

HJR

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THE SUPREME COURT OF THE STATE OF ALASKA

JAMES W. BROOKS, former
Commissioner of the Alaska
Department of Fish and Game,
JOEL BENNETT, former member
of the Alaska Board of Game,
and WOLF MANAGEMENT REFORM
COALITION,

Appellants,

Supreme Court No. S-8676

Superior Court No.
4FA-97-879 CI

O P I N I O N

[No. 5066 - January 15, 1999]

PATRICK WRIGHT, ALBERT W.
FRANZMANN, ALASKA FISH AND
WILDLIFE CONSERVATION FUND,
and SCIENTIFIC MANAGEMENT OF
ALASKA'S RESOURCE TREASURES,

Appellees.

STATE OF ALASKA, OFFICE OF
THE GOVERNOR OF THE STATE OF
ALASKA, LIEUTENANT GOVERNOR
FRAN ULMER,

Appellant,

Supreme Court No. S-8685

Superior Court No.
4FA-97-2337 CI

PATRICK WRIGHT, ALBERT W.
FRANZMANN, ALASKA FISH AND
WILDLIFE CONSERVATION FUND,
and SCIENTIFIC MANAGEMENT OF
ALASKA'S RESOURCE TREASURES,

Appellees.

NOTICE TO COUNSEL: This opinion will be released to the press and public at 12:30 p.m. (Alaska time) on the date indicated. This copy is provided to counsel of record in advance. Prior to the release time, please do not inform persons other than your clients in this case of the outcome.

Clerk of the Appellate Courts

He points to resolutions passed by the legislature and Game Board endorsing snare trapping as evidence that the initiative is ill-conceived. We agree with Wright that such issues are sensitive and complex; indeed, "public policy stakes are usually high" in initiative law.²³ But the framers of the constitution chose to include the initiative process as a law-making tool with full knowledge of the risks inherent to direct democracy.²⁴ And the public's disagreement with legislative and administrative officials can just as easily be taken as evidence of the appropriate use of the initiative process. Additionally, safeguards exist in the process, allowing the legislature to repeal initiated legislation after two years and to amend such legislation at any time.²⁵ Concerned parties can also bring a post-election substantive challenge to what they may believe is an ill-advised law. As the Alaska Wildlife Alliance (AWA) points out, if any specific initiated law is "constitutionally infirm," it can be invalidated on that basis.²⁶

²³ M. Kathryn Bradley & Deborah L. Williams, "Be It Enacted by the People of the State of Alaska . . ." - A Practitioner's Guide to Alaska's Initiative Law, 9 Alaska L. Rev. 279, 302 (1992).

²⁴ See Thomas v. Bailey, 595 P.2d 1, 8 (Alaska 1979) ("The restrictions on permissible subjects for direct legislation represent a recognition . . . that certain particularly sensitive or sophisticated areas of legislation should not be exposed to emotional electoral dialogue and impulsive enactment by the general public.") (internal citation omitted).

²⁵ See Alaska Const. art. XI, § 6.

²⁶ See also Ovsichak v. State, Guide Licensing & Control Bd., 763 P.2d 488, 494-96 (Alaska 1988) (invalidating board's establishment of guide areas for hunting as violative of Article (continued.))

Alaska State Legislature

CHAIR
HOUSE HEALTH, EDUCATION
& SOCIAL SERVICES COMMITTEE

VICE-CHAIR
HOUSE JUDICIARY COMMITTEE

MEMBER
LEGISLATIVE BUDGET & AUDIT COMMITTEE
HOUSE SPECIAL COMMITTEE ON OIL & GAS
SELECT COMMITTEE ON LEGISLATIVE ETHICS

REPRESENTATIVE CON BUNDE

District 18

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Representative_Con_Bunde@legis.state.ak.us

SPONSOR STATEMENT

HJR3

Proposing an amendment to the Constitution of the State of Alaska relating to initiatives regarding natural resources belonging to the state.

The purpose of this proposed amendment is to raise the bar for the passage of all natural resources ballot initiatives. HCR 3 will require a natural resources initiative to obtain a two-thirds vote of the people voting in order to pass. By raising the bar for management of our resources, we encourage the possibility that scientific data, both pro and con, will be available to the public to persuade them of the validity of the issues.

Resource management should be well reasoned and based on sound scientific principles. As a state we want to avoid the proliferation of initiatives that plagued California. We want to maintain access to our natural resources.

Recently, the Supreme Court of Alaska in Brooks v Wright, Opinion No. 5066, January 15, 1999, found that the legislature does not have exclusive law-making powers over natural resources and that management of natural resources belonging to the state is an appropriate subject for an initiative.

Our State's historic voter turn-out is not to our credit. The number of people who vote in an election is relatively small in relation to the number of registered voters in our state. HCR 3 will prevent something as important as resource management from being dictated by the "majority of the moment". Alaskans cannot properly maintain the resources they depend on for a living if we don't participate in the process. Alaska is the Owner State; we all have a stake in assuring that our resources are managed by a clear majority.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR3

Revision Date: _____
Title: Const. Am: Wildlife Initiatives

Dept. Affected _____
BRU _____
Component _____

Sponsor: Representative Bunde
Requester: _____

Component Serial No. _____

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
------------------------	--	--	--	--	--	--

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	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)

No Fiscal Impact

Prepared by House Resources Committee Phone _____

- Lorali Meier, Aide Phone 465-3715

Lorali Meier Date 1-22-99

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM

January 18, 1999

SUBJECT: HJR 3; Proposed constitutional amendment relating to initiatives regarding natural resources belonging to the state (Work Order No. 21-LS0211D)

TO: Representative Con Bunde
Attn: Patti Swenson

FROM: George Utermohle *GU*
Legislative Counsel

In a prior memorandum regarding an early version of HJR 3, I mentioned that there was an unresolved constitutional issue as to whether the people may propose an initiative measure that relates to management of fish and game or other natural resources belonging to the state. The concern that I expressed was that by setting a supermajority vote requirement for approval of initiatives relating to natural resources, HJR 3 would be explicitly recognizing the right of the people to propose such initiatives.

Just last Friday, January 15, 1999, the Alaska Supreme Court settled the question as to the power of the people to propose initiatives regarding management of natural resources. In a case that challenged the constitutionality of the proposed initiative that sought to ban the snaring of wolves (Brooks v. Wright, Opinion No. 5066, January 15, 1999; URL: <http://www.alaska.net/~akctlib/sp5066.txt> (copy enclosed)), the court found that the legislature does not have exclusive law-making powers over natural resources and that management of natural resources belonging to the state is an appropriate subject for an initiative.

Now that it is clear that the people may propose initiatives relating to management of natural resources¹, it is possible for you to offer HJR 3 without unintentionally affecting the determination as to whether the people ever had the power to propose initiatives relating to natural resources.

If I may be of further assistance, please advise.

GU:glc
99-008.glc
Enclosure

¹ The power of the people to propose an initiative on any matter, including the management of natural resources, is subject to art. XI, sec. 7, of the Alaska Constitution which reads (in relevant part): "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."



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P.O. Box 22151, Juneau AK 99802 / Ph. 907-463-3366 / Fax 907-463-3312 / unite@akvoice.org

March 3, 1999

Attention:
House Resources Committee

The Alaska Conservation Voice is a coalition of twenty-seven conservation organizations representing over 15,000 individuals statewide.

We are opposed to HJR 3 on the grounds that it reduces legitimate involvement of Alaska citizens in formulating the laws of their state.

Public participation is a fundamental component of Alaska's system of government. The initiative process is valuable as it provides another check and balance in which the citizens of Alaska can directly participate.

It provides an escape valve for when the mechanisms of government are not responsive.

If the legislature does not agree with the results of a citizen-passed initiative, current law provides that you can amend or even completely do away with the initiative after two years.

Thus, it is within the legislature's power to correct any legitimate problems that might result from the initiative process.

We feel it is ill-advised for elected representatives of the citizens of Alaska to further restrict the public's right to participate in making the laws that the govern them.

If the legislature feels there is a problem with initiatives by-passing the normal regulatory process, we feel the solution lies in making that process itself more accessible to the public.

We also question why it is necessary to single out natural resources-related initiatives to be governed differently than initiatives on other subjects.

In conclusion, we urge you not to move this resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Shelton", with a long horizontal flourish extending to the right.

Kirsten Shelton
Lobbyist, ACV

Conserve Alaska. It's Only Natural.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 1, 1999

TONY KNOWLES, GOVERNOR

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Representative Scott Ogan, Co-Chair
House Resources Committee
State Capitol
Juneau Alaska 99811

Hand-Delivered

Re: HJR 3

Dear Representative Ogan:

Per your request to Jim Baldwin, enclosed are copies of some of the constitutional convention debates regarding art. XII, sec. 11 of the Alaska Constitution regarding initiatives and citations to it by the parties in the Brooks v. Wright case which addressed the placement of the wolf snare initiative on the ballot.

Please let me know if you require further information.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Kathleen Strasbaugh
Assistant Attorney General

KS:jn
Enclosures

cc: Representative Con Bunde, sponsor
John Lindback, Chief of Staff
Office of the Lieutenant Governor
Pa: Pourchot, Legislative Director
Office of the Governor
Frank Rue, Commissioner
Department of Fish and Game
Deborah Behr, Assistant Attorney General
James L. Baldwin, Assistant Attorney General

P.L.L.C., Anchorage, for Amicus Curiae Alaska Wildlife Alliance.

Before: Matthews, Chief Justice, Compton, Eastaugh, Fabe, and Bryner, Justices.

FABE, Justice.

I. INTRODUCTION

Various citizens and community organizations sought to remove from the ballot an initiative prohibiting use of snares to trap wolves. The superior court agreed to decertify the initiative, reasoning that the initiative process is "clearly inapplicable" to natural resource management under Article XII of the Alaska Constitution because the state's role as "trustee" over natural resources gives it exclusive law-making powers over natural resource issues. After concluding that the prohibition of wolf snare traps is an appropriate subject for initiative, we reversed the superior court's order and placed the initiative back on the November 1998 general election ballot, announcing that an opinion would follow. Voters rejected the initiative in the November 1998 general election.

II. FACTS AND PROCEEDINGS

In October 1997 Lieutenant Governor Fran Ulmer certified a ballot initiative which, if passed, would criminalize both the use of snares to trap wolves and the possession, sale, or purchase of wolf pelts known to have been taken by snare. The initiative, titled "An Act Relating to the Use of Snares in Trapping Wolves," reads in full:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

AS 16.05 is amended by adding a new section to read:

Section 16.05.784. PROHIBITED METHODS OF TRAPPING WOLVES.

(a) A person may not use a snare with the intent of trapping a wolf.

(b) A person may not possess, purchase, offer to purchase, sell, or offer to sell the skin of a wolf known by the person to have been caught with a snare.

(c) A person who violates this section is guilty of a Class A misdemeanor.

One month later, a group of two citizens and two community organizations (Wright) [Fn. 1] filed suit against the State challenging the constitutionality of the initiative. Wright argued that, by virtue of the state's role as trustee over Alaska's natural resources under Article VIII, the legislature has exclusive law-making power with respect to wildlife management issues.

Wright had filed a previous suit against the State challenging a separate initiative that prohibited same-day airborne hunting of certain wildlife. Several proponents of the airborne hunting initiative (Brooks) [Fn. 2] intervened in that suit. Brooks also filed briefs in this appeal. In December 1997 Superior Court Judge Ralph R. Beistline consolidated the wolf snare suit with the airborne hunting suit.

Although Judge Beistline ruled that the challenge to the airborne hunting initiative was untimely because the initiative had

already become law, he barred placement of the wolf snare initiative on the 1998 general election ballot. Relying on Justice Compton's concurrence in Pullen v. Ulmer, [Fn. 3] Judge Beistline reasoned:

It would be inappropriate to dictate to the legislature the method or tool it should use to manage wildlife. The effect of such restrictions would be to infringe upon the legislature's exclusive right to manage wildlife resources and would compromise the legislature's ability to fulfill its trust obligation to preserve Alaska's fish and wildlife for the common use of all Alaskans.

The State appealed the superior court's ruling on the wolf snare initiative. On June 2, 1998, we issued an order to expedite the appeal. On August 17, 1998, after hearing oral arguments in the case, we reversed the superior court's ruling and vacated the injunction, thereby placing the wolf snare initiative back on the ballot. We stated in our order that an opinion of the court would follow. In the November general election the voters rejected the initiative.

III. STANDARD OF REVIEW

This appeal centers around the constitutionality of using the initiative process to prohibit wolf snare traps. We review such questions of law de novo, applying our independent judgment and "adopt[ing] the rule of law which is most persuasive in light of precedent, reason, and policy." [Fn. 4]

When reviewing initiative challenges, we liberally construe constitutional provisions that apply to the initiative process. [Fn. 5] Specifically, we narrowly interpret the subject matter limitations that the Alaska Constitution places on initiatives. [Fn. 6] Still, we have a duty to give questions involving the propriety of an initiative's subject matter careful consideration because the constitutional right of direct legislation is [also] limited by the Alaska Constitution." [Fn. 7]

Pre-election review of challenges to ballot initiatives is limited to ascertaining "whether [the initiative] complies with the particular constitutional and statutory provisions regulating initiatives." [Fn. 8] But "[g]eneral contentions that the provisions of an initiative are unconstitutional are justiciable only after the initiative has been enacted by the electorate." [Fn. 9] Hence, our review of the initiative at this stage is limited to whether the subject matter is constitutionally permissible.

