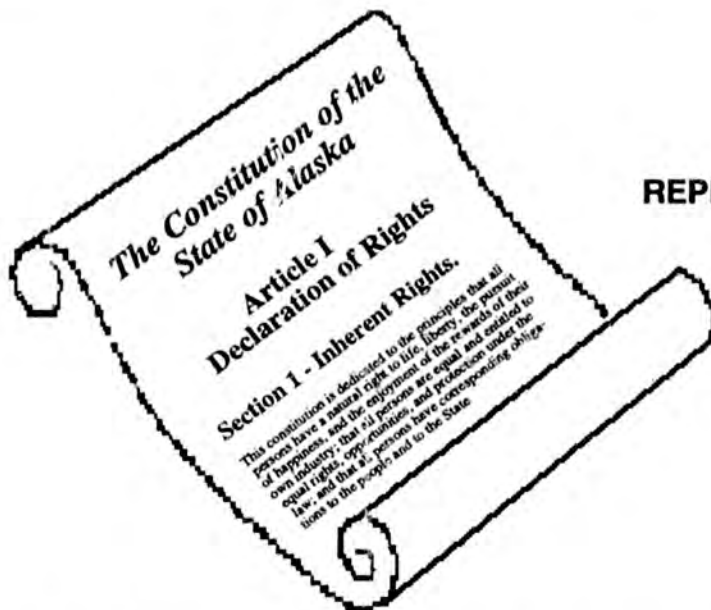


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TASK FORCE MEMBERS:
REPRESENTATIVE GAIL PHILLIPS, CHAIR
REPRESENTATIVE ELDON MULDER
REPRESENTATIVE FRAN ULMER
JUDGE THOMAS B. STEWART
KENNETH P. JACOBUS, P.C.

JUDI JORDAN, STAFF ASSISTANT
(907) 465-2689

THE CONSTITUTIONAL REVISION TASK FORCE

**MEMBERS HAVE BEEN APPOINTED, AND THE TASK FORCE
WILL BE HOLDING ITS FIRST MEETING ON**

THURSDAY, SEPTEMBER 9, 1993

FROM

9:30 A.M. UNTIL 4:00 P.M.

IN THE

**LEGISLATIVE OFFICES BUILDING
716 W 4TH STREET, SUITE 200
ANCHORAGE, ALASKA**

**THIS WILL BE AN ORGANIZATIONAL MEETING ONLY, AND NO PUBLIC
TESTIMONY WILL BE TAKEN; HOWEVER, INTERESTED INDIVIDUALS
ARE INVITED TO ATTEND.**

CONSTITUTIONAL REVISION TASK FORCE

AGENDA

September 9, 1993

GET ACQUAINTED TIME

OPENING COMMENTS FROM THE CHAIR

GENERAL GROUP DISCUSSION

**CONFERENCE CALL WITH DR. JANICE MAY
PROFESSOR AT THE UNIVERSITY OF TEXAS AT AUSTIN
AND
EDITOR FOR THE BOOK OF STATES**

**DR. MAY WILL SPEAK ON THE VARIOUS METHODS OTHER STATES
HAVE USED TO AMEND THEIR CONSTITUTIONS AND THE PROS AND
CONS OF EACH METHOD**

**THERE WILL BE TIME FOR QUESTIONS FROM TASK FORCE
MEMBERS AT THE END OF HER PRESENTATION**

**SETTING THE TIME LINE AND SUBJECTS FOR FUTURE TASK FORCE
MEETINGS**

ADJOURNMENT

TRANSCRIPT

CONSTITUTIONAL REVISION TASK FORCE SEPTEMBER 9, 1993

MEMBERS PRESENT:

Representative Gail Philips, Chair
Representative Eldon Mulder
Representative Fran Ulmer
Judge Thomas B. Stewart
Kenneth P. Jacobus, P.C.

MEMBERS ABSENT:

None

Also Present: Representative Terry Martin
Representative Pete Kott
Representative Dave Donley

SUBJECT:

Methods of Revising the Alaska State Constitution

Representative Gail Phillips called the meeting to order at 9:50 a.m. and noted that Representative Phillips, Representative Mulder, Representative Ulmer, Judge Thomas B. Stewart and Kenneth P. Jacobus were present.

Representative Phillips reviewed the agenda for the meeting. Members of the Committee introduced themselves. Representative Phillips also introduced Judi Jordan as the staff person for the Task Force.

Representative Phillips made opening comments regarding the charge of the Task Force as: 1) To study the issue of constitutional amendment and revision and to meet with those who are knowledgeable in alternative ways in which our constitution may be revised; 2) develop recommendations of the alternative methods of revising the state's constitution; 3) present such recommendations to the public for

widespread comment; and 4) prepare a final report on these methods and recommendations for the legislature by April 1, 1994. She emphasized that this committee is not going to look at specific amendments to the constitution; but rather a better way for Alaskan's to revise their constitution.

Rep. Phillips went on to say that two such constitutional committees have been established since statehood -- once in 1972 and again in 1983. No final recommendations of those committees was acted upon. We will include reports from those committees for members packets for the next meeting.

We will try to invite the chair of the previous committee to tell us about what their committees did.

Judge Stewart said that the previous committees looked at specific amendments -- not the process of amending the constitution.

Rep. Phillips said that we anticipate five meetings, the last of which will be held in Juneau. Our final report is due before the Legislature by April 1, 1994. The other three meetings will be teleconferenced and will take public testimony.

She went on to say that, while many other states have had several constitutions, Alaska's Constitution is it's first and it has lasted 37 years. Currently, our constitution provides only two means of amending our constitution: 1) holding a vote on whether to hold another constitutional convention (all three such votes since statehood have failed); and, 2) use of resolution by the legislature which places specific amendments on the ballot. If this Task Force feels these two means are not sufficient, the Task Force is charged with recommending other means.

Rep. Phillips pointed out that while many states have commissions which recommend revisions or amendments to their legislatures, only one state's commission, Florida's, has the authority to propose amendments directly to the voters. The commissions have the advantage of receiving a great deal more public input and study of an issue than legislators can afford the time for during a legislative session. Utah is the only other standing commission.

Rep. Martin felt there are major changes that need to be considered -- even since the original convention. He stated that the constitution is not written in concrete and it needs to be responsive to the current needs of

the people. Rep. Martin is supportive of the direct initiative process. He mentioned that many amendments have appeared on the ballot and recommended that we get a list of them and the outcome of the votes on them -- at least broken down into categories.

Judge Stewart felt that we need to improve the process of making changes to the constitution. He spoke against the process of amendment by initiative. He felt constitutions should not be subject to frequent change, but they should be looked at.

Rep. Ulmer said that she has a very conservative attitude toward revising the constitution. It is not a piece of legislation which tries to respond to the moment. It is to be viewed in a long term way and the process of making changes should evaluate first whether there is a need to make a change. We need to look at what the problems are with the process and then we can go on to look at how to change it.

Kenneth Jacobus said that he agrees with being conservative in amending the constitution. The US Constitution is not analogous to a state constitution. It is extremely difficult to amend the US Constitution, and it is done through judicial interpretation. It evolves through the judiciary process rather than the legislative process. He believes we should consider amendment by initiative or even commissions with authority to place amendments on the ballot. The legislature will not support many issues so that they get to the ballot. He is very concerned that appointments to a commission not be political. Mr. Jacobus would prefer not to see a constitutional convention. The people fear that there would be a real danger in opening up the entire constitution to a convention for possible change.

Rep. Phillips mentioned that judicial interpretation is a major way that state's amend their constitution, but it is not a method expressly mentioned in the constitution.

Neither Judge Stewart nor Ken Jacobus recalls that judicial interpretation received a great deal of discussion during the original writing of Alaska's constitution.

Rep. Mulder recognizes that there is a need to consider whether we should amend the constitution. He agrees that we should take a very conservative approach. The greatest danger (as in California) is that it will become too easy to change our constitution. We must guard against this happening.

Rep. Mulder emphasized that we must find out where the problem lies in the public having access to be heard on this subject.

Rep. Phillips invited Rep. Kott to join the Task Force's meeting.

Rep. Phillips stated that our reason for being here today is that there is a call from the general public to make changes to the constitution. The public wants us to do something, but the legislature has not met the public's request.

Rep. Phillips mentioned that we would like to have Assemblyman Willie Brown from California speak on the initiative process and Proposition 13 from his view point. Also, we need first to determine if we need to amend the constitution -- identify the problem if there is one and then consider the processes available to us to fix it.

Rep. Phillips asked Sen. Donley to join the Task Force's meeting. Rep. Donley mentioned again about getting the list of amendments which have been placed on the ballot. He is very concerned about the separation of powers in the state. He recommends that we keep in mind the fact that piece meal amendments to the constitution (as frequently proposed by the legislature) don't take into consideration their influence on all aspects of the constitution. The processes in Judiciary Committee for considering constitutional amendments needs to be looked at. The average citizen should be able to read and understand all parts of the constitution. But, requiring the legislature to have a 2/3rds vote makes proposing amendments a bargaining chip. With a separate committee, the members would have the necessary time to look carefully at the issues, according to Rep. Donley.

Judge Stewart said there are two distinct process which need to be considered: 1) the means by which the legislature considers potential constitutional amendments. We need to improve the legislative process by recommending the procedure for the legislature to follow in considering constitutional amendments. Second, we need to consider a way in which the public can air their concerns and have them addressed. The public does not have a mechanism for finding out why a particular proposed constitutional change was or was not recommended. These are the two areas the Task Force needs to address in determining whether there should be a permanent review commission or not. We need to find out which commissions have worked well and why. Some commissions no longer exist because they accomplished their job.

Judge Stewart went on to recommend that the committee find someone who has professional qualifications for drafting language. He said that we should not try to draft language as a committee.

Rep. Ulmer requested that we have Gordon Harrison of the Legislative Research Agency join us in our future meetings. Rep. Phillips agreed to ask him to do so.

Judge Stewart introduced Dr. Janice May from the University of Texas, Department of Government. Dr. May was invited to Anchorage in 1991 to participate in the conference that was held prior to the vote on whether there should be another constitutional convention. Dr. May is a leading authority on what the various state's are doing with regard to amending or revising their constitutions. She is the editor of the section of the Book of States which deals with constitutional revision.

Dr. May addressed the Task Force by teleconference. She stated that there are four major methods of amendment and revision. The legislature is the main actor in amendment and revision and is the earliest body to deal with both and is the most used. All 50 states' legislatures propose amendments and voters in 49 states ratify these amendments -- only Delaware does not have voter ratification.

The second major method is the constitutional convention. It is available in all states and is used primarily for major revision or for consideration of a group of amendments.

The third major method is amendment by initiative which is becoming more interesting to many states. It is available in 18 states. Mississippi just adopted this method. Two states have the indirect initiative -- that is they must go through the legislature. In the other 16, voters can go directly on the ballot. Massachusetts and Mississippi are the two with indirect initiative.

The fourth method is the constitutional commission. It is available in Florida only. It is the only state which can go directly to the ballot with an amendment. Florida originally set up such a commission in 1968 in its revised constitution. It is an episodic commission -- not permanent. It was to meet 10 years later and it did propose 8 amendments to the people, all of which were defeated. In 1988 they adopted a second constitutional commission which deals only with fiscal matters -- The Taxation and Budget Reform Commission. It came out of a fiscal crisis Florida was

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facing. That commission should have gone out of existence within three years. They were more successful than the first commission.

The legislature continues to dominate. The convention continues to drop out of sight. There were fewer conventions in the '80s than in the previous 30 or 40 years. The constitution initiative is experiencing a growth spurt. The 1980s represented the greatest increase in 60 years. The constitutional initiative made only 29 proposals in 1990-91 with 11 adoptions. Even though the trend is up, we are still dealing with small numbers. The number of initiatives was only about 4% over the last 10 years of all the amendments proposed. You cannot use the constitutional initiative for complete revision -- must only deal with one aspect. In Florida, initiative is the only way in which you can call a convention.

Only the Florida commission is unique. But when considering the more common commissions, most of these were for setting a constitutional convention. Both commissions and conventions have dropped off.

Dr. May has served on two constitutional convention commissions -- one which was not very successful. The Senate did not go along with their proposals. They had little money (\$20,000). The only thing that came out of it was the removal of some "dead wood". The second was very successful. This commission was composed of the 6 highest state officials who appointed the 37 members ((Gov., Lt. Gov, Speaker, AG, two judges). That committee appointed a very diverse group. They had \$900,000. All factions were represented as required by the resolution (women's groups, labor, minorities, etc.) They reduced the constitution from approximately 61,000 words to 13,000 words.

Utah has the only permanent commission. In 1977 the current Utah Commission had a very small staff. She recommended that we speak with the director of that commission.

The Oklahoma and Mississippi constitutions are pretty poor. Gov. Belman of Oklahoma could not get the legislature to fund a committee and set one up himself. The AG was made the chairman. It was funded entirely from private funds. They produced a new constitution and planned to use the initiative process

In Mississippi the Governor called together 362 people to form a commission.

