

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE

March 22, 2001

3:37 p.m.

MEMBERS PRESENT

Senator Gene Therriault, Chair
Senator Randy Phillips, Vice Chair
Senator Bettye Davis

MEMBERS ABSENT

Senator Rick Halford
Senator Drue Pearce

COMMITTEE CALENDAR

SENATE BILL NO. 146

"An Act relating to the primary election; and providing for an effective date."

HEARD AND HELD

SENATE BILL NO. 127

"An Act providing for a blanket primary system, and permitting political parties to select their nominees by alternative means; and providing for an effective date."

HEARD AND HELD

SENATE CONCURRENT RESOLUTION NO. 8

Urging Alaska's political parties to use a State of Alaska freedom of choice blanket primary election.

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 146 - No previous action recorded.

SB 127 - No previous action recorded.

SCR 8 - No previous action recorded.

WITNESS REGISTER

Lt. Governor Fran Ulmer
P.O. Box 110015
Juneau, AK 99811-0015

POSITION STATEMENT: Introduced SB 146

Avrum Gross
Former Alaska Attorney General,
Primary Election Task Force Member
420 N. Franklin
Juneau, AK 99801
POSITION STATEMENT: Testified on SB 146

Jim Sykes
Mat-Su LIO
No address provided
POSITION STATEMENT: Testified on SB 146, SB 127 and SCR 8

Ken Clark
Global Election Systems
Dallas, TX
POSITION STATEMENT: Answered ballot related questions

Larry Dix
Global Election Systems
Dallas, TX
POSITION STATEMENT: Answered ballot related questions

Randy Ruedrich
Primary Election Task Force Member
55 W 13th Avenue
Anchorage, AK 9950
POSITION STATEMENT: Testified on SB 146 and SB 127

Christian Warren
104 Muldoon Rd #305
Anchorage, AK 99504
POSITION STATEMENT: Testified on SB 127, SB 146 and SCR 8

Al Anders
1112 W 26th Avenue #2
Anchorage, AK 99503
POSITION STATEMENT: Testified on SB 127, SB 146 and SCR 8

Mark Chryson
Chairman, Alaska Independent Party (AIP)
No address given
POSITION STATEMENT: Testified on SB 127

Senator Kim Elton
Alaska State Capitol Room 115
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of SB 127 & SCR 8

Jim Baldwin

Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Answered questions on SB 127

ACTION NARRATIVE

TAPE 01-15, SIDE A
Number 001

CHAIRMAN GENE THERRIAULT called the Senate State Affairs Committee meeting to order at 3:37 p.m. Present were Senators Davis, Phillips and Chairman Therriault. The State primary issue was on the committee schedule for initial discussion. Senator Kim Elton has introduced SCR 8 and SB 127 and Governor Knowles introduced SB 146. Discussion and testimony will be taken but no final action is intended at this meeting.

#SB 146

SB 146-MODIFIED BLANKET PRIMARY ELECTION

LT. GOVERNOR FRAN ULMER thanked the committee for hearing the legislation. She appreciated the opportunity to talk about the legislation because it is an issue that is important to the State and one that needs action this year.

She said she would discuss why this legislation is needed and a bit about the Task Force. Then she would ask Avrum Gross to talk more specifically about the recommendations and how the Task Force came to those recommendations.

During the summer of 2000, the United States Supreme Court ruled that states with blanket primary systems, such as Alaska, California and Washington, could only run their primaries as a blanket if all the parties agree. If any of the political parties in the state objects to individuals being able to vote across party lines then the state must respect those party rules and restrict access to the ballot for those party candidates. That was the situation the State found itself in last summer when the Republican Party requested that the State change its primary so as to only permit Republicans and voters who are non-partisan or Independent to have access to those candidates. Under emergency regulations that she promulgated, there was a Republican ballot and a blanket ballot. The blanket ballot was available to anyone while the Republican ballot was only available to Republicans, Independents, and non-partisans. Those emergency regulations were good until the election was finished and it is now necessary for the legislature

to decide how Alaskan primaries will be structured, consistent with the law as articulated by the Supreme Court.

She decided that it would be helpful for the legislature to have a Task Force discuss the options and make recommendations. She appointed a Task Force comprised of former lt. governors, two former attorneys general and a representative of the League of Women Voters. They had three meetings and arrived at a consensus recommendation that was then delivered to the Lt. Governor's office on March 12, 2001. Governor Knowles agreed to introduce the legislation at her request and that of the Task Force.

It is important to act on this issue during this legislative session because next year will be a big election year for Alaska due to redistricting and the potential that all office holders, except the Senator Murkowski race, will be on the ballot. Most probably, there will be initiatives on the ballot as well. The sooner decisions are made about how the primary system will operate, the election equipment is changed or reprogrammed and notice is given to the public, the parties and the candidates, the better. The Task Force discussed the importance of action this session so the parties can be deciding what their rules are going to be this summer and they can give notice to the Division of Elections by the fall so the mechanical changes can be made so the election can be conducted openly, fairly and with the least amount of surprise to everyone.

