

SUR

41

SENATE COMMITTEE REPORT

FURTHER

2/3/89

DATE TURNED INTO OFFICE 4/21/90

Mr. President:

FINANCE Committee considered SJR 4

Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms.

and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated 22 Cov. previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

[Signature]

~~_____~~
~~_____~~
~~_____~~

[Signature]

OTHER RECOMMENDATIONS

[Signature] - No Rec
[Signature] - No Rec

[Signature] No Rec

[Signature] (NO REC)

Chairman signature and recommendation

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: 12/8/89
Title: Const. Amend. - Right
to keep and Bear Arms
Sponsor: Rodey
Requestor: Rodey

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	2.2*	-0-	-0-	-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 Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes. (Continued)

Prepared by: Linda Edgeworth Phone: 465-4611
Division: Division of Elections Date: 12/8/89

Approved by Commissioner: [Signature] (Acting) Date: 12.11.89
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. SJR 4

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

BY RODEY, KELLY, SZYMANSKI,
STURGULEWSKI, FISCHER,
HALFORD, KERTULA, PEARCE
AND FRANK

1 IN THE SENATE

2

SENATE JOINT RESOLUTION NO. 4

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

Proposing an amendment to the Constitu-

6

tion of the State of Alaska relating to

7

the individual right 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 individual [A
13 WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE
14 STATE, THE] right [OF THE PEOPLE] to keep and bear arms shall not be
15 denied or infringed by the state or a political subdivision of the
16 state.

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
20 election laws of the state.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 12, 1989

Commissioner William G. Demmert
Department of Education
P.O. Box F
Juneau, Alaska 99811

Dear Commissioner Demmert:

You have asked whether school districts will be able to prohibit the possession of weapons on school property if the Alaska constitution is amended as set out SJR 4. It is our opinion that the proposed amendment could present a constitutional impediment to adoption of laws that infringe on the right to keep or bear arms, including regulation of weapons on school grounds.

As set out more fully in the attached letter to Senator Jan Faiks, to support a finding of constitutionality in the face of a challenge based on the proposed amendment, each law infringing on the right to keep and bear arms must be based on a compelling state interest. Although we believe that a compelling state interest can be shown for prohibiting young children from having weapons, we are concerned that the new amendment could limit the prohibiting of adults, or older students, from having weapons on school property.

We must emphasize that the legal effects of the proposed constitutional amendment can not be predicted with any degree of certainty. However, based on the broad reading the Alaska court gives to the provisions of our constitution, and the lack of any language in the amendment giving the legislature the authority to regulate the exercise of the constitutional right, it is much more likely than at present that laws regulating firearms will be declared unconstitutional.

The constitutional hurdle could easily be avoided if the legislature amends the language of SJR 4 to specifically reserve the right to reasonably regulate arms. Language that would accomplish this result is set out at page 37 of the attached

Commissioner William G. Demmert
Right to Bear Arms Amendment


February 12, 1989
Page Two

letter, as well as in the attached document entitled "Alternative Methods of Reserving the Right of the Legislature to Reasonably Regulate Arms in SJR 4."

Please let us know if you have any remaining questions about this important issue.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Laurie H. Otto
Assistant Attorney General

Attachments: Letter to Senator Faiks, January 29, 1989
"Alternative Methods of Reserving the Right of the
Legislature to Reasonably Regulate Arms in SJR4"

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

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January 29, 1989

The Honorable Jan Faiks
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

Thank you for the opportunity to review SJR 4, relating to a proposed amendment to the constitutional right to bear arms in Alaska. After considerable research regarding the law in Alaska and other states on this issue, it is our opinion that the existing constitutional provision protecting the right to bear arms should not be, nor does it need to be, amended.

In summary, our analysis is:

1. In Alaska, the right of the people to bear arms for legitimate purposes has never been infringed. In the absence of a specific need to amend the constitution, it may be wise to follow the adage "If it ain't broke, don't fix it."

2. In a wide variety of contexts, the Alaska Supreme Court has interpreted individual rights under the state constitution more broadly than the federal constitution, and there is no reason to believe the court would not interpret the existing right to bear arms provision in an equally broad manner.

3. The legal effects of the proposed constitutional amendment can not be predicted with any degree of certainty. The recent experiences of West Virginia illustrate the unreliability of political statements made by proponents of this type of amendment.

4. The only effect of the amendment that can be stated with certainty is that it transfers power currently in the hands of the legislature to the judiciary. A similar and well-known example of such a power transfer occurred when the constitution was amended to specifically mention the right of privacy. The legislature is still struggling with the resulting supreme court opinion which recognized a constitutional right to use marijuana.

5. Based on the broad reading the Alaska court gives to the provisions of our constitution, and the lack of any language in the amendment giving the legislature the authority to regulate the exercise of the constitutional right, it is more likely that portions of Alaska's statutes regulating firearms will be declared unconstitutional. Case authority exists as legal precedent for invalidating, or seriously weakening, both the state statute prohibiting all felons from having firearms, and the Anchorage municipal ordinance against carrying concealed weapons in automobiles.

6. If the Legislature decides to approve a constitutional amendment modifying the right to bear arms in Alaska, the language of the amendment should affirmatively state

that the legislature continues to have the authority to reasonably regulate firearms by law.

1. The Right to Keep and Bear Arms in Alaska

The Alaska Constitution addresses the right of the people to keep and bear arms at Article I, Section 19. It provides: "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." Although this section of the constitution has never been interpreted by the Alaska Supreme Court, existing law grants Alaskans broad and relatively unrestricted rights to keep and bear arms.

Alaska's right to bear arms provision is virtually identical to language found in the Second Amendment to the United States Constitution. However, as noted by Legislative Counsel Tamara Brandt Cook in her memorandum to Senator Rodey dated April 14, 1983, "the [United States] Supreme Court has never directly considered whether the Second Amendment provides any protection to the private ownership of arms for lawful purposes." There is ample legal authority for the proposition that protection of the individual right to bear arms is provided by the language of both the Second Amendment and Section 19 of the Alaska Constitution.