In Kentucky in 1977, the only thing that came out of their commission was a lottery amendment.

Except for Florida and Utah, commissions haven't really accomplished a lot. Basically the auxilliary commissions provide a source of expert advice.

There are two Florida Commissions -- they come into being episodically. One every 20 years and the other every 10 years. We won't be seeing either one of them for a while. Both of Florida's commissions are constitutional (they are in their constitution). The Utah commission is the only one that is permanent and continuing and that is by statute.

The other commissions come and go. They are temporary. Mississippi and Oklahoma's don't have a rvery strong legal basis. Kentucky's has a legal basis for their legislative commission. Right now Dr. May knows of no new ones but is surveying states regarding this. As far as she knows the only one for 1993 -- in Florida -- just went out in June. There was provision for one of the Florida's commissions in the 1960 Florida constitution which was prepared by the legislature. It went to the voters -- it was not prepared by convention. There was some opposition to the commission. When they came into being in 1978 - 79 there was an amendment proposed to the constitution to repeal that commission -- but it failed. So this would imply that there is public support for it.

Florida's other commission was to be a major solution to the fiscal crisis. They held a lot of public meetings and took a lot of comment. Dr. May felt that something as important as fiscal issues should have been left with the legislature, but apprently the Florida voters didn't agree.

Dr. May then talked about the constitutional initiative. Oregon was the first state to adopt this means of constitutional amendment in 1902. The first constitutional initiative was on the ballot in 1906. California is a special case. Initiative in California has been a disaster, and they are working on trying to improve this process.

Dr. May recommended a book by Magelby for the negatives of the initiative process.

One corporation in California was able to buy up a lot of petition signers -- not pay for signatures, but they paid people to go out and get the signatures. This was one of the points made by Magelby -- petition issues could be "bought". Based on the experience of California, Oregon, Washington and Colorado, while they don't get as many votes on an

initiative as they do for President, Governor, Senator -- but they do get as many as they get for the legislature. Proposition 13 got more votes than the Governor in that election.

Not many propositions are approved -- only about 1/3rd over all of the constitutional initiative are approved. In California propositions are frequently very lengthy and confusing. Some deal with the constitution and some with statutes. The language is almost impossible to read. California is currently trying to make the process more rational. When you have more conservative legislature, you will tend to see more liberal propositions and vice versa. When the people can't get what they want through the legislative process, they resort to using the initiative process, according to Dr. May.

Dr. May suggested the following books for arguments in reponse to Magelby's points --

- 1) Thomas E. Cronin at Colorado College -- Direct Democracy published in 1989. Discusses the constitutional initiative.
- 2) David D. Schmidt -- Citizen Lawmakers for Balanced Initiative Revolution published by Temple University Press, 1989.
- 3) Stanley H. Friedelbaum -- Human Rights in the States published by Greenwood Press of Westport, Connecticut.
- 4) Dr. Janice May -- "Intergovernmental Perspective", Fall 1991 Vol 17. Put out by the Advisory Commission on Intergovernmental Relations. This issue is titled "Federalism and Constitutional Right", and Dr. May's article is "Amending States' Bills of Rights..."

The most effective way that states have limited the initiative process to the avoid wholesale revisions is through the "Single Subject Rule". We have that in legislation already.

In some cases the amendments did get on the ballot and after adoption the courts ruled that they violated the restrictions. There was no preview of the amendment. However, in some states like Florida, they have exercised judicial review to keep off the ballot amendments of a more revisionary nature. There are all kinds of ways for checking the language for a ballot amendment. That would be another opportunity to strike down some revisions. Another way is the number of subjects covered by the proposition.

In California the constitution expressly states that constitutional initiatives are limited to amendments rather than allowing revision. The courts can rely on that and don't even have to interpret.

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Going back to constitutional revision commissions -- what structure is to be recommended? By way of general guidelines, Dr. May felt that use of a committee rather than an individual office to appoint the members of the commission worked better. In this way you avoid conflicts of a single officer. Texas had six officers -- the majority had to agree on the list. Then the legislature had to approve the entire slate or reject it. They approved them with only a little objection. This is probably best rather than saying each member of the committee would appoint a stated number.

According to Dr. May, another guideline is to be certain that we have representation of all geographic areas and interests. It also helps to have someone who has some expertise and know something about the constitution. Texas had no legislators on their commission -- in fact, they had no officials -- only ex-officials. The chairman was the former Chief Justice of the Supreme Court. This may be a good suggestion and to the advantage of the commission not to have any current officials; however, most states do have at least some current officials.

They have to have officials in Florida. The AG is automatically a member. The Budget Commission had four legislators, but they were non-voting members. This gives the advantage of their expertise. This helps with getting the cooperation and funding from the legislature; however, the governor could take the lead in that area, also. Generally, funding from foundations is not very successful. Oklahoma funded theirs entirely through foundations.

Dr. May also suggested that we may want to consider an unofficial agency like New Mexico had called "New Mexico First". It's a non-profit organization set up by the two US Senators who set up town meetings. One of the items they discussed was constitutional revision. They were entirely privately funded. Nothing much came of its recommendations, however.

A commission is never exclusive of the ways a state makes available for constitutional amendment. Florida has the most ways of getting things on the ballot of any state: the legislature, constitutional initiative, and commissions. Utah has both the commission and the convention available. The amendments must get on the ballot through the legislature.

Georgia had a commission for 9 years to help the legislature prepare a constitution which was submitted to the voters in 1982 and was adopted.

So, except in Florida, states deal with an arm of the legislature or an arm of the convention.

In the 80's we saw a great increase in the use of the constitutional initiative which attests to the increase interest of the public and the frustration over their opinions regarding elected officials. Now we are getting more and more studies on the pros and cons of initiative, but also ways to improve the system. Things are not all that different and what Magelby wrote would still apply.

Dr. May sees a lot of need to improve the constitutional initiative, but Magelby is unduly critical. Magelby makes us think of what divides us rather than what brings us together, according to Dr. May.

Other states do require a super majority for constitutional change. There is another way to make it harder to pass an initiative. Nevada requires that an initiative be passed in two different general elections. Constitutional amendments require a higher percentage of signatures. Some states require that the initiative be approved in at least half of the congressional districts as well as a statewide majority. States can restrict the subjects that can be dealt with by initiative. Illinois, for example, restricts initiatives to dealing with changes of the structure or procedures of the legislature. The theory was that you can't depend on the legislature to reform itself.

Dr. May finds people leaning toward the indirect initiative -- meaning you can't get an initiative on the ballot unless it goes through the legislature. In Massachusetts there is no requirement at all that the legislature has put an initiative on the ballot. In Massachusetts, even an individual can go to the legislature and give them a bill. Another consideration would be to increase the opportunities of voters to submit initiatives to the legislature, but leave it up to the legislature to take it from there. Then the legislature could revise it. There could be a requirement that the legislature must consider the initiative. In California, they are considering giving the initiative promoters a chance to change their proposed initiative.

The idea of an indirect initiative--where the legislature at least gets a chance to do something--is growing. Massachusetts and Mississippi both have the indirect initiative.

There was some discussion about the general population's distrusting legislators.

Massachusetts has had the initiative since 1918 and they have very rarely allowed initiatives go to the ballot -- only two until 1986, and both were approved. It could be that a legislature might put something on the ballot as an legislative amendment rather than placing it on the ballot as an initiative.

Dr. May completed her teleconference call shortly after 1:00 p.m. and the Task Force took a recess for lunch to reconvene at 2:00 p.m.

The meeting reconvened shortly after 2:00 p.m. The members discussed a list of individuals they would like to contact to offer comments to the Task Force.

Robin Riggs was Utah's Commission director. Judge Stewart said that Mr. Riggs was pleased with the Utah plan. Three senators, three house members and three gubernatorial appointees work together to select six other members who must be bipartisan. To make 16 members in all, they also include the legislative affairs executive is a voting member. Judge Stewart said that Mr. Riggs said they have struggled with the politics of getting what the commission proposes passed.

Rep. Phillips would like to see if we could combine the philosophy of the commission with the philosophy of the indirect initiative, we may be able to come up with a workable solution for Alaska. The Task Force has no restrictions on what they recommend to the legislature.

Judge Stewart recommended we give particular consideration to the processes of the legislature in dealing with constitutional amendments and to the need for a special committee on style and drafting. Rep. Phillips requested that Rep. Ulmer's subcommittee make these two suggestions primary considerations.

Rep. Phillips appointed two subcommittees: The Legislative Processes Subcommittee will be chaired by Rep. Ulmer, and Rep. Mulder and Judge Stewart were appointed as members to this subcommittee. The Public Access Subcommittee will be chaired by Rep. Phillips, and Rep. Ulmer and Ken Jacobus were appointed as members.

The next meeting was scheduled for October 14 to be held via teleconference.

The meeting was adjourned.

MINUTES
CONSTITUTIONAL REVISION TASK FORCE
SEPTEMBER 9, 1993

MEMBERS PRESENT:

Representative Gail Philips, Chair
Representative Eldon Mulder
Representative Fran Ulmer
Judge Thomas B. Stewart
Kenneth P. Jacobus, P.C.

MEMBERS ABSENT:

None

Also Present were other legislators for brief parts of the meeting:

Representative Terry Martin
Representative Pete Kott
Representative Dave Donley

SUBJECT:

Methods of Revising the Alaska State Constitution

Representative Gail Phillips called the meeting to order at 9:50 a.m. and noted that Representative Phillips, Representative Mulder, Representative Ulmer, Judge Thomas B. Stewart and Kenneth P. Jacobus were present.

Representative Phillips reviewed the agenda for the meeting. Members of the Committee introduced themselves. Representative Phillips also introduced Judi Jordan as the staff person for the Task Force.

Representative Phillips made opening comments regarding the charge of the Task Force as: 1) to study the issue of constitutional amendment and revision and to meet with those who are knowledgeable in alternative ways in which our constitution may be revised; 2) to develop recommen-

dations of the alternative methods of revising the state's constitution; 3) to present such recommendations to the public for widespread comment; and 4) to prepare a final report on these methods and recommendations for the legislature by April 1, 1994. She emphasized that this committee is not going to look at specific amendments to the constitution; but rather a better way for Alaskan's to revise their constitution.

Rep. Phillips went on to say that two such constitutional committees have been established since statehood -- one in 1972 and one in 1983. No final recommendation of those committees was acted upon. We will include reports from those committees for members packets for the next meeting.

The committee considered inviting the chair of the 1983 committee to make comments. It was pointed out that the previous committees looked at specific amendments -- not the process of amending the constitution.

Rep. Phillips said that we anticipate five meetings, the last of which will be held in Juneau. Our final report is due before the Legislature by April 1, 1994. The other three meetings will be teleconferenced and will take public testimony.

Throughout most of the rest of the meeting, the Task Force discussed the various methods of revising a constitution which are used in other states and those currently available to Alaskan's as expressed in their constitution. Currently, Alaska's constitution provides only two means for amendment or revision: 1) holding a vote on whether to hold another constitutional convention (all three such votes since statehood have failed); and, 2) use of resolution by the legislature which places specific amendments on the ballot. If this Task Force feels these two means are not sufficient, the Task Force is charged with recommending other means.

The Task Force discussed having Assemblyman Willie Brown from California speak at our next meeting on October 14 on the initiative process and Proposition 13 from his view point. All members were in favor of doing so.

Task Force members felt that they need first to determine if we need to amend the constitution -- identify the problem if there is one -- and then consider the processes available to us to fix it.

Members of the Task Force agreed that there are two distinct process which need to be considered: First, the means by which the legislature considers potential constitutional amendments. The need to improve the

legislative process by recommending the procedure for the legislature to follow in considering constitutional amendments. Second, the Task Force needs to consider a way in which the public can air their concerns and have them addressed. The public does not have a mechanism for finding out why a particular proposed constitutional change was or was not recommended. These are the two areas the Task Force needs to address in determining whether there should be a permanent review commission or not. Task Force members agreed on the need to find out which commissions have worked well and why. Some commissions no longer exist because they accomplished their job.

Task Force members considered the need to find someone who has professional qualifications for drafting language.

The Task Force would like to have Gordon Harrison of the Legislative Research Agency join their future meetings.

Dr. Janice May addressed the Task Force via teleconference regarding the methods used by other states to amend and revise their constitutions and presented arguments regarding these methods. She is from the University of Texas, Department of Government. Dr. May was invited to Anchorage in 1991 to participate in the conference that was held prior to the vote on whether there should be another constitutional convention. Dr. May is a leading authority on what the various state's are doing with regard to amending or revising their constitutions. She is the editor of the section of the Book of States which deals with constitutional revision.

Dr. May stated that there are four major methods of amendment and revision. The legislature is the main actor in amendment and revision and is the earliest body to deal with both and is the most used. All 50 states' legislatures propose amendments and voters in 49 states ratify these amendments -- only Delaware does not have voter ratification.

The second major method is the constitutional convention. It is available in all states and is used primarily for major revision or for consideration of a group of amendments.

