

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 924 *224*

Patrick M. Rodey
Senator

Alaska State Legislature



3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

Senate

DATE : March 5, 1991

TO : Senator Jay Kerttula, Co-Chair
Senator Pat Pourchot, Co-Chair
Senate Finance Committee

FROM : Senator Pat Rodey

RE : **Scheduling of Senate Joint Resolution I -**
Proposing an amendment to the Constitution of the
State of Alaska relating to the individual right to keep
and bear arms.

I respectfully request that the Senate Finance Committee consider scheduling SJR I for committee consideration as soon as possible.

This proposal, if passed, would allow Alaskan voters an opportunity to decide in the 1992 general election whether Section I of our state constitution should be amended to secure an individual's right to keep and bear arms.

As you know, some federal court interpretations and Department of Law opinions have held this right in doubt. These actions have inspired several states to modify/clarify their state constitutional language to more precisely define this right.

Nearly 70% of Alaskan households possess at least one firearm and approximately 22,000 Alaskans are members of the National Rifle Association. It would seem quite clear that the right to keep and bear arms is highly guarded by a majority of Alaskans.

SJR I has a fiscal impact of \$2,200.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

June
STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 12, 1989

Commissioner William G. Demmert
Department of Education
P.O. Box F
Juneau, Alaska 99811

Dear Commissioner Demmert:

You have asked whether school districts will be able to prohibit the possession of weapons on school property if the Alaska constitution is amended as set out SJR 4. It is our opinion that the proposed amendment could present a constitutional impediment to adoption of laws that infringe on the right to keep or bear arms, including regulation of weapons on school grounds.

As set out more fully in the attached letter to Senator Jan Faiks, to support a finding of constitutionality in the face of a challenge based on the proposed amendment, each law infringing on the right to keep and bear arms must be based on a compelling state interest. Although we believe that a compelling state interest can be shown for prohibiting young children from having weapons, we are concerned that the new amendment could limit the prohibiting of adults, or older students, from having weapons on school property.

We must emphasize that the legal effects of the proposed constitutional amendment can not be predicted with any degree of certainty. However, based on the broad reading the Alaska court gives to the provisions of our constitution, and the lack of any language in the amendment giving the legislature the authority to regulate the exercise of the constitutional right, it is much more likely than at present that laws regulating firearms will be declared unconstitutional.

The constitutional hurdle could easily be avoided if the legislature amends the language of SJR 4 to specifically reserve the right to reasonably regulate arms. Language that would accomplish this result is set out at page 37 of the attached

Commissioner William G. Demmert
Right to Bear Arms Amendment

February 12, 1989
Page Two

letter, as well as in the attached document entitled "Alternative Methods of Reserving the Right of the Legislature to Reasonably Regulate Arms in SJR 4."

Please let us know if you have any remaining questions about this important issue.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Laurie H. Otto
Assistant Attorney General

Attachments: Letter to Senator Faiks, January 29, 1989
"Alternative Methods of Reserving the Right of the
Legislature to Reasonably Regulate Arms in SJR4"

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS
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1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

January 31, 1991

The Honorable Rick Halford
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Re: SJR 1, Right to Bear Arms

Dear Senator Halford:

The position of the Department of Law on the resolution to amend the Alaska Constitution to recognize an "individual" right to bear arms (Senate Joint Resolution 1) remains the same as it has been over the past several years during which similar resolutions have been introduced. The department has opposed, and currently opposes, such a change to the constitution, not because it opposes the "individual" right to bear arms, but because the resolution as introduced could invalidate existing laws regulating firearms. This conclusion has been reached after careful and extensive review, over a number of years, of the law in Alaska and other states.

A summary of the Department of Law's prior and current analysis follows:

1. In a wide variety of contexts, the Alaska Supreme Court has interpreted the state constitution as providing broader protection for individual rights than does the federal constitution. We believe that the court would interpret the existing right-to-bear-arms provision in the state constitution in a similarly broad manner and thus satisfy the proponents' concerns about the potential for over-regulation, without the need for the amendment.

2. According to federal authority, Alaska already shares with Vermont the distinction of having the least restrictive firearms laws in the United States.¹ It is common for firearms to be carried openly in all areas of the state, and they may be

¹ Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, State Laws and Published Ordinances: Firearms (18th Ed. 1988).

carried concealed in and around one's home or for protection while engaged in outdoor activity. AS 11.61.220(b). At the same time, dangerous weapons (such as switchblades, machine guns, bombs, and "sawed-off shotguns") are prohibited. Also, felons are prohibited from carrying concealable firearms. AS 11.61.200. In the department's view, there is no compelling reason that has been put forward to change this status quo.

3. No one can predict the full legal effect of the proposed constitutional amendment with any degree of certainty. The one effect of the amendment that can be stated with certainty, however, is that it transfers the power to regulate firearms use, currently held by the legislature, to the judiciary. A similar and well-known example of such a power transfer occurred when the constitution was amended to specifically guarantee the right of privacy; it was followed shortly thereafter by a supreme court opinion, with which the state is still struggling, that protected the right to use marijuana.

4. Because the Alaska courts construe the provisions of our constitution broadly, and because the language of the proposed amendment gives either no or exceedingly little authority to the legislature to regulate firearm use, it is very likely that portions of Alaska's statutes regulating firearms will be declared unconstitutional. Examples of conduct prohibited by existing laws that could be declared unconstitutional under the proposed amendment include the possession of weapons by felons, the possession by anyone of "prohibited weapons" such as machine guns, switchblades or "sawed-off shotguns", the possession of firearms in bars or by intoxicated persons, and the removal of serial numbers. Indeed, the courts of several states have struck down similar firearms laws based on amendments to their state constitutions. Furthermore, the proposed amendment could preclude future Alaska legislatures from adopting additional laws in this area, such as laws prohibiting the possession of firearms on school grounds, in government buildings, or in proximity to oil and gas facilities.

5. The department does not believe that statements of "legislative intent", indicating that the constitutional amendment should not be construed to preclude the reasonable regulation of weapons, are sufficient to avoid current state laws from being struck down. As a general rule, a statute or constitutional provision will be interpreted according to the plain meaning of the language on its face. If the intent behind the adoption of the amendment becomes an issue, it is the intent of the voters who adopted the measure, rather than the intent of the legislators who drafted it, that will be relevant.

If the legislature believes it is necessary to explicitly recognize the "individual" right to bear arms, the amendment should be drafted to also explicitly recognize the legislature's authority

The Honorable Rick Halford

January 31, 1991
Page 3

to reasonably regulate firearms, that is, to maintain the status quo concerning firearms laws. As alternatives to the proposed joint resolutions, the Department of Law has previously suggested the following language:

The individual right to keep and bear arms shall not be denied or infringed by the state or a political subdivision of the state, except that the state or a political subdivision of the state may regulate the manner in which arms may be kept, borne, or used.

or

except that the exercise of this right may be regulated by law.

or

except that the exercise of this right may be regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.

A more detailed analysis of this issue, and of the points raised above, which was submitted to the legislature in 1989, is attached to this letter.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General

DJG:me-004

BILL NO: SJR 7

DATE: January 31, 1991

TITLE: Proposing an Amendment to the Constitution...Relating to the Individual Right to Keep and Bear Arms

CONTACT: Gayle A. Horetski Deputy Commissioner

DEPARTMENT OF PUBLIC SAFETY

Senate Joint Resolution No. 1 proposes an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms. If approved by a two-thirds vote of each house, this proposed constitutional amendment would be placed on the ballot at the next general election. If a majority of the voters adopt the amendment, the language of the State Constitution will be changed.

This amendment apparently is intended to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective (militia-related) one. In Alaska, however, the right of the people to bear arms for legitimate purposes is widely recognized, and has never been infringed. Indeed, Alaska and Vermont are the states with the least restrictive firearms laws in the entire United States.

The Department of Public Safety and many other law enforcement agencies in the state are very concerned that if this language appears on the ballot and is approved by the voters, some existing state statutes may be subject to constitutional challenge. Present law, for example, prohibits a convicted felon from possessing a concealable firearm; prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shotguns; and prohibits possession of a firearm while intoxicated, the carrying of a concealed weapon, possession of a loaded firearm on licensed premises, and possession of a firearm by a minor without parental consent. (See AS 11.61.200 - 11.61.220).

These statutes serve a critical public safety function by restricting the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. In order to make sure that the proposed amendment does not render these statutes unenforceable, nor foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), it is essential that the language of any proposed amendment continues to allow reasonable regulation of firearms by law.

As presently drafted, SJR 1 would also prevent municipalities or other political subdivisions of the state from regulating the use or possession of firearms. This authority currently exists, and is used. Last October, for example, the Anchorage Municipal Assembly unanimously adopted an ordinance making it illegal for school students to carry deadly weapons onto school grounds in Anchorage. This action was taken after two separate incidents in which students had brought loaded handguns onto school grounds. At this time, there is no comparable law statewide.

There is no good reason why Art. I, §19 of the Alaska Constitution should be amended. Since adoption in its present form could seriously endanger the public safety of the state's citizens and visitors, the Department of Public Safety opposes SJR 1.

Richard L. Burton

Richard L. Burton
Commissioner

SJR 1 - Public SAFETY
POSITION PAPER

Alaska Association Chiefs of Police



POSITION PAPER

Bill No. SJR 1 and HJR 1

Senate Joint Resolution No. 1 and House Joint Resolution No. 1 both propose an amendment to our State Constitution which would address the rights of individuals to keep and bear arms. These same resolutions have been introduced in prior legislative sessions.

