

HJR

13

HOUSE COMMITTEE REPORT

(7)
 Date Referred: March 18, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 3/25/92

The JUDICIARY Committee considered: HJR 13

HOUSE JOINT RESOLUTION NO. 13 RUN-OFF ELECTION: GOV. & LT. GOV.

Proposing amendments to the Constitution of the State of Alaska requiring that candidates for governor and lieutenant governor receive 40 percent of the votes cast to be elected, and changing the term of office of the governor and the lieutenant governor.

RECOMMENDATIONS:
 be replaced with CSHJR 13 (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) _____
 zero fiscal note _____ zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dee Donley</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>		<input checked="" type="checkbox"/>	
<i>By Ellen</i>	<input checked="" type="checkbox"/>	<i>Mark Hanley</i>		<input checked="" type="checkbox"/>	
<i>Kevin Pat Parnell</i>	<input checked="" type="checkbox"/>				
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				

Dee Donley
 CHAIRMAN'S SIGNATURE

Revision Date: _____
 Title: Amendment to the Constitution-Gov. and Lt. Gov. receive 40% of votes for Election/Change of term
 Sponsor: Representative Kubina
 Requestor: House State Affairs

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 Election 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 of an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director
 Division: Elections

Phone: 465-4611
 Date: 01/10/92

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

Date: 01/10/92

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR 13

Revision Date: January 9, 1992 Department Affected: Department of Law
Title: "...amendments...requiring that candidates...receive 40% of the votes..." BRU: Legal Services
Component: Operations
Sponsor: Representative Kubina
Requestor: House State Affairs COMPONENT SERIAL NO.

		9	3
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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						
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.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: January 9, 1992
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: January 9, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 13

House Joint Resolution No. 13 proposes amendments to the constitution of the State of Alaska that would require that candidates for governor and lieutenant governor receive forty percent of the votes cast to be elected. The amendments would also change the term of office of the governor and lieutenant governor from noon on the first Monday in December following the governor's election to noon on the first Monday in January following the governor's election. Last, the amendment provides that if no candidate receives forty percent of votes cast for governor, a runoff election between the two candidates receiving the greatest number of votes cast shall be held within forty-five days of the first election. If the resolution is approved by a two-thirds vote of each house of the legislature, the proposed amendments would be placed before the voters at the next general election. The resolution, which asks the voters to consider requiring that future candidates for governor receive a minimum of forty percent of the votes to be elected, should not cause a fiscal impact for the Department of Law.

Alaska State Legislature

Chairman
State Affairs
Committee

Legislative Council

Transportation
Committee



Representative Eugene Kubina

During Session:
State Capitol
P.O. Box V
Juneau, Alaska 99801
(907) 465-4859

During Interim:
P.O. Box 2463
Valdez, Alaska 99686
(907) 835-2111

HJR 13: Relating to Run-Off Election: Governor and Lt. Governor

Sponsor Statement

The Constitution of the State of Alaska has given the office of Governor tremendous strength and power. It is extremely important that the person chosen for this weighty position be selected and approved by a significant number of eligible voters. Our electoral system should provide the public with some assurance that their elected governor and lieutenant governor represent something close to a majority of the voters.

Due to the importance of this issue, I introduced a Constitutional Amendment, HJR 13, which would amend our Constitution by requiring candidates for governor and lieutenant governor to receive at least 45 percent of the vote to be elected. At this time, the candidate in the general election who receives the highest number of votes, regardless of percentage, is elected.

Only twice since Statehood has a governor been elected with over 50 percent of the vote. Since the time of Governor Egan, percentages have been declining and two governors have been elected with less than 39 percent of the vote. However, the average percentage in all of the gubernatorial elections has been 47.9 percent and therefore I feel that a 45 percent plurality is a reasonable and realistic electoral requirement.

With the continuing emergence of third parties in Alaska, there exists the possibility that under current law, a governor and Lt. governor could be elected by less than one third of the electorate. Considering the fact that our Constitution greatly empowers those offices, it would be a tremendous disservice to the citizens of Alaska to allow persons to govern them who do not have a clear mandate. Our most powerful government officials should be elected with broad public support and a 45 percent requirement is a means to that end.

— DISTRICT SIX —

• Chenega Bay • Chitina • Cooper Landing • Cordova • Hope • Moose Pass • Seward • Tatitlek • Valdez • Whittier •

(7)
Date Referred: January 25, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3/16/92

The STATE AFFAIRS Committee considered:

HJR 13

HOUSE JOINT RESOLUTION NO. 13

RUN-OFF ELECTION: GOV. & LT. GOV.

Proposing amendments to the Constitution of the State of Alaska requiring that candidates for governor and lieutenant governor receive 40 percent of the votes cast to be elected, and changing the term of office of the governor and the lieutenant governor.

