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HOUSE STATE AFFAIRS COMMITTEE

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150

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

February 14, 1977

Subject: Closed v. Open Primary (W.O. #3357)

To: Representative Bob Bradley, Chairman
House State Affairs Committee

From: Jack C. Doyle, Executive Director

This is in response to your request for some background information on the subject of primary elections which might be used in connection with the committee's consideration of House Bill No. 150 which seeks to restore the party primary in Alaska and replace the "blanket primary" which was reinstated in 1967.

Of the 50 states, 39 have the strict party or closed primary. Eight states provide the voter with the ballots of all parties and the voter chooses in the privacy of the voting booth the one he wishes to vote on. Alaska and two other states (Washington and Louisiana) have the "blanket primary". An article on the peculiar Louisiana law and its origins is attached. Also attached is a 1975 table from The Book of the States (1976-77) of the Council of State Governments showing in table form the information noted above.

I am also pleased to enclose an extract from a 1951 report of the National Municipal League which gives the standard pros and cons of the open versus the closed primary. Special attention is given to the Washington blanket primary which has had periodic popularity in Alaska.

Of more current significance is a recent decision of the United States District Court for Connecticut (Nader v. Schaffer) which was upheld without issuing a further opinion by the U.S. Supreme Court on December 6, 1976. The news clipping and the district court opinion are included with this memorandum. The opinion is probably the most organized response I have ever read to the standard complaint of the independent voter to the party primary system.

I hope this material will meet your need for the background information. Please let me know if we may be of further assistance.

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Primaries ruled for parties only

Examiner News Services

WASHINGTON -- The Supreme Court held today that independent voters have no constitutional right to participate in primary elections.

The justices acted without issuing an opinion. They affirmed a three-judge federal court decision that upheld Connecticut's law limiting primary participation to members of political parties.

The lower court ruled that Connecticut's law was an appropriate means for the Legislature to preserve "the integrity of the electoral process."

Connecticut has an interest, the court said, in assuring "that primary election results reflect the will of party members, undistorted by the votes of those unconcerned with, if not actually hostile to, the principles, philosophies and goals of the party."

The state law was challenged by Nathra Nader and Albert Snyder, independent voters who sought to vote in Connecticut's 1976 primary. They claimed that by limiting participation to party members, the state denied them their right to vote at a critical stage of the electoral process.

The three-judge court noted that Connecticut provides petition procedures for placing independent candidates on the ballot and that party registration, enabling a person to vote in the primary, is easy.

"Connecticut's voting laws clearly provide avenues for supporting candidates of one's persuasion without affiliating with an established 'major' political party," the court said.

Limiting primary participation serves the rights of those who wish to join a party, the court said, and lets party candidates know who can vote to nominate them and presumably who is sympathetic with the political goals of the party.

"... In order to protect party members from 'intrusion by those with adverse political principles,' the lower court concluded, "and to preserve the integrity of the electoral process, a state legitimately may condition one's participation in a party's nominating process on some showing of loyalty to that party."

The court also:

• Ruled that the exclusion of even one prospective juror for general scruples against capital punishment automatically voids any death penalty imposed in a

High court takes Redwood City porn sales case

United Press International

WASHINGTON — The Supreme Court today agreed in a California case to decide whether "pandering" can be a factor in an obscenity case when there was no evidence the defendant tried to exploit the pornography commercially.

The court accepted for later argument and decision the appeal of Roy Splawn, a Redwood City bookstore owner convicted of selling some pornographic films to a part-time policeman. The sale took place only after the policeman had asked for the material several times.

Splawn's conviction was affirmed a second time by the California Court of Appeal after the Supreme Court established new guidelines for state obscenity cases.

Splawn was sentenced to 91 days in the county jail, one day suspended, and fined $1,000, plus state assessment. He has been free on bond of $1,250.

Copy of USDC Conn. opinion is attached

cially neutral; however, no black person has ever been elected to city office, notwithstanding black population levels in excess of 30 percent. While support of the city's black voters is actively sought by all candidates in city elections, blacks appear condemned to submergence in the local political sphere for the foreseeable future. Where black voters have provided the margin of victory, their effect has been only to tip the balance in favor of either of two white candidates. This is not the sort of meaningful access to political processes intended by the Fourteenth Amendment.

