

HJR

10

# REP. TERRY MARTIN

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## Alaska House of Representatives

### SPONSOR STATEMENT

by Rep. Terry Martin

HJR 10 - "Proposing amendments to the Constitution of the State of Alaska authorizing the use of the initiative to amend the Constitution of the State of Alaska."

Under current constitutional provisions, amendments to Alaska's constitution can be proposed only by a joint resolution of the legislature, passed by two-thirds majority votes; or by a constitutional convention. In either case, the proposed amendment must be approved by a majority vote of the electorate.

HJR 10 would provide a third avenue for proposing amendments to the constitution - the initiative process. An initiated amendment would follow the same procedure as an initiated statute. It would be proposed by its sponsors to the Lt. Governor, and when approved as to form, the sponsors would collect the necessary number of signatures of registered voters. Upon certification that the required number of voters had signed the petitions, the initiated constitutional amendment would be scheduled for the ballot. If passed, an initiated constitutional amendment would become effective 30 days after certification of the election.

A constitution is supposed to be the voice of the people. Yet, under current requirements, that voice is muffled. If the legislature doesn't want to pass a proposed amendment, it doesn't get done. Oftentimes, by the time a constitutional amendment does pass the legislature and is proposed to the people, it is so convoluted as to be difficult to understand, and open to varying interpretations. The recently-passed budget reserve fund is an excellent example.

On the other hand, when the time comes around for the people to vote on holding a constitutional convention (Nov. 1992) there develops such hysteria that an open convention would destroy our "model and modern constitution" and the public is urged to vote no, and thus the people are persistently denied a voice in "their" constitution.

Many other states allow constitutional amendment by initiative, with generally laudable results. Alaska would do well to follow their example, and give Alaskans another avenue of access to their constitution.



### A BRIEF SECTIONAL ANALYSIS

HJR 10 - "Proposing amendments to the Consitution of the State of Alaska authorizing the use of the initiative to amend the Constitution of the State of Alaska."

Section 1 adds constitutional amendments to that section of the constitution that allows for the use of initiative and referendum.

Section 2 adds constitutional amendments to the section that proscribes the application process. This section also contains a grammatical change to existing wording.

Section 3 adds constitutional amendments to the section that proscribes how the election for initiatives is to be held, and that voids an initiative petition if the legislature enacts substantially the same constitutional amendment.

Section 4 adds language that proscribes how the initiated amendment is adopted into the constitution. This section makes such an amendment effective 30 days after the election is certified.

Section 5 adds a sentence to Article XIII, allowing amendments to the constitution to be proposed by initiative.

Section 6 provides the mechanism to put before the voters in the next general election the amendment proposed in this resolution.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HJR 10

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...Authorizing the use of the initiative to amend the Constitution..." BRU: Legal Services  
 Component: Operations  
 Sponsor: Representative Martin  
 Requestor: House State Affairs COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
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 Date: February 13, 1991  
 Approved by Commissioner: Richard I. Pegues/AC  
Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 13, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HJR 10

House Joint Resolution No. 10 proposes an amendment to the state's constitution that would permit the people to propose and enact constitutional amendments through the initiative process. Currently, an amendment to the constitution must be proposed by two-thirds of each house of the legislature before it can be considered by the voters at a general election. The proposed amendment would permit use of an application with one hundred qualified voters as sponsors to initiate a constitutional amendment proposal. And, after certification by the lieutenant governor, a petition signed by qualified voters, equal in number to ten percent of those who voted in the preceding general election and resided in at least two-thirds of the state's election districts, would be required to place the proposition on the statewide ballot. This method is identical to the process required for proposing and adopting or rejecting a law by initiative.

Adoption of HJR 10, which would place this proposal on the ballot at the next general election, will not have a fiscal impact on the Department of Law.

**FISCAL NOTE**

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

BILL NO. HJR10

Revision Date: 01/29/91 Department Affected: Office of the Governor - Election

Title: Amend to Const.-Authorize use of Init.to amend Const of the State BRU: Elections

Sponsor: Representative Martin Component: II - Primary and General Elections

Requestor: State Affairs COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		2.2*				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>2.2*</b>				

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		2.2*				
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		<b>2.2*</b>				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared By: Linda Edgeworth, Information Officer Phone: 465-4611

Division: Division of Elections Date: 01/29/91

Approved by Commissioner: Charlotte E. Pickett

Agency: Division of Elections Date: 1-29-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**Table 1.3**  
**CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE**  
**Constitutional Provisions**

