

SWR 1

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 8, 1992

FURTHER REFERRALS:

Date of Committee Action: 5/7/92

The FINANCE Committee considered:

SJR 1

SENATE JOINT RESOLUTION NO. 1

RIGHT TO KEEP AND BEAR ARMS

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

RECOMMENDATIONS:

be replaced with HCSJR1 Jud the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) Gov 4/8/92

zero fiscal note _____

zero fiscal note(s) Law 4/8/92
DPS 4/8/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Robert Kelly IF amended</u>	<input checked="" type="checkbox"/>	<u>Eileen P. Muehler</u>		<input checked="" type="checkbox"/>	
<u>Bert Thompson</u>	<input checked="" type="checkbox"/>	<u>Robert</u>		<input checked="" type="checkbox"/>	
<u>Mark Boyer</u>	<input checked="" type="checkbox"/>	<u>Ray Brown</u>		<input checked="" type="checkbox"/>	
<u>James H. Baines</u>	<input checked="" type="checkbox"/>	<u>Mike Spawns</u>		<input checked="" type="checkbox"/>	
<u>Donald J. ...</u>	<input checked="" type="checkbox"/>				

E.P. Muehler
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 5
Bill Version: HCSSJR 1 (JUD)
(H) Publish Date: 3-8-92

Revision Date: _____ Department Affected: Public Safety
Title: An Amendment relating to the, BRU: Alaska State Troopers
individual right to keep and bear arms Component: Detachments
Sponsor: Senator Bodey
Requestor: House Judiciary COMPONENT SERIAL NO.

7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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-
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

It is impossible to estimate what fiscal impact the adoption of HCS SJR 1(SA) would have on the Alaska State Troopers and law enforcement.

Prepared By: Gayla A. Horatski Phone: 465-4322
Division: Commissioner's Office Date: 3/16/92
Approved by Commissioner: Richard L. Burton
Agency: Department of Public Safety Date: 3/16/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: January 21, 1992 Department Affected: Department of Law
 Title: "...amendment to the Constitution... BRU: Prosecution
 relating to the...right to keep & bear arms. Component: Criminal Justice Litigation
 Sponsor: Representative Zawacki
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

		8	9
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services / FAR Date: January 21, 1992
 Approved by Commissioner: Charles B. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HCS SJR 1 (

The House State Affairs Committee Substitute for SJR 1 would place a ballot proposition before the voters at the next general election to amend Article 1, Section 19, of the state's constitution, regarding the right to bear arms. Because the purpose of the resolution is to place a constitutional amendment proposal before the voters, adoption of the resolution by itself will not have a fiscal impact on the Department of Law.

The proposed amendment expands the current constitutional provision to state in the title a right to keep and bear arms, and not simply bear arms. It also states that the right of the people to keep and bear arms shall not be denied where formerly it stated that this right shall not be infringed. Last, the proposed amendment adds the statement: "The individual right to keep and bear arms shall not be unreasonably infringed by the State or a political subdivision of the State."

No one can predict the full legal effect of this proposed amendment. However, inclusion of the qualifying phrase that the right to keep and bear arms shall not be unreasonably infringed, appears to retain the existing legislative power to adopt laws regulating firearms. These include laws relating to concealed weapons and the possession of guns by felons. They also include laws that prohibit possession of certain weapons such as switchblade knives, fully automatic weapons or sawed-off shotguns, possessing firearms while intoxicated, and removing a firearm's serial number. Because current state laws regulating firearms will probably be maintained if this substitute proposal is eventually adopted by the voters, there should not be a long-term fiscal impact.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 3
Bill Version: HCSSJR 1(JUD)
(H) Publish Date: 3-8-92

Revision Date: 01/13/92
Title: Amendment to the Constitution RE: Right to Bear Arms
Sponsor: Senator Kildey
Requestor: House Judiciary

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: 11-Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director

Division: Elections

Phone: 465-4611

Date: 01/13/92

Approved by Commissioner: Charles E. Thickett
Agency: Office of the Governor

Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

HOUSE CS FOR SENATE JOINT RESOLUTION NO. 1 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/8/92

Referred: Finance

Sponsor(s): SENATORS RODEY, Fischer, Halford, Sturgulewski, Shultz, Frank, Menard, Jones

REPRESENTATIVES Zawacki, Donley, Gruenberg

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to the individual
 2 right to keep and bear arms.

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

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

5 SECTION 19. RIGHT TO KEEP AND BEAR ARMS. A well-regulated militia being
 6 necessary to the security of a free state, the right of the people to keep and bear arms shall not
 7 be infringed. The individual right to keep and bear arms shall not be denied or infringed
 8 by the State or a political subdivision of the State.

9 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new section to
 10 read:

11 SECTION 29. EFFECT OF 1992 AMENDMENT OF SECTION 19 OF ARTICLE I.
 12 The 1992 amendment of Section 19 of Article I does not affect or change any law relating to
 13 arms that is in effect on the date of ratification of the 1992 amendment of that section and article,
 14 nor does it affect or change the judicial standard of review applicable to laws relating to the
 15 misuse of arms.

16 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state

Alaska State Legislature



House of Representatives

House Judiciary Committee

Chairman Dave Donley

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

TO: Representative Mike Navarre, Co-Chair
Representative Eileen MacLean, Co-Chair
House Finance Committee

FROM: Representative Dave Donley ^D

RE: Request for scheduling HCS SJR 1 (JUD), proposing
amendments to the Constitution of the State of
Alaska relating to the individual right to keep
and bear arms.

DATE: April 9, 1992

I would appreciate it very much if you would schedule HCS SJR 1 (JUD) for a hearing before your committee as soon as possible.

This resolution, in one form or another, has been before this body for almost a decade. Despite very strong support from the legislature and the citizens of the state, a constitutional amendment providing for the individual right to keep and bear arms has never gotten through the legislature and before the people for a vote.

Previous resolutions have failed to pass the legislature and have died in committee because of opposition from the Department of Law, the Department of Public Safety, and the Alaska Chiefs of Police Association. However, this year, because of extensive negotiations between Senator Rodey, the law enforcement groups, and myself as prime sponsor of HJR 1, we have crafted language in Section 2 of the resolution that provides comfort to those on all sides of the issue.

I am happy to say that the N.R.A., the Alaska Outdoor Council, the various law enforcement agencies, and the House Judiciary Committee agree that this version of SJR 1 addresses the concerns of all.

I respectfully request an expedited hearing on this important legislation.

DD/hk

cc: Senator Pat Rodey

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

MEMORANDUM

DATE: April 8, 1992

TO : Representative Eileen MacLean, Co-Chair
✓ Representative Mike Navarre, Co-Chair
House Finance Committee

FROM: Senator Patrick Rodey, Sponsor

RE : HCS SJR 1 (JUD) - Proposing amendments to the
Constitution of the State of Alaska relating
to the individual right to keep and bear arms

I respectfully request that the House Finance Committee consider scheduling the above-referenced bill for a committee hearing.