IV. DISCUSSION

Articles XI and XII are the only provisions of the Alaska Constitution that explicitly mention the initiative process. Article XII describes when the people of Alaska may use the initiative to propose and pass legislation:

LAW-MAKING POWER. . . . Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI. [Fn. 10]

In turn, Article XI imposes certain subject matter restrictions on initiatives:

SECTION 7. RESTRICTIONS. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. [Fn. 11]

Wright does not claim on appeal that the wolf snare initiative falls within one of the enumerated Article XI limitations. [Fn. 12] Rather, he only argues that, under Article XII, the initiative process is "clearly inapplicable" to natural resource management decisions because of the state's role as trustee over wildlife and other natural resources. We first discuss whether wildlife management is "clearly inapplicable" to

the initiative process based on the language and framers' understanding of Articles XI and XII. We then address whether the state's trustee-like duty set forth in Article VIII implies that the public may not propose initiatives relating to wildlife management.

A. Whether Wildlife Management Is "Clearly Inapplicable" to the Initiative Process Based on the Language and History of Articles XI and XII

To determine whether the subject matter of wildlife management is clearly inapplicable to the initiative process, we look first to the language and history of the constitutional provisions regarding the initiative process.

We apply basic rules of statutory construction when interpreting the Alaska Constitution. [Fn. 13] When construing constitutional provisions, we use our independent judgment, "adopting a reasonable practical interpretation in accordance with common sense based upon the plain meaning and purpose of the provision[s] and the intent of the framers." [Fn. 14] We also "look to the meaning that the voters would have placed on [the] provision." [Fn. 15] Although the restrictions included in Article XI are relatively straightforward and easy to decipher, the meaning of the phrase "clearly inapplicable" in Article XII is less obvious. We therefore look to the intent of the framers for guidance in interpreting the provision.

The debates about the initiative process at the Alaska Constitutional Convention make clear the framers' understanding of the phrase "clearly inapplicable" in Article XII. During the discussion of what is now Article XII, sec. 11, Delegate George McLaughlin, chair of the Judiciary Committee and author of the proposed language, explained that use of the phrase "the legislature" in an article marked the delegates' intent to make the article subject to the initiative process as well:

What do I mean here by "unless clearly inapplicable"? . . . Certainly we wouldn't intend, where you read in the article on the judiciary that the supreme court may adopt rules which may be, in substance, disapproved by two-thirds of each house of the legislature, because it was obviously meant from that context that that couldn't be subject to the initiative, and so we are clearly indicating here that where we use the expression "by the legislature" or the expression "the legislature" we mean completely, thoroughly, and wholeheartedly know that it is subject not only to the initiative but to the referendum, and where it is clearly inapplicable, even 55 idiots would agree that it was inapplicable. [Fn. 16]]

The convention adopted McLaughlin's proposed language shortly after he gave this speech. [Fn. 17]

Delegate Victor Fischer, in response to a motion to make "the legislature" signify exclusively the legislature, argued that such an interpretation would leave "hidden meanings" in the constitution that would limit the people's legitimate use of the initiative:

I don't think it is right for us as an afterthought to start going through the whole constitution and add additional items that are not subject to the initiative. . . . If

you believe that certain items should be exempted let's put them into Section 3 of Article 3 [later renumbered as art. XI, sec. 7] and specifically exempt them from the initiative instead of going through each article, section by section, and by hidden meanings prevent the people from exercising the initiative. [Fn. 18]] Shortly after Fischer's speech, the motion to narrow the intended meaning of the term "the legislature" was defeated by a 2-1 margin.

[Fn. 19]

The framers chose to use the phrase "the legislature" in Article VIII, which concerns natural resource management:

GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people. [Fn. 20]

Such language evidences the delegates' intent that natural resource issues would be subject to the initiative. Indeed, unlike the Judiciary Committee, [Fn. 21] the Resources Committee made no effort to have the subject matter of Article VIII excluded from the initiative process. If we were to grant the legislature an exclusive right to propose wildlife legislation based on the state's role as "trustee" over wildlife under Article VIII, we would be relying on the very hidden meanings against which Fischer warned and that the delegates at the constitutional convention squarely rejected.

Even if Article VIII had not contained the words "the legislature," the subject of wildlife management is not so clearly inapplicable to the initiative process as to pass Delegate McLaughlin's "55 idiot" test. The convention debates suggest the framers added "clearly inapplicable" to Article XII so that the initiative would not replace the legislature where the legislature's power serves as a check on other branches of government, such as legislative power to define courts' jurisdiction or override judicial rules. [Fn. 22] This separation-of-powers concern does not exist with respect to natural resource issues under Article VIII. Hence, the debates do not support an interpretation of Article XII that would grant the legislature exclusive law-making powers over natural resource management on the grounds that such subject matter is "clearly inapplicable" to the initiative process.

Wright argues that natural resources issues are "sensitive and sophisticated" in Alaska, and therefore should be free from the "impulsive enactment of laws by the general public." He points to resolutions passed by the legislature and Game Board endorsing snare trapping as evidence that the initiative is ill-conceived. We agree with Wright that such issues are sensitive and complex; indeed, "public policy stakes are usually high" in initiative law. [Fn. 23] But the framers of the constitution chose to include the initiative process as a law-making tool with full knowledge of the risks inherent to direct democracy. [Fn. 24] And the public's disagreement with legislative and administrative officials can just as easily be taken as evidence of the appropriate use of the initiative process. Additionally, safeguards exist in the process, allowing the legislature to repeal initiated legislation after two years and to amend such legislation at any time. [Fn. 25] Concerned parties can also bring a post-election substantive challenge to what they may believe is an ill-advised law. As the Alaska Wildlife Alliance (AWA) points out, if any specific initiated law is "constitutionally infirm," it can be invalidated on that basis. [Fn. 26]

Finally, the delegates' decision to submit Ordinance 3, which banned commercial salmon traps, for voter ratification along with the rest of the constitution evidences the delegates' and voters' understanding that wildlife management issues would be subject to direct democracy. The wording of the referendum submitted to the people emphasized the public's role in the decision to abolish fish traps:

As a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, to conserve the rapidly dwindling supply of salmon in Alaska, to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska, the use of fish traps for the taking

of salmon for commercial purposes is hereby prohibited in all the coastal waters of the State. [(Fn. 27)]

Those delegates opposed to submitting the ordinance to the voters argued that the matter should be resolved by future state legislative action rather than by popular vote. [Fn. 28] A motion to this effect was defeated by a 42-12 vote. [Fn. 29] After ratification, we held that Ordinance 3 was a valid modification of the territorial laws. [Fn. 30] We viewed Ordinance 3, and by implication the process through which it was adopted, as being consistent with the state's management responsibilities for wildlife and other "property of the state, held in trust." [Fn. 31]

Thus the language and framers' understanding of Articles XI and XII, along with the chosen wording of Article VIII and the inclusion of Ordinance 3 for ratification, suggest that natural resource management is not, as Wright contends, "clearly inapplicable" to the initiative process.

B. Whether the Legislature Has Exclusive Law-Making Powers over Wildlife Management by Virtue of the State's Trustee-Like Duties under Article VIII

Article VIII of the Alaska Constitution concerns the management of natural resources:

SECTION 3. COMMON USE. Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses. [(Fn. 32)]

Wright argues that these clauses establish a "public trust" for management of the state's wildlife, with the State of Alaska as "trustee" and the people of Alaska as the intended beneficiaries. From this premise, Wright further claims that the state, as part of its fiduciary duty, retains exclusive law-making authority over natural resource issues. We disagree.

We have frequently compared the state's duties as set forth in Article VIII to a trust-like relationship in which the state holds natural resources such as fish, wildlife, and water in "trust" for the benefit of all Alaskans. [Fn. 33] Instead of recognizing the creation of a public trust in these clauses per se, we have noted that "the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state." [Fn. 34]

We have applied the public trust doctrine to cases involving exclusive grants of natural resources by the state. In CWC Fisheries, Inc. v. Bunker, [Fn. 35] we held that a holder of a state-granted fee interest in tidelands takes the land subject to a public easement. [Fn. 36] We based our holding in part on the state's public trust responsibilities with respect to tideland conveyance, [Fn. 37] but did not address whether Article VIII creates a public trust per se or whether such responsibilities preclude public participation in natural resource management decisions. Furthermore, we suggested that expansion of the public trust doctrine to include all or most public uses merely because it has been applied to a particular public use would be inappropriate. [Fn. 38]

A few months after CWC Fisheries, we clarified in Owsichuk v. State, Guide Licensing & Control Board that the purpose of the public trust doctrine was not to grant the legislature ultimate authority over natural resource management, but rather to prevent the state from giving out "exclusive grants or special

privilege as was so frequently the case in ancient royal tradition." [Fn. 39] Hence, the State of Alaska acts as "trustee" over wolves and other wildlife not so much to avoid public misuse of these resources as to avoid the state's improvident use or conveyance of them.

Indeed, in *Owsichek*, after a discussion of the holding in *CWC Fisheries*, we emphasized that the state's duties with respect to natural resource management under Article VIII "[are] to be exercised like all other powers of government, . . . and not as a prerogative for the advantage of the government as distinct from the people." [Fn. 40]

Wright relies on a recent case, *Baxley v. State*, [Fn. 41] to argue that we should apply basic principles of private trust law to the trust-like relationship described in Article VIII. In *Baxley*, we referred to the public trust doctrine in examining the propriety of four state oil leases in the Beaufort Sea:

The public trust doctrine provides that the State holds certain resources (such as wildlife, minerals, and water rights) in trust for public use and that government owes a fiduciary duty to manage such resources for the common good of the public as beneficiary. [Fn. 42]

Although we declined to address in *Baxley* whether the state had breached its fiduciary duty, we relied on another case, *State v. Weiss* (*Weiss I*), in noting that we should apply "basic principles of trust law to public land trusts." [Fn. 43]

But, unlike this case, *Weiss I* involved the state's duty as trustee over expressly created special purpose public land grants and leases. [Fn. 44] In that case we stated:

Our reliance upon basic trust law principles finds ample support in the precedents of this court and the United States Supreme Court. See *Lassen v. Arizona*, 385 U.S. 458, 87 S. Ct. 584, 17 L. Ed. 2d 515 (1967); *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981). Both *Lassen* and *University of Alaska* involved federal grants to be used by states for school purposes. Those cases stand for the proposition "that the same private trust law principles are to apply to federal land granted to the states for school purposes." [Fn. 45]

We have since emphasized that the applicability of private trust law depends greatly on both the type of trust created and the intent of those creating the trust. In *Weiss v. State* (*Weiss II*), [Fn. 46] involving the same grant lands as in *Weiss I*, we cautioned that "reliance [on principles of private trust law] does not imply that application of such principles yields the same result regardless of the nature of the trust at issue." [Fn. 47]

Baxley, unlike *Weiss I*, did not involve an expressly created public land grant. Rather, *Baxley* simply relied on *Weiss I* to show that, if *Baxley* had timely raised his public trust argument in the trial court, then questions of fact and law might exist as to whether the state breached its fiduciary duty. Wright relies on dicta in *Baxley* to argue that private trust law should be applied wholesale to the public trust doctrine. This result, however, would be an overbroad interpretation of our holdings in *Baxley* and *Weiss I*.

Moreover, application of private trust principles may be counterproductive to the goals of the trust relationship in the context of natural resources. For instance, private trusts generally require the trustee to maximize economic yield from the trust property, using reasonable care and skill. [Fn. 48] But Article VIII requires that natural resources be managed for the benefit of all people, under the assumption that both development and preservation may be necessary to provide for future generations, and that income generation is not the sole purpose of the trust relationship. [Fn. 49] And although trust law dictates

that the acts of a trustee should be reviewed for abuse of discretion, we have held that grants of exclusive rights to harvest natural resources listed in the common use clause are subject to close scrutiny. [Fn. 50] Private trust law principles also provide no guidance as to when the public's right to common use of resources can be limited through means such as licensing requirements. [Fn. 51] Finally, exceptions do exist to the general principle that beneficiaries cannot dictate how to manage the trust property. For example, in some circumstances, the creator may provide for the beneficiary's participation in trust management, [Fn. 52] and the beneficiary of a trust may act as trustee. [Fn. 53]

Other jurisdictions have held that, while general principles of trust law do provide some guidance, they do not supercede the plain language of statutory and constitutional provisions when determining the scope of the state's fiduciary duty or authority. [Fn. 54] One commentator notes that general trust law should not be applied to the public trust doctrine in a way that limits or destroys the democratic process: "It would be a strict violation of democratic principle for the original voters and legislators of a state to limit, through a trust, the choices of the voters and legislators of today." [Fn. 55]

We most recently visited the public trust doctrine in the natural resource context in Pullen v. Ulmer. [Fn. 56] In that case, we decertified an initiative allowing subsistence, personal use, and sport fisheries to have preference over other fisheries with respect to the harvestable salmon surplus. [Fn. 57] We concluded that salmon should be considered "assets" of the state for purposes of carrying out the state's trust duties with respect to wildlife. [Fn. 58] Because state assets may not be appropriated by initiative pursuant to Article XI, [Fn. 59] and because we viewed the preferential treatment of certain fisheries over others as an appropriation, [Fn. 60] we removed the initiative from the ballot. We left open the question of whether the state's trust responsibilities under Article VIII give the legislature exclusive law-making control over wildlife management. [Fn. 61]

We find little support in the public trust line of cases for the proposition that the common use clause of Article VIII grants the legislature exclusive power to make laws dealing with natural resource management. Article VIII does not explicitly create a public trust; rather, we have used the analogy of a public trust to describe the nature of the state's duties with respect to wildlife and other natural resources meant for common use. Additionally, the wholesale application of private trust law principles to the trust-like relationship described in Article VIII is inappropriate and potentially antithetical to the goals of conservation and universal use. And in Pullen, the only case in which we discussed the initiative process, we declined to hold that the public trust doctrine gives the legislature exclusive law-making authority over the subject matter of Article VIII. We therefore reject Wright's argument to the contrary and decline to decertify the initiative on public trust grounds.