The Alaska Association of Chiefs of Police has opposed and will continue to oppose any such amendments to our Constitution. In fact, we consider this to be our highest priority effort. We believe that the proposed legislation would seriously endanger public safety by hamstringing the State and Municipalities in their ability to reasonably regulate firearms.

Backers of the resolutions claim that it is necessary to protect gun owners from the infringement of their right to keep and bear arms. What infringement are we talking about? Alaska has had a long tradition of passing only those laws absolutely necessary to safeguard our citizens. Our state has the least restrictive guns laws anywhere in the country. Alaskans enjoy tremendous freedom in the use of firearms, and there has never been any threat to those freedoms.

Many of our members are firearms enthusiasts themselves. We, like many Alaskans, enjoy the aspects and rewards associated with responsible gun ownership. Yet, we stand united against HJR 1 and SJR 1. We simply cannot support any legislation that would have such sweeping effects on the ability of the State and Municipalities to reasonably regulate firearms.

Changing our Constitution is serious business. Before we endeavor to rewrite this time tested document, there should be some sort of compelling reason for doing so. No such need has been demonstrated. There is absolutely no evidence that the citizens of Alaska are in any danger of losing their right to keep and bear arms. That being the case, there is no reason to adopt SJR 1 or HJR 1.

STATE CONSTITUTIONAL GUARANTEES ON
THE RIGHT TO KEEP AND BEAR ARMS

Forty-one (41) states have constitutional guarantees on the right to keep and bear arms.

Alabama: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.

Alaska: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 19.

Arizona: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article 2, Section 26.

Arkansas: The citizens of this State shall have the right to keep and bear arms for their common defense. Article II, Section 5.

Colorado: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

Connecticut: Every citizen has a right to bear arms in defense of himself and the state. Article I, Section 15.

Florida: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. Article I, Section 8.

Georgia: The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. Article I, Section I, para. VIII.

Hawaii: A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 15.

Idaho: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person, nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted

felon, nor prevent the passage of legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. Article I, Section 11.

Illinois: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Article I, Section 22.

Indiana: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

Kansas: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power. Kansas Bill of Rights, Section 4.

Kentucky: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: *** 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

Louisiana: The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person. Article I, Section 11.

Maine: Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned. Article I, Section 16.

Massachusetts: The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Massachusetts Declaration of Rights, Part I, Article XVII.

Michigan: Every person has a right to keep and bear arms for the defense of himself and the state. Article I, Section 6.

Mississippi: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. Article 3, Section 12.

Missouri: That the right of every citizen to keep and bear

arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. Article I, Section 23.

Montana: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. Article II, Section 12.

Nevada: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Art. 1, Section II, para. 1.

New Hampshire: All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the state. Part First, Art. 2-a.

New Mexico: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. Article II, Section 6.

North Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30.

North Dakota: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreatnal, and other lawful purposes, which shall not be infringed. Article I, Section 1.

Ohio: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. Article I, Section 4.

Oklahoma: The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the

Legislature from regulating the carrying of weapons. Article 2, Section 26.

Oregon: The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. Article I, Section 27.

Pennsylvania: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. Article I, Section 21.

Rhode Island: The right of the people to keep and bear arms shall not be infringed. Article I, Section 22.

South Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. Article I, Section 20.

South Dakota: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Article VI, Section 24.

Tennessee: That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Article I, Section 26.

Texas: Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Article I, Section 23.

Utah: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for the other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. Article I, Section 6.

Vermont: That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power. Chapter I, Article 16.

Virginia: That a well regulated militia, composed of the

body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power. Article I, Section 13.

Washington: The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article I, Section 24.

West Virginia: A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. Article III, Section 22.

Wyoming: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Nine (9) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, and Wisconsin.

SUR 2

SENATE FINANCE COMMITTEE REPORT

DATE: 4/26/91

FURTHER:

DATE TURNED INTO OFFICE: 2-20-92

The Finance Committee considered SENATE JOINT RESOLUTION NO. 2

Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

and recommended:

- replace with _____ CS _____
- or adopt _____ CS STR 2 (Jud)
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S): Dept/Date:

- fiscal note(s) 2.2 Gov/Elections 1-13-92
- zero fiscal note(s) 9 DOLAW 12-19-91

APPROVES PREVIOUS: Dept/Date:

- fiscal note(s) _____
- zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

All Adams - No Rec
[Signature] No Rec

1. [Signature] 2. Do pass of Kestel
 Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SJR 2

Revision Date: 01/13/92
Title: Amendment to the Constitution RE: Repeal of Regulations by BRU: Division of Elections
Legislature: _____
Sponsor: Senator Fischer
Requestor: Senate Finance Committee

Department Affected: Office of the Governor-Elections
Component: II-Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/13/92

Approved by Commissioner: *Charles E. Hickel*
Agency: Office of the Governor

Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CSSJR 2 (Jud.)

Revision Date: December 19, 1991 Department Affected: Department of Law
Title: "...relating to repeal of regulations by the legislature." BRU: Legal Services
Component: Operations

Sponsor: Senator Fischer
Requestor: Governor's Office COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURE						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services / AIR Date: December 19, 1991
Richard I. Pegues / AIR
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: December 19, 1991

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSJR 2 (Jud.)

The Judiciary Committee substitute for Senate Joint Resolution No. 2 proposes an amendment to the Constitution of the State of Alaska that would give the legislature the power to repeal a regulation adopted by a state department or agency by joint resolution of the legislature, if the legislature finds that a regulation is inconsistent with the authorizing statute. If the amendment is adopted in the 1992 general election, it will probably not have a direct immediate fiscal impact on the department's operations. The department is statutorily responsible for reviewing all regulations for legality and form to insure consistency with the appropriate enabling legislation. The department also drafts regulations on behalf of some departments and assists other departments in drafting regulations that deal with highly complex matters requiring the attention of an attorney. Obviously, some of the time spent in these efforts will have been lost whenever a regulation has been annulled. Larger departments, which have the responsibility for carrying out major state programs, and who routinely draft numerous program operating regulations inhouse, will probably experience an even greater loss of staff time. More importantly the absence of statutorily mandated regulations, which would occur after annulment, could result in litigation from an adversely impacted industry, public interest group, or a member of the public claiming damages due to the absence of required regulations. The impact of such litigation cannot, in this case, be estimated in advance and therefore no cost impact can be shown.

CS FOR SENATE JOINT RESOLUTION NO. 2 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/2691
Referred: Finance

Sponsor(s): SENATORS FISCHER, Pearce

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to repeal of
2 regulations by the legislature.

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

4 * Section 1. Article II, Constitution of the State of Alaska, is amended by adding a new section to
5 read:

6 SECTION 22. REPEAL OF REGULATIONS. If the legislature finds that a regulation
7 is inconsistent with the authorizing statute, the legislature may repeal a regulation adopted by a
8 state department or agency. The repeal of the regulation is effective thirty days after the passage
9 of a joint resolution by the legislature unless the joint resolution specifies a different effective
10 date.

11 * Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state
12 at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and
13 the election laws of the state.

Alaska State Legislature

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269



State Senate

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

MEMORANDUM

TO: Senator Pat Pourchot, Co-Chairman
Senate Finance Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: CS Senate Joint Resolution 2 (Judiciary)
(repeal of regulations by the legislature)

DATE: January 28, 1992

Background

This proposal for an amendment to the Constitution of the State of Alaska to repeal regulations by the Legislature has been placed on the ballot on three previous occasions. Each time it failed to be approved by the voters. The following chart and past proposition materials are attached for your files.

<u>1980</u>	<u>1984</u>	<u>1986</u>	
58,808	91,174	65,176	Yea's
82,010	98,856	94,299	Nay's
140,818	190,030	159,475	Total Proposition Votes
16%	4%	18%	Failure Percentage
162,653	213,173	182,526	Total Votes Cast
258,742	305,262	292,274	Total Registered Voters
63%	70%	62%	Voter Turnout

PAF/sgn
Attachments

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution; regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.

A vote "AGAINST" rejects the amendment.

FOR

AGAINST

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas <u>18</u>	Nays <u>0</u>	Absent or Not Voting <u>2</u>
House	(40 members):	Yeas <u>36</u>	Nays <u>0</u>	Absent or Not Voting <u>4</u>

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to

the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, even though no single person elected by the voters has approved them.