CHAIRMAN THERRIAULT said that he flew to Anchorage and sat in on the last Task Force meeting but not during the statewide teleconference or previous meetings.

A number of Senate Majority Caucus members have asked for a clear discussion on whether the passage of legislation is absolutely required or whether there are regulations that could be used to go ahead with the next elections without the passage of new legislation.

LT. GOVERNOR ULMER said that was a good question but not an easy one to answer. When she noticed the public last summer after the Supreme Court ruling, and in light of the fact that there really wasn't enough time for a special session, the parties and interested individuals who follow elections said, "Okay, it's all right if you do it by emergency regulations." However, there were a few individuals representing two parties that indicated that they didn't feel she had enough statutory authority to promulgate those regulations and the only reason they didn't sue her was that they recognized the practical constraints associated with the lateness of the Supreme Court decision and the inability to have a special

session. During the second meeting of the Task Force, it became apparent that there are people that will probably sue her if she conducts an election and uses regulation without statutory changes.

Although not specifically discussed at the Task Force meetings, the minimalist approach could remove the provisions from the statute that are inconsistent with the law and give the Lt. Governor more authority to structure a ballot consistent with party rules. The Department of Law would have to be consulted to determine which specific statutes would have to be removed to do the minimum necessary to avoid a lawsuit or the uncertainty associated with a possible lawsuit.

CHAIRMAN THERRIault asked whether there was a challenge to the emergency regulations that was ruled on by the courts.

LT. GOVERNOR ULMER responded that there was and Mr. Gross would speak to the challenge.

AVRUM GROSS, former attorney general and Primary Election Task Force Head, read the following paragraph from the Supreme Court decision which upheld the emergency regulations: "By acknowledging that the validity of the challenged regulations turned on the unconstitutionality of present law, 'I'm paraphrasing,' we implicitly determine that the division's power to abrogate a clearly unconstitutional statute triggered it's authority to regulate, on a temporary basis, in an emergent situation like the situation we face here 'This is the Division of Elections we're talking about here.' the U.S. Supreme Court issued Jones less than two months before Alaska's primary scheduled date. The Alaska Legislature is out of session and will not reconvene until January 2001. Given these circumstances, we conclude that the division has authority to promulgate emergency regulations to implement a primary election that complies with the constitutional mandates of the Jones' case. We find the division's power to take the temporary action needed to ensure a timely and constitutional primary is solidly rooted in the principle of necessity and in the division's statutory power of supervision over elections."

From the court's decision, they recognize the division's authority to issue emergency regulations. If the legislature fails to adopt any legislation, there are two options. First, the division can try to adopt permanent regulations based upon its general supervision over elections. This will, unquestionably, be challenged. The second option is that the court will make the decision. He reminded committee members that the court made reapportionment decisions when the legislature failed to act so there's no reason to believe they wouldn't do the same here. Although there are no guarantees,

the obvious intent of the court was to have the legislature act on the issue.

CHAIRMAN THERRIAULT commented that the wording indicates that the court expects the legislature to make the policy call for how the regulation should be drafted. However, if no legislation is passed and another election is to be held, the Lt. Governor would not be barred from "putting together something" so the election could run in an orderly fashion.

MR. GROSS said that if the legislature doesn't make the decision, it will be allowing the primary election system to go to the vagaries of the court system. They will either approve the decisions of the Division of Elections or they'll do it themselves. One way or another, they will "have the call on it, whereas if you do it, you'll have the call on it."

CHAIRMAN THERRIAULT asked Mr. Gross to explain the decisions of the Task Force.

MR. GROSS said that the Task Force was unanimous in its decision and he believes this was possible because they began with the basic principle that they wanted to keep the system as close to the existing system as possible and still comply with the U.S. Supreme Court decision. They knew that all parts of the system wouldn't work but they wanted to preserve those that would. Therefore, there was no wholesale revision of the primary election laws.

CHAIRMAN THERRIAULT asked Mr. Gross to talk about the Task Force discussion regarding the Supreme Court ruling and the fact that it spoke to how you operate a primary.

MR. GROSS explained that the U.S. Supreme Court in Jones said "states can not compel parties to participate in blanket primaries where people they don't want to select their candidates get to select their candidates." In other words, if Democrats want their candidates to be nominated only by registered Democrats they have the right to do that. The same applies to Republicans; it's a constitutional right under the right of association.

CHAIRMAN THERRIAULT said that the point that needs to be emphasized is that you can't force a party to participate in a blanket primary but you can make the public policy call that you will have primaries.