The city has a long history of official racial discrimination and unresponsiveness that have long affected all aspects of the lives of the city's black citizens. Only recently have the legal obstacles to black voting been removed. Housing remains almost totally segregated, and residual effects of past discrimination linger in public employment. Black voter registration percentages remain lower than proportionate white registration.

At-large voting for city commissioners has been the rule since 1910. Because blacks were disenfranchised at that time, the court perceives no "tenuous policy" underlying the use of at-large voting in the city.

In the past, local officials clearly neglected their responsibilities to the needs of black persons. Recreational facilities were completely segregated, and those in black neighborhoods were inferior. Blacks were not appointed to committees and boards of local importance, and the record of black employment by the city was, and still is, shameful. Finally, governmental services and facilities generally were disproportionately poor in black neighborhoods. While there are now some sincere efforts to achieve racial fairness in dispensing public benefits, the record bespeaks many still lingering failures remaining to be rectified. The present political scheme of things has not, and will not, guarantee the black minority any more than peripheral participation in the solution.

The majority primary law, the requirement that candidates run for specific seats, the requirement that city commissioners reside only in the city and not in any specific part of it, and racially polarized voting have all exacerbated the almost total foreclosure of blacks from truly effective exercise of the ballot. Accordingly, those portions of the city charter that require only that various commissioners be residents of the city—from no particular neighborhood, district or section—and by common consent and practice during the 26 years since the charter's adoption all elected commissioners have run at-large, operate impermissibly to dilute the voting power of black voters in violation of the Equal Protection Clause. These provisions deprive black voters as a class of the opportunity meaningfully to participate in the political processes and to elect legislators of their choice. Of course, as the chief executive officer of the city, necessarily the mayor must be elected by voters in an at-large election.—Dawkins, J.

—USDC WLa; Blacks United For Lasting Leadership, Inc. v. Shreveport, Louisiana, 7/16/76.

PRIMARIES—

Connecticut law that restricts voting in primary to voters enrolled with party holding primary does not deny voters registered independently of any party equal protection or freedom of association and does not infringe their right to vote.

The independent voters argue that the alternative avenues of political activity open to them under state law are ineffectual and unrealistic, since in most general elections only the Democratic and Republican nominees have reasonable chances of success. But any dominant position enjoyed by the major parties is not the result of any improper support or discrimination in their favor by the state; it is because over a period of time they have been successful in attracting the bulk of the electorate so that they now have substantial followings.

The independents also argue that the challenged law limits their constitutionally protected right not to associate. It is true that in order to vote in a party's primary, a voter must publicly affiliate with that party. But enrollment imposes absolutely no affirmative party obligations on the voter in terms of time or money, and it does not even obligate him to vote for the party's candidates, or to vote at all. State law does permit erasure of the voter's name from the party's enrollment list upon a proper showing that he does not support the party's principles or candidates; but in actual practice this provision is not used. Such limited public affiliation is simply not comparable to the coerced orthodoxy imposed by government officials in cases such as West Virginia State Bd. of Education v. Barnett, 319 U.S. 624 (1943).

The independent voters also argue that the public nature of enrollment violates their right to privacy or association by potentially subjecting them to harassment because of their affiliations with a party. It is insufficient, however, for them to merely raise the spectre of harassment; they must make a detailed factual showing of actual threats or incidents of harassment.

They further argue that the state may not force them to comply with the challenged law unless it establishes that the law serves a compelling state interest by the least drastic means available. A political party, however, is a voluntary association. Its ultimate goal is to win elections. It seeks to nominate those candidates who are most likely to win elections while remaining faithful to the policies and philosophies of the party's membership. Constitutionally protected associational rights of its members are vitally essential to the candidate selection process. Any attempt to interfere with a party's ability to organize itself in the way that will make it the most effective political organization is also an interference with the associational rights of its members. The rights of party members may to some extent offset the importance of allegedly conflicting rights asserted by persons challenging some aspect of the candidate selection process. More importantly, the state has a legitimate interest in protecting party members' associational rights by legislating to protect the party from intrusion by those with adverse political principles.

Additionally, a state has a legitimate interest in protecting the overall integrity of the electoral process. This includes preserving parties as viable and identifiable interest groups, insuring that the results of primary elections accurately reflect the voting of party members. Parties should be able to avoid primary election outcomes that will confuse or mislead the general electorate to the extent it relies on party labels as representative of certain ideologies. The Supreme Court has recognized the legitimacy of this state interest in a number of decisions.