The proposal has received strong support in the Senate and recently passed out of the House Judiciary Committee with the support of the Department of Law, Department of Public Safety and the Police Chiefs Association.

As you know, I have remained a strong proponent for this resolution and would appreciate your consideration to having it scheduled for a hearing as soon as possible.

The only fiscal impact is \$2,200 associated with ballot printing. I would be happy to furnish additional information to your committee and answer any questions you may have.

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

LETTER OF INTENT

HCS SJR 1 (JUD). PROPOSING AMENDMENTS TO THE CONSTITUTION
OF THE STATE OF ALASKA RELATING TO THE INDIVIDUAL RIGHT TO
KEEP AND BEAR ARMS.

It is the intent of the legislature in adopting the language in Section 2 of HCSSJR 1 (JUD), providing that the 1992 amendment of Article I, Section 19, of the Alaska Constitution does not "affect or change the judicial standard of review applicable to laws relating to the misuse of arms", that the standard of review used by the courts should not be changed from the current standard.

In cases involving firearms, the Alaska courts have applied a case-by-case review, weighing the individual's interest in bearing arms and in privacy against the state's interest in the public safety and welfare.

In addition, by leaving the reference to a militia in the first sentence of Article 1, Section 19, the legislature in no way intends to make the individual right to keep and bear arms dependent on or connected to the collective right to keep and bear arms. Further, it is the intent of the legislature for each sentence of that section to stand alone and be interpreted separately.

Dave Donley

RIGHT TO KEEP AND BEAR ARMS
 CONSTITUTIONAL AMENDMENTS
 HISTORY SINCE 1983

<u>LEGISLATURE</u>	<u>RESOLUTION #</u>	<u>SPONSOR</u>	<u>PASSED BY</u>	<u>DIED IN</u>
13th ('83-'84)	SJR 28	Rodey		S. St.Aff.
14th ('85-'86)	HJR 45	Marrou		H. Jud.
	HJR 63	Szymanski		H. Jud.
	SJR 39	Rodey	H. & Sen.	Conf. Com.
15th ('87-'88)	SJR 15	Rodey	Sen.	H. Jud.
16th ('89-'90)	HJR 7	Donley		H. Jud.
	SJR 4	Rodey	Sen.	H. Jud.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, 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

March 17, 1992

The Honorable Dave Donley
Chairman House Judiciary Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: SJR 1 (right to bear arms)

Dear Representative Donley:

I greatly appreciated the courtesy extended to me by the House Judiciary Committee yesterday in carefully considering my analysis of the legal consequences of different wordings of SJR 1.

As you correctly observed, the primary issue at this point is whether a constitutional amendment will change the standard of review applied by the courts in determining the validity of laws relating to the misuse of weapons.

From the telephonic testimony, it appears that many supporters of the amendment (though by no means all) believe the word "unreasonably" in the State Affairs version would lower the legal standard of review because what is "reasonable" to an "anti-gun" person may not seem "reasonable" to a gun collector.

My fear is just the opposite. As I have indicated in my testimony in your committee and in the State Affairs Committee, and in my recent letter to you, I believe that removing the word "unreasonably" would greatly increase the legal standard of review that the state would bear in seeking to uphold the validity of laws.

As lawyers, I know that you and Rep. Gruenberg and Sen. Rodey are aware that the outcome of a case very often depends on the standard of review applied by the judiciary. Sen. Rodey's comments during yesterday's hearing seemed to indicate no intent to change the standard of review applied to laws relating to misuse of weapons. I recall he specifically mentioned that the Alaska courts had never struck down a law relating to weapons, and had relied on the "police power", rather than the right to bear arms, to uphold laws in the past.

At Sen. Rodey's request, I discussed with him a possible way in which all of the above interests can be accommodated. This could be accomplished by adopting paragraph (a) from your version of the resolution (that is, without the word "unreasonably"), and changing paragraph (b) to read:

The 1992 amendment of this section does not affect or change any law relating to arms that is in effect at the time of ratification of the 1992 amendment of this section, nor does it affect or change the judicial standard of review applicable to laws relating to misuse of weapons.

Another possible way of drafting this concept, along the lines suggested to me by Sen. Rodey, would be:

. . . nor does it affect or change the interpretive powers of the court in reviewing or determining the validity of laws relating to the misuse of weapons.

In this way the constitution will recognize the "individual", rather than the "collective", right to bear arms, yet the laws now on the books will be protected, and future laws that will respond to future problems will not be subjected to a higher judicial standard than under current law.

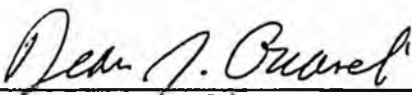
The Honorable Dave Donley
Chairman House Judiciary Committee

March 17, 1992
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This wording should address the specific concerns of both the proponents and the opponents of the measure. I have not had an opportunity to thoroughly discuss this wording with, and obtain the support of, Commissioner Burton or Anchorage Deputy Chief Duane Udland, but I will do so if it appears that this solution will be acceptable to the committee and to Sen. Rodey.

Respectfully Submitted,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Dean J. Guaneli
Assistant Attorney General &
Criminal Division Administrator

DJG/sf

CC: Senator Rodey

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, 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

March 13, 1992

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (right to bear arms)

Dear Representative Donley:

This responds to your March 3 memorandum to the Criminal Division, in which you requested our thoughts about your proposed changes to SJR 1 (amending the constitution to create an "individual" right to bear arms).

As you know, the House State Affairs Committee substitute for SJR 1 would add the following underlined language to Article 1 of the state constitution:

Section 19: RIGHT TO KEEP AND BEAR ARMS. 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 denied. The individual right to keep and bear arms shall not be unreasonably infringed by the State or a political subdivision of the State.

Your proposed change would, in effect, remove the clause "shall not be unreasonably infringed," and would include a second paragraph saying that the amendment does not affect any existing weapons law.

Because the State Affairs version specifically permits regulation of weapons that is not "unreasonable," I believe it will not draw the same level of opposition from police groups as past versions have encountered. Moreover, in my opinion the State Affairs version does not raise the same serious legal questions that I have raised in previous legislative committees.

The committee substitute by the State Affairs Committee was adopted after testimony showing that current or future laws relating to weapons could be invalidated by court action pursuant to a broad constitutional right to bear arms. Although proponents

of the amendment have stated emphatically that no court has ever struck down a weapons law based on the right to bear arms, that simply is not accurate. Among the examples given in testimony before the State Affairs Committee were cases from Oregon in which the court struck down laws relating to switchblade knives, State v. Delgado, 692 P.2d 610 (Or. 1984), and blackjacks, State v. Kessler, 614 P.2d 94 (Or. 1980). Colorado has struck down portions of its laws relating to carrying a concealed weapon. People v. Ford, 568 P.2d 26 (Colo. 1977). Other courts have also struck down weapons laws based on the right to bear arms.

