SJR

36

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-2105

MEMORANDUM January 28, 1998

SUBJECT: Legislative redistricting and reapportionment (CSHJR 36(JUD))

TO: Representative Joe Green

FROM: Richard A. Glover - RAG
Legislative Counsel

You have asked for clarification of the terms "redistrict" and "reapportionment" as they relate to HJR 36. You also asked which term would be appropriate to use in HJR 36.

In your memo of January 22, 1998, you made reference to testimony by Jack Chenoweth before the House Judiciary Committee on May 5, 1997. Mr. Chenoweth's distinction between the terms "reapportionment" and "redistricting" is correct. Taken independently, a "reapportionment" would be the taking of, or addition to, the representative seats in a political body without changing the number or designation of the people represented[1]. A "redistricting" would be an abandonment of currently defined boundaries and the designated representation in favor of a newly established set of boundaries with new numbers of representative seats in the political body[2].

A redistricting power is broader than a reapportionment power, the latter being restricted to adding or subtracting representative seats only. In terms of the Alaska State Constitution as it is currently written, the difference may be moot. In 1972, the Alaska Supreme Court, speaking of the powers to reapportion the house of representatives, noted "[r]edistricting is inseparable from reapportionment and the Governor should be able to authorize any

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[1]This is also supported by the definition from Black's Law Dictionary for apportionment: "The process by which legislative seats are distributed among unit entitled to representation," or for reapportionment "A new apportionment of seats in the House of Representatives among States 'according to their respective numbers....' See Westberry v. Sanders, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481."

[2]This too is supported by Black's: "'Districting' is the establishment of the precise geographical boundaries of such unit or constituency.' Seaman v. Fedourich, 16 N.Y.2d 94, 262 N.Y.S.2d 444, 209 N.E.2d 778, 779".

constitutional device to accomplish the task.[3]" The court appears unconcerned by the use of one term or the other since implying the constitutional power of the governor to reapportion the senate (at least on an interim basis) in Wade v. Nolan[4]. The end result must be a population based system, allowing for equal representation in both houses. It was the decision in Wade that fixed the number of senate districts at 20 "for the 1966 primary and general elections and thereafter until the Alaska Constitution has been amended to provide a valid, permanent reapportionment plan for the Senate."[5]

HJR36 requires senate districts to be composed of two contiguous election districts, and criteria is provided for how to establish the geographic lines of each. Under the old text, the determination of how many seats would represent a particular district in the legislature was determined under Article VI, section 4, specifying the "method of equal proportions." Section 4 would no longer contain that phrase, but that power and directive would be included in the new language in section 3, "Redistricting shall be based upon resident population within each election and senate district as reported by the census." This eliminates the distinction between the terms, instructing the governor to draw the lines in a manner that is based upon the population and consistent with the requirements of the 14th amendment. In an improvement from the original text, the U.S. constitutional requirements of "based upon resident population" can change with court decisions,[6] and no future amendment to the Alaska Constitution will be necessary. In the broader sense of the terms, by redistricting, the governor would be reapportioning, but court decisions have required this to be accomplished with the current redistricting power. There is no new power or requirement conferred by eliminating the term "reapportionment" from the constitution, and doing so avoids future confusion.

Historical notes:

The Constitution of the State of Alaska currently specifically authorizes the governor to redistrict by changing the size and area of election districts subject to certain restrictions set forth.[7] Under the text of the Alaska Constitution, this power applied only to the election districts: the senate districts could only be "modified to reflect changes in election districts..."

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[3] Egan v. Hammond, 502 P. 2d 856 (Alaska 1972)

[4] 414 P. 2d 689

[5] Id. at 701

[6] Although the framers may not have considered this loss of autonomy an "improvement."

[7] Constitution of the State of Alaska, art. VI, section 6; See also, Egan v. Hammond, 502 P. 2d 856, 873.

and a senate district "although modified, shall retain its total number of senators and approximate perimeter.[8]" The original article XIV established 16 senate districts which were continued in the 1961 reapportionment. The subsequent rulings of the U.S. Supreme Court in Baker v. Carr[9] and Reynolds v. Sims[10], held the original area based apportionments of the senate in the Alaska Constitution unconstitutional as a violation of the equal protection clause of the 14th amendment, in that they do not require that the seats in both houses of a bicameral legislature be apportioned on a population basis. In Wade v. Nolan[11], the Alaska Supreme Court heard a challenge to the governor's September 3, 1965 proclamation. The 1965 proclamation established 20 senate districts, and left the election districts unchanged from the 1961 plan. The Wade court held the art. VI sections to mean "representation in the Senate is determined by area rather than population, with no specific provision made for changing this plan.[12]" The court held that the governor had the implied authority to reapportion the senate, and upheld the 1965 proclamation for the 1966 election and "thereafter until the Alaska Constitution has been amended to provide a valid, permanent reapportionment plan for the Senate.[13]" Since the number of senate districts was now equal to the number of senators, the court order precludes any proclamation that alters the number of senators elected from any one district: the ratio is to remain one senator per senate district until the constitution is appropriately amended. It is true that the framers of the constitution used both terms, but at the time, they were doing so in an attempt to base the senate primarily on area and to prohibit the reapportioning of the number of senators elected from each senate district, a procedure that ultimately was held to be unconstitutional. This was, in the words of the Wade court, "entirely consistent with the existing national concept of fairness....[14]"