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— Charles H. Parr
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention,
1955-1956

MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS (1983 Legislative Resolve No. 15 (SCS HJR 5(Jud)))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR
AGAINST

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 19	Nays 0	Absent or Not Voting 1
House	(40 members):	Yeas 34	Nays 2	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently not directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law. The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would not be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

—Katherine D. Nordale,
Delegate to the Alaska Constitutional Convention, 1955-1956

BALLOT MEASURE NO. 2

Constitutional Amendment Legislative Annulment of Administrative Regulations (1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE

(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR

A vote "AGAINST" rejects the amendment. AGAINST

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	31
	Nays	4
	Absent or Not Voting	5
Senate:	Yeas	17
	Nays	0
	Absent or Not Voting	3

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate... and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention, 1955-1956

SUR 4

SENATE FINANCE COMMITTEE REPORT

DATE: 4/1/92

FURTHER:

DATE TURNED INTO OFFICE: 4-16-92

The Finance Committee considered SENATE JOINT RESOLUTION NO. 4

Proposing an amendment to the Constitution of the State of Alaska requiring legislative confirmation for members of the governing boards of the Alaska Permanent Fund Corporation and the Alaska Railroad Corporation.

and recommends:

- replace with _____ CS _____ (FINANCE)
or adopt previous CS SJR 4 (Tul)
 attaches amendment(s)

- same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

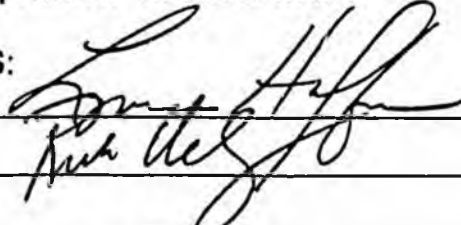
NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

DO PASS:



1. 
Co-Chair: Signature/Recommendation

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes 2.2 Gov. Elections 1-13-92

OTHER RECOMMENDATIONS:

2. 
Co-Chair: Signature/Recommendation

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. 1
Bill Version: SJR 4
(S) Publish Date: 4-1-92

Revision Date: 01/13/92 Department Affected: Office of the Governor-Elections
Title: Amendment to the Constitution RE: Legislature to Confirm BRU: Division of Elections
Railroad and Permanent Fund Boards Component: 11-Primary and General Elections
Sponsor: Senator Kerttula
Requestor: Senate Judiciary

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Changes in SJR 4 (JW) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.
4/1/92 RC
date Comte Aide (initial)

Prepared by: Elizabeth Ziegler, Deputy Director Phone: 465-4611
Division: Elections Date: 01/13/92

Approved by Commissioner: Charles B. Thiel
Agency: Office of the Governor Date: 01-13-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

CS FOR SENATE JOINT RESOLUTION NO. 4 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/1/92
Referred: Finance

Sponsor(s): SENATORS KERTTULA, Sturgulewski

A RESOLUTION

1 Proposing an amendment to the Constitution of the State of Alaska relating to
2 appointment, confirmation, and removal of members of the governing entities of public
3 corporations.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. Article III, sec. 26, Constitution of the State of Alaska, is amended to read:

6 SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the
7 head of a principal department or a regulatory or quasi-judicial agency, or is the governing
8 entity of a public corporation established by law, its members shall be appointed by the
9 governor, subject to confirmation by a majority of the members of the legislature in joint session,
10 and may be removed as provided by law. They shall be citizens of the United States. The board
11 or commission may appoint a principal executive officer when authorized by law, but the
12 appointment shall be subject to the approval of the governor.

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

Alaska State Legislature



Sen. Jay Kerttula, Co-Chairman
Sen. Pat Pourchot, Co-Chairman

Sen. Al Adams
Sen. Jim Duncan
Sen. Lyman F. Hoffman
Sen. Dick Shultz
Sen. Rick Uehling

Senate Finance Committee

SPONSOR STATEMENT Senator Jay Kerttula

CSSJR 4 (Judiciary)

Legislative Confirmation of Public Corporation Boards

CS SJR 4(Judiciary) proposes a constitutional amendment which would require legislative confirmation for the boards of public corporations.

The Alaska Constitution currently provides for legislative confirmation of any board or commission which is the head of a principal department (Dept. of Education) or is a regulatory(Dept. of Fish and Game) or quasi-judicial agency. Public corporations, such as the Alaska Railroad and the Permanent Fund Corporation are not included in this provision.

Legislative counsel has provided an opinion that only those officers whom the constitution explicitly describes are subject to legislative confirmation; the legislature is not free to add to the list of boards and commissions which is it required to confirm. Our

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counsel cited Bradner v. Hammond as authority for this conclusion. The legal opinion is attached.

The Permanent Fund corporation invests extremely large sums of state funds and their activities have a tremendous impact on all Alaskans and on our state economy. As of January 1, 1992, the Permanent Fund was managing \$11.9 billion in state funds.

The Railroad Corporation is an agency which is virtually independent of any state control, while being vital to our statewide transportation system and which has received state capital funds (\$9 million for the purchase of locomotives for Wishbone Hill project - 1990). As of November 30, 1991, the total assets of the Railroad Corporation were \$98.6 million; while not as large as the Permanent Fund Corporation, this is still a substantial holding.

I am not generally in favor of revisions to our state constitution. I believe that the drafters of the constitution put a great deal of thought into the document and the citizens of Alaska had a large voice in its drafting. However, it appears clear that the drafters of the constitution intended that the boards of principal functions of the state be subject to legislative

confirmation. Public Corporations, such as the Permanent Fund and the Alaska Railroad Corporation are too important to the state to be exempted from legislative confirmation.

As originally introduced, SJR 4 proposed a constitutional amendment which specified legislative confirmation for the Alaska Permanent Fund and the Alaska Railroad Corporation.

The legislation was amended in Senate Judiciary to include all corporations and the title was amended accordingly.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

240 Main Street, Suite 500
Juneau, Alaska 99801-2101

FEB 03 1992

MEMORANDUM

February 3, 1992

SUBJECT: Alaska Public Corporations (Work Order No. 17-LS1927)

TO: Senator Jay Kerttula
Attn: Paula

FROM: Jerry Luckhaupt *JEL*
Legislative Counsel

You have requested a compilation of the public corporations and corporate authorities of the state of Alaska. In my review of the statutes I have found the following corporations and authorities:

- (1) Alaska Aerospace Development Corporation (AS 14.40.821)
- (2) Alaska Amateur Sports Authority (AS 05.40.010);
- (3) Alaska Energy Authority (AS 44.83.020);
- (4) Alaska Gas Pipeline Finance Authority (AS 44.82.010);
- (5) Alaska Housing Finance Corporation (AS 18.56.020);
- (6) Alaska Industrial Development and Export Authority
(AS 44.88.020);
- (7) Alaska Medical Facility Authority (AS 18.26.010);
- (8) Alaska Municipal Bond Bank Authority (AS 44.85.020);
- (9) Alaska Permanent Fund Corporation (AS 37.13.040);
- (10) Alaska Railroad Corporation (AS 42.40.010);
- (11) Alaska Resources Corporation (AS 37.12.010);
- (12) Alaska Science and Technology Foundation
(AS 37.17.010)
- (13) Alaska Seafood Marketing Institute (AS 16.51.010)
- (14) Alaska State Housing Authority (AS 18.55.020);
- (15) Alaska Tourism Marketing Council (AS 44.33.700);

In addition, the Commercial Fishing and Agriculture Bank (AS 44.81.010), appears to have some of the attributes of a public corporation in that the exercise of its powers "is considered to be for a public purpose." AS 44.81.010(a). Further, a cursory review of legislation that has been introduced during the 17th Legislature shows these additional public corporations have been proposed:

Senator Jay Kerttula
February 3, 1992
Page 2

- (a) HB 10 - Alaska Marine Highway Authority;
- (b) HB 59 - Alaska Mental Health Trust Corporation;
- (c) HB 71 - Alaska State Health Resources Authority;
- (d) HB 358 - Alaska State Salmon Marketing Association;
- (e) SB 18 - Alaska State Pension Corporation;
- (f) SB 73 - Health Insurance Authority.

Gubernatorial appointees to the boards of public corporations are apparently not subject to confirmation by the legislature as the public corporations are not "at the head of a principal department or a regulatory or quasi-judicial agency" as provided in art. III, § 26 of the Alaska Constitution. See also, Bradner v. Hammond, 553 P.2d 1 (Alaska 1976)(only section 26 boards subject to confirmation); Walker v. Alaska State Mortgage Authority, 416 P.2d 245 (Alaska 1966)(ASMA not a section 26 board).

GPL:pl
92-064.plm

MEMORANDUM

June 22, 1990

SUBJECT: Confirmation of the members of boards
and commissions (Work Order No. 7-0029)

TO: Senator Jay Kerttula

FROM: Richard A. Bradley
Legislative Counsel

Kathy Hathaway has asked that we comment on an opinion of the attorney general regarding the power of the legislature to confirm members of boards and commissions. The only opinion that we could find on that subject goes back to 1975; it addresses the "Constitutionality of CSSB 98 (Legislative Confirmation Bill)".

I have checked with Ron Lorensen and Jim Baldwin in the attorney general's office on the question whether anything more recent has been issued; neither could recall any more recent opinions. The index of opinions published by the Department of Law contains no such opinion.

Jim Baldwin suggested that the Bradner case represents the authoritative statement on the question; we agree that Bradner v. Hammond, 553 P.2d 1 (Alaska 1976) represents a more informed statement of the law than the attorney general's opinion, particularly as the Bradner decision is a year later than the opinion.

We have enclosed a copy of the 1975 attorney general's opinion as well as the Bradner decision.

I. Discussion of the Attorney General's opinion.

The opinion concludes that it would be beyond the power of the legislature to require the confirmation of the members of boards and commissions except for that confirmation

contemplated by art. III, sec. 26 of the Alaska Constitution. The provision states, in pertinent part:

SECTION 26. BOARDS AND COMMISSIONS. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. . . .

While the opinion also addresses the authority of the legislature to require the confirmation of sub-cabinet officers-- and finds the power to require their confirmation also lacking-- the essential point of the opinion regarding confirmation is that the "power to confirm [executive] appointments is an executive function." The logic of concluding that the power to confirm constitutes an executive function leads to the corollary of that conclusion: that legislative incursions into executive functions are construed against the legislature. The result is that only those officers whom the Constitution has required the legislature to confirm are subject to confirmation; the legislature is not free to add to (or subtract from) the list of executive officers serving as members of boards or commissions whom it is required to confirm-- or not.