RECOMMENDATIONS:
be replaced with CS HJR 13 (STA) 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) Div of Elections

APPROVES PREVIOUS: (Dept/Date) fiscal note(s) _____

zero fiscal note Dept. of LAW

zero fiscal note(s) _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
<i>Eugene A. Kukena</i>				
<i>T. Onnora</i>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>				
<i>[Signature]</i>				

Eugene A. Kukena
Chairman's Signature

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

September 17, 1991

SUBJECT: Sectional analysis of HJR 13

TO: Representative Gene Kubina
Attn: Annie

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have requested a sectional analysis of the above described resolution.

As a preliminary matter, note that a sectional analysis or summary of a resolution should not be considered an authoritative interpretation of the resolution, and the resolution itself is the best statement of its contents. If you would like an interpretation of the resolution as it may apply to a particular set of circumstances, please advise.

Section 1 amends article III, section 3 of the Alaska constitution to provide that the candidate for governor receiving the greatest number of votes must get at least 40% of the vote to be elected, or there is a runoff between the top two votegetters. Currently the candidate receiving the most votes is elected, regardless of the percentage of the vote that candidate has received.

Section 2 makes the governor's term of office begin on the first Monday in January following the gubernatorial election, rather than the first Monday in December. This change is necessary to accommodate a possible runoff election; if one were required, there would be no candidate elected by the first Monday in December.

Section 3 provides that the constitutional amendments proposed by the resolution be placed on the ballot, if approved by the legislature.

JBG:lmb
91-254.lmb

SECTIONAL ANALYSIS

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

MEMORANDUM

DATE: October 29, 1991
TO: Representative Kubina
House Affairs Committee
FROM: Division of Elections
Office of the Governor
SUBJECT: Voting Statistics: 1958 - 1990

DATE/ GOVERNOR	VOTES CAST IN FAVOR	VOTES CAST	PERCENT CAST IN FAVOR
November 25, 1958 Egan	29,189	50,343	57.98025%
November 6, 1962 Egan	29,627	60,084	49.3093%
November 8, 1966 Hickel	33,145	67,361	49.20502%
November 3, 1970 Egan	42,309	82,405	51.34275%
November 5, 1974 Hammond	45,602	98,557	46.26967%
-- Recount	45,840	98,557	46.51115%
November 7, 1978 Hammond	49,580	129,705	38.2252 %
November 2, 1982 Sheffield	89,918	199,358	45.10378%
November 4, 1986 Cowper	84,943	179,555	47.30751%
November 6, 1990 Hickle	75,721	194,750	38.88112%

47.9 percent average

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

Averages of previous gubernatorial elections:

Previous 9	(1958 thru 1990)...	47.096%
8	(1962 thru 1990)...	45.735%
7	(1966 thru 1990)...	45.225%
6	(1970 thru 1990)...	44.561%
5	(1974 thru 1990)...	43.205%
4	(1978 thru 1990)...	42.379%
3	(1982 thru 1990)...	43.764%
2	(1986 thru 1990)...	43.094%
1	(1990)...	38.881%

ALASKA STATE LEGISLATURE • P.O. Box V • JUNEAU, AK 99811 • (907) 465-4930

Steele Creek/Gilmore • Steese East • Steese West • Goldstream • Ester • Ft. Wainwright • Two Rivers • Fox • Central • Livengood • Circle • Chotanika

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 185-3991
Fax: (907) 103-3351

February 5, 1991

MEMORANDUM

TO: Representative Fran Ulmer
FROM: Gordon S. Harrison, Director *(GSH)*
RE: Majority Vote Requirement for State Elections
Research Request 91.083

You requested information about an electoral system which would require winning candidates for state office to receive a majority of the votes cast, rather than a plurality, as is now the case under state law. You asked several specific questions about a majority vote system.

Your specific questions are addressed in the second section of this memorandum. The first section provides general background information about plurality and majority electoral systems. This background information is intended to provide a measure of overall perspective on the subject of majority vote requirements, as well as details that supplement the otherwise brief responses to your questions.

BACKGROUND INFORMATION ON PLURALITY AND MAJORITY ELECTION RULES

With a few exceptions, most elections in the United States today are decided by a plurality of the votes cast at the polls--that is, the candidate receiving the highest number of votes is the winner, whether or not that number of votes is more or less than 50 percent. However, some elections (a few primaries in southern states, some municipal elections, and the election of some state officers in Georgia and Arizona) are conducted under a majority vote rule--a winning candidate must garner at least one more than half of the votes cast.¹ These majority rule elections require a runoff to determine the winner when no candidate receives a majority of the votes in the first round.

¹In the literature on this subject, a plurality is occasionally referred to as a simple majority. However, a simple majority is 50 percent plus one. A special majority (also called a supermajority) is a larger, specified percentage of the vote, usually two-thirds or three-fourths of the ballots cast.