With this historical background, it is clear that the 20 senate districts are an accident of the 1965 reapportionment plan. Had the plan contained a different number, it is likely that number would be retained today. The Wade court gave the governor the implied authority to reapportion the senate to conform with Reynolds and Carr, and then fixed the apportionment (i.e. the number of senators per senate district) until a constitutional amendment provided for a constitutionally valid procedure to reapportion the senate. Both houses have the continuing requirement of conforming to the population based method of

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[8] Constitution of the State of Alaska, art. VI, section 7.

[9] 369 U.S. 186 (1962)

[10] 377 U.S. 533 (1964)

[11] 414 P. 2d 689

[12] Id. at 692.

[13] Id. at 700-701.

[14] Id. at 700.

representation, and either process, redistricting or reapportionment, may be used to accomplish the goal.

If I may be of further assistance, please advise.

RAG:jdr
98-038.jdr

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Juneau, Alaska 99801-2105

MEMORANDUM April 21, 1997

SUBJECT: Redistricting constitutional amendment resolution (Work Order No. 0-LS0939\A)

TO: Representative Joe Green
ATTN: Jeff Logan

FROM: Jack Chenoweth
Legislative Counsel

Although popularly understood as "reapportionment," a term that is used in articles VI and XIV of the Constitution of the State of Alaska, the process of revising state legislative election and senate district lines to achieve equal population is properly styled "districting" or "redistricting."

"Apportionment" is the division of a given number of positions among established political subdivisions in accordance with an existing plan or formula. Every ten years, under article I, sec. 2, cl. 3 of the United States Constitution, the number of authorized members allowed to each of the 50 states in the House of Representatives is redetermined to reflect changes in the respective populations in the states as determined by the census. This redetermination or re[illegible]cation of seats among the political jurisdictions is an apportionment, or reap[illegible]ionment, and the net gain or loss of House seats by each state is the product of that appo[illegible]nment. Thereafter, within each state, the boundaries of the districts of the members of the House of Representatives are revised into new district boundaries to achieve equal population under a process of "districting" or "redistricting."

Historically, in the state legislatures--and this is true of the Alaska State Senate under the provisions of article VI of the state constitution--one house was often "apportioned" in the sense that members elected to that house were chosen within specific political subdivisions having fixed boundaries such as counties. Some counties or groups of counties elected one member, but more populous counties were assigned multiple members. But, at least since the decision in Reynolds v. Sims, 377 U.S. 533 (1964), holding that both houses of a bicameral state legislature are to be districted on a population basis, reliance on the fixed boundary lines set by counties and other political subdivisions to identify the basis of electing members of one house of the state legislature has been abandoned.

The terminology--the only terminology--properly applicable to the process to be revised within article VI, Constitution of the State of Alaska, is "districting" or "redistricting." I have amended the appropriate provisions of article VI to so provide.

*

If this memo or its attachment prompts questions, please contact me.

JBC:jdr
97-281.jdr

Attachment

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

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Senate Judiciary Committee

SPONSOR STATEMENT

SJR36 - SINGLE MEMBER DISTRICTS

SJR36 proposes to amend Article 6 and Article 14 of the Alaska Constitution.

Article 6 addresses legislative reapportionment. We are proposing changes to reflect rulings by the United States and Alaska Supreme Courts, and to enshrine single member legislative districts in the Alaska Constitution. The U.S. Supreme Court rulings, *Baker v. Carr,* 396 U.S. 267, issued in 1962, and *Reynolds v. Sims*. 377 U.S, 567, issued in 1964, established the so-called "one person, one vote" apportionment rule. The result of these decisions is that all state legislative bodies in the United States are apportioned on the basis of population. The Alaska Constitution, as originally written, bases senate districts partly on population, and partly on geography. The Alaska Supreme Court rulings, *Wade v. Nolan,* Alaska 414 P.2d 689, in 1966, *Egan v. Hammond*, Alaska 502 P.2d 856, in 1972, and *Groh v. Egan*, Alaska 526 P.2d 863, in 1974 establish an equal basis for both civilian and military population.

Section 3 removes the authority of the governor to reapportion and affords only the authority to redistrict.

Section 4 of SJR36 establishes single member legislative (House) districts. This change essentially "constitutionalizes" the status quo. Single member districts have proven to work well in Alaska and in many other states. Along with Alaska, several other states have shifted from multi-member to single member districts.