Although your draft proposal explicitly protects current laws, it implicitly suggests that future laws have no similar protection. There are several proposed amendments to the state's weapons laws now pending before this legislature, including one in your own HB 396. Controlling the improper use of weapons is very much like "hitting a moving target." The technology in the weapons industry, and our changing social structure, may make today's laws obsolete tomorrow. Because of the proliferation of new and deadlier weapons, and because of the spread of weapons to heretofore sacrosanct areas, such as our schools, future legislatures must have the greatest possible latitude in dealing with this serious matter of public safety.

I have heard it said many times by proponents of the amendment that the legislature's power to impose reasonable restrictions on weapons would not be altered. Your March 3 memorandum seems to echo that point. However, if that is the intent of the amendment, then the constitution should say so explicitly and directly. In that way, Alaska can avoid the experience encountered in other states, where state laws have been struck down by the courts.

Our fear is not that the courts will find an absolute right to keep and bear arms. Rather, as with all other constitutional rights, the legislature will have some residual authority to pass laws. The question, however, is whether the state's legal burden will be slight or great when faced with a constitutional challenge to a weapons law. In other words, will the state be required to prove that there is merely a "rational basis" for the law, or will the state have to show something close to a "compelling state interest?" This question is not one of academic interest only, because in most cases it will mean the difference between the law being upheld or being struck down.

As I expressed in my testimony before the State Affairs Committee, I believe the only legal effect of creating an "individual" right to bear arms, while at the same time explicitly refusing to recognize the power of the legislature to "reasonably"

The Honorable Dave Donley
Alaska State Legislature

March 13, 1992
Page 3


regulate weapons, is to greatly increase the state's burden in meeting challenges to the constitutionality of weapons laws.

Thank you for the opportunity to present our legal analysis.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Dean J. Guaneli
Assistant Attorney General

DJG:jf

cc: Lori Nottingham
Office of the Governor

Members of the House Judiciary Committee

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE (907) 463-4322

March 13, 1992

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (Right to Bear Arms)

Dear Representative Donley:

Thank you for your memorandum of March 3 requesting our comment upon a proposed draft change to SJR 1, relating to the constitutional right to keep and bear arms.

As you know, the Department of Public Safety has no opposition to the stated purpose of SJR 1: to establish that the Alaska constitutional right to keep and bear arms is an individual one, not a militia-related "collective" right. We believe it essential that this right not be absolute, however, but be subject to reasonable regulation by the legislature. Some persons also believe that local communities should also retain their present authority to reasonably regulate the possession and use of weapons within their boundaries.

We do not see any need for SJR 1. Alaska has the least restrictive firearms laws in the country. If some measure of this sort is to be adopted, however, we urge the Judiciary Committee to adopt the House State Affairs Committee substitute for SJR 1. That version of the proposed constitutional amendment establishes that the right to keep and bear arms is an individual one, but specifically states that the right may not be "unreasonably infringed", thus allowing for reasonable regulation of arms.

Your proposed draft eliminates this language, and includes instead a new subsection (b) stating that the amendment does not "affect or change any law relating to arms in effect at the time of ratification." What about future laws? What about the ability of future lawmakers to respond to changing technology or social conditions, and to express the collective will of future generations of Alaskans? The fact that the Legislature adopted a significant revision to the state's weapons laws last year (your bill, HB 104) and has another pending now (your HB

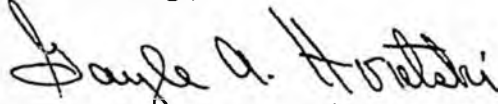
The Honorable Dave Donley
March 13, 1992
Page 2

396) is compelling evidence that the law in this area is not settled.

An amendment to the state constitution, by its very nature, is forward-looking--it is intended to guide future actions of legislators, public officials, judges and citizens. The proposed draft substitute for SJR 1 does not adequately safeguard local and state lawmakers' ability to reasonably regulate the possession and use of weapons, thus the Department of Public Safety opposes it.

Thank you for this opportunity to comment on the proposed draft.

Sincerely,



Gayle A. Horetski
Deputy Commissioner

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

November 26, 1990

SUBJECT: The Law Regulating the Possession and Use of Weapons
(W.O. No. 16LS1985)

TO: Representative Dave Donley

FROM: Gerald P. Luckhaupt *GLP*
Legislative Counsel

The right to keep and bear arms is provided by the Second Amendment to the United States Constitution and by Art. I, § 19 of the Alaska Constitution. The provisions are identical and state:

A well-regulated militia being necessary for the security of a free state, the right of the people to keep and bear arms shall not be infringed.

The Second Amendment to the United States Constitution applies only to insure that this right is not infringed by Congress and has no application to the states through the 14th Amendment. Presser v. Illinois, 116 U.S. 252, 6 S.Ct. 580, 29 L.Ed. 615 (1886); Quilici v. Morton Grove, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863. The Second Amendment, though, does not bar all infringements of this right by the federal government. While, strictly speaking, the federal government has no police powers (those powers being reserved to the states), the federal courts have affirmed the federal government's authority to enact police regulations in any area of constitutionally granted sovereignty. Laws regulating the possession and use of weapons on a federal level have been upheld on a number of grounds including the commerce clause, the taxing power, the limitation of potential threats to the president, limitation of impediments to the exercise of free speech and other rights guaranteed by the Bill of Rights, and pursuant to the federal government's power to define and proscribe federal felonies.

What weapons or arms does the Second Amendment protect and who may possess them? The United States Supreme Court has interpreted the Second Amendment to provide only a collective right to possess arms for the common defense; no individual right to possess arms has ever been articulated. It applies only to the possession of those arms which are necessary to maintain a well-regulated militia, or,

in other words, does the possession of the arm or weapon bear some reasonable relationship to the preservation or efficiency of a well-regulated militia. United States v. Miller, 307 U.S. 174, 59 S. Ct. 816, 83 L.Ed. 1206 (1939); Quilici, supra; Cody v. United States, 460 F.2d 34 (8th Cir. 1972), cert. denied, 409 U.S. 1010. Miller involved a prosecution for the possession of an illegal sawed off shotgun. The defendant claimed that his right to possess the shotgun was protected by the Second Amendment. The court looked to the early colonial requirements imposed upon the able-bodied men of the colonies and found that all the members of the militia (composed of all men of certain specified ages) were required to keep at the ready a musket or long rifle and adequate ammunition to defend the state. Other weapons, other than a bayonet to affix to the musket, were not required. The Court then found the possession of the shotgun to not be protected as its possession was not necessary for the maintenance of a well-regulated militia. Similarly, the possession of handguns and other weapons, and the possession of weapons by certain classes of people, have been found to not be protected. Quilici, supra; United States v. Oakes, 564 F.2d 384 (6th Cir. 1977), cert. denied, 435 U.S. 926 (1978); United States v. Houston, 547 F.2d 104 (9th Cir. 1976).

