

S J R

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STATE OF ALASKA
THE LEGISLATURE

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Mary Van Nimwegen

STR 3

Senate State Affairs

3/15/89

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
CSSJR 3 (Jud)

Repeal of Regulations by Legislature

Received April 10, 1989
by The Judiciary Committee

Heard April 20, 1989

Passed Out of Committee April 20, 1989
6 Do Pass
1 No Recommendation

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CSSJR 3 (Jud): Repeal of Regulations by Legislature

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from Sen. Jack Coghill
April 13, 1989

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 10, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered: CSSJR 3 (JUD)

CS FOR SENATE JOINT RESOLUTION NO. 3 (Judiciary)

[REPEAL OF REGULATIONS BY LEGISLATURE]

Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: Senate letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- [] fiscal impact _____
[X] zero fiscal note LAA
[] zero with analysis _____

- [X] Senate fiscal note(s) Analysis Elections/3/29/89
[] zero fiscal note(s) _____
[] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check appropriate column)

Doyce Hanley
David Douley
Scott Williams
Jim Zwach
Kilduff P. MacLean
Ch. A. Parker

| | Do Not Pass | No Rec | Amend |
|----------------|-------------|--------|-------|
| <u>Paul H.</u> | | X | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Ch. A. Parker
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Proposing an amendment to the
Constitution of the State of Alaska relating to...
Sponsor: Senate Judiciary
Requestor: House State Affairs

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|-------|-------|-------|-------|-------|-------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants, Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (THOUSANDS OF DOLLARS)

| | | | | | | |
|--------------|---|---|---|---|---|---|
| General Fund | | | | | | |
| Federal Fund | | | | | | |
| Other | | | | | | |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| Full-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No fiscal impact.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Phone: 465-3850
Date: 4/17/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren Endicott

Date: 4/17/89

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Alaska State Legislature

Senate

Committee on Finance

Item 3

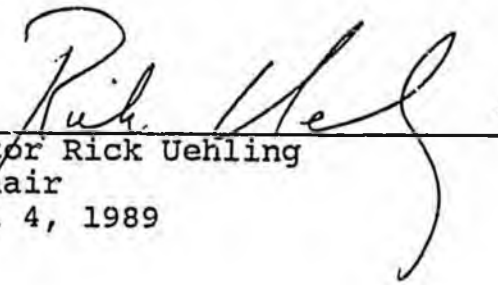
Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT

FOR

CS FOR SENATE JOINT RESOLUTION NO. 3 (JUDICIARY)

It is the intent of the Legislature that the Division of Elections publish in the elections pamphlet the statements supporting the proposition as drafted by the prime sponsor of the resolution.



Senator Rick Uehling
Co-chair
April 4, 1989

Senate adopted 4/8

Item 4

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 17, 1989

Honorable H. A. Boucher, Chair
House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99801

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

Re: CSSJR 3(Jud) -- constitutional amendment re legislative repeal of administrative regulations

Dear Representative Boucher:

CSSJR 3(Jud) appears on this week's schedule for a hearing before your committee on April 20. We believe that this resolution, and the constitutional amendment that it proposes, should not pass.

For your and your committee's convenience, a copy of my March 28, 1989 letter to Senator Jan Faiks, chair of the Senate Judiciary Committee, is attached, briefly summarizing the basic reasons for our opposition.

Some people might regard it as an affront to the voters to hit them for the fourth time in 10 years with the same question. Although there is a slight difference in wording in the current proposal, the voters soundly rejected, in 1980, 1984, and 1986, the idea proposed in this resolution. It seems unnecessary and inappropriate to subject them to this issue again in 1990.

It should be noted that in sec. 2(a) of this resolution, at page 2, lines 5 and 6, there is a vague reference to certain circumstances, such as achieving the constitutionally required two-thirds vote to override a veto, resulting "in adverse effects on the public." While various legislators might believe that to be the case, there has been no evidence brought forward to substantiate that claim.

