

SJR

15

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version : CS SJR 15 (JUD)  
Publish Date : 5/12/87

Revision Date: \_\_\_\_\_  
Title: Proposing an amendment to  
the St. Constitution - rt. to bear  
Sponsor: Rodev, Szymanski, et al. arms  
Requestor: \_\_\_\_\_

Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

\_\_\_\_\_

Prepared by: Senator Jay Kerttula Phone: \_\_\_\_\_  
Division: Chair, Senate Judiciary Date: 5/12/87

Approved by Commissioner:  Date: 5/12/87  
Agency: \_\_\_\_\_

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE JOINT RESOLUTION NO. 15 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 the right of a person to keep and bear  
8 arms.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
11 is amended to read:

12 SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED  
13 MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of  
14 the people to keep and bear arms shall not be infringed.

15 \* Sec. 2. LEGISLATIVE INTENT. (a) In proposing the amendment to art.  
16 1, sec. 19, Constitution of the State of Alaska, in sec. 1 of this resolu-  
17 tion, the legislature intends only that the proposed amendment clarify the  
18 Alaska Constitution by providing that the right to keep and bear arms is an  
19 individual right as well as a collective right. The amendment, if adopted,  
20 should not be construed to preclude the regulation of the manner in which  
21 arms may be borne, carried, or used. For example, the adoption of this  
22 amendment should not be interpreted to repeal or to render unconstitutional  
23 statutes or municipal ordinances regarding assault, misconduct involving  
24 weapons, or other similar offenses.

25 (b) In the preparation of its neutral summary under AS 15.58.-  
26 020(6)(C), the Legislative Affairs Agency shall consider the statement of  
27 legislative intent contained in (a) of this section.

28 \* Sec. 3. The amendment proposed by this resolution shall be placed  
29 before the voters of the state at the next general election in conformity

1 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
2 tion laws of the state.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1987

SUBJECT: Prohibiting possession of a certain knife  
(Work Order No. 5-0792)

TO: Senator Jalmar Kerttula

FROM: Michael F. Ford *m.f.*  
Legislative Counsel

The attached work draft banning a certain knife raises a constitutional issue. Under article I, section 19, of the Alaska Constitution the right of a person to keep and bear arms is protected. The issue raised is, does this type of knife fall within the protection of the constitutional right to keep and bear arms? In an Oregon case, State v. Delgado, 692 P.2d 610 (Or. 1984), the court held that possession of a switchblade knife was protected under the Oregon Constitution's right to bear arms. The court construed "arms" to include weapons commonly used by individuals for personal defense. Whether a knife with a blade that can be hurled would also be constitutionally protected has not, to my knowledge, been answered by a court. You should note that the possession of a switchblade in this state is illegal under AS 11.61.200(e).

MFF:mkr  
m9/088

Enclosure

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 463 3806

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 30, 1986

SUBJECT: Right of a citizen to keep and bear arms  
[CSSJR 39(Judiciary) am]

TO: Representative M. Mike Miller  
Chair, House Judiciary Committee

FROM: Richard A. Bradley  
Legislative Counsel

Hayden Kaden has asked that I comment on three issues relating to this resolution proposing a constitutional amendment.

The amendment proposed under CSSJR 39(Judiciary) am would amend art. I, sec. 19 of the Alaska Constitution, "Right to Bear Arms". The resolution contains a statement of "Legislative Intent".

It may be desirable to summarize each to set the stage for the comments that follow.

Section 1 of CSSJR 39(Judiciary) am amends as follows:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of each citizen of the state [THE PEOPLE] to keep and bear arms for lawful defense of self, family, property, and the state and for lawful hunting, recreation, and other lawful purposes, shall not be infringed by the state or by a borough or city of the state.

Sec. 2(a) of CSSJR 39(Judiciary) am states legislative intent: "the legislature intends only that the amendment . . . [provide] that the right to keep and bear arms is an individual rather than a collective right." And the "amendment, if adopted, should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used." [It] "should not be used to repeal or to

render unconstitutional existing statutes . . . or existing municipal ordinances."

I. What is the effect of an expression of legislative intent in a constitutional amendment?

I believe that the courts will give deference to legislative intent. There is an existing history of them doing that. In Alaska Public Employees Ass'n v. State, 525 P.2d 12, 17 - 18 and in Seward Marine Services, Inc. v. Anderson, 643 P.2d 493, the Alaska Supreme Court considered the extent to which it would consider evidence of legislative intent apart from that stated in the legislation itself. In each case, even though it would seem that extraneous evidence is weaker than legislative intent stated within the legislation itself, it considered the offered evidence carefully.

A statement of legislative intent in the context of a constitutional amendment would be entitled to equal weight as compared to a statement of legislative intent in legislation if everything were equal. Everything is not, however, equal.

There is a unique mechanical problem in the case of a constitutional amendment. In the usual statement of legislative intent, the theory and the fact is that those who vote for the bill have the statement of the legislative intent before them (if it is incorporated into the bill) as they vote or, in the case of the governor, when it is reviewed before signature or veto.

There is a difference here. The voters of the state who actually approve or reject the amendment will not have the statement of legislative intent before them. As a matter of law, it seems that they will have only section 1 of the resolution before them. See art. XIII, sec. 1 of the Alaska Constitution: the "lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot . . . "

In an attempt to address that problem, sec. 2(b) of CSSJR 39(Judiciary) am directs the Legislative Affairs Agency, as it prepares the "neutral summary" under AS 15.58.020, to "consider" the statement of legislative intent. It is presumably only through the neutral summary published in the voter's pamphlet that a voter may become aware of sec. 2(a) of the resolution.

Representative M. Mike Miller  
Page 3  
April 30, 1986

I am satisfied that the Agency, when it considers CSSJR 39(Judiciary) am, will prepare a neutral summary. The law requires no less. Some of the problems that the Agency may have in the preparation of the summary are suggested below.

The general rule is that the legislative intent will be considered only after the substantive language has itself been considered and then only if the court is unable to determine what the legislature intended from the substantive language. The corollary of the rule is that the legislative intent will not be considered if the substantive language is clear or to the extent that the legislative intent contradicts, in some fashion, the substantive language.

It is these points that present the problem for legislative intent.

Sec. 2(a) states that the legislature intends that the "right to keep and bear arms" be "an individual right rather than a collective right." Consistently with that, the amendment deletes the reference to the "well-regulated militia being necessary to the security of a free state".

The very substantial problem is that the language added in provides that the purpose of the right to bear arms is "for lawful defense of self, family, property, and the state". [Emphasis added.] It seems clear that the focus of the amendment is broadened; individual purposes for the right are affirmed. But the amendment also states a collective purpose: the "defense of . . . the state". To the extent that the "legislative purpose" seems inconsistent the substantive language of the amendment itself, the court must disregard the legislative purpose.

I assume that the legislative purpose of the amendment "not [being] used to repeal or render unconstitutional existing statutes . . . or existing municipal ordinances" will be effective.

II. What is the likely effect of the language of the amendment on existing laws against concealed weapons, etc.?

The legislative purpose says that the amendment should have no effect on those laws; predictions of actual effect in this area are, however, somewhat difficult.

The amendment and its analogs in the U.S. Constitution and in the constitutions of other states have a long history: 1

think it is fair to say that the amendment has a meaning and an understanding that is larger than the language of the section itself; I see no reason to suggest that the amendment changes these understandings.