For example, in one scholarly article,¹ the author demonstrated that the amendments guarantee the individual right to keep and bear arms for the following purposes: (1) to enable the individual to perform militia duties; (2) to deter governmental oppression; (3) to maintain public order; and (4) to enable the individual to exercise the right to self-defense. The author concluded his analysis by clearly stating that, under language identical to the Alaska Constitution, common and traditional users of private firearms are protected and that it would be unconstitutional to enact

(1) any law that infringes the right of the people (excepting those people who fall into a traditional high-risk category, such as felons, the mentally deficient, and infants) to keep any arms commonly used for personal protection or any of the modern equivalent of arms that were fairly commonly possessed by the people at the adoption of the Constitution, or
(2) any law that infringes the right to bear those arms for traditional lawful purposes.²

¹Dowlut, "The Right to Arms: Does the Constitution or the Predilection of Judges Reign?," 36 Oklahoma Law Review 65 (1983).

²Id. at 101. The following articles have been cited as authority for the proposition that the Second Amendment guarantees an individual right to bear arms: S.P. Halbrook, That Every Man Be Armed: The Evolution of a Constitutional Right (Univ. of N. Mex. Press 1984); Dowlut, "The Current Relevancy of Keeping and Bearing Arms," 15 U. Balt. L. F. 32 (1984); Kates, "Handgun Prohibition and the Original Meaning of the Second Amendment," 82 Mich. L. Rev. 204 (1983); Malcolm, "The Right of the People to Keep and Bear Arms: The Common Law Tradition," 10 Hastings Const. L. Q. 285 (1983); Caplan, "The Right of the Individual to Bear Arms: A Recent Judicial Trend," 1982 Detroit Col. L. Rev. 789; Shalhope, "The Ideological Origins of the Second Amendment," 69 J. Am. History 599 (1982); Halbrook, "To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791," 10 N. Ky. L. Rev. 13 (1982); Gardiner, "To Preserve Liberty--A Look at The Right to Keep and Bear Arms," 10 N. Ky. L. Rev. 63 (1982); Halbrook, "The

An analysis of the constitutional right to bear arms in Alaska must of necessity consider the history of gun regulation in the state.³ The right of the people to bear arms for legitimate purposes is widely recognized in Alaska, and has never been

Jurisprudence of the Second and Fourteenth Amendments," 4 Geo. Mason U.L. Rev. 1 (1981); Cantrell, "The Right to Bear Arms," 53 Wis. Bar Bull. 21 (Oct. 1980); Caplan, "Handgun Control: Constitutional or Unconstitutional?," 10 N.C. Central L. J. 53 (1978); Caplan, "Restoring The Balance: The Second Amendment Revisited," 5 Fordham Urban L.J. 31 (1976); Whisker, "Historical Development and Subsequent Erosion of the Right to Keep and Bear Arms," 78 W. Va. L. Rev. 171 (1976); Weiss, "A Reply to Advocates of Gun Control Law," 52 Jour. Urban Law 577 (1974); Hardy & Stompoly, "Of Arms and the Law," 51 Chi.-Kent L. Rev. 62 (1974); McClure, "Firearms and Federalism," 7 Idaho L. Rev. 197 (1970); Levine & Saxe, "The Second Amendment: The Right to Bear Arms," 7 Houston L. Rev. 1 (1969); Olds, "The Second Amendment and The Right to Keep and Bear Arms," 46 Mich. St. Bar. J. 15 (Oct. 1967); Comment, "The Right to Keep and Bear Arms: A Necessary Constitutional Guarantee or an Outmoded Provision of the Bill of Rights?," 31 Albany L. Rev. 74 (1967); Sprecher, "The Lost Amendment," 51 Am. Bar Assn. J. 554 and 665 (1965); and Hays, "The Right to Bear Arms: A Study in Judicial Misinterpretation," 2 Wm. & Mary L. Rev. 381 (1960).

³See, e.g., Hootch v. Alaska State-Operated School System, 536 P.2d 793, 800 (Alaska 1975): "In determining the scope of a constitutional right, the focus of the court's inquiry is not, however, on the question of whether there is a burden on the exercise of that right. We must look to the intent of the framers of the constitution concerning the nature of the right itself, the problems which they were addressing and the remedies they sought. While prior practice and the framers' purposes are not necessarily conclusive, an historical perspective is essential to an enlightened contemporary interpretation of our constitution."

infringed.⁴ Alaska and Vermont share the distinction of having the least restrictive firearms laws in United States.⁵

Proponents of the amendment indicate it is not proposed to rectify a current injustice nor to overturn existing guns laws or regulations, but to protect the rights of individuals to keep and bear arms against the caprice of an irresponsible legislature. We believe the protection of the existing constitution and the respect and restraint historically shown by the Alaska legislature and courts for the people's right to bear arms renders the proposed amendment unnecessary, and worse, the amendment interjects the uncertainty of judicial interpretation into a new and uncharted area.

2. Constitutional Interpretation in Alaska

It is often difficult to predict how a court will interpret the scope and effect of a new constitutional amendment, and how the power of the legislature will thereafter be limited. This unpredictability is very familiar to Alaskans. In 1972, the

⁴In previous years, a 1983 informal Attorney General's opinion has been cited as proof of the need for a constitutional amendment. The opinion addressed whether a landlord could prohibit a tenant from having firearms. This analysis of the right to bear arms, rendered in the context of a contractual relationship between private parties, did not comprehensively address the issue of governmental regulation of arms.

⁵Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, State Laws and Published Ordinances: Firearms (18th Ed. 1988).

people explicitly recognized the right to privacy in Alaska by approving a constitutional amendment. In the first major case interpreting the privacy amendment, the Alaska Supreme Court in Ravin v. State,⁶ struck down the law that criminalized possession of marijuana in the home for personal use. The legislature has been struggling for many years to deal with this unique interpretation of our constitution.⁷

Ravin is only one example of the propensity of the state supreme court to interpret the Alaska constitution as giving broader protection to individual rights than similar constitutional provisions in other jurisdictions. As a result, the judicial decisions of other states interpreting individual rights cannot be

⁶537 P.2d 494 (Alaska 1975).

⁷Although other states, including Arizona, California, Florida, Hawaii, Louisiana, Montana, South Carolina, and Washington, have adopted similar constitutional provisions recognizing the right to privacy, the Alaska court stands alone in its conclusion that the right to privacy protects the right to possess marijuana in the home.

heavily relied upon in predicting what will happen when the Alaska courts are asked to analyze identical issues.⁸

With respect to the actions of individual citizens, Alaska court decisions frequently rely on the privacy amendment to justify constitutional interpretations that are significantly broader than those reached by other courts. Our court has repeatedly determined that the effect of the right of privacy is to amplify the protections afforded by other constitutional rights. The complexity of anticipating the court's interpretation of a right to bear arms is compounded by the potentially augmenting effect of the explicit right to privacy.