<i>State</i>	<i>Number of signatures required on initiative petition</i>	<i>Distribution of signatures</i>	<i>Referendum vote</i>
Arizona.....	15% of total votes cast for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Arkansas .....	10% of voters for governor at last election.	Must include 5% of voters for governor in each of 15 counties.	Majority vote on amendment.
California.....	8% of total voters for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Colorado .....	5% of total legal votes for all candidates for secretary of state at last general election.	None specified.	Majority vote on amendment.
Florida .....	8% of total votes cast in the state in the last election for presidential electors.	8% of total votes cast in each of 1/2 of the congressional districts.	Majority vote on amendment.
Illinois(a) .....	8% of total votes cast for candidates for governor at last election.	None specified.	Majority voting in election or 3/5 voting on amendment.
Massachusetts(b).....	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters).	No more than 1/4 from any one county.	Majority vote on amendment which must be 30% of total ballots cast at election.
Michigan .....	10% of total voters for all candidates at last gubernatorial election.	None specified.	Majority vote on amendment.
Missouri .....	8% of legal voters for all candidates for governor at last election.	The 8% must be in each of 2/3 of the congressional districts in the state.	Majority vote on amendment.
Montana.....	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election.	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts.	Majority vote on amendment.
Nebraska .....	10% of total votes for governor at last election.	The 10% must include 5% in each of 2/5 of the counties.	Majority vote on amendment which must be at least 35% of total vote at the election.
Nevada .....	10% of voters who voted in entire state in last general election.	10% of total voters who voted in each of 75% of the counties.	Majority vote on amendment in two consecutive general elections.
North Dakota .....	4% of population of the state.	None specified.	Majority vote on amendment.
Ohio .....	10% of total number of electors who voted for governor in last election.	At least 5% of qualified electors in each of 1/2 of counties in the state.	Majority vote on amendment.
Oklahoma .....	15% of legal voters for state office receiving highest number of voters at last general state election.	None specified.	Majority vote on amendment.
Oregon .....	8% of total votes for all candidates for governor at last election at which governor was elected for four-year term.	None specified.	Majority vote on amendment.
South Dakota .....	10% of total votes for governor in last election.	None specified.	Majority vote on amendment.

(a) Only Article IV, The Legislature, may be amended by initiative petition.  
 (b) Before being submitted to the electorate for ratification, initiative

measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

CONSTITUTIONAL AMENDMENTS APPEARING ON  
THE BALLOT IN ALASKA

	<u>For</u>	<u>Against</u>
August 23, 1966 SJR 1 - Residence Requirement to Vote for President	36,667	12,383
August 27, 1968 HJR 74 - Judicial Qualifications, Commission and Remedial Powers	32,481	12,823
August 27, 1968 Compensation of Judicial Qualification Commission	27,156	17,467
August 25, 1970 Establishing Voting Age at 18 years	36,590	31,216
August 25, 1970 English Eliminated as Requisite for Voting	34,079	32,578
August 25, 1970 Secretary of State Designated Lieutenant Governor	46,102	18,781
August 25, 1970 Chief Justice Election by Supreme Court	44,055	19,583
August 25, 1970 Term of Office for Judicial System Administrator	43,462	18,651
August 22, 1972 Residency Requirement for Voting	31,130	20,745
August 22, 1972 Prohibition of Sexual Discrimination	43,281	10,278
August 22, 1972 Right of Privacy	45,539	7,303
August 22, 1972 Borough Assemblies	30,132	19,354
August 22, 1972 Limited Entry Fisheries	39,837	10,761
August 27, 1974 Time of Voting on Constitutional Amendments	56,017	20,403

	<u>For</u>	<u>Against</u>
November 2, 1976		
Capital Site Selection Ballot Measure		
Larson Lake	33,170	
Mount Yenlo	16,169	
Willow	56,219	
November 2, 1976		
Action on Veto of Bills	71,829	39,980
November 2, 1976		
Permanent Fund From Non-Renewable Resource Revenue	75,588	38,518
November 2, 1976		
Administration and Review of State Land Disposals	46,652	64,744
November 2, 1976		
Direct Financial Aid to Students	54,636	64,211
November 7, 1978		
Powers of Legislative Interim Committees	48,078	68,403
November 4, 1980		
Legislative Annulment of Regulations	58,808	32,010
November 4, 1980		
Disqualification of Legislators	47,054	99,705
November 4, 1980		
Interim and Special Legislative Committees	41,868	102,270
November 4, 1980		
Appointment and Confirmation of Members	56,316	90,506
November 2, 1982		
Veterans' Housing Bonding Authority	111,460	69,497
November 2, 1982		
Changes in Commission on Judicial Qualifications	123,172	53,424
November 2, 1982		
Amendment Limiting Increases in Appropriations	110,669	71,531

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ome men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well. I belonged to it, and labored with it. But I know also that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.

Thomas Jefferson, letter.

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Source: The Initiative and Referendum: A Study and Evaluation of Direct Legislation  
Presented as a working paper to the California Roundtable  
November, 1981 by Dr. Alfred Balitzer

## CHAPTER II

### THE THEORY OF DIRECT LEGISLATION REVIEWED AND CRITIQUED

With the increasing use of direct legislation in both statutory and constitutional matters, it is well to examine the theory behind such legislation—the underlying assumptions of the advocates of the initiative and referendum.

A short review of the philosophy of governmental "reform" will assist in comprehending of the impulse behind direct legislation. Our system of government, it is said, is unresponsive to the needs of the people. The distance between elected representatives and electors is too great. Moreover, between the voters and the representatives are many intervening structures—including corporations, political parties, and political machines—that act as "special interests" and unduly influence the governors to the detriment of the governed. Too often, special interests constitute well-organized and well-financed elites whose agents are able to corrupt legislators. The laws made by corrupt public officials lack legitimacy in the eyes of the people, so that the people become alienated from their government.