It has been said that the provision in the U.S. Constitution goes back to 1689. The English Bill of Rights, enacted by Parliament in 1689, granted the English the right "to have Arms for their Defence, suitable to their Conditions, and allowed by Law." See State v. Kessler, 289 Or. 359, 614 P.2d 94 (Oregon 1980).

The Kessler case and State v. Delgado, 692 P.2d 610 (Oregon 1984) construed the Oregon version of art. I, sec. 19. It provides "The people have the right to bear arms for the defence (sic) of themselves, and the State, . . ." [Art. I, sec. 27, Oregon Constitution.] It seems clear that the language of the Oregon Constitution is identical in function and almost identical in language to that contained in CSSJR 39(Judiciary) am. It should be reasonable, therefore, to expect them to be construed similarly.

The Kessler case involved a prosecution for the possession of a "billy", an item the possession of which was prohibited as a "slugging weapon."

The Oregon court noted that in colonial time and during the Revolutionary War, weapons used by militiamen and by individuals in the defense of their home or their person were the same. The court noted that the historical analysis of the provision indicated that

the drafter intended "arms" to include the hand-carried weapons commonly used by individuals for personal defense. The club is an effective, hand-carried weapon which cannot logically be excluded from this term. We hold that the defendant's possession of a billy club in his home is protected by Article I, section 27, of the Oregon Constitution. [614 P.2d at 100.]

The Delgado case involved possession of a switchblade.

The appropriate inquiry in the case at bar is whether a kind of weapon, as modified by its modern design and function, is of the sort commonly used by individuals for personal defense during either the revolutionary or postrevolutionary era, or in 1859 when Oregon's consti-

Representative M. Mike Miller

Page 5

April 30, 1986

tution was adopted. In particular, it must be determined whether the drafters would have intended the word "arms" to include the switch-blade knife as a weapon commonly used by individuals for self defense. [692 P.2d at 612.]

The Oregon Supreme Court agreed that a law that sought to prohibit possession of the "jackknife" or "mere pocketknives" would violate the Oregon constitution.

The only difference is the presence of the spring-operated mechanism that opens the knife. We are unconvinced by the state's argument that the switch-blade is "so substantially different from its historical antecedent" (the jackknife) that it could not have been within the contemplation of the constitutional drafters. They must have been aware that technological changes were occurring in weaponry as in tools generally. [692 P.2d at 614.]

Note that the provisions of Alaska law now prohibit the possession of a switchblade. See AS 11.61.200.

It is possible that the reference in the amendment to art. I, sec. 19 to "lawful" uses may be adequate to authorize regulation of an "unlawful" use, that is, to define what is unlawful.

On the other hand, a constitutional provision granting the legislature the authority to characterize a use as unlawful may then authorize a regulation that was unintended by the sponsors of the amendment.

I agree that such a result in this state is unlikely for more practical reasons. But that result occurs because of the understandings on the amendment, not really because of the language itself.

### III. Elimination of militia concepts.

Your third question asks whether it would be possible to eliminate the "well-regulated militia" concepts while permitting reasonable regulation. The answer is a qualified yes; I think it is clear that some context for the regulation must be offered. Consider the section with the "militia" eliminated:

Representative M. Mike Miller  
Page 6  
April 30, 1986

SECTION 19. RIGHT TO BEAR ARMS. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of the people to keep and bear arms shall not be infringed.

With no context for the regulation, the statement becomes absolute and no regulation would be possible. Accordingly, I believe that some threshold basis for the regulation (such as that in SJR 39) must be offered by the constitution.

If I may be of further assistance, please advise.—

RAB:mkr  
m5/046

Section 19. RIGHT TO KEEP AND BEAR FIREARMS [ARMS]. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of an individual, who is not otherwise prohibited by federal law from receiving firearms, [THE PEOPLE] to keep and bear firearms for lawful purposes, consistent with the obligation of government to protect the public welfare and safety, shall not be infringed, except that the manner of keeping, bearing, or using firearms may be regulated by law

Section 19. RIGHT TO KEEP AND BEAR FIREARMS [ARMS]. The [A  
WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A  
FREE STATE, THE] right of a citizen of the state [THE  
PEOPLE] to keep and bear firearms for lawful purposes [ARMS]  
shall not be infringed, except that the keeping, bearing, or  
using of firearms may be regulated by law.

Bradley  
5/5/86

Original sponsors: Rodey, Abood,  
Bennett, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
 2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 39 (Judiciary)  
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
 6 tion of the State of Alaska relating to  
 7 the right of a citizen to keep and bear  
 8 arms.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
 11 is amended to read:

12 SECTION 19. RIGHT TO KEEP AND BEAR FIREARMS [ARMS]. The [A  
 13 WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE  
 14 STATE, THE] right of a citizen of the state [THE PEOPLE] to keep and  
 15 bear firearms for lawful purposes [ARMS] shall not be infringed except  
 16 that the keeping, bearing, or use of firearms may be regulated by law.

17 \* Sec. 2. The amendment proposed by this resolution shall be placed  
 18 before the voters of the state at the next general election in conformity  
 19 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
 20 tion laws of the state.

Bradley  
5/9/86

Original sponsors: Rodey, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 39 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
6 tion of the State of Alaska relating to  
7 the right of the people to keep and bear  
8 ~~fire~~arms.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
11 is amended to read:

12 SECTION 19. RIGHT TO KEEP AND BEAR ~~FIREARMS~~ ~~ARMS~~. The [A  
13 WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE  
14 STATE, THE] right of <sup>a person</sup> ~~the people~~ to keep and bear <sup>arms</sup> ~~firearms~~ for lawful  
15 purposes ~~shall~~ shall not be infringed.

16 \* Sec. 2. The amendment proposed by this resolution shall be placed  
17 before the voters of the state at the next general election in conformity  
18 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
19 tion laws of the state.  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 9, 1986

SUBJECT: Right to bear arms  
(Work Order No. 14-SJ39)

TO: Representative M. Mike Miller  
Chair, House Judiciary Committee

FROM: Richard A. Bradley  
Legislative Counsel 

Hayden Kaden has requested a CS for SJR 39. It is enclosed as requested.

The amendment is changed in the second house. I believe we may have provided you with a concurrent resolution to address the question.

The resolution continues the "legislative intent" language in sec. 2. As my April 30 memorandum to your committee on the Senate version of this resolution suggested, we do not believe that "legislative history" is placed before the voters and therefore will not be considered before them.

Thus, the language of sec. 3 that directs the lieutenant governor to place the "legislative history" before the voters may be ineffective. Article XXX, sec. 1 of the Alaska Constitution tells the lieutenant governor what to place before the voters; it provides, in pertinent part:

SECTION 1. AMENDMENTS. \* \* \* The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. \* \* \*

Thus, as you see, the amendment itself is not placed before the voters but only "a ballot title and proposition summarizing each proposed amendment". If the lieutenant governor follows the constitution, which seems to offer mandatory

Rep. M. Mike Miller  
Page 2  
May 9, 1986

language, the lieutenant governor may not follow the instructions added in sec. 3 of the resolution.

And I also believe that the amendment to sec. 2(b) of the resolution is also ineffective in its instruction to the Legislative Affairs Agency to "include" the statement of legislative intent in the neutral summary.

