted that the history of a provision cannot be used to narrow a right that was otherwise broadly written. The Court articulated this caveat most clearly in the context of privacy. While Alaska's Privacy Clause may have arisen out of concern for government surveillance, the final text of the provision was written to protect privacy broadly.⁴⁷ As such, the Alaska Supreme Court refused to limit its interpretation of the Privacy Clause to solely the government-surveillance context.⁴⁸ On this reasoning, Alaska's Privacy Clause has been used to protect against an array of government intrusions, including with respect to

⁴⁶ See e.g., *Ketchikan Gateway Borough*, 366 P.3d at 96 (reasoning that the state-local cooperative approach to school funding was intended to be constitutional, as evidenced by the fact that it was maintained post-statehood); see also *Bradner v. Hammond*, 553 P.2d 1, 4 (Alaska 1976) (noting that courts have given particular weight to "interpretation[s] [that] date[] back to the first years of statehood. Contemporaneous interpretation of fundamental law by those participating in its drafting has traditionally been viewed as especially weighty evidence of the framers' intent").

⁴⁷ Prior litigants have attempted to use the original proposed language of Alaska's Privacy Clause to show that its passage was in direct response to concerns around government surveillance. See e.g., *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997). The clause originally read:

The right of the people to privacy in their opinions, persons, families, reputations and property is recognized and shall not be violated. Neither warrants nor writs of investigation in abrogation of privacy shall issue, except upon probable cause and upon a showing of a legitimate and pressing need, supported by oath or affirmation, particularly describing the information or data sought and the person whose privacy may be affected, and particularly setting forth the reasons for the search or investigation. The legislature shall provide for the prosecution and punishment of public officials and private parties who act in violation of this section, and shall provide civil remedies to redress and prevent such violations. The legislature shall provide for the protection and security of information available to the State to the extent necessary to protect the rights of the individual recognized in this section and shall further provide for the protection and security of information gathered under this section by the State.

Id. (quoting 1972 Alaska Senate Joint Resolution No. 68, 7th Leg., 2d Sess.).

⁴⁸ As the Court explained:

While the initial draft of the amendment attempted to specify privacy interests to be protected, the final constitutional amendment simply protected the right of the people to privacy. The plain language of article I, section 22 is a broad protection of privacy rights. *The legislative history is insufficient to limit the general language of the privacy amendment.*

Id. at 969 (emphasis added).

reproductive healthcare⁴⁹ and in the home.⁵⁰ Thus, the history of the Alaska Constitutional Convention can be a useful tool for delineating—but not overly narrowing—the scope of its codified rights provisions.

B. Adherence to Alaskan Values

The Alaska Supreme Court also considers “important Alaskan values”—including individual autonomy—when interpreting its Constitution.⁵¹ In particular, it considers these values when the parties’ arguments involve the recognition of unenumerated, implied rights.

This trend arises most often in cases regarding the Court’s recognition of fundamental rights associated with liberty.⁵² It first began in *Breese v. Smith*, where the Alaska Supreme Court cited to the “basic values” of Alaska’s identity as a pluralistic society—including “the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles”—as grounds for recognizing the individual’s fundamental right to control their personal appearance.⁵³ This reasoning fueled the Court’s recognition of several other unenumerated but fundamental rights under the Alaska Constitution, including the rights to reproductive healthcare,⁵⁴ privacy in one’s home (including privacy with respect to the possession and consumption of marijuana),⁵⁵ self-representation,⁵⁶ and medical treatments⁵⁷ (including refusal thereof).⁵⁸

⁴⁹ *Id.*

⁵⁰ *Ravin v. State*, 537 P.2d 494, 502–04 (Alaska 1975).

⁵¹ *Sampson v. State*, 31 P.3d 88, 93 (Alaska 2001).

⁵² “Fundamental rights” in Alaska are the legal category of rights that are subject to strict scrutiny under an equal protection analysis, meaning any infringement of that right must be justified by a compelling interest. *Doe v. Dep’t of Pub. Safety*, 444 P.3d 116, 125 (Alaska 2019).

⁵³ *Breese v. Smith*, 501 P.2d 159, 169 (Alaska 1972).

⁵⁴ *E.g.*, *Valley Hosp. Ass’n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 968 (Alaska 1997) (“A woman’s control of her body, and the choice whether or when to bear children, involves the kind of decision-making that is ‘necessary for . . . civilized life and ordered liberty.’” (quoting *Baker v. Fairbanks*, 471 P.2d 386, 401–02)).

⁵⁵ *E.g.*, *Ravin*, 537 P.2d at 504.

⁵⁶ *E.g.*, *McCracken v. State*, 518 P.2d 85, 91 (Alaska 1974).

⁵⁷ *E.g.*, *Huffman v. State*, 204 P.3d 339, 346 (Alaska 2009).