For example, the Alaska constitutional guarantee against unreasonable searches and seizures is held to be broader in scope than identical guarantees under the federal constitution, in part because of the right to privacy.⁹ Despite considerable authority

⁸In addition to the cases discussed below, the Alaska Supreme Court has held that the Alaska Constitution provides greater protection in areas ranging from the free exercise of one's religious beliefs, Frank v. State, 604 P.2d 1068 (Alaska 1979) (defendant entitled to exemption from fish and game regulations on account of his religious beliefs even though the charges against defendant would have been upheld under the federal constitution) to the right to counsel, Resek v. State, 706 P.2d 288 (Alaska 1985) ("the right to counsel under the Alaska Constitution is more expansive than the corresponding right under the sixth amendment to the United States Constitution.").

⁹Reeves v. State, 599 P.2d 727, 734 (Alaska 1979). In this case, the court reversed a conviction for possession of heroin. The defendant had been arrested for driving while intoxicated, and a correctional officer discovered the heroin inside a balloon in

to the contrary in other jurisdictions, the Alaska court has held that the state constitution prohibits warrantless administrative inspections of private business premises.¹⁰ The warrantless monitoring of private conversations with the consent of one participant, acceptable under federal constitutional standards, is held in Alaska to be an unreasonable search and seizure in light of the combined effect of the Alaska constitutional prohibition against unreasonable searches and seizures, and the Alaska constitutional right of privacy.¹¹

The Alaska court has also forged new legal ground in interpreting the equal protection clause of the state constitution. This amendment provides additional protection for the exercise of constitutional rights such as the right to bear arms because it is used by the court in evaluating whether legislation is

the defendant's pocket. Although it was permissible for the officer to take the balloon away from the defendant before he was booked into the jail, the court held that the defendant's right to privacy and right to be free from unreasonable searches and seizures was violated when the officer looked inside the balloon.

¹⁰Woods & Rohde, Inc. v. State, 565 P.2d 138 (Alaska 1977).

¹¹In the cases of Coffey v. State, 585 P.2d 514 (Alaska 1978) (court reversed conviction of marijuana dealer); Aldridge v. State, 584 P.2d 1105 (Alaska 1978) (court reversed conviction of heroin dealer); State v. Glass, 583 P.2d 872 (Alaska 1978) (court agreed charges against heroin dealer should be dismissed), the decisions were based on the court's broad interpretation of Alaska's constitutional rights to privacy and to be free from unreasonable searches and seizures. Federal courts faced with the same issues have interpreted similar federal constitutional guarantees relating to searches and seizures differently, and would have upheld the convictions.

constitutional. In developing its own equal protection analysis, our court rejected the deferential test applied by the United States Supreme Court, holding instead that the Alaska Constitution requires social and economic legislation to pass a more rigorous test.¹²

In Herrick's Aero-Auto-Aqua Repair v. DOT, 754 P.2d 1111 (1988), the court explained its expansive equal protection analysis as follows:

In reviewing equal protection claims under the Alaska constitution ... the minimum burden that the state must meet when defending legislation challenged on equal protection grounds under the Alaska constitution is greater than that required under the United States Constitution. The burden on the state increases in proportion to the primacy of the interest involved. Eventually this burden reaches the functional equivalent of the federal compelling state interest test in those cases where fundamental rights and suspect categories are at issue.¹³

Another liberal interpretation of Alaska's constitution was set out in Vogler v. Miller, 651 P.2d 1 (Alaska 1982). In this case the court invalidated statutes relating to ballot access by

¹²Isakson v. Rickey, 550 P.2d 359 (Alaska 1976).

¹³754 P.2d at 1114. The court in Herrick also pointed to an additional burden placed on the state in defending against an equal protection challenge. "[T]he rational basis test articulated by the Supreme Court allows a court to 'hypothesize' facts. Under that test, a party challenging legislation on equal protection grounds, cannot prevail so long as 'it is evident from all the considerations presented to [the legislature], and those of which we may take judicial notice, that the question is at least debatable.'" Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981). In Alaska, the court will not hypothesize facts.

candidates of small parties. The court relied on the free speech and equal protection provisions of the Alaska constitution, and acknowledged that the statutes would have been upheld under the interpretation the federal courts have given to identical provisions of the United States constitution. The court declared that Alaska restrictions on the right to associate in pursuit of political beliefs are permissible only where the government is able to show that the restrictions are justified by compelling governmental interests. Further, the restrictions must be no broader than needed to accomplish the governmental interests which justify them.¹⁴

Thus, any effort to predict the interpretation of any amendment relating to an individual right in the Alaska court must be mindful of the court's tendency to interpret individual rights broadly, in often unexpected contexts, and the court's frequent insistence that regulatory schemes satisfy a compelling state interest test.

3. The West Virginia Experience

Despite Alaska's unique constitution and the willingness of our court to adopt novel legal interpretations, we have also considered the experience of other states with right to bear arms amendments. For example, based on its newly-enacted right to bear

¹⁴651 P.2d at 5.

arms amendment, the West Virginia Supreme Court recently struck down a statute that prohibited carrying dangerous or deadly weapons without a license.

Proponents of the amendment had argued during legislative hearings that existing laws would not be affected by the amendment, but when an existing law was challenged, the proponents switched positions and argued for the unconstitutionality of the West Virginia law. This case shows the dangers that arise when a legislature approves a constitutional amendment that does not spell out in plain language its precise intent. A detailed description of what happened in West Virginia is therefore important because many of the same issues are currently being discussed in the context of your consideration of SJR4.

a. Legislative History

In 1986, West Virginia amended its constitution to expand the right to keep and bear arms. The new constitutional provision stated, "A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreation use."