Since art. 1, § 19 of the Alaska Constitution is identical to its federal counterpart the interpretation given the Second Amendment by the federal courts is, at least, instructive as to the interpretation given the Alaska provision. The Alaska Court of Appeals has said regarding the interpretation of an Alaska constitutional provision similar to a federal provision:

We recognize that the state constitutional provision, while using different language, is essentially the same as its federal counterpart and was intended by the constitutional convention to be so. [Citation omitted.] Thus we find persuasive the line of cases interpreting the federal provision and utilize the same analysis in interpreting our own constitution.

State v. Dankworth, 672 P.2d 148, 151 (Alaska App. 1983).

From this reasoning it would appear that art. 1, § 19 grants only a collective right to the citizens of Alaska to bear arms which are necessary for the common defense of the state. This right may not be eliminated but is subject to the state's authority to enact reasonable restrictions pursuant to its police power. See e.g., Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), cert. denied, 368 U.S. 517. Therefore, statutes regulating the possession and use of certain weapons appear to be permissible.

Nor would the privacy provision of our constitution (art. 1, § 22) appear to inhibit regulation in this area. In State v. Weaver, 736 P.2d 781 (Alaska App. 1987) the

Alaska Court of Appeals found that a prosecution pursuant to AS 11.61.200 for possession of an illegal weapon, a gravity knife, in one's home not to be violative of art. 1, § 22 of the Alaska Constitution. The court said:

The legislature may properly prohibit the possession of an object which 'interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare.' State v. Erickson, 574 P.2d 1, 21 (Alaska 1978). 'No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely.' Ravin v. State, 537 P.2d 494, 504 (Alaska 1975). The legislative commentary to AS 11.61.200, discussing the definition of 'prohibited weapon,' states: 'Such weapons have little or no legitimate function, are unnecessary for protection and are not commonly used for commercial or recreational purposes. Substantial risk of harm to others and the furtherance of crime result from private possession of such weapons.' Commentary on the Alaska Revised Criminal Code, Senate Journal Supp. No. 47 at 101, 1978 Senate Journal 1399. The legislature could reasonably conclude that gravity knives have no legitimate purpose and are too dangerous to be casually possessed.

Weaver, supra, at 783.

The court also observed that the pertinent characteristics of a gravity knife or switchblade are that they are easily concealed, quickly brought to bear, and more closely resemble weapons than tools. Weaver, supra. In State v. Strange, 785 P.2d 563 (Alaska App. 1990) the court found that a balisong or butterfly knife, though being easily concealed and quickly brought to bear (and, apparently, having little or no legitimate function as discussed in the legislative commentary to AS 11.61.200, quoted in Weaver, supra), was not prohibited by AS 11.61.200 as it was not specifically defined in the statute nor did it fit within the definition of the other weapons prohibited there. The legislature's failure to include this weapon among those prohibited appears to be inconsistent with the purposes behind AS 11.61.200. The regulation of metal knuckles appears consistent with these purposes.

While no individual federal right to bear arms has been recognized (and no individual state right in Alaska would be recognized as explained earlier) other states have found an individual right to bear arms based upon their own unique constitutional provisions. As pointed out in City of Princeton v. Buckner, 377 S.E.2d 139 (W.Va. 1988) at least 14 states have a constitutional provision that protects an individual's right to bear arms for self-defense, and in some cases defense of home and property, in addition to common defense of the state. These states, though, have been nearly

Representative Dave Donley

November 26, 1990

Page 4

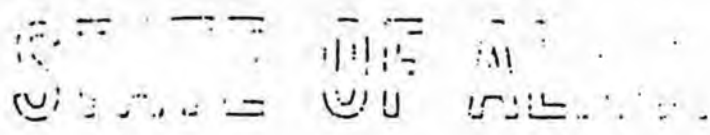
uniform in finding that this individual right is not absolute and is subject to reasonable regulation by the state pursuant to its police power. Buckner, supra.

The Oregon courts have been especially active in finding broad statutory regulation of defensive arms unconstitutional. State v. Blocker, 291 Or. 255, 630 P.2d 824 (1981) (possession of billy club outside of home constitutionally protected); State v. Kessler, 289 Or. 359, 614 P.2d 94 (1980) (possession of billy club in home constitutionally protected). In State v. Delgado, 298 Or. 395, 692 P.2d 610 (1984) the Oregon Supreme Court found a statute which prohibited the mere possession of a switchblade to be unconstitutional. The court found such an absolute ban violative of art. 1, § 27 of the Oregon Constitution which provides: "The people shall have the right to bear arms for the defence of themselves, and the State. ..." The court noted that the legislature may regulate the possession of weapons but may not absolutely ban defensive weapons.

That decision and the decision of the Alaska Court of Appeals in State v. Weaver, while both dealing with switchblades, are not inconsistent. The Oregon decision is based upon the particular language of that state's constitution concerning the right to bear arms for individual defense. While the court in Weaver did not specifically address whether the possession of a switchblade was protected by art. 1, § 19 of the Alaska Constitution, as noted herein that provision completely lacks any individual self-defense language, thereby removing any possible inconsistency in reasoning with the Oregon courts or with the decisions of those other states that have found an individual constitutional right to bear arms for self-defense based upon their own constitutions.

If you have any questions, please contact me at your convenience.

GPL:gc
90-056.GLC



Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 13, 1983

Redated 7/1/83 for printing purposes

The Honorable Pat Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Charlie Bussell
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Handgun Ban
Our file No.: 366-444-83

Dear Senator Rodey and Representative Bussell:

You have asked this office whether a landlord, through a leasehold agreement, may prohibit a tenant from possessing handguns. We conclude that in certain circumstances a landlord may restrict or prohibit the use and/or possession of handguns on property which is leased to another individual.

Our initial inquiry regarding this matter commenced with a review of relevant Alaskan Constitutional provisions. The Alaska Constitution directly addresses a citizens ability to bear arms at Article I, Section 19 which states:

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.

The language embodied in Alaska's Constitution pertaining to arms is virtually identical, save for two changes in punctuation, to language found in Article II of the United States Constitution. Article II of the United States Constitution was proposed by the Congress on September 25, 1789 and became the law of the United States on December 15, 1791. During the one hundred and ninety two years since adoption of the Second Amendment to the United States Constitution and the twenty-four years since the Alaska Constitution has been in effect, numerous court cases have interpreted the constitutional language which establishes the right to bear arms.

COLH

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

April 13, 1983
Page 2

We note the period since the adoption of the Second Amendment has witnessed an ever increasing issuance of opinions from the judiciary of the various states and the federal courts which place limits on an individual's ability to bear arms. Some commentators have theorized that the legislative and judicial limitations increased significantly with the availability of inexpensive surplus weapons following the American Civil War. ^{1/} According to this theory, the increase in restrictive gun control measures and corresponding judicial interpretations was associated with increasing acquisition of firearms by recently emancipated Black Americans and immigrants coupled with the increased availability of firearms in the post Civil War industrial America. The right of 'bearing arms' is not a right granted by the Constitution nor is it in any manner dependant upon that instrument for its existence. U.S. v. Cruikshank, 92 U.S. 553 (D.C.La. 1875).

