

HJR

7



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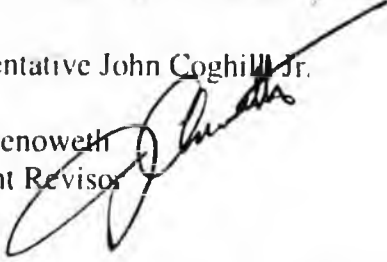
## MEMORANDUM

April 4, 2007

**SUBJECT:** Does HJR 7, proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document, constitute a "revision" of the state constitution?  
(Work Order No. 25-LS0429\A)

**TO:** Representative John Coghill Jr.

**FROM:** Jack Chenoweth  
Assistant Revisor



The inquiry from Carol Beecher of your staff to Tam Cook asking for an answer to the above-captioned question has been referred to me for preparation of a response.

Any proposal for a constitutional amendment raises a question as to whether or not the proposed amendment could survive scrutiny under *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999). The decision in *Bess* established that the legislature's power to propose a change in the text of the state constitution is limited to amendments that are "few, simple, independent, and of comparatively small importance."<sup>1</sup> The legislature lacks authority, the court concluded, to propose changes to the document's "substance and integrity." Changes of that magnitude would have to be prepared and offered by a constitutional convention as revisions. The standard that the court fashioned relates that:

. . . an enactment which is so extensive in its provisions as to change directly the "substantial entirety" of the constitution by the deletion or alteration of numerous existing provisions may well constitute a revision thereof [while] even a relatively simple enactment may accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision also.

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<sup>1</sup> The court prefaced its analysis by noting that, in its view, the framers' distinction between an amendment and a revision was intended to be substantive, and concluded that:

a revision is a change which alters the substance and integrity of our Constitution in a manner measured both qualitatively and quantitatively.

*Bess*, 985 P.2d at 982.

The process of amendment, on the other hand, is proper for those changes which are "few, simple, independent, and of comparatively small importance." The core determination is always the same: whether the changes are so significant as to create a need to consider the constitution as an organic whole.

*Bess*, 985 P.2d at 987 (notes omitted).<sup>2</sup>

The *Bess* standard spoke of evaluating an amendment's qualitative and quantitative effects.

Quantitatively, the material in the proposed amendment arguably fails at least part of the standard. The proposed changes are, admittedly, not clearly "few," nor, it may be contended, are they "independent." On the other hand, the material proposes changes that are "simple" -- the amendment is confined to a series of technical changes affecting singular masculine personal pronouns and a handful of gender-related terms. At least when compared to the much more significant questions of assigning powers among the branches of government, limiting the exercise of institutional authority, or providing protection of individual rights, for example, HJR 7 does not propose to make fundamental changes in the scheme or plan of operation of the state government. Indeed, in that context, the modifications set out are of relative unimportance.

Qualitatively, it is my observation that nothing in the accompanying document would "substantially alter the substance and integrity of the state Constitution as a document of independent force and effect." *Bess*, 985 P.2d at 987, quoting *Raven v. Deukmejian*, 801 P.2d 1077, 1087 (Cal. 1990) (note omitted). The material in the resolution is arguably wholly technical and not intended to make a substantive change in a matter of constitutional law.

On balance, I am satisfied that, if challenged, the court could conclude that the absence of qualitative change within the proposed amendments as set out and, despite the number of sections affected, the relatively insignificant incidental effect on the integrity of the document as a whole would allow the material to be treated through the amendment process rather than as a revision.

JBC:imb  
07-097.imb

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<sup>2</sup> The court's preliminary opinion in the *Bess* matter looked at the qualitative standard from a different perspective, indicating that changes that are "few and simple and independent" are permissible amendments while "sweeping change" requires revision. In that preliminary opinion, the court identified four factors that suggest that a particular proposal is a valid amendment: it (1) "is simple to express and understand"; (2) "is complete within itself"; (3) "relates to only one subject"; and (4) "does not substantially affect numerous other sections of the constitution..." Preliminary Opinion and Order, at paragraphs 10 and 12. The four factors identified by the court in the preliminary opinion amount to a first effort to frame a quantitative analysis.

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**Representative Carl Catto**  
Co-Chair, House Resources Committee  
District 13 - Palmer

## SPONSOR STATEMENT

### HJR 7

*"Proposing amendments to the constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document."*

HJR 7 removes all masculine or feminine terms from the Constitution of the State of Alaska. This resolution deletes the terms "his," "him," and "himself" and replaces them with terms as "oneself," "Governor," "Governor-elect," "Lieutenant Governor," "Legislator," "members," "executive," "justice or judge," "voter," "person's," "auditor," and "accused." Other changes that occur make the sentences grammatically correct.