Despite the popularity of the right to keep and bear arms amendment in the West Virginia legislature, the legislative process "failed to give the amendment's language any real definition beyond

a general sense that passage of the amendment would leave undisturbed current law and constitutionalize existing state law prohibiting municipal governments from banning the ownership of weapons or ammunition. The very popularity of the concept seemed to insulate the proposed amendment from the 'hard look' analysis appropriate for amendments to a constitution."¹⁵

No significant statement of legislative intent was prepared by any of the committees that considered the proposal, nor was any substantive research done by the legislative committees that recommended the measure for passage. As a result, there was little in the legislative history to assist the court in fixing any specific meaning to the words, phrases, or the intent of the amendment. In researching the legislative history, McNeely concluded, "All that can be said without question was that legislative proponents consistently took the position that the amendment, if adopted, would not change existing laws, and that legislative opponents consistently attempted, with no ultimate success, to amend the measure to assure that the state would retain its ability to maintain the existing state of the law."¹⁶

¹⁵McNeely, "The Right of Who to Bear What, When, and Where - West Virginia's Firearms Law v. The Right-To-Bear-Arms Amendment," 89 West Virginia Law Review 1125 (1987) at 1160.

¹⁶McNeely at 1152.

In an analysis provided to the West Virginia legislature by the National Rifle Association, the proponents argued that under the amendment the bearing of constitutionally-protected arms "may be regulated." The analysis described the various statutes that the NRA believed would be upheld if the proposed amendment were adopted, and specifically stated that "a license may be required to carry a pistol away from one's home, place of business, or land."¹⁷

In attempting to predict the effect the court would give to the amendment, McNeely predicted that,

Given the legislature's failure to provide clear legislative intent in any formal sense, it shall be up to the judicial branch of the state to interpret the amendment consistent with its language and demonstrated intent. With that interpretation, the court may continue the state's traditional legal attitude toward firearms by finding the amendment consistent with state law, or it may embark the state on an uncharted course of repeal and revision of long-standing statutes and case law ... It is, perhaps, ironic that such a lack of legislative research and formal legislative findings, coupled with the broad, unqualified

¹⁷The National Rifle Association "Analysis of Proposed West Virginia Constitutional Guarantee to Keep and Bear Arms" is set out as Appendix H to the McNeely article at 1176-78. It is virtually identical to the "Analysis of Proposed Alaska Constitutional Guarantee to Keep and Bear Arms" contained in the Senate Judiciary file for SJR4.

In addition, at least one advertisement by the NRA for the amendment in West Virginia contained "a prominent statement that no existing federal or state law would be repealed by passage, with the statement reading 'Amendment 1 keeps Federal and State firearms laws the law.'" McNeely at 1148.

language of Amendment No. 1, have combined to place the future of firearms regulation, heretofore primarily a legislative activity, in the hands of the judicial branch of state government.¹⁸

b. Princeton v. Buckner

The case of Princeton v. Buckner¹⁹ began when a police officer searched a drunk driver who had been placed under arrest, and found a .22 caliber automatic pistol concealed in the driver's pocket. Under existing West Virginia law, a license was required to carry a concealed weapon. Although the drunk driver did not have a license, the magistrate refused to issue charges for illegally carrying a firearm because he concluded that the licensing law was unconstitutional under the newly-enacted right to bear arms amendment to the West Virginia Constitution.

Despite the assertions during the legislative and public debates that existing West Virginia firearms laws would not be affected, the challengers to the law in Buckner lost little time in proving the non-binding nature of such statements.²⁰ In their analysis of legislative intent, the challengers pointed to the

¹⁸McNeely at 1162.

¹⁹Case No. CC972, West Virginia Supreme Court of Appeals, July 1, 1988, reconsideration denied December 20, 1988.

²⁰The National Rifle Association filed an amicus brief in the Buckner case on behalf of its West Virginia members, which concluded: "... the licensing statute is unconstitutional because it frustrates rather than regulates the right to bear arms."

legislature's refusal to modify the amendment to specifically state that the legislature retained the power to regulate firearms.

For example, in his brief to the Supreme Court, Buckner argued as follows:

The State, in its brief, concludes that "it is clear that the Right to Keep and Bear [Arms] Amendment to the West Virginia Constitution was not meant to nullify existing laws." This conclusion is without factual support or logic. Had the efforts of Delegate McNeely to add the word "lawful" and had the efforts of Delegate Knight to make the amendment subject to the "police power" of the State, or either of these efforts, been successful, then the argument of the State might bear some logic. The fact that both of these efforts were specifically turned down by the Legislature indicates clearly that the Legislature had no such intent as stated by the State. Had that been the clear intent of the Legislature in passing the resolution, it could have simply added language to that effect, or adopted one of the amendments referred to. (emphasis added) Brief of Respondent Buckner at 4.

The basis of the argument of the State is that the proponents took the position that the right to bear arms amendment did not change existing laws. The fact of the matter is that the opponents of the amendment took the position that it would, in fact, change existing law and the Legislature refused, although given opportunity to do so, to word the amendment in such a fashion so as to deal with that question. (emphasis added) Brief of Respondent Buckner at 5.

In addition to pointing out that the legislature refused to address the extent to which it retained the power to pass firearms legislation, the challengers concluded that the

legislature and the people must have wanted to place restraints on the legislature. At page 6 of his brief, Buckner argued that if the constitutional amendment "means anything, it has to mean that the people of the State wanted to change the law in existence at the time, and place restraints upon the Legislature. Any other conclusion is illogical and would render the act of the Legislature and the people in adopting the constitutional provision an exercise in futility." In other words, it doesn't matter what the supporters of the bill said; it only mattered what the legislature itself said in the language of the amendment.

The West Virginia Supreme Court accepted the arguments presented by the challengers, and held that a "constitutional amendment will supersede any inconsistent portions of antecedent constitutional or statutory provisions, as 'the latest expression of the will of the people.'"²¹ The court rejected the position taken by the state that "West Virginia's licensing statute evinces an intent to control, but not prohibit, carrying weapons, such as handguns, which are both easily concealable and deadly."²²

²¹Princeton v. Buckner, at page 10.

²²Brief of Petitioner State of West Virginia, at 15.