For these reasons, we conclude that the legislature does not have exclusive law-making powers over natural resources issues merely because of the state's management role over wildlife set forth in Article VIII of the Alaska Constitution, and therefore the wolf snare issue is not "clearly inapplicable" to the initiative process under Article XII.

V. CONCLUSION

Pursuant to this court's August 17, 1998 order, the superior court's order on summary judgment is REVERSED and its injunction against placement of the proposed ballot measure, "An Act Relating to the Use of Snares in Trapping Wolves," on the general election ballot is VACATED.

FOOTNOTES

Footnote 1:

The four plaintiff-appellees in this case are: Patrick Wright, a member of the Anchorage Fish and Game Advisory Committee; Albert Franzmann, a past member of the Alaska Board of Game; the Alaska Fish and Wildlife Conservation Fund; and Scientific Management of Alaska's Resource Treasures (SMART).

Footnote 2:

Intervenor-appellants include James Brooks, a former commissioner of the Alaska Department of Fish and Game; Joel Bennett, a former member of the Alaska Board of Game; and the Wolf Management Reform Coalition.

Footnote 3:

923 P.2d 54, 65-66 (Alaska 1996) Compton, J., concurring).

Footnote 4:

Ford v. Municipality of Anchorage, 813 P.2d 654, 655 (Alaska 1991) (citing Guin v. Ha, 591 P.2d 1281, 1284 n.6 (Alaska 1979)).

Footnote 5:

See Interior Taxpayers Ass'n, Inc. v. Fairbanks North Star Borough, 742 P.2d 781, 782 (Alaska 1987).

Footnote 6:

See Citizens' Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 163 (Alaska 1991) ("[T]he law-making powers assigned to the legislature are to be liberally construed as within the people's right to legislate by initiative.").

Footnote 7:

Pullen v. Ulmer, 923 P.2d 54, 58 (Alaska 1996) (quoting Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, 1155 (Alaska 1991)).

Footnote 8:

Boucher v. Engstrom, 528 P.2d 456, 460 (Alaska 1974), overruled in part on other grounds, McAlpine v. University of Alaska, 762 P.2d 81 (Alaska 1988).

Footnote 9:

Id. at 460 n.13.

Footnote 10:

Alaska Const. art. XII, sec. 11 (emphasis added).

Footnote 11:

Alaska Const. art. XI, sec. 7.

Footnote 12:

At no stage of this case has any party argued that the wolf snare initiative makes or repeals an appropriation in violation of Article XI, sec. 7. As Judge Beistline wrote:

[N]or did [the parties] address the issue of whether or not an initiative addressing methods of wildlife management or harvest, such as the use of snares, would constitute an appropriation of state assets

Indeed, Wright himself acknowledges that:

While an argument can be made that the establishment of laws involving means and methods of game harvest may effectively result in an appropriation of state assets, . . . Wright argues here, as he did in the superior court, that the subject of the wolf snare initiative is clearly inapplicable

The question is therefore not properly before us, and we do not address it here.

Footnote 13:

See *Thomas v. Bailey*, 595 P.2d 1, 4 (Alaska 1979).

Footnote 14:

Cissna v. Stout, 931 P.2d 363, 366 (Alaska 1996) (citation omitted).

Footnote 15:

Division of Elections v. Johnstone, 669 P.2d 537, 539 (Alaska 1983) (citation omitted).

Footnote 16:

See 4 Proceedings of the Alaska Constitutional Convention (PACC) 2849 (January 21, 1956) (emphasis added).

Footnote 17:

See *id.* at 2850-51.

Footnote 18:

Id. at 2837 (emphasis added).

Footnote 19:

See id. at 2841.

Footnote 20:

Alaska Const. art. VIII, sec. 2 (emphasis added).

Footnote 21:

See 4 PACC at 2843-46 (January 21, 1956).

Footnote 22:

See, e.g., PACC at 2848-49 (January 21, 1956) (statement of Del. McLaughlin) (stating that initiative should not be used to override judicial rules); id. at 2821 (statement of Del. Davis) (defining the jurisdiction of courts); id. at 2835-37 (statement of Del. Rivers) (challenging fundamental aspects of the judiciary as defined in the constitution). See also Citizens' Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 168 (Alaska 1991) (invalidating an initiative to limit attorney contingency fees because "[o]nly the law-making powers assigned to the legislature" are within the right to legislate by initiative).

Footnote 23:

M. Katheryn Bradley & Deborah L. Williams, "Be It Enacted by the People of the State of Alaska . . ." - A Practitioner's Guide to Alaska's Initiative Law, 9 Alaska L. Rev. 279, 302 (1992).

Footnote 24:

See Thomas v. Bailey, 595 P.2d 1, 8 (Alaska 1979) ("The restrictions on permissible subjects for direct legislation represent a recognition . . . that certain particularly sensitive or sophisticated areas of legislation should not be exposed to emotional electoral dialogue and impulsive enactment by the general public.") (internal citation omitted).

Footnote 25:

See Alaska Const. art. XI, sec. 6.

Footnote 26:

See also Owsichuk v. State, Guide Licensing & Control Bd., 763 P.2d 488, 494-96 (Alaska 1988) (invalidating board's establishment of guide areas for hunting as violative of Article VIII's public use clause).

Footnote 27:

Alaska Const. art. III, sec. 2 (emphasis added).

Footnote 28:

See 5 PACC at 3564-3752 (January 30, 1956).

Footnote 29:

See id. at 3572.

Footnote 30:

See Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901, 922-23 (Alaska 1961), vacated on other grounds, 369 U.S. 45 (1962), aff'd sub nom on other grounds, 369 U.S. 60 (1962).

Footnote 31:

Id. at 915. One could argue that regulation of salmon traps is an allocation of resources, given that the purpose of the ordinance was to give individual commercial Alaska fishermen greater access to the salmon population. See 5 PACC at 3564-71 (January 30, 1956); Alaska Const. ord. III, sec. 2. This argument was not made by opponents of Ordinance 3, nor was it made by Wright in this case with respect to the wolf snare initiative. Moreover, the wolf snare initiative, the main purpose of which is presumably to prevent cruelty to animals, does not present the same opportunity or motive for self-dealing as did Ordinance 3. In any event, such an argument does not diminish the persuasiveness of the Ordinance 3 example in countering Wright's public trust argument.

Footnote 32:

Alaska Const. art. VIII, sec.sec. 3, 4.

Footnote 33:

See, e.g., McDowell v. State, 785 P.2d 1, 18 (Alaska 1989); Herscher v. State, Dep't of Commerce, 568 P.2d 996, 1002-03 (Alaska 1977).

Footnote 34:

Owsichek v. State, Guide Licensing & Control Bd., 763 P.2d 488, 496 (Alaska 1988).

Footnote 35:

755 P.2d 1115 (Alaska 1988).

Footnote 36:

See id. at 1121.

Footnote 37:

See id. at 1118-19.

Footnote 38:

See id. at 1118 nn.7-8.

Footnote 39:

Owsichek v. State, Guide Licensing & Control Bd., 763 P.2d 498, 493 (Alaska 1988 (citing constitutional convention papers)).

Footnote 40:

Owsichek, 763 P.2d at 494 (citation omitted).

Footnote 41:

958 P.2d 422 (Alaska 1998).

Footnote 42:

Id. at 434 (citation and internal quotation marks omitted).

Footnote 43:

Id. (citing State v. Weiss (Weiss I), 706 P.2d 681, 683 n.3 (Alaska 1985)).

Footnote 44:

See Weiss I, 706 P.2d at 681-82.

Footnote 45:

706 P.2d at 683 n.3 (emphases added) (quoting University of Alaska, 624 P.2d at 813).

Footnote 46:

939 P.2d 380 (Alaska 1997), cert. denied, 118 S. Ct. 366 (1997).

Footnote 47:

Id. at 389.

Footnote 48:

See Restatement (Second) of Trusts sec.sec. 174, 176, 181 (1959).

Footnote 49:

See Alaska Const. art. VIII, sec.sec. 1, 4.

Footnote 50:

See *Cwsichek v. State*, 763 P.2d 488, 494 (Alaska 1988).

Footnote 51:

See *id.* at 492 (noting that the common use clause does not prohibit all regulation of use of listed resources).

Footnote 52:

See Restatement (Second) of Trusts at sec. 37 cmt. b (1959) (creator may reserve for beneficiary the power to administer, revoke, or modify trust).

Footnote 53:

See *id.* at sec.sec. 99, 100.

Footnote 54:

See, e.g., *Evans v. City of Johnstown*, 410 N.Y.S.2d 199, 207-08 (N.Y. App. Div. 1978) ("While the use of the name 'public trust' may suggest duties similar to those under a private trust, that interpretation is not feasible."); *City of Coronado v. San Diego Unified Port Dist.*, 38 Cal. Rptr. 834, 844 (Cal. Dist. App. 1964) ("[P]rivate trust principles cannot be called upon to nullify an act of the legislature or modify its duty . . .").

Footnote 55:

James L. Huffman, *A Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy*, 19 *Envtl. L.* 527, 544 (1989).

Footnote 56:

923 P.2d 54 (Alaska 1996).

Footnote 57:

See *id.* at 55, 64-65.

Footnote 58:

Id. at 61.

Footnote 59:

See id. at 58.

Footnote 60:

See id. at 64.

Footnote 61:

See id. at 64 n.18. Justice Compton concurred with our result in Pullen, disagreeing with our conclusion that salmon was a state "asset" and basing his decision instead on the Article VIII public trust argument. See Eilen, 923 P.2d at 65-66 (Compton, J., concurring).

INITIATIVES APPEARING ON THE BALLOT IN ALASKA

		<u>FOR</u>	<u>AGAINST</u>
August 9, 1960	Relocate the State Capital	18, 865	23, 972
November 6, 1982	Relocate the State Capital	26, 542	32, 325
August 27, 1974	Relocate and Construct Capital	46, 659	35, 683
August 27, 1974	Conflicts of Interest	57,084	23,151
November 2, 1976	Repeal of Limited entry	44,304	75,125
November 7, 1978	Full Bondable Costs of Relocating the Capital	69, 414	55,253
November 7, 1978	Disposal of State Lands	70,409	55,511
November 7, 1978	Refundable Deposits on Certain Beverage Containers	49,882	75,397
November 4, 1980	Establish Alaska General Stock Ownership Corporation	72,072	78,404
November 2, 1982	Claiming State Ownership of Federal Land	136, 633	50,791
November 2, 1982	Limiting State Funding of Abortions	77, 829	113,005
November 2, 1982	Personal Consumption of Fish and Game	76,679	111,770
November 6, 1984	Reducing Government Regulation of Transportation	116,891	78,663
August 26, 1986	Nuclear Weapons Freeze	80,326	57,125
November 8, 1988	Civil Liability	138,511	54,206
November 8, 1988	A State Community College Separate from University of Alaska	83,472	104,719
August 28, 1990	Amendments to the Alaska Railroad	31,612	107,289

Initiatives Appearing on the Ballot in Alaska

		<u>FOR</u>	<u>AGAINST</u>
August 28, 1990	Relating to the Regulation of Gambling and Establishing an Alaska Gambling Board	50,446	90,827
November 6, 1994	Relating to the Recriminalization of Marijuana	105,263	88,644
November 8, 1994	Relating to Changing the Capital to Wasilla	96,398	116,277
November 8, 1994	Relating to Banning Ballot Listing Certain Congressional Candidates	128,980	74,658
November 8, 1994	Relating to Voters Right to Know the Cost of Moving the Capital	119,089	66,157
November 5, 1996	Relating to Same Day Airborne Hunting of Certain Animals (95Hunt)	137,635 T = 325325	97,690 2/3 - 105345
November 5, 1996	Relating to Ballot Information and Term Limits (95BITL) (overturned by court)	123,167	102,533
November 3, 1998	Relating to Prohibiting Billboards (97BILL)	160,922	61,401
November 3, 1998	Relating to Requiring Government to Use English (97ENGL)	153,107	70,085
November 3, 1998	Relating to Requiring a Term Limits Pledge for Candidates (97TERM)	109,613	108,731
November 3, 1998	Relating to Allowing Medical Use of Marijuana (97PSDM)	131,586	92,701
November 3, 1998	Relating to Trapping Wolves With Snares (97TRAP)	83,224	140,049 2/3 - 140000 T = 223273

The Initiative and Referendum States

Updated January 20, 1999

State	Statutes			Constitution	
	Initiative	Citizen Petition Referendum	Legislative Referendum	Initiative	Legislative Referendum
Alaska	I*	Yes	No	None	Yes
Arizona	D	Yes	Yes	D	Yes
Arkansas	D	Yes	Yes	D	Yes
California	D	Yes	Yes	D	Yes
Colorado	D	No	No	D	Yes
Florida	None	No	No	D	Yes
Idaho	D	Yes	Yes	None	Yes
Illinois	None	No	Yes	D	Yes
Kentucky	None	Yes	Yes	None	Yes
Maine	I	Yes	Yes	None	Yes
Maryland	None	Yes	Yes	None	Yes
Massachusetts	I	Yes	Yes	I	Yes
Michigan	I	Yes	Yes	D	Yes
Mississippi	None	No	No	I	Yes
Missouri	D	Yes	Yes	D	Yes
Montana	D	Yes	Yes	D	Yes
Nebraska	D	Yes	Yes	D	Yes
Nevada	D & I	Yes	Yes	D	Yes
New Mexico	None	Yes	Yes	None	Yes
North Dakota	D	Yes	Yes	D	Yes

Ohio	I	Yes	Yes	D	Yes
Oklahoma	D	Yes	Yes	D	Yes
Oregon	D	Yes	Yes	D	Yes
South Dakota	D	Yes	Yes	D	Yes
Utah	D & I	Yes	Yes	None	Yes
Washington	D & I	Yes	Yes	None	Yes
Wyoming	I*	Yes	No	None	Yes
US Virgin Is.	I	Yes	Yes	I	Yes

Initiative – a law and/or constitutional amendment introduced by the citizens either to the legislature or directly to the voters.