Since the language in sec. 2 of the resolution is not law and has not (and cannot) amend the instructions to the Agency, the Agency will continue to be bound by the requirements of AS 15.58.020(6)(C). Those provisions now provide:

Sec. 15.58.020. CONTENTS OF PAMPHLET. Each election pamphlet shall contain

\* \* \*

(6) for each ballot proposition submitted to the voters by initiative or referendum petition or by the legislature,

\* \* \*

(C) a neutral summary of the proposition prepared by the Legislative Affairs Agency:

\* \* \*

It seems that the obligation of the Agency is to prepare a summary (rather than simply accept a summary not prepared in the Agency). The Agency is also obligated to ensure that the summary is neutral (not weighted by any external considerations beyond the language of the actual proposed amendment itself).

I believe, therefore, that the Agency may consider the legislative history but cannot "include" as its own the legislative history suggested in sec. 2(a).

If I may be of further assistance, please advise.

RAB:ml  
095/m5

Municipality  
of  
Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4545

TONY KNOWLES,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 25, 1986

TO: Members of the Senate Judiciary Committee

Re: Senate Joint Resolution No. 39

The proposed amendment to Article I, Section 19 of the State Constitution set forth in Senate Joint Resolution No. 39 could, in its original form, preclude the regulation of conduct which has traditionally been considered to be criminal. Of particular concern is the clause beginning on line 15 which specifies "...personal defense and for the defense of family, property...". This provision could be read to invalidate all existing state and municipal laws governing the use of firearms for self-defense and the defense of property. Historically, the right to use firearms to protect self, family, and property has been curtailed. The amendment in its present form would cast doubt on the viability of continued regulation of such items.

The amendment, in its present form, would also have the likely affect of nullifying state and municipalities laws regulating the possession of firearms. This is because of the deletion of provisions referencing a "well regulated militia." Historically, the courts have interpreted that phrase as creating not a personal right to bear arms, but rather a right of the state to maintain a militia. The deletion of that phrase would cast doubt on the validity of all previous court decisions pertaining to the interpretation of section 19, and a similar provision of the Federal Constitution. With the deletion of that body of law, the phrase "shall not be infringed" would take on a whole new meaning. Thus, the state and local governments could lose the ability to regulate such activities as the carrying of concealed weapons and the obliteration of serial numbers on firearms.

The provision could easily be amended so as to affirm the right of the individual to own and possess firearms (as opposed to the right of the state to maintain a militia) without precluding the Legislature's ability to prescribe certain conduct with respect

February 25, 1986  
Page 2

to the use and possession of deadly weapons. First, I would propose a change to line 15 whereby the term "personal" would be replaced by "lawful" and the phrase "and for the defense" be replaced by the phrase "of self". In addition, line 17 should be changed by adding language after the term "city" which would read "...except that the manner in which arms are possessed may be subject to reasonable regulations designed to protect the public safety".

In addition, if the Committee's intent is merely to establish a personal right to the ownership and possession of firearms and not to overturn existing laws governing the use of firearms, then such intent should be plainly set forth in a permanent report that will serve in the future to guide the courts. Furthermore, if the additional language I have suggested is added to the amendment, the Committee report should clarify the Committee's intent by specifying that the ability of state and local government to impose reasonable regulations on the possession of firearms would include laws curtailing the possession of concealed weapons or weapons that have altered identification marks, but would not include the right of the state or local government to enact an outright ban on the ownership or possession of arms.

Very truly yours,

DEPARTMENT OF LAW

Jerry Wertzbaugher  
Municipal Attorney

JW:gml

# Municipality of Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4545

TONY KNOWLES,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 6, 1986

Members of the House Judiciary Committee

Re: SJR 39

The Municipality does not oppose a constitutional amendment that redefines the "right to bear arms" as a personal right vested in each citizen of the state. We are very concerned however with the way in which the measure is now drafted. Our concerns are based on the fact that the present language, quite arguably, would not permit the state or a municipality to regulate either the type of arms possessed or the manner and circumstances of possession.

While the version passed by the Senate clearly allows regulation of the use of arms, many existing laws do not relate to the simple use of a weapon, but rather to its function and to the manner and circumstances in which it is possessed. Public safety concerns demand that the state legislature and local assemblies be permitted to ban certain types of arms such as bombs, hand grenades, machine guns, silencers, sawed-off shotguns and bullets designed to pierce protective devices worn by law enforcement officials. We believe likewise that the constitution should permit the Legislature to bar the possession of arms by certain classes of convicted criminals, intoxicated or mentally disturbed persons. Finally we feel it is essential to control the circumstances in which otherwise lawful weapons are possessed by limiting the carrying of concealed weapons, the possession of loaded firearms on licensed premises, the possession of a firearm by a minor without parental consent, et cetera. We reiterate the position taken by Attorney General Harold Brown in his March 26, 1986 letter regarding SJR 39:

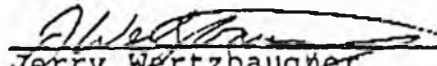
These statutes [that would be invalidated by SJR 39] serve an important public safety function by carefully regulating the possession of especially dangerous weapons or weapons

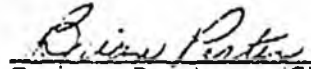
May 6, 1986  
Page 2

carried in an especially dangerous manner or place. If the legislature does not intend to render these statutes unenforceable, nor to foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds for example), then the legislatures intent to continue to allow a reasonable regulation by law should be made clear

The clarity of intent referred to by the Attorney General must be embodied in the measure itself. Otherwise both State and Municipal prosecutors will face a flurry of legal challenges by those charged with weapons-related offenses.

In conclusion, we urge that if the committee does not intend to invalidate existing statutes and ordinances regulating the type of arms that may be possessed, and the circumstances of possession, then it must embody this intent clearly within the amendment that is offered to the voters for ratification.

  
\_\_\_\_\_  
Jerry Wertzbaugher  
Municipal Attorney

  
\_\_\_\_\_  
Brian Porter, Chief  
Anchorage Police Department

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

May 8, 1986

The Honorable M. Mike Miller  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Miller:

You have asked this office to comment upon the effect of "legislative intent" language currently contained in a resolution now under consideration by the House Judiciary Committee: CS SJR 39 (Jud) am. This resolution, if passed, would place a proposed constitutional amendment before the voters at the next general election. The resolution contains an amendment to art. I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. The stated purpose of the proposed amendment is to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective one.

The proposed constitutional amendment now states that a citizen's right to keep and bear arms "shall not be infringed by the state or by a borough or city of the state." During consideration of CS SJR 39 (Jud) am on the Senate floor Senator Vic Fischer proposed an amendment which would have added the phrase "except that the manner of keeping and bearing arms may be regulated by law." This proposed amendment was rejected by the Senate on a vote of 16 to 2. See Senate Journal, March 26, 1986, at pp. 2166-2167. The Judiciary Committee version of the resolution, adopted with amendment by the Senate, contains a section entitled "legislative intent." Section 2 of CS SJR 39 (Jud) am now provides, in part, that the proposed constitutional amendment "should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used."

We are concerned that the language presently contained in CS SJR 39 (Jud) am might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shot guns, prohibits possession of a firearm while intoxicated, the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm

on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-11.61.220.)