While offering no judgment on the propriety or effectiveness of the restrictive legislative and judicial measures, we observe that the current state of the law pertaining to the constitutional language holds that:

{The} purpose of this amendment, guaranteeing that the right of the people to keep and bear arms, was to preserve the effectiveness and assure the continuation of the state militia. U.S. v. Oakes, 564 F.2d, cert. denied 98 S.Ct. 1493 (C.A. Kan. 1977).

The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia. The contemporary judicial view in the great majority of states interprets the constitutional language as posing no limitations on the legislature's power to regulate the ownership or control of firearms. Whatever the scope of any common-law or constitutional right to bear arms, it is not absolute and does not guarantee to individuals the right to carry weapons abroad at all times and in all circumstances. Application of Atkinson, 291 N.W.2d 396 (Minn. 1980). By analogy then, a landlord, too, could restrict

^{1/} Kates, Don B. Restricting Handguns, North River Press, pages 7-30 (1979)

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

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Page 3

the possession of handguns on property he or she owns and leases. If the State can restrict arms without running afoul of constitutional provisions, an individual almost certainly has similar abilities.

It is conceivable that a landlord's ban on handgun ownership could be challenged under constitutional doctrines which afford a right of privacy. The United States Constitution, while not containing an express provision guaranteeing privacy has been interpreted to afford an individual certain protections, Cf. Griswold v. Connecticut, 381 U.S. 479 (1965). "The Constitution extends special safeguards to the privacy of the home, including activities which might be prohibited in other contexts." Cf. U.S. v. Orito, 413 U.S. 137, 142 (1973).

While it is unlikely that a court would find that an individuals right to possess arms (for example a gun collection) is protected by the privacy shield of the U.S. Constitution, the argument could be maintained. We are unaware of this argument being successfully asserted in any anglo-american jurisdiction.

A more likely source of protection under the right to privacy doctrine may be afforded by the Alaska Constitution at Article I, Section 22 which states that:

The right of the people to privacy shall not be infringed. The legislature shall implement this section.

The Alaska Supreme Court has explicitly stated that the right of privacy guaranteed to Alaskans is broader in scope than that guaranteed by the federal constitution. Woods & Rohde, Inc., v. State, 565 P.2d 138 (1977). Even so, the meaning of privacy of necessity must vary depending on the factual context and the often compelling interests of society and the individual. State v. Glass, 583 P.2d 879 (1978). The test for what interests are protected under Alaska's constitutional right to privacy are, first, whether a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable". Hilbers v. Municipality of Anchorage, 611 P.2d 31 (1980).

The question of handgun ownership in Alaska and whether such ownership is "reasonable" in the context of a landlord tenant relationship is open ended. Probably the "expectation" and reasonableness of gun ownership in Alaska is different than the reasonableness of gun ownership in many other jurisdictions where actual firearm ownership and use is reduced. In any event,

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

April 13, 1983
Page 4

absent specific language under the Alaska Uniform Residential Landlord and Tenant Act, AS 34.03.010 et seq., or other relevant Alaska law, prohibiting inclusion of provisions in a leasehold agreement, we believe a landlord can properly restrict the terms of the tenancy. ^{2/} In all probability, under existing Alaska law, a landlord can restrict possession of handguns for tenants in a manner not unlike a landlord's ability to prohibit tenants from possessing dogs, operating businesses in a residential leasehold or operating obnoxious stereo equipment.

While a landlord will probably be able to impose a restriction prohibiting future tenants from possessing handguns, an across-the-board ban applicable to tenants with existing leasehold agreements may be invalid. Under classic contract principles, neither party to an agreement may superimpose an additional term on a valid contract without the consent of each party to the contract. Consequently, a landlord may not prohibit handgun possession among tenants during the pendency of an existing lease. Conversely, where a landlord and tenant agree to a lease agreement which contains a restriction banning handguns, remedial legislative action interpreting Alaska's right to privacy law to permit such possession probably would not invalidate existing prohibitions.

Finally, concern was expressed regarding the state's liability with respect to landlord/tenant agreements which prohibit handgun ownership in buildings located on property owned by the State. This last point is conceivably problematic if the land on which the Panoramic View Apartments are located is conveyed to the state as a result of the current Alaska Railroad transfer negotiations. Attached is a copy of a memorandum by Assistant Attorney General Jack McGee which deals with this subject.

^{2/} In passing, we note that a landlord concerned with unjustified gun play need not necessarily prohibit gun ownership. Other remedies exist for controlling individual tenants with a propensity to abuse gun ownership. Cf. Osness v. Dimond Estates, Inc., 615 P.2d 605 (1980), where the landlord obtained a Forcible Entry and Detainer (F.E.D.) thereby removing a tenant that proved incapable of properly handling firearms.

Redated 7/1/83 for printing purposes

Hon. Pat Rodey, Senator
Hon. Charlie Russell, Representative
Our File No.: 366-444-83

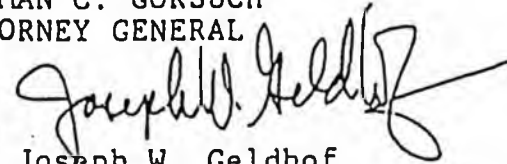
April 13, 1983
Page 5

We trust this response answers your inquiry. If you have any additional questions, please let me know.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Joseph W. Geldhof
Assistant Attorney General

JWG:vrh

cc: Norman C. Gorsuch
Attorney General

Ronald W. Lorensen
Deputy Attorney General



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

April 19, 1991

The Honorable Mike Navarre
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

 FAX TRANSMITTAL MEMO
 TO: Mike Navarre - Linda
 DEPT: _____ FAX #: 465-4937
 FROM: Chief Ross PHONE: 283-7879
 CO: Kenai PD FAX #: 283-3014
 Post-it brand fax transmittal memo 7871

NO. OF PAGES
2

Dear Representative Navarre:

I am requesting your support in amending HJR 1, or SJR 1 should they come to the House floor for a vote. While I do not believe the Constitution needs to be changed, I can understand why proponents of HJR 1 want to clarify the right of the individual versus the collective right in the constitution. The amended HJR 1 would read as follows:

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

The proposed amendment would hopefully protect our present firearms regulatory statutes from successful challenge if the Constitution were to be changed. I have heard no complaint, even from the strongest proponent of HJR 1/SJR 1, that our present State Statutes are onerous or unduly interfere with the rights of the individual.

If the resolutions are passed without amendment, it is questionable whether present statutes (possession while intoxicated, possession on a licensed premises, carrying concealed weapon, etc.) will be found constitutional. In any case it would cause considerable expense and unnecessary litigation on each statute.


Insertion of the word unreasonably puts this Constitutional protection on the same level as that of the right to be secure from unreasonable searches and seizures. The burden will still be on the government to show that firearms regulations are not unreasonable. However, it would not result in an insurmountable burden that cannot be overcome in the interest of public safety.