The third major method is amendment by initiative which is becoming more interesting to many states. It is available in 18 states. Mississippi just adopted this method. Two states have the indirect initiative -- that is they must go through the legislature. In the other 16, voters can go directly on the ballot. Massachusetts and Mississippi are the two with indirect initiative.

The fourth method is the constitutional commission. It is available in Florida only. It is the only state commission which can go directly to the ballot with an amendment. It is an episodic commission -- not permanent. When originally set up, it was to meet 10 years later and it did propose 8 amendments to the people, all of which were defeated. In 1988 they adopted a second constitutional commission which deals only with fiscal matters -- The Taxation and Budget Reform Commission. It came out of a fiscal crisis Florida was facing.

Dr. May completed her teleconference call shortly after 1:00 p.m. and the Task Force took a recess for lunch to reconvene at 2:00 p.m.

The meeting reconvened shortly after 2:00 p.m. The members discussed a list of individuals they would like to contact to offer comments to the Task Force.

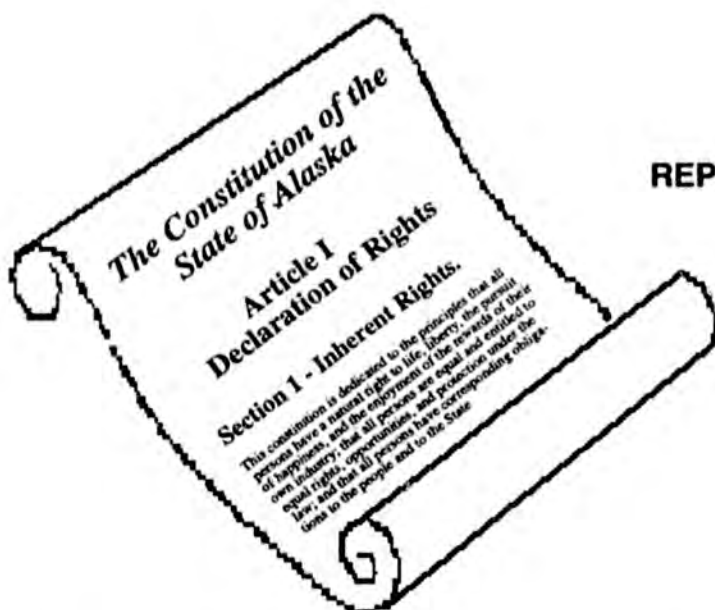
Rep. Phillips would like to see if we could combine the philosophy of the commission with the philosophy of the indirect initiative, we may be able to come up with a workable solution for Alaska. The Task Force has no restrictions on what they can recommend to the legislature.

Judge Stewart recommended we give particular consideration to the processes of the legislature in dealing with constitutional amendments and to the need for a special committee on style and drafting. Rep. Phillips requested that Rep. Ulmer's subcommittee make these two suggestions primary considerations.

Rep. Phillips appointed the two subcommittees: The Legislative Processes Subcommittee will be chaired by Rep. Ulmer, and Rep. Mulder and Judge Stewart were appointed as members to this subcommittee. The Public Access Subcommittee will be chaired by Rep. Phillips, and Rep. Ulmer and Ken Jacobus were appointed as members.

The next meeting was scheduled for October 14 to be held via teleconference.

The meeting was adjourned at 2:30 p.m.



TASK FORCE MEMBERS:
REPRESENTATIVE GAIL PHILLIPS, CHAIR
REPRESENTATIVE ELDON MULDER
REPRESENTATIVE FRAN ULMER
JUDGE THOMAS B. STEWART
KENNETH P. JACOBUS, P.C.

JUDI JORDAN, STAFF ASSISTANT
(907) 465-2689

THE CONSTITUTIONAL REVISION TASK FORCE

WILL BE HOLDING ITS SECOND MEETING
VIA TELECONFERENCE ON

THURSDAY, OCTOBER 14, 1993

FROM

9:30 A.M. UNTIL 4:00 P.M.

AT THE

**LEGISLATIVE TELECONFERENCE
CENTERS IN JUNEAU,
FAIRBANKS AND ANCHORAGE**

OTHER SITES MAY BE ADDED ON REQUEST. ***PLEASE NOTE:***
THE TASK FORCE IS CONSIDERING THE METHODS OR PROCESSES
OF AMENDING ALASKA'S CONSTITUTION.
SPECIFIC CONSTITUTIONAL AMENDMENTS WILL NOT BE DISCUSSED.
PUBLIC TESTIMONY WILL BE TAKEN AS TIME PERMITS.

CONSTITUTIONAL REVISION TASK FORCE

AGENDA

October 14, 1993

OPENING COMMENTS FROM THE CHAIR

MINUTES FROM SEPTEMBER 9TH MEETING

COMMENTS FROM TASK FORCE MEMBERS

**CONFERENCE CALL WITH WILLIE BROWN AT 10:00 A.M.
SPEAKER OF THE CALIFORNIA ASSEMBLY
SPEAKER BROWN WILL ADDRESS THE TASK FORCE ON THE
INITIATIVE PROCESS AND THE EFFECTS OF CALIFORNIA'S
PROPOSITION 13
(A BRIEF TIME WILL BE AVAILABLE FOR QUESTIONS FROM
TASK FORCE MEMBERS)**

**LT. GOVERNOR JACK COGHILL
WILL OFFER HIS COMMENTS ON VARIOUS METHODS OF
AMENDING ALASKA'S CONSTITUTION**

**REPRESENTATIVE ULMER
WILL REPORT ON THE PROGRESS AND RECOMMENDATIONS OF THE
LEGISLATIVE PROCESSES SUBCOMMITTEE**

**COMMENTS FROM GUESTS AND THE PUBLIC
AND GENERAL GROUP DISCUSSION**

TIME LINE AND SUBJECTS FOR FUTURE TASK FORCE MEETINGS

MEETING ADJOURNS

TRANSCRIPT

CONSTITUTIONAL REVISION TASK FORCE OCTOBER 14, 1993

MEMBERS PRESENT:

Representative Gail Phillips, Chair
Representative Eldon Mulder
Representative Fran Ulmer
Judge Thomas B. Stewart
Kenneth P. Jacobus, P.C.

MEMBERS ABSENT:

None

INVITED GUESTS PRESENT:

Representative Terry Martin
Gordon Harrison of the Legislative Research Agency

GUEST SPEAKER:

Speaker Willie Brown of the California Assembly
Lt. Governor Jack Coghill

TELECONFERENCE SITES ON LINE:

Anchorage - Chair
Juneau
Fairbanks
MatSu
Kotzebue

SUBJECT:

Methods of Revising the Alaska State Constitution

The Task Force Chair, Representative Gail Phillips, called the meeting to order at 9:43 a.m. and noted that Representative Phillips, Representative Ulmer, and Kenneth P. Jacobus were present in Anchorage and also Representative Terry Martin. Representative Mulder joined the meeting at approximately 10:30 in Anchorage. Judge Thomas B. Stewart and Judi Jordan, Task Force Staff, were on line from Juneau as was Gordon Harrison of Leg. Research.

Representative Phillips welcomed committee members, thanked Gordon Harrison for all the research he has done for the committee and for agreeing to join this and future Task Force meetings. She went on to review the agenda for the meeting. Members of the committee and guests made brief comments.

At 10:00 a.m. Speaker Willie Brown of the California Assembly joined the meeting via teleconference to address the Task Force on the effects of the initiative process in California and specifically Proposition 13 from his view point. Mr. Brown strongly discouraged the use of the public initiative process to amend our constitution based on the disastrous effects he feels the state of California has faced.

Speaker Brown talked first about the US Constitution and processes available for it's amendment. Then he said that California faces just the opposite process. They have a constitution that is very, very easy to amend and this has created major chaos in their state. California is authorized by 2/3rd vote of each house of the legislature to amend the constitution and place amendments on the ballot for voter approval. They also have the opportunity for the people to call a constitutional convention to amend California's Constitution. In 1911 they adopted another method -- the initiative process. He encourages us to be extremely careful as we consider the appropriateness of the initiative process.

In California 8% of people voting in the last gubernatorial race must sign to have something placed on ballot. The result of the initiative has left California with conflicting parts in their constitution. There is no specificity for massive geographical coverage of the state and the number of signatures required are terribly low. This has brought into being small cottage industries for those who want to amend the constitution for special interest purposes. Originally, the initiative process was developed to get around the special interests of the legislature; however, it now has switched to being the tool of the special interest groups. Anyone group with enough money can gather signatures by paying those getting the signatures.

The insurance initiative of the early 90's were specifically designed to benefit the insurance industry or the trial lawyers. Fortunately the voters defeated all but one.

There is no authorization for a proposed initiative to be approved by the courts to determine the constitutionality of a measure. The one initiative that passed in the 90's was later determined by the courts to be unconstitutional.

These problems point out that, in California there are clearly flaws in the initiative process, according to Speaker Brown. They are rooted primarily in the low threshold of signatures required to be eligible to put something on the ballot. Speaker Brown advocates against the initiative process altogether. He feels it is counterproductive to what the legislature is about.

California is in the midst of a terrible recession and the initiative has exacerbated this problem. In 1978 Proposition 13 was passed. It took away about 2/3rds of the funding for local government derived from property taxes in California. Following that there was a limitation on what government could spend. Even though it raised monies in excess of what it could spend, there was a triggering rebate to the citizens. Then the teachers put a measure in the ballot to protect their funds in spite of what the state brought in. The state tried to hold local governments harmless from the adverse impacts of Proposition 13. They used state funds to bail local governments out. They could do so because the state had a huge surplus at that time. This created the illusion that California could live with all the things done to it through the initiative process. Only with the recession this year have the voters begun to recognize the dire circumstances. However, it is not yet serious enough to convince the voters to do away with Proposition 13.

This leaves the legislature of California ham strung. They are unable to respond to the rapid growth in California. They are in a nightmare.

If the committee does decide to recommend the use of the public initiative, Mr. Brown says that the Task Force should consider several safeguards: 1) we need to have a requirement that at least 10 - 15% of the registered voters in Alaska must sign the petition; 2) we ought to require that a certain percentage must come from each of our "counties"; 3) we should have the AG or someone designated to determine whether a proposed ballot initiative would pass constitutional muster **before** there is any consideration of whether it goes on the ballot -- so that we don't create the

create a disillusionment that the people voted for something which is now being overturned by someone with a constitutional challenge.

In California, you cannot limit the amount of money spent on collecting signatures and there is no way to block the process in terms of citizens using it for special interests. In California, the legislature is barred from amending anything which is done by to the constitution through the initiative process.

Speaker Brown recommends that Alaskan's not use the initiative and that our constitution should be like the federal constitution in providing simply basic principles and other matter to be left to statutory law. He does believe it is appropriate for citizens to have the opportunity to challenge the appropriateness of what the legislative body has done through recall and referendum. This should be a cumbersome process, but citizens should also have the opportunity to fire elected officials sooner than their terms. All of these things should only occur in general elections where the massive number of people show up and not in special elections.

California has used a constitutional revision commission which makes recommendations to the legislature. Judge Bruce Summer (Orange County) was chair of their CRC in the mid-60's. In 24 to 36 months this commission put together their recommendations on what needed to be revised in their constitution. Over 24 months the legislature debated, modified, and amended, but essentially adopted 90-95% of the commissions work. They have just created another constitutional revision commission for the express purpose of trying to undo some of the damage that has been done by the initiative process. He highly recommends a constitutional revision commission to us.

The Supreme Court ruled that, while they can restrict the funds on limited bases with candidates, they cannot restrict issues or signature collections in any fashion. Now the only unit of state government not now subject to any spending limit, constitution limit, or campaign limit is the initiative and referendum process.

He believe that the federal constitution is the most appropriate model. It allows for a constitution convention. It also says 2/3rd vote of both congressional houses can amend the constitution and then it must be ratified by the appropriate number of states. There is no direct access by the people. In California, there is no deliberate debate as there is before the legislature. There is not requirement to be factual in the public's presentation of an issue.

Speaker Brown believes that, in early 1995, the California legislature will begin the legislative process of reviewing the ongoing CRC's work. There are currently no proposed recommendations. The CRC takes a section at a time and reviews it and gathers comments on it.

The best person to discuss the CRC with is Michael Galizio (916-445-8077) or Joann Murphy (916-445-1638), Deputy Director of the Office of Research in Speaker Brown's office. The last Chief of Staff for a CRC is Sam Farr -- (who has currently been appointed to finish Representative Pinetta's term). He's in Washington, and Speaker Brown recommends strongly that we ask him to speak with us on how Farr, as the Chief of Staff, managed that process over the several years in the 60's when California had the last serious revision of its Constitution.

Rep. Phillips asked Judi to get the reports from the California Commission.) *

Rep. Ulmer reported on the Legislative Processes Subcommittee which proposed a bill draft which designed to increase the public's feeling that they would be able to get a hearing on every idea that any legislator put in. The subcommittee proposed appointing a special (House and Senate) joint committee that would be required to hold hearings on every recommended constitutional amendment. This special committee would be required to hear testimony on both constitutional amendments which had already been introduced in the legislature and also on constitutional amendments the public felt should be considered by the legislature. The special committee would come back at the beginning of the second session of a legislature with a constitutional amendment reflecting the recommendations that they had heard. The purpose is to allow adequate scrutiny, allow the public a sense that they will be heard on every issue, and bring more focus in the legislative process itself to constitutional amendments. The subcommittee members felt that the joint committee should be the first and last committee of referral to help assure that the language is drafted in the best possible way.