MR. GROSS said that's correct, the Supreme Court has ruled that states do have the legal right to insist that parties nominate their candidates by means of a primary but the Jones case didn't

direct itself to that issue.

In Alaska, parties do nominate their candidates by means of a primary and the Task Force didn't want to change that. Whether you wanted to try to change that and nominate candidates by conventions rather than primaries is another issue. It's not unconstitutional to do that but the State has the right to disallow it. In Alaska, political parties have always nominated their candidates in a public process.

The Task Force wanted to retain the blanket primary to the greatest extent possible because it was the legislative choice in the past. They started with the assumption that if parties had no restrictions there would be a blanket primary.

The second step was to incorporate the necessary element of the U.S. Supreme Court decision in Jones by saying that any party wanting to limit those persons who may vote for its candidates in a primary election may do so and the statute must reflect that fact.

In explanation, he said to consider candidates for all offices from both parties. If the Republicans notify the lt. governor that only Republicans may participate in their primary, then Republicans would get a blanket primary ballot listing all the candidates. Every other voter would get a ballot listing all candidates except Republicans.

The blanket primary is retained but it's not a blanket primary that includes Republicans because Republicans only wanted Republicans to be able to vote for them. However, this doesn't mean that Republicans are restricted from voting for other candidates if they want to do so. It's one thing to say that a party may choose who may select their candidates but it's a different matter for the party to say that if you want to choose our candidate you have no right to choose anybody else's candidate.

In retaining the blanket primary and incorporating the Jones decision, several issues were raised and resolved. The first asked when parties wanting to restrict the primary should notify the lt. governor of their decision. The Task Force consulted the Division of Elections and the political parties before making the determination that September 1 of the previous year would be a reasonable period for notification.

The second issue was that if a party wants to limit access to its ballot based upon an individual's party registration, when does the registration becomes effective? During the last election, people were allowed to change their party affiliation on the day of the

election. This wasn't satisfactory for two reasons. For right of association to work well, there should be some mechanism to stop numerous party crossovers on election day. There are Supreme Court cases, which have approved periods up to ten months before a registered individual may participate in a particular primary. The Task Force decided that 30 days before a primary was a more appropriate time frame to fix party affiliation. That period also coincides with the last day you may register to vote in an election.

Finally, they addressed what the ballot would look like. They concluded that constructing a ballot form wasn't possible due to the many variables. With this in mind, they started with the blanket and then said that the lt. governor will prepare appropriate ballots reflecting the parties' wish as of September 1 of the preceding year. The ballots will then be available 30 days in advance of the election.

Of course there are other options that could be tried; this is just what the Task Force decided upon in an effort to vary from existing law as little as possible while reflecting the theory of the U.S. Supreme Court decision.

CHAIRMAN THERRIAULT asked whether a party could select a time greater than 30 days if it was in their bylaws.

MR. GROSS said that although the State has the right to set reasonable standards, that point hasn't been specifically addressed by the courts.

CHAIRMAN THERRIAULT said the Task Force also dealt with the issue of having a blanket party and allowing parties to opt for something else if they were willing to pay for it.

MR. GROSS said he would have Mr. Baldwin address specific cases dealing with this issue but that the general constitutional theory, which bars that kind of system, is as follows. The Supreme Court has decided that parties have the associational right to decide who will participate in their primaries. The Task Force didn't feel it was sound theory for the legislature to impose a penalty for the utilization of a constitutional right and having to pay for a change from the blanket party is indeed seen as a penalty.

SENATOR PHILLIPS asked whether a primary was necessary or could there be a general election with a runoff three weeks later.

MR. GROSS said yes, you could have a non-partisan primary but using that system you don't necessarily get the top two candidates. When

there are lots of candidates in a non-partisan primary, it's not unusual for a candidate from a tightly knit extremist group to get into the runoff and still have garnered less than 20 percent of the popular vote. He used Louisiana's election of David Duke as an example.

SENATOR PHILLIPS asked about Nebraska, which is non-partisan and supposedly has no primary.

MR. GROSS didn't know for sure but he thought that Nebraska has a primary for governor and lt. governor.

He asked whether they were non-partisan or unicameral.

SENATOR PHILLIPS said they were unicameral and non-partisan.

MR. GROSS questioned that there are no Democrats or Republicans because he remembers a Democratic or Republican attorney general from Nebraska when he was the Alaska Attorney General.

SENATOR PHILLIPS said he was talking about the legislature.

CHAIRMAN THERRIault said that to the credit of the Task Force, they decided that there were many options but that is a public policy call that the legislature should make and they tried to restrict themselves to suggestions that were as close as possible to the current system and still comply with the Supreme Court decision. However, it is a legislative policy call to consider the "full gambit" of options.

SENATOR PHILLIPS said that eliminating the primary would be in compliance with the Supreme Court ruling. "You have an election and have a bunch of guys run and may the two best people win. If the top two don't get a 50 percent plus one vote then you have a runoff."