HJR 1
April 19, 1991
Page 2

I would request that you resist the local pre-emption argument of some advocates. If adopted this could become a two-edged sword. If the State were to pre-empt all local firearms regulations, the ultimate loser could be small communities and rural areas. As the needs of Anchorage, Fairbanks, and Juneau are dictated in the future, so would State Statute because of their political power. These attempts to resolve their local problems would become State law and broadly apply to areas without the problems they are trying to address.

Your consideration of these thoughts and support for an amended HJR 1 and SJR 1 is appreciated.

Very truly yours,


Richard A. Ross
Chief

RAR/elr



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

March 13, 1992

Representative Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SJR1

Dear Representative Donley,

It was good to see you at the Alaska Police Standards Council meeting. Your obvious interest and comments were appreciated.

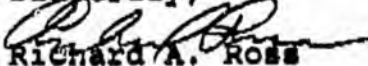
In response to your letter of March 3, 1992, I still believe that the CS for SJR1 as amended in the House State Affairs is the best alternative if a Constitutional change is deemed necessary. It addresses the concerns of those that want the recognition of a clearly defined individual right, while still recognizing the need for reasonable regulation. The constitutional protection to the individual under that version would be equivalent to that afforded individuals against unreasonable searches and seizures.

The working draft proposal you forwarded does accomplish the recognition of the individual right while protecting the present statutory and regulatory requirements. However, two possible problems are present if this version is passed:

1. Anchorage has ordinances that no other City has, or may need at this time. Should another City grow to the size of Anchorage, or encounter problems that its citizen's would want to address by adoption of similar ordinances, it would require a Constitutional change in order for them to do this.
2. Without being too futuristic in our thinking, it is not hard to envision "Arms" technology development that is not even conceived of, or addressed in our present statutes and regulations. This could also require a constitutional change if this version were adopted.

I am very much interested in this issue and appreciate your solicitation of input.

Sincerely,


Richard A. Ross
Chief of Police

ANALYSIS OF SJR 15

Claim: SJR 15 not needed: Second Amendment provides protection to gun owners.

Consider the opinion handed down in State v. Friel, 508 A.2d 123 (Me. 1986):

"The Second Amendment is inapplicable to this case; it operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms."

Other cases culminating with the same decision:

Miller v. Texas, 153 U.S. 523 (1894)
Presser v. Illinois, 116 U.S. 252 (1886)
Quilici v. Village of Morton Grove, 695 F.2d 261 (1983)
U.S. v. Kozerski, 740 F.2d 952 (1st Cir. 1984)
State v. Sanne, 116 N.H. 583 (1976)
State v. Skinner, 189 Neb.57 (1973)

Additionally, in State v. Skinner, the Nebraska Supreme Court ruled that the Second Amendment to the U.S. Constitution guarantees the right to keep and bear arms to an organized militia, not individuals.

This aspect of the Skinner decision is quite similar to the April 13, 1983, opinion of Alaska Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution, stating: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Claim: Individual language in SJR 15 will allow felons to own/possess firearms.

Courts in states with "individual" constitutional guarantees have consistently rejected challenges to state statutes restricting or denying the possession of firearms by convicted felons:

(State: Citation: Constitutional Language: Proscription By Felons.)

North Dakota: State v. Ricehill, 415 N.W.2d 481 (1987); "All individuals....": ownership or possession of firearms.

Maine: State v. Friel, 508 A.2d 123 (1986); "Every citizen....": possession of firearm.

Kentucky: Eary v. Commonwealth, 659 S.W.2d 198 (1983); "All men....": possession of handgun.

Alabama: Bristow v. State, 418 So.2d 927 (1982); "Every citizen....": possession of pistol.

Wyoming: Carfield v. State, 649 P.2d 865 (1982); "The right of citizens....": possession of any firearm.

- Texas: Shepperd v. State, 586 S.W.2d 500 (1979); "Every citizen...": possession of firearm away from residence.
- Louisiana: State v. Amos, 343 So.2d 166 (1977); "Each citizen...": possession of firearms.
- Colorado: People v. Blue, 544 P.2d 385 (1975); "The right of no person to keep and bear arms..."; possession of firearms.
- Washington: State v. Tully, 89 P.2d 517 (1939); "The individual citizen..."; possession of pistol.

In addition to the cases cited above, courts in Georgia, Oregon, and Arizona have also rejected challenges based on state constitutional keep-and-bear-arms provisions to statutes making illegal a felon's possessing a firearm.

Claim: SJR 15 will invalidate reasonable laws currently on the books

Specifically mentioned have been laws regulating the carrying of concealed weapons and proscribing possession of firearms by intoxicated persons. As above, numerous citations can be offered indicating that courts regularly and routinely rule that the right to bear arms is subject to reasonable regulation:

(State: Citation; Decision.)

- Wyoming: State v. McAdams, 71 P.2d 1236 (1986); concealed carrying of arms subject to regulation.
- Oregon: State v. Delgado, 692 P.2d 610 (1984); legislature may regulate possession and use of arms.
- Indiana: Schubert v. DeBard, 398 N.E.2d 1339 (1980); license may be required to carry a pistol concealed.
- Oregon: State v. Kessler, 614 P.2d 94 (1980); concealed weapon carrying regulations permissible.
- Colorado: People v. Garcia, 595 P.2d 228 (1979); carrying a gun while drunk is outside the protected boundaries of the right to bear arms.
- North Carolina: State v. Dawson, 159 S.E.2d 1 (1968); open carrying for unlawful purposes may be prohibited.
- Kentucky: Holland v. Commonwealth, 294 S.W.2d 83 (1956); limits carrying of concealed weapons.
- Idaho: State v. Hart, 157 P.2d 72 (1945); upholds statutes prohibiting the carrying of concealed weapons.

District 29: Republican Convention

March 14, 1992

RE: A resolution in support of the individual right to keep and bear arms.

Resolution

Whereas: The Republican Party of Alaska supports the individual right to keep and bear arms.

And whereas: This right could be jeopardized by the vague wording in the Alaska State Constitution.

Be it resolved: The Republican Party of Alaska supports SJR1 as introduced by Sen. Pat Rodey, an amendment to preserve the individual right to keep and bear arms.

Proposed by: Gary Hammond

Second by: Steven Colboch

Results: Passed by unanimous consent.

STATE OF ALASKA

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

March 16, 1992

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (Right to Bear Arms)

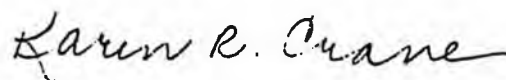
Dear Representative Donley:

The Department of Education is concerned with the restrictive language of the proposed draft change to SJR 1, relating to the constitutional right to bear arms.

While the draft adds language preserving current laws relating to arms, it restricts the ability of a municipality to pass laws concerning public safety. While last year's passage of HB 104 gave authority to school administrators to limit firearms on school grounds, there is no assurance that this law will meet all future needs. Both the State and Municipalities need the ability to reasonably regulate the use and possession of arms on school grounds.