The initiative and referendum, on the other hand, close the gap between the people and their government, circumvent the power of special interests, encourage representatives to be honest and attentive (because the threat of the initiative process is always present), and provide the ultimate degree of democratic legitimacy for laws and political decisions. Governor Hiram Johnson of California, in the midst of the battle over adoption of the initiative and referendum in his state, expressed the Progressive position, saying: "There are two kinds of government, government in secret, the spring of which no man knows, and government in the open—government that takes into confidence all the people of all the state all the time."

It would be grossly inaccurate to assume that the Progressive champions of

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direct legislation were only reacting to the power of money in politics. It is true that their ire was raised in part by their perception of special-interest money and its ill effects on the political system; underlying this perception, however, was their peculiar view of the relationship between democracy and egalitarianism. They drew their political philosophy of participatory and egalitarian democracy from many sources, including elements of the American religious tradition, experiments with utopian communities, the popular utopian literature, the works of the French philosopher Jean Jacques Rousseau and the German Karl Marx, the budding industrial labor movements, and the ideas of America's small but articulate Socialist Party. Indeed, the Progressives believed that their political philosophy represented a furthering of the American political tradition which was, from its inception, devoted to the equal rights of all men.

In fact, the Progressive belief in the equality of all men led to their insistence on direct democracy and to their implicit distrust of representative government. Their views, expressed early in the twentieth century, represented the continuation of a debate that was first heard in the eighteenth, between the advocates of the new Constitution and those who had opposed it. During the debates between the Federalists and the anti-Federalists, the latter offered the opinion that popular government is only secure in a small country where the people can meet to administer government directly. Many anti-Federalists believed that a scheme of representative government, necessary in a large country, was subversive of the principle of popular government, and held the seed of despotism. Although the advocates of the Constitution won the day, the arguments of the anti-Federalists faintly persisted down through the decades, from time to time growing more influential when taken up by able leaders battling for a good cause.

Underlying the reformist philosophy of the Progressives was a sentimental and romantic vision of the democratic citizen. According to the historian Richard

Hofstadter:

At the core of their conception of politics was a figure quite as old-fashioned as the figure of the little competitive entrepreneur who represented the most commonly accepted economic ideal. This old-fashioned character was the Man of Good Will, the same innocent, bewildered, bespectacled, and mustached figure we see in the cartoons today labeled John Q. Public. . . . In a great deal of Progressive thinking the Man of Good Will was abstracted from association with positive interests; his chief interests were negative. He needed to be protected from unjust taxation, spared the high cost of living, relieved of the exactions of the monopolies and the grafting of the bosses. . . . The problem was to devise such governmental machinery which would empower him to rule. Since he was dissociated from all special interests and biases and had nothing but the common weal at heart, he would rule well. He would act and think as a public-spirited individual, unlike all the groups of vested interests that were ready to prey on him.

According to this view, such democratic citizens, when left to their own devices, would freely meet, deliberate, and arrive at decisions that furthered the best interests of society as a whole. However, when confronted by well-organized and well-financed elites, the noble citizen would withdraw from public participation, leaving the government to the oligarchs; alienated himself, he would deny to the democracy its most valuable assets—his public spiritedness and innate good sense. At the heart of the Progressive reform philosophy, then, was a desire to elevate this mythical model citizen to power.

Of course, public spiritedness and innate good sense may not be sufficient to guide society in an age of technological progress and industrial expansion. According to Progressive thought, the social and economic problems that arise as a result of these forces are too complex for sensible but simple men. Thus, communities of democratic citizens need the expertise of professional and technical advisers—specialists who are devoted to sharing their special knowledge of social structure, economics, government, management, and physical science. It is no wonder that so many leaders of the Progressive movement were middle-class technocrats, managers, lawyers, journalists, and other professionals whose educational attainments and general background prepared them to lead the movement.

Indeed, they elected themselves a President of the United States—Woodrow Wilson, formerly the president of Princeton University.

The Progressives in general believed strongly in the virtues of enlightened public discussion. They advocated the creation of public forums for the discussion of topics of the day. These forums, they thought, would create a climate conducive to honesty in government. The Progressives also tried to establish civic and fraternal clubs of bankers, businessmen, lawyers, and others who would devote their energies to informing the public about corruption and about proposed reforms in government and elsewhere. These self-appointed elites, once organized, encouraged government officials to address the people both directly and through the press—all in the hope that a better-informed people would be better able to affect their government in a positive fashion.

The union of sentimental, democratic idealism with a faith in professionalism and technical expertise generally suggests the intellectual character of the Progressives. This union also suggests the ultimate aspirations for society of those who advocated the initiative and the referendum. In its prime, Progressivism represented a great movement for the creation of "apolitical politics."

Although the initiative and referendum are supposedly intended to defend the rights of the people, they represent a significant departure from the American political tradition as it relates to representative government. While they were first designed as corrections to misuses of power in the representative system, it is now claimed by some that the initiative and referendum threaten the procedural safeguards of the legislative process under the representative system. "Without these safeguards the rights of minorities, and civil liberties generally, are acutely vulnerable to oppression by an anonymous majority of voters." In today's political environment, marked by extensive media influence and by a substantial degree of political polarization, the danger increases.