MR. GROSS said that, to his knowledge, there is only one state doing that and the reviews aren't very good.

SENATOR PHILLIPS asked Mr. Gross to check on the Nebraska system for him.

MR. GROSS said he would check. He then restated the fact that the Task Force intended to make few changes and to keep the process as non-contentious as possible.

Number 1882

SENATOR PHILLIPS commented that during a primary several elections ago, there were many problems in his district because "they wanted freedom to express their will to pick whoever they want when they want." This made him think that it would be a good idea to skip the primary election." If the person doesn't get 50 percent plus one then have a runoff." In addition, he has philosophical objections.

MR. GROSS said that's why the Task Force stayed with the blanket system.

CHAIRMAN THERRIAULT pointed out that any change from status quo brings discontent. Seemingly forgotten is the fact that primaries are for the purpose of choosing party standard bearers by members of a particular party and whoever they want to participate in the process.

MR. GROSS first addressed Senator Phillips' statements and said he's correct, all the polls indicate that everyone wants the right to vote on all candidates but as Senator Therriault points out, that denies freedom of association to the extent that a party wants to limit itself. This has a self-controlling effect. The more restrictions the party places on its membership in order to participate in a primary, the more pure its membership will be. However, that party won't win in the general election. Parties must make compromises in order to get a candidate who represents the party views and is also able to win support from the majority.

SENATOR PHILLIPS said that, "The perfect ruins the good."

SENATOR DAVIS said that the committee should consider that there are individuals that do not want to declare any party affiliation and candidates must rely on those voters because there are not enough Republicans or Democrats to win any election alone.

Although the Task Force determined that the State should pay for primaries that limit participation because it is a constitutional right, it is her understanding that Washington State charges for such primaries.

MR. GROSS said that some disagree with Task Force interpretation but that is their view.

SENATOR PHILLIPS asked whether that was argued in the Supreme Court.

MR. GROSS said no, there are circuit court cases that are against it but no Supreme Court case. The general doctrine says the state cannot burden the exercise of a constitutional right.

CHAIRMAN THERRIAULT thanked Mr. Gross for his time and for serving on the Task Force.

MR. JIM SYKES, testified via teleconference and said that he had successfully challenged ballot access law in 1990 and in 1991 he presented the idea of instant runoff voting to the House State Affairs Committee but no bill resulted. Legislation for instant runoff voting was introduced in the last legislature but did not pass.

Senator Phillips is right to raise the idea of eliminating primaries and there is an alternative to having a runoff. "If you would choose to have instant runoff voting, whether you had four candidates runoff or thirty, people would be able to select candidates by preference in the order of the number. The State has already produced sample ballots for just such an election and it's always billed the majority of 50 percent plus one without the need for a runoff election. This is election reform that actually recognizes the multi-party aspect of Alaska." He urges this consideration rather than the current system that isn't compliant with the Supreme Court decision.

Although he has enormous respect for members of the Task Force, it troubles him that Independent voters will be given unequal primary access if parties are able to limit access to their primary ballots. The modifications recommended by the Task Force will "inevitably realize inequalities that we now do not have." The party that he belongs to has opted to participate in the open blanket primary because no other legal options are open to them. There is no legal option for a mail in ballot or to choose a party convention and he believes those options should be available to parties.

On page 2, lines 22-26, deals with providing separate ballots for parties limiting access to their primaries. This could become very expensive and confusing and therefore would provide greater opportunity for errors.

He likes parts of SB 127 because it allows parties options but restricts write in candidates those whose names will not appear on the general election ballot. It's unclear to him whether petition candidates are discriminated against for receiving campaign contributions. In addition, it's unclear whether a mail in ballot would be accepted.

Perhaps the primary election process should be eliminated. Alaska is unique in that a majority of its voters are not registered to

any political party. For this reason, instant runoff voting is a good idea.

Side B

On page 4, SB 127 addresses filling a vacancy by party petition. This allows questionable party switching such as in the 1990 election, which is another argument for not having a primary.

He challenged lines 10-12 on page 8 of SB 127, which says that candidates who file nominating petitions without designating a political group name will all be treated as candidates of the same political group. It is his feeling that this would not withstand a constitutional challenge.

He urged the committee "to open your minds and consider the possibilities." The system does not need to stay the way it is; the prime consideration is that the voters are treated with equality, which is not the case with the modified blanket primary.

CHAIRMAN THERRIAULT thanked Mr. Sykes for his participation.

He recognized Ken Clark who was on an off net site and asked him to comment on the technical possibility and expense of modifying the optical scanning systems the State of Alaska uses to deal with multiple ballots without actually having to print multiple separate ballots.