It is clear from these cases that, in order to protect party members from intrusion by those with adverse political principles and to preserve the integrity of the electoral process a state may legitimately condition one's participation in a party's nominating process on some showing of loyalty to that party, and that is precisely what Connecticut does. The enrollment process is not particularly burdensome, and it is a minimal demonstration by the voter that he has some commitment to the party in whose primary he wishes to participate.

The independent voters argue that the law does not accomplish legitimate state goals because the waiting period for persons who are independent voters is less than three weeks, and that this is an insufficient period to deter fraudulent or deceptive conduct by those planning it. But this argument goes only to the length of

the waiting period, and not to the method used. The legislature has determined that enrollment 18 days before the primary is sufficient to demonstrate that a previously independent voter will not engage in disruptive or deceptive voting conduct inconsistent with the associational rights of other party members and the preservation of the integrity of the nominating process. The legislature has, with some logic, imposed a longer waiting period on voters previously enrolled in other parties, as they are perhaps more likely to have a hostile motivation.

The claim that Connecticut could prevent raiding and other distortive or deceptive conduct by a less drastic means, namely, criminal sanctions against the perpetrators, is not persuasive. Assuming arguendo that the least drastic means test applies here, that standard does not require the state to chose ineffectual means to accomplish its goals. Although criminal sanctions might be effective to punish the ringleaders of any raid, it would be difficult to detect and punish individual voters who engaged in the proscribed conduct. Unless the deterrent aspect of the law were totally effective, such a law would apply only after the damage had been done and would be in the nature of punishment, not remedy. The state obviously cannot conduct a test on each voter to determine his political ideas before allowing him to vote in a primary, and the enrollment requirement is a constitutionally acceptable surrogate.

The independents also argue that the law deprives them of equal protection by denying them the right to participate in elections in which they are interested and by which they are affected to the same extent as those persons who may vote, solely because the independents do not enroll in political parties But the independent voters are not interested in primary elections in the crucial, distinguishing aspect that party members are interested. Specifically, they are not interested in nominating the candidate who presents the best chance of winning the general election while remaining most faithful to party policies and philosophies. The constitutional validity of this distinction between enrolled party members and other voters, on which the challenged law is based, is at least implicit in the Supreme Court's flat statement in Ray v. Blair, 343 U.S. 214 (1952), that "a state might reasonably classify voters or candidates according to party affiliations." The challenged law, therefore, does not make an invidious discrimination that would offend the Constitution. Not every limitation or incidental burden on the exercise of voting rights is subject to a strict standard of review. Similarly, a state statute or policy must cause more than a minimal infringement of First Amendment rights before a state is called upon to provide a compelling interest justification. The court, therefore, holds that the challenged law is reasonably related to the accomplishment of legitimate state goals.—Anderson, J.

—USDC Conn (three-judge court); Nader v. Schaffer, 7/14/76.

Evidence

TAX RETURNS—

Yacht owner's federal income tax returns are subject to discovery in Jones Act case as relevant to issue of whether, at time of injury, yacht was being used for business purposes even though owner's income is not directly in issue.

In this Jones Act case, the complaint alleges that the injured party was a crew member of a yacht that, at the time of injury, was being used for business purposes. The yacht owner denies that he was using the yacht in the pursuit of his business at the time of the injury. Thus, the critical question is whether at the time of the injury, the yacht was being used for a business purpose or for a pleasure voyage. The issue here is whether the yacht owner's federal income tax returns are subject to discovery even though his income is not an issue in the case. Those seeking the discovery compelling production of the documents contend that the returns will reveal the extent to which the vessel had been used in a business capacity and, therefore, are relevant and material to the question of whether the yacht was being used for a business purpose at the time of injury.

As a general rule, federal income tax returns are subject to discovery in civil suits where a litigant tenders an issue as to the amount of his income. This is consistent with the public policy against unnecessary disclosures of federal returns. Such returns are not absolutely privileged from discovery, but federal courts have been cautious in ordering the disclosure of tax returns, and in most instances, it has been held that production of a tax return should not be ordered unless there appears to be a compelling need for information that is not otherwise readily attainable.