Thank you for the opportunity to comment on the draft.

Sincerely,



Karen R. Crane
Acting Deputy Commissioner



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

March 16, 1992

Position Paper

SJR 1 - RIGHT TO KEEP AND BEAR ARMS

The League and its members support the concept of individual rights to keep and bear arms; however, they are opposed to any legislation that would limit or preempt the authority of municipalities to pass reasonable laws or regulations concerning the use of firearms.

Amendments to the Alaska Constitution that would address the rights of individuals to keep and bear arms have been introduced several times by legislators. The League does not feel that such amendments are appropriate or desirable because they would limit the ability of municipalities to regulate the use of firearms in a reasonable manner. Municipalities must be allowed to retain their authority to pass laws that concern public safety within their boundaries.

Alaskan municipalities have not abused the rights of gun owners, nor are they expected to because of Alaskan's historical tradition of possessing and using firearms. However, the proposed constitutional amendment would preempt the rights of Alaskan municipalities to pass such limited restrictions on the use of firearms as are appropriate to the situations within the varied communities of the state.

Public Opinion Message

Only short single messages delivered by the signing individual to the Legislative Information Office by phone, hand-delivered or written at the Legislative Information Office will be accepted for transmission via electronic mail as a Public Opinion Message. We require the following information to be held confidential: (1) name address and phone number of sender, (2) who the POM should be addressed to, (3) the text of the POM (80 words or less), and (3) when possible, the bill number referenced in the POM. Your message may be directed to any individual or combination of the following members of the Legislature.

Delegations	
Anchorage Delegation (*)	
Fairbanks Delegation (*)	
Mat-Su Delegation (*)	
Bush Caucus (#)	

Senate	
Adams#	Jones
Collins*	Karjala**
Cohen*	Menard**
Craft*	Pearce*
Duncan#	Pourchoi*
Eirason	Rodey*
Fischer	Shultz*
Frank*	Sturgulowski*
Hallford*	Uehling*
Hottmann#	Zharoff#

House		
Baker*	Foster#	MacLean#
Barnes*	Gonzales*	Martin*
Boyer*	Gruenberg*	Miller, Mary*
Brown*	Gruessendorf#	Miller, Mike*
Bruckman*	Hartley*	Moyer*
Cainey*	Hudson	Navarre
Choquette*	Ivans#	Parrell*
Davidson#	Jackel	Phillips, G
Davis, B.*	Koponen*	Phillips, R.*
Davis, C.	Kubins#	Sharp*
Dorley*	Lanson*	Taylor
Ellis*	Leman*	Ulmer
Finkelstein*	Lincoln#	Zawack*
	Mackey	

Committees	
Indicate H for House or S for Senate.	
	Community & Regional Affairs
	Finance
	Health, Education & Social Services
H	Judiciary
	Labor & Commerce
	Resources
	Rules
	State Affairs
	Transportation

Name	Donald P. Chase	Phone (H)	835-4640
Title		Phone (O)	835-3858
Address	Box 1251 Valdez, Alaska	ZIP	99686

Subject: SJR1 Amendment to state Constitution 2nd Amendment			
1 2	3 support	4 amendment	5 of
6 sword	7 amendment	8 to	9 specify
10 individuals	11 right	12 to	13 bear
14 and	15 bear	16 arms	17 however
18 2	19 specify	20 the	21 language
22 of	23 Senator	24 Roddy's	25 original
26 Senate	27 Resolution	28 before	29 Revision
30 26	31 bills	32 address	33 or
34 non-passed	35 language	36 on	37 debate
38 one	39 language	40 2	41 word
42 support	43 current	44 version	45 place
46 before	47 the	48 voters	49 the
50 year		Date/Time	Owner

Support Oppose Amend None

Signature: Donald P. Chase

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

March 16, 1992

~~Alaska State Legislature~~

P.O. Box V
Juneau, AK 99811

Ref: SJR1

Dear Mr. Donley,

I am writing to express my opinions on SJR1, and your amendment as presented to the Legislature in Juneau.

Let me begin by saying that I firmly believe that the Constitutional Amendment is a mistake. I am one of the law enforcement officers that are of the opinion that Alaska courts will interpret the language of SJR1 as to prohibit any regulation of carrying concealed weapons, misuse of firearms, or prohibiting anyone from using or owning firearms of any sort. That would include convicted felons or those with diminished mental capacity.

I have not heard of courts in other states with similar amendments ruling that the language was short of an absolute rule. They, in fact, invalidated carrying concealed weapon, and felon in possession laws that were in effect.

Further, and regretfully, I cannot support your CS to the amendment. Specifically, the change in language to make the "Right to keep and bear arms" an "individual right", would guarantee the Court's interpretation of the amendment as an absolute rule. I am basing my opinion on the history of the Alaska Supreme Court's love of the rights of the individual.

The exclusion of the rights of Municipalities to pass any ordinance regulating firearms, anytime in the future also causes me grief. The City of Seward is not large enough now for it to be a real problem. However, we don't know what it will be 20 years from now. I think that it will be much more difficult repealing this amendment, should it pass than it is to enact it.

In closing, I am apposed to any changes in Alaska's Constitution that would decrease our right and ability to reasonably regulate the sale, ownership and carrying of firearms.

Sincerely

Thomas C. Walker
Thomas C. Walker
Chief of Police

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Dave Donley	From	Chief Tom Walker
CO	AK Legislature	CO	Seward P. D.
Dept.		Phone #	224-3338
Fax #	463-5661	Fax #	224-3248

Alaska Association Chiefs of Police



March 13, 1992

Representative Dave Donley
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Donley,

Thank you for the opportunity to comment on your latest draft of the Right to Keep and Bear Arms amendment. This is an issue that has been with us for a long time, and we appreciate your attempt to come up with a compromise. The new language does address some of our concerns, however it still does not solve the problem from our perspective. I have spoken to a number of Chiefs about this issue since receiving your new draft.

If for no other reason, we oppose the new language because municipalities would still be preempted from passing firearms laws. We as Chiefs simply cannot support legislation that would severely restrict the ability of a municipality to pass laws concerning public safety.

In addition, there may be some other practical problems with your latest draft. For instance, if the new language passed, would there be two standards the courts would have to decide constitutionality upon? Would the courts apply one standard for laws prior to 1992 and another standard for laws passed after 1992? Frankly, we have never seen or heard of a constitutional amendment that was crafted in this fashion and we are very concerned about the ramifications of such wording.

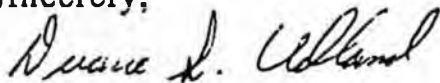
As you know, we have consistently opposed any change to our constitution, with strong feeling that existing law is more than adequate to protect firearms rights. At the same time we have indicated we could be somewhat flexible, because we do not philosophically oppose the concept that firearms are an individual right. In other words, we believe that it is possible to come to a compromise.