Section 8 eliminates references to reapportionment and specifically allows for judicial review of a governor's acts or failure to act. Provision is also made for giving priority to redistricting cases that come before the superior or supreme courts

Finally, Section 10 of SJR36 repeals sections 5 and 7 of Article VI and Article XIV of the Alaska Constitution. Article 14 sets out the original reapportionment schedule, which is now obsolete.

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M E M O R A N D U M — March 11, 1998

SUBJECT:	Sectional Summary of CSSJR36( ). (Work Order No. 0-LS1541\E)
TO:	Senator Robin Taylor Attn: Ralph
FROM:	Richard A. Glover ~ RAG Legislative Counsel

You have requested a sectional summary of the above-described bill.

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

Section 1 makes a nomenclature change to "house" districts from the current "election" districts. Obsolete language is deleted from original constitutional text .

Section 2 deletes obsolete language from original constitutional text.

Section 3 removes the authority of the governor to reapportion, and retains only redistricting authority.

Section 4 requires establishment of 40 single member house and 20 single member senate districts.
Section 5 establishes the method of redistricting.

Section 6 establishes the criteria for the advisory redistricting board.

Section 7 makes nomenclature changes to eliminate reapportionment references.

Section 8 makes nomenclature changes to eliminate reapportionment references, and to specifically allow for judicial review of governor's acts or failure to act. Priority is given to redistricting cases in the superior and supreme court.

Section 9 makes a nomenclature change to "house" districts from the current "election" districts in initiative petition requirements.

Section 10 deletes obsolete language from the original constitutional text, and deletes sections no longer applicable to redistricting.

RAG:jdr
98-153.jdr

ALASKA STATE LEGISLATURE

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Sen. Drue Pearce, Vice Chair
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Sen. Sean Parnell
Sen. Johnny Ellis

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Senate Judiciary Committee

SPONSOR STATEMENT

SJR36 - SINGLE MEMBER DISTRICTS

SJR36 proposes to amend Article 6 and Article 14 of the Alaska Constitution.

Article 6 addresses legislative reapportionment. We are proposing changes to reflect rulings by the United States and Alaska Supreme Courts, and to enshrine single member legislative districts in the Alaska Constitution. The U.S. Supreme Court rulings, *Baker v. Carr,* 396 U.S. 267, issued in 1962, and *Reynolds v. Sims*. 377 U.S, 567, issued in 1964, established the so-called "one person, one vote" apportionment rule. The result of these decisions is that all state legislative bodies in the United States are apportioned on the basis of population. The Alaska Constitution, as originally written, bases senate districts partly on population, and partly on geography. The Alaska Supreme Court rulings, *Wade v. Nolan,* Alaska 414 P.2d 689, in 1966, *Egan v. Hammond*, Alaska 502 P.2d 856, in 1972, and *Groh v. Egan*, Alaska 526 P.2d 863, in 1974 establish an equal basis for both civilian and military population.

Section 4 of SJR36 establishes single member legislative (House) districts. This change essentially "constitutionalizes" the status quo. Single member districts have proven to work well in Alaska and in many other states. Along with Alaska, several other states have shifted from multi-member to single member districts.

Finally, Section 9 of SJR36 repeals Article 14 of the Alaska Constitution. Article 14 sets out the original reapportionment schedule, which is now obsolete.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SJR36

Revision Date (Note if correction)

Dept. Affected: Office of the Governor

Title: Const. Amend: Relating to redistricting of the legislature

BRU: Elective Operations

Component: General and Primary

Sponsor: Senate Judiciary Committee

Requester: Senate Judiciary Committee

Component Serial No. #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by: Gail Fenumiai — Phone: 465-3935

Division: Division of Elections — Date: 3/6/98

Approved by C: Lt. Governor Fran Ulmer — Date: 3/6/98

Agency: Office of the Lieutenant Governor

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MEMORANDUM January 29, 1998

SUBJECT: Redistricting resolutions: HJR36/HJR 44
(Work Order No. 20-LS0939)

TO: Representative Joe Green

FROM: Richard A. Glover - RAG
Legislative Counsel

You have asked several question regarding two similar resolutions now being considered by the legislature related to legislative redistricting. A summary of each of your questions and my answer for each follows:

1. If both [resolutions] pass, do both [resolutions] appear on the ballot? Yes. The procedure for placing constitutional amendments before the voters is described in AS 15.50. AS 15.50.010 specifically states "The lieutenant governor shall prepare a proposed ballot title and proposition for *each* amendment to the state constitution proposed by the legislature...." (Italics added.) The duty to place each on the ballot appears in AS 15.50.030: "The lieutenant governor *shall* direct the director to place the ballot title and proposition on the ballot for the next statewide general election held after the amendment proposed by the legislature...." (Italics added.)

2. Do the [resolutions] appear as written? The actual resolutions do not appear on the ballot: the lieutenant governor is to prepare ballot titles and propositions. AS 15.50.020 describes each: "The ballot title shall, in not more than six words, indicate the general subject of the act. The proposition shall, in not more than 100 words, give a true and impartial summary of the amendment proposed." Three copies of the actual resolutions are displayed in the room where the election is held. AS 15.50.050.