While I have not sought to review our opinions from this era, my assumption is that we may have disagreed with the attorney general's opinion at that time. I note that Billy Berrier, director of the division of legal services at that time was counsel for the legislative officers and members in the Bradner litigation. But because of the Bradner decision, discussed below, we now agree that the conclusion reached by the attorney general represents the law of the state.

II. Discussion of Bradner.

The court starts out by noting that the members of the constitutional convention that drafted the Alaskan Constitution intended that the state have a "strong executive." The court quoted the chairman of the executive committee at the convention, Victor Rivers: "We are all strongly agreed on the principle of the strong executive." Bradner, supra, at 3.

The court then stated that the sole question before the court is whether secs. 25 and 26 of art. III describe the outer limits of the legislature's confirmation authority or whether the legislature may, by statute, require the confirmation of other high-level, policy-making officials within the executive branch. The legislative officers had argued that no provision of the constitution prohibited the legislature from requiring confirmation of other executive officers.

The governor had argued, on the other hand, that the power of confirmation is an executive function that may be exercised by the legislature only to the extent that the Constitution grants the power to the legislature.

Viewed in this manner, appellee [Hammond] analyzes the power to confirm executive officers as part of the appointment process, incapable of existence independent of the power of appointment, and characterizes this confirmation authority as a power "super-added" to the legislature's general legislative powers. Thus, appellee would find that Sections 25 and 26 set the maximum rather than the minimum parameters of the legislature's power to confirm appointments of executive officers. This follows, according to appellee, from the fact that legislative confirmation is a delegated function taken from executive function, and thus the breadth of this delegated authority must be strictly construed.
Bradner, at 4.

The court affirmed the superior court's judgment that the law requiring legislative confirmation of certain sub-cabinet officers was in excess of legislative power.

In its decision, the court agreed with decisions of the U.S. Supreme Court concluding that confirmation is a power "super added" to those possessed by the legislature. Myers v. United States, 272 U.S. 56 (1926). Confirmation is not a distinct legislative power but is a part of the executive power of appointment, some part of which in specific instances was delegated to the legislative branch.

Moreover, the court stated, "[t]he lack of ambiguity in Sections 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointment authority through the

legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision."

III. Comments.

The Bradner decision did not explicitly discuss the application of sec. 26 to members of boards and commissions the Bradner decision construed AS 39.05.020, as enacted in 1975, required the confirmation only of deputy commissioners and certain division directors. The logic of the decision makes clear, however, that the court believes that only those members of the boards and commissions described in sec. 26 would be subject to legislative confirmation. Sec. 26 states that legislative confirmation is required for members of a board or commission when the board or commission is "at the head of a principal department or a regulatory or quasi-judicial agency". I believe that the phrase describes most state boards or commissions-- but not all. For example, advisory commissions are not among those described in sec. 26. The board recently established in the Forest Practices Act, ch. 34, SLA 1990, appears only to have advisory functions and its members are not subject to legislative confirmation under that Act; in my view, they are similarly not subject to confirmation under Sec. 26. See AS 41.17.041 as enacted in Sec. 3 of ch. 34.

Other boards or commissions that seem not to fall under sec. 26 include the Alaska Women's Commission [AS 44.19.165], the Alaska Public Broadcasting Commission [AS 44.21.256], and the Older Alaskans Commission [AS 44.21.200]. Others probably exist.

If I may be of further assistance, please advise.

RAB:gc
G15/002

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU 99811

February 3, 1977

Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: Confirmation of Members
of Boards and Commissions

Dear Governor Hammond:

You have asked us for an opinion as to the propriety under the State Constitution of the Legislature's confirming your appointments to State Boards and Commissions.

Under the Constitution, Article 3, Sections 25 and 26, the Legislature's power to confirm your appointments to executive positions is limited to those positions specified by the Constitution, that is, heads of the principal departments and the members of boards and commissions which are at the head of principal departments or quasi-judicial or regulatory agencies. Bradner vs. Hammond, 553 P.2d 1 (Alaska 1976).

We have accordingly prepared an alphabetical listing of all the State boards and commissions in Alaska and have indicated for each the statute under which its members are appointed, whether that statute requires legislative confirmation, and whether the Constitution requires or permits legislative confirmation. The list follows:

Administration of Justice, Governor's Commission on the.
AS 44.19.746. Confirmation is not required by statute or the Constitution.

Aging, Governor's Advisory Committee on.
There is no statute on this one and no confirmation would be required by statute or Constitution.

Alcoholic Beverage Control Board.
AS 4.05.010 and 39.05.050. This is a regulatory board and requires confirmation under the statutes and the Constitution.

Alcoholism, Advisory Board on.
AS 47.37.070. Confirmation is not required under either statute or the Constitution.

Arts, Alaska State Council on the.
AS 44.19.900. This board is made expressly not subject to legislative confirmation under the statute, and of course, is not subject to confirmation under the Constitution.

Assessment Review Board, State.

AS 43.56.040. This is a quasi-judicial agency and must be confirmed under both the statute and the Constitution.

Athletic Commission.

AS 05.05.010. This is a regulatory board and is subject to confirmation under both the statute and the Constitution.

Barber Examiners, Board of.

AS 08.12.010. This is a regulatory board and must be confirmed under the Constitution, even though not required by statute.

Bristol Bay Regional Development Council.

Chapter 4, SSSLA 1974, and Chapter 209, SLA 1976. No confirmation is required under either the statute or the Constitution.

Capital Site Selection Committee.

AS 44.06.110. Confirmation is not required under either the statute or the Constitution.

Chiropractic Examiners, Board of.

AS 08.20.010. This is a regulatory board and confirmation is required under the Constitution, even though not required under the statute.

Code Revision Commission.

AS 24.20.075. Confirmation is not required by either the statute or the Constitution.

Collection Agency Board.

AS 8.24.011. This is a regulatory board and confirmation is required under the Constitution, even though not required by the statute.

Commercial Fisheries Entry Commission.

AS 16.43.020. This is a regulatory commission and confirmation is required under both the statute and the Constitution.

Comprehensive Health Advisory Council.

AS 18.07.020. Confirmation is required by the statute; however, this is not a quasi-judicial or regulatory agency, and confirmation is not permissible under the Constitution.

Commission for Northern Operations of Rail Transportation and Highways.

AS 44.19.704 and 39.05.060. Confirmation is required under the latter statute but cannot be required under the Constitution.

Dental Examiners, Board of.

AS 8.36.010. This is a regulatory board, and confirmation is required under both the statute and the Constitution.

Developmental Disability Planning and Advisory Council.

This is created under federal law and confirmation is not required.

Development Corporation, Alaska State.

AS 44.59.010. Confirmation is required by the statute; however it cannot be required under the Constitution.

Dispensing Opticians, Board of.

AS 08.71.010. This is a regulatory board, and while not required by statute, confirmation is required under Constitution.

Drug Abuse, Advisory Board on.

AS 44.29.030. Confirmation is not required under either the statute or the Constitution.

Education, Board of.

AS 14.07.075. This is head of a principal department, and confirmation is required under both the statute and the Constitution.

Educational Broadcasting Commission, Alaska.

AS 14.40.700. Confirmation is not required under either the statute or the Constitution.

Electrical Examiners, Board of.

AS 08.40.010. This is a regulatory board, and confirmation is required under the statute and the Constitution.

Employment of the Physically Handicapped, Governor's Committee on.

AS 23.15.220. Confirmation is not required under either the statute or the Constitution.

Environmental Advisory Board.

AS 44.46.030. Confirmation is not required under either the statute or the Constitution.

Equal Employment Opportunity Committee.

This board is created by administrative order, and confirmation is not required.

Fisheries, Board of.

AS 16.05.221(a). This is a regulatory board and confirmation is required by both the statute and the Constitution.

Fisheries Council.

This board was created by administrative order, and confirmation is not required.

Fishermen's Fund Advisory and Appeals Council.

AS 23.35.010. Confirmation is not required by the statute or the Constitution.

Game, Board of.

AS 16.05.221(b). This is a regulatory board, and confirmation is required by the statute and the Constitution.

Geographic Board, State.

AS 44.19.360. Confirmation is not required by the statute or the Constitution.

Growth Policy Council, Alaska.

This board was created by administrative order and confirmation is not required by statute or the Constitution.

Guide Licensing and Control Board.

AS 08.54.010. This is a regulatory board, and confirmation is required by both the statute and the Constitution.

Hair Dressing and Beauty Cultural Examiners, Board of.

AS 08.28.010. This is a regulatory board, and while confirmation is not required by the statute, it is required by the Constitution.

Historical Commission, Alaska.

AS 41.19.461. Confirmation is not required by the statute or by the Constitution.

Historic Site Advisory Committee.

AS 41.35.110. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

Housing Authority, Alaska State.

AS 18.55.020; 39.05.060. Confirmation is not required by the former statute but it is by the latter. Confirmation is not permissible under the Constitution.

Housing Finance Corporation, Alaska.

AS 18.56.010. Confirmation is not required by the statute or by the Constitution.

Human Rights, State Commission for.

AS 18.80.010. This is a quasi-judicial agency, and confirmation is required by the statute and by the Constitution.

International Development Commission, Alaska.