Judge Stewart suggested more emphasis be placed on the drafting of the appropriate language of any proposed constitutional amendment.

Rep. Phillips asked when the legality of an issue would be discussed. Rep. Ulmer said the legality would be discussed both on initial consideration and then again after it had gone through the hearing process, it may need to be reconsidered and revised at that time.

Would an amendment which went through all of the process and was changed on the floor come back to the special committee for a final review?-- Rep. Ulmer said that that wasn't discussed, but would need to be considered at a later time.

Terry Martin said that this sort of thing was done by the legislative council in 1976. Then in 1980, Vic Fisher held many hearings at a cost of some \$300,000 and came up with nothing because the legislature wouldn't follow through. If we required a hearing on all amendments proposed -- there have been 560 so far -- it would be both expensive and time consuming. We need put more emphasis on this idea of whether a proposed amendment is constitutionally sound -- it should take into consideration what the people want today -- not just whether it is constitutionally sound for our current constitution. He does feel the subcommittee's proposal is a good one.

Rep. Phillips explained that her concern over whether an idea was constitutionally sound referred to making certain it wasn't in conflict with the federal constitution.

Rep. Phillips thanked the subcommittee for its work. She went on to say that there were 35 resolutions introduced last year. She agreed with Judge Stewart in that we need to work on the language pertaining to the proposed amendments for drafting and style.

Rep. Ulmer suggested that we submit the subcommittee's draft to current and former legislators -- especially those who have served as Judiciary Chairs -- those who are interested in process questions in order to get their ideas.

Rep. Phillips confirmed that there would be no restriction on the public in terms of getting their ideas to the legislature.

Lt. Governor Coghill addressed the Task Force. He expressed strong support for allowing the initiative process to be available to the public for amending their constitution. He said that we need to devise a third method of amending our constitution and that is by referendum or initiative of the people. But before the initiative can go forward in the process, they must go before a Constitutional Revision Commission made up of the Senate President, Speaker of the House, Chief Justice of the Supreme Court and two people appointed by those three people to run on an every two year term. Lt. Gov. Coghill expects this CRC to with the drafting of proposed amendments without losing the thrust of the general

public in putting their ideas forward. This is to avoid the runaway process in California. He feels we should bring before this task force a proposition whereby we add one more section to Article 13 -- Amendments and Revision -- where we allow the constitution to be revised by the people through petition and that it be brought before a CRC.

Rep. Phillips asked whether the CRC Lt. Gov Coghill proposed would have as its purpose anything other than approving the style and drafting of a suggested amendment, or would it act as a clearing house or a qualifier -- or just for purposes of making certain the proposal is clear and ballot worthy, etc.

Lt. Gov. -- that would be his desire. Check the style, drafting and whether it is contradictory to any other section of the constitution.

Ken Jacobus questioned Lt. Gov. Coghill's proposed composition for the CRC. The two members for two year terms would be appointed how? Lt. Gov. Coghill said that all of the commission would serve for a two year term because the presiding officers serve for two year terms. The first three members would appoint the other two members, subject to confirmation by the legislature. Ken asked if there would be any limitations on who those two could be? Lt. Gov. Coghill responded that there would be no limitation. Ken asked if the Lt. Gov saw any problem with the Chief Justice being a member -- if so how would the Chief Justice be able to review and rule on constitutional challenges? Lt. Gov. asked Judge Stewart to offer his opinion on this. Judge Stewart said that it would be an open conflict. Then Lt. Gov suggested we have the Attorney General. Ken felt it would be a conflict of interest for anyone from the Judicial system and that the CRC does need public members.

Rep. Martin is concerned that the Task Force would be a scapegoat for all proposed amendments currently before the legislature -- they would simply send it over to the task force. Rep. Phillips said that she didn't see it affecting this years legisaltion at all because our recommendations aren't due until April 1, 1994 when the second session will be nearly over.

Rep. Phillips thanked Lt. Gov. Coghill. The Task Force took a brief break.

The Task Force discussed having a meeting in November and not in December. Rep. Phillips said that staff would contact the Task Force with a specific date soon. The other subcommittee will make a presentation on it's recommendations at that time.

Rep. Phillips asked that those members of the public who wished to testify do so at this time.

Karen Dempster -- Past Executive Director for Alaskan's for Constitutional Reform. Her group's objective was to encourage a yes vote to call for a constitutional convention. She feels strongly that we should allow the public initiative. If we had the right to amend the constitution, the public would be able to handle the rest of the concerns in that form. She would like to see the committee recommend that. We are close to Russia. The individual becomes lost and we need a constitution that allows individuals to have some ownership and control of the government. Without it, we are in a worse situation than our neighbors who recently resolved their own problems. Ms. Dempster said that "We need the ability to address our government and we need to feel we have some control over our destiny and issues. This one small thing will give us that opportunity."

Rep. Phillips asked if Ms. Dempster if her organization focused on any other means than the initiative. Ms. Dempster said they considered many other means, but they could address them all if they just had the initiative. Her organization is no longer in existence -- it was just to address the issue of the yes vote.

Ken Jacobus asked if Ms. Dempster's group were able to circulate an initiative through a CRC, would this satisfy the concern of the individuals who were in her organization or would it be viewed as just a stumbling block. Karen felt that this is more of the same problem they wanted to remedy which is greater direct access to the process. Currently, if they go for a recall vote or anything else, those petitions must be certified and reviewed and they must be checked for clarity and language, etc. To create a committee to do that again would create an additional stumbling block. Ken asked her to think about the Task Force subcommittee's proposed CRC and whether it would actually be considered a stumbling block. She would like us to look at how other states have done and determine what things are effective and what aren't, but we must remember that we are so unique in Alaska.

Rep. Ulmer emphasized that Speaker Brown made his position on the initiative very clear. Her biggest concern was that signatures could be solicited by paid gathers. This bothers her greatly because in a small state like Alaska promoters could buy up the television media. Rep. Ulmer asked Karen how we could moderate this type of influence. Karen said that, if we have a good method, it will allow us to hone in on what will work here. We must first start with all the information and do the

investigations necessary to see the pitfalls, but this shouldn't prevent us from looking at the processes. We need to do it in a method that will permit the concerns to come forward and be identified, then we can really get on to looking at workable solutions. She's very much in favor of having many people look at the processes.

Rep. Phillips thanked Karen and said that we would very much like to have her comments as we go along.

Brian Rogers -- Fairbanks stated that he is speaking on behalf of himself, not on behalf of his employer. He served as chairman of the Constitutional Convention Committee of the legislature in the late 70's and served on a conference on the constitution in 1991. He disagrees strongly that the initiative is the appropriate way to deal with amendments to the constitution. He prefers the legislative method and believes it should be preserved as the principle method for change in the constitution. He also believes that there are areas where the legislature has an inherent conflict of interest in dealing with constitutional change or may be afraid to deal with certain changes because of other political considerations. So we do need to look at another process short of a full scale constitutional convention. He agrees with Willie Brown that constitutional revision should be a deliberative process. Of the methods offered, he would recommend that we keep the current two and add one or two short of the initiative. 1) a commission to look at constitutional change, but one different from that proposed by Lt. Gov. Coghill. One that could be largely constituted by appointments by the Speaker, President, Governor, Chief Justice and the public elected at large. It would go through a deliberative process; it would require a super majority to put an amendment out; and an amendment proposed by the commission would go first to the legislature. Then if the legislature failed to act, it would then go to the ballot. He agrees that whatever type of commission that we have, it should not involve the officials themselves because of potential conflicts. Rather he is recommending appointment by the officials. We need to avoid the passions of the moment -- three years ago, one ammendment might have been proposed that would have said "except for the EXXON corporation there will be no higher taxes", and it might have passed. There should be a way of getting by the legislature if it fails to act. The other method he thinks might be considered is a **limited** constitutional convention. Illinois allows amendments but they are limited to a single area. They do allow amendment by initiative, but only to the legislative section. Finally a commission should look at some areas of clean up to the constitution that don't deal with matters of great substance such as: still referring to the Secretary. of State in two sections; the fact that we have one Article on

reapportionment that is unconstitutional; we have one out moded. We need to take out references to the Gov. and Lt. Gov. as "he" and "him". We ought to provide that those dealing with transitional matters expire when the transition closes out. Also, we need a single subject rule applying to amendments.

Rep. Mulder -- agrees that we should not open our constitution to the highest bidder. We must prevent this.

Rep. Phillips thanked Brian Rogers and said she hopes that we will be able to call on him in the future.

Leonard Moffit -- MatSu Valley -- was really surprised that there was so little publication of this meeting. He supports the initiative process. He claims that the elected officials are afraid of the people.

Rep. Phillips told Mr. Moffitt that our meetings are all public; and as we get down to the final recommendations, we hope there will be a lot of public input. She said that it is not the case with the legislature that dollar contributions could buy a vote.

There was no one else in Fairbanks or in Kotzebue who was interested in testifying.

Ken Jacobus asked Rep. Ulmer if the committee that her subcommittee was recommending would have legislators who would have the time and interest to serve on such a committee, or would it just get put on a back burner? Rep. Ulmer said that those who showed an interest would view this appointment as more than an average appointment -- they would see it as a very prestigious appointment and a great honor. In terms of hearings around the state to assure that all areas of the public had a chance to be heard, she foresees it as an interim committee process between the first and second session which could hold teleconference. She anticipates these teleconferences would be all day meetings.

Ken Jacobus asked if she thought there would be any problem getting funding for this. Rep. Ulmer said no.

Ken Jacobus was also concerned about Rep. Ulmer's concern over special interests groups winning elections. It's easier to package a candidate and sell them with money than it is an issue because the issue is right in the voter's face. Judge Stewart mentioned what Speaker Brown said that these cottages industries are very successful at packaging an issue. Ken

felt that California has the population to support such industries and in Alaska it would be a very different matter. Judge Stewart felt it was a very serious threat to be considered. Ken felt that special interest should have access to the process as well anyone else. He feels that people have proven to be good at evaluating the pros and cons of an issue. In Alaska he feels it would be much more difficult to sell an issue. He is also concerned that we don't cut the public out because were trying to cut the big money and private interests out.

Rep. Phillips asked Judi to make note to make copies of Speaker Brown's comments.

The meeting adjourned at 12:00 noon.

MINUTES
CONSTITUTIONAL REVISION TASK FORCE
OCTOBER 14, 1993

MEMBERS PRESENT:

Representative Gail Phillips, Chair
Representative Eldon Mulder
Representative Fran Ulmer
Judge Thomas B. Stewart
Kenneth P. Jacobus, P.C.

MEMBERS ABSENT:

None

INVITED GUESTS PRESENT:

Representative Terry Martin
Gordon Harrison of the Legislative Research Agency

GUEST SPEAKERS:

Speaker Willie Brown of the California Assembly
Lt. Governor Jack Coghill

TELECONFERENCE SITES ON LINE:

Anchorage - Chair
Juneau
Fairbanks
MatSu
Kotzebue

SUBJECT:

Methods of Revising the Alaska State Constitution

The Task Force Chair, Representative Gail Phillips, called the meeting to order at 9:43 a.m. and noted that Representative Phillips, Representative Ulmer, and Kenneth P. Jacobus were present in Anchorage and also Representative Terry Martin. Representative Mulder joined the meeting at approximately 10:30 in Anchorage. Judge Thomas B. Stewart and Judi Jordan, Task Force Staff, were on line from Juneau, as was Gordon Harrison of Legislative Research.

Representative Phillips welcomed committee members, thanked Gordon Harrison for all the research he has done for the committee and for agreeing to join this and future Task Force meetings. She went on to review the agenda for the meeting. Members of the committee and guests made brief comments.

At 10:00 a.m. Speaker Willie Brown of the California Assembly joined the meeting via teleconference to address the Task Force on the effects of the initiative process in California and specifically Proposition 13 from his view point. Mr. Brown strongly discouraged the use of the public initiative process to amend our constitution based on the disastrous effects he feels the state of California has faced. He encourages Task Force members to be extremely careful in considering the appropriateness of the initiative process.

Speaker Brown mentioned several problems with the initiative process in California which include: 1) the small number of signatures required; 2) the lack of geographical representation required; 3) the lack of control on funds spent to gather signatures; and 4) the lack of review to see if the proposed amendment passes constitutional muster. Speaker Brown advocates against the initiative process altogether. He feels it is counterproductive to what the legislature is about. Also, in California, the legislature is barred from amending anything which is done by to the constitution through the initiative process.