KEN CLARK, Software Development Manager with Global Elections Systems of Dallas, Texas, said his company is the primary vendor for election equipment in the State of Alaska. All their systems are software based. The voting systems have firmware or ROM chips in them that drive the control of the system. The systems scan the ballots and then the software takes over. Next there is a centralized GEM system that tallies the votes that are sent in from each of the tabulation units.

The software can be modified to suit any particular need. If the State decides to go to a multi ballot system, the software could accommodate that or a selection race if that was desired. Although the systems and requirements are quite different, his company runs the same software from Florida to Nome. The State needs to define its needs and his company will make it work.

CHAIRMAN THERRIAULT asked about the time and expense involved and whether there would be much involved in making changes from election to election if parties changed their participation requirements.

MR. CLARK said it depends on whether the changes are structural or not. If only parameters are changing then that would require no reprogramming. If it is not possible to define what will change from year to year then it would be an ongoing expense. He asked that his colleague respond as well.

LARRY DIX, Vice-President of Operations for Global Elections Systems, said that the primary concern where software changes are concerned is that once the State identifies the "rules" they can begin to make changes. As far as cost is concerned, the "rules" governing the software must be identified before a fiscal analysis can be given.

LT. GOVERNOR ULMER thought it was important to address ballot confusion in light of what happened in Florida during the last election. Chairman Therriault asked about a single ballot that would have all parties on it and then perhaps something to identify the party affiliation at the top of that ballot. She asked for either Mr. Clark or Mr. Dix to talk about how that ballot would be counted or not counted. With the Alaskan Acuvote machine, if you vote for two candidates in a single race your ballot is rejected as an over count. The ballot is immediately rejected and the election worker will help tear up that ballot and give the voter a new ballot to vote.

As an example of the State going with a single ballot and restricting who can vote for which parties candidates, she said to suppose that Chairman Therriault went to the polling station. He is a Republican so the top of his ballot would be punched in the Republican ballot hole. If he entered the polling booth and voted for a party candidate that was not permitted under the party rules, then the ballot would come back out at him just as an over vote ballot does now. He would have to tear up that ballot and vote under the appropriate rules of only voting for the parties that he is permitted to vote for.

She asked for clarification that this is how the ballots would be programmed if the parties restricted who could vote for their party candidates even though they are all on the same ballot.

MR. DIX said that the statement is correct so long as the software is programmed to reject the ballot the same as an over vote situation.

LT. GOVERNOR ULMER said she is concerned about voters being misled into thinking that their vote counted if their ballot isn't immediately rejected if they vote for a candidate that they are not

permitted to vote for. It's very different for the Acuvote machine to reject the vote by spitting the ballot back at the voter thus indicating a problem and the Acuvote accepting the ballot but not counting it. The voter could readily be misled into thinking their vote counted in the later situation.

MR. DIX said that is a valid concern because if the Acuvote was programmed to accept and simply not count a ballot that was voted improperly, then the voter would have no indication that their vote did not count.

LT. GOVERNOR ULMER wanted that on the record because she believes there is a misconception about how the technology, the single ballot, voter education, party restrictions and the rules that could potentially change at every primary could lead to the kind of voter outrage as that experienced in Florida when people learned, after the fact, that their vote did not count. It's not only a problem of voters being misled, but also a problem for election workers because they can't be asked to be in the voter education business. She urged caution, and said that perhaps it would be less confusing to have seven ballots than having just one ballot and the potential that the vote won't be counted.

CHAIRMAN THERRIAULT asked whether technology allows for the use of a colored marker that the scanner won't pick up. If so, then the election worker could circle the block of candidates that the voter was permitted to vote for and not have to worry about the scanner trying to read the colored markings.

MR. CLARK said you wouldn't want to rely on color for that reason or build a system around that tendency. Although the colors blue and black are read best, it would be difficult to work in the other direction, and try to find a color that was invisible to the scanner.

CHAIRMAN THERRIAULT wasn't necessarily thinking about filling in the ovals but of putting a square around the block of candidates that the voter was permitted to vote for.

MR. CLARK said that the active area of the ballot is the only area scanned but you couldn't depend on a color not being picked up.

CHAIRMAN THERRIAULT asked whether a fold through an oval on a ballot could trigger a positive vote when it was unintended.

MR. CLARK said that their system scans the ballot and looks for a certain percentage of color and, as in any scanning system, there is the possibility of a false reading. However, their system has

sophisticated leading edge optical technology for filtering those types of problems.

Number 1616

CHAIRMAN THERRIAULT thanked Mr. Clark and Mr. Dix for their participation.

RANDY RUEDRICH, Task Force participant for the Republican Party, agreed that the 30-day requirement for party participation is a proper consideration. He also agreed that the party rule notification proposal is reasonable and it is in the best interest of the State, the parties and the candidates to have the playing field defined well in advance of the election.

He disagreed with the proposal in Section 15.25.010 for the multiple ballot process and thoroughly appreciated the previous discussion. The technology available today will help the State "get to a good election process for our primary candidate selection."