These statutes serve an important public safety function by restricting the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend that the proposed amendment of art. I, sec. 19 would render these statutes unenforceable, nor foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear.

It may be that the Senate, in rejecting the amendment proposed by Senator Fischer but adopting section 2 of CS SJR 39 (Jud) am, believed that it was not necessary to explicitly state in the proposed constitutional provision that regulation of firearms by law is allowed, as this point is included in their "legislative intent" language. As a general rule, however, a measure will be enforced according to the plain meaning of the language on its face. 2A C. Sands, Sutherland Statutory Construction § 45.02 at 4 (4th ed. 1984); Wilson v. Municipality of Anchorage, 659 P.2d 569, 571 (Alaska 1983). It is a "fundamental principle of statutory interpretation ... that a statute means what its language reasonably conveys to others..." North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978); South Central Health Planning v. Commissioner, Dept. of Administration, 628 P.2d 551, 553 (Alaska 1981). 1/

While the courts in Alaska may consider a measure's legislative history to the extent it may assist the court in correctly interpreting the measure, a legislative committee report or formal statement of legislative intent may not be used to give the statute a meaning not fairly contained within its words. Chicago, M., St. P. & P. R. Co. v. Acme Fast Freight, 336 U.S. 465, 93 L.Ed.2d 817, 69 S.Ct. 692 (1949); North Slope Borough, 585 P.2d at 540.

---

1/ Although general rules of legal interpretation are most often expressed in the context of statutory interpretation, the same rules apply to the interpretation of legislative resolutions and constitutional amendments. 1A C. Sands, Sutherland Statutory Construction § 29.08 at 500 (4th ed. 1985).

When a reviewing court decides that it must consider the legislature's intent in order to construe a provision, the text of the measure itself is still considered the best evidence of legislative intent. See 2A C. Sands, Sutherland Statutory Construction § 46.03 at 82 (4th ed. 1984) and the cases cited there. Where the terms of a provision are clear and straightforward, the intent of the legislature will be based on those terms, even if the apparent intent conflicts with a statement of legislative intent or a committee report. See Caminetti v. United States, 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192 (1917) and 2A C. Sands, Sutherland Statutory Construction § 48.06 at 308 (4th ed. 1984).

In Commercial Fisheries Entry Commission v. Apokedak, 680 P.2d 486 (Alaska 1984) Apokedak, relying upon legislative intent language contained in the "preamble" to the Limited Entry Act, urged the state supreme court not to adopt a literal construction of the act. The court refused to adopt the interpretation suggested by Apokedak, stating: "a statutory preamble ... can neither restrain nor extend the meaning of an unambiguous statute; nor can it be used to create doubt or uncertainty which does not otherwise exist." 680 P.2d at 488, n.3. Thus, to the extent that language contained in the "legislative intent" section of CS SJR 39 (Jud) am conflicts with the plain meaning of the terms of the constitutional provision, it is the constitutional language which will control.

The courts may also consider the history of legislative action taken on a given measure when determining legislative intent. Generally, the rejection of a proposed amendment indicates that the legislature did not intend the bill to include the provisions embodied in the rejected amendment. Lapina v. Williams, 232 U.S. 78, 58 L.Ed. 515, 34 S.Ct. 196 (1914); United States v. Great Northern Railway Co., 287 U.S. 144, 155, 77 L.Ed. 223, 53 S.Ct. 28 (1932); 2A C. Sands, Sutherland Statutory Construction § 48.04 at 302, § 48.18 at 341 (4th ed. 1984). Thus, a reviewing court may well conclude that if the legislature had intended to allow the continued regulation by law of some aspects of a person's right to possess arms it would have adopted the language proposed by Senator Fischer during the Senate's consideration of the resolution. See, e.g., North Slope Borough, 585 P.2d at 541; Wilson, 669 P.2d at 571.

Perhaps the most important consideration here is that in the case of a measure (such as this one) which is to be decided by a vote of the electorate, descriptive statements accompanying the proposition are an important source of

guidance for interpretation. 2A C. Sands, Sutherland Statutory Construction § 48.04 at 301, § 48.19 at 345 (4th ed. 1984); State v. Lewis, 559 P.2d 630, 637-638 (Alaska 1977), cert. denied, 97 S.Ct. 2943, 432 U.S. 901, 53 L.Ed.2d 1073.

Under art. XIII, sec. 1 of the Alaska Constitution, the lieutenant governor is required to prepare a ballot title and a summary of the proposed constitutional amendment. The election pamphlet prepared pursuant to AS 15.58.010 must contain: 1) the text of the proposed constitutional amendment, 2) the ballot title and summary prepared by the lieutenant governor, 3) "a neutral summary" of the proposition prepared by the Legislative Affairs Agency, and 4) advocacy statements for and against the proposed amendment. AS 15.58.020(6). Thus, although the resolution directs the Legislative Affairs Agency to "consider" the statement contained in section 2 of CS SJR 39 (Jud) am when preparing its neutral summary for the ballot, this language will not appear on the ballot, and may well not appear in the elections pamphlet. Since, in the final instance, a reviewing court will look to the intent in the minds of the voters who voted to adopt the constitutional amendment, the legislature's statement of its intent when placing the measure on the ballot has limited significance. Lewis, 559 P.2d at 637-638.

One of the main purposes of a constitution is to limit legislative power. Ordinary acts of the legislature (i.e., statutes), whether adopted before or after a given constitutional provision, cannot be given effect if the statute conflicts with a substantive provision in the constitution. Thus, an amendment to the constitution may expressly, or by implication, repeal existing legislative enactments. Rhode Island v. Palmer, 253 U.S. 350, 64 L.Ed. 946, 40 S.Ct. 486 (1919); 1A C. Sands, Sutherland Statutory Construction § 23.20 at 387 (4th ed. 1985). The possibility that the language proposed in SJR 39 could be interpreted as invalidating some portions of Alaska's present criminal code is a real one, as this has occurred in similar circumstances in other states. See, for example, State v. Kessler, 289 Or. 359, 614 P.2d 94 (1980) and State v. Delgado, 298 Or. 395, 692 P.2d 610 (1984).

Principals of both common sense and responsible draftsmanship dictate that a well-drafted statute or constitutional provision should reduce the need for disputes about interpretation. 2A C. Sands, Sutherland Statutory Construction § 45.02 at 5 (4th ed. 1984). Statements of "legislative intent" are not an adequate substitute for clear, unambiguous language in the proposed constitutional amendment. A more precisely drafted amendment would minimize the

The Honorable M. Mike Miller  
Alaska State Legislature

May 8, 1986  
Page -5-

possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold M. Brown", with a long horizontal flourish extending to the right.

Harold M. Brown  
Attorney General

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

State Sheriff's Office

BOUCHER - STATE CAPITOL  
JUNEAU, ALASKA 99801  
PHONE: (907) 455-5570

March 26, 1986

RECEIVED

MAR 26 1986

Dept. of Law  
Administration

The Honorable Vic Fischer  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: S.J.R. 39

Dear Senator Fischer:

You have asked for the Department of Law's comments upon the current language of S.J.R. 39, a resolution proposing an amendment to Article I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. As I understand it, S.J.R. 39, as amended on the Senate floor yesterday, provides that art. I, sec. 19 of the Alaska Constitution will be amended to read:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of each citizen of the state [THE PEOPLE] to keep and bear arms for lawful defense of self, family, property, and the state and for lawful hunting, recreation, and other lawful purposes, shall not be infringed by a state or by a borough or city of the state.