⁵⁸ *E.g.*, *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 248 (Alaska 2006).

The consistent thread across these cases is the importance of preserving Alaskans' ability "to direct the course of our lives."⁵⁹ In each case, the Court reiterates the importance of liberty as a foundational Alaskan value. For instance, the Alaska Supreme Court recognized that "[o]ur territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or to continue living here in order to achieve a measure of control over their own lifestyles[,] which is now virtually unattainable in many of our sister states."⁶⁰ Through its protection of liberty and personal autonomy, the Alaska Supreme Court has ensured the protection of fundamental rights in the Alaskan Constitution, even in instances where those rights were not explicitly enumerated by the framers.

II. The Right to Housing in Alaska

Using the Alaska Supreme Court's theories of constitutional interpretation and rights expansion, this Part argues that a right to housing already exists in the Alaska Constitution. While constitutional history is not determinative, it is nonetheless significant that the drafters of the Alaska Constitution understood it to include a fundamental right to housing. As Section II.A demonstrates, precursors to the Constitution's Health and Welfare Clauses included statements authorizing the State to provide "shelter[] for the needy"⁶¹ and "housing for persons of low-income."⁶² These provisions were omitted from the final Alaska Constitution solely because the framers believed they were already encompassed by the Constitution's text.⁶³ As such,

⁵⁹ *Sampson v. State*, 31 P.3d 88, 94 (Alaska 2001); *see also McCracken*, 518 P.2d at 91 ("In considering the fundamental importance of self-representation, we are mindful that ours is a society valuing the autonomy of the individual and his freedom of choice.").

⁶⁰ *Ravin*, 537 P.2d at 504.

⁶¹ *See infra* App. A.

⁶² *See infra* App. B.

⁶³ ALASKA CONST. CONVENTION, *supra* note 39, at 1547 (Delegate Fischer arguing for the removal of the provision on housing because "[t]here has never been any doubt about public housing. It is definitely authorized under the welfare clause, so there is no need for that at all.").

recognizing a fundamental right to housing in Alaska would be in keeping with both the original intent and text of the Alaska Constitution.

The fundamental right to housing contained in the Alaska Constitution should be understood as a two-pronged right, containing both affirmative and negative protections. The right to housing contains an affirmative right to adequate and affordable housing, consistent with the right originally contemplated by the framers of the Alaska Constitution in Article VII.⁶⁴ It also encompasses a corollary negative right to house oneself in the manner of one's choosing.⁶⁵ Recognition of this negative right would be in keeping with the basic values of personal autonomy and liberty that are core to Alaska as a state.⁶⁶ Further, it can be inferred into the Alaska Constitution's right to privacy, which the Alaska Supreme Court has previously defined as "the right to be left alone."⁶⁷

The following Sections will address each of these components of the right to housing in turn, first discussing the affirmative right to adequate and affordable housing under Article VII's Health and Welfare Clauses and then turning to the negative right to self-shelter protected by Article I's right to privacy.

A. The Affirmative Right to Adequate and Affordable Housing

The Alaska Constitution, as it stands, encompasses an implied affirmative right to adequate and affordable housing. When determining whether to recognize a fundamental but unenumerated right in the Alaska Constitution, the Alaska Supreme Court has considered the

⁶⁴ See *supra* Section I.A.

⁶⁵ This negative right to self-shelter has been extensively theorized by Ben McJunkin, who defines the right as "protect[ing] the decision of homeless individuals to undertake self-sheltering activities—from the simple use of blankets or bedding to the erection of temporary encampments in public spaces—free from the threat of criminalization." Ben McJunkin, *The Negative Right to Shelter*, 111 CALIF. L. REV. 127, 174 (2023). Such a negative right would protect individuals' "freedom to choose where and how to find shelter, to protect themselves and their property, and to build meaningful connections with others." *Id.* at 175.

⁶⁶ See *supra* Section I.B.

⁶⁷ *Ravin v. State*, 537 P.2d 494, 514–15 (Alaska 1975) (Boochever, J., concurring).

constitutional text and heritage of the document.⁶⁸ Both of these modes of interpretation support the recognition of an affirmative right to adequate and affordable housing.

The language of the Health and Welfare Clauses in Article VII is sufficiently broad to encompass a right to adequate and affordable housing.⁶⁹ In *Valley Hospital Association, Inc. v. Mat-Su Coalition for Choice*, the Alaska Supreme Court reasoned that because “[t]he plain language of [A]rticle I, [S]ection 22 is a broad protection of privacy rights[,]”⁷⁰ it could be read to encompass the right to abortion as a kind of fundamental privacy right.⁷¹ The same reasoning applies to the Health and Welfare Clauses of Article VII. The text of the provisions themselves does not impose any limits on the meaning of “health” or welfare.”⁷² Moreover, Constitutional Convention Delegate Victor Fischer stated on the record that “our health and welfare clauses are broad enough” to protect housing.⁷³ Given that both provisions were intentionally drafted as broad protections for health and welfare, the Alaska Supreme Court could reasonably read the right to adequate and affordable housing into Article VII.