AS 44.19.400. Confirmation is not required by the statute or by the Constitution.

Investment Advisory Committee.

AS 37.10.010(f). Confirmation is not required by the statute or the Constitution. (The presence of legislators on this committee is probably not permissible under the constitutional prohibition against dual office holding. Alaska Constitution, Art. 2, Sec. 5).

Judicial Council.

Alaska Constitution, Art. 4, Sec. 8. The non-attorney members, and solely the non-attorney members, are subject to legislative confirmation.

Judicial Qualifications, Commission on.

Alaska Constitution Art 4. Sec. 10. The two members who are non-lawyers and non-judges are subject to legislative confirmation.

Juvenile Justice and Delinquency Commission.

This board is created under federal law and no confirmation is required.

King Crab Marketing and Quality Control Board, Alaska.

AS 18.90.040. This board has regulatory powers and confirmation is required by the statute and the Constitution.

Land Use Planning Commission, Joint Federal-State.

AS 41.40.020. Confirmation is not required by statute or by the Constitution.

Law of the Sea, Commission on the Conference of the.

AS 44.19.789. Confirmation is not required by the statute or by the Constitution.

Libraries, Advisory Council on.

This board is the creature of federal law, and no confirmation is required.

Local Boundary Commission.

AS 44.19.250; 39.05.060. The former law does not require confirmation, but the latter does; however, that is not permissible under the Constitution.

Manpower Planning Council, State.

This is also a creature of federal law, and no confirmation is required.

Manpower Services Council, State.

This group is also a creature of federal law and no confirmation is required.

Marine Pilots, Board of.

AS 08.62.010. This is a regulatory board and confirmation is required by the statute and the Constitution.

Medical Board, State.

AS 08.64.100. This is a regulatory board and confirmation is required by the statute and the Constitution.

Medical Indemnity Corporation of Alaska (MICA).

AS 21.88.030. Confirmation is required by statute but is not permissible under the Constitution.

Mental Health Advisory Council.

AS 47.30.605. Confirmation is not required by statute or the Constitution.

Municipal Bond Bank Board.

AS 44.58.010. Confirmation is required by statute; however, confirmation is not permissible under the Constitution.

Nursing, Board of.

AS 08.68.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

Nursing Home Administrators, Board of.

AS 08.70.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

Occupational Safety and Health Review Board.

AS 18.60.057. This is a quasi-judicial board, and confirmation is required by the statute and the Constitution.

Optometry, Board of Examiners in.

AS 08.72.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

Pacific Marine Fisheries Commission.

AS 16.45.020. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

Parole, State Board of.

AS 33.15.010. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

Personnel Board (also acts as Public Employees Retirement Board and Labor Relations Board).

AS 39.25.060. This is a regulatory board and also a quasi-judicial agency, and confirmation is required by the statute and the Constitution.

Pharmacy, Board of.

AS 08.88.010. This is a regulatory board, and confirmation is required by the statute and the Constitution.

Physical Therapy Board, State.

AS 08.84.010. This is a regulatory board, and while not required by statute, confirmation is required by the Constitution.

Pioneers Home Advisory Board, Alaska.

AS 44.21.100. Confirmation is not required by the statute or the Constitution.

Pipeline Commission, Alaska.

AS 46.06.020. This is a regulatory board and confirmation is required by the statute and the Constitution.

Police Standards Council, Alaska.

AS 18.65.140. Confirmation is not required by the statute or by the Constitution.

Post-Secondary Education, Alaska Commission on.

AS 14.40.903. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution. (The presence of legislators on this Commission is highly questionable under the separation of powers doctrine and the prohibition against dual office holding).

Professional Teaching Practices Commission.

AS 14.20.380. This commission has quasi-judicial powers, and confirmation is required by the statute and by the Constitution.

Psychologist and Psychological Associate Examiners, Board of.

AS 08.86.010. This is a regulatory board, and confirmation is required by the statute and by the Constitution.

Public Accountancy, Alaska State Board of.

AS 08.04.010. This is a regulatory board, and while not required by the statute, confirmation is required by the Constitution.

Public Offices Commission, Alaska.

AS 15.13.020(b). This is a quasi-judicial commission, and while not required by statute, confirmation is required by the Constitution. (The method of appointment to this commission is highly suspect under the Constitution Art 2. Secs. 25 and 26).

Public Offices Salary Commission.

AS 39.23.010. Confirmation is not required by statute or by the Constitution.

Public Utilities Commission, Alaska.

AS 42.05.010. This is a regulatory board, and confirmation is required by the statute and by the Constitution.

Real Estate Commission.

AS 08.83.011. This is a regulatory board, and confirmation is required by the statute and the Constitution.

Regents Board, University of Alaska.
Alaska Constitution. Art. 7 Sec. 3; AS 14.40.120.
Confirmation is required by the Constitution.

Royalty Oil and Gas Development Advisory Board.
AS 38.06.010. Confirmation is required by the statute; however,
confirmation is not constitutionally permissible.

Rural Affairs Commission.
AS 44.19.720. Confirmation is not required by the statute or
by the Constitution.

Small Business Corporation of Alaska.
AS 44.60.020. Confirmation is not required by the statute or
by the Constitution.

Soil Conservation Board, Alaska.
AS 41.10.040. Confirmation is required by the statute; however,
confirmation is not permissible under the Constitution.

Teacher's Retirement Board, Alaska.
AS 14.25.035. Confirmation is not required by the statute or
by the Constitution.

Tourism Advisory Board.
AS 44.33.190; 39.05.060. Confirmation is not required by the
former, but it is required by the latter. However, confirmation
is not permissible under the Constitution.

Transportation Commission, Alaska.
AS 42.07.011. This is a regulatory board, and confirmation is
required by the statute and the Constitution.

Transportation Planning Committee.
Administrative Order No. 33. No confirmation is required by
statute or the Constitution.

Veterinary Examiners, Board of.
AS 8.99.010. This is a regulatory board, and confirmation
is required by the statute and by the Constitution.

Violent Crimes Compensation Board.
AS 18.67.020. This is a quasi-judicial agency, and while not
required by the statute, confirmation is required by the
Constitution.

Vocational Education Advisory Council, Alaska State.
This is a creature of federal law, and confirmation is not
required by statute or by the Constitution.

Water Resources Board.
AS. 46.15.190. Confirmation is required by the statute; however,
confirmation is not permissible under the Constitution.

Welding Examiners, Board of.

AS 8.99.101. This is a regulatory board, and while not required by the statute, confirmation is required by the Constitution.

Western Interstate Commission for Higher Education.

AS 14.40.690. Confirmation is required by the statute; however, confirmation is not permissible under the Constitution.

Workman's Compensation Board, Alaska.

AS 23.30.005. This is a quasi-judicial agency, and confirmation is required by the statute and by the Constitution.

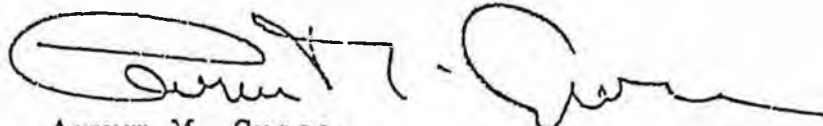
Yukon-Taiya Commission.

AS 44.20.010. Confirmation is not required by the statute or by the Constitution.

Summarizing the above, there are 41 boards which do not require confirmation under the applicable statutes and the Constitution. There are 27 boards that require confirmation under both the applicable statutes and the Constitution. There are 13 regulatory or quasi-judicial boards which must be confirmed by the legislature under the Constitution but which are not required to be by the applicable statutes. There are 14 boards which require confirmation under the applicable statutes, but which are not subject to confirmation under the Constitution.

It is our opinion that you should submit the names of your appointees to the boards and commissions which are subject to confirmation under the Constitution. You need not submit appointees for confirmation that under the Constitution are not subject to that requirement. You are, of course, free to do so as an advisory matter relying upon the legislative vote as an indication of the legislature's views on the appointment, but under the Constitution, if the appointee is not required to be confirmed, a legislative decision not to confirm the appointee would be of no legal effect. The appointment would be valid in any event.