3. Does the attorney general review ballot measures proposed by the legislature? There is no statutory requirement for the attorney general to do so. However, under AS 44.23.020 the attorney general shall "give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature."

4. If the attorney general reviews a ballot measure proposed by the legislature, would he or she consolidate or delete language from one of our prospective HJR's? No. Only amendments *proposed by the legislature* and supported by a two-thirds vote in each house

can be considered by the lieutenant governor for presentment to the electorate for vote, and subsequent adoption. AS 15.50.010(a) and Article XIII, section 1. Any language that was not properly proposed by the legislature cannot be considered.

In the course of giving legal advice upon request of the legislature or legislator(s), the attorney general may certainly give suggestions for altering the language in a *prospective* joint resolution, subject to subsequent 2/3 majority vote making it a formal proposal by the legislature.

5. In the engrossment and enrollment process, would the revisor of statutes consolidate or delete duplicative language in the resolutions? No. The revisor of statutes has no authority to do so. AS 01.05.031(a) states: "... [T]he revisor of statutes shall revise for consolidation into the Alaska Statutes... all *laws* of a general and permanent nature and all *laws* of a temporary or special nature *enacted by the legislature*." (Italics added.) A resolution is not a *law* of the state, and a constitutional amendment approved by the electorate and certified by the lieutenant governor has not been *enacted* by the legislature.

AS 01.05.031(b) does not contain the limiting phrase "enacted by the legislature", but it nevertheless applies only to "laws". It states, "The revisor shall edit and revise the laws for consolidation without changing the meaning of any law in the following manner: . . ." As mentioned earlier, a resolution is not a "law." Even if the revisor were given authority to revise resolutions, he or she could not make any <u>substantive</u> changes since amendments are to be proposed by the <u>legislature</u>, not the revisor. Finally, the revisor has no power to revise the constitution (or amendments to it) nor could a statute give the revisor that power.

Summary: If duplicative or conflicting amendments to the constitution are adopted by the electorate, they both become part of the constitution. The courts will be required to interpret and apply both simultaneously.

If I may be of further assistance, please advise.

RAG:jdr
98-044.jdr

Change in Multimember Legislative Districts from 1980s to 1990s

state	State Senates						State Houses					
	Total Number of Districts		Number of Multimember Districts		Largest Number of Seats in a District		Total Number of Districts		Number of Multimember Districts		Largest Number of Seats in a District	
	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s	1980s	1990s
Alaska	14	20	6	0	2	1	27	40	13	0	2	1
Arizona							30	30	30	30	2	2
Arkansas							84	97	10	2	3	3
Georgia							156	180	15	0	5	1
Idaho	33	35	6	0	3	1	33	35	33	35	6	2
Indiana							77	100	16	0	3	1
Maryland							59	62	45	44	3	3
Nevada	14	16	7	5	2	2						
New Hampshire							175	132	103	74	10	36
New Jersey							40	40	40	40	2	2
North Carolina	35	42	13	8	3	2	72	98	30	17	4	3
North Dakota	53	49	2	0	2	1	53	49	53	49	2	2
South Dakota							35	35	35	35	2	2
Vermont	13	13	10	10	6	6		108		42		2
Washington							49	49	49	49	2	2
West Virginia	17	17	17	17	2	2	40	56	26	23	12	7
Wyoming	18	30	5	0	4	1	23	60	15	0	9	1

Source: National Conference of State Legislatures

HJR 36 - REAPPORTIONMENT BOARD & REDISTRICTING

Number 0076

CHAIRMAN GREEN announced the first item of business was House Joint Resolution No. 36, proposing amendments to the Constitution of the State of Alaska relating to redistricting of the legislature, and repealing as obsolete language in the article setting out the apportionment schedule used to elect the members of the first state legislature.

JACK CHENOWETH, Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, explained that since not long after statehood, it has been clear that provisions covering legislative apportionment are out of sync with constitutional requirements first laid down by the United States Supreme Court in the early 1960s. This resolution would conform Alaska's constitutional scheme to those requirements. It would also require that in future legislative districting schemes, only single-member districts would be used.

MR. CHENOWETH noted that HJR 36 deals principally with Article VI, the legislative apportionment article of the constitution. Section 1 of Article VI talks about election districts, the "term-of-art" used to describe the districts in which House members run for election or re-election. Section 1 of HJR 36 deletes obsolete language that refers to the first reapportionment and the reference to Article XIV, Section 1, substituting a requirement that the boundaries of election districts be drawn in conformity with other provisions of this article after each decennial census of the United States. A parallel change is made in Section 2 for Senate districts.

MR. CHENOWETH referred to Section 3 and said he is recommending substitution of the term "redistricting" throughout this article. "Reapportionment" is a term generally reserved to amending or changing the number of representatives within fixed political boundaries. For example, every ten years when the census comes out, the United States Congress is reapportioned, with states gaining or losing seats based on population changes. The shift of seats from one jurisdiction to another having fixed boundaries, such as state boundaries, is a true reapportionment; the number of seats is reallocated among these jurisdictions.