In this case, the extent to which the vessel had been used for a business purpose, as may be revealed by the business deductions showing on the federal tax returns is relevant to the factual issue raised by the owner's denials. Indeed, it may be the only source of this information available to the injured party. As a litigant, the yacht owner ought not be permitted to raise an issue upon which his tax returns may pass significant light and then claim that his returns are not subject to disclosure. Thus, the income tax returns are subject to discovery in this case, even though the owner's income is not directly in issue. It is not enough that the owner examine the contents of the return and swear by affidavit as to what they contain.—Leighton, J.

—USDC Nlll; Shaver v. Yacht Outward Bound, 6/25/76.

Labor

EQUAL OPPORTUNITY—

Complaint challenging as racially discriminatory employer's disqualification for manual labor of workers who suffer from bone degeneration, which is condition commonly resulting from sickle cell anemia disease that affects blacks almost exclusively, sufficiently raises both "intent" and "effect" claims under Title VII of 1964 Civil Rights Act.

The employee successfully passed a preemployment physical examination and performed satisfactorily as a manual laborer during a probationary period. His continued employment was dependent upon the results of a second medical examination generally given around the 90th day of an employee's probationary period. Such examination determined that the employee suffered "bone degeneration in his spinal region and was physically disqualified for any manual labor job at the plant." The employee, and his personal physician, when informed of the bad back diagnosis informed the company doctor that the bad back diagnosis could be explained by his history of sickle cell anemia, a blood disorder affecting black Americans almost exclusively. The company thereafter terminated the employee.

The district court rejected the employee's assertions that he was "discharged because the [company] suspected that [he] has sickle cell anemia, a disease common to Black Americans," and that he was discharged for "reasons made unlawful by Title VII * * *."

This case must be remanded for further consideration of the possible liability of the employer based on employment practices that are fair in form but discriminatory in operation. As construed by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424, 39 LW 4317 (1971), Title VII requires the "removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the

cess to the entrenched and well-organized."

ROSALINE LEVENSON
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Louisiana Adopts Open Election System

Louisiana has abolished its closed primary method of nominating candidates for state and local elections and has replaced it with an "open election" system. Passed by the legislature, signed by Governor Edwin W. Edwards and approved by the United States Department of Justice, the new system will go into effect for the regular state elections in November.

Unlike any other election process, the open election combines elements of nonpartisanship and the open primary (particularly the "blanket" primary variation) found in other states. Instead of a Democratic primary and runoff (if needed) followed by a general election if there is Republican, independent or third-party opposition, all candidates regardless of party affiliation will be listed alphabetically. Democras, Republicans, third party and independents will all run on the same ballot against each other. Should no candidate receive a majority, there would be a runoff between the top two.

These features are quite similar to those of a nonpartisan election, but there is an additional provision of the open election which distinguishes it from other systems. The party affiliation of the candidates will be indicated on the ballot next to their names. There is no effort here to create a nonpartisan election climate; Republicans and Democrats will be labeled as such. If a third party were to gain legal status, its candidates would also be listed with a party designation. Independents will be identified by the phrase "No Party" unless they request no label. The voter may cast a ballot for any candidate regardless of the party affiliation of either. If no one receives a majority in the first election, the runoff could involve any combination of candidates and parties.

This legislation does not apply to congressional, presidential or party committee elections, which remain partisan in nature. There may be some confusion when local elections are held at the same time as congressional primaries. When that occurs, Democratic voters will participate in a closed primary for the congressional races and in the open election for local offices. (Republican congressional candidates are normally designated by the party without any primary.) Voters who are not Democrats may vote only in the local contests. There is a great potential for confusion in such situations.

While the open election bill passed both houses of the state legislature (both heavily Democratic; there are only four Republican members), the measure did produce considerable debate in the chambers and throughout the state. Proponents of the new process cited four main arguments in favor of the change. Most often mentioned was the fact that the state could save hundreds of thousands of dollars by reducing the number of elections from three to two. In addition to saving the state money, the reduction in the number of elections, and thus the length of the campaign, would cut campaign costs.

It was also pointed out that under the proposed system there would be no advantage for latent Republicans to retain their Democratic registration. A widely held assumption in Louisiana politics is that many voters who might want to register as Republicans become affiliated with the Democratic party instead because most elections are decided in the Democratic primaries. One argument was then that the open election would lead to the development of larger numbers of registered Republicans and thus a stronger two-party system.