Leg. Research

Plurality Election Systems

Despite the political ethos in the United States of "majority rule," we elect by a plurality system most of our public officials (and virtually all of our state officials). This voting system is typically used in combination with the single-member district method of representation, and the term "plurality system" is commonly understood to mean a plurality/single-member district system.

When only two candidates stand for election to an office, the plurality rule has the same result as a majority rule. But when more than two candidates vie for office, the plurality rule may result in the election of a candidate who does not receive a majority of the popular vote. The greater the number of candidates, the more likely that this will be the outcome. In a crowded election (as in many primaries, for example), the winner may receive less than 30 percent of the vote.

Furthermore, under the plurality rule in multicandidate elections, candidates with extreme positions occasionally prevail. This may occur if several candidates split the vote of the preponderance of the electorate which occupies the middle of the political spectrum. While this outcome is not necessarily the tendency in multicandidate elections conducted under the plurality rule,² its periodic occurrence usually attracts widespread attention and commentary.

Theorists analyze the democratic characteristics of electoral systems in terms of their relative probability of producing a winner who could defeat all of the other candidates in "pairwise" contests. This winner--called the "Condorcet" winner in the theoretical literature--is the candidate who is acceptable to the greatest number of people. The plurality rule is less likely than a majority vote system to produce the Condorcet winner in a multicandidate contest, and the more candidates in the contest, the less likely is the plurality voting method to produce the Condorcet winner.³

In view of its defects in multicandidate elections, why is the plurality rule used so extensively in the United States? The answer to this question may have many facets, but probably the most important one is to be found in the correlation that has long been recognized to exist between the plurality rule

²One such outcome to attract wide attention was the victory of conservative Democrat Mario Proccacino in the 1969 New York City primary. Proccacino won by a 33 percent plurality, and the remainder of the vote was split among four more liberal candidates. (In the general election, Proccacino was defeated by John Lindsay, who ran as a third-party candidate.)

³See P.C. Fishburn and W. Gehrlein, "An Analysis of Simple Two-stage Voting Systems," *Behavioral Science*, Vol. 21 (1976), and S. Merrill, "A Comparison of Efficiency of Multicandidate Electoral Systems," *American Journal of Political Science*, Vol. 28 (1984).

and a stable, two-party government. The plurality rule (together with single-member districts) has its origin in English political history, and it spread to this country in colonial days. In contrast to this Anglo-American system, the majority voting rule developed on the continent (notably in France), where it was widely adopted along with the system of proportional representation.

Proportional representation is the allocation of legislative seats among parties in direct proportion to the electoral strength of each party. Under this system, a minor party with, say, 15 percent of the popular vote, will acquire approximately 15 percent of the legislative seats. Proportional representation contrasts dramatically with the single-member district system, which is biased in favor of the majority party in the allocation of seats. While the strength of the bias depends on the geographical distribution of partisan voters, the single-member district ("winner take all") system usually results in a substantial over representation of the majority party in the legislative body. This bias of the system works to the detriment of the second strongest party, however it is devastating to third, fourth, fifth and whatever other minority parties may aspire to power.

Also, the plurality rule is thought to bolster the two-party system by encouraging voters to gravitate toward the two candidates most likely to prevail. Because the candidate who attracts the most votes takes the seat, votes are "wasted" if they are cast for a minority party. The plurality rule encourages bargaining among factions and various interests before the election in order to advance a candidate with the broadest possible electoral appeal; hence the tendency of the plurality rule to deter entry by third candidates (and third parties), and to limit contests to two serious candidates.

Political scientists and practical people of politics have long noted the relative stability of the political systems in America and Great Britain compared with those of major continental countries such as France and Italy. A dominant feature of the former is a competitive two-party system that accommodates the vast majority of voters; and a dominant feature of the latter is a highly fractured electorate organized in numerous small parties that coalesce into unstable ruling coalitions. The different electoral methods--the plurality/single-member district system on the one hand and the majority/proportional-representation system on the other hand--came to be regarded as largely responsible for the different party systems. Indeed, so convincing has the correlation been between the plurality/single-member election method and two-party systems that the relationship enjoys the status of a "law" of political science.⁴

Thus, the popularity and longevity of the plurality rule in the United States, despite its undemocratic idiosyncrasies, has to do in large part with its

⁴William H. Riker, "The Two-party System and Duverger's Law: An Essay on the History of Political Science." *American Political Science Review*, Vol, 76 (1982).

venerable Anglo-American history and its perception as a bulwark of the two-party system. However, use of the majority voting rule, in association with the single-member district rather than proportional representation, is not unknown in the United States.

Use of Majority Rule in U.S. Elections

The majority vote rule (coupled with the traditional single-member district method of representation) is currently used in the primaries of nine southern states, in some municipal elections, in the general elections for state officials in Georgia and Arizona, and in the unique "open election" system of Louisiana.