MR. CHENOWETH explained that within jurisdictions, however, the process of drawing lines is a simple redistricting, which is what is going on with state legislatures. The United States Supreme

Court has made it clear that only resident population count can serve as the basis for the line-drawing and that any effort to tie this to some sort of fixed, permanent or semi-permanent lines will not sit well with the courts. This is a simple redistricting of Alaska into 20 Senate seats and 40 House seats. Section 3 of HJR 36 simply substitutes the term "redistricting" for "reapportionment", and that change is made throughout the rest of the resolution.

MR. CHENOWETH referred to page 2, line 7, and said it also substitutes the word "resident" so that "resident population" rather than "civilian population" is the basis for redistricting. The limitation of tying this to a civilian population was set aside by an early state supreme court case. "And we have to go with some sort of resident-based population scheme," he concluded.

Number 0365

MR. CHENOWETH said Section 4 deletes current language that talks about how reapportionment shall be developed and substitutes the requirement of single-member districts. "The Governor is to establish single-member election districts and is to establish Senate districts composed of two contiguous election districts, with each Senate district to elect one Senator," he explained. "That's the scheme that we now have in place."

MR. CHENOWETH explained that Section 5 reworks Article VI, Section 6. It deletes some language that ties back to reapportionment and keeps in place the only language that seems to be pertinent to how lines are to be drawn, the language that the reapportionment boards in the past, and the courts in their review of the work of the Governor, have looked back at and used to consider these reapportionment decisions.

MR. CHENOWETH noted that Section 6 changes the board's name to the "Redistricting Board". It maintains the requirement of a geographic spread but unties this from the notion of fixed Southeastern, Southcentral, Central and Northwestern Senate districts, which are the fixed districts used in the original constitution; it substitutes the four judicial districts established by law and authorized under Article IV, Section 1.

MR. CHENOWETH said Section 7 simply is a change in name from "Reapportionment" to "Redistricting". Section 8 updates some references to the Governor, removing a gender-based pronoun and substituting a neutral term. It also makes further substitutions of "redistricting" for "reapportionment".

MR. CHENOWETH said Section 9 deletes two sections of Article VI made obsolete by United States Supreme Court decisions: Section 5, which talks about combining House districts in order to maintain Senate districts in the old fixed-boundary scheme, and Section 7 (misstated as Article VII), which talks about modification of Senate districts when necessary to accommodate population shifts.

MR. CHENOWETH stated, "We also propose to repeal Article XIV, which is a provision that sets out the initial reapportionment dating from 1959. It's not used anymore. It has no standing anymore. Article XIV is simply a device or a vehicle by which we generally restate the current apportionment, so that it can be found in the statute books. It's typically an annotation of some sort that describes the boundaries of the current apportionment, so at least we have it someplace out in the public and they can find it. Every time there's an apportionment change, every ten years, that change is made. But ... the original language of Article XIV is of no value anymore." He concluded by saying Section 10 is a boiler plate to get this before the voters in November 1998.

Number 0570

REPRESENTATIVE ERIC CROFT asked whether the major change is "constitutionalizing" single-member districts.

MR. CHENOWETH said yes, for both the House and the Senate.

REPRESENTATIVE CROFT asked, "Do you mean any change in current law when you make the switch from 'civilian' to 'resident,' that is, the law that we're forced into by the federal interpretation?"

MR. CHENOWETH replied, "Yes, we are following the requirements that have been imposed by, chiefly, recently, state supreme court decisions that have eliminated the use of 'civilian' and required that we go to a resident population base. And the state supreme court has suggested ways in which it is possible to take, for example, the military count, and try to allocate some number of estimated military that reflect a better split between resident and nonresident."

REPRESENTATIVE CROFT asked whether it conforms to current practice in that regard.

MR. CHENOWETH affirmed that.

REPRESENTATIVE CROFT referred to the term "contiguous" and said

he'd read some of those cases. Because of geography, Alaska has an interpretation somewhat different from other states. For example, Alaska has one Senate district and two House districts separated by 700 miles of ocean; those are considered "contiguous." He stated, "So, we don't mean any change in that."

MR. CHENOWETH concurred.

REPRESENTATIVE CROFT asked, then, whether the sole substantive change is locking in single-member districts. If this were current law and these changes had been made two years ago, would what they are doing now be legal?

MR. CHENOWETH said yes.

Number 0714

REPRESENTATIVE ETHAN BERKOWITZ asked for confirmation that there is no constitutional problem with the existing structure, from a federal perspective.

MR. CHENOWETH replied that what problems there might be, the state courts have generally worked their way around. They have looked at decisions of the United States Supreme Court and accommodated as best as they've been able to, pointing out that this is an article in need of revisitation and amendment, in light of decisions from the United States Supreme Court and their own practices.