Another argument focused on the advantages of the new system to the voter. The voter would be able to look at all candidates for a particular office at the same time and vote for first choice in the first election rather than having to wait possibly until the general election assuming the first choice were a Republican or independent. Moreover, the voter would have to participate in only two elections rather than three.

Least discussed but probably most important of the arguments for the change was that it would eliminate the unfair advantage the Republican party is now believed to have. Less than 3 percent of Louisiana voters are registered as Republicans, yet the Republican party can force the Democratic nominee into a third campaign (the general election) simply by designating a nominee. In theory, then, the party of 3 percent of the voters can require a candidate submitted to 97 percent of the voters to once again go before the people.

Opponents of the new election system argued that it would not contribute to the development of competitive party politics. They noted that while some voters might be encouraged to change their registration from Democrat to Republican because they could now participate in state and local elections without reference to party affiliation, the Republican party would no longer enjoy an automatic spot in the general election. Instead Republican candidates would be grouped together with Democrats and independents in the first election with no guarantee, and perhaps little chance, of getting into the second election. If a voter does change his registration from Democrat to Republican this will prohibit him from participating in the Democratic congressional primaries which are still "closed."

Furthermore, whatever sense of party responsibility might have developed in the state would be destroyed by eliminating any party role in the nominating process. Cohesive, identifiable parties would not emerge under this proposal.

Most important, critics perceived that the state political leadership had found a way to relieve Democrats of the necessity of running against a Republican in the general elections. Republican opponents in particular believed that this measure was, despite protestations to the contrary, aimed at weakening their already precarious foothold in Louisiana politics.

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University of Southwestern Louisiana

Maine's Independent Governor Succeeds with Legislature

Despite fears of a stalemated state government in Maine which arose after the 1974 election of an Independent governor, a Republican Senate and a Democratic House of Representatives, substantial cooperation emerged during the regular session of the 107th legislature. The session, which adjourned in early July, was the longest in Maine's history.

Governor James B. Longley was successful in carrying out a "no new taxes" pledge made during his election campaign. The legislature defeated various efforts to increase the rates of the income and gasoline taxes, and finally accepted without major revisions the governor's $703-million, two-year budget. The financial plan generally establishes a moratorium on new programs and sets out a first-year reduction of approximately 5 percent in Maine's 13,000 state employees.

Governor Longley vetoed more measures (26) than any Maine chief executive in half a century. The governor based most vetoes on the factor of costs. The legislature upheld a veto of a controversial bill creating a Maine medical school, though it did vote to override rejection of a $4.9-million social services supplemental bill. Altogether the legislature enacted 14 measures over the governor's opposition, marking the first legislative