CHAIRMAN THERRIAULT wanted to clarify that the September 1st date is acceptable. He thought he remembered the Task Force discussing a number of different dates.

MR. RUEDRICH said that somewhere between September 1 and November 1 is reasonable as far as he is concerned. If a date later than November 1st is selected for starting the rule making process, then undue pressure is placed on the candidates and on the Division of Elections.

CHAIRMAN THERRIAULT asked whether he was on-line for the discussion about the need for the legislature to spell out the framework and if so, what his comments are.

MR. RUEDRICH doesn't feel there's any overwhelming need to change the statutes. The parties could work with the Lt. Governor's office to implement a viable process that is consistent with the intent of the State and the Supreme Court.

SENATOR PHILLIPS asked whether he heard his comments on skipping the primary and going directly to the general election.

MR. RUEDRICH heard the discussion and he agrees with the former attorney general that, "we're far better served to have a party process to select candidates as we have today."

SENATOR PHILLIPS said that is from a party point of view.

MR. RUEDRICH disagreed saying that it was in the interests of the State. The best candidates are selected using the party process.

SENATOR PHILLIPS said, his constituents "hate this thing, they absolutely hate it and this is coming from not only non-partisans, Democrats, but as well as Republicans. Maybe I have a different district but this is one thing that really, talk about venting, they vented on the Republican Party of this by limiting the ability of Alaskan voter to have a say, I'm not going to say a right, but the ability to pick the candidate."

MR. RUEDRICH said what they are proposing, and the rule since 1992, is not at all what has been done either is 1992, 1994 or 2000 election. The rule as it was implemented, with the technology of the day in 1992, required a voter to select a Republican ballot or the other ballot. It took no notice of Section 3 of the rules, which allows all voters to vote for any candidate on the ballot without restriction.

Using the technology available today, voters should be allowed to participate in a primary process as the rule envisions. This is much broader and would allow a non-partisan or undeclared or Republican to vote for another primary candidate if they so desired.

CHAIRMAN THERRIAULT cautioned that it is necessary to take turns asking questions and waiting for the answers to be given so that the written record is clear.

SENATOR PHILLIPS said that he respects Mr. Ruedrich's views but, "this gets his back side up because I have a constituency that I, at least try to represent their point of view, regardless of party."

CHAIRMAN THERRIAULT said Christian Warren and Al Anders would be heard next.

CHRISTIAN WARREN, Alaska Libertarian Party member, testified that he wouldn't be able to improve on anything that Jim Sykes said regarding SB 127 and SB 146 but he does want to comment on several items former attorney general, Avrum Gross, discussed.

First, there is time to evaluate alternative systems from those presently used. He questions the premise that the current system is optimal. He believes that some Task Force proposals are cosmetic alterations that mask an inherent defect in the system, as it now exists. He is pleased that the matter is before the legislature where there is a deliberative process being undertaken. It is unacceptable for this decision to be made by either executive or judicial fiat. Clearly, the legislature has plenary power in this area and is obliged to exercise it.

Next he argued that the State should not be driven by a "technological imperative." The Alaska Libertarian Party would be

happy with a convention system as proposed by Mr. Sykes. "The objection to this seems to be that it activates a right that you should not be penalized for so doing. Clearly, if a man owns a house, he's expected to pay property taxes on it. If a man wishes to exercise his God given and constitutionally recognized rights to keep and bear arms, even in a fairly liberal state you're expected to pay a concealed hand gun permit fee to do so. These are reasonable restrictions that are easily met and therefore not penalties imposed but the cost of enjoying a particular advantage over an alternative set of circumstances."

Number 1135

AL ANDERS, Alaska Libertarian Party member, agrees with the proposal offered by Mr. Sykes. Election workers would have to be knowledgeable of all rules and all parties if the voting machines was programmed to reject ballots and they were expected to help the voter to recast their ballot. If there are seven parties and seven different sets of rules, he has trouble believing that all election workers will be fully informed.

MARK CHRYSO, Chairman of the Alaska Independent Party, testified that his party is the third largest third party in any of the 50 states. He said that Alaska is unique with its six political parties.

The Alaska Independence Party doesn't support SCR 8 in any way.

SB 127 has many features that AIP likes. It empowers the party to ensure that only party members are involved in the selection of their own candidates. Also, it allows the AIP to enforce party bylaws to ensure that the people who signed on to run as candidates are actually AIP members who have signed the political party platform. This is the only way they feel that their party ideals are accurately represented.

AIP has a by-law, which states that only approved members of the Alaska Independence Party may run for political office. He doesn't believe that Lt. Governor Ulmer has contacted the AIP to check to see that candidates who filed under AIP are actually approved. He feels that the Division of Elections doesn't uniformly enforce all the AIP bylaws.