If the committee does decide to recommend the use of the public initiative, Speaker Brown says that the Task Force should consider several safeguards: 1) requiring that at least 10 - 15% of the registered voters in Alaska sign the petition; 2) requiring that a certain percentage of signers come from each of our "counties"; 3) requiring that the AG or someone determine whether a proposed ballot initiative would pass constitutional muster **before** there is any consideration of whether it goes on the ballot - so that we don't create the resulting disillusionment that the people voted for something which is now being overturned by a constitutional

challenge. And then, initiatives should be voted on only in general elections, where there's higher voter turnout, and not in special elections.

California has used a constitutional revision commission (CRC) which makes recommendations to the legislature. They have just created another one for the expressed purpose of trying to undo some of the damage that has been done by the initiative process. Speaker Brown highly recommends a constitutional revision commission to the Task Force.

In California, the Supreme Court ruled that, while they can restrict the funds on a limited bases with candidates, they cannot restrict issues or signature collections in any fashion. Now the only unit of state government not subjected to any spending limit, constitutional limit, or campaign limit are the initiative and referendum processes in California. In California, there is no deliberate debate as there is before the legislature. There is no requirement to be factual in the public's presentation of an issue.

The last Chief of Staff for a CRC in California is Sam Farr -- (who has currently been appointed to finish Congressman Pinetta's term). Speaker Brown strongly recommends that the Task Force invites him to speak on how Rep. Farr, as the Chief of Staff, managed the CRC process over the several years in the 60's when California had the last serious revision of its Constitution.

Rep. Ulmer reported on the Legislative Processes Subcommittee which proposed a bill draft which is designed to increase the public's feeling that they would be able to get a hearing on every idea that any legislator put in. The subcommittee proposed appointing a special (House and Senate) joint committee that would be required to hold hearings on both constitutional amendments which had already been introduced in the legislature and also on constitutional amendments the public felt should be considered by the legislature. The special committee would come back at the beginning of the second session of a legislature with a constitutional amendment reflecting the recommendations that they had heard. The purpose is to allow adequate scrutiny, allow the public a sense that they will be heard on every issue, and bring more focus in the legislative process itself to constitutional amendments.

The subcommittee members felt that the joint committee should be the first and last committee of referral to help assure that the language is drafted in the best possible way. Rep. Ulmer said the legality of an issue would be discussed both on initial consideration and then again after it had

gone through the hearing process. Whether an amendment which went through all of the process and was changed on the floor would come back to the special committee for a final review wasn't discussed by the subcommittee, but that issue would need to be considered at a later time.

Judge Stewart suggested more emphasis be placed on the drafting of the appropriate language of any proposed constitutional amendment.

Rep. Ulmer suggested that we submit the subcommittee's draft to current and former legislators -- especially those who have served as Judiciary Chairs -- those who are interested in process questions to get their ideas.

Lt. Governor Coghill addressed the Task Force at 11:00 a.m. He expressed strong support for the initiative process. He feels we should add one more section to Article 13 -- Amendments and Revision -- where we allow the constitution to be revised by the people through petition and that it be brought before a CRC solely for the purpose of checking the style, drafting and whether it is contradictory to any other section of the constitution.

Ken Jacobus and Judge Stewart felt that it would be an open conflict of interest for anyone from the Judicial system to serve on the CRC, and Ken stated that the CRC does need public members as well.

The Task Force decided to having a meeting in November and not in December. A specific date will be set later. The other subcommittee will make a presentation on it's recommendations at that time.

Testimony from members of the public was taken at this time.

Karen Dempster -- Past Executive Director for Alaskan's for Constitutional Reform. Karen feels strongly that we should allow the public initiative. Her organization is no longer in existence -- it was organizaed to address the issue of the yes vote.

Ken Jacobus asked if Ms. Dempster's group were able to circulate an initiative through a CRC, would this satisfy the concern of the individuals who were in her organization or would it be viewed as just a stumbling block. Karen felt that this presents more of the same problem they wanted to remedy which is getting greater direct access to the process.

Rep. Ulmer emphasized that Speaker Brown made his position on the initiative very clear. Her biggest concern was that signatures could be solicited by paid gathers.

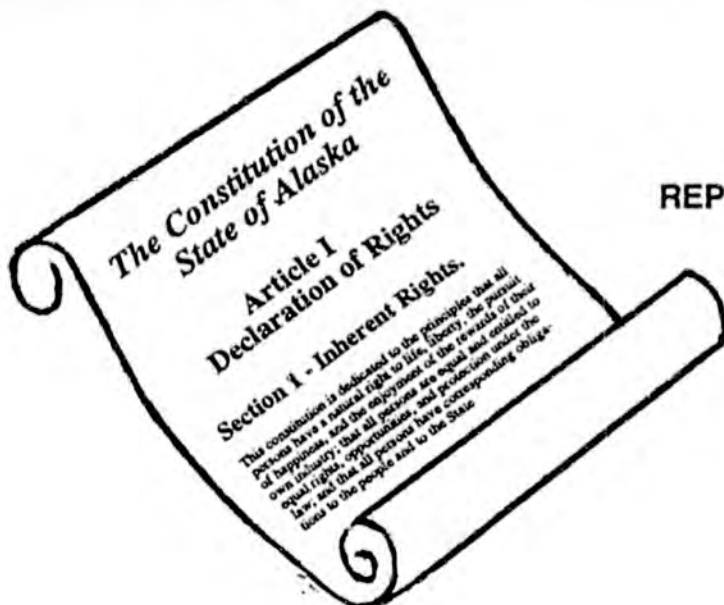
Brian Rogers -- Chairman of the Constitutional Convention Committee of the legislature in the late 70's and he served on a conference on the constitution in 1991. Brian disagrees strongly that the initiative is the appropriate way to deal with amendments to the constitution. Of the methods offered, he would recommend that we keep the current two and add one or two short of the initiative or a full scale constitutional convention: He recommends a commission made up of appointments made by the Speaker, President, Governor, Chief Justice and the public elected at large -- not the officials themselves. A proposed amendment would go through a deliberative process; it would require a super majority to put an amendment out; and an amendment proposed by the commission would go first to the legislature. Then if the legislature failed to act, it would then go to the ballot. There should be a way of getting by the legislature if it fails to act. The other method he thinks could be considered is a **limited** constitutional convention. Also, we need a single subject rule applying to amendments and several "clean up" changes made.

Rep. Mulder -- agrees that we should not open our constitution to the highest bidder. We must prevent this.

Leonard Moffitt testified from MatSu Valley. He supports the initiative process. He claims that the elected officials are afraid of the people.

Rep. Phillips told Mr. Moffitt that our meetings are all public; and as we get down to the final recommendations, we hope there will be a lot of public input.

The meeting adjourned at 12:00 noon.



TASK FORCE MEMBERS:
REPRESENTATIVE GAIL PHILLIPS, CHAIR
REPRESENTATIVE ELDON MULDER
REPRESENTATIVE FRAN ULMER
JUDGE THOMAS B. STEWART
KENNETH P. JACOBUS, P.C.

JUDI JORDAN, STAFF ASSISTANT
(907) 465-2689

THE CONSTITUTIONAL REVISION TASK FORCE

WILL BE HOLDING ITS THIRD MEETING
VIA TELECONFERENCE ON

WEDNESDAY, NOVEMBER 17, 1993

FROM

1:00 P.M. UNTIL 5:00 P.M.

AT THE

**LEGISLATIVE TELECONFERENCE
CENTERS IN ANCHORAGE,
JUNEAU AND FAIRBANKS**

OTHER SITES MAY BE ADDED ON REQUEST. ***PLEASE NOTE:***
THE TASK FORCE IS CONSIDERING THE METHODS OR PROCESSES
OF AMENDING ALASKA'S CONSTITUTION.
SPECIFIC CONSTITUTIONAL AMENDMENTS WILL NOT BE DISCUSSED.
PUBLIC TESTIMONY WILL BE TAKEN AS TIME PERMITS.

CONSTITUTIONAL REVISION TASK FORCE

AGENDA

**November 17, 1993
Meeting at 1:00 p.m.**

OPENING COMMENTS FROM THE CHAIR

MINUTES FROM OCTOBER 14TH MEETING

COMMENTS FROM TASK FORCE MEMBERS

**CALIFORNIA CONGRESSIONAL REPRESENTATIVE SAM FARR WILL
ADDRESS THE TASK FORCE AT APPROXIMATELY 2:00 P.M.
VIA TELECONFERENCE ON THE PROCESS HE OVERSAW IN SETTING
UP A CONSTITUTIONAL REVISION COMMISSION AND THE
MANAGEMENT OF EFFORTS INVOLVED IN EXTENSIVELY REVISING
CALIFORNIA'S CONSTITUTION
(FOLLOWING REP. FARR'S ADDRESS, A BRIEF TIME WILL BE AVAILABLE FOR
QUESTIONS FROM TASK FORCE MEMBERS)**

**GENERAL TASK FORCE DISCUSSION AIMED AT FOCUSING IN ON THE
RECOMMENDATIONS THE TASK FORCE WILL MAKE IN ITS
PRELIMINARY REPORT TO THE LEGISALTURE**

**COMMENTS FROM GUESTS AND THE PUBLIC
AND GENERAL GROUP DISCUSSION**

SET UP OF THE NEXT TASK FORCE MEETING

MEETING ADJOURNS

MINUTES/TRANSCRIPT
CONSTITUTIONAL REVISION TASK FORCE
NOVEMBER 17, 1993

MEMBERS PRESENT:

Representative Gail Phillips, Chair
Representative Fran Ulmer
Judge Thomas B. Stewart
Kenneth P. Jacobus, P.C.

MEMBERS ABSENT:

Representative Eldon Mulder

INVITED GUESTS PRESENT:

Gordon Harrison of the Legislative Research Agency

GUEST SPEAKERS:

Representative Sam Farr, California Congressional Representative

TELECONFERENCE SITES ON LINE:

Anchorage - Chair. John Havelock of Common Ground was there to
testify

Juneau
Kotzebue

SUBJECT:

Methods of Revising the Alaska State Constitution

The Task Force Chair, Representative Gail Phillips, called the meeting to order at 1:30 p.m. and noted that Representative Phillips, Representative Ulmer, and Kenneth P. Jacobus were present in Anchorage. Judge Thomas

B. Stewart and Judi Jordan, Task Force Staff, were on line from Juneau, as was Gordon Harrison of Legislative Research.

Representative Phillips welcomed committee members. She had a memo from Jack Chenoweth of Legislative Legal and a Resolution proposed by Rep. Ulmer faxed to the other sites on line.

Rep. Phillips asked tat the minutes from the October 14, 1993 meeting be approved. Judge Stewart moved that the minutes be adopted and they were.

Judge Stewart mentioned the letter and proposed resolution he received from Common Ground and that he would let John Havelock comment upon it. Judge Stewart felt that the memo offered a very interesting and constructive proposal for the creation of a commission and its composition. The proposal has the interesting aspect that, if the commission reviews proposals over two legislative sessions and there has been no action by the legislature, then the commission would have the authority to offer a proposal directly to the public which would accomplish what many people seem to feel desirable of avoiding a block by the legislature where something otherwise has considered, deliberate treatment by an authorized body. It would require a constitutional amendment to achieve this -- it couldn't be done by statute. It is a very interesting proposal that Judge Stewart didn't feel we could consider far enough to adopt it today, but we would like to hear from Mr. Havelock about the details of it.

Representative Phillips asked Mr. Havelock to discuss Common Ground's proposal before we needed to join Rep. Farr on line at 2:00.

John Havelock said that the memo was prepared by himself and members of a group which is a committee on the Alaska Constitution of the Alaska Common Ground organization. This is an organization of about 200 people who are interested in providing forums for Alaskans throughout the state to gather facts on long term problems in Alaska's affairs and to see what can be done to bring consensus on approaches that might be taken on some of these long term issues. The committee on the AK Constitution is one of five committees of that organization.

The committee prepared a resolution and took it to the board who adopted it unanimously as a committee proposal. They are attempting to find a solution to dealing with the frustration of Alaskan citizens and their inability to get constitutional proposals before the people. Maybe it's even more important to have the feeling that the proposals are being considered

by somebody or some body who is paying attention to them and is giving them reasons why they are going forward or not going forward. He felt that that has brought about a great deal suspicion of the legislature in particular as being a body that is overly influenced by special interests or by their own interests in resisting any form of constitutional change. They have been following and admiring the work of this task force and the proposal that there be a constitutional review commission, and they are basically testifying in support of this idea.

John Havelock said that he wrote the voter pamphlet piece opposing the constitutional convention. He did so with some ambivalence in the sense that all of us recognize that there are changes that should be adopted to the constitution or changes that should be given much more of a hearing than they have. They can see obstacles to amendments of the constitution which they feel are obstacles that do not relate to the merit of the proposed amendment. The most obvious example is the issue of reapportionment. They believe the citizens should be able to figure out what is going on without having to read constitutional cases. They should not have to read the footnotes to the Constitution which says everything you read above is not operative. There are arguments at the mechanical level that there are needed changes to the constitution.