On December 20, 1988, the West Virginia Supreme Court reaffirmed its holding that the statute was unconstitutional. The opinion did not isolate the specific provisions of this statute, or the related licensing requirements, which rendered the statute violative of the right to keep and bear arms amendment. Instead, the court declared that the prohibition against carrying a dangerous or deadly weapon for defensive purposes without a license or other statutory authorization was overly broad.

c. Current Status of West Virginia Gun Law

Similar to the current situation in Alaska where the legislature is trying to pass a constitutional statute prohibiting people from possessing marijuana in their homes, the West Virginia legislature is now working on developing a constitutional statute relating to the carrying of deadly and dangerous weapons.²³ In the meantime, unless a person commits a separate criminal offense with a firearm, West Virginia law enforcement authorities are prohibited from arresting persons for, or protecting persons from, carrying concealed weapons, regardless of whether the offender is carrying the weapon for defensive or other purposes. (Source--West Virginia Department of Public Safety)²⁴

Although the court acknowledged that the legislature "may, through the valid exercise of its police power, reasonably regulate the right of a person to keep and bear arms in order to promote the health, safety and welfare of all citizens of this State, provided that the restrictions or regulations imposed do not frustrate the constitutional freedoms guaranteed by...the Right to Keep and Bear Arms Amendment," the court recognized that each statute regulating firearms would need to be evaluated in light of the new constitutional provisions. The court cautioned that "a governmental purpose to control or prohibit certain activities, which may be constitutionally subject to state regulation under the police power, may not be achieved by means which sweep unnecessarily broadly and thereby invade the realm of protected freedoms, such as the right to keep and bear arms guaranteed by our State Constitution." (emphasis added)

²³Telephone conversation, Steve Hernden, West Virginia Assistant Attorney General.

²⁴Petition for Reconsideration of Remedy filed by the State of West Virginia at pages 1-2.

4. The Proposed Alaska Amendment

The proposed amendment to the Alaska constitution states that "The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state."

The first and most significant effect of the constitutional amendment proposed in SJR4 is to limit the legislative authority to regulate the right to bear arms. The amendment takes authority away from the people's elected representatives as to what policies the state will follow concerning the right to keep and bear arms and, shifts to the courts the ultimate authority to decide state policy through the uncertain course of constitutional interpretation.

The sweeping but ambiguous language of the proposed amendment means that, if passed, it can be expected to trigger a great deal of litigation in a number of different contexts. If the courts were to construe the amendment in a fashion that the Legislature felt was harmful to the public interest, the only way that the law could be changed, without inducing the court to change its own position, would be through another constitutional amendment. Thus, the amendment would give the courts a much greater role in interpreting the regulatory authority of the Legislature than it has at present.

As discussed above, relying on legal precedents from the courts of other states to predict what the Alaska court may decide under the proposed amendment is fraught with difficulty. Although proponents of amending Alaska's constitution argue that at least 42 states have constitutional provisions guaranteeing a right to bear arms, and that all firearms laws have been upheld in every state, this assertion is incorrect and misleading, as discussed below.

Most constitutional provisions enacted by other states differ from SJR4 because they either define the circumstances in which the constitutional right applies, or they expressly recognize that the constitutional provision is subject to legislative regulation.²⁵ Only Rhode Island has a constitutional provision, like SJR4, that grants an apparently unfettered right to keep and bear arms.²⁶

Each of the 50 state supreme courts interpret its own constitutional provisions consistent with the legal precedents of that state. Decisions made by courts of sister states may be

²⁵See R. Dowlut & J. Knoop, "State Constitutions and the Right to Keep and Bear Arms," 7 Okla. City U.L. Rev. 177, 236-240 (1982).

²⁶We have been unable to find any cases in which the Rhode Island Supreme Court has directly interpreted this constitutional provision.

informative, yet are not persuasive or conclusive authority from which one can predict the result in a different jurisdiction. For example, the West Virginia court struck down its licensing statute after considering and rejecting an Indiana Supreme Court decision that reached the opposite conclusion.²⁷ In the Indiana decision, the dissent noted that "The decisions from other jurisdictions are not uniform on the right to keep and bear arms any more than the constitutional provisions are stated in the same language."

²⁷An Indiana statute which imposed licensing requirements on handguns similar to those of West Virginia was addressed in Matthews v State, 148 N.E. 2d 334 (1958). As in West Virginia, the Indiana statute placed no restrictions on possessing or carrying a weapon on one's own premises, but to carry a gun elsewhere required a license conditioned on a showing that, among other things, "the applicant has a proper reason for carrying a pistol and is of good character and reputation and a suitable person to be so licensed." 148 N.E.2d at 336. The Indiana constitution provided that "the people shall have a right to bear arms, for the defense of themselves and the State." The Matthews court affirmed the statute and held that the licensing statute was a legitimate exercise of the legislative power to provide for the public safety and welfare.

In a subsequent case, Schubert v. DeBard, 398 N.E.2d 1339 (Indiana App. 1980), the Indiana court relied on the constitutional right to bear arms provision in reversing the denial of a license to carry a handgun made by an applicant who claimed he needed a gun for self-defense. The authorities had denied the license after reviewing evidence showing that the applicant "was a 'chronic liar' suffering from a 'gigantic police complex.'" Evidence also showed that when the applicant had previously held a license, he "had carried and displayed his pistol at inappropriate times." Other witnesses testified that the applicant had "mental problems."

The Schubert court reiterated that establishing a licensing procedure for handguns is not violative of the constitution. However, the court ruled that once a person makes the claim that a gun is needed for self-defense, the constitutional right to bear arms provision prohibits authorities from withholding the license, or even making a factual determination as to whether the person actually needs a gun.

Since the analysis of each case turns on the precise wording of each constitutional provision, it is difficult to use the cases for purposes of comparison. For example, the court's reasons for upholding a challenged statute in State v. Grob, 690 P.2d 951 (Idaho App. 1984) are illustrative of the limited precedential value out-of-state decisions would have in Alaska. In this case, the defendant argued that a statute providing a mandatory sentence for using a firearm while engaged in kidnapping or aggravated battery violated his constitutional right to bear arms. Since Idaho's constitutional right to bear arms provision was amended in 1978, the court looked to the language of both the pre-1978 and post-1978 constitutions. The court found that the statute was constitutional under the pre-1978 language because the provision specifically stated "the legislature shall regulate the exercise of this right by law." Similarly, the statute was found to be constitutional under the post-1978 language based on the specific authorization given the legislature to prescribe "minimum sentences for crimes committed while in possession of a firearm" and to punish the unlawful "use of a firearm."²⁸

5. The Risk to Specific Alaska Statutes

a. Constitutionality of Concealed Weapons Statutes

Despite the assertions of supporters of this amendment, it is by no means certain that a new right to bear arms amendment

²⁸State v. Grob, 690 P.2d 951, 953-54 (Idaho App. 1984)

would leave current Alaska statutes prohibiting the carrying of concealed weapons untouched. If the Alaska courts interpreted the amendment to permit the carrying of concealed weapons, AS 11.61.220(a)(1) would be unconstitutional. On the other hand, it cannot be said that the Alaska Supreme Court would hold that this was an area beyond legislative regulation. The matter is simply uncertain.