Such a reading would also be in keeping with the Constitutional Convention history regarding the Health and Welfare Clauses in general, and housing in particular. The drafters intended the Health & Welfare Clauses to be inclusive of a variety of services. Throughout the Convention, the delegates referred to a “system” or “program” of public welfare when discussing the Health and Welfare Clauses.⁷⁴ The vision for this system included the provision of a wide

⁶⁸ See generally *supra* Section I (discussing modes of rights expansion and constitutional interpretation in the Alaska Supreme Court).

⁶⁹ ALASKA CONST. art. VII, § 4 (“The legislature shall provide for the promotion and protection of public health.”); *id.* § 5 (“The legislature shall provide for public welfare.”).

⁷⁰ *Valley Hosp. Ass’n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997).

⁷¹ *Id.*

⁷² See *supra* note 69.

⁷³ ALASKA CONST. CONVENTION, *supra* note 39, at 1548.

⁷⁴ See e.g., *id.* at 1540 (Delegate Armstrong referencing “this system of public welfare”); *id.* at 1541 (Delegate Taylor stating “my idea of public welfare connotes a system provided by the state or established by the state for the

swath of supports to Alaskans in order to ensure a minimum standard of health and dignity. As one delegate, Warren Taylor, explained:

[T]oday, we have the relief of the widows, we have dependent children, we have relief for the orphans, for the cripples, we have rehabilitation for persons who have partially lost their ability to earn or gain for livelihood, and other matters which would come under this public welfare, so it would be *a system that would embrace all of those things that would go into maintaining the health and human dignity of our people*.⁷⁵

Such a system would thus encompass a variety of types of support, including public health benefits,⁷⁶ unemployment insurance,⁷⁷ and “things of the nature of social security.”⁷⁸

These services were intended to serve Alaskans in an array of socioeconomic positions. Delegate R. Rolland Armstrong, one of the original drafters of the Public Welfare Clause,⁷⁹ provided the example of someone with tuberculosis who “may have what seems to be a normal adequate income, yet the loss of his income while in the [tuberculosis] sanitarium makes it absolutely impossible for him to pay the bills.”⁸⁰ In such a scenario, Armstrong argued there would be a role for the public welfare system as well. He explained:

[W]e were trying to get away from a clause that might indicate that you had to be a pauper and really down and out before you would arrive at the place you could crawl up to the welfare department for help. There are many areas of life where a

alleviation of various people who are unable to make a living”); *id.* at 3313 (Delegate Hurley referencing a suggestion that the Welfare Clause covered “a program of public welfare”). At one point, Mr. Taylor offered an amendment to specifically include the language of “a system of public welfare” in the amendment; however, it was narrowly rejected. *Id.* at 1543–45 (twenty-six yeas to twenty-seven nays). This loss was, in part, because the language of the Welfare Clause was framed in permissive terms at the time (“may”). *Id.* at 1545. As such, Delegate Kilcher believed it would be superfluous to specify the nature of public welfare further, since the state may do (or not do) as it pleases. *Id.* This reasoning is less persuasive today, however, given that the clause is now written in mandatory terms. *Id.* at 3314–15 (“The State *shall* provide for public welfare.”) (emphasis added).

⁷⁵ *Id.* at 1544 (emphasis added).

⁷⁶ *Id.* at 1538 (Delegates Sundborg and Awes discussing how the language of the Health Clause would permit the creation of a “statewide system of public health benefits”).

⁷⁷ *Id.* at 3318 (Delegate Awes explaining that the amendment to the Welfare Clause was intended to avoid any potential difficulties with interpretations barring coverage of “new programs like unemployment insurance and things of the nature of social security”).

⁷⁸ *Id.*

⁷⁹ ALASKA CONST. CONVENTION, COMM. MEMBERSHIP (Nov. 18, 1955) (on file with the Alaska Legislature), <https://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Folder%20200.pdf>.

⁸⁰ ALASKA CONST. CONVENTION, *supra* note 39, at 1540.

little help to a widow, to an orphan, to a pioneer who needs help, brings them to the place of self-respect . . . [D]ignity and self-respect certainly go hand in hand.⁸¹

The intention behind the Public Health and Welfare Clauses was thus to provide a system of supports for Alaskans at a range of income levels and circumstances.⁸²

The Welfare Clause, specifically, also came to encompass a right to housing. When drafting the Health and Welfare Clauses, the Committee on the Preamble & Bill of Rights consulted several texts, including proposals from Convention delegates Warren Taylor and Victor Fischer.⁸³ Both of the delegates' proposals included a discussion of the right to adequate and affordable housing, including policies regarding the provision of shelter, low-rent housing, and rehabilitation of substandard living areas.⁸⁴

Taylor's proposal included language on the State provision of both shelter and low-rent housing. Sections 3 and 5 of Taylor's proposal were most relevant to the right to housing:

Section 3. The maintenance and distribution, at reasonable rates, or free of charge, of a sufficient supply of food, fuel, clothing and other common necessities of life, and *the providing of shelter, for the needy*, are public functions, and the state and its civil divisions shall provide the same for their inhabitants in such manner and by such means as may be prescribed by law.