According to John Havelock, Common Ground is very much opposed to the use of the initiative, as it now stands, as a method of amending the constitution. Basically they believe that the proposal to use the initiative fundamentally misunderstands the purpose of constitutions generally. The constitution is intended to promote limited government under law and to protect the rights of minorities. It is not a majoritarian document. The idea that 50% plus 1 of a transient majority can change a constitution is an anathema to the republican form of government under which we operate. Also, the lack of the deliberative process, the lack of any system for compromise or adjustment, the absence of style and drafting restraint, the potential use of misleading or confusing language, the absence of regard for minority rights, the problem of financing initiative campaigns (they are financed and do not represent true grass roots as much as they represent the efforts of individuals who are able to gather enough money to hire people to pay for signatures) makes the initiative process an even less suitable vehicle for constitutional change.

Mr. Havelock went on to say that all that doesn't take away from the fact that there is a perceived or actual problem of amending the constitution only through the methods that we have now -- of which perhaps the most obvious problem is that any time you look at the legislative article, you are

looking at the lives and fortunes of sitting legislators. In any process that requires that you go through those legislators, you aren't going to necessarily get the most disinterested attention in terms of framing the proposal or in terms of the merit.

According to John Havelock, Common Ground supports the committee's efforts, and they developed a proposal. This is not the only thing Common Ground would endorse. There are obviously lots of options and variations that should be considered. For example, they said that the commission should have about seven members. There is nothing magic about seven -- more would raise the cost. At the minimum the group should be representative. It gets harder the smaller the group gets. They proposed that none of the seven members be government officials. They should all be lay persons with the hope that people would be appointed based upon their history of involvement in public affairs. Two should be appointed by the legislature -- one by the Speaker of the House and one by the Senate President; two by the governor as representative of the executive branch and two by the chief Justice as representative of the Judicial Branch. Perhaps two retired judges, maybe a former Governor or former Governor-ex-cabinet member, and former legislators. The seventh member would be appointed by the other six committee members and is not necessarily identified with one of the branches of government, historically or otherwise. Then you would be dealing with a quality group of individuals who have "been around the block", but would have no current stake in the system itself.

Common Ground would like the commission to have sufficient funding to go around the state every year. There are necessarily compromises on what constitutes going over all of the state. There should be some ability for them to take proposals from citizens no matter who they are. Particular attention should be paid to a means of giving a reason of why a proposal is not being forwarded (for example: this conflicts with the bill of rights or other parts of the constitution). John Havelock's committee thought that it would not be a good idea to have this commission be purely advisory, but to have a little constitutional umph. There should be a proposal that the amendment lay before the legislature for a full year before they could put propositions directly on the ballot. This commission should have the power to send a message to the Lt. Governor saying that a particular proposition shall go on the next general election ballot. They felt that you would need a super majority of the commission to do that. They suggest that there should be this constitutional authority there and he thinks that the public would like to see that as well. They are concerned that if there is just an advisory committee, the legislature may not hear all

proposed amendments and this would be just inventing another way to bury good proposals.

Rep Phillips asked that Mr. Havelock remain with us to answer questions right after we have spoken with Rep. Farr who is to address the group at 2:00 p.m. from Washington, DC. At 2:00 p.m. Congressional Representative Sam Farr joined the meeting via teleconference to address the Task Force on the setting up of a Constitutional Revision Commission, and on how Rep. Farr, as the Chief of Staff, managed the CRC process over the several years in the 60's when California had the last serious revision of its Constitution. Rep. Phillips thanked Congressman Farr for joining us and introduced him:

Congressman Farr was elected in a special election on June 8, 1993. The election was held to replace Leon Panetta, who was named by President Clinton to head the Office of Management and Budget. Congressman Farr represents the 17th District of California which includes all of Monterey County, San Benito County and a large portion of Santa Cruz County. He has a distinguished record of public service. He served twelve and one-half years in the CA State Assembly, Being re-elected six times with overwhelming majorities. He is a recognized leader in legislative efforts for educational excellence, environmental protection, economic development and new technologies. Prior to serving in the state Assembly, Congressman Farr served on the Monterey County Board of Supervisors and worked as a budget analyst and as a consultant for the Assembly Committee on Constitutional Amendments. He came very highly recommended to us as an authority on constitutional reform. He is a fifth generation Californian, born on the 4th of July in 1941.

Rep. Phillips also introduced the members of the Task Force, Gordon Harrison, and staff to Congressman Farr as well as John Havelock of Common Ground.

Congressman Farr said that he served as a staff person to the legislature when the CA revision commission had finished its work. It had transferred their recommendations for revision, article by article, section by section, to the legislature and he played that role. When he got elected to the legislature the speaker always referred to him whenever anyone asked Willie Brown who knew anything about the constitution. He doesn't have a law degree or really expertise on constitutions, but he does know something about the California process and hopes to share that with us.

What's happening in California is that they have the initiative process in which it is very easy to qualify for the ballot. Many have qualified for the

ballot in the last 10 years. The constitution got all cleaned up by 1975 (not totally reformed because the legislature wouldn't adopt all of the recommendations), but pretty far along the way and then all of a sudden the tide turned and now it's back to chaos. This year the CA legislature passed legislation to create another CRC and an interesting committee to go along with it that is not really a product of the legislature, but is a private non-profit sponsored citizens' budget commission made up of the best leaders in California on the budget issues of our state. He thinks it's attempting to separate the budget process from the other constitutional issues.

Representative Ulmer asked what advice Congressman Farr had for us as a state looking at alternative ways to amend our constitution? Do you recommend the initiative process -- why or why not? Do you have feelings about a constitutional revision commission, and based on your experience in CA do you think that was a good approach and would you recommend it to us?

Congressman Farr said that he does recommend a revision commission because it takes the political heat focus off the elected and puts it onto a commission. Obviously you would probably need to have some members of the legislature serving on the commission. The one that they just created in CA will be a 23 member commission to study the structure of state government. It will be made up of 10 members appointed by the governor, 5 members appointed by the assembly speaker, 5 members appointed by the Senate Rules Committee, the Chief Justice of the Supreme Court, the Legislative Analyst, and the Director of Finance and his/her designee. The bill requires that the membership of the commission broadly reflect the ethnic, cultural, geographic and gender diversity of the state. They will only allow one member from each house to serve as the appointees of the Speaker and the Senate Rules Committee.

Congressman Farr said that he thinks the revision commission works well. In CA they created a commission in the mid 60's which worked until about 1966 to 1972 and then along the way they would finish certain articles, they would pass them on to the Legislature, and there's where it fell apart. The legislature had no ownership of the commission's recommendations other than those Articles that revised the legislative, judicial and executive branches of government and the civil service branches. They were all put on the ballot 1966 (should be 1976) and the first proposal to the voters to adopt the recommendations of the commission after passing through both houses of the legislature were put on the ballot. They had bipartisan support by the then opposing candidates for governor, and both advertised

supporting proposition 1A; and it passed. Essentially it took the major politics out of the process and after that capitol had not much more interest and the rest lost an awful lot of momentum. When Congressman Farr came on board, he took it on himself just to keep pushing the legislature to adopt the rest of the recommendations. They were able to get almost all of them on the ballot in various different patterns, and the voters rejected some and adopted others. Some rejected ones were reformed and put on the ballot years later and were adopted.

Congressman Farr thinks the commission is a good way to get a much better dialogue without the vested interests. By the way, they won't allow any lobbyists to sit on the new commission. On the first commission they created there were a lot of lobbyists as members and certain protections that special interests had in CA history were still retained in the constitutional language because of this.

Rep Ulmer also asked Congressman Farr to address the other half of the question regarding his comments on amending the constitution by initiative.

Congressman Farr asked if we had the initiative process in Alaska. Rep. Ulmer responded that we did not have it for constitutional amendments, only for legislation. Congressman Farr said that he would strongly recommend against constitutional revision by initiative. In California, for just a few thousand more signature, you can get a constitutional amendment and therefore special interest groups are saying now "Why would I pursue a statutory amendment when I can work a little bit more just on the qualification process and get a constitutional amendment that can't be tinkered with". Rep. Farr thinks because of this they have put an awful lot of special interest statutory law into the CA Constitution. Based on that experience, he would recommend against constitutional amendment by initiative.

Ken Jacobus asked Congressman Farr if the California Commission makes recommendations to the legislature? Rep. Farr said that the commission sunsetted in 1972 and nothing has happened regarding constitutional revision since then. Nobody has been a watchdog for what has gotten into the constitution since then.

Ken Jacobus said that we are thinking about a commission with a smaller number so it would be able to do its work more effectively and at less cost. But the important thing is that it would be able to bypass the legislature if it were necessary to do so, and the commissions recommendations would

be put on the ballot directly. Congressman Farr said that he would think that the commission would have to have an awful lot of prestige in order for the recommendations going directly to the voters to be adopted. Otherwise, you will loose to politics. You will have legislators who don't like the recommendations of the commission campaigning against them. There is some merit in having it go through the legislature if you get through that process. The legislature could amend a proposal in California because the recommendations were just handled like any other bill. At least it would have bipartisan support then when it gets onto the ballot and to get a constitutional amendment adopted by the legislature, it takes 2/3rds of each house. So the argument could be made about the ballot issue that at least the legislature has had a second look at it and it's bipartisan. You might wind up with controversial revision issues loosing to politics.

Jacobus said that that may not be all that bad because part of the concern up here is that a lot of the citizens feel that they are totally shut out of the process. This would assure that at least they would get their constitutional revisions considered and maybe even voted on and voted down. This would still give them the feeling that it was given consideration.

Congressman Farr said that that's what's going on across America -- distrust for government. Maybe a commission that is really a prestigious commission that has a lot of respect might be more successful. He thinks there's merit to that idea, also. As long as the legislators can appear before the commission and discuss the drafting issues that you bring up.

Judge Stewart asked Congressman Farr about his thoughts on the composition of a constitutional revision commission both from the point of view from the appointing authority or authorities and on the number and any particular qualifications they should have in terms of experience background. Congressman Farr said that that's a very challenging question because he never had to put that together. But his experience in California was that the commission appointed back in the 60s really took the blue blood of California, and he didn't think that would pass muster now. Now there needs to be more emphasis on gender and ethnic representation than anyone paid any attention to in those days. But it was a very credible commission, and the best decision they made was to get one of the Deans of UC Berkeley to sit on the commission that became the wordsman and real draftsman on the language. He thinks we need to have someone with incredible skill and knowledge to play that role and allow a commission to officially delegate to that person the task of writing the language. You don't need to have legal scholars on. Bruce Sumner, a

Superior Court Judge in Orange County, chaired the commission. He is highly respected and gave prestige to the commission. We really need to have people of high respect in the state. Gender and Ethnic diversity as well.

Congressman Farr went on to say that the new commission in California would have no lobbyists. Membership of the commission would be broadly reflective of the economic, geographic, ethnic, racial, cultural and gender diversity of the state. The initial appointment to the commission would be made no later than 90 days after adoption of the resolution. Each member receives \$100 each day while on official commission business. The Governor is to select one of the members to serve as Chairman of the commission. The commission may appoint an executive secretary and employ professional, clerical and other assistance which may be necessary. The legislative counsel, the legislative analyst, state auditor, and the department of finance would assist the commission. The commission is required to submit a report to the legislature by August 1, 1994. \$200,000 was appropriated to carry it out.

Gordon Harrison will get us a copy of California's SB 16 which was just adopted and signed by the Gov. Authored by Senator Lucy Callais (Gollett?) Also, we should get the analysis of the bill for more background.

Rep. Ulmer asked how the NAFTA vote was going. Congressman Farr said they should be voting on it in two to three hours. He was originally strongly opposed to it, but decided to switch his vote yesterday. He said he was probably the only one that switched. He said the old adage is right that it doesn't matter what they say about you as long as they spell your name right; and he got three headlines in California papers today. He thinks it will pass by about a 1 vote margin.

Representative Phillip's said that everyone up here is thinking it will be a very, very close vote.

Representative Phillips thanked Congressman Farr. He said that he would be glad to help us in any way that he can. What they've done in California is too much micromanaging of their constitution. They've tied the hands of the legislature too much, and he thinks a lot of the reformists in America would love to see government incapable of doing anything. He encourages us to keep our constitution with as much flexibility as possible for the legislature. If we do constitutional revision by initiative, we need to have other checks and balances.

Judge Stewart emphasized Rep. Farr's echo of Speaker Brown's comment that we should stay clear of the use of the initiative and that therefore, Judge Stewart felt that we ought to go to some kind of constitutional revision commission process. While we're a long way from arriving at a majority view on how that should be structured, his view is that now we can pretty safely strike from our consideration the possibility of using the initiative process for amendment of our constitution.

Representative Phillips felt that this was probably correct and that she is a lot more comfortable about going with a revision commission now than she was when the task force first started debating this.

Rep. Phillips returned to the Common Ground proposal and asked for any comments.

Ken Jacobus asked John about the commission action in paragraph 5 having to be by unanimous vote. John Havelock said that he thinks it should be by a super majority of the commission.

Ken Jacobus commented that he was generally in agreement with the proposal by Common Ground. As long as there is a way to bypass the legislature when not getting appropriate action by the legislature. He generally likes Common Ground's outline.