Southern Runoff Primaries

Nine states--Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina,⁵ Oklahoma, South Carolina and Texas--require party candidates to be nominated in a primary election by a majority of the votes cast. If no candidate receives a majority in the primary, a runoff primary is held between the two candidates with the highest number of votes. The runoff occurs three to four weeks after the primary.⁶ A majority vote is not required in the subsequent general election in these states (except in Georgia, which is discussed below).

All of the states with runoff primaries have been dominated by the Democratic party since the collapse of the Republican party in the south after the Civil War. In these one-party states, the runoff primary was adopted to insure that the Democratic nominee had the support of the majority of the party, because for all practical purposes the primary was tantamount to the general election.⁷ That is, because there would be ineffective Republican opposition in the general election (if any at all), the decisive election was the primary, which was often crowded with candidates.

⁵In 1989 North Carolina lowered to 40 percent the portion of the vote that a candidate may receive to be elected and therefore avoid a runoff.

⁶Council of State Governments, *Book of the States 1990*, Table 5.3, p. 236.

⁷This is the conventional explanation of the southern runoff primary. However, it has also been alleged that the runoff primary was contrived as a means of excluding blacks from elective office. This is discussed below under the heading "Majority Vote Systems and the U.S. Voting Rights Act."

Municipal Runoff Elections

A number of municipal election codes in the United States, particularly in cities where local elections are conducted on a nonpartisan basis (and which involve no primary), require the successful candidates for certain offices to receive a majority vote. We could not obtain data (or even an informed estimate) on the number or proportion of U.S. cities that require a majority vote. However, several large cities, including New York City, do so.⁸

In Alaska, Title 29 of the state statutes requires a runoff in municipal elections if a candidate for mayor, assembly or school board fails to obtain 40 percent of the vote in the general election. However, municipalities may opt out of this requirement by ordinance.⁹ Municipalities with home-rule charters may choose their own election rules. The home-rule Municipality of Anchorage, for example, requires a runoff for mayor if no candidate receives 40 percent of the vote in the general election.

General Election Runoffs for State Offices

In the early history of this country, several state constitutions--primarily those of the New England states--required the governor to be elected by a majority of the popular vote. If a candidate failed to obtain a majority of the vote cast, the state legislature decided the election.¹⁰ These laws have been repealed, with one exception. The Vermont Constitution still requires the

⁸A study of minority candidates in municipal runoff elections used data from Dallas, Fort Worth and San Antonio, Texas. Arnold Fleischmann and Lana Stein, "Minority and Female Success in Municipal Runoff Elections," *Social Science Quarterly*, Vol. 68, No. 2 (1987). In Georgia, about half of the 550 municipalities elect officials under the majority rule (personal communication, February 1, 1991, Jeff Lanier, director of Elections Division, State of Georgia).

⁹Alaska Statute 29.29.060. The Matanuska-Susitna Borough assembly opted out of the provision in 1989. The impetus for doing so in that case came from the local municipal administrators. Voter turnout in the runoffs was low, and the second election was an administrative burden (personal communication with Linda Dahl, clerk of the Matanuska-Susitna Borough, January 24, 1991).

¹⁰See the discussion in Robert A. Diamond, *Guide to U.S. Elections*, Congressional Quarterly, Inc. pp. 363-364. During the 19th century, many gubernatorial elections were decided by the legislatures in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and Georgia. Apparently many state constitutions continue to provide for the legislative election of executive officers in the case of a tie in a general election conducted under the plurality rule. See the U.S. Supreme Court decision in *Fortson v. Morris*, 385 US 231, n.3.

positions of governor, lieutenant governor and treasurer to be filled by an election in the General Assembly when no candidate for these offices receives a majority of the popular vote in the general election.¹¹

Georgia is the latest state to drop a constitutional provision for the legislative election of governor. There, the change resulted from a furor surrounding the 1966 election by the General Assembly of Lester Maddox.¹² The new law calls for a popular runoff if a candidate does not receive a majority of the votes cast. The majority vote requirement applies to all elected state officials in the executive, legislative and judicial branches. The runoff is to be held on the third Tuesday following the general election. Only those registered to vote in the general election are entitled to vote in the runoff, and only those votes cast for the two candidates whose names appear on the ballot are counted.¹³

According to the Georgia state election office, general election runoffs are rare, but primary election runoffs are common.¹⁴ Currently, the Georgia attorney general's office is defending the state's runoff provisions from allegations that they deny blacks full participation in the electoral process

¹¹Vermont Constitution, Section 47. In 1976, the General Assembly, pursuant to this provision, elected lieutenant governor the candidate who received the second highest vote in the general election (the difference between the highest and second highest number of votes was 1,100). A controversy erupted, but efforts to amend the constitution came to nothing.