An article published by Robert Dowlut, General Counsel for the National Rifle Association,²⁹ gives rise to concern about the constitutionality of an Anchorage municipal ordinance, if the proposed amendment to the Alaska constitution were approved. Dowlut asserts that the right to keep and bear arms includes the right to carry weapons in private vehicles,³⁰ something which is now prohibited by Anchorage Municipal Code 8.05.070(A), as interpreted in Municipality of Anchorage v. Lloyd, 679 P.2d 486 (Alaska App. 1984).³¹

²⁹Dowlut & Knoop, "State Constitutions and the Right to Keep and Bear Arms," 7 Oklahoma City University Law Review 177 (1982).

³⁰Id. at 220.

³¹Support for amending Alaska's constitutional right to bear arms provision has been predicated on an unwarranted assumption that the amendment will not have an effect on existing state or municipal laws. For example, Resolution No. AR 87-238, dated September 29, 1987 and passed by the Anchorage Assembly, included the bald assertion that the amendment "will not invalidate existing municipal public safety measures regulating the use and possession of firearms."

In the document entitled "Analysis of Proposed Alaska Constitutional Guarantee to Keep and Bear Arms," which was written by Dowlut and provided to members of the Senate Judiciary Committee, the assertion is made that "concealed carrying statutes ... are routinely upheld." A review of the cases cited in support of this proposition highlights the problems involved in relying on judicial decisions in jurisdictions outside the state of Alaska to predict how our court would interpret the proposed constitutional amendment.

For example, Dowlut cites Holland v. Commonwealth, 294 S.W.2d 83 (Ky. 1956) as standing for the proposition that concealed weapons statutes are constitutional despite the broadly drafted language of SJR4. However, a review of the case shows that the Kentucky constitution explicitly declares that the right to bear arms is "subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons," a phrase not included SJR4. The court upheld the concealed weapons statute because it found that "the meaning of the constitutional provision is plain and the legislature has exercised the power granted to it by enacting [the concealed weapons statute]." Id. at 85.

Similarly, Dowlut claims that State v. Kessler, 614 P.2d 94, 99 (Oregon 1980) is another case in which a concealed weapons statute was "routinely upheld." In fact, the court in Kessler

struck down a statute that prohibited possessing billy clubs. Despite Dowlut's claim, the court did not address the constitutionality of concealed weapons laws, although it noted in passing that the court in State v. Hart, 157 P.2d 72 (Idaho 1945) upheld a concealed weapons statute.

In Hart the Idaho court specifically based its decision to uphold the ordinance on the language of Idaho's constitutional right to bear arms provision. At the time Hart was decided, the Idaho constitution stated "The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law."

The final case cited by Dowlut to support his claim that Alaska's courts will uphold concealed weapons statutes is State v. McAdams, 714 P.2d 1236 (Wyo. 1986). However, once again, the constitutional provision that was analyzed in McAdams is significantly narrower than the proposed amendment contained in SJR4. The Wyoming constitution provides, "The right of citizens to bear arms in defense of themselves and of the state shall not be denied." The court upheld the concealed weapons statute because it did not believe that the law placed unnecessary restraints on the right to possess arms for self defense: "We are cognizant of the fact that our concealed deadly weapons statute imposes some limitation on a person's right to bear arms in defense of himself;

but, when balanced against the object of the statute, we do not find the limitation unreasonable." Id. at 1238.

b. Constitutionality of Felon in Possession Statutes

It is also by no means certain that the Alaska Supreme Court would uphold current laws controlling or prohibiting convicted felons from owning or possessing weapons if SJR4 were adopted. Felons convicted of bootlegging or drug dealing would be allowed to possess firearms with impunity if the opinion expressed by the General Counsel of the National Rifle Association, and discussed below, were adopted in this state. Moreover, the Colorado Supreme Court has interpreted its constitutional right to bear arms as providing a defense to the charge of felon in possession. If the Alaska courts reached a similar interpretation, the ability to prosecute felons for possessing firearms would certainly be impaired.

The supporters of SJR4 have provided you with the "Analysis of Proposed Alaska Constitutional Guarantee to Keep and Bear Arms" which implies that Alaska's felon in possession statute would withstand constitutional scrutiny. However, Robert Dowlut, General Counsel for the National Rifle Association, has previously published contrary statements. In a law review article, he stated, "To prevent the people from being disarmed by the expedient of classifying regulatory offenses as felonies, the disqualification

for felons should be restricted to common law felonies and their modern equivalents and to offenses requiring some state of mind above strict liability which are inherently inimical to life and property."³² (emphasis added). Thus, under Dowlut's view, felons charged with drug dealing and bootlegging, which are not "common law felonies," could legally carry weapons.

Under current AS 11.61.200, all persons convicted of any felony are prohibited from possessing a firearm capable of being concealed on the person, and this law applies to persons convicted of regulatory offenses such as bootlegging and drug dealing, as well as the common law felonies such as murder, assault or kidnapping. If Dowlut's interpretation were adopted, Alaska's statute would be overbroad, and struck down as unconstitutional.

A conviction for being a felon in possession of a firearm was reversed by the Colorado Supreme Court in People v. Ford, 568 P.2d 26 (Colorado 1977), based on the "right to bear arms" provision of the Colorado Constitution. The court held that the constitutional protection extends to a defendant "who presents competent evidence showing that his purpose in possessing weapons was the defense of his home, person, and property" and that this type of evidence provides a complete defense to a felon-in-

³²Dowlut & Knoop at 192.

possession charge.³³ Once the defendant has raised the issue as a defense, the prosecution must prove, beyond a reasonable doubt, that the defendant's purpose in possessing firearms was not for defense. Thus, unless the felon is committing a crime with the gun, it is virtually impossible to prove that the weapon was not for "defense." As a practical matter, the teeth have been taken out of the law because of the problems of proving that a felon in possession of a gun at the felon's home, on the felon's person, or on the felon's property is using it other than for defense.