REPRESENTATIVE BERKOWITZ indicated the Hickel case is the only related case he has read, although there may be others. He asked, "What, generically, are the concerns i the courts?"

MR. CHENOWETH answered, "Well, the courts have had to fill in, if you will. They have had to assume responsibility where there was no literal expression of responsibility for action taken by the Governor or by the reapportionment board as recommendations to the Governor. For example, there is no authority in law to adjust the terms of sitting Senators. The courts have filled in by saying that when there is a substantial change in a boundary, and a Senate district is increased substantially so that new faces are brought in or former constituents are let go of and put in a different district, ... there is an inherent authority to cut short by two years the Senate terms and require a Senator ... in a remade district to run again."

MR. CHENOWETH indicated there is nothing of that in the state constitution, adding, "They have simply accepted the fact that that

needs to be done, looked at the operation of that kind of a provision in other states and adapted it ... into this." He emphasized this is the one thing for which no express provision exists in the state constitution, nor is there an express provision for it in this resolution.

Number 0845

REPRESENTATIVE CON BUNDE asked why they weren't including that omitted provision here.

MR. CHENOWETH answered, "Well, I think you should. I think a complete package would be some sort of reference in here that the Governor has explicit authority to, under some kind of circumstances, cut short the terms of sitting Senators and require that they run for re-election. Now, I don't know how that's going to sit in the other body, and I certainly wasn't asked to make that change. I only throw it out on the table as the one piece of this puzzle that, as I went back and looked at this thing over the weekend, I thought perhaps we ought to put something in there so that the courts are not relying upon some assumed authority. Having rewritten Article VI, perhaps we ought to add that in and make that point clear."

Number 0919

REPRESENTATIVE BUNDE noted the lateness in the session and the expense required for a public vote on a constitutional amendment. He suggested they'd be remiss not to include as many housekeeping details as possible. He'd like to see that provision included.

REPRESENTATIVE BRIAN PORTER pointed out that the Governor can make the appointment to the districting board without confirmation by or concurrence of the legislature. He asked whether it would be a friendly amendment to add that.

Number 1001

CHAIRMAN GREEN said that was a good thought. He mentioned the "two concepts" and asked Mr. Chenoweth whether there is a way to tighten this so that nothing is left to chance. They'd been working this way at least as long as he'd been in the state, that "every decennial election, the Senators just serve two terms, and then everybody starts from scratch again; but this would codify it."

REPRESENTATIVE PORTER indicated his own suggestion about confirmation had been somewhat facetious.

CHAIRMAN GREEN clarified that he was discussing the prior issue. Although it wasn't essential to do it immediately, he wondered whether there was a way to modify it, possibly for review at a future meeting.

MR. CHENOWETH said he believed that could be accomplished. It may only be necessary to add a sentence or a fraction of one that invites the published final plan to indicate some determination on the terms of Senators then in office, or words to that effect.

CHAIRMAN GREEN said he perceived that to be the will of the committee, according to comments.

REPRESENTATIVE CROFT asked whether there would be other witnesses.

CHAIRMAN GREEN replied that no one was on teleconference, but Mr. Baldwin was signed up to testify locally.

Number 1114

JAMES BALDWIN, Assistant Attorney General, Governmental Affairs Section, Civil Division (Juneau), Department of Law, came forward to testify, saying Representative Croft's questions had pretty well covered what he wanted to clarify that day. The people in his area of the department generally end up advising the reapportionment board. He said, "I guess I've been through about three or four, but not that many governors. It seems like there's been more reapportionments than there have been governors because of the way these things get into litigation. And we seem to have to do them more than once per ten-year cycle."

MR. BALDWIN indicated the application of the federal voting rights act has made their job increasingly complicated over time. He explained, "It seems like we do the plan, we get through our courts, and then we have to get through the Justice Department for pre-clearance, which then seems to make us have to go through another cycle again." Mr. Baldwin is concerned, with this legislation particularly, about abandoning some current flexibility in techniques to bring forward reapportionment plans. He stated, "If you go strictly to a single-member-district approach, then you give up the ability to go to multi-member districts, if that would serve our interests and perhaps assist us in gaining pre-clearance from the Justice Department."

MR. BALDWIN said he couldn't pose a particular set of facts that would cause that to arise. "But I've been having a terrible time

doing that for every reapportionment plan we've come up with; there's always been something new that comes up to cause us a hurdle before the Justice Department," he stated. "So, I just ask the committee to consider that fact. As our population grows and it shifts, and we know it's shifting somewhat, particularly towards the Mat-Su area of the state, it's going to take a larger population for rural areas of the state; they're going to have to come in and pick up, perhaps, what we call the 'fringe areas' of the municipalities and more higher-populated areas."

MR. BALDWIN said it might be possible they'd need to go to multi-member districts to solve some particular problem. Under the current interpretation of the state constitution, they can go to single-member districts if the Governor desires that. Mr. Baldwin advised members, "Not knowing who the next Governor is going to be that's going to be writing the next plan, you might want to keep in mind leaving that option open to him or her."