¹²In the 1966 gubernatorial election in Georgia, votes cast for write-in candidate Ellis Arnall were enough to deny Democrat Lester Maddox and Republican Howard Calaway a majority. The General Assembly elected segregationist Maddox governor, even though he received the second highest number of votes in the general election. The legislative election was contested in federal court, and the U.S. Supreme Court upheld the state constitutional provision. (The case, *Fortson v. Morris*, 385 US 231, is analyzed in Richard J. Bryan, "Legislative Election of a Governor", *North Carolina Law Review*, Vol 46, 1967.)

¹³Georgia Statutes 21-2-501(a) states in part: "Except as otherwise provided in this Code section, no candidate shall be nominated for public office in any primary or elected to public office in any election unless such candidate shall have received a majority of the votes cast to fill such nomination or public office."

¹⁴Jeff Lanier, director of the Election Division, Office of the Secretary of State, Georgia, said that there has not been a general election runoff in Georgia since the time he assumed his position in 1982, and he personally does not remember a general election runoff since he began to vote in 1972. Personal communication, February 1, 1991.

(this issue is discussed below under the heading "Majority Vote Systems and the U.S. Voting Rights Act").

Arizona is the only other state which requires a majority vote in statewide general elections.¹⁵ This provision, which applies only to the executive offices of governor, secretary of state, attorney general, and superintendent of public instruction, was ratified by the voters as an amendment to the state constitution in 1988. It represented a political reaction to Arizona's unhappy experience with Governor Evan Meacham, who was elected without a majority of the vote in 1984 and later removed from office by impeachment.

The Arizona constitutional provision states, in part: "If no person receives a majority of the votes cast for the office, a second election shall be held as prescribed by law between the persons receiving the highest and second highest number of votes cast for the office."¹⁶ A law implementing this provision was not adopted prior to the general election in November 1990. In the contest for governor, votes cast for a write-in candidate denied a majority to either of the major party candidates. It was necessary for the Arizona legislature to convene in special session to adopt legislation to provide for the runoff election. The runoff is scheduled for February 26, 1991.

Louisiana's "Open Election" System

In 1975, Louisiana's legislature adopted a method of electing state officials that is unique in the United States. It is commonly referred to as the "open primary" system in Louisiana, but it is not a conventional open primary (nor is it a blanket primary) system. Rather, it is best described as an "open election" system.

In Louisiana, all candidates from all parties compete in the first round of a runoff system. A candidate who receives a majority of the vote in the first round wins the seat. A runoff is held between the two candidates receiving highest and second highest number of votes in those contests which did not produce a majority-vote winner in the first round. Note that the first round is not a primary election in which party candidates are nominated. The two

¹⁵In 1969 the Arkansas legislature adopted a majority vote requirement for the general election in contests for governor and four other elective executive officers. However, the Arkansas supreme court struck it down on the grounds that it conflicted with a provision in the state constitution which declares that the election of these officers shall be determined by "the highest number of votes", which refers to a plurality (*Rockefeller v. Matthews*, 459 S.W. 2d 110).

¹⁶Arizona Constitution, Article V, Section 1.B

candidates who advance from the first round to the runoff may be from the same party.¹⁷

Analysis of Majority Vote Rule

Requiring candidates to receive a majority of the votes cast at an election has a strong appeal on the basis of fundamental democratic values. On the other hand, the majority vote rule may also have undesired political and administrative impacts on the electoral process. This section discusses the case for and against a majority vote rule. It should be noted in passing, however, that the plurality and majority vote rules are not the only, and may not be the most efficient, methods of electing public officers. There are numerous alternative voting schemes.¹⁸ In Australia, for example, the alternative preference ballot is used, in which voters rank the candidates. In this scheme, when a candidate fails to obtain a majority on the first ballot, the weakest candidate is eliminated and the votes he received are distributed to the other candidates according to the second preference on the ballot. This process of redistributing votes continues until a candidate obtains a majority.

The Arguments for a Majority Vote Rule

In political environments where third parties or single-issue groups are active, a majority vote system is more likely than a plurality system to produce public officials who have broad public support. Under a majority vote rule, fringe political candidates are unlikely to be elected. It gives to those who supported an "also ran" candidate the opportunity to express a preference

¹⁷Your research request expressed an interest in a system in which "... any candidate who receives an absolute majority of the votes cast in the primary election [is] declared the winner; no general election [is] held for that office." A provision of this kind could be grafted on Alaska's existing blanket primary system. In this case, if a candidate did not receive a majority of the vote, the two party nominees with the highest number of votes (presumably the Democrat and Republican) would advance to the general election. However, this is not how the Louisiana system works.

¹⁸A wide variety of election schemes have been devised, some of which have found practical application and some of which remain theoretical. See, for example, Jeffrey T. Richelson, "Running Off Empty: Run-off Point Systems," *Public Choice*, Vol. 35, (1980). See also, Joseph F. Zimmerman, "The Single-Member District System: Can it Be Reformed?," *National Civic Review*, Vol. 70, No. 5 (1981).

for one of the two remaining candidates. In theoretical terms, the majority rule has a higher probability of electing the Condorcet winner.¹⁹

It is argued that a majority rule can promote political consensus in jurisdictions that have numerous, independent factions. It does so through the bargaining process that occurs after the first round election. The top two candidates who advance to the runoff must seek support from those who did not initially support them. They must compromise with other factions and interests to build a winning coalition.