It should also be noted that the Division of Elections' fiscal note for CSSJR 3(Jud) deals only with the cost of putting the proposition on the ballot, not with the consequences of voter approval of the amendment.

If you would like to have additional information regarding the constitutional issues involved in this resolution,

Honorable H.A. Boucher, Chair
House State Affairs Committee
Re: CSSJR 3(Jud)

April 17, 1989
Page 2

along with a fuller statement of our opposition to the resolution, please let me know. Thank you.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb:pjg

Enclosure

cc w/o encl.: Honorable Jack Coghill
Alaska State Senate

Robert A. Evans
Legislative Liaison
Office of the Governor

March 28, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SJR 3, repeal of regulations
by legislature

Dear Senator Faiks:

SJR 3, proposing a constitutional amendment authorizing legislative repeal of administrative regulations, appears on your committee's agenda for today. For the record, this letter briefly expresses the Department of Law's opposition to that resolution.

First, this resolution would present essentially the same question to the voters for the fourth time in 10 years (1980, 1984, 1986, and 1990). The voters rejected the idea three times already. Changing "annul" to read "repeal," as this resolution does, is not likely to change their minds. We recommend that the decision of the voters, given and reaffirmed recently, be accepted.

Second, the legislature does not need this shortcut method to perform its proper oversight function. We recommend reliance on current statutory and constitutional procedures.

Third, the State Affairs Committee substitute deletes some of the original resolution's protections, relying on the Uniform Rules of the Alaska State Legislature in its provisions on handling resolutions. Whatever the probability of changing the Uniform Rules, having the accountability provisions spelled out in the constitution provides greater assurance to the public.

Fourth, a simple repeal of a regulation, by the legislature, does not provide the responsible executive-branch agency

The Honorable Jan Faiks, Chair
Senate Judiciary Committee

March 28, 1989
Page 2

sufficient direction as to statutory policy or legislative intent. Such a repeal is not an efficient management tool.

Thank you for this opportunity to comment.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:

Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb

cc: Honorable Jack Coghill
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Robert A. Evans
Legislative Liaison
Office of the Governor



Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Representative H. A. Red Boucher
House State Affairs Committee Chairman

From: Senator Jack Coghill

Re: Backup for CS for SJR 3; Legislative Repeal of
Administrative Regulations.

Date: April 13, 1989

Intent: The intent of this proposed amendment to the Constitution of the State of Alaska, is to provide a mechanism for the legislature, as representatives of the people from which we derive our legislative authority, to oversee the rule making power granted the executive branch as a result of enacted legislation.

Background: This proposal has been placed on the ballot on three previous occasions, each time it failed. The following chart is provided for your consideration.

| | <u>1980</u> | <u>1982</u> | <u>1984</u> | <u>1986</u> | <u>1988</u> |
|--------------------------------|-------------|-------------|-------------|-------------|-------------|
| Yea's | 58,808 | N/A | 91,174 | 65,176 | N/A |
| Nay's | 82,010 | N/A | 98,856 | 94,299 | N/A |
| Total Proposition Votes | 140,818 | N/A | 190,030 | 159,475 | N/A |
| Total Election Vote Cast | 162,653 | 199,358 | 213,173 | 182,526 | 203,433 |
| Total Reg. Voters | 258,742 | 266,224 | 305,262 | 292,274 | 292,441 |
| Proposition Failure % | 16.0% | N/A | 4.0% | 18.2% | N/A |
| % Voter Turn Out | 63% | 75% | 70% | 62% | 70% |

NOTE: N/A means Not Applicable because the proposition was not on the ballot.

April 13, 1989

From this chart it is interesting to note the difference between the total number of votes cast on the proposition and the total number of votes cast in the election. For 1980 this number is 21,835; for 1984 it is 23,147; and for 1986 the difference is 23,143. It appears that each time this ballot measure has been brought up, between 11 percent (1984) and 13 percent (1980 and 1986) of the electorate did not know what they were voting for.