We are concerned that the language presently contained in S.J.R. 39 might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shot guns, prohibits possession of a firearm while intoxicated, or the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-.220.)

These statutes serve an important public safety function by carefully regulating the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend to render

The Honorable Vic Fischer

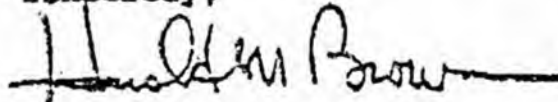
March 26, 1986  
Page -2-

those statutes unenforceable, nor to foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear. The possibility that the language proposed in S.J.R. 39 could be interpreted as invalidating some portions of Alaska's present criminal code is a real one. See, for example, State v. Kessler, 614 P.2d 94 (Ore. 1980), and State v. Delgado, 692 P.2d 610 (Ore. 1984).

We believe that any possible ambiguity could be eliminated by the addition, at the end of the current language, of the phrase "except that the manner of keeping and bearing arms may be regulated by law." This suggested language is based upon similar provisions in the constitutions of several other states, including Florida (art. I, sec. 8), Georgia (art. I, sec. 1), and Utah (art. I, sec. 6). The addition of this clause would make it clear that, although a citizen's basic right to keep and bear arms may not be infringed, reasonable and appropriate regulation of the manner in which arms are kept or borne (i.e., possession by felons, by minors, in a bar, while intoxicated, etc.) is not an infringement on an individual's constitutional right. Mr. Rupe Andrews, Alaska Field Representative for the National Rifle Association, has indicated that his organization would not object to the inclusion of this additional language in S.J.R. 39. I also suggest that you consider retaining the language in the present constitutional provision "the people," rather than change it to "each citizen of the state." State constitutional provisions have traditionally recognized the equal rights of all residents of the state, regardless of the resident's national origin.

A carefully drafted amendment would minimize the possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

Sincerely,



Harold M. Brown  
Attorney General

HMB:GAR:gb-13,

# INQUIRY

## Topic: HANDGUN CONTROL

Sarah Brady, 43, was recently named to the board of Handgun Control, Inc., a national group working to restrict handgun availability. Many members of their relatives have been handgun crime victims. Her husband, James Brady, presidential press secretary, was seriously wounded in the 1981 assassination attempt on President Reagan. She was interviewed by freelance journalist Steve Vliker.



Sarah Brady

## Handguns give me a feeling of horror

**USA TODAY:** As a new board member of Handgun Control, Inc., you recently urged Congress to put tougher controls on handguns. Had you ever considered doing that before your husband, James Brady, was shot by John Hinckley in 1981?

**BRADY:** I had always felt something was needed to ensure handguns didn't get into the wrong hands. I don't believe in arming criminals or mentally incompetent people or drug addicts or children. I've always felt that it was too easy for them to purchase handguns.

**USA TODAY:** Didn't you get rid of a fatally hunting rifle after Jim was shot?

**BRADY:** It wasn't as a result of the shooting. I have a 12-year-old son and I have no need for a hunting rifle myself, so I just saw no reason to keep it here in the house. There was too great a chance for it to get stolen.

**USA TODAY:** Does Jim share your views on handgun control?

**BRADY:** He agrees that measures should be taken to keep guns out of the wrong hands. This is what I'm fighting for. And I think he certainly has applauded my efforts.

**USA TODAY:** Your little Jim was shot. He's almost seven now. Does he remember it at all?

**BRADY:** Oh, certainly. I'm sure he remembers. It's been hard for him, but he's managed it very well.

**USA TODAY:** Do you think violence on television affects him?

**BRADY:** I don't know that he is particularly adversely affected at this point. I try to monitor very closely what he watches. I do think there is a lot of violence on television. But it's parents' responsibility to see that children don't watch those kinds of shows.

**USA TODAY:** What is Handgun Control, Inc.?

**BRADY:** A group of concerned citizens, very much like myself. Many have been victims or have family members who were victims of handgun misuse.

**USA TODAY:** How are you helping the group?

**BRADY:** I'm just a volunteer worker. I like to take every opportunity I can to talk to people throughout the country and try and make them realize that by asking Congress for these controls we're not advocating banning, confiscating or interfering in any way with a law-abiding citizen's right to purchase a gun for a sporting or legitimate purpose. We're just trying to make it more difficult for criminals or irresponsible people to purchase guns.

**USA TODAY:** Why did you join this effort?

**BRADY:** Because last summer the Senate passed the McClure-Volkmer bill, which I consider to be a fairly dangerous bill. It is opposed by every major law enforcement organization in the country. When I saw that pass, I thought it was time to speak out and see if I couldn't help make sure that it did not pass in the House of Representatives.

**USA TODAY:** Doesn't the National Rifle Association support this bill?

**BRADY:** On the McClure-Volkmer Gun Decontrol Bill, the NRA is very out of step with law enforcement and with the majority of the people throughout the country. I don't even think the NRA's members — the fine citizens throughout the country — realize that law enforcement opposes McClure-Volkmer.

**USA TODAY:** What should be in a federal handgun law?

**BRADY:** To make it more difficult for criminals or irresponsible people to purchase handguns, we would like to see the ban on interstate sales maintained, and a reasonable waiting period instituted. When a person goes to purchase a handgun in the state in which

**USA TODAY:** What would this bill, which is pending in the House, do?

**BRADY:** Today, to purchase a handgun, you must buy it in the state where you live. This makes a lot of sense. This bill takes that requirement away.

**USA TODAY:** How would it affect inspections of gun dealers?

**BRADY:** Now, gun dealers are required to keep certain records and, as with other record-keeping processes, they are subject to inspections — surprise inspections, the same as with elevators. This bill would take away surprise visits, allowing the gun dealers to have quite a bit of notice to get their records in order. I say they should have those records in order instantly.

**USA TODAY:** Are handgun controls in Europe stricter than they are in the USA?

**BRADY:** Oh, yes. Every major country in Europe has much stricter controls than even I would probably advocate at this point. And, of course, they also have much less violence and much less shooting than we do.

**USA TODAY:** Did John Hinckley have to wait when he bought his handgun?

**BRADY:** No. There is no background check or waiting period in effect now, nationwide. Hinckley walked into a gun shop in Texas — a state which he was not a resident of — lied on his form that he lived in Texas, and was given a handgun immediately. Had there been a waiting period, it probably would have been discovered that he was not a resident of Texas and that he had been detained by Tennessee police weeks earlier for attempting to take handguns aboard an airline. So had there been a background check and waiting period, he probably would not have been able to buy the gun that was used to shoot the president and my husband.

**USA TODAY:** What are your feelings about John Hinckley?

**BRADY:** Nothing will do away with the problem unless you make it nationwide. No matter how strict gun laws are in New York, if you can run down to Virginia and purchase 57 handguns and run back up

**USA TODAY:** Many North-east states with large urban populations have stricter handgun controls than some Western states. Doesn't this help?