Also, in these fractured political settings, the official who wins with a majority vote acquires legitimacy that a plurality vote cannot provide. One commentator observes: "There may be no 'general will', but a majority's will is a closer approximation than a plurality's, and thus more able to confer a mandate, a sense of the right of the chosen representative to act."²⁰

Criticisms of the Majority Vote Rule

A practical criticism of runoff elections is that generally fewer voters turn out at the second ballot. Studies of southern primaries confirm that voter turnout declines in runoff elections.²¹ Because of this drop-off in voter participation between the first and second rounds, the runoff may not be more likely than a plurality election to produce a winner with broad public support and confer legitimacy. For example, a 45 percent plurality in the first round may amount to more votes than a 51 percent majority in the runoff if the number of voters declines sufficiently between the two elections.

¹⁹There is no guarantee that the majority vote system will produce the Condorcet winner. That it may not can be illustrated by reference to the 1990 gubernatorial election in Alaska. The following scenario is only speculative, but it seems plausible on the basis of opinion polls published during the campaign. If paired in dual contests with Walter Hickel and Tony Knowles, Arliss Sturgulewski wins. She is, therefore, the theorists' Condorcet winner and presumably has the broadest electoral support of the three candidates. But in a plurality contest involving all three, Walter Hickel wins (this was the outcome of the November general election). If a majority vote rule required a runoff, Hickel would have been paired with Knowles, and Knowles would have won (this would be the outcome if more Sturgulewski voters went to Knowles than to Hickel). If nothing else, this scenario illustrates that the rules under which an election is conducted can affect the outcome of the election.

²⁰Charles Krauthammer, "Runoff Run-in," *The New Republic*, May 28, 1984, p. 13.

²¹Stephen G. Wright, "Voter Turnout in Runoff Elections," *Journal of Politics*, Vol. 51, No. 2 (1989).

Indeed, even when voter participation in the runoff does not decline precipitously, the distinction between the number of votes cast for a winner under a plurality rule and under a majority rule may pale in significance when the number of the voters under either system is compared with the number of registered voters or the number of eligible voters (for example, when only a quarter of the eligible voters go to the polls, a majority victory for a candidate may not represent a significant difference from a plurality victory when both are viewed as a percentage of potential voters).

Also, as a practical matter, elections are expensive to run, both for the candidates who must campaign and the government that must mobilize the election machinery. A runoff election may seem like a very expensive proposition, especially if one must be held to resolve the election of a single position over which there is little voter excitement (such as the insurance commissioner, for example). Also, a runoff presents other administrative problems, such as providing adequate opportunity for absentee voters to participate.

Politicians and political scientists have long speculated that the majority rule tends to encourage the candidacy of people representing third parties and miscellaneous political factions. The hypothesis is that the majority rule fosters multicandidate contests because it makes it possible for weak candidates to parlay a second place showing in the first round into a victory in the runoff. A prominent political scientist describes the rationale of the hypothesis:

In the runoff majority system a candidate who initially has the second most votes can ultimately win, provided the supporters of eliminated candidates vote for her or him at the second ballot. Hence, if a group of politicians can see a chance to come in second or third, it is often worthwhile to form a new party.²²

In recent years, theoretical studies have demonstrated the logic of this longstanding hypothesis, and empirical studies of runoff and non-runoff primaries confirm that runoff primaries tend to attract more contestants. While local political history and circumstance can help explain the correlation, it seems to be a persistent characteristic of majority vote systems. Whether this characteristic should be considered a shortcoming of

²²Riker, "The Two-party System and Duverger's Law," p. 759.

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the system is not clear, in view of the countervailing tendency of majority runoff systems to be more effective in preventing a third party victory.²³

The virtue of the majority vote system, which is the ability it gives to a centrist coalition to rally behind a consensus, mainstream candidate, has also lead to its harshest criticism, namely that it serves as a convenient and effective method of excluding blacks and other minorities from office. Black politicians in the south have attacked runoff primaries as contrivances to keep blacks from being elected. They argue that black candidates can often win a plurality of votes in the first ballot, but that white voters close ranks behind the white candidate in the runoff (even if it means voting for a Republican). Similar complaints about the discriminatory effects of a runoff requirement have been voiced by female candidates.

These criticisms of the majority vote rule have spawned a number of academic studies that investigate the political fortunes of black, hispanic and female candidates in southern runoff elections. The studies have generally provided little support for the discrimination thesis.²⁴ Nonetheless, many minority politicians believe the system is biased in its result and biased in its intent, and the U.S. Department of Justice has viewed majority systems with skepticism under the U.S. Voting Rights Act of 1965.