TABLE 8

PRIMARY ELECTIONS FOR STATE OFFICERS

State or other jurisdiction	Dates for 1976–77 primaries for officers with statewide jurisdiction*		Method of nominating candidates (a)	Party affiliation for primary voting		Voters receive ballot of	
	1976 primary	Runoff primary		Recorded on registration form	Declare for party ballot	One party	All parties participating
Alabama	May 1	June 1	C,P(b)	...	★(c)	★	...
Alaska	Aug. 24	...	P	...	...	...	★(d)
Arizona	Sept. 7	...	P	★	...	★	...
Arkansas	May 25	June 8	P	...	★(c)	★	...
California	June 8	...	P	★	...	★	...
Colorado	Sept. 14	...	X(e)	★	...	★	...
Connecticut	(f,h)	...	X(f)	★(g)	...	★(h)	...
Delaware	Sept. 11	...	X(f)	★	...	★	...
Florida	Sept. 7	Sept. 28	P	★	...	★	...
Georgia	Aug. 10	Aug. 31	C,P(b)	...	★(i)	★	...
Hawaii	Oct. 2	...	P	...	★(j)	★	...
Idaho	Aug. 3	...	P	...	...	...	★(k)
Illinois	March 16	...	C,P(l)	...	★(m)	★	...
Indiana	May 4	...	C,P(b)	...	★(i)	★	...
Iowa	June 8	...	X(n)	★(o)	...	★	...
Kansas	Aug. 3	...	C,P(b)	...	★(j)	★	...
Kentucky	May 25	...	P	★	...	★	...
	(1977) May 24	...					
Louisiana	...	...	P	★	...	...	★(d)
Maine	June 8	...	P	★	...	★	...
Maryland	May 18	...	P	★	...	★	...
Massachusetts	Sept. 14	...	P	★(p)	...	★	...
Michigan	Aug. 3	...	CP(q)	...	...	...	★(k)
Minnesota	Sept. 14	...	P	...	...	...	★(k)
Mississippi	June 1	June 22	P	...	★(c)	★	...
Missouri	Aug. 3	...	P	...	★(m)	★	...
Montana	June 1	...	P	...	...	...	★(k)
Nebraska	May 11	...	P	★	...	★	...
Nevada	Sept. 14	...	P	★	...	★	...
New Hampshire	Sept. 14	...	P	★	...	★	...
New Jersey	(1977) June 7	...	P	...	★(m)	★	...
New Mexico	June 1	...	P	★	...	★	...
New York	Sept. 14	...	CC,P	★	...	★	...
North Carolina	Aug. 17	Sept. 14	P	★	...	★	...
North Dakota	Sept. 7	...	P	...	...	...	★(k)
Ohio	June 8	...	P	...	★(i)	★	...
Oklahoma	Aug. 24	Sept. 21	P	★	...	★	...
Oregon	May 25	...	P	★	...	★	...
Pennsylvania	Apr. 27	...	P	★	...	★	...
Rhode Island	Sept. 14	...	P	...	★(m)	★	...
South Carolina	June 8	(r)	C,P(b)	...	★(s)	★(s)	...
South Dakota	June 1	...	X(n)	★	...	★	...
Tennessee	Aug. 5	...	P	...	★(m)	★	...
Texas	May 1	June 5	P	...	★(c)	★(s)	...
Utah	Sept. 14	...	X(c)	...	...	...	★(k)
Vermont	Sept. 14	...	P	...	...	...	★(k)
Virginia	(1977) June 7	...	C,P(b)	...	★(c)	★	...
Washington	Sept. 21	...	P	...	...	...	★(d)
West Virginia	May 11	...	P	★	...	★	...
Wisconsin	Sept. 14	...	P	...	...	...	★(k)
Wyoming	Sept. 14	...	P	★(t)	...	★	...
District of Columbia	May 4	...	P	★	...	★	...
Guam	Sept. 4	...	P	...	...	...	★(k)
Puerto Rico	(u)	(u)	C	...	★(s)	★	...

*Primaries for statewide offices in 1977 include (1977) before the date. For a listing of candidates to be voted upon, see "General Elections in 1976 and 1977."

(a) Abbreviations: C—Convention; P—Direct primary; CP—Some candidates in convention, some in direct primary; X—Combination of convention and direct primary; CC,P—State Central Committees or direct primary.

(b) The party officials may choose whether they wish to nominate candidates in convention or by primary elections. Usually major party candidates are elected by primary.

(c) Political party law prescribes individual party membership.

(d) Blanket primary—voting is permitted for candidates of more than one party.

(e) Preprimary endorsement assemblies are held in Colorado and preprimary conventions are held in Utah. If one candidate in Utah receives 70 percent of the delegate vote he is certified the candidate and is not required to run in the primary.

(f) A post-convention primary can be held if convention action is contested by a candidate receiving a specified minimum percentage of the convention vote: Connecticut, 20 percent; Delaware, 35 percent.

(g) A party enrollment list of party members is maintained separate from the registration books.

(h) Primaries of different parties are held on separate days.

(i) By written declaration. Ohio: party selection in primary is noted on registration [illegible] at each election.

(j) Party designation is made the first time a voter participates in a primary election by his selection of a "party ballot." This designation becomes permanent until changed at the City Clerk's office no later than 19 days before another primary. Kansas: 20 days.

(k) Voter is restricted to candidates of one party only. Ballots of all parties are received by voter and his party selection is private.

(l) Trustees of the University of Illinois are the only state officers nominated in convention.

(m) By oral declaration or request for ballot.

(n) If for any office no candidate receives 35 percent of votes cast at the primary, a convention is held to select a candidate.

(o) Party affiliation may be changed at the primary, but if challenged, a voter must take an oath that the change is made in good faith. The new party designation is entered on registration form.

(p) A voter who is a member of no party may declare to vote in a party's primary up to and including election day. By filling out a card after he votes, an elector may return to being a member of no party after the election.