The danger posed to minority rights and civil liberties by direct popular rule was a subject on which the American Founders spoke and wrote at length. The Founding Fathers recognized that direct democracy posed a profound threat to individual rights and liberty. Not only the Federalist Papers, but the records of the Federal Constitutional Convention, show that the Constitution was designed to provide a system of government that would prevent either a tyranny of the majority or a tyranny of the few. James Madison described the danger as one of "faction," as he warned against the power of a majority or a minority of the population "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interest of the community."

History had taught Madison that factionalism was the undoing of all previous experiments in popular government.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote: It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our enquiries are directed: Let me add that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

The history of popular rule, from ancient Greece to Rome to the city-states of Renaissance Italy, offered numerous examples of turmoil, anarchy, and finally tyranny. In sum, the history of free government until the American experiment was a sordid and unhappy one. Direct democracy, Madison believed, only exacerbated the problem of faction. On the other hand, he thought a representative government promised a remedy for the illness. Madison was keenly aware that the attempt to create a union of the states under a republican constitution was an action

unprecedented in modern history. Boldly, Madison urged Americans to undertake the Herculean effort to rescue the reputation of popular government by creating political structures that would secure and preserve both majority rule and minority rights.

Although the danger of factionalism was manifest, Madison did not seek to extirpate factions from society. Faction, he held, was "sown in the nature of man"; any effort to extirpate it would require a tyranny sufficient to destroy all liberty. Madison and his fellow Federalists did not pretend to possess a "final solution" for the chief problem of democracy. Rather, as Alexander Hamilton said: "We are now forming a republican government. Real liberty is neither found in despotism or the extremes of democracy, but in moderate governments."

The effort to create moderate government culminated in the establishment of representative government--a republic. Direct democracy was avoided partly because it exacerbated the tensions between factions by pitting one group of citizens against another in an open, public forum. This inevitably led to "confrontational" politics. If one group of citizens proved to be a majority, it would act for its own sake, disregarding the rights of the minority. Minorities, by contrast, would seek to compel the whole of society to support their special interests. The New England town meeting was no model of popular government, as far as Madison was concerned. Rather, popular government was best when the sphere of territory subject to popular government was enlarged. This necessitated a scheme of representation, and also enlarged the number of interests competing for the public's support.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of Republican, than of Democratic Government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals

composing a majority; and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.

Madison expected that a "multiplicity of interests" would provide for political freedom in America, just as the multiplicity of sects provided for religious freedom. A multiplicity of interests would force each interest to moderate its views as it sought, through compromise, to satisfy its desires in the legislative process. Representative government, in short, allowed for consideration of a great many interests in the lawmaking process, whereas direct or "pure" democracy allowed a bare majority to set the rules for society.

What Madison was saying, in effect, was that direct democracy, including the rule of the people as lawmakers, hold no answer to the problem of special interest. Rather, he believed that the solution to the problem of special interest lay in creating those circumstances—geographic, cultural, economic, and political—that would allow for the development of a multiplicity of interests, and for their subsequent competition through the vehicle of representative government. Madisonian theory, applied to the realities of today's politics, raises troubling questions about the initiative and referendum.

The issue is clearly joined by Justice Hugo Black's often-quoted statement regarding referenda: "Provisions for referendums demonstrate devotion to democracy, not to bias, discrimination or prejudice." Setting aside the fact that a successful referendum or initiative campaign represents an unadulterated victory for the larger part of the electorate over the lesser part, it should be pointed out that, in California at least, referenda and initiatives have been used most frequently by special interest groups seeking to influence "life styles" and to legislate morality. Throughout the 1960's, when racial tension was especially high, local and statewide

direct legislation was used, according to many commentators, to maintain segregated neighborhoods. These same commentators point to the use of direct legislation to continue patterns of racial segregation in public schools. Likewise, initiatives have been used to try to limit the employment opportunities of homosexuals in education. Popular measures aimed at homosexuals possess the same "moral tone" as initiatives of an earlier period that sought to restrict drinking and gambling.

Madison feared the direct injection of religious and moral issues into the political process. These are the most inflammatory kinds of issues, sharply dividing society, and sometimes creating a "civil war"-like atmosphere. They are the kinds of issues that dominated European politics throughout the Middle Ages, producing zealots for political leaders and subjecting whole societies to the rule of organized elites. Although Madison strongly believed in the need for moral and religious principles among democratic peoples, he felt that the development and inculcation of these principles was best left to men in their private capacities as educators, religious leaders, and molders of public opinion. The American Founders consciously rejected the medieval approach to politics, seeing in the distinction between state and moral order, and in the processes of representative government, the guarantee of the civil liberties of all men.

While initiatives and referenda have often had a negative impact on racial and ethnic minorities, it is also true that these devices have often adversely affected the business community. The initiative has been particularly popular among a coalition of special-interest groups, including consumer advocates, environmentalists, educators, and some lawyers, who see business--especially "corporate America"--as the single greatest impediment to a better "life style" for the American people. This coalition, which one critic has termed the coalition of the "utopian coercives," has, in the name of a moral vision, sought to curtail "business as

usual." Their antagonism is most often aimed at the "private sector" and at the "profit motive," which they see as corrupting forces that threaten to destroy basic human values. When the "utopian coercives" speak politically, it is usually against the influence of corporations. Opposing private profits with moral values, they seek to involve the people directly. They tend to reject the representative system, because too often they see their designs frustrated by the compromises that are a necessary part of representative government.