The second interesting observation that has been made, is that in 1982 when the proposition almost passed, voter turn out was high. In 1990, voter turn out is also likely to be high for a number of reasons, which I am sure you are aware of.

The Administration has always opposed this resolution. This is to be expected.

Attachments

1. Ballot Proposition No. 1, 1980.
2. Ballot Proposition No. 1, 1984.
3. Ballot Proposition No. 2, 1986.
4. Letter from the Department of Law,
to Representative M. Mike Miller, Dated May 8, 1986.
5. Division of Elections Fiscal Note and Analysis.

Rational: I have resurrected this issue of legislative oversight of the policy setting ability of the executive branch, because the Constitution established the Legislature as the policy branch of government.

We have seen increasing numbers of administrative regulations promulgated to implement legislative policy, as established in the legislation we pass, that either ignores the legislative directive or goes beyond the limits of what the Legislature intended.

As an example, in 1985 the Legislature passed a bill that allowed "work commitments" on certain oil and gas leases to be extended by the Department of Natural Resources. The bill was half a page long and very direct. The intent, as I recall, was to retain the nearly 30% royalty rate that would result from production on these lease and to give the lease holder relief from the crashing oil market. The DNR wrote 14 pages of regulations to implement this policy. The result was that the lease holder lost his leases, the state put them up in another lease sale, and the leases were sold at 12 3/4 percent royalty.

Another example is the regulations established by the State Board of Dental Examiners regarding licensure of new dentists by credentials. It is obvious that the intent of the Statute (AS 08.36.234) was to allow the Board to establish

April 13, 1989

criteria where dentists could gain access to Alaska patients based on their track record in other states. The Board simply wrote a regulation prohibiting licensure by credential. And to further exemplify the need for this resolution, the proposal to change this situation, SB 126, is a one word change, from "may" to "shall". You might think this is a simple policy change, however, in public hearings we have learned that this is substantial. The Board should promulgate regulations that address the intent of the law, and not the purview of the Board.

There are other examples from resource industries, and labor training programs to motor vehicle regulations. The broader issue however, and the complaint I receive most from my constituents, is that it is becoming increasingly evident that administrative agencies are using regulations to perpetuate their bureaucratic empires. The problem is that this was never intended by the Constitution.

Recommendation: I recommend you move the CS for SJR 3 (Jud) from committee, with "do pass" recommendations.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

| | | | | |
|--------|---------------|----------------|---------------|-------------------------------|
| Senate | (20 members): | Yeas <u>18</u> | Nays <u>0</u> | Absent or Not Voting <u>2</u> |
| House | (40 members): | Yeas <u>36</u> | Nays <u>0</u> | Absent or Not Voting <u>4</u> |

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to

the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— Charles H. Parr
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

BALLOT MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5[Jud]))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

| | | | | |
|--------|---------------|---------|--------|------------------------|
| Senate | (20 members): | Yeas 19 | Nays 0 | Absent or Not Voting 1 |
| House | (40 members): | Yeas 34 | Nays 2 | Absent or Not Voting 4 |

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three-fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently not directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law. The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would not be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

—Katherine D. Nordale,
Delegate to the Alaska Constitutional Convention, 1955-1956

BALLOT MEASURE NO. 2

Constitutional Amendment Legislative Annulment of Administrative Regulations (1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE

(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR

A vote "AGAINST" rejects the amendment. AGAINST

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

| | | |
|---------|----------------------|----|
| House: | Yeas | 31 |
| | Nays | 4 |
| | Absent or Not Voting | 5 |
| Senate: | Yeas | 17 |
| | Nays | 0 |
| | Absent or Not Voting | 3 |

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(HCS SJR 40 [Jud] am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate... and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Law of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statute. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention, 1955-1956

DEPARTMENT OF LAW

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

OFFICE OF THE ATTORNEY GENERAL

May 8, 1986

Honorable M. Mike Miller
Chairman
House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SJR 40 (constitutional
amendment on annulment of
regulations)
Our file: 66-3-86-0493

Dear Representative Miller:

I understand that Senate Joint Resolution No. 40, proposing an amendment to the Alaska Constitution, is on your committee's agenda for tomorrow. This letter is to express the Department of Law's opposition to that resolution. If the resolution is passed, that proposed amendment would hit the voters for the third time in six years.