D – Direct Initiative; proposals that qualify go directly on the ballot

I – Indirect Initiative; proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. Depending on the state, the initiative question may go on the ballot if the legislature rejects it, submits a different proposal or takes no action.

I -- Alaska and Wyoming's initiative processes are usually considered indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they only require that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned.*

Referendum – a process by which voters may express their judgment on statutes and/or constitutional amendments enacted by the legislature.

Restrictions on the Use of the Initiative

Alaska: No revenue measures, no appropriations, no acts affecting the judiciary, no local or special legislation. Limited to one subject.

California: Limited to one subject.

Colorado: Limited to one subject.

Florida: Limited to one subject.

Illinois: Allowed only for amendment of constitutional Article IV, relating to structural and procedural subjects concerning the legislative branch.

Maine: Any measure providing for an expenditure of funds in excess of those appropriated becomes inoperative 45 days after the legislature convenes.

Massachusetts: No measures relating to religion, the judiciary, specific appropriations and local or special legislation.

Michigan: The initiative power extends only to laws which the legislature may enact.

Mississippi: The initiative cannot be used to repeal or modify the state's Bill of Rights; to amend or repeal provisions relating to the state's public employees' retirement system; to amend or repeal Mississippi's constitutional right-to-work provision, or to modify the initiative process.

Missouri: Limited to one subject. Not used for appropriations of money other than new revenues created and provided for by the initiative. Cannot be used for any purpose prohibited by the state's constitution.

Montana: Cannot be used for appropriations or for local and special laws.

Nebraska: Limited to matters which can be enacted by legislation. The same measure cannot be initiated more often than once in three years.

Nevada: Initiative measures may not make an appropriation or require an expenditure of money unless a sufficient tax is provided as part of the initiative proposal.

North Dakota: Not for emergency measures. Not for appropriation measures for the support and maintenance of state departments and institutions.

Oklahoma: Initiatives rejected by the voters cannot be proposed again for three years by less than 25 percent of the state's legal voters.

Wyoming: Cannot be used to dedicate revenues; to make or repeal appropriations; to create courts; to define the jurisdiction of courts; to prescribe court rules; to enact local or special legislation or to enact legislation prohibited by the Wyoming constitution. The

same measure cannot be initiated more often than once in five years.

Initiatives and Referenda

Arizona Initiatives and Referenda

- Prop. 100** **Amend the Constitution adding rules relating to public retirement systems**
Type: Legislative Referendum Status: Pass (Yes votes: 61.4%)
Summary: Prop. 100 would amend the Arizona Constitution to include specific rules that apply to public retirement systems in this state. Public retirement systems have public employee members such as teachers, state, county and city workers, police officers, fire fighters, correctional officers, university and community college staff and faculty, judges and elected officials. The rules contained in Prop. 100 are consistent with current law and practices.
-
- Prop. 101** **Amend the Constitution relating to commission on salaries for elected state offices**
Type: Legislative Referendum Status: Fail (Yes votes: 34.1%)
Summary: Prop. 101 would amend the Arizona Constitution to increase the salary commission membership from 5 to 11 members; commission recommends salaries for elective state officers every 2 years, beginning in 1999; commission recommendations become final, including legislators' salary recommendation, unless Legislature or the people place referendum on salary recommendations on the general election ballot.
-
- Prop. 102** **Amend the Constitution relating to investment of State Trust funds**
Type: Legislative Referendum Status: Pass (Yes votes: 53.3%)
Summary: Would amend the Arizona Constitution to expand investment options for State Trust funds, allowing investment in equity securities, such as stocks. The Board of Investments would manage funds under conditions set out in the Constitution; require investment according to "The Prudent Investor Rule;" permit certain payments out of permanent funds to designated state institutions.
-
- Prop. 103** **Amend the Constitution relating to voting in Primary Elections**
Type: Legislative Referendum Status: Pass (Yes votes: 60.5%)
Summary: Would amend the Arizona Constitution to allow voters registered as independents, no party designation, or members of a party without ballot recognition to vote in the partisan primary of the choice of one of the four currently recognized political parties.
-

Type: ~~Referendum~~ 45.40%

Summary: Would amend the Arizona Constitution relating to initiative and referendum measures; prohibit governor's veto; prohibit legislative repeal for five years; require two-thirds vote to repeal, amend, substantively modify or transfer funds designated by measure; allow governor to veto bill amending measure; require three-fourths vote to override veto; prohibit "emergency" clauses on amendments.

Type: Initiative

Status: Pass (Yes votes: 52.3%)

Summary: Would amend the Arizona Constitution relating to initiative and referendum measures; prohibit governor's veto; prohibits legislative repeal; require three-fourths vote to amend measure, to supersede measure, or to transfer funds designated by the measure, and only if each furthers the purpose of the measure.

Prop. 200 **An Act relating to a campaign finance funding and reporting system**

Type: Initiative

Status: Pass (Yes votes: 51.2%)

Summary: Would establish a five-member commission to administer additional alternative campaign financing system; provide public funding and additional reporting for participating candidates; reduce current contribution limits by 20% for non-participating candidates; set personal monies and spending limits for participating candidates; limit private contributions for participating candidates unless Commission declares emergency.

Prop. 201 **An Act relating to creating the crime of cockfighting**

Type: Initiative

Status: Pass (Yes votes: 68.1%)

Summary: Would make cockfighting a Class 5 felony for knowingly owning, possessing, keeping or training a cock for cockfighting; cause any cock to fight or injure another cock for amusement or gain, or allowing cockfighting on a person's property; make it a Class 1 misdemeanor for being present at a cockfight.

Prop. 202 **An Act relating to creating a federal candidates' IRS pledge**

Type: Initiative

Status: Fail (Yes votes: 45.0%)

Summary: Would give Arizona candidates for federal offices the option to pledge to support and vote for elimination of the federal income tax and Internal Revenue Service through the passage of a national consumption tax; permit "Signed the IRS Elimination Pledge" to be shown on the ballot next to pledging candidates' names.

Prop. 300 **Referendum relating to the medical use of schedule I drugs**

Type: Popular Referendum

Status: Fail (Yes votes: 42.7%)

Summary: Referendum of an act which requires authorization by the Federal Food and Drug Administration or the United States Congress for the medical use of marijuana before doctors may lawfully prescribe Schedule I drugs, including heroin, LSD, marijuana and analogs of PCP, to seriously ill or terminally ill patients in Arizona.

Prop. 301 **Referendum relating to probation eligibility for drug possession or use**

Type: Popular Referendum

Status: Fail (Yes votes: 48.4%)

Initiatives and Referenda

Mississippi Initiatives and Referenda

~~Amendment 1 Amend the Constitution to provide that only a person who is a resident of this state may circulate an initiative petition or obtain signatures on an initiative petition for the purpose of proposing an amendment to the Mississippi Constitution.~~

Type: Legislative Referendum

Status: Pass (Yes votes:)

Summary: This proposed constitutional amendment provides that only a person is a resident of this state may circulate an initiative petition or obtain signatures on an initiative petition for the purpose of proposing an amendment to the Mississippi Constitution.

Amendment 2 Amend the Constitution establishing victims' rights

Type: Legislative Referendum

Status: Pass (Yes votes:)

Summary: This amendment gives victims of crimes the right to be informed, to be present and to be heard during the criminal process of the person accused of the crime, when authorized by law.

Initiatives and Referenda

Missouri Initiatives and Referenda

Type: Legislative Referendum

Status: Pass (Yes votes: 57.7%)

Summary: If adopted, Constitutional Amendment 1 would change the deadline for submitting initiative petitions to the Secretary of State's Office from four months prior to the general election to six months prior to the general election. The deadline would fall in early May rather than early July. The earlier deadline would give local election officials and the Secretary of State's Office more time to determine whether sufficient valid signatures have been obtained from registered voters and to investigate allegations of fraud. This will help finalize the ballot by the time absentee voting begins six weeks before the election. It will also allow local election officials to verify signatures when they are not in the middle of preparing and conducting the August primary election.

Amendment No. 2 Allows school board to set operating levy no higher than \$2.75 without a vote

Type: Legislative Referendum

Status: Pass (Yes votes: 58.8%)

Summary: If adopted, Constitutional Amendment 2 would change limits on tax levies imposed by school districts. Currently, the limit on levies not requiring voter approval is \$1.25 per \$100 assessed valuation, which was set in 1945. Under this amendment the limit would be increased to \$2.75. This proposal also increases the limit on tax levies requiring voter approval by a simple majority from \$3.75 to \$6 per \$100 assessed valuation. Levies above \$6 would still require a two-thirds majority for passage.

Amendment No. 5 Directs state treasurer to prepare a written investment policy for state funds

Type: Legislative Referendum

Status: Pass (Yes votes: 75.7%)

Summary: If adopted, Constitutional Amendment 5 would require the State Treasurer to prepare and maintain a written investment policy. It would also give the Treasurer additional options for investing by allowing investment of state funds in the highest rated commercial paper and banker's acceptances issued by American companies. The maximum length of time the Treasurer could invest state funds in federal government securities would be increased from three years to five years. The goal of this amendment is to allow more varied investment practices and increase earnings on state funds without an appreciable increase in risk.

Amendment No. 6 Allows financing of municipal or joint sewer improvement project by

Initiatives and Referenda

Montana Initiatives and Referenda

- C-33** **Criminal laws must be based on principles of public safety and restitution for victims as well as prevention and reformation**
Type: Legislative Referendum **Status:** Pass (Yes votes: 71.4%)
Summary: The Legislature submitted this proposal for a vote. The Montana Constitution currently provides that laws concerning criminal punishment are based upon the principles of prevention and reformation. This proposal would amend the Constitution to include public safety and restitution as additional principles upon which the criminal laws are to be founded. If approved the measure would take effect July 1, 1999.
-
- CI-75** **Approval of tax increases**
Type: Initiative **Status:** Pass (Yes votes: 51.2%)
Summary: This initiative would amend the Montana Constitution to require an election and voter approval of any new or increased tax imposed by state and local governments, school districts and other taxing districts. Each governmental unit could hold only one tax election per year. As an emergency measure, a bill passed by $\frac{3}{4}$ of each house of the legislature could enact a state or local tax without voter approval, but it would be in effect for only a limited time. Any elector could sue to enforce this amendment, and public officials and employees could be held civilly liable for violations. The exact fiscal impact of this proposed constitutional amendment is unknown; however, it will limit increases in government revenue and spending if voters do not approve new taxes and tax increases. There would also be a fiscal impact if special elections are held for tax measures.
-
- I-134** **Repeal Montana Retail Motor Fuel Marketing Act**
Type: Initiative **Status:** Pass (Yes votes: 54.0%)
Summary: This initiative would repeal the Montana Retail Motor Fuel Marketing Act. The Act was passed in 1991 to prevent fuel dealers from selling fuel below cost to drive out competition from smaller independent dealers and distributors. It prohibits selling fuel for less than the price the seller paid, plus overhead and labor costs, if the effect of the below-cost pricing is to destroy or injure competitors or competition. A gas station cannot sell fuel for less than the wholesale price it pays plus a 6% markup, unless its cost of doing business is actually less than the 6% markup. The effect of this measure on state government is difficult to predict since most state government fuel purchases are already the result of competitive bid and not affected by the current law. A "yes" vote is for repealing the Montana Retail Motor Fuel Marketing Act; a "no" vote is against

Type: Legislative Referendum

Status: Pass (Yes votes: 61.4%)

Summary: The Legislature submitted this proposal for a vote. State law currently gives the legislature authority to levy up to 6 mills on the taxable value of all real and personal property for the support, maintenance and improvement of the Montana university system. This legislative authority, however, expires in 1999. A statewide university mill levy has been in effect since approval by the electorate in 1920, and since 1948 has stayed constant at six mills. This proposal would continue the authority for the tax levy for ten additional years. The levy would generate revenue of up to \$15 million a year beginning in fiscal year 2000 and increase approximately 2% a year for the remaining nine years.

Initiatives and Referenda

Oregon Initiatives and Referenda

Measure 54 Amends constitution: authorizes state to guarantee bonded indebtedness of certain education districts

Type: Legislative Referendum **Status:** Pass (Yes votes: 54.6%)

Summary: Constitution now generally prohibits state from creating debt over \$50,000 or lending its credit. Measure amends constitution permitting state to guarantee general obligation bonded indebtedness of school districts, education service districts, community college districts. Limits amount state can guarantee to ½ of one percent of true cash value of taxable property in state. State may issue bonds, borrow from Common School Fund to satisfy obligation. Legislature must enact statutes authorizing state to recover from district payments made to satisfy state's guarantee of district debt.

Measure 55 Amends constitution: permits state to guarantee earnings on prepaid tuition trust fund

Type: Legislative Referendum **Status:** Fail (Yes votes: 44.1%)

Summary: Amends Constitution. Measure approval makes effective the Post-secondary Education Expense Program adopted by the 1997 Legislature. Program allows payment of undergraduate tuition before enrollment at lower than highest prevailing rate at time of enrollment; establishes trust fund. Measure permits state to exceed constitutional debt limit to authorize indebtedness at ½ of one percent of true cash value of all property in state to guarantee minimum benefits on contributions to prepaid tuition trust fund. State may issue bonds; may borrow from Common School Fund, if necessary.