This special-interest coalition also possesses a class bias and seeks to promote a class interest. For example, environmentalists tend to consider environmental quality more important than the production of energy; many also appear more sensitive to the quality of animal life than to the quality of human life (understood in terms of jobs and economic well-being). The environmentalist can usually afford the luxury of his position, but what then becomes of the economic rights of the poor, of disadvantaged racial minorities, and of the business community? By their very nature, initiatives and referenda can seldom balance moral principles and class interests in the same way as a legislative act may balance such principles and interests. Not only is direct legislation absolute, but as with direct or pure democracy itself, it is insensitive to the issues and differences separating economic classes and moral perspectives. Rather than producing reconciliation and consensus, an initiative often hardens class differences. The sophisticated politics that bridges class interests for the sake of the commonweal is sometimes totally absent in the politics of the initiative and referendum.

The foregoing argument is not intended to suggest that initiatives and referenda do not often carry with them a subtle "hidden agenda." For example, Blacks are often disliked by lower-class whites who feel their economic security threatened by the prospect of Black advancement. It has been noted, also, that many of those who seek to prevent the further development of natural resources and

productive capacity, in order to protect a particular "life style," do so out of base motives. As one observer has stated: "It is clear . . . that direct legislation is used effectively by residents of homogenous middle-class communities to prevent unwanted development--especially development that portends increased size or heterogeneity of population." The argument was stated differently by another observer: "Comparison of the voters and nonvoters confirms that direct democracy also has a distinct social bias. Because of low turnouts, local referenda are likely to have more class bias than major elections."

The popularity of the initiative and referendum among those who seek to legislate "life styles" and morality is no accident. Not only is an initiative or a referendum an absolute measure--requiring in California only a simple majority of the votes for passage--but once it becomes law, it is very difficult to repeal. Opposition by the legislature to a successful measure, for example, is tantamount to opposing majority rule and "the will of the people." Generally, the legislative process, filtering legislation through committees and other mechanisms that encourage deliberation and compromise, tends to produce laws that are less stringent and less likely than direct legislation to impede individual choice. The legislative process usually requires more than a mere numerical majority of the representatives in order to produce legislation as restrictive and severe as that which can come from the initiative and referendum.

James Madison believed that irresponsible majorities would be controlled by the legislative process as established under a representative form of government. In a legislature, numerical support for a proposal can be roughly determined in advance of a formal vote, as can the comparative strength of various competing interests. A representative must determine what a given measure means to his constituency in terms of the votes he might win or lose in the next election. The voter in the initiative process does not have to make such a judgment.

One may argue that the media and public debate are the only checks on the initiative process, and, indeed, are the only real checks left against unjust measures. This may be true enough—but it is also true that public debate is especially effective in a representative system. Representative government enlarges and refines public discussion through such devices as committee hearings and other public hearings, the testimony of expert witnesses and interested parties, the production of studies by government and private agencies, and the "give and take" of legislators in debate as they express differing views and partisan opinions. Such processes and devices regularly attract the attention of the media, giving any particular measure greater exposure than it might receive as a statewide ballot proposition (except in the case of an occasional "Proposition 13"). In fact, the ambiguity of many initiatives, the "hidden agendas" that underlay them, the technical nature and wording of some propositions, the extraordinary length of many ballots, and the widespread lack of interest in off-year elections, often discourage public debate, not to mention media coverage of the issues and personalities involved in an initiative campaign.

The problem, then, persists: How does the American body politic protect itself against irresponsible initiatives and referenda? The use of the initiative and referendum to legislate "life styles" and morality promises to grow more widespread in the decade of the 1980's. Supporters of the "Moral Majority," of the "Right to Life" and of environmental causes--including opponents of nuclear power and of economic growth and development--will continue to create a circus-like atmosphere in the political arena. The initiative and referendum are not now, and will not become, the exclusive tools of the "right" or the "left," of conservatives, liberals, radicals, or reactionaries. From Jerry Falwell to Tom Hayden, initiatives and referenda are contemplated as instruments for purifying private and public life. Given the expanded use of the initiative and referendum that is almost certain to

take place in the future, how are the interests of majorities and minorities to be protected against unwise, selfish, irresponsible, or unjust pieces of direct legislation?

The Madisonian concern with the problems of direct democracy reminds us that any effort to improve the processes of direct legislation must focus attention on the questions of majority rule and minority rights. Because there are no standing or permanent majorities in American politics, initiatives and referenda can become the instruments of special interests on both the "right" and the "left." On the other hand, there are permanent rights in this country, promised to all Americans by the Declaration of Independence, the Constitution, the Bill of Rights, and by subsequent Constitutional Amendments. Thus, in considering the present standing of the initiative and referendum, and their possible future improvement, it is necessary to set aside partisan and class interests in favor of attention to those structures that, in providing for majority rule, also protect the rights of individuals and minorities.