To date, the compromise version we have been most comfortable with is House Committee Substitute for SJR 1 as amended in House State Affairs. At our annual Chiefs meeting last November, in which a high percentage of our members were present, we agreed that if the State Affairs version becomes the final language, we will drop our opposition to the proposed constitutional change.

I'm not sure how closely you have followed this issue in the Senate, but the House State Affairs language appears to have some support on that side of the Legislature. Last year, the same language was debated and voted upon on the Senate floor. It failed by only two votes, despite heavy opposition from some of the original sponsors of SJR 1. In years past there had been almost unquestioned support for the original language. I think this is a strong indication that once people become more educated about this amendment, there is a willingness to consider other language that is less radical in nature.

I would be happy to discuss this further with you. If you have any questions about our position, please contact me.

Sincerely,



Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

March 16, 1992

The Honorable Dave Donley
Chairman
House Judiciary Committee
Room 120, State Capitol
Juneau, Alaska 99801-1182

Dear Chairman:

I would like to take this opportunity to commend you and the Committee on the fine work you have done in drafting SJR 1. We at the NRA feel the proposed amendment to the Alaska Constitution would be a positive step forward for individual gun owner's rights in Alaska.

In all states that have the constitutional provision for the right to keep and bear arms, the courts have universally held without exception, that a state is not prohibited from banning possession of firearms by felons and mental incompetents. Therefore, the wording in subsection (b) of Section 1 is unnecessary.

Alaska has always been among the top states in the country to both recognize and support individual's rights to purchase and own firearms, whether it be for hunting, collecting, sporting, or defense of self and family. Today, with gun-control advocates increasing their efforts to restrict law-abiding citizens' rights regarding gun ownership, this amendment would assure Alaskans for generations to come, their individual constitutional right to keep and bear arms.

Again, congratulations on your fine work with SJR 1. We at the NRA support this much needed endeavor. If I, or anyone at the Institute for Legislative Action can be of service, please let me know.

Sincerely,

Jeff W. Rabon
Institute for Legislative Action
Alaska Liaison

P.S.

If it appears that adding the wording contained in subsection (b) is necessary to gain the support of all parties, then we would agree to the language. However, if a consensus cannot be reached, then we feel it should be omitted.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 6, 1989

MEMORANDUM

TO: Representative Dave Donley

ATTN: Michael Ward

FROM: Sandi Depue *Sandi*
Administrative Officer

RE: State Constitutional Amendments for the "Right to Bear Arms"
Research Request 89.199

You asked which states have amended their constitutions to include the right to bear arms. According to the National Rifle Association of America (NRA), the following states provide for that right:

- | | | |
|-----------------------------|--------------------------------|--------------------------------|
| <u>Alabama</u> Δ | <u>Louisiana</u> Δ | <u>Oregon</u> * |
| <u>Alaska</u> | <u>Maine</u> Δ | <u>Pennsylvania</u> Δ |
| <u>Arizona</u> Δ | <u>Massachusetts</u> * | <u>Rhode Island</u> * |
| <u>Arkansas</u> | <u>Michigan</u> \square | <u>South Carolina</u> |
| <u>Colorado</u> \square | <u>Mississippi</u> Δ | <u>South Dakota</u> Δ |
| <u>Connecticut</u> Δ | <u>Missouri</u> Δ | <u>Tennessee</u> Δ |
| <u>Delaware</u> | <u>Montana</u> \square | <u>Texas</u> Δ |
| <u>Florida</u> * | <u>Nebraska</u> | <u>Utah</u> \square |
| <u>Georgia</u> * | <u>Nevada</u> Δ | <u>Vermont</u> * |
| <u>Hawaii</u> | <u>New Hampshire</u> \square | <u>Virginia</u> |
| <u>Idaho</u> * | <u>New Mexico</u> Δ | <u>Washington</u> Δ |
| <u>Illinois</u> Δ | <u>North Carolina</u> | <u>West Virginia</u> \square |
| <u>Indiana</u> * | <u>North Dakota</u> \square | <u>Wyoming</u> Δ |
| <u>Kansas</u> * | <u>Ohio</u> * | |
| <u>Kentucky</u> | <u>Oklahoma</u> Δ | |

The following seven states do not have right to bear arms amendments to their constitutions:

- California
- Iowa
- Maryland
- Minnesota
- New Jersey
- New York
- Wisconsin

- \square "individual person" (7)
- * "the people" (10)
- Δ "citizen(s)" (17)

STATE CONSTITUTIONAL GUARANTEES ON
THE RIGHT TO KEEP AND BEAR ARMS

42
Forty-one (41) states have constitutional guarantees on the right to keep and bear arms.

Alabama: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.

Alaska: 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. Article I, Section 19.

Arizona: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article 2, Section 26.

Arkansas: The citizens of this State shall have the right to keep and bear arms for their common defense. Article II, Section 5.

Colorado: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

Connecticut: Every citizen has a right to bear arms in defense of himself and the state. Article I, Section 15.

Florida: 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. Article I, Section 8.

Georgia: The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. Article I, Section I, para. VIII.

Hawaii: 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. Article I, Section 15.

Idaho: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person, nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted

felon, nor prevent the passage of legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. Article I, Section 11.

Illinois: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Article I, Section 22.

Indiana: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

Kansas: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power. Kansas Bill of Rights, Section 4.

Kentucky: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: *** 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

Louisiana: The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person. Article I, Section 11.

Maine: Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned. Article I, Section 16.

Massachusetts: The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Massachusetts Declaration of Rights, Part I, Article XVII.

Michigan: Every person has a right to keep and bear arms for the defense of himself and the state. Article I, Section 6.

Mississippi: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. Article 3, Section 12.

Missouri: That the right of every citizen to keep and bear

arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. Article I, Section 23.

Montana: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. Article II, Section 12.

Nevada: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Art. 1, Section 11, para. 1.

New Hampshire: All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the state. Part First, Art. 2-a.

New Mexico: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. Article II, Section 6.

North Carolina: 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; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30.

North Dakota: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreatnal, and other lawful purposes, which shall not be infringed. Article I, Section 1.

Ohio: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. Article I, Section 4.

Oklahoma: The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the

Legislature from regulating the carrying of weapons. Article 2, Section 26.

Oregon: The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. Article I, Section 27.

Pennsylvania: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. Article I, Section 21.

Rhode Island: The right of the people to keep and bear arms shall not be infringed. Article I, Section 22.

South Carolina: 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. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. Article I, Section 20.

South Dakota: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Article VI, Section 24.

Tennessee: That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Article I, Section 26.

Texas: Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime. Article I, Section 23.

Utah: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for the other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. Article I, Section 6.

Vermont: That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power. Chapter I, Article 16.

Virginia: That a well regulated militia, composed of the

body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power. Article I, Section 13.

Washington: The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article I, Section 24.

West Virginia: A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. Article III, Section 22.

Wyoming: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Nine (9) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, and Wisconsin.

Nebraska approved a
Constitutional provision
November, 1988.