They have no real problem with the elective primary so long as they are able to veto those individuals running under their party banner who don't support their ideals and goals.

SB 146 will cause "more confusion than the Republicans ever dreamed of causing from 1992 on." He was on the ballot for the closed primary in 1992. There were many non-partisan and Independent voters who wanted to vote for him but were unable to do so because

they selected the Republican primary ballot.

He reminded committee members that instant runoff voting is a viable alternative and it will be on the ballot in 2002 "whether you like it or not."

It is the legislature's responsibility to act and this shouldn't be passed along as a political hot potato.

Vogler v Alaska empowered third parties to get on the primary ballot. He doesn't think that Mr. Vogler envisioned the day when what is experienced today is actually the case. The Independent Party is in the primary process simply because they have no legal alternative but to participate in the primary process. If they could nominate candidates by convention they would do so.

In closing, he charged that the Task Force was composed of no third party members, no moderate Republican, no Libertarian, no AIP and no Green Party member. It was made up of Republicans and Democrats alone and in the State of Alaska these two parties comprise not more than 40 percent of the registered voters combined.

CHAIRMAN THERRIAULT thanked Mr. Chryson for his testimony.

SB 146 was held in committee.

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Number 567

SB 127

SB 127-OPTIONAL BLANKET PRIMARY

CHAIRMAN THERRIAULT asked Senator Elton to respond to comments made about his bill during testimony for SB 146. Individuals testifying via teleconference on SB 146 also included remarks on SB 127 and SCR 8. In particular he asked whether Senator Elton wanted to speak to the issue of parties picking up the cost of special primaries. He also planned to have Assistant Attorney General Baldwin address the issue.

SENATOR ELTON, Senator from District B, wanted to talk about general principles, move into the specifics of SB 127 and finally anticipate a question that the committee probably has.

- First, it is important to do no damage to minor parties. There needs to be a system that doesn't encourage people to abandon a party.
- There is a need to avoid chaos, as was the case in Florida.

- Non-partisan voters are the majority of voters in the State of Alaska and need to be protected.
- Realize that there is no finality. Both bill provide that primary elections may be run differently than the previous primary.

The challenge facing the legislature is huge. He can think of no issue that so combines partisan issues with policy issues. Each legislator will be looking at the issue from their particular viewpoint be it partisan or from an ambition point. Each elected official will ask which method works to his or her best benefit. Is a convention better for me than a caucus or an open, closed, or blanket primary? He urged everyone to heed the words of the Lt. Governor and bring finality to this issue during this session. Otherwise the Division of Elections and potential candidates are done a great disservice. They need to know what the rules will be before they are able to determine whether they want to participate in the process.

Both SB 146 and SB 127 began with the same general premise that it is important to preserve the present system to the greatest extent possible. Their ideas diverged at some point and that anticipates a question committee members probably have about the constitutionality and freedom of association. However, the impulse for both is to try and keep the system close to the current system and comply with the Supreme Court decision. This is what most Alaskans expect.

SB 127 says that the State will conduct a primary election and it will be a blanket primary. Then it provides that if a party chooses not to participate in that primary, they may opt out. This gets around the Supreme Court finding that the State cannot compel a party to participate in a process that they don't want to participate in. Then, it prohibits voters from a party that has withdrawn from the primary system from participating in the primary because you don't want to give them the opportunity to select party candidates twice.

Most of the remaining bill provisions are quite technical and he would address them if there were questions. He did note that some of the technical issues were raised by Mr. Sykes' testimony. For example, he is concerned about the withdrawal provisions and finding ourselves in the same situation as in 1990. His bill doesn't change that provision but the committee should consider it.

The question of whether constitutional problems are being created by associating a cost to a decision by a party to not participate in a blanket primary is a spectrum issue. Clearly, wherever that cost lines up on the spectrum may influence the decision the court makes. It isn't a new issue; Arizona now has a primary system where

Democratic Party rules provide a different date for selecting their presidential candidate. The courts have said that the party may opt out but they must pay for the alternate selection process. This is a system that was compelled by court decision. He cautioned against throwing out other alternatives because it has been suggested that we're abridging the constitution by associating a cost with a party decision.

CHAIRMAN THERRIAULT asked if the Arizona case didn't say, "We will pay for it along with everybody else if you opt. Otherwise you can choose to pay for your primary." This isn't the same as what Senator Elton is suggesting. The difference is that they aren't trying to direct the way the party conducts the primary, just the date.

Tape 2

SENATOR ELTON read the following: "Because the state conducts its election prior to the date allowed under the bylaws of the Democratic Party, Arizona allows political parties to opt out of participation." This is because their presidential primary statutes don't comport with Democratic Party bylaws. "Parties that do opt out of the state run election, bear the cost of conducting their own presidential preference election."