Majority Vote Systems and the U.S. Voting Rights Act of 1965

Section 2 of the Voting Rights Act of 1965 prohibits any election procedure "that results in an abridgement of the right to vote on account of race." The act was amended by Congress in 1982 to make clear its application to

²³See Stephen G. Wright and William H. Riker, "Plurality and Runoff Systems and Numbers of Candidates," *Public Choice*, Vol. 60. (1989). This study concludes that plurality voting systems in general may be more efficient in producing Condorcet winners than majority systems because of the tendency of the latter to entice more contestants into the election. That is, all things being equal, plurality systems are less efficient than majority systems. But because majority systems attract more candidates, and because the efficiency of any system declines as the number of candidates increases, the plurality system may over the long haul produce more Condorcet winners than the majority system.

²⁴See for example, Charles S. Bullock and Lock K. Johnson, "Runoff Elections in Georgia," *Journal of Politics*, Vol. 47 (1985). The authors conclude: "While the small number of cases makes our conclusions tentative, there is no support for the minority-disadvantage myth. Blacks and women who led primaries do at least as well as white males. To the extent that runoffs disadvantage minorities, it is blacks and women running second in the primaries who have a harder time--but they would also lose under a plurality system." (p. 945).

electoral procedures that result in discrimination whether or not they were adopted with the intent to discriminate. In congressional hearings at the time, the U.S. Department of Justice indicated that majority vote procedures often had a discriminatory impact (as did at-large elections, high fees and bonding requirements, numbered posts, staggered terms, full slate voting requirements, residency requirements, annexations and retrocessions, incorporations, and malapportionment and gerrymandering).²⁵ Between 1965 and 1981, the U.S. Justice Department, acting under the Voting Rights Act, objected to 43 attempts by local governments to adopt general election runoffs (out of a total of 151 objections filed against municipal election procedures).²⁶

In 1990, the U.S. Justice Department brought suit against the primary and general election majority vote requirements in Georgia. The American Civil Liberties Union brought a similar suit on behalf of several black candidates. These suits have been consolidated into a single proceeding in federal court. The Georgia attorney general is defending the legality of the majority vote provisions.²⁷

Political jurisdictions with a significant racial minority must receive "preclearance" under Section 2 of the Voting Rights Act of proposed changes in election procedures. The U.S. Justice Department must rule on the proposed changes before they may be implemented. It is interesting to note that the legislation recently adopted in Arizona to carry out the runoff election for governor was successfully precleared. Thus, not all majority vote schemes are prohibited, only those deemed to be discriminatory.

An analysis in 1986 of the legality of runoff elections under Section 2 of the Voting Rights Act concluded:

Section 2 of the Voting Rights Act steers a careful middle course, allowing most jurisdictions to continue to use runoffs to build political consensus while striking down those that result in significant racial discrimination. The Act mandates a broad but rigorous assessment of each challenged procedure. A court must consider whether the "totality of circumstances" indicates that a runoff is depriving minorities of the right to participate fully. However, a court should only invalidate

²⁵See U.S. House of Representatives, 97th Congress, *Voting Rights Extension*, Report No. 97-227 (1981), p. 18.

²⁶U.S. Senate, 97th Congress, *Voting Rights Act*, Hearings before the Subcommittee on the Constitution, Committee on the Judiciary; Report No. J-97-92, pp. 1746-1759.

²⁷An informative article about this case is Ellen Perlman, "Civil Rights Leaders Seek to Overturn Georgia Primary System," *City and State*, May 21, 1990.

a runoff where there is evidence of significant discrimination.²⁸

QUESTIONS POSED IN RESEARCH REQUEST

This section addresses the several specific questions you asked.

Would Adoption of a Majority Vote Rule Require A Constitutional Amendment?

In Alaska, a majority vote requirement for governor and lieutenant governor would require a constitutional amendment. Article III, Section 3 of the Alaska Constitution states: "The governor shall be chosen by the qualified voters of the State at a general election. The candidate receiving the highest number of votes shall be governor." This means that the candidate receiving a plurality of the vote carries the election. Because the lieutenant governor is elected with the governor (Article III, Section 8), the plurality provision also applies to this office.

However, a majority vote rule could be adopted for legislative members by statute. Article II, Section 3, states merely that "Legislators shall be elected at general elections." There does not appear to be any other constitutional provision or common law principle that would limit the legislature's power to prescribe a majority vote requirement.²⁹

Are Alaska's Election Laws Subject to "Preclearance" Under the Voting Rights Act?

Yes. However, not readily apparent are the factors the U.S. Justice Department would use to evaluate the potential discriminatory effects of a statewide, majority vote requirement. One important factor might be the position taken by the Alaska Federation of Natives, and other Native Alaskan groups, on the majority vote issue.