If improvements are to be contemplated in the process of direct legislation, they should begin by making possible a clearer expression of the will of the majority. For example, efforts should be made to distinguish more clearly between measures promoted by special interests and elite organizations and measures that are genuinely popular. This can be accomplished by changing in the way that direct legislation reaches the ballot. Such change may also give greater protection to minority rights. Specific suggestions for change, and possible alternate approaches to direct legislation, will be discussed in a later chapter. These discussions will focus on what may be the most important question in American politics: how to truly determine and implement the will of the majority while protecting the rights of the individual and the minority.

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APR 26 1991

"A CALL FOR CONVENTION"

By: Representative Terry Martin  
April 26, 1991

A patriotic Alaskan is not one who is willing to give up his freedoms which were expounded, and guaranteed in the Declaration of Independence, and in the U.S. Constitution of 1789. In 1992, the people of Alaska will have an opportunity to call for a constitutional convention to make changes in the Alaska constitution that will return power to the people.

In 1790, Supreme Court Justice (and convention delegate) James Wilson observed that the Constitution "is clay in the hands of a potter [the people]; they have the right to mold, to preserve, to improve, to refine, and to furnish it as they please." Should a convention be called to solve the problems we have that make the citizens of Alaska less than equal to citizens of other states?

I find myself as the revolutionist Tom Paine did in 1776, offering a few remarks on a much boasted constitution. Mr. Paine, was of course speaking on the constitution of England, while I speak on the constitution of Alaska. Some of his remarks in reference to England's constitution: "That it was noble for the dark and slavish times in which it was erected is granted. When the world was overrun with tyranny the least remove therefrom was a glorious rescue. But that it is imperfect, subject to convulsions, and incapable of producing what it seems to promise, is easily demonstrated."

As America began it's third century under a constitution, Alaska completed it's third decade. The idea of this book is to stimulate Alaskans in making a living, viable constitution. One that will enhance the natural freedoms of a people and their society by design, rather than be constrained by default in not reevaluating the documents we live under.

Over the years of experience, as we matured as an independent state, we have heard that changes are needed in our constitution. Other's have voiced a fear of change that a constitutional convention might bring forth. The state constitution has been amended 21 times. However, all past Legislatures have refused to address the major constitutional issues and concerns of the people. Major issues are direct iniatives, voting on taxes, election of judges, reapportionment on bases of one person one vote.

The measurement of our maturity is our capacity to change. How flexible are we today to accept the needed changes? Many have the voices for change been throughout the years, as well as today. Do we have the capacity to change, knowing full well that the only certain thing in life and society is a continuous series of changes, static or otherwise.

Over the decades, citizens throughout Alaska have seen their rights of what they believed was a free society eroding at an alarming rate.

As one reviews the Alaska Constitution, it is apparent that the seeds of the erosion were embedded during the constitutional convention of 1955-56.

During my experience as a legislator, I have become more and more concerned about the lack of knowledge that Alaskans, including myself possess concerning the Constitution of the United States. Even more important, is what little knowledge many have of their state's constitution. I believe that this allows for more prohibitions to individual freedoms, than the lack of knowledge about the federal constitution. Everyone seems to know about politics, but few seem to know what we are always fighting about.

With all do respect to the framers of the Alaska Constitution, many who have evaluated the constitution, has experienced the limitation of direct involvement in the government of their affairs. They know that it could be made better for future generations, and improve participation in a representative democracy by the limiting control of government over their lives.

President George Washington once observed: "Government is not reason, it is not eloquence -- it is force! Like fire, it is a dangerous servant and a fearful master." Thomas Jefferson advised: "In questions of power, then let no more be heard of confidence in man, but bind him down from mischief by the chains of the constitution."

Alexander Hamilton warned in Essay 25 of The Federalist Papers, that "it is a truth, which the experience of ages has attested that the people are always most in danger when the means of injuring their rights are in the possession of those of whom they entertain the least suspicions."

Citizens who need to renew their knowledge, or learn for the first time of the great documents of our freedom. The Magna Carta 1215 the English Bill of Rights, the Declaration of Independence, the Constitution of the United States of America, the Bill of Rights, and sixteen other amendments added over the last two hundred years. Compare these documents to that of Alaska's Constitution. See if your presumed rights under the historical documents have not been diminished under the much touted "modern one." It is up to all of us to keep informed or lose what we take for granted.

It would have been most beneficial had the delegates of Alaska's Constitutional Convention reviewed the motives of the framers of the national constitution. Perhaps then, Alaskans today would not be suffering losses citizens of other states are free to enjoy. Two very basic questions to have asked would have been: In whom did the American Founding Fathers place the ultimate responsibility for the preservation of the freedoms of the people? Are there governmental controls guaranteed in the U.S. constitution?

From numerous articles printed over the years of debate, especially the Federalist Papers, it is clear everything begins and ends with full faith in "the people". The entire structure of the American government is designed to make elected and appointed officials accountable to the people or the people's representative. The Founders emphasized repeatedly that they were depending upon the people to keep informed and involved in order to preserve their freedoms and to control government. As we prepare to celebrate our thirty fifth anniversary, let us compare for the future.