**BRADY:** Yes. I went through that. Looking at that gun now — essentially a small, concealable type of handgun — I get a feeling of horror and evil concealed with that, as opposed to looking at a good hunting rifle or something that has a legitimate sporting purpose.

**USA TODAY:** After the shooting, if you had a car backfire did you instinctively jump?

**BRADY:** Oh yes. Of course there is no place in the country where there might not be somebody walking. But I feel fairly safe walking the streets of Washington. We have good laws here, a good police force.

**USA TODAY:** Do you feel safe in Washington, D.C., at night?

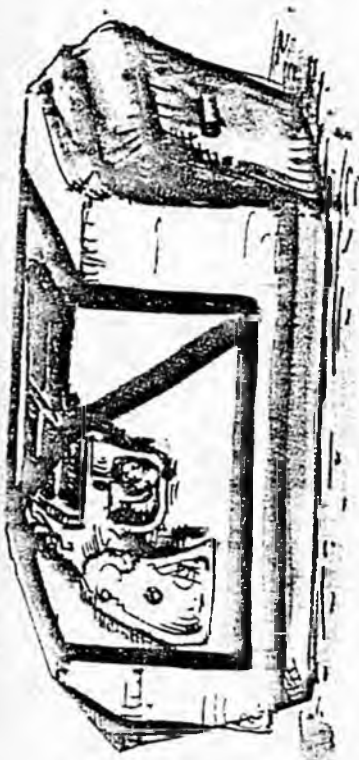
**BRADY:** Oh yes. Of course there is no place in the country where there might not be somebody walking. But I feel fairly safe walking the streets of Washington. We have good laws here, a good police force.

## A nation of handguns

There are more than 60 million handguns in the USA today, up from fewer than 10 million in 1953. At the current rate of production — one is produced every 13 seconds — there will be 100 million handguns in civilian hands by the year 2000. Each year:

- More than 20,000 USA citizens are killed by handguns; about 2 1/2 minutes someone is injured.
- More than 300,000 crimes are committed with handguns.
- More than 200,000 privately-owned handguns are stolen.
- An estimated \$500 million is spent treating people who have been shot with handguns.
- And every day, on the average, one child under the age of 14 is killed with a handgun.

Source: Handgun Control, Inc., Washington, D.C.



By Susan Harlan, USA TODAY

to New York and sell them on the street — which is done every day — you are still going to have violence.

**USA TODAY:** Do you feel safe in Washington, D.C., at night?

**BRADY:** Oh yes. Of course there is no place in the country where there might not be somebody walking. But I feel fairly safe walking the streets of Washington. We have good laws here, a good police force.

**USA TODAY:** After the shooting, if you had a car backfire did you instinctively jump?

**BRADY:** Yes. I went through that. Looking at that gun now — essentially a small, concealable type of handgun — I get a feeling of horror and evil concealed with that, as opposed to looking at a good hunting rifle or something that has a legitimate sporting purpose.

## A nation of handguns

There are more than 60 million handguns in the USA today, up from fewer than 10 million in 1953. At the current rate of production — one is produced every 13 seconds — there will be 100 million handguns in civilian hands by the year 2000. Each year:

- More than 20,000 USA citizens are killed by handguns; about 2 1/2 minutes someone is injured.
- More than 300,000 crimes are committed with handguns.
- More than 200,000 privately-owned handguns are stolen.
- An estimated \$500 million is spent treating people who have been shot with handguns.
- And every day, on the average, one child under the age of 14 is killed with a handgun.

Source: Handgun Control, Inc., Washington, D.C.

While the 1968 law and the revisions last year include provisions that bar certain people, such as convicted felons and drug addicts, from purchasing guns, there is no way salesmen can validate an applicant's qualifications.

Proponents of a waiting period contend it would give the police a chance to check the credentials of purchasers.

A gun bill that emerged from the Senate Judiciary Committee in 1982 included a 14-day waiting period, but the measure never reached the floor. (1982 *Almanac* p. 415)

Gun groups oppose the waiting period, claiming it is an unnecessary inconvenience and amounts to assuming a potential buyer is guilty until proved innocent.

Other firearms issues likely to emerge in this Congress include:

- **Ammunition Ban.** Rep. Mario Biaggi, D-N.Y., introduced a bill (HR 538) Jan. 8 to roll back provisions in the 1986 law that lifted licensing and record-keeping requirements on the interstate shipment of ammunition.

Biaggi's bill would ban in-state shipments except by federally licensed dealers, manufacturers, exporters and importers, and collectors shipping to one another.

Gun Owners of America seized upon the changes in the 1986 law, sending out mailings to members offering them special over-the-phone deals on ammunition.

Biaggi says the problem with mail-order ammunition is that there is no way to make sure it is not being sold to people who are prohibited by law from buying it. For example, no one under 18 is permitted to buy ammunition for rifles or shotguns, and no one under 21 can buy ammunition for handguns.

Pratt contends the bill is anti-consumer, but a Biaggi spokesman calls that "absurd."

"We fully support the rights of citizens to own and use firearms," he says. "We're looking for reasonable controls. . . . We're looking to help the law enforcement community."

- **Bullet Ban.** Sen. Daniel Patrick Moynihan, D-N.Y., has introduced a bill (S 25) to ban the production of .25 and .32 caliber bullets. Moynihan says a survey of shootings involving New York City police from 1975-85 showed that 25 percent of the bullets used were .25 or .32 caliber.

Gun groups flatly oppose the bill, and even some gun control advocates, while praising Moynihan's effort,

think it may not be effective because it would prompt a shift to guns using different bullets.

- **Plastic Guns.** Rep. Robert J. Mrazek, D-N.Y., is planning to introduce a bill that would impose a "flexible ban" on plastic guns. The bill would ban the domestic manufacture or importation of any firearm the secretary of the Treasury determines cannot be detected by security devices.

### Battles in Local Jurisdictions

In addition to its work on Capitol Hill, the NRA expects to be involved in several legislative battles on the state level. Last year, according to Ted Lattanzio, head of the NRA's State and Local Affairs Division, the NRA donated more than \$750,000 to state and local candidates. Lattanzio says 83 percent of the NRA-supported candidates were elected.

A key item on the NRA's agenda is pushing "pre-emption" legislation that would prevent cities and counties from enacting gun control laws more

stringent than statewide laws.

Lattanzio says legislation will be introduced on behalf of the NRA in 16 states, with highly visible fights expected in Michigan and Florida.

The NRA will be up against law enforcement groups in this arena as well. Spokesmen say the police groups will organize to defeat the pre-emption statutes.

Detroit officer Scully, who worked to stop a statute in Michigan last year, says, "We don't want to take local control away from city or county governments. That's a ploy by the NRA that cuts down on the individual police chief's [ability to do] his job."

Another legislative push — one that won't put the NRA at odds with the police — is a "hunter-harassment" proposal. Bills will be introduced in 13 states to create stiff civil penalties for people who try to interfere with lawful hunting. Lattanzio says it is aimed at animal rights groups that have published a "21-point pamphlet on how to stop a lawful hunt."

## Hastings Responds to Charges

Federal District Judge Alcee L. Hastings of Florida has filed a two-pronged response to impeachment charges, stemming from his acquittal in 1983 on bribery charges.