Some of our oldest and youngest states in the union such as New York and Hawaii have amended their constitutions to reflect gender neutrality. The framers of our constitution went to great lengths in the construction of the Constitution to recognize gender equality and it is in that spirit and as a continuation of their leadership that we seek to modify our constitution in recognition of the progress in our society and culture.

This resolution is before us now because it is time for us to recognize a significant moment in Alaska history, a time when we elected our first female Governor. The administration fully supports this effort.

I ask for your support.



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TOP STORY

THURSDAY, APRIL 03, 2003 States Balance He's And She's

By Kathleen Murphy, Staff Writer

Michigan's governor is a woman but the state constitution refers to Democrat Jennifer Granholm as "he."

Michigan Rep. Lisa Wojno, D-Warren, wants to change the constitution to gender-neutral language, following the lead of Rhode Island, Maine, Vermont, New York, California, Florida and Hawaii. New Hampshire lawmakers are also considering the change.

Women won the right to vote through the 19th Amendment to the U.S. Constitution in 1920, and many had secured full voting rights by constitutional action in states such as Colorado much earlier. But many state constitutions never envisioned that women would hold political office.

Making these constitutions more inclusive has been unwelcome in places where it's seen as political correctness run amok. Nebraska voters rejected adding gender-neutral language to the state constitution in 2000. Minnesota lawmakers considered the change in 2001 but didn't adopt it.

In New Hampshire, gender-neutral reform failed in 1998 and has met resistance this year. Critics said changing the constitution is unnecessary because legally it's already interpreted to include men and women. They said the constitution is a sacred historical document that shouldn't be reworded.

Theresa de Langis, executive director of the New Hampshire Commission On The Status Of Women, said women's role in state government is made invisible by the constitution's non-inclusive language.

"State constitutions are living historical documents that need to reflect the day and time in which they are protecting their citizens. Sexism in any form, just like racism and slavery, is wrong and should be struck from our governing documents," de Langis said.

New York voters approved gender-neutral language in 2001. In 170 places, "she" was added where there had only been a "he." Terms such as fireman and policeman were changed to firefighter and police officer. "Mankind" changed to "humankind."

New York's ballot measure overcame opposition from the Conservative Party which urged voters to reject it as frivolous "feel-good legislation" that accomplishes nothing.

New York Assemblywoman Sandy Galef, D-Ossining, a driving force behind the changes, said, "My response to people who said that was, what would happen, as a man, if the constitution was written all about women? Wouldn't you want it changed to reflect that there are men involved too in the state? Then they'd come along on board."

In Michigan, Rep. Wojno's gender-neutral resolution could be on the statewide ballot this year if two-thirds of the House and Senate approve it.

But Michigan's Gov. Granholm is more concerned with the state's bottom line than gender-neutral words.

Granholm press secretary Liz Boyd said, "We don't have a position on that as long as a change in the constitution doesn't cost us any money."

Contact Kathleen Murphy at kmurphy@stateline.org

ISSUES AND TOPICS

Issues: Politics

COMMENTS

There are no comments yet, would you like to add one?



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# FISCAL NOTE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: HJR007-OOG-DOE-4-02-07  
 Bill Version: HJR 7  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: OOG  
 Title Constitutional Amendment to avoid the use of RDU Elections  
personal pronouns and similar references... Component Elections  
 Sponsor Representative Gatto  
 Requester House State Affairs Committee Component No. 21

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual		1.5				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		1.5				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>1.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

If this amendment appears on the 2008 ballot, the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, is \$1.5. Should the addition of this question require the printing of an 8-1/2 by 18-inch ballot, the cost will increase to \$22.0.

Prepared by: Gail Fenuniai, Asst. Admin. Director  
 Division: Division of Administrative Services  
 Approved by: Whitney Brewster, Director  
 Agency: Office of the Lt. Governor, Division of Elections

Phone 465-3885  
 Date/Time 4/2/2007, 8:57am  
 Date 4/2/2007

ALASKA STATE LEGISLATURE  
Rep. Carl Gatto



**MEMORANDUM**

TO: Rep. Lynn Chair House State Affairs Committee  
FROM: Rep. Gatto  
DATE: March 1, 2007  
RE: Request for Hearing  
CC:

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Enclosed you will find a committee packet for HJR 7 "Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document." I have included a sponsor statement, the most recent version of the bill, and other supplemental information.

I would appreciate a committee hearing before the House State Affairs committee at your earliest convenience. I appreciate your time and look forward to your reply.

Please contact my staff member Sandra Wilson at ext 3163 with any questions or comments regarding this request.

Thank you