Representative democracy has proven itself over the past centuries to be the most beneficial system in which a society of peaceful human beings can conduct relationships between individuals, groups and ideologies. However in Alaska, many people find usually through experience that our kind of democracy isn't all it's cracked up to be. Often some old guards of our young states's constitution herald it to be a model that should be untouchable. What kind of government does Alaska have? Do the people have a democratic representative government or an oligarchy, which is government by an exclusive few as a super powered executive, prohibitive controlling Senators, and little dictators or freedom obstructors in the House of Representatives.

In our review of important documents in which we place our confidence that insure our freedoms, it is worthy of one's time to consider and compare examples of the Soviet Union's constitution.

Article 5 of the Soviet constitution guarantees freedom of speech, freedom of the press, of assembly, meetings, street processions, and demonstrations. That it not far from the First amendment of the U.S. Constitution, and of the Declaration of Independence. Other articles guarantee freedom of religion, freedom of conscience, and a whole host of other freedoms that are similar to Alaska's Article I.

However, there is also Soviet Article 39, which basically states that the individual freedoms must not be to the detriment to the interest of the State. It may surprise many in Alaska, that there are similar limitations in our constitution . . . i.e. Art. 1 Sec. 19., and that all persons have corresponding obligations to the people and to the State. The Soviet system clearly puts the state first, while the Alaska constitution puts limitations on the powers of the people for express purpose of a strong executive and legislature from which it states all power are derived.

We would be negligent to be satisfied with a mere celebration of the past. Celebrations are also a time for examination - to consider where we are now in the evolution of representative democracy, what the future holds in store for us, and whether that future will see the survival of Alaska in the great experiment of equality and liberty.

Introduction to the Concept  
of Constitutional Review

We are all proud to be known as Alaskans, and I am fortunate to have been elected to represent the people to help plan our State's bright future.

The Alaska Constitution, which I have sworn to uphold, marked the beginning of a brand new state 33 years ago. I will uphold the Constitution, but reserve my rights on behalf of the people to advocate changes that are necessary to return the power back to the people, which is guaranteed in the U.S. Constitution, and in Article I of our Constitution.

"Model and modern", is a phrase that is often used to elevate Alaska's Constitution above other's. It really only serves to intimidate the public into thinking we have something super sacred which never should be changed. Consider the remarks of Alexis de Tocqueville, "A false notion which is clear and precise will always have more power in the world than a true principle which is obscure and involved".

In addition, Professor of Political Science Francis Canavan, states "slogans are useful for rallying us to a cause, but they are no substitute for thought. Sophists use them to keep us from thinking". These words are often used to portray Alaska's Constitution to be even superior to the United States Constitution- it certainly is not. Although, we have a relatively young Constitution, it cannot be considered a model. Except perhaps as a model for overbearing executive and legislative powers.

It certainly cannot be considered modern, for it is very much outdated when compared to the freedoms and rights granted to the citizens of other states. In certain matters, it is most unenlightened.

Article I of our Constitution guarantees that "all persons have a natural right to life . . .". Using the word "natural" is unique to only Alaska. I often wonder why Alaska uses "natural" proceeding the three basic rights of "life, liberty, and the pursuit of happiness". Recall that in the Declaration of Independence our country's founding fathers chose to use the phrase "unalienable" to describe our rights. The limitation of the Alaskan term is most crucial when the right to life of the unborn child is not protected.

Evaluate Article I, Sec. 2, which states, "All political power is inherent in the people."

Compare this to Art. XI Sec. 7, restrictions of initiatives and referendums pertaining especially to "make or repel appropriations." Who has what powers?

The fear of renewed taxation is upon us all. A quick reading of Art. IX Sec. 1 would lead one into false security without reading the following sections of the Article.

Sec. 1 The power of taxation shall never be surrendered. (?) This power shall not be suspended or contracted away, (?) except as provided in this article.

The emphasis of the underlined words and (?) are added for obvious purposes. In a later chapter it will be easier to see what lies in the way of any citizen or group of citizens who try to regain their supposed power of limiting or prohibiting taxation by the legislature.

In considering the phrase "all powers are inherent in the people", evaluate why they are not allowed direct access to changing the Constitution through the initiative process. The right of changing the action of the Legislature through the referendum is so restrictive, that it is impractical to implement. Therefore, depriving the People of the ability to counter the legislative process in a reasonable time frame. The legislative pay raise is a good example of this problem. Limitations on initiatives and referendum will also be discussed in detail in a latter chapter.

For now be cautious when one speaks of the phrase "rights of the people", to petition the government shall never be abridged as guaranteed in section six of our declaration of rights. The people of Alaska have been refused this right on a number of occasions. In addition, most state constitutions allow their citizens to vote on questions of legislatively enacted taxation. Ours does not give that right to the people of Alaska. Don't jump too quickly to say they have the power of referendum, until you evaluate the time constraints.

The word "model" is badly misused. For example, in 1955-56, at the time of the Constitutional Convention, only twelve states allowed for the election of the Attorney General. Today, forty four states elect their Attorney General. We are really behind the times in granting this power to the people.