Hastings, who is black, denounced the disciplinary procedure being used against him, saying it was "infected by a form of racism" and had more in common with a Moscow political trial than an American judicial proceeding. He claimed that the entire investigation and the underlying bribery prosecution were biased and were "conducted in a manner . . . to provide just cause for outrage as well as alarm."

The 11th U.S. Circuit Court of Appeals, which includes Florida, began investigating Hastings shortly after his acquittal. A special 11th Circuit investigative committee recommended that Hastings be removed from office, on the grounds that he had fabricated his defense and should have been convicted. The 11th Circuit accepted those findings and forwarded them to the Judicial Conference, which gave Hastings a chance to respond. (1986 *Weekly Report* p. 2280)

On Jan. 16 he petitioned the House and Senate to terminate the judicial investigation and to repeal or amend the 1980 judicial discipline law (PL 96-458) that is the basis for the probe.

The Judicial Conference is scheduled to meet in March and could decide then whether to end the investigation or to forward the impeachment recommendation to Congress.

Hastings' Senate petition was quickly referred to the Judiciary Committee, but as of Jan. 22, his House petition was still at the Speaker's office.

Rep. Robert W. Kastenmeier, D-Wis., who helped draft the 1980 discipline law, said in an interview Jan. 21 that it was unclear what Congress would do with the Hastings petition. Kastenmeier said he believed that the Judicial Conference should be allowed to proceed and either forward an impeachment recommendation to Congress or drop the matter.

Kastenmeier added, however, that he had intended to take another look at the judicial discipline law in the 100th Congress, even before Hastings suggested that.



## Police, NRA Brace for Rematch on Gun Control

Emboldened by a last-minute comeback in the 99th Congress and fortified with new-found experience, organization and unity, law enforcement groups are digging in to defend the nation's gun control laws against new attacks from the redoubtable National Rifle Association (NRA).

In the 99th Congress, the NRA caught the police off duty and forced Senate passage of a bill that would have significantly rolled back the landmark 1968 gun control law.

But when the measure went to the House, the police groups, bolstered by Handgun Control Inc., a gun control lobby, entered the fray and kept the NRA in check during the last weeks of legislative skirmishing.

The law officers emerged with two notable come-from-behind victories. The final version of the gun bill (PL 99-308) barred the sale of new machine guns and maintained the ban on the interstate sale of handguns. (1986 *Weekly Report* p. 1034)

Now the NRA is taking aim at these issues and new fights are looming. The police are determined not to make the same mistakes again, and their year-old organization, the Law Enforcement Steering Committee, is preparing to hold the line.

But with memories of last year's bitter fight still lingering, the NRA's top legislative strategists want to keep the din of battle at a manageable level this time around.

"There has been a tendency to sensationalize these issues, to put headlines out there that bear little relationship to what the real situation is on a specific issue," says Wayne LaPierre, the director of the NRA's Institute for Legislative Action and the man who ran the 1985-86 gun campaign.

"We are going to be doing everything we can to urge people to look behind the sensational headline and focus on the real situation."

James J. Baker, the NRA's director of governmental affairs, echoes LaPierre's views, and, referring to the police groups, adds, "I don't think

—By Nadine Cohodas

### *NRA Wants to Lift Ban on Machine Guns*

[the gun control fight] helped either of us."

"A lot of their members are our members as well. We should try to minimize our differences."

The NRA has designated Rep. Larry E. Craig, R-Idaho, to meet with those police who are NRA members and who supported the organization last year, in an effort to devise a plan for reconciling differences with the law enforcement groups.

thing the gun lobby springs," says Hubert Williams, president of the Police Foundation, a research group in Washington, D.C., that is represented on the 12-member Steering Committee.

Detroit police officer Robert T. Scully, president of the 90,000-member National Association of Police Organizations, thinks of the committee, which meets regularly in Washington, as "preventive medicine."

"I hope we don't have continued confrontation with the NRA," he says. "But whatever pops up on a national level, we will be prepared."

The police message to the gun groups is, "Don't even think of trying

*"We regret that we have to operate in this fashion. . . . We think it is unfair that we have to compete with other interest groups."*

—Cornelius J. Behan,  
Baltimore police chief



But Richard Boyd, president of the Fraternal Order of Police (FOP), is doubtful of rapprochement. "We're not disposed to mend those fences unless the NRA significantly changes its views," says Boyd, whose organization represents 193,000 police officers.

### **Battle Preparations**

Although the police groups say they are not looking for a fight, they are preparing for the worst, a testament to the gun lobby's political might. In the 1986 campaigns, for example, Federal Election Commission figures show the NRA spent more than \$1.7 million to help its congressional candidates.

"We are definitely ready for any-

to sneak something past us," says Martha Plotkin, associate director of the Police Executive Research Forum (PERF), a group providing research and technical support to local police organizations.

Baltimore police Chief Cornelius J. Behan, president of PERF, says the law enforcement community was forced into an activist role. "We regret that we have to operate in this fashion," he says. "We see ourselves as an arm of government. We think it is unfair that we have to compete with other interest groups." But until the police organized, Behan says, "we were not heard or listened to."

The police groups are now a formidable force, but gun lobbyists con-

tend the Steering Committee does not represent the views of most policemen.

"I still think those organizations aren't representative of the feelings of the rank and file," says the NRA's Baker.

Comments like that anger police leaders, particularly Scully, who won re-election to his police group post in December. "The leadership of the NRA are not sworn police officers, and they are not elected to those positions by police officers," he says.

The police leaders say they have learned to play politics, and a major lesson, according to Boyd, is that members of Congress must be told they "will be held accountable at home" for their votes on law enforcement issues.

The police groups are encouraged by the Democratic takeover of the Senate. While many Democrats support the gun groups, the police are nonetheless optimistic about having more sympathetic ears at the Senate Judiciary Committee, which would be the starting point for most legislation.

Chairman Joseph R. Biden Jr., D-Del., said in an interview he will oppose efforts to eliminate the machine gun ban.

#### New Definitions, New Allies

The gun fight last year also created a new law enforcement litmus test and brought about a partial realignment of political forces.

In the past, police groups generally supported members who were "tough on crime," favoring, among other things, preventive detention and the death penalty.

But while those issues remain important to the police, the gun control battle emphasized the significance of two other elements — police safety and the ability of law officers to protect the public. The law enforcement groups opposed the gun control bill because they felt it would create problems for the police in protecting themselves and in fighting crime, and they judged members on that basis.

This change in emphasis was reflected in the "congressman of the year" award Scully's organization gave to Sen. Howard M. Metzenbaum, D-Ohio, in December.

Metzenbaum, one of the Senate's most liberal members and hardly a conventional "law and order" man, was instrumental in crafting pro-police amendments to the Senate version of the gun control bill and in protecting law enforcement provisions in the

House bill that eventually came back to the Senate for approval.

#### The Agenda

The NRA and its allies, Gun Owners of America and the Citizens' Committee for the Right to Keep and Bear Arms, will probably set the initial firearms agenda for the 100th Congress. The police groups are still sorting out their priorities, spokesmen say.

Almost before the ink was dry on last year's gun law, gun groups said they wanted to repeal the ban on new machine gun sales.

That section was a last-minute addition on the House floor that barred all future sales and possession of machine guns by private citizens. It did not affect existing machine guns.