Section 5. *The state may provide for low rent housing for persons of low income as defined by law*, or for the clearance, replanning, reconstruction and rehabilitation of substandard or unsanitary areas, or for both such purposes, and for recreational and other facilities incidental and appurtenant thereto, in such manner, by such means, and upon such terms and conditions as may be prescribed elsewhere in this constitution, or as may be prescribed by law.⁸⁵

⁸¹ *Id.* at 1541.

⁸² This scope initially raised a concern that the Health & Welfare Clauses would go so far as to protect millionaires who happened to fall ill. *See id.* at 1541 (comments by Robertson and Hellenthal); *see also id.* at 1542 (comments by Johnson). However, the Chair of the Preamble and Bill of Rights Committee Dorothy Awes responded to these concerns by noting that the ordinary meaning of "public welfare" would likely preempt this issue. *Id.* at 1542–43 (comments by Awes). Moreover, these concerns largely arose from the Welfare Clause's original text, which included the language of "a standard of living compatible with health and human dignity." *Id.* at 1541–43, 3314. That text has since been removed. *See id.* at 3314–15. As such, this concern about the slippery slope towards protection of millionaires in the guise of public welfare is likely no longer salient today.

⁸³ *See infra* App. A & B.

⁸⁴ *See infra* App. A at 1–2; App. B.

⁸⁵ *See infra* App. A at 1–2 (emphasis added).

Although the precise language of Taylor’s proposal was not included in the Committee’s final text, the Committee report indicates that their proposed text was intended to capture the spirit of Taylor’s proposal.⁸⁶ Specifically, the Committee report noted that “[s]ections 3 and 5 were *adopted in substance* in the Proposal on Health, Welfare and Education.”⁸⁷ In light of this statement, it can be inferred that Taylor’s commitment to the provision of shelter and adequate affordable housing were intended to be incorporated into the text of the Alaska Constitution’s Health and Welfare Clauses.

Fischer’s proposal for the text of Article VII also included an explicit recognition of the right to housing. Section 4 of Fischer’s proposed text read: “The State may provide for and assist in slum clearance, development and rehabilitation of substandard areas, and housing for persons of low income.”⁸⁸ The Committee incorporated Fischer’s proposed Section 4 into their proposed text for Article VII with minor edits.⁸⁹

⁸⁶ DOROTHY AWES ET AL., ALASKA CONST. CONVENTION, COMM. PROPOSAL 7: REPORT OF THE COMMITTEE ON THE PREAMBLE AND BILL OF RIGHTS (Alaska 1955)

<https://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Folder%20205.pdf>.

⁸⁷ *Id.* at 2 (emphasis added).

⁸⁸ *See infra* App. B.

⁸⁹ Fischer’s proposal raises the question of whether his proposed provision for “slum clearance” would also encompass the clearance or abatement of homeless encampments. *See infra* App. C (“Section 4. The State may provide for and assist in the clearance, development and rehabilitation of substandard areas and for public housing.”). The debates of the Constitutional Convention are silent as to what the drafters meant by “slum clearance”; however, the text and local history demonstrate that this provision would not serve as a *carte blanche* for local governments to forcibly displace people experiencing homelessness. The drafters conceived of “clearance” in the context of redevelopment and rehabilitation (i.e., creating a livable space in its place). *Id.* Moreover, the history of slum clearance in Alaska illustrates that residents in the designated areas were compensated financially for their homes and had first claim to the new homes built in their place. *See generally* Paul W. Lovinger, *Cabins Razed to Make Way for Development in Rehabilitated Area*, FAIRBANKS NEWS MINER (Dec. 3, 1958) (on file with Author). Conversely, abatement is not accompanied by any financial compensation, production of housing, or even identification of an alternate place to go. *See generally* Emily Goodykoontz, ‘*Shouldn’t Just be a Mountain View Problem*’: Neighborhood Wants City’s Help with Longstanding Homeless Encampment, ANCHORAGE DAILY NEWS (Feb. 9, 2025), <https://www.adn.com/alaska-news/anchorage/2025/02/09/shouldnt-just-be-a-mountain-view-problem-neighborhood-wants-citys-help-with-longstanding-homeless-encampment/>.