Measure 56 Changes notice requirements for proposed government land use actions

Type: Legislative Referendum **Status:** Pass (Yes votes: 80.4%)

Summary: Requires counties and cities to mail notices to landowners regarding changes to state, local, or metropolitan service district land use laws and regulations that limit or prohibit uses currently allowed on the landowners' property. Requires state government to reimburse counties and cities for costs of mailing notice resulting from changes to state statutes or administrative rules. Requires metropolitan service districts to reimburse counties and cities for costs of mailing notice resulting from changes in district land use regulations. Prescribes form of each notice.

Measure 57 Makes possession of limited amount of marijuana Class C misdemeanor

Type: Popular Referendum **Status:** Fail (Yes votes: 33.5%)

Summary: Under current Oregon law, possession of less than one ounce of marijuana is a violation, punishable by a \$500 to \$1,000 fine; charges against first-time offenders may be dismissed upon completion of marijuana diversion agreement. Measure makes possession of less than one ounce of marijuana a Class C misdemeanor, punishable by up to 30 days imprisonment, plus a \$500 to \$1,000 fine. Measure also makes failure to complete diversion agreement ground for six-month suspension of offender's driving privileges. Allocates \$600,000 for enforcement.

Measure 58 Requires issuing copy of original birth certificate to adoptees

Type: Initiative **Status:** Pass (Yes votes: 57.4%)

Summary: Current Oregon law provides that upon decree of adoption, a new birth certificate generally will be substituted for the original birth certificate, and the original certificate showing birth parent information will not be subject to inspection, unless a court orders disclosure. Measure would require state registrar to issue certified copy of original birth certificate to any Oregon born adopted person 21 years old or older. Establishes same procedures, filing fees and waiting periods for obtaining birth certificate copies for adopted persons as for non-adopted persons.

Measure 59 Amends constitution: prohibits using public resources to collect money for political purposes

Type: Initiative **Status:** Fail (Yes votes: 49.0%)

Summary: Amends constitution. Prohibits using "public funds" to collect or assist in collecting "political funds." "Public funds" defined to include public employee time, public property or equipment and supplies. "Political funds" defined to include any expenditure supporting or opposing a candidate, ballot measure or initiative petition. Prohibition applies even if public entities are reimbursed for use of public funds for collection. Measure would prohibit public employee payroll deduction for any entity that uses any funds deducted for political purposes or that commingles political and non-political funds.

Measure 60 Requires vote by mail in biennial primary, general elections

Type: Initiative **Status:** Pass (Yes votes: 69.4%)

Summary: Current law prohibits vote by mail for biennial primary or general elections. This proposal eliminates the prohibition and requires vote by mail for biennial primary or general elections. The proposal does not affect existing law permitting the Secretary of State and county clerk to conduct other elections either at the polls or by mail.

Measure 62

Type: Initiative **Status:** Pass (Yes votes: 67.5%)

Summary: Amends constitution. Existing statutes require disclosing certain campaign finances. Measure adds constitutional requirements for prompter disclosure of contributions of \$500 or more; more frequent disclosure of contributions/expenditures for referendum/initiative petitions. Requires disclosing entity authorizing/paying for political advertising. Legislature may regulate, prohibit paying signature gatherers if it finds practice has caused fraud, other abuses. Guarantees individuals' right to make campaign contributions using certain methods. Secretary of state must promptly publish finance reports. Prohibits payments for signing/not signing petitions. Specifies penalties. Other provisions.

Measure 63

~~Amends constitution: requires 75% majority voting requirements
for all measures supermajority for passage~~

Type: Initiative **Status:** Pass (Yes votes: 55.3%)

Summary: Amends constitution. Measures including a requirement for more than a majority of votes cast by the electorate to approve any change in law or government action would become effective only if approved by at least the same percentage of voters specified in that proposed voting requirement. For example, a measure imposing a 2/3 majority voting requirement to change law would require a 2/3 majority to pass. Applies to initiated, referred measures present to voters on or after November 3, 1998, including measures on same ballot.

Measure 64

Prohibits many present timber harvest practices, imposes more restrictive regulations

Type: Initiative **Status:** Fail (Yes votes: 19.4%)

Summary: Prohibits many present timber harvest practices, chemical herbicides, pesticides in forest. Limits size of trees that can be harvested. Covers private, state, federal forestlands. Imposes new harvest regulations including federal regulation by classifying forestland waters as "navigable." State Board of Forestry must adopt new timber harvest methods and regulations to meet new requirements. Requires state to submit new forestland water quality plan to federal Environmental Protection Agency, seek approval before permitting logging. Authorizes citizens suits to enforce new harvest restrictions or other provisions of measure.

Measure 65

Amends constitution: creates process for requiring legislature to review administrative rules

Type: Initiative **Status:** Fail (Yes votes: 47.5%)

Summary: Amends constitution. Current law does not require legislative review of administrative rules. Measure allows voters to require legislative review of administrative rules at next regular session when petition, signed by specified number of voters, is filed listing affected rules. Rule remains effective until reviewed by legislature, but rule ceases to be in effect unless approved. If governor vetoes bill, rule is disapproved unless legislature overrides veto. If rule is not approved, state agency may adopt new rule on same issue, but legislative review is required.

Measure 66

Amends constitution: dedicates some lottery funding to parks, beaches; habitat, watershed protection

Type: Initiative **Status:** Pass (Yes votes: 67.2%)

Summary: Amends constitution. State lottery proceeds currently limited to job creation, economic development, public education. Measure dedicates 15 percent of net lottery proceeds to new fund for parks, beaches; salmon, wildlife habitat, watershed protection. Dedicates half of fund to create, maintain state parks, ocean shores, public beach access areas, historic sites, recreation areas. Dedicates other half for single agency to administer funds to protect native salmon, wildlife habitat, watersheds, using at least 65 percent for capital expenditures. Requires biennial audits, voter renewal in 2014. Other provisions.

Measure 67

Allows medical use of marijuana within limits; establishes permit system

Type: Initiative **Status:** Pass (Yes votes: 54.6%)

Summary: Oregon statutes currently prohibit possession, delivery, production of marijuana.

Initiatives and Referenda

Utah Initiatives and Referenda

Proposition 1 Legislative Eligibility Resolution

Type: Legislative Referendum **Status:** Pass (Yes votes: 87.0%)

Summary: Proposition 1 amends the present eligibility requirements in the Utah Constitution for the offices of state senator and state representative. This proposition requires that the three years during which a person must be a resident of the state be a consecutive period and that it occur immediately prior to the last date provided by statute for filing for the office. Likewise, this proposition requires that the six months during which a person must be a resident of the person's legislative district be a consecutive period and that it also occur immediately prior to the last date provided by statute for filing for the office. This proposition eliminates the reference to a specific date at which other eligibility requirements must be met, but does not otherwise affect those eligibility requirements. This proposition also makes grammatical changes.

Proposition 2 Resolution Repealing Marital Property Provisions

Type: Legislative Referendum **Status:** Pass (Yes votes: 70.5%)

Summary: Proposition 2 repeals a provision of the Utah Constitution regarding property rights of married women. The Utah Constitution presently contains a provision adopted in 1896 and intended to raise the protection given to property rights of married women to the same level as that given to the property rights of men. It provides that property of a married woman, acquired before marriage or acquired afterwards by purchase, gift, grant, or inheritance, should remain her separate property and not be liable for her husband's debts and obligations. Utah statutes contain a provision that is comparable to the constitutional provision. Proposition 2 repeals the Utah constitutional provision regarding property rights of married women. The repeal of this provision is not likely to affect the property rights of married women because over the years a substantial body of law has developed that protects those rights apart from the Utah constitutional provision. Even without the Utah constitutional provision, married women have, with respect to their separate property, the same legal rights as men.

Proposition 3 Acceptance of Trust Lands Resolution

Type: Legislative Referendum **Status:** Pass (Yes votes: 84.5%)

Summary: Proposition 3 clarifies the status of school and institutional trust lands designated by Congress at statehood and other lands which may be added to them. It provides that those lands are to be held in trust for specified beneficiaries and purposes, and distinguishes those lands from other public lands held in trust by the state for other beneficiaries and purposes.

Proposition 4 Resolution Eliminating Voting Rights of Convicted Felons

Type: Legislative Referendum **Status:** Pass (Yes votes: 82.0%)

Summary: Proposition 4 restricts any person convicted of a felony from voting and holding office in Utah. This proposition restricts those rights until the right to vote or hold elective office is restored as provided by statute. It also modifies language relating to the restoration of rights for other persons deprived of the right to vote or hold office.

Proposition 5 ~~Resolution Eliminating Voting Rights of Convicted Felons~~

Type: Legislative Referendum **Status:** Pass (Yes votes: 56.1%)

Summary: Proposition 5 amends present provisions of the Utah Constitution regarding the power of the people of the state to initiate legislation and submit it to a vote of the people for approval or rejection by majority vote. This proposition requires a two-thirds vote in order to adopt by initiative a state law allowing, limiting, or prohibiting the taking of wildlife or the season for or method of taking wildlife.

Proposition 6 Resolution on Review of Tax Commission Cases

Type: Legislative Referendum **Status:** Pass (Yes votes: 74.5%)

Summary: Proposition 6 amends the Revenue and Taxation Article of the Utah Constitution. It permits the Legislature to authorize any state court to adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission or by a county board of equalization relating to revenue and taxation. This proposition also permits the Legislature to make the expansion of the court's jurisdiction effective back to July 1, 1994 under specified circumstances.

WYOMING

Amendment A Allows the legislature to reapportion its membership at the first session after all the census data is available

Type: Legislative Referendum **Status:** Pass (Yes votes:)

Summary: The adoption of this amendment will allow the legislature to reapportion its membership at the first session after all the census data is available.

Amendment B ~~Changes minimum requirement for petition signatures for initiatives and~~

Type: Legislative Referendum **Status:** Pass (Yes votes:)

Summary: The passage of this amendment would change the minimum requirement for petition signatures for initiative and referendums. Currently the petition must be signed by at least 15% of the qualified voters in the state, with that number based on those who voted in the last general election. There must also be at least one qualified voter signing from at least two-thirds of the counties. This amendment would keep the overall, or statewide, number of signatures required the same, but would increase the minimum number required in at least two-thirds of the counties from one signature to 15% of the qualified voters of that county, as determined by the number of votes in the last general election. The purpose of this amendment is to ensure that the signatures needed to place an initiative or referendum on the ballot cannot be gathered in only the most populated counties, and that a significant number of qualified voters from throughout the state support the proposal.

Amendment C Restricts use of funds paid into the workers' compensation fund

Type: Legislative Referendum **Status:** Pass (Yes votes:)

Summary: The adoption of this amendment would provide that funds paid into the workers' compensation fund may only be expended as provided in the Workers' Compensation Act and for debt service and for workplace safety as provided by law.

*Alaska has
this already*

stitution, we are confronted with "by the legislature" and "by law", we will be in conflict with our initiative provision unless we prescribe in our initiative provision that all these things cannot be done by the legislature. That is what concerns me. I think, practically speaking, it would be absurd for an initiative provision to define "waters" to begin with. Now I will grant the possibility that it could happen, but it being so unusual to have such a thing, it will be a much better constitution if we use "by law" recognizing that it could possibly be referred to initiative.

RILEY: The Committee, as Mr. Hellenthal pointed out and those who were present this morning, used the word deliberately just against that remote possibility. Now, sooner or later I am sure that the matter will probably be threshed out here at the instance of Style and Drafting, but in any event, we submit it as "defined by the legislature".

PRESIDENT EGAN: Is there objection to the unanimous consent request?

TAYLOR: I will object, because I would like to ask a question. Mr. Riley, does the amendment "as defined by the legislature" refer back to fish and wildlife, too?

RILEY: No, it does not. "Wildlife, and waters as defined by the legislature,".

PRESIDENT EGAN: If there is no objection, the proposed committee amendment is ordered adopted. Are there other committee amendments? Are there other committee amendments, Mr. Riley?

COGHILL: Mr. President, could I ask a question on this proposed amendment to Mr. Riley -- on the one we just finished?

PRESIDENT EGAN: You may ask a question if there is no objection.

COGHILL: On that, Mr. Riley, it would be the feeling of the Committee that the legislature could not regulate any of their wildlife to the point of, say, domesticating moose or providing for such development of any source of wildlife that is held in their own natural state?