As with the concealed weapons statutes, there are problems in relying on the judicial decisions of other states in reaching the conclusion that Alaska's statute would withstand constitutional scrutiny. For example, in the North Dakota case distributed to the Senate Judiciary Committee, State v. Ricehill³⁴, the statute only prohibited persons "convicted anywhere for a felony involving violence or intimidation" from owning firearms. Unlike current Alaska law, North Dakota's narrower felon in possession statute would fall within the category of felon in possession statutes that Dowlut considers to be constitutional, in

³³The court noted at page 28 that this affirmative defense is available in cases involving the charge of carrying a concealed weapon.

³⁴415 N.W.2d 481 (N.D. 1987).

that it only prohibits felons convicted of common law felonies from having firearms.³⁵

Other state courts have upheld felon in possession statutes based on express constitutional language that preserved the right of the legislature to regulate arms. In Landers v. State, 299 S.E 2d 707 (Ga. 1983), the court affirmed the conviction of a felon charged with possessing a firearm, and held "Where a State constitution in terms provides, in connection with the right to bear arms, that the State may regulate this right, or may regulate the manner of bearing arms, these words expressly

³⁵See also, Dickerson v. State, 517 So.2d 625 (Ala. Cr. App. 1986), Bristow v. State, 418 So.2d 927 (Ala. Cr. App. 1982) and Mason v. State, 103 So.2d 337 (Ala.App. (1956), aff'd 103 So.2d 341 (1958) (Statute prohibited "a person who has been convicted of a crime of violence from owning or possessing a pistol); State v. Krantz, 164 P.2d 453 (Wash. 1945) and State v. Tully, 89 P.2d 517 (Wash. 1939) (Statute prohibited possession of a firearm after having been convicted of a crime of violence); Carfield v. State, 649 P.2d 865 (Wyo. 1982) (Statute prohibited persons convicted of "murder, voluntary manslaughter, assault to commit murder, aggravated assault, robbery, burglary or sexual assault in the first or second degree, or mayhem" to possess any firearms.); State v. Noel, 414 P.2d 162 (Ariz. 1966) and State v. Rascon, 519 P.2d 37 (Ariz. 1974) (Statute prohibited any person convicted of a crime of violence from possessing a pistol); Sheppard v. State, 586 S.W.2d 500 (Tex. Crim. App. 1979), McGuire v. State, 537 S.W.2d 26 (Tex. Cr. App. 1976) and Webb v. State, 439 S.W.2d 342 (Tex. Cr. App. 1969) (Statute prohibited persons convicted of "a felony involving an act of violence or threatened violence to a person or property" from possessing firearms "away from the premises where he lives."); State v. Cartwright, 418 P.2d 822 (Ore. 1966) (Statute prohibited possession where convicted of "a felony against the person or property of another."

recognize the police power in direct connection with the constitutional declaration as to the right."³⁶

Similarly, in Nelson v. State, 195 So. 2d 853 (Fla. 1967), the conviction for possession of a pistol by a defendant who had previously been convicted of a felony was upheld. Although the statute applied to persons convicted of all felonies, Florida's constitutional provision said "The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law."

The court in Amos v. State, 343 So.2d 166 (La. 1977) upheld charges for felon in possession of a firearm because the "purpose [of the statute] is to limit the possession of firearms by person who, by their past commission of certain specified serious felonies, have demonstrated a dangerous disregard for the law and present a potential threat of further or future criminal activity." However, two justices of the Louisiana Supreme Court dissented from the opinion, believing that the statute impermissibly infringed on the right to bear arms.

³⁶Georgia's constitution states "The right of the people to keep and bear arms shall not be infringed but the General Assembly shall have power to prescribe the manner in which arms may be borne."

The reasoning of the two dissenting justices in Amos is important, since if this position were adopted in Alaska, AS 11.61.200 would be struck down. The dissenters stated that the felon in possession statute "impermissibly limits the affirmative constitutional guarantee and as such is not a valid exercise of the police power." The dissenters looked at other state decisions upholding felon in possession laws and concluded "These states, however, have constitutional provisions different from ours. Every one of these constitutions link the right to bear arms to the need for a militia. Unlike these provisions, the Louisiana Constitution of 1974 expressly grants to each citizen the 'right to keep and bear arms,' a right which 'no law' shall abridge. This constitutional guarantee is not limited by linking it to a militia or a defense for the people as a whole. It is limited only by one state exception: the legislature has the authority to prohibit the concealment of weapons on the person. Otherwise, the legislature lacks the authority to nullify the right of Louisiana citizens to keep and bear arms."

An analysis of the effect the proposed right to bear arms amendment will have on the state's felon in possession statute must be undertaken with both the right to privacy and the Alaska Supreme Court's expansive equal protection standard in mind. Alaska law prohibits all felons, including persons convicted of non-violent felonies such as embezzlement and certain sex offenses, from

possessing firearms. If SJR4 were adopted, the court would require the state to prove that the law is based on a compelling state interest. In relation to non-violent felons, it is not unlikely that the state would be unable to meet the burden of proving it had a compelling state interest in prohibiting the possession of firearms by non-violent felons.

c. Constitutionality of Prohibited Weapons Statutes

The possession of certain classes of weapons is prohibited in Alaska.³⁷ Included in the category of prohibited weapons are switchblades, gravity knives, and metal knuckles. Under SJR4, this law would be unconstitutional, if the court in this state accepted the analysis of the Oregon Supreme Court in State v. Delgado, 692 P.2d 610 (Ore. 1984); State v. Blocker, 630 P.2d 824 (Ore. 1981); and State v. Kessler, 614 P.2d 94 (Ore. 1980).

In Delgado, the Oregon court held that a statute prohibiting mere possession of a switchblade was unconstitutional under the right to bear arms provision of the Oregon constitution.³⁸ The court first determined that the drafters of Oregon's constitution "intended that the private citizen have the

³⁷AS 11.61.200(e).

³⁸Article I, section 27, of the Oregon Constitution provides: "The people shall have the right to bear arms for the defence of themselves, and the State..."

right to possess arms for the defense of person and property."³⁹ Next, the court reasoned that switchblades were arms, and as a result, possession of a switchblade is a constitutionally protected in Oregon and the statute making such possession a crime is unconstitutional.

d. Constitutionality of Game Regulations

Alaska's regulatory scheme relating to the lawful methods of taking game is potentially at risk if the proposed amendment is adopted.⁴⁰ Since each of the game regulations infringes on the right to bear a particular type of arm, in order for the regulation to withstand constitutional scrutiny, the state would need to prove that it had a compelling state interest for adopting the regulation.