MR. BALDWIN expressed concern that being required to go to single-member districts may affect rural areas more than urban areas. While he wasn't saying they'd want to do multi-member districts in rural areas, they may need to do so in urban districts in order to make things work in the rural areas. Or they could possibly be into retrogression, which he called a "nasty word in the area of voting rights." Mr. Baldwin explained, "In other words, the minorities who are represented now would lose representation. And ... mathematically, if that works out, if demographically that works out, we have to do that, that's fine. But ... if it can be done another way, the Justice Department is going to be there, and I don't know what the outcome would be, lacking the flexibility that we have now. So, ... I really hate this saying, but 'if it ain't broke, don't fix it' might well apply here."

MR. BALDWIN said he believed the testimony earlier was that the requirement of districting only resident population is not intended to be a change from anything now in effect. He stated, "Our supreme court was not quite so direct in the way it said that contiguity can include expanses of water. And I want to make sure that in here you're not saying 'contiguous' in its plain meaning, which means right up against one another. We can't lose that flexibility, because geography just works against us in so many ways, and particularly getting things to work. So, I'm glad that you're creating a strong record for that."

Number 1380

MR. BALDWIN noted that it was nearly the end of session. If this resolution did not pass both houses, he asked the committee to carefully consider studying this matter in the interim, particularly with regard to single-member districts. He mentioned "knowing better what's going into the building blocks of the census, which is being put together now, whether there isn't going to be enough evidence there to perhaps lead to a decision that we don't need to abandon this flexibility that we have now."

MR. BALDWIN commented that from a Governor's perspective, single-member districts are good because a veto can be done "surgically," by district. However, from the realities of reapportionment or redistricting, it may cause real problems for the next Governor.

Number 1432

CHAIRMAN GREEN indicated they had used this method since the 1992 election. He asked whether there wasn't a significant influx and shifting of population in the 1980s. He said it seems the concerns Mr. Baldwin expressed were handled well in single-member districts. He asked, "Do you anticipate some reason why that won't continue to be handled well with single-member districts?"

MR. BALDWIN said the only thing he can successfully anticipate is that there will be litigation over the plan, one way or another. There have been a couple of supreme court cases recently on using minority voters as a criteria. While he can't foresee the affect of that, he predicts Alaska will be in a "fight over retrogression" in the next reapportionment. He explained, "When you go into these reapportionment efforts, the Justice Department generally sticks you with a benchmark as to ... how many minority-influence seats you have, how many majority seats you have. And if the way we go into it forces us into a retrogression situation, I see long and protracted litigation, with uncertain results at the end of the tunnel."

REPRESENTATIVE PORTER asked, "With the feds?"

MR. BALDWIN replied, "I think with the minorities, and the feds will be as a part of it, yes. They will be ... in the litigation as well." He said for a state like Alaska, which is closely monitored under the voting rights act, the best situation is not to have retrogression but to maintain the benchmarks, if at all possible. While it is hard to predict what will happen, he anticipates that is what Alaska will be confronted with. There might be ways to avoid it.

MR. BALDWIN stated, "Keeping the maximum powers in the hands of the Governor to do that, (indisc.) in the board to do that, would be my preferred alternative. But it's not the best." He pointed out there is much good to be said for single-member districts. Campaigns are cheaper and easier. It is easier to maintain "one person, one vote." Constituents don't need to feel that they can't tell who their representative is, and there is a more direct relationship. Mr. Baldwin stated, "There's all those good things, but when you get right down to the problems that we have with a small population, a large area of geography and much water and all those factors brought to bear, tying your hands to one method of redistricting might not be what would serve the interests of ... the state as a whole."

Number 1596

CHAIRMAN GREEN suggested that when one looked at the demographics of the districts as they were done, and the number of minorities and other factors, it looked pretty good across the state. "To then say that it might be better to go to multiple-member districts and potentially get back into the 'doughnut' district or Valdez being tied in with South Anchorage, I mean, those kinds of things seem to be much more confusing and much more potential for litigation than to go to an area where the constituency is far more aware of who their representative really is," he said.

REPRESENTATIVE JEANNETTE JAMES agreed with Mr. Baldwin's reasons why a single-member district is important. She indicated she'd prefer not to have an option, which they may use when they don't need to. She'd never yet seen a redistricting without litigation. She feels much more comfortable with a single-member district because of the "one man, one vote" issue and because the people know who represents them. She believes those are important issues.

REPRESENTATIVE JAMES indicated she understands about losing members from rural areas. However, in the next ten years there may be a surge in the rural areas, particularly if they get some of the anticipated development. She asked whether "maybe it ought to be left that the option is only a single-member district and then, should we see a problem with that coming in the future, that we then go to the voters to ask for a change." She added, "Maybe that's not wise, because maybe most of the voters are in the areas who love to have more representation than less out there; I don't necessarily think that's true." She asked Mr. Baldwin to respond to that way of looking at it.