However, the Convention later struck housing from the final draft of the Alaska Constitution.⁹⁰ This omission did not stem from a belief that housing was not fundamental, but rather from a desire to avoid including redundant provisions.⁹¹ Fischer himself proposed the deletion because he believed that the right to adequate and affordable housing was already covered by the Alaska Constitution.⁹² He explained to the Convention that “there has never been any doubt about public housing. It is definitely authorized under the welfare clause, so there is no need for that at all.”⁹³ Fischer’s belief in the Alaska Constitution’s implied protection of public housing rested, in large part, on the breadth of the Health and Welfare Clauses.⁹⁴ Believing that these broad provisions would provide sufficient protection for the right to adequate and affordable housing, Fischer and the rest of the Constitutional Convention agreed to remove Article VII’s Housing Clause.

The history of the Alaska Constitutional Convention makes it clear that the right to housing was intended to be protected by Article VII of the Alaska Constitution. To the extent that it was not explicitly enumerated in the Constitution, that omission is attributable to a fear of surplusage on the part of the drafters—not an opposition to the right to housing itself. The decision to omit Fischer’s proposed Housing Clause thus was a product of the time in which the

⁹⁰ ALASKA CONST. CONVENTION, *supra* note 39, at 1547–48.

⁹¹ *See e.g.*, ALASKA CONST. CONVENTION, *supra* note 39, at 1547–49 (discussing the importance of avoiding surplusage). This fear of surplusage is unsurprising given the environment in which the Alaska Constitution was drafted. The Alaska Constitutional Convention occurred in the wake of a broader movement to reform state constitutions, which emphasized “shortening and simplifying state constitutions” in order to make them more adept at addressing popular needs. *See* GERALD McBEATH, THE ALASKA STATE CONSTITUTION 10–11 (2011).

⁹² ALASKA CONST. CONVENTION, *supra* note 39, at 1547.

⁹³ *Id.*

⁹⁴ *See id.* at 1548 (“[O]ur health and welfare clauses are broad enough.”). In a further show of the Convention’s desire to provide broad protection for the public welfare, the Welfare Clause was later redrafted to be in mandatory (rather than permissive) language. *See id.* at 3314–15 (proposing the change); *id.* at 3319 (adopting the change). This revision brought the Welfare Clause into conformity with the other clauses in Article VII. *Id.* at 3319. As a result, the Alaska Constitution now *requires* that the legislature provide for the public health and welfare. ALASKA CONST. art. VII, §§ 4–5.

Constitution was drafted, as opposed to evidence of the Convention members' valuation of its importance.

B. The Negative Right to Self-Shelter

In addition to this affirmative right, the Alaska Constitution also contains a negative right to self-shelter within its enumerated Privacy Clause.⁹⁵ In 1972, Alaskans voted to amend their Constitution to include an affirmative right to privacy.⁹⁶ Using the Alaska Supreme Court's theories of constitutional interpretation, a negative right to self-shelter could be inferred into this existing protection for privacy.

The text of the Alaska Constitution is broad enough to encompass a right to self-shelter. The Alaska Supreme Court has already held that the narrow origins of the right to privacy in the Alaska Constitution do not limit its applicability. In *Valley Hospital*, the Alaska Supreme Court held that "the legislative history is insufficient to limit the general language of the privacy amendment."⁹⁷ Given that the text of this provision has remained unchanged since *Valley Hospital*, the Alaska Supreme Court could similarly recognize the right to privacy to contain a right to self-shelter as well.

The Alaska Supreme Court has broadly defined the right to privacy as a component of all Alaskans' "right to be left alone."⁹⁸ This framing originated in the Court's jurisprudence on the meaning of "liberty" in the Alaska Constitution. In *Breese*, the Court put forth a broad definition of liberty under Article I, Section 1 of the Constitution, explaining that while they "are cognizant

⁹⁵ ALASKA CONST. art. I, § 22 ("The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.").

⁹⁶ Erwin Chemerinsky, *Privacy and the Alaska Constitution: Failing to Fulfill the Promise*, 20 ALASKA L. REV. 29, 30 (2003) (noting that the right to privacy was added to the Alaska Constitution via voter initiative in 1972).

⁹⁷ *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997).