The amendment was adopted by voice vote, and was later accepted by

#### Handgun Fight Less Predictable

The gun groups are more optimistic about repealing the ban on the interstate sale of handguns. When the gun bill passed the Senate in 1985, it included provisions lifting the handgun ban. But that was before the police got involved in the fight.

When gun legislation started moving through the House, the law officers organized and pressed hard to keep the handgun ban.

An amendment by William J. Hughes, D-N.J., restoring the ban prevailed 233-184. The Senate accepted that provision, even though it had killed a similar proposal in 1985, 69-26. (1985 Almanac p. 228)

Now the police are ready for a rematch on handguns.

"Just in the city of Detroit last year we had five police officers killed in the line of duty — one was from a

---

*"A lot of [police group] members are our members as well. We should try to minimize our differences."*

—James J. Baker,  
National Rifle Association



the Senate without change.

"The whole machine gun issue doesn't bear a lot of relationship to reality," says the NRA's LaPierre. He contends that there is no record of a lawfully owned machine gun ever having been used in a crime.

"How many do we have to have killed before we have to have a ban on it?" retorts FOP's Boyd. "Is it one or 10,000 a year? Why can't we have some preventive measures?"

The gun lobbyists are not optimistic that anything will be done soon.

"Philosophically, it's something I desire, but I think it is going to be hard in the 100th Congress," says John M. Snyder, public affairs director for the Citizens' Committee.

And Lawrence D. Pratt, executive director of Gun Owners, concedes, "It looks difficult."

shotgun, the other four by handguns," says Scully.

And Boyd argues that allowing unrestricted interstate sales of handguns would make it "almost impossible for us to keep a hand on the sale and exchange" of the weapons. "We can't even do it in-state now."

If the gun owners want the ban lifted, Boyd adds, "they'll have to give us something. . . . We'd offer them in return something like a 30-day waiting period."

#### Other Firearms Issues

A uniform waiting period between the purchase and receipt of a handgun is high on the agenda of Handgun Control, but it is anathema to the NRA.

Metzenbaum and Rep. Edward F. Feighan, D-Ohio, are expected to introduce waiting-period legislation early in February.

While the 1968 law and the revisions last year include provisions that bar certain people, such as convicted felons and drug addicts, from purchasing guns, there is no way salesmen can validate an applicant's qualifications.

Proponents of a waiting period contend it would give the police a chance to check the credentials of purchasers.

A gun bill that emerged from the Senate Judiciary Committee in 1982 included a 14-day waiting period, but the measure never reached the floor. (1982 Almanac p. 415)

Gun groups oppose the waiting period, claiming it is an unnecessary inconvenience and amounts to assuming a potential buyer is guilty until proved innocent.

Other firearms issues likely to emerge in this Congress include:

• **Ammunition Ban.** Rep. Mario Biaggi, D-N.Y., introduced a bill (HR 538) Jan. 8 to roll back provisions in the 1986 law that lifted licensing and record-keeping requirements on the interstate shipment of ammunition.

Biaggi's bill would ban in-state shipments except by federally licensed dealers, manufacturers, exporters and importers, and collectors shipping to one another.

Gun Owners of America seized upon the changes in the 1986 law, sending out mailings to members offering them special over-the-phone deals on ammunition.

Biaggi says the problem with mail-order ammunition is that there is no way to make sure it is not being sold to people who are prohibited by law from buying it. For example, no one under 19 is permitted to buy ammunition for rifles or shotguns, and no one under 21 can buy ammunition for handguns.

Pratt contends the bill is anti-consumer, but a Biaggi spokesman calls that "absurd."

"We fully support the rights of citizens to own and use firearms," he says. "We're looking for reasonable controls... We're looking to help the law enforcement community."

• **Bullet Ban.** Sen. Daniel Patrick Moynihan, D-N.Y., has introduced a bill (S 25) to ban the production of .25 and .32 caliber bullets. Moynihan says a survey of shootings involving New York City police from 1975-85 showed that 25 percent of the bullets used were .25 or .32 caliber.

Gun groups flatly oppose the bill, and even some gun control advocates, while praising Moynihan's effort,

think it may not be effective because it would prompt a shift to guns using different bullets.

• **Plastic Guns.** Rep. Robert J. Mrazek, D-N.Y., is planning to introduce a bill that would impose a "flexible ban" on plastic guns. The bill would ban the domestic manufacture or importation of any firearm the secretary of the Treasury determines cannot be detected by security devices.

### Battles in Local Jurisdictions

In addition to its work on Capitol Hill, the NRA expects to be involved in several legislative battles on the state level. Last year, according to Ted Lattanzio, head of the NRA's State and Local Affairs Division, the NRA donated more than \$750,000 to state and local candidates. Lattanzio says 83 percent of the NRA-supported candidates were elected.

A key item on the NRA's agenda is pushing "pre-emption" legislation that would prevent cities and counties from enacting gun control laws more

stringent than statewide laws.

Lattanzio says legislation will be introduced on behalf of the NRA in 16 states, with highly visible fights expected in Michigan and Florida.

The NRA will be up against law enforcement groups in this arena as well. Spokesmen say the police groups will organize to defeat the pre-emption statutes.

Detroit officer Scully, who worked to stop a statute in Michigan last year, says, "We don't want to take local control away from city or county governments. That's a ploy by the NRA that cuts down on the individual police chief's [ability to do] his job."

Another legislative push — one that won't put the NRA at odds with the police — is a "hunter-harassment" proposal. Bills will be introduced in 13 states to create stiff civil penalties for people who try to interfere with lawful hunting. Lattanzio says it is aimed at animal rights groups that have published a "21-point pamphlet on how to stop a lawful hunt."

## Hastings Responds to Charges

Federal District Judge Alcee L. Hastings of Florida has filed a two-pronged response to impeachment charges, stemming from his acquittal in 1983 on bribery charges.

Hastings, who is black, denounced the disciplinary procedure being used against him, saying it was "infected by a form of racism" and had more in common with a Moscow political trial than an American judicial proceeding. He claimed that the entire investigation and the underlying bribery prosecution were biased and were "conducted in a manner... to provide just cause for outrage as well as alarm."

The 11th U.S. Circuit Court of Appeals, which includes Florida, began investigating Hastings shortly after his acquittal. A special 11th Circuit investigative committee recommended that Hastings be removed from office, on the grounds that he had fabricated evidence and should have been convicted. The 11th Circuit affirmed the findings and forwarded them to the Judicial Conference, which gave Hastings a chance to respond. (1986 Weekly Report p. 2280)

On Jan. 16 he petitioned the House and Senate to terminate the judicial investigation and to repeal or amend the 1980 judicial discipline law (PL 96-458) that is the basis for the probe.

The Judicial Conference is scheduled to meet in March and could decide then whether to end the investigation or to forward the impeachment recommendation to Congress.

Hastings' Senate petition was quickly referred to the Judiciary Committee, but as of Jan. 22, his House petition was still at the Speaker's office.

Rep. Robert W. Kastenmeier, D-Wis., who helped draft the 1980 discipline law, said in an interview Jan. 21 that it was unclear what Congress would do with the Hastings petition. Kastenmeier said he believed that the Judicial Conference should be allowed to proceed and either forward an impeachment recommendation to Congress or drop the matter.

Kastenmeier added, however, that he had intended to take another look at the judicial discipline law in the 100th Congress, even before Hastings suggested that.