BRIEF STATEMENT

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical constitutional amendment by a substantial margin -- 82,010 to 58,808. In 1984, they even rejected an improved version (improved in terms of accountability to the public). We should assume that the voters knew what they were doing.

2. The legislature does not need this shortcut method to perform its proper oversight function.

(A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.

(B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines,

limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable to bills, which provisions tend to assure protection of and accountability to the public.

4. An annulment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

DISCUSSION

The amendment proposed by SJR 40 is virtually identical to the Eleventh Legislature's CSHJR 82 am (1980 Legislative Resolve No. 5). That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They again rejected the amendment in 1984 -- in the form of the Thirteenth Legislature's SCS HJR 5(Jud) (1983 Legislative Resolve No. 15) -- even though it contained provisions for a deferred effective date, three readings on separate days, and recording in the journal the yeas and nays on final passage. The voters should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.F. Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions did not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislating are "designed to engender a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively

votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example

- the single subject rule of art. II, sec. 13;
- the descriptive title rule of art. II, sec. 13;
- the requirement of separate readings on separate days, under art. II, sec. 14;
- the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14;
- the provisions on gubernatorial veto, under art. II, secs. 15 and 16; and
- the deferred effective date, under art. II, sec. 18.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act take effect only after the required public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. Curiously, the current version of this proposed constitutional amendment omits the improvements contained in 1983 LR 15. Neither the constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to a concurrent resolution's annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment by means of a concurrent resolution, provides for the legislature to make what can be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of

course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to interpret the annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statutes. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

In Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983), affirming Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), the United States Supreme Court held invalid what has become known as the "legislative veto." The U.S. Supreme Court's decision is consistent with our state supreme court's decision in A.L.I.V.E. Voluntary. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State laws; see, especially, the art. III introductory comments

Hon. M. Mike Miller
House Judiciary Committee

May 8, 1986
Page 5

which discuss the legislative/executive/public interrelationship regarding administrative regulations.

In a nutshell, the problem is that once the legislature passes a statute creating a program or function it is then up to the executive to execute that statute and up to the court system to determine whether the executive has exceeded its authority or otherwise violated the law. This proposed amendment would alter that balance by injecting the legislature into the execution stage of the system.

As the voters have done twice before, your committee should reject this proposed constitutional amendment.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Hon. Paul Fischer
Alaska State Senate

Jim Ayers, Director
Legislative Relations
Governor's Office

STATE OF ALASKA

THE LEGISLATURE

1981

Source

SCS HJR 1 (Jud)

Legislative
Resolve No.

15



Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

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

* Section 1. Article II, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

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

*Rejected by voters
98,856 to 91,174.*

FISCAL NOTE

REQUEST:

Revision Date: 4/5/89
Title: Relating to repeal of regulations
by the legislature
Sponsor: Judiciary Committee
Requestor: Judiciary Committee

Agency Affected: Office of the Governor
BRU: Division of Elections
Components: II-Elections
Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | -0- | -0- | 2.2* | -0- | -0- | -0- |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | 2.2* | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|------|-----|-----|-----|
| GENERAL FUND | -0- | -0- | 2.2* | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | -0- | 2.2* | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Election Pamphlet for printing and typesetting, and costs estimated to cover computer programming requirements for vote (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611
Division: Elections Date: _____

Approved by Commissioner: [Signature] for SAE Date: 4.6.89
Agency: Division of Elections

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSJR-3 (Judiciary)

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4