⁹⁸ *Breese v. Smith*, 501 P.2d 159, 168 (Alaska 1972).

of the fact that the term ‘liberty’ is an illusive concept . . . at the core of this concept is the notion of total personal immunity from governmental control: the right ‘to be let alone.’”⁹⁹

The right to be left alone could reasonably encompass a right to self-shelter. At its most fundamental level, the right to self-shelter entails “the freedom to choose where and how to find shelter, to protect themselves and their property, and to build meaningful connections with others” without fear of criminalization.¹⁰⁰ This respect for an individual’s autonomy to shelter themselves aligns with the essence of the right to be left alone. A key component of allowing individuals to “achieve a measure of control over their own lifestyles” is allowing them to choose their home.¹⁰¹ This choice ought to include both the option to live in a government-provided shelter *and* the right to create a temporary shelter for themselves free from the threat of criminalization, particularly when no adequate government shelter is available.¹⁰² There are several reasons government-provided shelter may be inadequate, such as there are not enough beds, the shelter is perceived to be unsafe, or the shelter cannot house people with their families.¹⁰³

Outside of the housing context, the Alaska Supreme Court has upheld the right to be left alone in the context of forced medication. For example, in *Myers v. Alaska Psychiatric Institute*, the Court upheld Ms. Myers’s right to turn down psychotropic drugs while in state custody.¹⁰⁴ In doing so, the Court echoed an Oklahoma Supreme Court ruling that “the basic premise of the

⁹⁹ *Id.*

¹⁰⁰ McJunkin, *supra* note 65, at 174–75.

¹⁰¹ *Ravin v. State*, 537 P.2d 494, 503–04 (Alaska 1975).

¹⁰² This option would likely be limited by the courts, based upon a balancing of the rights and interests at play. *See infra* text accompanying notes 106–110.

¹⁰³ JULIE HUNTER, PAUL LINDEN-RETEK, SIRINE SHEBAYA, & SAMUEL HALPERT, WELCOME HOME: THE RISE OF TENT CITIES IN THE UNITED STATES 3, 21, 49 (Mar. 2014) (identifying the desire to live as a couple and/or with one’s family and safety concerns as two of several reasons that individuals may turn down a shelter bed), https://law.yale.edu/sites/default/files/area/center/schell/welcomehome_tentcities_final_report.pdf.

¹⁰⁴ 138 P.3d 238 (Alaska 2006).

right to privacy is the freedom to decide whether we prefer to be helped, or to be left alone.”¹⁰⁵

In the context of the right to self-shelter, this holding could be reasonably extended to mean that individuals experiencing homelessness in Alaska have the freedom to decide whether they prefer to access government shelter or to shelter themselves in the manner of their choosing. Thus, through the Alaska Supreme Court’s existing precedents interpreting the right to privacy as encompassing the right to be left alone, a negative right to self-shelter could be recognized under the Alaska Constitution.

It should be noted, however, that this right to self-shelter is not unlimited. The Alaska Supreme Court has caveated the right to be left alone to exclude activities that “infringe on the rights of others.”¹⁰⁶ The public rights in question often include the broader public’s right to health and welfare.¹⁰⁷ However, this balancing ultimately still weighs in favor of recognizing the right to self-shelter once it is acknowledged that the fulfillment of the right to housing *advances*—rather than contradicts—the public right to health and welfare.

The Court first articulated this caveat on the right to privacy in *Ravin*, where it reasoned that the right to privacy “must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare.”¹⁰⁸ Using this line of reasoning, the State, municipalities, or other third parties may attempt to challenge the right to self-shelter by arguing that outdoor encampments interfere with public health, safety, and/or welfare.

However, this argument can be counter-balanced by demonstrating that such ad hoc self-shelters have public health, safety, and welfare *benefits* that must be considered as well. The

¹⁰⁵ *Id.* at 249 (quoting *In re K.K.B.*, 609 P.2d 747, 751 (Okla. 1980)).

¹⁰⁶ *Ravin*, 537 P.2d at 514–15 (Boochever, J., concurring).

¹⁰⁷ *Id.* at 504 (majority opinion).

¹⁰⁸ *Id.*

“public” inherently includes our unsheltered and unhoused community members.¹⁰⁹ Living completely unsheltered (meaning without access to any tents, tarps, or other property to protect oneself from the elements) is associated with higher rates of mortality, non-communicable and communicable diseases, sexually transmitted diseases, substance use, and worsening mental health.¹¹⁰ Moreover, government acts—such as sweeps and abatements—that deny individuals access to their self-created shelters have detrimental effects on health and welfare.¹¹¹ Individuals have reported loss of essential medical items, as well as heightened instability after a sweep, resulting in challenges managing their preexisting chronic health conditions or substance use disorders.¹¹²

Courts outside of Alaska have also begun adopting this broadened definition of the “public” in the context of sweeps and abatement. Most recently, in *Tyson v. San Bernardino*, the United States District Court for the Central District of California reasoned in an order granting a preliminary injunction against abatements:

¹⁰⁹ Order and Preliminary Injunction, *Tyson v. San Bernardino*, No. EDCV 23-01539, 2024 U.S. Dist. LEXIS 138743, at *22 (C.D. Cal., Jan. 12, 2024) (citations omitted).

¹¹⁰ Jessica Richards & Randall Kuhn, *Unsheltered Homelessness & Health: A Literature Review*, 2 AM. J. PREVENT. MED. FOCUS 1, 9 (2023), [https://www.ajpmfocus.org/article/S2773-0654\(22\)00041-4/fulltext](https://www.ajpmfocus.org/article/S2773-0654(22)00041-4/fulltext).