For example, under 5 AAC 92.100(a)(1), it is illegal to shoot waterfowl with a rifle or pistol. The purpose of the regulation is to make hunting waterfowl less efficient, and more

³⁹Delgado at 611.

⁴⁰5 AAC 92.075 (the permissible weapons for taking big game are a shotgun, a muzzle-loading rifle, or a rifle or pistol using a center-firing cartridge); 5 AAC 92.080 (it is prohibited to take game with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge); and 5 AAC 92.100 (it is prohibited to take waterfowl, snipe and cranes with a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to a three shell capacity).

sporting.⁴¹ However, many biologists have argued that the regulation is unnecessary as it doesn't matter how a bird is killed, it only matters how many animals are shot, and whether the appropriate bag limit was exceeded.⁴² In the face of this type of expert testimony, it is not unlikely that a court would strike down 5 AAC 92.100(a)(1) as an infringement of the right to bear arms.

6. The Legislature Should Affirmatively State Its Intent

The State, through exercise of its police power, is vested with the authority to enact laws, within constitutional limits, to promote the general welfare of its citizenry. The Alaska Supreme Court examined the state's police power in light of express constitutional limitations on regulatory authority in Matthews v. Quinton.⁴³ In this case, the court analyzed whether a statute providing for the transportation of children to nonpublic schools at public expense was in contravention of a constitutional prohibition against the appropriation of public funds for the support of private schools. Since the statute had been on the books before the constitutional provision was adopted, the court

⁴¹Telephone conversation with James Sheridan, Assistant Special Agent in Charge, Law Enforcement, Alaska Region, United States Fish and Wildlife Service.

⁴²Id.

⁴³362 P.2d 932, app. disp., cert. den. 82 S.Ct. 530, 368 U.S. 517, 7 L.Ed.2d 522 (Alaska 1961)

considered the effect of subsequently adopted constitutional provisions on existing statutes.

The court concluded that for a constitutional provision to operate retrospectively to validate antecedent legislation in the face of claimed unconstitutionality, "the validating constitutional provision must make some reference, however slight or inferential, to the statute intended to be validated." The statute authorizing transportation of private school pupils was declared void because the newly adopted constitutional provision did "not show by the language used, either directly or by necessary implication, that it was intended to operate retrospectively so as to validate [the statute]." Id. at 939.

Whether the statute was a valid exercise of the police power of the state was also considered in Matthews. The court noted that "the police power -- broad and comprehensive though it is -- may not be exercised in contravention of plain and unambiguous constitutional inhibitions." Although the state has "inherent and reserved police power to enact laws to promote the safety, health and general welfare of society," the court emphasized that "this power must be exercised within constitutional limits." Id. at 944.

During the Fourteenth and Fifteenth Legislatures, versions of the right to bear arms amendment contained a general statement of "legislative intent" indicating that the constitutional amendment, if adopted, "should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used." We are concerned that this indirect statement of legislative intent will not be effective to preserve the present power to reasonably regulate the possession and use of weapons.

As a general rule, a statute or constitutional provision will be interpreted according to the plain meaning of the language on its face. If the intent behind the adoption of the amendment were to later become an issue, it is the intent of the voters who adopted the measure that will be relevant, rather than the intent of the legislators who drafted it. Although last session's resolution directed the Legislative Affairs Agency to consider the stated "legislative intent" when preparing its neutral summary for the election pamphlet, the intent language would not appear on the ballot itself, and might not be contained verbatim in the election pamphlet. See art. XIII, sec. 1 of the Alaska Constitution and AS 15.58.010.

Conclusion

It is our belief that the present provision of the Alaska constitution and the traditional restraint of the legislature in

regulating firearms adequately protect the right to bear arms. However, if the legislature believes this issue should be placed before the people in the form of a constitutional amendment, that amendment should be drafted to explicitly recognize the legislature's regulatory authority with regard to arms.

Both legal principles and common sense dictate that a well-drafted statute or constitutional provision should reduce uncertainty and disputes about interpretation. 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 possibility that a criminal defendant would later be able to successfully convince a court, as has been done in other that states, that a statute, regulation, or ordinance is unconstitutional.

As alternatives to SJR4, we suggest language such as:

The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state, except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used.

or

The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state, except that the exercise of this right may be regulated by law.

The Honorable Jan Faiks
SJR4 - Right to Keep and Bear Arms

January 29, 1989
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We appreciate your consideration of our comments, and trust that we can work together to accomplish your goals in a way that does not detrimentally affect our ability to prosecute activities that we all agree should be against the law.

Respectfully submitted,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

cc: The Honorable Pat Rodey
The Honorable Peter Goll
The Honorable Max Gruenberg
The Honorable Dave Donley
Grace Berg Schaible
Bob Evans

ALTERNATIVE METHODS OF RESERVING THE RIGHT OF THE LEGISLATURE TO
REASONABLY REGULATE ARMS IN SJR 4

The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state,

1. ... except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used.

2. ... except that the state or a political subdivision of the state may reasonably regulate the manner in which arms may be kept, borne, or used.

3. ... except that the exercise of this right may be regulated by law.

4. ... except that the exercise of this right may be reasonably regulated by law.

5. ... except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

6. ... except that the state or a political subdivision of the state may reasonably regulate the manner in which arms may be kept, borne, or used. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

7. ... except that the exercise of this right may be regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

8. ... except that the exercise of this right may be reasonably regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

Department of Law
Laurie Otto

2/13/89

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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During Session:
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DATE: February 13, 1989

TO : Senator Rick Uehling, Co-Chair
Senator John Binkley, Co-Chair
Senate Finance Committee

FROM: Senator Patrick Rodey

RE : Senate Joint Resolution 4 - Proposing an amendment to the
Constitution of the State of Alaska relating to the individual
right to keep and bear arms.

Senate Joint resolution would place a proposed constitutional amendment before the voters at the next general election. The resolution contains an amendment to the state constitution which would establish and clarify an individual's right (rather than a collective right) to keep and bear arms. It also precludes local regulation of the possession or use of firearms.

There is a fiscal note of \$2,200 for printing, typesetting and computer programming requirements associated with the Official Elections Pamphlet and ballot cards.