Yours very truly,



Avrum M. Gross
Attorney General

SUR6

SENATE FINANCE COMMITTEE REPORT

DATE: 2/13/91

FURTHER:

DATE TURNED INTO OFFICE: 3/28/91

The Finance Committee considered SENATE JOINT RESOLUTION NO. 6

Relating to an amendment to the Constitution of the United States prohibiting desecration of the Flag of the United States.

and recommended:

replace with _____ CS SJR 6 (Fin)
 or adopt _____ CS _____
 attached amendment(s)
 _____ letter of intent adopted

same title
 new title
 technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

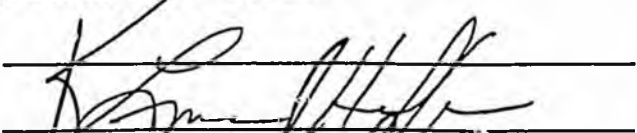
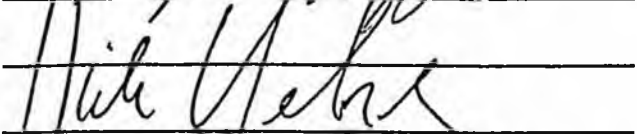

appropriation-no fiscal note

APPROVES PREVIOUS:
Dept/Date:

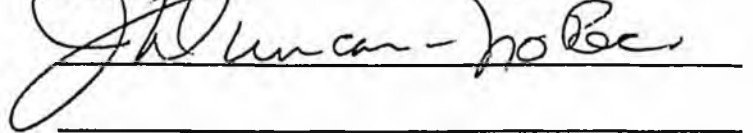
fiscal note(s) _____

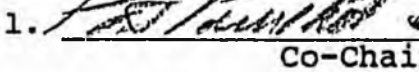
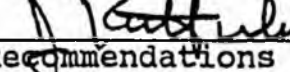
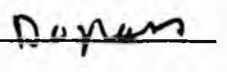
zero fiscal note(s) S(Jud) 2/12/91

SIGNING DO PASS:

OTHER RECOMMENDATIONS:



1.  DO NOT PASS.  
 Co-Chairs: Signatures and Recommendations

FISCAL NOTE

No. 1

Bill Version: STAR 6

(S) Publish Date: 2/13/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: None -
 Title: Prohibit Desecration of BRU: _____
US Flag Component: _____
 Sponsor: Sen Zharoff
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

CAPITAL	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

POSITIONS:

FULL-TIME	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
PART-TIME	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TEMPORARY	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Estimate of current year impact: None -

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Don B. Bair Phone: 465-3717
 Division: Senate Judiciary Committee Date: _____

Approved by Commissioner: _____ Date: Feb 12, 1991
 Agency: _____

Distribution (by preparer): Legis: _____ or, OMB, & Impacted Agency(ies).
 Changes in CSJR 6 (Fin) have no fiscal impact. This fiscal note is appropriate.

CS FOR SENATE JOINT RESOLUTION NO. 6 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATORS ZHAROFF, Menard, Rodey, Jones, Fischer

A RESOLUTION

**1 Relating to an amendment to the Constitution of the United States prohibiting desecration
2 of the Flag of the United States.**

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

**4 WHEREAS, although the right of free expression is part of the foundation of the United States
5 Constitution, very carefully drawn limits on expression in specific instances have long been recognized
6 as legitimate means of maintaining public safety and decency, as well as orderliness and the productive
7 value of public debate; and**

**8 WHEREAS certain actions, although arguably related to one person's free expression,
9 nevertheless raise issues concerning public decency, public peace, and the rights of expression and sacred
10 values of others; and**

**11 WHEREAS there are symbols of our national soul such as the Washington Monument, the
12 United States Capitol Building, and memorials to our greatest leaders, that are the property of every
13 American and are therefore worthy of protection from desecration and dishonor; and**

**14 WHEREAS the American Flag was most nobly born in the struggle for independence that began
15 with "The Shot Heard Round the World" on a bridge in Concord, Massachusetts; and**

16 WHEREAS in the War of 1812 the American Flag stood boldly against foreign invasion,

1 symbolized the stand of a young and brave nation against the mighty world power of that day, and in
2 its courageous resilience inspired our national anthem; and

3 **WHEREAS** in the Second World War the American Flag was the banner that led the American
4 battle against fascist imperialism from the depths of Pearl Harbor to the mountaintop on Iwo Jima, and
5 from defeat in North Africa's Kasserine Pass to victory in the streets of Hitler's Germany; and

6 **WHEREAS** Alaska's star was woven into the fabric of the Flag in 1959, and that 49th star has
7 become an integral part of the Union; and

8 **WHEREAS** the American Flag symbolizes the ideals that good and decent people fought for in
9 Vietnam, often at the expense of their lives or at the cost of cruel condemnation upon their return home;
10 and

11 **WHEREAS** the American Flag symbolizes the sacred values for which loyal Americans risked
12 and often lost their lives in securing civil rights for all Americans, regardless of race, sex, or creed; and

13 **WHEREAS** the American Flag was carried to the moon as a banner of goodwill, vision, and
14 triumph on behalf of all mankind; and

15 **WHEREAS** the American Flag to this day is a most honorable and worthy banner of a nation
16 that is thankful for its strengths and committed to curing its faults, and remains the destination of
17 millions of immigrants attracted by the universal power of the American ideal; and

18 **WHEREAS** the law as interpreted by the United States Supreme Court no longer accords to the
19 Stars and Stripes that reverence, respect, and dignity befitting the banner of that most noble experiment
20 of a nation-state; and

21 **WHEREAS** it is only fitting that people everywhere should lend their voices to a forceful call
22 for restoration to the Stars and Stripes of a proper station under law and decency;

23 **BE IT RESOLVED** by the Alaska State Legislature that the Congress of the United States is
24 requested to propose an amendment to the Constitution of the United States that would specifically
25 provide the Congress and the legislatures of the several states the power to prohibit the physical
26 desecration of the Flag of the United States; and be it

27 **FURTHER RESOLVED** that the legislatures of the several states are invited to join with Alaska
28 to secure ratification of the proposed amendment.

29 **COPIES** of this resolution shall be sent to the Honorable Dan Quayle, Vice-President of the
30 United States and President of the U.S. Senate; to the Honorable Thomas S. Foley, Speaker of the U.S.
31 House of Representatives; the presiding officers of each house of the legislatures of the several states;
32 and to the Honorable Ted Stevens and the Honorable Frank Murkowski, United States Senators, and the

1 Honorable Don Young, United States Representative, members of the Alaska delegation in Congress.



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance Committee
committee name

committee on SJR 6 , dated 29 March 1991
bill/subject

The American Legion Auxiliary is the worlds largest patriotic-service organization, one million members strong. By now, you must all be aware of the stand that the American Legion, American Legion Auxiliary and Sons of the American Legion have made in regard to the desecration of our Flag.

There are certainly enough other ways for one to display "freedom of expression" without desecrating Old Glory and the country it stands for. The hippies, yuppies, (or whatever they now call themselves) have the freedom (in this country) to "love it or leave it"!

This flag desecration issue has been bounced around long enough, and since it gained nationwide attention, we have been involved in yet another war.

I testify support of SJR 6 on behalf of the 2,958 members of the American Legion Auxiliary, Department of Alaska.

Millie McManus, National Western Division Americanism Chairman
National Executive Committeeman-Dept. of Alaska

Signed: Millie McManus

Testifier

American Legion Auxiliary

Representing (Optional)

HC 34 Box 2662, Wasilla, AK 99687

Address

(Bus) 376-2611 (Hm) 892-6319

Phone No.

Statement; the Finance Committee on the Resolution to be sent to Congress regarding the desecration of the American flag:

Before she died in 1836, You will recall that Betsy "Griscom" Ross designed the American flag. Since then, in all the wars this country has ever fought, Americans and other nationals have laid their lives down for the sake of the American flag and all it represents.

Does this country so dishonor these millions of men, women, and yes children; that we allow the American flag to be burned, walked on, spat upon, used for clothing, or hung as window curtains?
How about garments for pet pigs, as reported on
 As President of The American Legion, Unit 2, Valdez Alaska, I say
 NO! NO! NO! *can you see this morning?*

How best to honor those millions of people than to amend the Constitution of the United States, making it a crime, with severe Penalties, for anyone to desecrate the American flag.

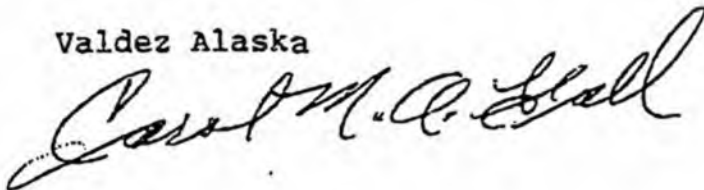
The crime as I see it, was when the United States Supreme Court declared that desecration of the American flag is covered under our First Amendment Rights of free speech! There is the crime! What a slap in the Face to those who died since the birth of our nation. Have they died in vain? They died to protect and defend all this country holds dear.

The American flag is the one symble to the entire world of what was considered, at its inception, as a crazy experiment. Three hundred years ago, the experts of those days, swore our experiment would never work. Well, look at us today! We are the most powerful country in the world. And the symble of our democracy is the American flag.

If this amendment does not pass, it will tell the world that we Americans have lost all sense of values. They would be right. We should hang our heads in total shame. It will tell the world that we are not a proud people, Is this what you want the world to think of the American people? I think not.


Protect and defend the American flag. This resolution must be passed by the Alaska State legislature. Thank You

For God and Country,
Carol M.A. Fall
President,
American Legion Auxiliary
Unit 2
Valdez Alaska



Endorsed:

Ellis D. Fall
American Legion
Western District
Zone 3 Commander





I Was There.

I was there at the dawn's early light
 I was there at the twilight's last gleaming.
 I was there with the bombs bursting in air,
 torn and tattered, what so proudly you hailed.
 I was there, in Germany, France, Italy,
 Pearl Harbor, Korea,
 Vietnam and countless other places.

I flew proud and honored.

What have I done that I'm allowed to be burned,
 trampled and treated with disrespect?

Why are so few allowed to desecrate
 what so many died to protect?

For 214 years I've flown to represent this country
 and its people. Who will be there for me when
 the next call to arms is made?

Will I burn on foreign soil as I do on my own?

Who will be there for all of us?

It's time to let the government know
 we will not stand for the burning or desecration
 of the symbol which stands for this country
 and its people. Anyone who feels he has that
 right should visit Arlington Cemetery, Pearl Harbor
 or any one of the cemeteries where
 our war dead lie in honored respect.

There are enough of them. Tell them about the
 right to burn their flag. If they say it's OK,
 do what your conscience tells you to.