¹¹¹ Diane Qi, Kamran Abri, M. Rani Mukherjee, Amy Rosenwohl-Mack, Lina Khoeur, Lily Barnard, & Kelly Ray Knight, *Health Impact of Street Sweeps from the Perspective of Healthcare Providers*, 37 J. GEN. INTERN. MED. 3707, 3707 (2022), <https://pubmed.ncbi.nlm.nih.gov/35296981/>.

¹¹² *Id.* at 3709–11. In light of these harmful impacts, healthcare providers have suggested that municipalities create state-sanctioned encampments informed by the principles of harm reduction, rather than continue their policies of camp sweeps and abatements. *Id.* at 3711. Indeed, the Anchorage Assembly previously assembled a task force on “allowed camping” that explored this precise possibility. See Anchorage Assembly, Assembly Information Memorandum No. 140-2023: Allowed Camps Community Task Force Final Report (July 11, 2023), <https://www.muni.org/Departments/Assembly/PressReleases/SiteAssets/Pages/Allowed-Camp-Community-Task-Force-Finalizes-Report-to-the-Anchorage-Assembly/10.F.4.--AIM%20140-2023.pdf>. However, it should be noted that “allowed camping” can quickly devolve into another form of carceral shelter and is not a solution to homelessness. See WESTERN REGIONAL ADVOCACY PROJECT, POSITION PAPER: SHELTERS & SANCTIONED ENCAMPMENTS ARE NOT HOUSING: HOMELESSNESS ENDS WITH A HOME (June 16, 2021) (providing an in-depth critique of sanctioned encampments as a response to the homelessness crisis), <https://wraphome.org/wp-content/uploads/2021/06/Sanctioned-Encampments-Position-Paper-6.16.pdf>. Instead, some advocates are now calling for a “housing engagement model,” which pairs sanctioned encampments with a broader infrastructure of housing-focused case management and other housing resources. See Jon DeCarmine & Joseph S. Jackson, *A Tale of Two Tent Cities: The Critical Role of Housing Engagement in Addressing Homeless Encampments*, 30 GEO. J. POVERTY L. & POL’Y 371, 377–78 (2023) (discussing the housing engagement model).

[T]he Court is, and should be, cognizant of the fact that people experiencing homelessness are members of the community, and their interests, too, must be included in assessing the public interest. Indeed, “[o]ur society as a whole suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their rights or privileges.”¹¹³

Thus, although some parties may attempt to challenge the Alaska Supreme Court’s recognition of the right to self-shelter on the grounds that it must yield to the public’s interest in health and safety, these arguments can be effectively countered by recognizing unhoused and unsheltered community members as part of the public in question.

CONCLUSION

A dual right to housing exists within the Alaska Constitution as it currently stands. Implied within the Constitution’s provisions on health and welfare is an affirmative right to adequate and affordable housing, and, implied within its provisions on privacy and the right to be left alone, is a negative right to self-shelter. Together, these two rights form the basis of the fundamental right to housing held by all Alaskans. All that is left is for housing advocates in Alaska to use the tools at our disposal to recognize it.

¹¹³ Order and Preliminary Injunction, *Tyson v. San Bernardino*, No. EDCV 23-01539, 2024 U.S. Dist. LEXIS 138743, at *22 (C.D. Cal., Jan. 12, 2024) (citations omitted).

Appendix

A. Warren Taylor, *Proposal No. 17, Public Welfare* (Nov. 22, 1955) (on file with the Alaska Legislature).

Referred to Committee on
Preamble & Bill of Rights
November 22, 1955

CONSTITUTIONAL CONVENTION OF ALASKA

PROPOSAL NO. 17

INTRODUCED BY WARREN A. TAYLOR

PUBLIC WELFARE

1 Section 1. Public Education.

2 The Legislature of the State of Alaska shall provide for
3 the maintenance, operation and support of a system of free com-
4 mon schools, wherein all children of the State may be educated,
5 and of such other educational institutions, including institu-
6 tions of higher learning as may be deemed desirable.

7 Section 2. Public Health.

8 The protection and promotion of the health of the inhabit-
9 ants of the State are matters of public concern and provision
10 shall be made by the state and by such of its civil departments
11 and in such manner and by such means as the legislature shall
12 from time to time determine.

13 Section 3. Public Relief.

14 The maintenance and distribution, at reasonable rates,
15 or free of charge, of a sufficient supply of food, fuel, cloth-
16 ing and other common necessities of life, and the providing of
17 shelter, for the needy, are public functions, and the state and

PROPOSAL NO. 17

1 its civil divisions shall provide the same for their inhabitants
2 in such manner and by such means as may be prescribed by law.