RILEY: No, that was not in the Committee's contemplation at all. We wished simply to meet the objection raised last evening by Mr. Poulsen, as you will recall. He and others, including the Committee, have been quite concerned about the problem as stated by him as concerns small bodies of water on privately owned

DAVIS: No member of the Judiciary Committee worked on the subcommittee, and Mr. McLaughlin made it clear at the time we started consideration of this article that he wanted no part of styling this particular article so that it could not be said that the substantive committee was handling this matter. Is that clear? At the outset the subcommittee here took this judiciary article to pieces and put it back together in several respects. For that reason you cannot take this article and read it against the enrolled copy without reading both of them completely because a hurried reading of the Style and Drafting copy would indicate that some portions have been left out, where in fact, that is not the case. As a quick resume on that, if you were to read this article in a hurry, you would see right away that the enrolled copy said that the judicial council should consist of six members, where the Style and Drafting Committee says the judicial council shall consist of seven members. Now, the reason for that is that a reading of the article will show, the enrolled copy will show they actually intended seven members all the time but they were worried about how they were going to get the supreme court justice on that committee when in fact he had not been appointed at the beginning. We have taken care of that by a separate section at the end, Section 18, which we have separated out of the body of the judicial article and which we intend to have go into a transitional ordinance. We believe that since the staggered terms of judicial council will only happen once, I mean the setup of it will only happen once, after you once get the council appointed, the terms will be staggered and thereafter the problem does not arise, so we believed it was not either necessary or desirable to keep the language about staggered terms in the body of the constitution, and for that reason we have made a separate section which we intend to lift out of the body of the judicial article and put it in a transitional measure. The same thing is true in a different manner as to the question that a service in the armed forces is not an office of profit. You will remember that that appears in one position in the present judicial article. Now, it has already come out on the floor in at least one other article and probably will come in others, and we figured that that matter could best be handled by a general provision in the constitution that service in the armed forces is not an office of profit as provided in the constitution, and for that reason once again we lifted that language out of the particular section and set it up in a separate section at the end of the judicial article. I think that is Section 17, as I remember it, with the intention that that section will be taken out of the judicial article and fitted into the proper place in the entire constitution. Now, to get to Steve's problem here. He has got his whole copy marked up on the side -- "initiative, initiative" -- and he started to ask a question, and that is a good question. As quick as we started working on this article, we found that we had used, interchangeably, the terms "by the legislature" or "by law". You will remember at the time the judicial article was considered by the Convention we had not yet considered the initi-

ative, and I am satisfied in my own mind, and I think that the Judiciary Committee agrees with me on this point, that at the time the article was before the Convention that we meant exactly the same when we said "by law" or "by the legislature". After we adopted, at least tentatively, an initiative article of course it was obvious that the terms "by the legislature" and "by law" are no longer synonymous. They might mean two different things because the initiative initiates laws. For that reason in order to try to keep the thinking of the Convention in our first draft of this matter we kept the terms all the way through just as they were in their enrolled copies. Wherever it said "by the legislature" we left it that way; wherever it said "by law" we left them that way. Then, in order to try to resolve the problem -- I should back up just a minute -- there is considerable feeling by some people, and I might say that I am one of them, that the setting up and the jurisdiction of the courts is something that should properly be handled by the legislature and not left to the initiative and for that reason in an attempt to find out where we were going on this thing, we held a combined meeting of some members from Style and Drafting, some from the Judiciary Committee, and some from the Initiative Committee, to find out how it was best to handle this problem, and the result of that meeting was that most members, I think we had only one dissent, but most members felt in that bunch that the courts should be something that should be handled by the legislature and not by the initiative, but it was not unanimous, and we do not know how the body as a whole feels, but as a result of that meeting we agreed that probably the best way to handle this thing would be to change the judicial article to provide "by law" in each case, and then to request the body to make a further exception in the initiative article when it came before the body to exempt the jurisdiction in the make-up of the courts from the initiative article. With that in mind then we did in our next and final draft change all of these provisions to read "by law" wherever it had said "by law" or "by the legislature". We changed them except in two instances here where it is obvious we couldn't have meant anything but the legislature. One of those instances is where the legislature by a vote of two houses, of each house, must approve any change of the rules. The other was in connection with the confirmation of members of the judicial council; once again it was so written we couldn't have meant anything but "the legislature" so with that in mind we went through the article and changed everywhere it said "by the legislature" or "by law". With those two exceptions we changed it to read "by law". That, then, was the purpose for my question at the time we started the resources article. I asked as to whether, when you say "legislature" do you mean "legislature" or do you mean "by law", and the answer by the Committee was that when we say "legislature" we mean legislature, not initiative. It occurs to me and to some of the others that have been working on this, that if each article that comes in is going to have things that they feel should be limited to action by the legislature, that then we are going to make the

initiative article as long as a sled track and completely unworkable if we say, "The initiative shall apply except, except, except, except", and so we have thought it would be best if the Convention wishes to limit some of these things to action by the legislature, to adopt a general miscellaneous provision to the effect that when the article says "legislature" it means just that, and when it says "by law", it will mean action by either the legislature or by the initiative. If we adopt that approach, then the article which we have prepared here is wrong to that extent if the body decides that they want the courts to be set up by the legislature and not by the legislature and the initiative. Now that is something we will have to decide here, but I think, Steve, that answers what you were asking. I think that I have pretty well covered the matter here. I do have between my draft of the enrolled copy and my copy, my original copy of Style and Drafting, I believe with a little work I can tell anybody where a particular article came from or where a particular article went in the final draft. Now I don't have it in too good shape, but I think I can find it. One thing further I wish to state, that the article has been checked by a member from the Judiciary Committee, and by the Judiciary Committee as a whole, and I believe that they have no exceptions or objections to it except in the question of whether the courts are going to be set by the initiative or not, and that point is before the body.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Point of information, Mr. President. Mr. Davis said the rule-making power or the changes in rules must be approved by a two-thirds vote of the legislature. I do not read it that way. Did you so state just a moment ago?

DAVIS: I think I did, Mr. Rivers, but what I meant was -- I wasn't, of course, talking about that particular section except as an illustration. The section itself will control, and what it says is that it will stand unless disapproved.

V. RIVERS: I still don't read it that way.

DAVIS: All right, I will read it then.

V. RIVERS: I was just checking the enrolled copy to see. Mr. President, I merely wanted the record straight. It does not say "shall be approved by a two-thirds vote of the legislature", it says that "it may be changed by a two-thirds vote of the legislature". That is an entirely different action.

DAVIS: I heard, although I did not attempt to read that particular section, Mr. Rivers, I was only using it as a matter of illustration.

MCLAUGHLIN: To confirm what Mr. Davis has said, we had a representative of the Judiciary Committee present and I believe it is the unanimous agreement of the Committee that there have been no substantive changes made by Style and Drafting, unless those substantive changes on the matter of "provided by law" or "provided by the legislature", which in substance will be left to the body except upon motion of amendment by Mr. Robertson.

PRESIDENT EGAN: Are there questions with relation to Section 1? Mr. Robertson.

ROBERTSON: Amendments are not up now, are they?

PRESIDENT EGAN: We are in the process of accepting or rejecting the report of the Style and Drafting Committee.

ROBERTSON: Mr. President, I would like to ask Mr. McLaughlin, the Chairman of the Judiciary Branch Committee, if it is not true that the Judiciary Branch Committee when submitting this proposal did not intend in Section 1 that where the words "by law" are used, it means "by the legislature"?

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: You place me in an awkward position, Mr. Robertson, because frankly I don't know what we intended. We hadn't discussed the initiative and I cannot speak for the Committee, but we did use in many instances "legislature" interchangeably with "law", although that might not be the viewpoint of many members of the Committee.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, point of inquiry. Must we not settle, first of all, before we can proceed upon the suggestion of the Committee on Style and Drafting as outlined by Mr. Davis, because Mr. Davis said that should that suggestion be accepted, then in some instances here the report of the Committee on Style and Drafting as to this particular article must be changed?

PRESIDENT EGAN: Is it the wish of the body that at this time that a motion be made on that subject from the floor and we discuss it and settle it before we go section by section? Mr. Kilcher.

KILCHER: Mr. President, since the thought of the initiative was not clear when this article was first adopted in second reading, I think that each section should be viewed in the light of the initiative. I don't think it would be wise to either reject or adopt a motion that includes or excludes initiative for the whole article. There may well be instances where matters should be left to the legislature and there may be a few instances where the initiative might get due consideration.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I wanted to rectify a statement to the embarrassment of Mr. Robertson. I did not mean it that way, but when he says "Did the Committee intend it to be the 'legislature'", I would say by elimination "yes"; where we said "by law" we thought in terms of the legislature because of the fact we were not even thinking of the initiative, and "by law" we did in fact treat it in terms of the legislature.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I served on both committees, both the Initiative and Judiciary, and it was my own personal thought that we said or used the phrase "by law" we meant the legislature and not the initiative or the referendum.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: In order to have something before us, I move that in Section 1 wherever the words "by law" are used that they be changed to read "by the legislature", and I move that the rule be suspended.

ROBERTSON: I second the motion.

PRESIDENT EGAN: Mr. Johnson moves that the rules be suspended and that the words "by law" wherever they appear, be changed to read "by the legislature" in each case where those words appear in Section 1. Mr. Robertson.

ROBERTSON: I would suggest that if Mr. Johnson is agreeable that that also apply to Section 2, Section 3, Section 4, Section 9, Section 11, and Section 13.

JOHNSON: I certainly have no objection. However, in light of Mr. Kilcher's observation I thought that in order to expedite it, it might be better to proceed section by section. However, I am perfectly willing to include the other sections because they certainly apply.

PRESIDENT EGAN: Is it your wish that the other sections be included?

JOHNSON: It is.

PRESIDENT EGAN: Then the motion will include the words wherever they appear in the proposal.

ROBERTSON: No, only in those particular sections I mentioned.

V. RIVERS: I will ask Mr. Robertson if he included Section 11 there?

ROBERTSON: Yes, I mentioned Section 11 and Section 13.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I would like to ask the proposer of the motion a question now in order to get the thinking; if we vote on the question I want to know what we have done. Mr. Johnson, by proposing this motion is it your intention that if the motion passes, that by using the word "legislature" that we have meant that we have limited the operation to the legislature and the initiative does not apply in those instances? Is that your intention?

JOHNSON: That is my intention.

PRESIDENT EGAN: Mr. McNees.

MCNEES: Mr. President, I fail to see any great threat anywhere throughout this article, and I read it carefully last night; I spent a little better than two hours on it last night comparing it with the enrolled copy. I fail to see any threat whatsoever to the judiciary article by leaving the words "by law" remain in the article where they are found. The basis of constitutional law is that certain rights are reserved, certain reservations are made within the constitution and all other laws are left up to the legislature and to the people. Inasmuch as this body has gone on record as favoring the initiative, I do not feel that we should relegate it to a position of second- or third- or fourth-class nature in the formation of the statutory laws of our new proposed state. I have heard many discussions, informal on this subject this morning, and I think that we are probably being faced by some bugaboos that actually are not there. I am a firm believer that the initiative is something that belongs in our constitution just as much as I feel that the legislature belongs in our constitution. I don't feel that we can separate them and say that one law is going to have greater value or greater realm of power than a law stemming from some other source. I would heartily oppose any effort here to say, carte blanche, without serious discussion and study on the part of every delegate in this room that we can go through and say Section 1, 2, 3, and with the exception of Section 11, we are going to change the words "by law" to read the "legislature". I don't feel that that would be the will of this group; I certainly do not feel it would be the will of the people who elected us here. I think we must give much more consideration to it than that.

PRESIDENT EGAN: The Chair would like to state that ordinarily the motion to suspend the rules is not debatable, but inasmuch as within that motion to suspend the rules the proposed amendment was included, that it is permissible to discuss the question before us. Mr. Collins.

COLLINS: As Chairman of the Committee on the Initiative, Referendum and Recall, I would like to ask Mr. Davis if this move would not take the power of the initiative out. The initiative is a law itself. Of course, we have provided in the initiative for Section 3, "The legislature shall prescribe the procedure to be followed, the exercise of the power and initiative and referendum except as herein provided." I am just wondering if it would not take the power of the initiative away. Our Committee would firmly stand by the initiative. Mr. Taylor is not here, he is Vice Chairman of this Committee. I am sorry he is not here, but before a move is made I would like to have the opinion of the Committee, my Committee on the Initiative and Referendum. I think it is very vital at this point. If they endeavor to take away the power of the initiative I oppose it, and I want the backing of the Committee.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. Collins, in my opinion, to answer your question, in my opinion, if we adopt the motion which has been proposed we have taken away the power of the initiative as to the subjects covered in these particular articles.

COLLINS: Can you make that exception?

DAVIS: I don't see why not. I intended, if this carries, I intended certainly to provide somewhere in here a miscellaneous article in the constitution to the effect that when we have used the words "the legislature" as distinguished from "by law", that action then was limited to the legislature in those particular places. To further go ahead with what you mentioned, you will remember that we held a committee meeting which included members from your Committee. I don't remember whether you were there or not, but Mr. Taylor was there.

COLLINS: I was there.

DAVIS: At that time it was proposed, I think without dissent so far as that committee of committees was concerned, that we would offer an amendment to the initiative article to specifically eliminate, to specifically exclude the setup and jurisdiction of the courts from the initiative article. That is what we had agreed to do at that time, but this other thing has come up since. That is why we have the problem now, that apparently other committees are talking the same position and if they do we will have more exceptions in the initiative than we have initiative. That is the point I was trying to get at awhile ago. Now it is purely a matter of policy here as to whether the body itself wants to exempt the jurisdiction and the make-up of the courts from the initiative. So far as I, as an individual am concerned, I do favor that, but that is something that the body itself has got to decide; neither Style and Drafting nor either of the substantive committees can decide

that point.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, to carry this forward to what seems to me to be a logical conclusion, I wonder if the makers of the motion would be willing to hold it in abeyance until we decide the more basic question as outlined by Mr. Davis. It seems to me we have to decide that basic method of procedure before we know what we are going to do when we change or don't change the words in this article, "as prescribed by law". It wouldn't affect your motion, Mr. Johnson, but don't you think it might be better to settle the basic procedure first?

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I assume what Mr. White has in mind is perhaps a division on the question and we vote --

WHITE: I have in mind, Mr. Johnson, if you would agree to hold it in abeyance and move in line with the later suggestion of the Committee on Style and Drafting that a miscellaneous provision be adopted by the Convention as outlined by Mr. Davis.

JOHNSON: I beg your pardon, I have no objection to that.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, it appears to me that this is the basic question right now. The proposal that Mr. Johnson has offered is the basic question. It does not only apply to this particular article but it can apply and may apply to all other articles and we are now at this time arguing a differentiation between "by law" and "by legislature", so it seems to me that the point could be argued very clearly at this time.