But not in front of me because I was There . . .

were you?

Alaska State Legislature



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ANCHORAGE, ALASKA 99503
(907) 561-7615

While in Juneau
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3818

SENATOR
ARLISS STURGULEWSKI


Senate

RECEIVED FEB 26 1991

MEMORANDUM

February 26, 1991

TO: Senator Fred Zharoff
Senate District N

FROM: Senator Arliss Sturgulewski 
Senate District F

RE: SJR 6

It has come to my attention that U. S. citizens living in the United States of America have been denied the right to patriotically display the American flag in support of the brave men and women serving with the American forces in the Persian Gulf engaged in operation Desert Storm. It has been reported that on some college campuses and along some highway routes, U.S. citizens have been forced to take down this symbol of sacred American values.

Senate Joint Resolution 6 'Relating to an amendment to the Constitution of the United States prohibiting desecration of the Flag of the United States' which so ably supports the protection of our national symbol appears to be the proper vehicle to also protect the rights of Americans to display this symbol.

I would like to suggest that you consider the inclusion of the following language in order to bring attention to this restrictive practice:

Add on page two after line 29:

FURTHER RESOLVED THAT THE AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES PROHIBIT ANY RESTRICTIONS REGARDING THE PATRIOTIC DISPLAY OF THE AMERICAN FLAG AS A SYMBOL OF SUPPORT FOR THE FREEDOMS, VALUES AND RIGHTS EXPRESSED IN THE CONSTITUTION AND BILL OF RIGHTS.



American Civil Liberties Union

Alaska Civil Liberties Union -Legislative Committee-217 Second St. #204-Juneau, Alaska 99801

POSITION PAPER ON SB 333

THE ALASKA CIVIL LIBERTIES UNION OPPOSES ANY FORM OF LEGISLATION BANNING FLAG DESECRATION. SUCH LEGISLATION IS AN UNCONSTITUTIONAL INFRINGEMENT OF ONE OF OUR MOST VALUABLE FIRST AMENDMENT FREEDOMS, THE RIGHT TO CRITICIZE THE GOVERNMENT.

Every legislative session seems to produce one bill that is totally offensive to civil liberties. This year, a very strong contender for the most obnoxious bill, without question, is the flag desecration bill, SB 333.

The American flag flies the proudest and strongest in the world precisely because the government does not mandate that its citizens revere it. Reverence by force is nothing more than obedience. There are only a handful of citizens who would consider burning a flag. Yet our tolerance for these few makes the rest of us free. In choosing to grant our flag respect, we exercise exactly the same rights that Gregory Johnson did when he contemptuously burned the symbol of America's liberty. A government which thinks that it can order people to respect it, rather than earning their respect, is doomed to fail.

Lest anyone question the power of the flag as a symbolic impetus for government change, it is worth recalling the powerful images we recently witnessed of thousands of Rumanian citizens carrying flags from the centers of which the hammer and sickle of communism had been torn. We happen to agree with their symbolic statement that the yoke of oppression represented by that flag should be lifted, and so we view the action they took against their flag with approval. We cannot have it both ways. The people of Rumania earned their freedom by dissent and protest. The values they expressed by their symbolic use of the flag are the very values this legislation would suppress.

This is a cynical and hypocritical bill. Flag burning is not exactly a rampant social problem in Alaska, certainly not one which deserves the level of effort that the legislature has put into this bill. There are much worse problems to worry about. We do predict that if the bill passes, it will incite many incidents of flag burning. The legislation is exactly the kind of repressive, oppressive government action that invites protest.

The legislation arises from a hysterical response to a decision of the United States Supreme Court affirming our most basic liberty, the freedom to criticize government. It is hard to understand how the self-appointed defenders of our

flag, (and presumably of our freedom), can justify such a basic infringement on the First Amendment. We would like to quote from that decision:

" . . . According to Texas, if one physically treats the flag in such a way that would tend to cast doubt on the idea that nationhood and national unity are the flag's referents, or that national unity actually exists, the message conveyed is a harmful one and therefor may be prohibited. . . If there is a bedrock principle underlying the First Amendment, it is that Government may not prohibit the expression of an idea simply because Society finds the idea itself offensive or disagreeable. "

The idea that the First Amendment needs fixing is a dangerous fallacy. If our liberty perishes, it will bleed to death from nicks and cuts inflicted by those who will not tolerate dissent. A pathetic group of radicals, so at a loss for words that they burn flags, poses no comparable threat to our freedom.

This bill will put Alaska in the ignominious company of countries like the Soviet Union, Iran, China and other nations which routinely put people in prison for expression of ideas with which the government disagrees. If we travel down this road, our freedom to tell the government to go to hell will depend on the whims of politicians playing for a political advantage.

Without question the most basic civil liberty, in the absence of which all other liberties are defenseless, is the right to criticize the government. If we cannot criticize government, we cannot change it and we cannot prevent its abuses. We know from our painful experiences with McCarthyism and Vietnam the pitfalls of the "America right or wrong" philosophy. The most important way in which we can celebrate our liberty is to allow even the most obnoxious protesters to present their ideas for consideration. As Senator Dellenger of Nebraska, a man who lost a leg fighting for his country in Vietnam put it, legislation like this is actually an ultimate victory for flag burners, making America "look just a little silly, and a little less brave and little less free."

*F -
flagburning*

*From the Desk of
Jamie Bollenbach
Executive Director, AkCLU
326 "L" Street Ste. B
Anchorage, AK
99501*

December 4, 1989

Hello!

In the past two months, we saw monumental changes in history - the spark of freedom igniting the most powerful movement for individual liberty since the Second World War. Just today I read that the hardline communist leadership in East Germany has resigned. and we all watched one of the greatest moments of the twentieth century when the Berlin Wall, the stark symbol of the state's power over the individual, collapsed with a joyful celebration. In Poland, Hungary, Czechoslovakia, and the Soviet Union itself, the desire for individual rights and democracy is beginning to overwhelm state supremacy.

I share their hope for democracy, for fundamental human rights, for a constitution that guarantees rights instead of neatly skipping over them. But I am reminded that it can be easier to win freedom than to remain free.

I want to draw an connection between these events and the continuing struggle for freedom here at home - in Alaska, the American state that more than any other believes in the freedom of the individual.

The people of Eastern Europe know too well that the lack of enforceable constitutional protections against the excesses of power leads directly to oppression.

With the U.S. Supreme Court's backtracking on privacy and

abortion rights, the proliferation of random urine testing, and the President of the United States intent on restricting the First Amendment by changing the Constitution, our essential freedoms are constantly threatened. Worse, the American public is being frightened into thinking that their own constitutional rights are to blame for all kinds of social problems. Many politicians feed these fears shamelessly.

In a recent poll, 52% Americans support the police searching homes without a warrant or any cause if they are investigating illegal drug use.

Although I believe that most Americans understand and agree with the principles of our constitution, our rights can often get swept up in the politics of the moment.

As an FBI agent in Portland, Oregon commented:

"Americans are only willing to give up constitutional rights because they have never given up any before."

Any East German, any Pole, any Czech, any Hungarian, any South African can tell you about the consequences of giving up rights.

Americans can encourage the world struggle for liberation by remaining true to our ideals of freedom, ideals we can easily forget in the moment-to-moment world of politics and law enforcement.

The Bill of Rights cannot rest like a dusty museum exhibit. It must breathe freedom as we live it, it must develop with the republic, its spirit must grow with Americans themselves. Organizations like the AkCLU and Alaskans like yourself can keep it alive and full.

SO WHAT ARE THE THREATS TO FREEDOM IN ALASKA?

- Twice in Alaska, the ACLU had to sue to protect the right of Americans to criticize the Soviet Government! In 1986, Sullivan Arena security guards during a Soviet-Czechoslovakian hockey game ripped down a banner that said simply: "Free Soviet Jews." This year, the Northway Mall threw out a Hungarian immigrant just for wearing a 6 by 8 inch square sign reading "Murderer Ruskies go home."

- This summer, The Kenai Peninsula Borough came one vote short of prohibiting all abortions in public hospitals... Encouraged by the Webster decision, Alaskan anti-choice legislators will attempt to limit abortion in the next legislative session.

- In Eagle, Alaska, when a public school teacher blamed the Holocaust on the Jews, saying it came from them being too "prideful and money hungry, I guess," and the teaching of evolution was all but banned, it brought to a head the deep involvement of the fundamentalist church in the Eagle school system.

- When U.S. Customs seized Homer fisherman Kevin Hogan's brand-new 32-foot fishing vessel because one of his crewman had 1.7 grams of marijuana in a coat pocket, they said that Mr. Hogan's total innocence of any crime would not affect the punishment. His economic losses now exceed \$100,000.

- Mayor Tom Fink proposes to put anyone caught with any marijuana in prison for up to one year, while alcohol and tobacco kill hundreds of thousands of Americans, drugs Mayor Fink does not consider to be "mind-altering."

- A search of the Anchorage School District Administration Building by at least seventeen armed Anchorage police officers lead to the search and recording of thousands of confidential special education, disciplinary, and personnel records. Nothing restricts what they do with this information. At this writing, the police still have records of hundreds or thousands of private files totally irrelevant to their investigation. The court transcripts indicate that the police had no concern that their actions might transgress privacy rights of hundreds of innocent Alaskans. In our suit we represent parents, teachers, and students whose files were or were probably searched. The ACLU, not the taxpayers, funds this litigation.