Rep. Phillips asked if Common Ground's original committee formed with the idea of specific changes to the constitution or for looking at the methods of amending the constitution. John Havelock said that they originally formed to address the question of "Shall there be a constitutional convention?", which led to how changes should come about. They hadn't really intended to be in the campaign regarding the constitutional convention which they didn't really think was a good idea. At the same time they all recognized that changes are appropriate. One of the arguments for not having a constitutional convention is that there were other ways to do this. They were glad to see this Task Force formed, because it actually reflects the recommendation that was made in the voter pamphlet.

Rep. Phillips asked if it was Common Ground's idea that the constitutional revision commission would replace the constitutional convention call every 10 years. Havelock said it was not their idea for that to happen.

Rep. Ulmer -- questioned Mr. Havelock about the 7 member specification and the appointment process. She asked if Common Ground would be

willing to author some additional criteria which should be part of the consideration as opposed to just specifying seven people. She supports the idea of covering the areas of representation Congressman Farr mentioned and what Mr. Havelock mentioned about coming to the table not having to be totally educated about the system. Also, the idea of not having people who are just single issue people is important.

Mr. Havelock responded that you do want to find a good balance -- not just "old white males". He would hope that the decision would involve deliberation. Doesn't think that it's necessary to say that there be 3 men and 3 women and 1 bisexual or even geographic representation.

Rep. Ulmer suggests that we look for some language that makes it clear that what we are trying to achieve is a balanced commission with a sensitivity toward the need for a balance. The requirement that individuals come to the table with some historical knowledge. She would like to see perhaps former legislators, former judges, etc. But we have no guarantee that just because we say that here today, that is what we'll get. She wants to see some language built into this to help assure it.

Rep. Phillips asked that Judi send a letter to Common Ground addressed to Chairman Wunnicke responding to the memorandum and the resolution and thanking them for the input and that we will be considering it. Also, that we really appreciate the work that they have put into it and the input they have given us.

Representative Phillips thanked Mr. Havelock and said that it is very rewarding to have this kind of participation across Alaska on something that is so critical to the future of our state.

Rep. Phillips asked Rep Ulmer to discuss the resolution that she proposed and the memo from Jack Chenowith regarding the prohibition on people being paid to collect signatures.

Rep. Ulmer said that the resolution is the product of the subcommittee and reflects the opinions of both Judge Stewart and Rep. Mulder and herself. It was intended to respond to the concern that the legislature does not always deal with proposals in a way that gives the public the impression that their ideas have been seriously considered by the legislature. It does provide for a joint committee which would be a standing committee. It would require the legislature to hold hearings on all of the amendments that are proposed. The idea is that it would not only provide a better public review but would also address some of the style and drafting

concern that the committee had about constitutional amendments by building a review process into our committee process that doesn't exist now for constitutional amendments.

Rep. Phillips said that in reading through the proposed resolution there are some very good points. She particularly likes the point that this committee shall hear every proposed change. She would like to see strengthening on the wording on the style and drafting. We might say that this committee would be responsible for the proper style and drafting so that from the very beginning of putting forth a proposed amendment, it would be in the proper form.

Judge Stewart -- said that he has not devoted the time to look at this in detail. We asked for it from legislative legal, and he believes that there ought to be special legislative rules to deal with constitutional amendments. But he is not prepared at this time to comment on the details of the proposal in its present form. He would like to see the committee schedule it for the next meeting, and that each of us might submit specific thoughts about the language and the general detail of it; but not today.

Rep. Phillips said that we do have something now in hand to work with and it's headed in the right direction. She particularly likes the fact that this would be a standing committee because that gives it far more stature and credibility. Rep. Phillips said that we will each do our own research on it and get with the subcommittee people and gather their input and we will have it on our agenda for the next meeting.

Rep. Ulmer discussed Jack Chenoweth's memo on paying people to collect names. She said that Jack Chenoweth supports that there is no way to prohibit this. His memo is very clear, and he gives excellent opinions in support of this decision. Common sense might seem to dictate that one could be prohibited from paying people to collect signatures, but there is no way that we, as a legislature can keep it from happening, Rep. Ulmer said. We must accept that this is part of the initiative process.

Rep. Phillips said that she is glad to have this at this time so that whenever a question comes up, we will have it to refer to.

Judge Stewart expressed his appreciation for Rep Ulmer getting this memo.

Rep. Phillips said that we will not be holding a meeting in December and not until after session starts. However, we need to stay focused on our

direction. She asked Ken Jacobus for his opinion on the revision commission.

Ken Jacobus said that a constitutional revision commission is fine as long it is not set up in such a way as to preclude public access to the ballot. He thinks John Havelock's suggestion as originally written, in that it requires unanimous approval to bypass the legislature, is unacceptable. That is the appointee of the Speaker of the House or President of the Senate is being watched. He does not have a problem requiring a supermajority or five of seven votes. The public must have a meaningful access to the ballot. We ought to have the subcommittee appointed and should get together in the next few weeks to draft language for consideration.

Rep. Phillips said that the subcommittee would develop some proposed language for the proposal and that would be our agenda topic for the next meeting. We are still doing fine time-wise.

Judge Stewart agrees with the direction we are taking, but is not sure he's in agreement with the schedule for it. He feels we should focus the next meeting just on the subject of the rules, but that we should have presented to us at that meeting the general proposal of this committee on the constitutional review commission and then fix that for more specific discussion at the following meeting.

Rep. Phillips agreed. It will be a lot easier for us to meet in Juneau and bring Ken Jacobus in via teleconference from his office.

Judge Stewart suggested that the subcommittee have before them the Common Ground proposal and the material that Rep. Farr has in SB 16. He feels that we do have to pay attention to a balanced composition and that this might call for a slightly larger commission than was contemplated in the Common Ground proposal. He is also interested in some kind of provision that makes a stringent requirement before any proposal of the commission could go directly before the people.

Rep. Phillips intends that we will have California's SB16, the Common Ground Proposal and also Utah's Commission setup before the subcommittee to work with. Judi will get the three or four pieces out to the subcommittee before we meet to start doing some drafting before the next full committee meeting.

We will also provide a separate tape of Congressman Farr's comments and we will make taped comments available to committee members.

Ken Jacobus asked what sort of scheduling is necessary to get this sort of legislation considered in the 1994 session and to be on the '94 ballot.

Rep. Ulmer said that it depends on how much consensus there is. But if people like the idea, there wouldn't be much in the way of procedural problems. It would probably get a Judiciary Committee referral and a Finance Committee referral since there will be a fiscal note. March 1st would be a good goal for getting something into the legislature.

Rep. Phillips said that she knows there is a lot of concern in the legislature for doing something. She thinks what we are discussing offering will be a very viable solution or alternative. But, the initiative would probably never get to the floor.

Judge Stewart said that he will be out of town from January 22nd until February 4th. Rep. Phillips anticipates the subcommittee will still be meeting at that time and we'll not have another full committee meeting until mid-February. We will get the subcommittee work out as soon as possible for people to review before the next meeting. It might be that we can have another meeting in early January.

Rep. Ulmer asked that Gordon prepare a chart on the commissions comparing the various states in regard to issues such as the appointing authority, the number of members, criteria to be appointed, and whether recommendations are either self-actualizing or for legislative action or the end product of the process. It would be helpful for us to use this in the legislative committees who will get our work product. Gordon agreed to do so. He wants to look at some other revision commissions to get a broader sample of the possibilities. There have been many of these things in the past 30 years, and he will research the options for organizing and structuring.

Rep. Phillips would like to wait to get that info from Gordon before we get too far along in our subcommittee process.

The Task Force adjourned at 2:45 p.m.

MINUTES/TRANSCRIPT

CONSTITUTIONAL REVISION TASK FORCE MARCH 26, 1994

MEMBERS PRESENT:

Representative Gail Phillips, Chair
Representative Fran Ulmer - via teleconference from Naknek
Judge Thomas B. Stewart
Kenneth P. Jacobus, P.C. - via teleconference from Anchorage

MEMBERS ABSENT:

Representative Eldon Mulder

INVITED GUESTS PRESENT:

Gordon Harrison of the Legislative Research Agency
Tam Cook of the Legislative Legal Services

TELECONFERENCE SITES ON LINE:

Anchorage and Naknek for comments from committee members only.

SUBJECT:

Methods of Revising the Alaska State Constitution and consideration of the final drafts for presentation as recommendations to the Legislature.

The Task Force Chair, Representative Gail Phillips, called the meeting to order at 1:15 p.m. and noted that Representative Phillips, and Judge Thomas Stewart were present in Juneau. Representative Ulmer and Ken Jacobus were on line via teleconference from Naknek and Anchorage respectively. Also joining the Task Force meeting were Tam Cook of Legislative Legal Services, Gordon Harrison of Legislative Research and Judi Jordan, Task Force staff.

Representative Phillips asked that we begin by covering the memo which Tam Cook sent to accompany the new versions of the draft bills as

prepared on 3/22/96. Judge Stewart presented us with a recommended findings section.

Tam Cook's memo pointed out the need to consider the constitutional question of whether the members of selection committee by the Governor and Chief Justice might be attacked as a violation of separation of powers. She said that, since the committee does not exercise legislative power, but rather makes appointments to another commission in the legislative branch, perhaps the court would not invalidate this provision.

Judge Stewart asked what the Bradner case said. Tam said that it was the case dealing with the Governor's power of appointment. That's the main case in which the court recognizes that our state is subject to the separation of powers doctrine. Judge Stewart asked then what about the Ethics Committee, if that was the same question. Tam said it was. Judge Stewart said that perhaps not as sharply so in this case since it only functions to make appointments to another commission. Tam agreed.

All members agreed that it is probably not something they need to worry about.

The same question was raised regarding the proposed commission's authority to introduce resolutions. Mr. Jacobus was not certain that the draft needed to say that or that the draft really contemplates that. They could specify that the recommendations would be presented to the legislature and then require that the Joint Committee introduce them.

Judge Stewart asked Tam if this was parallel to the court systems introducing legislation. They don't actually introduce it but rather present it to the Rules Committee which is then, by statute required to introduce it. We should perhaps have the draft say "offered by", rather than "introduced by".

Tam said that the way this is structured, the Rules Committee has no discretion to say "No." Just as in the case with the Governor's bills -- the Rules Committee cannot say "No." All it is is a pro forma thing. So from that point of view, you do have a citizens group essentially controlling the introduction of legislation.

Judge Stewart said that this would be at the direction of the legislature and the governor. Presumably the governor would sign the bill, so both the legislature and the governor would have said that they want legislation

introduced by this means. It's not a power that the commission has determined.

Tam said that is true, but we'd still have the delegation question, because by statute the legislature is delegating to a non-legislative entity the power to introduce legislation. It doesn't matter whether the legislature and the governor have approved it, if there is a constitutional dimension question.

Rep. Ulmer asked how the Code Revision Commission gets its' legislation introduced.

Judge Stewart said that it takes it to the Legislative Council and the Council is not required to introduce it. No statute requires it. Tam Cook confirmed that statement.

Tam Cook said that Leg. Council also does not have the power directly to introduce legislation, but it has the authority to do so through the Rules Committee and it is also non-discretionary on the Rules Committee to accept those drafts. So we have a number of entities right now that are, for form sake, filed through the Rules Committee, but the Rules Committee has no choice about the introduction of legislation from these groups.

Judge Stewart asked if there was any more of a constitutional question with respect to those entities than there is with this one.

Tam Cook said that none of them consist of non-legislators except for this one and the Governor. The Judiciary does not get to introduce legislation. The Rules Committee can say "No" to introducing legislation requested by the Judiciary. Rules Committee will not be able to say "No" to the Commission as this is currently drafted.

Judge Stewart asked what particular language of the Constitution is it that comes into question here.

Tam Cook said that it is only a vague separation of powers question that she has as to whether or not the legislature is delegating legislative authority.

Judge Stewart said that he did not think we should be concerned about this because the legislature has complete authority as to whether or not it becomes legislation. Tam Cook agreed.

Rep. Ulmer said that she agrees this would not be a problem. While she understands the concern, she feels that, as long as we are not allowing an issue to go directly on the ballot if the legislature does not act, she believes this is okay.

Tam said that it is worth taking that risk if it is the desire of the committee.

Rep. Phillips polled the members and they all agreed to leave the provision that the Commission could introduce through the Rules Committee in the bill.

Judge Stewart asked to take another look at the provision that requires the legislature to vote. He has not committed himself to that.

Rep. Phillips asked to return to the findings section of the bill. All members agreed to use the language proposed by Judge Stewart except for the last sentence which was more applicable to the draft resolution on the Uniform Rules. (See attached proposal by Judge Stewart.) All agreed that having fewer findings rather than more was best.

Gordon Harrison also prepared some findings which the committee agreed should be contained in a transmittal letter for the committee recommendations to the Legislature. (See attached)

The members returned to considering the proposed bill's language. Judge Stewart felt that the new language should be modified in section one to say "offered by the Rules Committee by request". This would be Line 13 of Page 1 of the current draft. Judge Stewart moved this change and other members agreed. Representative Phillips said that we would change the word "introduced" on line 13 to "offered".