WHITE: That is correct, but Style and Drafting has changed this article in some respects to read "as prescribed by law". In doing so they intended that at first that under the initiative an exception be made for the judiciary.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Point of order, Mr. President, I think that is a misstatement of fact. The Style and Drafting Committee, in my opinion, has no right to recommend a change in the substance of the whole constitution. I recognize that Mr. Davis, in presenting this thing, did the best he could and probably did it right, but the fact of the matter is that any decision that was made was a decision that was improper in itself, and it was simply, our job is to point this problem up and not to recommend a solution to the thing.

WHITE: Mr. President, in answer to Mr. McCutcheon, I maintain that settling the basic method of procedure at this time would not affect Mr. Johnson's motion or any discussion of it that may ensue. The only thing it would do is clarify what our procedure is going to be in each case. If Mr. Johnson agrees to hold his motion in abeyance as he had agreed, then I am prepared to make a motion.

PRESIDENT EGAN: Has Mr. Johnson agreed then that his motion will be held in abeyance and will not be before us at this time? Do you ask unanimous consent that it be held in abeyance?

JOHNSON: I do.

PRESIDENT EGAN: Is there objection to that request? Hearing no objection then, the motion as has been made by Mr. Johnson will be held in abeyance until a later time. Mr. White still has the floor if he has a motion.

WHITE: Mr. President, I move that it be the policy of the Convention to adopt a miscellaneous provision which shall say that when the constitution says "the legislature" it means the legislature only and that when it says "by law" it means by the state or by the legislature. I so move.

PRESIDENT EGAN: Is there a second?

MCNEES: I second the motion.

PRESIDENT EGAN: Mr. McNees seconds the motion.

MARSTON: Is it open for discussion?

PRESIDENT EGAN: The motion is open for discussion. Mr. Marston.

MARSTON: May I ask a question of Mr. Davis? What position has Style and Drafting taken on the initiative where it says "by law" or "by legislature", have they also done the same thing on the initiative powers going into the legislature?

DAVIS: Mr. Marston, Mr. Hurley had the right idea awhile ago when he said that Style and Drafting cannot decide that. I do not agree with Mr. Hurley when he said we shouldn't propose a solution if we had one because I think somebody has got to do it, but at the minute in working on the initiative article this point doesn't come up. Had this matter been limited to the judicial and had the body wanted to limit action on the judiciary to the legislature we could have then proposed an amendment to the initiative article which would have taken care of that, but so far as I see, the action taken now won't have any effect at all on the initiative article as such. It will, certainly if adopted, take certain things away from the initiating power that might be given unless the motion were adopted.

CHIEF CLERK: "That it be the policy of the Convention to adopt a miscellaneous provision which shall say that 'when the constitution says "the legislature" it means the legislature only and that when it says "by law" it means by initiative or by the legislature.'

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we have reached a very fundamental question, and we are going to be making a very fundamental decision. If we distinguish between the meaning of the words "by law" or "by the legislature" we are raising a substantive question in every case where those words appear. I have talked to various committee people and most of them say that they did not have the distinction clearly in mind when they drafted their proposals. They used them more or less interchangeably without stopping to think of the distinctions. If we are going to raise a substantive question on the meaning of those words, then we get into the problem of whether all these articles should go back to their standing committees for decision on that fundamental substantive question which is involved or else we will just keep them on the floor here and we will fight it out every time one of those terms arises as to what we mean by it. Of course, only the body can make the final decision. As far as the Judiciary is concerned, the members of that Committee were thinking only of the legislature. Ours was among the first out and we didn't stop to think about the distinction. We used the words interchangeably. However, the Judiciary is pretty well-constructed right in the constitution. The initiative power does not extend to changing the constitution. We have our courts with the main jurisdiction defined and the judicial council and everything we have written in here; the initiative could not touch it. However, we have said "by law" with regard to about seven points, as Mr. Robertson pointed out this morning. One is that inferior courts could be established by law, and the salaries of justices and judges could be changed by law, and the number of justices of the supreme court may be increased, but only upon request of the supreme court, so that would not apply. And then additional qualifications are prescribed by law for judges. I am perfectly secure as far as the judiciary article is concerned. I don't think the public is going to concern itself by initiative, whether it is going to change the salary of judges or create an inferior court. We have the broad question before us and that is what I am speaking to. The Judiciary raised this because we think those are not proper subjects for the initiative. Neither are they subjects that the public is going to be interested in from the standpoint of the initiative, and I feel if we go through with the distinction that Mr. Barrie White would establish here -- I really fully approve of having him raise the point at this time -- I feel that every proposal that comes before us from now on in third reading is before us on a substantive question as to what we mean by those particular terms and I doubt that the remaining

14 days is long enough for us to fight that battle out every time we come across those terms. So, in the interest of the entire Constitutional Convention, I am willing to let the Judiciary take a chance. I am not speaking for any of my colleagues on the Committee. I am willing to let Judiciary take a chance, and I am willing to say that let the initiative apply wherever it would ordinarily apply without making that distinction, because if we start giving an initiative which we have done, and then say, "except this, except this", and take every proposal and treat that as a matter of substance, for the rest of this Convention during the third reading, I am afraid we are just about wrecking the operation, so if the Convention votes this down, Mr. Barrie White's amendment, I am going to propose one to the effect that those words may be used interchangeably wherever applicable insofar as the initiative is concerned. If we take that decision now we can go ahead and wind up this Convention. Otherwise, I don't see where we are coming out.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I agree entirely with Mr. Rivers that we will be spending the rest of our days worrying as to what exactly the meaning of each of those words is. It seems to me that in the passing of the proposed article on direct legislation, we made a decision in this particular matter; we said as follows: "The initiative and referendum may not be used as a means of earmarking revenues for making or defeating of appropriations of public funds or for local or special legislation." We specifically exempted those. I don't think it is right for us as an afterthought to start going through the whole constitution and add additional items that are not subject to the initiative. I personally am not a believer in the initiative; however, if you have it, let's be honest about it; let's be above board about it. If you believe that certain items should be exempted let's put them into Section 5 of Article 3 and specifically exempt them from the initiative instead of going through each article, section by section, and by hidden meanings prevent the people from exercising the initiative.

PRESIDENT EGAN: Miss Awes.

AWES: I agree with Mr. Fischer that we adopted the initiative with certain exceptions which appear in that article. The proposal that is before us now was decided before we adopted the initiative, so I think the problem is with it, and it seems to me that Style and Drafting acted very properly when they used a consistent term "by the law", the one they chose, and I think in this case we should decide the matter as a substantive matter. The other proposals where we are concerned with it, I think all came up after the initiative was adopted, and therefore, I think the Style and Drafting should continue to use the term "by law" and I think then it would be understood that the

CROSS: Mr. President, when we were writing this constitution and these articles we made no distinction between "legislature" and the "law". I am opposed to going ahead and making that distinction now. I can foresee hours and hours of debate on that. Let's get back to the question and vote this down.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I won't feel badly at all if this motion is voted down. I merely proposed it as a means of clearing the air and establishing basic policy. Whether or not we agree with Miss Awes that we do or do not need such a provision, I think if you want to exempt a number of things from the initiative we do need such a provision, because there seems to be some doubt among the delegates as to what we have meant in the past when we say "by the legislature" or "by law", and I propose it only as a means of clearing the air.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: I was delayed in arriving here and I would like to be allowed not to vote on this subject because I have not heard all the debate. I ask to abstain.

PRESIDENT EGAN: You ask to abstain? The question is, "Shall the proposed motion as offered by Mr. White be adopted by the Convention?"

METCALF: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 18 - Barr, Buckalew, Coghill, Collins, Cooper, Davis, Johnson, Kilcher, Laws, McCutcheon, McNealy, Nerland, Nolan, Peratrovich, Poulsen, Reader, Robertson, Taylor.

Nays: 34 - Armstrong, Awes, Boswell, Cross, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, King, Knight, Lee, Londborg, McLaughlin, McNees, Marston, Metcalf, Nordale, Riley, R. Rivers, V. Rivers, Smith, Stewart, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 2 - Hellenthal, VanderLeest.

Abstaining: 1 - Rosswog.)

PRESIDENT EGAN: The Convention will come to order. The Chief

Nays: 20 - Coghill, Collins, Emberg, H. Fischer, V. Fischer, Hilscher, Hinckel, Hurley, Kilcher, Knight, Lee, Londborg, McNees, Marston, Peratovich, V. Rivers, Smith, Stewart, Sundborg, White.

Absent: 2 - Hellenthal, VanderLeest.)

CHIEF CLERK: 33 yeas, 20 nays and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the rules have not been suspended. Are there other questions with relation to Section 1? Mr. Johnson.

JOHNSON: Mr. President, I ask unanimous consent to withdraw my motion, that is the remainder of the motion.

PRESIDENT EGAN: Mr. Johnson asks unanimous consent that the motion be withdrawn. It actually should not have been before us. Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I will try it again. I asked for unanimous consent to the suspension of the rules so that I may introduce a motion.

PRESIDENT EGAN: The Convention will come to order.

MCCUTCHEON: Point of information. I would like to hear the matter of the motion before I rule on that, or whether I would object.

PRESIDENT EGAN: Mr. McLaughlin, would you inform the body.

MCLAUGHLIN: It is my intent, if the rules are suspended, to introduce the following motion to be adopted by the Convention or rejected by the Convention: "That it is the intent of the Convention that all provisions of the constitution which include the words 'by the legislature' or 'the legislature', unless clearly inapplicable or unless specifically excluded from the initiative and referendum by the article on the initiative and referendum, shall be subject to the initiative and referendum."

HERMANN: I think the motion ought to be submitted to Style and Drafting. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Mr. McLaughlin asks unanimous consent for the suspension of the rules in order that he may introduce such a motion. Is there objection?

BUCKALEW: I object.

PRESIDENT EGAN: Objection is heard. Did you so move, Mr.

McLaughlin?

MCLAUGHLIN: I so move.

KNIGHT: I second the motion.

PRESIDENT EGAN: The question is, "Shall the rules be suspended?"
The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 47 - Armstrong, Awes, Barr, Boswell, Collins,
Cooper, Cross, Davis, Doogan, Emberg, K.
Fischer, V. Fischer, Gray, Harris, Hermann,
Hilscher, Hinckel, Hurley, Johnson, Kilcher,
King, Knight, Laws, Lee, Londborg, McCutcheon,
McLaughlin, McNealy, McNees, Metcalf, Nerland,
Nolan, Nordale, Reader, Riley, R. Rivers, V.
Rivers, Robertson, Rosswog, Smith, Stewart,
Sundborg, Sweeney, Taylor, Walsh, White, Wien.

Nays: 6 - Buckalew, Coghill, Marston, Peratrovich,
Poulsen, Mr. President.

Absent: 2 - Hellenthal, VanderLeest.)

CHIEF CLERK: 47 yeas, 6 nays and 2 absent.

PRESIDENT EGAN: The "yeas" have it and the rules have been
suspended. Mr. McLaughlin.

MCLAUGHLIN: Do I now move, Mr. Chairman?

PRESIDENT EGAN: Would you submit it to the Chief Clerk please.

TAYLOR: May we have five minutes to look that over, please?

PRESIDENT EGAN: If there is no objection the Convention will be
at recess for two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief
Clerk will please read the proposed amendment as offered by Mr.
McLaughlin.

CHIEF CLERK: "That it is the intent of the Convention that all
provisions of the constitution which include the words 'by the
legislature' or 'the legislature', unless clearly inapplicable
or unless specifically excluded from the initiative and referen-
dum by the article on the initiative and referendum, shall be
subject to the initiative and referendum."

PRESIDENT EGAN: Mr. Cooper.

COOPER: Point of order. The other day a rule was adopted in addition to the other rules that we had which said that any amendment that was long would have to be mimeographed and I would like to ask to have this mimeographed.

MCLAUGHLIN: Mr. Chairman, may I point out this is not an amendment to anything. It is merely a statement of intent.

PRESIDENT EGAN: Do you still raise your point of order?

COOPER: No, I will withdraw it.

HARRIS: Mr. President, I would like to ask Mr. McLaughlin a question if I may.

PRESIDENT EGAN: You may, Mr. Harris, if there is no objection.

HARRIS: Mr. McLaughlin, if the words "by law" are stated I guess that would also apply to the initiative and referendum as well as the legislature?

MCLAUGHLIN: Yes, that is clearly the understanding of this body at the moment that "by the law" makes it subject to the initiative and referendum, if I may speak on this, Mr. Chairman.

PRESIDENT EGAN: You may speak on this, Mr. McLaughlin, but did you so move?

MCLAUGHLIN: I so move.

BARR: I second it.

PRESIDENT EGAN: Mr. McLaughlin moves, seconded by Mr. Barr.