- The Juneau School Board proposed a policy eliminating any student from extracurricular activities who is at an event where alcohol is served, regardless of whether they consumed any.

- In the wake of an Alaska Supreme Court decision, company after company randomly tests the urine of their employees, with no

regulation on the accuracy of the test, or limits on what they test for.

On these issues and more, the Alaska Civil Liberties Union litigates, educates, and lobbies to protect constitutional rights and promote the spirit of Alaskan liberty. We raise issues and stand up for causes others are unable or unwilling to take.


We learn time and time again that no government can be trusted as the sole guardian of the rights of the people.

I write today invite you to join the Alaska Civil Liberties Union, and I am asking you to take the harder road: to support the exercise rights for people you may consider undeserving, as well as those same rights for people you admire. I ask you to join one thousand other Alaskans: friends, neighbors, fellow citizens of all backgrounds who commit to protect rights for each and every Alaskan.

The ACLU has been instrumental in making the Bill of Rights a working reality for nearly seventy years. And with your \$20 donation, you can help us continue to keep the United States of America the envy of a long-oppressed world.

Thank you very much for your consideration. As always, if you have any questions about ACLU membership or about our program, please call me at 276-2258.

Sincerely,



Jamie Bollenbach

Executive Director, Alaska Civil Liberties Union

If you are already a member of the ACLU and have not donated this year, please take this opportunity to renew your membership. Joining the AKCLU also makes you a member of the American Civil Liberties Union.

We use a variety of mailing lists to recruit new members, and sometimes we mail more than once to the same person because we do not have the staff or the equipment to carefully screen every list. I regret any inconvenience this might cause.

FOR RELEASE MONDAY, MAY 14, 1990

GALLUP POLL RESULTS ON
AMERICANS' OPINIONS ON THE
FLAG-BURNING ISSUE

Statistics just released to The American Legion by The Gallup Organization, Inc. show that a significant majority of Americans support a constitutional amendment to protect the United States Flag. The poll, which was conducted from April 11 through May 2, and has a "maximum standard-error rate of 2.7% at the 95% level of confidence," reported that 71% favor a narrowly drawn constitutional amendment; 73% do not believe such an amendment would jeopardize their freedom of speech; and 57% would vote for or against an elected official because of his position on this issue.

The questions asked and the responses, by percentage, follow.

1. Do you agree that burning the American flag should be protected under the free speech guarantee of the First Amendment, or do you disagree that burning the flag should be protected under the free speech guarantee of the First Amendment?

Agree	25%
Disagree	72%
No Opinion	2%

2. On May 14th the Supreme Court is going to hear final arguments on the Flag Protection Act of 1989, the law which was written to make flag burning a crime. If the Supreme Court finds the Act to be unconstitutional would you favor or oppose a narrow constitutional amendment that would allow federal and state governments to make flag burning illegal?

Favor	71%
Oppose	26%
No Opinion	3%

3. Do you believe that a constitutional amendment outlawing flag burning would place your freedom of speech in jeopardy?

Yes	25%
No	73%
Don't Know	2%

4. How strong is your opinion on the flag burning issue? On a 1 to 5 scale where 5 means you completely made up your mind on your position on the issue and 1 means you're unsure of your position on the issue, where would you rate yourself regarding the flag burning issue?

1	Unsure of position	3%
2		3%
3		9%
4		16%
5	Completely made up mind	68%

5. Please tell me yes or no if you would be likely to participate in the following activities as a result of your position on the flag burning issue. Would you be likely to:

A. Donate to a group that supported your position?

Yes	53%
No	44%
Don't Know	3%

B. Sign a petition that supported your position?

Yes	86%
No	13%

C. Vote for or against an elected official because of his position on the issue?

Yes	57%
No	40%
Don't Know	3%

D. Do volunteer work for a group that supported your position?

Yes	44%
No	54%
Don't Know	2%

E. Write a letter to an elected official stating your position on the issue?

Yes	65%
No	34%

For more information, please contact The American Legion, Public Relations Division. Lew Wood - 317-635-8411 or John Hanson - 202-861-2700.

THE FLAG AMENDMENT

Mr. DOLE. Mr. President, earlier this week, the Supreme Court heard oral argument on the constitutionality of the so-called Flag Protection Act of 1989.

Within 8 weeks or so, the Supreme Court will settle—once and for all—the question of whether the flag statute passes, or flunks, the constitutionality test.

I've predicted that the Supreme Court will affirm the two lower court opinions striking down the statute. Obviously, I am not a mindreader, and I could be dead wrong on this one.

But what the critics can't dispute is the simple fact that the American people still—to this day—stand four-square behind a constitutional amendment to protect Old Glory from desecration.

Last Friday, the American Legion officially released the results of a Gallup poll testing the opinions of Americans on the flag-burning issue. And the results show that Old Glory—as well as the constitutional amendment—have won with landslide numbers.

According to the poll, an overwhelming 72 percent of the American people "disagree that burning the flag should be protected under the free speech guarantee of the first amendment;" 71 percent favor "a narrow constitutional amendment that would allow Federal and State governments to make flag-burning illegal," just like the amendment that the Senate considered last year.

And 73 percent of the American people do not "believe that a constitutional amendment would place our freedom of speech in jeopardy," while only 25 percent think it would.

So despite what you may hear or read in the media, the commitment of the American people to a constitutional amendment remains as strong as ever—almost a full year after the Texas versus Johnson decision. And this commitment will grow even stronger if, and when, the Supreme Court finally strikes down the so-called Flag Protection Act.

I commend the American Legion for its unrelenting work on behalf of the constitutional amendment. And I commend the legion for bringing the poll results to the attention of their elected representatives in Congress.

Mr. President, I ask unanimous consent that the text of the American Legion poll results be printed in the Record at this point.

There being no objection, the results were ordered to be printed in the Record, as follows:

THE AMERICAN LEGION,

Washington, DC, May 11, 1990

DEAR SENATOR: Although it has been almost a year since the Supreme Court's controversial decision, 72 percent of the American public still believes that burning the American flag should not be a protected form of free speech as guaranteed by the Constitution's First Amendment. As a reinforcement of that belief, 71 percent of Americans favor a narrowly-drawn constitutional amendment to make flag burning illegal, and 73 percent are convinced that such an amendment would not jeopardize their freedom of speech.

These are only three findings of a recent Gallup poll clearly showing that most Americans are still enraged over the whole matter of flag burning. In fact, 57 percent of them stated their intention to vote for or against elected officials because of where they stand on the issue. These are not "soft" opinions or attitudes because it was also found that only 15 percent of the poll participants expressed any uncertainty in stating their positions.

The American Legion is convinced that this poll, conducted April 11 through May 2, is a clear indicator of public opinion. We see it as proof that Americans have considered carefully all sides of the issue, they have made up their minds, and they are demanding that flag burners be dealt with as law-breakers.

A more detailed presentation of the Gallup poll results is enclosed for your review.

Sincerely,

MILES S. EPLING,
National Commander.

GALLUP POLL RESULTS ON AMERICANS' OPINIONS ON THE FLAG-BURNING ISSUE

Statistics just released to The American Legion by The Gallup Organization, Inc. show that a significant majority of Americans support a constitutional amendment to protect the United States Flag. The poll, which was conducted from April 11 through May 2, and has a "maximum standard-error rate of 2.7 percent at the 95 percent level of confidence," reported that 71 percent favor a narrowly drawn constitutional amendment; 73 percent do not believe such an amendment would jeopardize their freedom of speech; and 57 percent would vote for or against an elected official because of his position on this issue.

The questions asked and the responses, by percentage, follow.

1. Do you agree that burning the American flag should be protected under the free speech guarantee of the First Amendment or do you disagree that burning the flag should be protected under the free speech guarantee of the First Amendment?

Agree, 25 percent; disagree, 73 percent; no opinion, 2 percent.

2. On May 14th the Supreme Court is going to hear final arguments on the Flag Protection Act of 1989, the law which was written to make flag burning a crime. If the Supreme Court finds the Act to be unconstitutional would you favor or oppose a narrow constitutional amendment that would allow federal and state governments to make flag burning illegal?

Favor, 71 percent; oppose, 28 percent; no opinion, 3 percent.

3. Do you believe that a constitutional amendment outlawing flag burning would place your freedom of speech in jeopardy?

Yes, 25 percent; No, 73 percent; no know, 2 percent.

4. How strong is your opinion on the burning issue? On a 1 to 5 scale where 1 means you completely made up your mind on your position on the issue and 5 means you're unsure of your position on the issue where would you rate yourself regarding the flag burning issue?

(1) Unsure of position, 3 percent; (2) completely made up mind, 88 percent; (3), 9 percent; (4), 16 percent; (5), 1 percent.

5. Please tell me yes or no if you would likely to participate in the following activities as a result of your position on the burning issue. Would you be likely to:

A. Donate to a group that supported your position?

Yes, 53 percent; No, 44 percent; no know, 3 percent.

B. Sign a petition that supported your position?

Yes, 86 percent; No, 13 percent.

C. Vote for or against an elected official because of his position on the issue?

Yes, 57 percent; No, 40 percent; no know, 3 percent.

D. Do volunteer work for a group supported your position?

Yes, 44 percent; No, 54 percent; no know, 2 percent.

E. Write a letter to an elected official regarding your position on the issue?

Yes, 65 percent; No, 34 percent.

PLEASE MICROFILM TOP PAGE ONLY

SUR 7