You may have wondered why it seems that the voice of the majority is not being heard and acted upon? Quite simply, the majority of legislators are not elected by the majority of the people. Thus, let's look at the issue of reapportionment. The U.S. Constitution and the U.S. Supreme Court have guaranteed equal representation - one person, one vote.

When we review the history of the reapportionment boards appointed by Alaska's Governors over the past thirty years, people of all political persuasions agree the system should be changed.

Even the great liberal intellectuals of Harvard University, and Common Cause agree that our process is outdated. All six of this state's reapportionments have been successfully contested in State Supreme Court. The Court has requested the Legislature to change the constitution. Sadly, the Legislature refuses to act. If the system totally fails to protect the rights of the people - then what?

Since 1791 there have been only sixteen amendments to the U.S. Constitution. There have already been twenty one amendments to Alaska's Constitution. Thus can we say it has withstood the changes of society? No, it should be flexible enough to be amended as the people advance in their concept of equality to all.

Allow me to conclude this thought with this most profound statement by the major articulator of the U.S. Constitution, Mr. Thomas Jefferson. "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it...But I know also that laws and institutions must go hand in hand with the progress of the human mind.

Fortunately, we Alaskans have inherited much of the good and thoughtful works of America's founding fathers. However, we are also the unwitting participants in one of the world's biggest experiments in socialism, which we have inherited from Alaska's founding fathers and their advisors at the State Constitutional Convention.

In Alaska, many people discover much to their frustration, that democracy isn't all it's cracked up to be. Why is it that Alaska, "the last frontier", is less democratic than other states? People come to Alaska expecting to find the freedom to go and do - to confront nature and realize their dreams. This is best expressed by the shirts they wear claiming that "Alaska is what America was". How rudely they are awakened when they find out they are less free here, than where they originally came from.

Perhaps a bit of historical perspective would be in order to explain how we came to be in this unfortunate situation.

This area of the world we know as Alaska, has throughout history been continuously controlled by foreign powers. First, Imperial Russia exerted her influence for over 100 years, protecting her lucrative fur industry. In addition, Great Britain had strong ties thru the Hudson Bay Company. The Bostonians and West Coast conglomerates introduced the American presence, and finally the federal government of the United States. This was a result of the purchase of Alaska, from Russia in 1867.

The compelling interests of each of those governments was always something other than the well-being of the people living here. Most frequently their interest was to extract one natural resource or another; furs, gold, fish, timber, etc.. They kept the locals under control to the extent that they would not become a hindrance, and in extreme cases in servitude.

Not surprisingly, the need of the faraway government to preserve order, over time developed into a strong paternalistic relationship. It was evidenced by the close ties between the government, represented by the appointed governor, and the people who lived within the boundaries of the territory. Initially as an American territory however, the military controlled everything that happened in Alaska and this proved good. During the Russian occupation, inhumane and cruel treatment of the aboriginal peoples by the peredovshiks, fur hunters, traders, and the commercial monopolies was often the case.

Therefore, in the 17th century Catherine II, turned over to the Russian Orthodox Church the special responsibility to maintain, administer justice, provide an education, and restore civil human treatment throughout the Russian colonies. Perhaps things improved, but the paternal relationship did not change, and the people's opportunity for self-government did not materialize.

After the United States acquired Alaska, the paternalism of Washington, D.C. steadily grew.

Until finally in 1959, the people of Alaska, frustrated by the inaccessibility of the federal government succeeded in establishing themselves "as a State among equals". Today we are well aware that we were not successful in throwing off the yoke of the federal government, and are feeling the dictates of Washington even more acutely now than before. However, the relationship of paternalism between Alaskans, and those who govern them survived, and the institutions of our state government have been spawned by it.

The framers of the Alaskan Constitution made little compromises which they knew were contrary to the basic principle of faith in the people oriented democracy, they accepted the delusion that appointed government officials through one person was a better form of representative government and direct accountability. Once you become the tyrant or dictator you need no accountability. Today the Alaska Constitution persists in denying us a truly democratic-republican government.

This is not to say that democracy is not alive in the Great Land. In fact, we are most fortunate in many respects in being a young state with unique circumstances and unusual characteristics. Some of which make the political process more accessible. For example, Alaska has a small population, so it is not unusual for ordinary citizens to personally know their senators and representatives.

It is not difficult for those who are interested, to really dig in and evaluate those who are asking for their vote, to call them on the telephone, or even to stop by their home for a visit. Another advantage that Alaska has is its easy access to political office. Because the political system is still in its formative years, virtually anyone can run for office and win. There are few effective political cliques in the way, and special interest groups are not well organized as to present insurmountable impediments to determined candidates.

Unfortunately, it is not possible to take full advantage of the many positive aspects of our system, because the basic instrument of our state government, the Alaska Constitution is flawed. It is the document, along with the Statehood Act, that has inherited the paternalism of a people not allowed their full freedom, and has passed it on to the myriad statutes, regulations and polictics adopted by state government over the past thirty three years.

Perhaps, it would be worthwhile to note that there is nothing wrong with protecting the people from too much democracy. As stated above, the American system is that of a democratic republic, where democracy is a mechanical means to an end, and the republican protections of the constitution guard against the misuse of democratic powers.