3 Section 4. Inspection of Private Institutions and Agencies.

4 The State shall have the power to provide for the inspec-
5 tion by such state departments, offices or agencies, and in such
6 manner as the legislature may determine, of all private institu-
7 tions and agencies in the state, whether incorporated or not in-
8 corporated which are engaged in charitable, correctional, or
9 health activities.

10 Section 5. Public Housing.

11 The state may provide for low rent housing for persons of
12 low income as defined by law, or for the clearance, replanning,
13 reconstruction and rehabilitation of substandard or unsanitary
14 areas, or for both such purposes, and for recreational and other
15 facilities incidental and appurtenant thereto, in such manner,
16 by such means, and upon such terms and conditions as may be
17 prescribed elsewhere in this constitution, or as may be pre-
18 scribed by law.

19 Section 6. Conservation.

20 The conservation, development, and utilization of the
21 agricultural, mineral, forest, water and other natural resources
22 of the state are public functions, and the legislature shall
23 have the power to provide for the same and to enact legislation

1 necessary, requisite and expedient therefor.

2 Section 7. Scenic Beauty and Historical Association.

3 The natural beauty, historic associations, and the physical
4 good order of the state and its parts contribute to the general
5 welfare and shall be conserved and developed as a part of the
6 patrimony of the people, and to that end private property shall
7 be subject to reasonable regulation and control.

8 Section 8. General Powers of the State.

9 The enumeration in this article of specified functions
10 shall not be construed as a limitation upon the powers of the
11 state government. The state government shall have full power
12 to act for the government and good order of the state and for
13 the health, safety, and welfare of its citizens, by all nec-
14 essary and convenient means, subject to the limitations pre-
15 scribed in the Constitution of the United States.

- B. Victor Fischer, *Proposal No. 9, An Article on Education, Health and Welfare* (Nov. 21, 1995) (on file with the Alaska Legislature).

Referred to Committee on
Precedent and Bill of Rights
November 21, 1955

Constitutional Convention of Alaska

PROPOSAL NO. 9

Introduced by Victor Fischer

AN ARTICLE ON EDUCATION, HEALTH
AND WELFARE

RESOLVED, that the following be agreed upon
as part of the Alaska State Constitution.

- 1 1. Public Education. The State shall provide for a system
2 of public schools which shall be open to all children of the
3 State and may provide for other public educational institu-
4 tions. They shall be free from sectarian control.
- 5 2. Public Health. The State shall provide for the protection
6 and promotion of the public health.
- 7 3. Public Welfare. The State may provide assistance for
8 persons unable to maintain a standard of living compatible
9 with decency and health.
- 10 4. Slum Clearance. The State may provide for and assist in
11 slum clearance, development and rehabilitation of substandard
12 areas, and housing for persons of low income.
- 13 5. Public Sightliness and Good Order. The State may con-
14 serve and develop the natural beauty, objects and places
15 of historic or cultural interest, sightliness and physical
16 good order of the State, and for that purpose private pro-
17 perty shall be subject to regulation.

C. Committee on the Preamble & Bill of Rights, *Committee Proposal No. 7* (Dec. 15, 1955)
(excerpted) (on file with the Alaska Legislature).

Constitutional Convention
Committee Proposal/7
December 15, 1955

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 7

Introduced by the Committee on the
Preamble and Bill of Rights

RESOLVED: That the following be agreed upon as part of the
Alaska State Constitution.

PREAMBLE, Article on Declaration of Rights, and
Article on Health, Education and Welfare.

1 We, the people of the State of Alaska, grateful to Almighty
2 God for our civil and religious liberty, seeking His con-
3 tinued blessing upon our endeavors to secure and transmit
4 these liberties unimpaired to posterity, do ordain and estab-
5 lish this Constitution.

6 ARTICLE

7 DECLARATION OF RIGHTS

8 Rights of Section 1. This constitution is to promote the gen-
9 Man eral welfare of the people, and is dedicated to the
10 principle that all persons have a natural right to
11 life, liberty, the pursuit of happiness and the en-
12 joyment of the gains of their own industry; that all

Committee Proposal No. 7

ALASKA CONSTITUTIONAL CONVENTION

COMMITTEE PROPOSAL NO. 7

ARTICLE

HEALTH, EDUCATION AND WELFARE

1 Public
2 Educa-
3 tion

Section 1. The State shall establish and maintain by general law a system of public schools which shall be open to all children of the State and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private institution.

9 Public
10 Health

Section 2. The State shall provide for the promotion and protection of public health.

11 Public
12 Welfare

Section 3. The State may provide for public welfare for persons unable to maintain a standard of living compatible with health and human dignity.

14 Substand-
15 ard Areas
16 and Public
Housing

Section 4. The State may provide for and assist in the clearance, development and rehabilitation of substandard areas and for public housing.