He doesn't see the distinction between what they have done and what SB 127 suggests which is that the State of Alaska will provide a blanket primary. If party bylaws don't comport with State statutes then the parties may opt out. SB 127 does not suggest that parties pay for the alternative selection process but that is probably what ends up happening, which is the same as in Arizona. Again, the Arizona model is a model suggested by the courts.

CHAIRMAN THERRIAULT asked for questions from the committee members. There were none.

He asked Mr. Baldwin to come forward.

JIM BALDWIN, Assistant Attorney General, said he isn't familiar with the Arizona case but can speak to the effect of having a political party pay for holding a different primary, it's electoral process of choice.

The U.S. Supreme Court ruled on a Texas statute that said that parties who wanted to participate in the state primary system had to pay for the portion of the cost related to their participation. It was a graduated fee charged for various offices with the charges for statewide offices being less than for local offices. In that instance, the court applied an equal protection analysis. This is common in this type of election case, which is a third party charging that they are being treated differently. Looking at

different state precedents, it's difficult to predict an outcome. This is because the courts will look at the specific circumstances of Alaska and determine whether a good case may be made for the direction that was chosen. If the court is employing a strict standard, is there some compelling reason for the system? Or, will the basis be more rational and ask whether there is some good reason why the State has done what it has done? It's difficult to predict whether you'll be faced with a strict compelling interest standard or a more rational basis.

In the area of First Amendment rights, and a system that adversely affects those rights, the State has been faced with the compelling interest standard. That standard was applied in the Jones case.

In other areas, the State has been confronted with the rational basis standard. For example, states have not been held to a compelling interest standard when justifying the decision to nominate by election rather than by convention. In the case where a statute says that the norm is the blanket primary, you must leave the State system and do it on your own if you want to do something other than the blanket primary. "This presents the problem of the State having to justify what it has done by whatever interest it has in promoting the blanket primary. We all know where that ended up. It was not a good result for the State of California and hence, applicable for us. So we start out on the lower end of that burden and I tend to think that we will be, more than likely, confronting a compelling interest standard more than a rational basis standard. We could argue Arizona, California or Texas but I think we'll be facing a compelling interest standard if this is litigated. We'd have to prepare for that and record would have to be made in these committees that are hearing this bill as to what particularly is our interest in maintaining the system that we maintain if we're going to require that parties choose, and have there be some consequences to that choice, without the State-there being an unequal benefit or an unequal State benefit being provided there. I'm not saying it absolutely can't be done; appropriate case would have to be made for it though."

Number 547

CHAIRMAN THERRIAULT said that he hasn't had the opportunity to read the Arizona case and he and his staff intend to track down the actual case documents mentioned. However, it seems that the decision to participate on the day that the state selects for its primary or the decision to not participate on that day and bear the expense of selecting an alternative date is different than being required to bear the expense because the party wanted to exercise its right to the methodology.

ASSISTANT ATTORNEY GENERAL BALDWIN agreed but said that there is

also "a big difference between a case that deals with the presidential primary and a case that deals with a state primary for a state office. The cases have been different in how they deal with primaries for national office. Different rights are accorded to those kinds of electoral processes as opposed to primaries that deal with local state office. So I would read that case carefully with that in mind."

CHAIRMAN THERRIAULT said that if a party chooses to exercise its constitutional right they shouldn't be preempted from doing so because they might not have the ability to pay for it.

ASSISTANT ATTORNEY GENERAL BALDWIN said that the Texas case dealt with candidates and their party who had to help defray the cost of the election. In that instance, the court found that there wasn't sufficient justification to sustain that burden on the exercise of the right to run for office or put forward candidates. He believes that's what Chairman Therriault is speaking to and said the case could be made but the burden for that is heavy along with the fact that the federal court might hold the State to the compelling interest standard.

In the Alaska Constitution, there is a provision in the title dealing with elections that says that the legislature shall provide the method of voting. It doesn't say that a primary election is necessary but if there is voting going on then it's arguable that the legislature shall regulate how that voting takes place. Therefore, if the legislature says there must be elections by primaries then there is a question of whether they must say how the voting is conducted.

CHAIRMAN THERRIAULT said that the courts can not compel legislative action due to separation of powers so potentially the court and the administration would work together to determine what the legislature intended or might do.

ASSISTANT ATTORNEY GENERAL BALDWIN said the legislature would be facing a declaration that they should do something and it would be up to them to do it.

CHAIRMAN THERRIAULT asked whether there were any questions for Mr. Baldwin. There were none.

He said the committee would be taking the matter under advisement and tracking down information on the court cases mentioned. SB 127 was held in committee.

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#SCR 8

SCR 8-POLITICAL PARTIES BLANKET PRIMARY ELECTIONS

SCR 8 was discussed in general terms during the hearings of SB 146 and SB 127. The concurrent resolution was heard and held.
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The meeting was adjourned at 5:17 p.m.