MCLAUGHLIN: Regrettably this is wordy, but the wordiness is necessary so that we cover in most of the problems that confront Style and Drafting. All we are asking is that the Convention notes immediately that where we use in any article, have used in any article the expression "by the legislature" or we have used in any article the proposal, the words "the legislature", unless those things obviously are inapplicable they are subject to the initiative and the referendum unless they are otherwise specifically excluded from the article on the initiative and referendum. What do I mean by that? I mean by that this: where we say "the legislature shall provide", automatically on the adoption of this constitution, Style and Drafting can say, we can substitute the words "by law". It means that where we say "further provision shall be made by the legislature", Style and Drafting upon adoption of this can say they mean "according to law", or "by law", because we automatically have then confirmed, in a sense, the article on the initiative and

referendum and said unless you are specifically--you have been specifically exempted by the article on the initiative and referendum, this section of the constitution where the expression "the legislature" is used is subject to the article on the initiative and referendum and it means "by the law". You have a "yes" or a "no". We don't intend to insert anything in here in the constitution. It is a statement of intent, but it means that now and hereafter Style and Drafting has a clear directive from the Convention. What do I mean here by "unless clearly inapplicable"? I will give you the best example; it has been used before. Certainly we wouldn't intend, where you read in the article on the judiciary that the supreme court may adopt rules which may be, in substance, disapproved by two-thirds of each house of the legislature, because it was obviously meant from that context that that couldn't be subject to the initiative, and so we are clearly indicating here that where we use the expression "by the legislature" or the expression "the legislature" we mean completely, thoroughly, and wholeheartedly know that it is subject not only to the initiative but to the referendum, and where it is clearly inapplicable, even 55 idiots would agree that it was inapplicable. That is not a reflection upon the body, Mr. Chairman, if it is, it is upon myself alone. Thank you. (Laughter)

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I am afraid I haven't anything witty to say.

PRESIDENT EGAN: Mr. Johnson has the floor.

JOHNSON: I would like to point out that while normally I am in agreement with our distinguished Judiciary Chairman, I am afraid here that his motion isn't going to help us a great deal because it certainly does not resolve the problem we are faced with in this judiciary article, and I don't know how to solve that; I tried by a motion but that failed, rather the suspension of the rules failed, and as I said before, I don't see how the adoption of Mr. McLaughlin's motion is going to help us in solving the problem that still, I believe, exists in the judiciary article. The McLaughlin motion may help the Style and Drafting Committee in the future -- I don't know about that -- but certainly so far as the judiciary article is concerned, I don't think that it has resolved the question.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I would like to support the motion. If it is adopted it will facilitate the work of Style and Drafting, immeasurably. Beyond that I say there is a solution for Mr. Johnson, and the solution is, if he doesn't want the judiciary article to be subject to action by the initiative or referendum, the way to state that and state it unmistakably is to write it in as one of the restrictions on the use of the

initiative in the initiative article, and if the body wants to do that, that is the place to put it. I am sure, and I think every man and woman here will agree with me, that as we considered these matters on the floor we did not stop to think each time that the use of the term "by the legislature" or "by law" was used whether we were distinguishing between whether a thing would be subject to the initiative or not. We did use those terms interchangeably. I know they were used interchangeably in my own thinking at least as we looked at the proposals before us. There is one other alternative still before us, and that is when we get around to it we may not even adopt the article on the initiative and referendum. I myself am in favor of it; I think it ought to be in the constitution, but to let Style and Drafting get on with its work it would help greatly in that work if we adopt Mr. McLaughlin's motion.

PRESIDENT EGAN: Mr. White.

WHITE: This is a logical sequence and only logical sequence to voting down the motion that I made previously.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, may I ask a question of Mr. McLaughlin?

PRESIDENT EGAN: You may.

COGHILL: On your proposed amendment, let's just take for an example in your local government article on boroughs would the legislature that provides for the performance of services to unorganized boroughs, would that be "the law shall provide"?

MCLAUGHLIN: That would be "it shall be provided by law".

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: May I ask a question of Mr. McLaughlin? It wasn't your intent to preclude the Committee on Style and Drafting to occasionally use "by the legislature" just for variety, was it?

MCLAUGHLIN: It was not, but if intelligence conflicts with variety I would say that variety would have to go by the board. Mr. Chairman, I might answer one of the objections that came from Mr. Johnson. If Mr. Johnson, after the adoption of this, wants to raise the question immediately as to whether or not the judiciary article is subject to the referendum, he need merely move to strike all the expressions "be established by law" and substitute the word therein "legislature".

PRESIDENT EGAN: The question is, "Shall the proposed motion as offered by Mr. McLaughlin be adopted by the Convention?" All those in favor of the adoption of the proposed motion will signify by saying "aye", all opposed by saying "no". The

"ayes" have it and the proposed motion is ordered adopted.
Are there questions with relation to Section 1? Mr. McCutcheon.

MCCUTCHEON: Mr. President, in view of the action that has just been taken by the body, I will move that the judiciary article be sent back to Style and Drafting for further consideration in drafting.

TAYLOR: I second the motion and ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the judiciary article be sent back to Style and Drafting for further consideration in drafting.

SUNDBORG: Is this debatable?

PRESIDENT EGAN: Recommit, is that your motion, Mr. McCutcheon?

MCCUTCHEON: Yes, that is what it amounts to.

PRESIDENT EGAN: Recommit is debatable, yes, it is, Mr. Sundborg.

SUNDBORG: We don't want it back. We have already labored over this for more than two weeks. We have inserted in here "by law". If we get it back that is all we could do, as I can see it.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, it just seems to me that this should be recommitted to Judiciary Committee because they know what they mean in each case, and then it should come out on the floor for adoption. They could consult with Style and Drafting, perhaps.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: When the initiative and referendum article finally comes before us, Mr. Barr, I am quite sure our Committee is going to move an exclusion of the formation and jurisdiction of the courts in the judiciary article, but I think we ought to go ahead and clear this and get it into third reading and take the other up in due course.

PRESIDENT EGAN: The question is, "Shall the report of the Committee on Style and Drafting on Committee Proposal No. 2 be recommitted back to the Style and Drafting Committee for further consideration?" All those in favor of recommitting the proposal to the Style and Drafting Committee for further consideration will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposal is before us. Mr. Robertson.

ROBERTSON: I move that it be recommitted to Judiciary Branch

SUNDBORG: We are aware of those two, and we will take care of them appropriately here. I was just wondering if there may be some others that in the course of the Convention have been given to some committee or have been assigned for further study and have not come before us again.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I do not recall seeing the one in regard to suffrage and elections, which referred to the election of 1924. Does that belong here or in Ordinances?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I believe it has been passed in third reading, and will be among the provisions in the schedule of transitional measures and ordinances. I believe it was reported out again by Mr. McNealy's committee along with the Alaska-Tennessee Plan.

PRESIDENT EGAN: Mr. Rivers had one he was working on. Mr. Rivers.

V. RIVERS: Well, I have in mind what I consider to be a problem of omission, and that is the question of financing in the transition period. I mentioned that the other day. I also have in mind as to whether or not we should have a sort of a severability or savings clause in here, so that if the Congress should find they are not able to accept certain clauses, such specifically as the fish trap clause, that we would not lose the balance. I was just thinking about that and I mentioned that before dinner. I have talked it over with a few. I wonder if it might not be well to have it.

PRESIDENT EGAN: Mr. Sundborg, do you have a Committee explanation to make in relation to this article?

SUNDBORG: Mr. President, the general and miscellaneous provisions have been gathered from all points here in the Convention and collected in the Engrossment and Enrollment Committee and turned over to our Committee. Some of them have been drafted in the first instance by Style and Drafting, and we gave those just as critical a going-over as we did the others as to language. The redraft was prepared by a subcommittee consisting of Mr. Davis, Mr. Fischer, and myself. And we have asked Mr. Fischer to explain the changes that have been made and to answer any questions by delegates.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, there are no basic changes in the various sections as they are before you. There is an additional section inserted, as you will note, Section 9, that is a clari-

fication of the use of the terms "by law" and "by the legislature" as they are used in this Constitution. It was deemed desirable to include this provision to make sure that the courts do follow the intent of this Convention in deciding upon various questions that may come up. We will ask for a suspension of the rules to consider this matter.

PRESIDENT EGAN: Are you asking for that suspension at this time? You mean for the inclusion of this section?

V. FISCHER: Yes, I think it properly should come after the language has been approved. If you would like me to, I can just run through quickly and advise the members where the various sections came from. Section 1 is Section 1 in the enrolled copy; 2 and 2 are the same; 3 comes from 3; 4 is the same as No. 4 was before -- in most cases they are practically the same wording; 5 has the same number as previously. Section 6 is composed of what were Section 7 as well as Section 8 in the enrolled draft. We combined those into one section. What is Section 7 now previously was Section 9. What is Section 8 previously was Section 10. Section 9, as I mentioned, is new. Section 10 comes from Section 11; Section 11 comes from 13; Section 12 comes from 6; Section 13 comes from 6; and as Mr. Sundborg mentioned, Section 12 of the enrolled copy is not as yet ready for presentation and will be brought in as an addendum to this report at a future time for separate approval. I will be glad to answer any questions. ✓

PRESIDENT EGAN: Are there any questions to be directed to Mr. Fischer on any of the sections? Mr. Cooper.

COOPER: Mr. President, in line 21, page 2, Section 6, should not the words "persons of" be stricken?

V. FISCHER: They probably could be. I don't think that they add very much to the language as it stands here.

PRESIDENT EGAN: Are there other questions relating to Article XII? If not, are there any committee amendments to be offered at this time? Mr. Fischer.

V. FISCHER: Mr. President, I would like to ask unanimous consent that the rules be suspended for the purpose of considering the inclusion of Section 9.

PRESIDENT EGAN: Mr. Fischer moves and asks unanimous consent that the rules be suspended for the purpose explained. Mr. McLaughlin.

McLAUGHLIN: Mr. Chairman, the objection is merely a technicality, but on page 2, line 21, "including persons of both sexes.", should not that read, "shall be construed as including either

sex."? (laughter)

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I think I would rather not answer that question while we are in the middle of a request for the suspension of the rules.

McLAUGHLIN: I will withdraw that objection.

PRESIDENT EGAN: Mr. Fischer asks unanimous consent that the rules be suspended in order that he might offer Section 9 as an amendment to this article. Is there objection? Hearing no objection the rules are suspended. Mr. Fischer, you might offer your proposed amendment.

V. FISCHER: Mr. President, I move that Section 9 be approved for inclusion in Article XII of this Constitution. I ask unanimous consent.

PRESIDENT EGAN: Mr. Fischer moves and asks unanimous consent that Section 9 be adopted as a part of Article XII, the Article on General and Miscellaneous provisions. Is there objection? Hearing no objection, the amendment is ordered adopted. Are there other committee amendments, Mr. Fischer?

FISCHER: Mr. President, on page 2, line 7, change the word "dis-charge" to "discharge".

PRESIDENT EGAN: Unanimous consent is asked that the rules be suspended. Hearing no objection, it is so ordered. Mr. Fischer, you ask unanimous consent for the adoption of that change? Hearing no objection, it is so ordered.

V. FISCHER: I would like to ask the grammarian of the Convention whether "construing" is properly spelled on line 19 of page 2.

HERMANN: Yes.

V. FISCHER: The committee has no further amendments, Mr. President.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: I think that the Committee on Style and Drafting is avoiding the issue, and it may cause some embarrassment in future generations. I move that the word "both" on line 21, page 2, be stricken, and in lieu thereof the word "either" be inserted.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: May I ask a question of Mr. McLaughlin? And use the singular for "sex"?

1-LS0211\G
Utermohle ✓
2/1/99

CS HOUSE JOINT RESOLUTION NO. 3()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE BUNDE

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 a petition for an initiative or referendum regarding fish or wildlife.

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

4 * **Section 1.** Article XI, sec. 3, Constitution of the State of Alaska, is amended to read:

5 **Section 3. Petition.** After certification of the application, a petition containing
6 a summary of the subject matter shall be prepared by the lieutenant governor for
7 circulation by the sponsors. If signed by qualified voters, equal in number to ten per
8 cent of those who voted in the preceding general election and resident in at least two-
9 thirds of the house districts of the State, it may be filed with the lieutenant governor.
10 However, the lieutenant governor may not accept for filing a petition relating to
11 the utilization, development, or conservation of fish or wildlife unless the petition
12 is signed by qualified voters equal in number to ten percent of those who voted
13 in the preceding general election and resident in all of the house districts of the
14 State.

15 * **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of
16 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the

1 State of Alaska, and the election laws of the state.



ALASKA OUTDOOR COUNCIL

211 4th St. #302A
Juneau, Ak. 99801
(907) 463-3830
FAX 586-6020

February 3, 1999

The Honorable Scott Ogan, Co-Chair
The Honorable Jerry Sanders, Co-Chair
House Resources Committee
Alaska State Capitol
Juneau, AK 99801

Dear Representatives Ogan and Sanders:

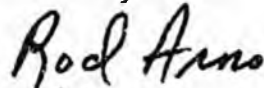
It has come to my attention that the comments I presented to the House Resources Committee last week on HJR 3 have been misconstrued in a publication of the Laws of the Sea. In order for there to be no question about where we stand as a group, I have taken the time to write to you and clear this matter up.

The Alaska Outdoor Council (AOC) strongly supports the position outlined in the letter you received the first week of session. Our first concern revolves around our belief that wildlife management is clearly provided for in Article VIII, Section 2 of our constitution which we feel precludes putting wildlife management to a public vote. Secondly, we feel strongly that sound scientific based management under the constitution's sustained yield mandate cannot be achieved by common consensus. Last of all, we believe the animal rights activists will not be deterred by simply making the process more difficult.

We were very disappointed in the Alaska Supreme Court's handling of the Wright case. It is our opinion the court ignored the state constitution and long standing public trust doctrines to arrive at a politically expedient decision in tune with the current administration. Although there will be those Legislators who may be reluctant to move the state back toward sound scientific based management through concerns about how the general public may react to such a measure, it is our hope that the majority of you will find the courage to provide us the opportunity to correct this problem with an amendment to the constitution that precludes such initiatives.

In conclusion, we strongly recommend your consideration of a committee substitute for HJR 3 that would reflect the language we provided in our position paper. Thank you for your time and attention to this important issue, it is very much appreciated.

Sincerely,



Rod Arno
President

cc: Representative Con Bunde
Representative Bill Williams
House Resource Committee Members
Senator Rick Halford, Chair Senate Resources
Senate Resource Committee Members