What Procedures Should Govern Runoff Elections, Based on the Experience of Other States?

There is so little experience anywhere with general election runoffs at the state level that this question is difficult to answer. With respect to the

²⁸Matthew G. McGuire, "Assessing the Legality of Runoff Elections Under the Voting Rights Act," *Columbia Law Review*, Vol. 86, (1986), p. 887.

²⁹Memorandum from John B. Gaguine, Legislative Council, to Gordon S. Harrison, January 31, 1991.

question of when a runoff should be held, it seems evident that there are reasons why a runoff should be held as soon after the general election as practical. A new governor needs as much transition time as possible to prepare for the legislative session. A late runoff would shorten this transition time. Runoff candidates should not be required to bear the financial burden of a third campaign. However, sufficient time between the general and runoff election must lapse to fully inform and prepare the electorate for the runoff, to print and distribute ballots, and reactivate the local election machinery. A minimum of three weeks from the general election is probably necessary to accomplish these tasks.

How Many Elections in Recent Alaska History Would Have Required a Runoff?

In six of the ten general elections since statehood, the successful team of candidates for governor and lieutenant governor was elected by a plurality. They were elected four times by a majority. The smallest plurality was received by Governor Hammond in 1978 (38.2 percent). If the threshold for triggering a runoff election had been 40 percent of the vote (see below), two runoffs would have been held: in 1978 and in 1990, when Governor Hickel obtained a plurality of 38.8.

Occasionally a member of the state legislature is elected by a plurality rather than a majority. In 1990, for example, state Representative Tom Moyer was elected with 48.7 percent of the vote; in 1986 Senator Uehling received 49.9 percent, and Representative Swackhammer received 41.7 percent.

It is interesting to note that candidates for legislative seats often run unopposed in the primary. Also, candidates in multicandidate primary contests frequently obtain a majority in the primary. In the August 1990 primary, for example, seven candidates ran unopposed (i.e., they faced no opposition from their own party and no candidates ran from the other party) and received virtually 100 percent of the vote cast. Thirty-one candidates who faced opponents in their own party and/or another party obtained a majority of the votes cast. Thus, changing the law to consider a candidate the winner of the general election who receives a majority of the votes cast in the primary would affect a substantial number of legislative races (refer to the discussion of Louisiana's open election system, and footnote 17, on page 8).

How is a Majority Assured in the Runoff?

Runoff elections should be conducted with the stipulation that the only valid votes are those cast for the two candidates printed on the ballot.

Georgia statutes (21-2-501) provide that ". . . only those votes cast for the persons designated . . . as candidates in such run-off election shall be counted in the tabulation and canvass of the votes cast." The recently

adopted Arizona law states simply: "A write-in candidate is not permitted in a second election" (321.16.D).

Why Do Some Jurisdictions Require a Runoff if No Candidate Receives 40 Percent of the Votes?

A 40 percent threshold, such as that provided in AS 29.29.060, has been adopted in a number of jurisdictions as a means of avoiding the more egregious undemocratic outcomes that are possible under the plurality rule, while preserving many of the political and administrative advantages of a plurality system. That is, a runoff is thought to be necessary to build political consensus if a candidate is not successful in polling over 40 percent of the vote at the general election. The voters who cast ballots for a third (or fourth) candidate are considered numerous enough to warrant the expense of a runoff to give them a chance to express a preference for the two leading candidates.

It is important to note that in very close contests, just a few write-in votes (or just a few votes for a minor party) can deny a candidate a majority of the total votes cast. For example, in Alaska in 1966, Walter Hickel garnered 49.996 percent of the votes in a contest with one other serious candidate.³⁰ Most people would agree that runoff elections in such cases do not serve a useful political purpose.³¹ Therefore, a threshold somewhere below 50 percent is established to trigger a runoff.³²

Will a Majority Rule Tend to Attract More Candidates?

Studies and the theoretical literature suggest that elections conducted under a majority rule tend to have more candidates than elections conducted under a plurality rule. The additional candidates are likely to represent fringe (noncentrist) political causes and interests. However, local political circumstances will amplify or moderate this tendency to some extent. Therefore, it is not readily apparent how a change to a majority rule in Alaska might affect the number of candidates running in various races.

If you have any questions, please contact this agency.

³⁰In the contest for governor and lieutenant governor in 1966, Egan/Wade received 32,065 votes; Hickel/Miller 33,145 votes; and Grasse/Saupe 1,084.

³¹Arizona's first runoff under its new majority vote rule was required because a relatively few write-in votes narrowly denied either of the major party candidates a majority victory. According to Mr. Rich Bitner, research staff with the Arizona Senate, many Arizonans are now questioning the wisdom of their new "50 percent plus one" law.

³²Candidates in primaries in South Dakota and Iowa must poll over 35 percent of the votes or face a runoff election. See also "Why 30% (but not 40%) Mayors?" *New York Times*, August 15, 1984.