Judge Stewart said that on Line 16 of Page 2 he would like to have it say "an elected state official. . ." and either "a sitting justice or judge", or "an acting justice or judge". Tam Cook asked if he was trying to say a retired Judge could sit? Judge Stewart said he was. Tam Cook said that as she reads the Constitution, a retired Judge could at any time be called upon to sit on a case by the Supreme Court, but it was fine with her.

Judge Stewart said that the Constitution does authorize that, but in the procedures that are actually in effect, the supreme court has to specifically solicit opinion in the same way they do for voting on retention and they make a specific order. He thinks that if we used the word "active" or

"sitting", then they could not take a case if they are on the commission; and the Supreme Court cannot require a judge to sit.

Tam Cook said that she just has a question as a policy matter because she had missed the last meeting. Why does the committee want to preclude a justice or a judge from sitting on this commission?

Judge Stewart said that he doesn't, necessarily.

Tam Cook said that it seemed silly to her that we would disallow those who are the most knowledgeable about the constitution from sitting on the commission.

Ken Jacobus felt that we did not want sitting judges on the commission because of the conflict of interest. On the other hand, we did not want to waste the talent of the retired judges and who would never have a conflict of interest.

Judge Stewart said that conflict would be only if the sitting judge had a case which involved an issue which was being considered by the commission.

Gordon Harrison felt that the conflict could go beyond that in the sense that the judge could be seen as a representative of the institution of the judiciary, a branch of government that may have an interest in constitutional proposals or amendments. Since there are no executive officers or legislators there, then a judge should also not be permitted.

Rep. Ulmer moved that they include the word sitting before justice or judge. Tam Cook said to include "a sitting justice or a sitting judge". All members agreed.

Judge Stewart said that on Line 18 of page 2, he would be more comfortable to say that a commission member may only be removed from office and insert "for cause" and then only upon the affirmative vote. . .

Rep. Ulmer was very concerned on the other part of it which was "appointment and sitting at the pleasure of the appointing authority". The "for cause" removal is fine.

Judge Stewart wanted to assure that the other members couldn't just say they didn't like one member so "get off."

The members agreed to say "A commission member may be removed from office only for cause and only upon the affirmative vote of at least five members of the Commission on the Constitution. " All members agreed.

On page 2 line 25, Tam Cook asked if we needed to put "sitting" in front of the selection committee in front of justice and judge. This poses a different issue because this is the group that appoints members to the commission. You may not need to limit it to sitting justices and sitting judges.

Judge Stewart said that he did not think there was any harm in doing so. There are plenty of opportunities for qualified people out there. All members agreed.

Judge Stewart went on to discuss changes. On page three he wondered if there out to be a sentence fixing a method for determining who gets the initial three year term -- by lot? or how? Rep. Ulmer agreed to the drawing by lot approach. Ken Jacobus did not. Tam Cook said that if section three were left silent on the issue, it would be up to the selection committee to appoint individuals to those particular terms. The committee decided to, at line nine, put in before the period, "as designated by the selection committee." All members agreed.

Tam Cook brought up the consideration of whether there was any desire or need for an effective date. She didn't particularly see that there is a need. All members agreed to leave it as the standard course would have it go into effect.

The committee voted on the final draft as amended today.

Tam Cook asked who to show as sponsor, otherwise it needs to be run as a draft again. Rep. Phillips said that she would talk with Judiciary and get back with Tam on Monday.

Representative Phillips said that we would be sending a draft report early the coming week and that we would hope to have the committee members comments on it back to us by mid-week.

The Concurrent Resolution was before the committee. Judi Jordan reminded the committee that they had made changes to the requirement that the legislature must vote on a bill by the 100 days.

Tam Cook said that she, at the direction of Judi Jordan, came up with a mechanism so that these types of constitutional amendments (only those

proposed by this commission) required a vote by the 100th legislative day. She decided that she had to put in a date by which the house of origin had to consider it in order to make the 100 days apply to the second body. She picked that, by the 60th legislative the first house must consider the matter. That certainly is up to the will of the committee. Her scheme is a direction that a floor vote be held in the house of origin by the 60th day; and additionally that, if the resolution passes the house of origin, a vote must be held by the 100th legislative day in the second house. That would give only 10 days to make it through conference committee if necessary.

Judge Stewart stated that he has retained the position that he advanced in the last meeting. He is opposed to any requirement in the Rules that there be a floor vote. He thinks that it is a mistake to force action on these propositions when it is not forced on possibly equally important measures that are pending before the body; and he is not prepared to disturb the historic practices of the legislature in this regard. If a majority of this group should vote for language of this kind, he would want to be counted as not agreeing.

Ken Jacobus said that he also has concern about this, but his concern is sort of the opposite of Judge Stewart's; and that one of the things we were concerned about at the last meeting was constitutional amendments being buried by committee chairmen, at not put to a vote, but just dying. He also felt that it would be really important to the people to know how their legislators voted on any particular constitutional amendment, such as term limits so that they could take the appropriate action at the next election if they so desired. He felt that both houses should be required to vote on it. One house shouldn't be let off the hook if it fails in the first house.

Tam Cook pointed out that the commission could introduce their proposed amendments to both houses, just as the Governor nearly always does. This would mean that each house would have to consider the version in their body by the 60th day. However, no version introduced in one house and not passed by that house should be required to go on for consideration in the next house. There is no point in doing so if one house has failed to pass their version. Even if, say a house version failed, and the senate has its own vehicle which passes the senate, then the senate version would go to the house for another consideration. Otherwise it would be very much against the way every piece of legislation is handled by this body to allow a bill that has been defeated on the floor of the house of origin to then go over to the second body.

Mr. Jacobus asked then if Ms. Cook was suggesting then that both houses would be deemed to be houses of origin? Ms. Cook said they are.

Mr. Jacobus asked if it was necessary for the resolution to say that it may be introduced simultaneously in both houses? Tam Cook said that it is not because the section authorizing the introduction of their proposals says that it can go to the rules committees of both the houses and they both would be charged with introducing it, assuming it were submitted to them.

Mr. Jacobus said that he would withdraw his objection as long as we can get a vote in both houses so that the people know how their representatives stand on these issues.

Rep. Ulmer said that she had to leave. She supports the resolution as it stands but she understands Judge Stewart's concern and she is not 100% convinced that this is a good idea; but she is willing to give it a try and willing to experiment with it with the full knowledge that in the future we may decide that this wasn't such a hot idea after all. She does believe it is the next logical thing for us to have a try at and she feels comfortable with the draft the way it is.

Rep. Phillips asked for one more answer from Rep. Ulmer. Did she intend that the committee established by the joint resolution would be a special committee or a standing committee.

Rep. Ulmer wanted this to be a standing committee. We are talking about it being able to do its' thing year after year and having full force and effect and being established as sort of a procedural matter in the way in which the legislature does its' business. She thinks it needs to be a standing committee unless Ms. Cook has a reason she feels it should not be.

Representative Phillips asked if we need to clarify the title where it says "joint committee".

Tam Cook said that as she originally drafted this resolution for Rep. Ulmer, she established it as a joint committee rather than a standing committee; but it is a unique type of joint committee in that it is subject to Rule 1E with minority membership, and it does have the authority to introduce legislation, and there is a requirement that all constitutional amendments be referred to the Joint committee. If we want her to, she can unravel all this a go back to make it a standing committee of each body.

Rep. Ulmer said that what she meant when she said "standing committee" was that the other rules apply. If Tam Cook structured it that way, then leave it the way it is.

Judge Stewart asked then if it were sufficient for this committee to be otherwise subject to the Rules. Tam said that is was and that there were several rules she had to amend to make reference to this committee.

Judge Stewart said that it is not a special committee -- in that it is only an ad hoc committee for one session. It's a joint committee, so it is a continuing committee. Tam Cook agreed that it is and that in that sense it would be a type of a standing committee.

Judge Stewart asked again that we include in our transmittal letter that he does not support the requirement that the legislature must vote on a proposal from the commission.

Tam Cook said that we should bear in mind that the substitute legislation which we are passing out requires a majority vote of the members of each body, but the resolution would require 2/3rd vote. So we do run the risk of passing the statute, but not getting the amendment to the Uniform Rules.

Tam Cook confirmed then that the committee desires no changes to draft E of the resolution. At this point we do not need another draft of that.

The meeting was adjourned at 2:00 p.m.

Section 1. FINDINGS AND PURPOSES.

The legislature finds there is a need to improve and expand procedures for introduction and consideration of proposed amendments to the state constitution. There should be substantially increased opportunities for citizen involvement in these procedures. To accomplish these goals there should be created a citizen Commission on the Constitution to make continuing studies of the needs, from time to time, for ⁶constitutional change, and to provide the legislature with carefully considered recommendations for such proposals.] In addition, the legislature should establish a special joint committee from its own membership and special procedures for improved consideration of any proposals for constitutional change.]

The . . . finds that:

- (1) the two methods of amending the state constitution authorized by Article XIII of the Alaska Constitution, the convention and legislative proposal, may tend to discourage public discussion and debate about constitutional issues and proposals for constitutional reform;
- (2) partisan divisions, the press of other legislative business, and traditional legislative procedures may conspire to deny legislative proposals for constitutional change adequate consideration by legislators and adequate public exposure and testimony in the committee hearing process;
- (3) institutional self-interest of the legislative branch may tend to discourage full and open consideration by legislators of proposed constitutional amendments affecting the powers, duties, or structure of the legislature;
- (4) advisory constitutional commissions have been used successfully in many states to review existing constitutional provisions, study suggestions for change, and recommend to the legislature proposed amendments;
- (5) a citizen review commission in Alaska would provide a mechanism for unhurried, reflective, imparatial and nonpartisan study of the Alaska Constitution, and for the involvement of the public in the discussion of constitutional issues and proposed amendments;

therefore....

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March 15, 1994

To: Judge Tom Stewart
Juneau, Alaska

From: Samuel K. Gove

SKG

These are my comments on the draft resolution you Faxed to me.

1. I think there is a serious drafting problem in Section 1. It cou'd be read to say that this Commission on the Constitution could submit constitutional amendments to the voters.

2. More importantly, is it necessary to amend the Constitution to create the Commission? Would it not be better to create the Commission by statute? If I read Janice May correctly (The Book of the States, 1992-93 Edition, pp. 4-6, and Table 1.5) only Florida has a constitutional provision for such a Commission.

3. I have no problem with the composition or powers of the Commission. I would, however, allow the legislature to amend amendments presented by the Commission.

If you have any questions on my comments, please give me a call (217/244-4821).

SKG:lmc

191 AK participate

new commission
will get a task
like the first
one

FAX

TO: Judge Tom Stewart
FAX (907) 463-3475

FROM: Jandice C. Mey
FAX (512) 471-1061

DATE: March 17, 1994

SUBJECT: Proposed Resolution to create a Constitutional Commission for
the State of Alaska - work draft

The proposed resolution is unique although certain elements have been tried before. To evaluate it, I will hypothesize about the major purposes of the commission.

- 1- Is the major purpose to add citizen input into the amendment proposal process — to implement further the theory of "popular sovereignty"?
- 2- Is the major purpose to add expertise to the amendment proposal process?
- 3- Is the major purpose to provide a substitute for a constitutional convention?
- 4- Is the major purpose to force the legislature to pay attention to proposals for constitutional amendments it routinely ignores, doesn't know about, or for some other reason?

1- The seven-member commission is too small to serve as a citizens' committee representative of the people. Also, the appointment process does not give adequate attention to factors other than bipartisanship and geography (judicial districts). For example, the appointing authorities of the 1973 Texas Constitutional Revision Commission, in the resolution setting up the commission, were directed "to give consideration to fair and equitable representation of the sexes, ethnic groups, social groups, economic groups, and geographic regions of the state." Also, there is no mechanism for assuring citizen input on a regular basis (or any other). Personally, I still like the idea of institutionalizing town meetings. The worst scenario would be an unrepresentative elite dedicated to its own agenda of a few issues empowered to force the legislature to consider given proposed constitutional amendments.

2- As for adding expertise, there is no specific indication that such would be the case. For example, the Kentucky Commission of 1987 required the deans of the state's three law schools to appoint a faculty member from each of their respective schools to serve on the commission.

3- If the major purpose is to serve as a substitute for a constitutional convention, the observations made under point "1" above are relevant. The commission is far too small and unrepresentative. As Bennett M. Rich has written, "the commission device is no substitute for a convention. No amount of wishing can make it so." In addition, the ten-year mandatory referendum and the power of the legislature to call a convention at any time ought to be adequate. Also, the rejection by the voters of a convention in 1992 speaks for itself.

4- If the major purpose is to force the legislature to pay attention to proposals emanating from outside the legislative branch itself, I think the proposed resolution will be successful. However, I suppose one can imagine a scenario in which the legislature abdicates its responsibility by purposely sending by inaction a "hot potato" to the voters.

Final- The real issue is whether there is a demonstrated need to add to the formal procedures for proposing amendments. The answer lies in Alaskan politics, which is outside my domain.