Number 1708

MR. BALDWIN replied, "I don't think it's harder to come up with a list of ... why you'd want multi-member districts, first off. I think there's a list of reasons for that, too, and because of the other criteria in the constitution about compactness and socioeconomic interrelatedness, which are the other criteria in the constitution, it might well be able to state a case that an area, for example, Juneau, which ... has in past reapportionment plans, before the one we're in, has had multi-member districts, and probably for a good reason. It's hard to see any division line between the town and the [Mendenhall] Valley, for example, and there have been other areas in the state that are like that, that have benefitted from having multi-member districts."

MR. BALDWIN said he didn't know what the process would be for the voters to come back and change it at some point in the future. He stated, "I mean, we have a reapportionment, and we try to do a plan and have it done so it can be in place for another ten years. And to interrupt that in the middle of a cycle, which is what we've done the last couple of times because of litigation, has been very disruptive to the electoral process. Can you imagine the Division of Elections scrambling to try and get their precinct lines and regulations done for an election when you don't know what the districts are going to be? It's really pandemonium." He said he wouldn't recommend an approach like that, if he understood the question correctly.

Number 1777

REPRESENTATIVE JAMES mentioned a lawsuit "determined on a national level last year" about gerrymandering in the South. In her own district, she noted that they'd "zeroed out Nenana to meet some population, Native population, and left me with less people in my district than other districts," but within the parameters allowed. She asked whether that court decision would have precluded that from happening and whether Mr. Baldwin was familiar with it.

MR. BALDWIN replied, "Yes, I am. I don't think so. Representative Croft and I've argued about this a little bit; he doesn't quite see it my way. But I think that in Alaska we did our redistricting considering not only race; we also considered the other traditional criteria, which are compactness and socioeconomic connectedness. At the same time, we did the adjustments which were required, we thought, to meet pre-clearance requirements. It's only when you're doing it based completely on race, without any other criteria, that you fall into the realm of those U.S. Supreme Court cases involving Texas and Georgia. So, if that was your ... sole criteria, you did

it just because of race considerations, then you're going to have violated the U.S. Constitution."

Number 1874

REPRESENTATIVE PORTER indicated that if it wasn't the sponsors' desire to get this past both bodies this year, he was only being facetious regarding confirmation of the board by the legislature to the extent that he believed this was a "slam-dunk" housekeeping legislation. However, if the main feature needs looked at further, this would be the appropriate committee to perhaps look at "a much bigger element of this whole area."

REPRESENTATIVE PORTER explained, "I would think that it would be appropriate to try to get a procedure to put in place a board that would look at redistricting from a position of what is the most appropriate - under the law - district to put in place for the betterment of the voters of the state of Alaska, instead of, 'How much partisan gerrymandering can we do and get away with it?' And I'm not saying that one party does this any better or worse than the other party. I mean, we've been here long enough to know that they both do it. So, if it is that we have a desire to work on this over the interim, I would be happy to try to work on that element also."

CHAIRMAN GREEN indicated changing that would raise a concern. He asked whether Mr. Baldwin had indicated, in response to Representative Porter's mention of this earlier, that the Administration would be more concerned about the resolution if they modified the strong gubernatorial input in selection of the board.

MR. BALDWIN suggested that may have been Mr. Chenoweth. He said it wasn't brought up while he was present.

CHAIRMAN GREEN asked, "So, you don't see any problem with that?"

MR. BALDWIN laughed, then said, "I think that the constitution is just fine, as far as having the Governor appoint the board. That was a decision that was hotly debated in the minutes of the constitution. ... They felt that the legislature, while a[n] exceedingly wise organization, maybe was not best suited for ... making reapportionment decisions."

Number 2004

REPRESENTATIVE CROFT suggested if they knew anything after this history, it's that the legislature doesn't want to be involved in

rewriting its own boundaries. While to some extent it's up to the vagaries of who is in office every decade and there have been some games, he can't imagine the games there would be if the legislature were in charge of that.

Number 2024

REPRESENTATIVE PORTER responded that he certainly wasn't suggesting that. He was suggesting trying to establish a neutral board without gubernatorial or legislative direction on how to try to gerrymander the districts. He said, "And if there's anybody here that doesn't think that that isn't what's happened the last 10, 20, 30, 40 years, I'll talk to you after we get off the record."

Number 2050

REPRESENTATIVE BUNDE brought up questions he'd like to have addressed if this was worked on during the interim. First, do other states have both single-member and multiple-member districts in the same body? And have other states gone from having single to multiple members? He understood that most have gone from multiple to single, for many good reasons, and while he understood the plea for flexibility, "we may need a socket set here but we've got a crescent wrench; maybe we don't need to keep the crescent wrench."

MR. BALDWIN replied that he didn't know the answer but would be happy to research it.

Number 2107

CHAIRMAN GREEN asked whether there were further comments. Speaking as both sponsor and chairman, he announced that HJR 36 would be held over and worked on during the interim.

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POSITION STATEMENT: Testified regarding HJR 36.

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