(q) The Governor is the only state officer nominated by primary election.

(r) First runoff held two weeks after primary; second runoff held two weeks after that, if necessary.

(s) Polling areas for the different parties are physically separate.

(t) Party affiliation can be declared if uncommitted, or changed at the polls on primary election day.

(u) Primaries are not mandatory unless party regulations require them.

satisfied with the major parties may express their protest, and often
y have advocated governmental reforms which were later supported
one of the major parties and adopted. A number of states have un-
rtunately enacted legislation which makes it extremely difficult for
w parties to secure a place on the ballot at the general election. In-
ed, in the 1948 presidential election, the voters in two sta were not
rmitted to cast their ballots for the national Democratic candidates,
ho were unable under state law to secure a place on the ballots of
ose states.

Open, Closed or Blanket Type of Primary?

Recommendation No. 8. It is deemed unwise to offer any positive recommendation as between the "open," "closed" and "blanket ballot" types of primary. The merits and objections to each type are summarized below. The system which is best suited for a particular state will depend in large part on the party traditions and history within the state.

losed Primary

Under the closed primary, which is used by the large majority of ates, only voters who have registered their party affiliation ahead of me, or who declare it at the polls when they apply to vote in the primary lection, are permitted to vote. They are handed the ballot of the party ith which they have declared themselves and are limited in the primary lection to the candidates of that party.

In eighteen of the states which use the closed primary, voters are equired to register their party affiliation prior to the primary, while in he other states they are required to declare their party affiliation when hey apply for a ballot and may be challenged on the ground that they re not *bona fide* members of the party. A number of states require the oter to state that he has supported all candidates of the party in the ast, but the usual provision is that the voter must simply state that he s generally affiliated with the party. Some states attempt to bind the oter to vote for all candidates nominated by the party but this is unound as a public policy and is not legally enforceable.

Open Primary

In the open primary the voter is not required to register his party affiliation ahead of time or to disclose it when he applies for a primary ballot. He is handed the ballots of all political parties and, in the secrecy of the polling booth, selects the party ballot which he wishes to vote. In some states the several party ballots are stapled together and the voter selects one and marks it; in other states they are printed on a single ballot paper but the voter invalidates his ballot if he does not confine his

A Model Direct Primary Election System

Report of the
Committee on Direct Primary

Extract

Prepared by
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NATIONAL MUNICIPAL LEAGUE
New York City

marks to candidates in one party. The open primary is used in the following eight states: Wisconsin, Minnesota, Montana, Idaho, Washington, Utah, Michigan and North Dakota. The last five states listed adopted the open primary during the period of 1935-39, indicating a trend in this direction in that period, but it does not appear that any other state has adopted the open primary since 1939.

Blanket Primary

One state, Washington, uses the blanket ballot type of primary described below, which is more wide open than that of the other states.

Merits of the Closed Primary System

The closed primary is the type predominantly used in this country and is generally favored by persons who believe in a strong party system. Advocates maintain that only persons who are definitely identified as members of the party should be permitted to participate in the party primary. They regard the direct primary as a substitute for the party nominating convention—the means whereby the voters of the party, instead of delegates to a convention, select the candidates of the party. Independent voters, as well as those who are unwilling to declare themselves as members of the party, are free to choose between the candidates of the competing parties at the final election but, it is maintained, should not be permitted to participate in the selection of the party nominees.

Advocates of the closed primary oppose the open system because the latter permits voters who are not affiliated with a party to participate in the party primary and permits "raiding" by the opposite party. If there is no contest in the primary of one party, its voters are able under the open primary system to vote in the primary of the opposite party in which there are contests and, it is asserted, often vote deliberately for the weaker candidate to improve the chances of victory of the candidates of their own party. The voters of each party, it is maintained, should be free to choose the candidates of their party without any interference or help from outsiders who have no natural right to vote in the primary.

Another argument for the closed primary is that the party system is strengthened by the requirement that voters shall register or declare themselves as members of the party in order to vote in the primary election. The registration of party affiliation gives the party workers a list of the voters of the party and facilitates party work. It requires members of the party "to stand up and be counted" and tends to make for more definite party alignment.

Merits of the Open Primary System

In support of the open type of primary, it is stated that the requirement of voters to register as members of a party, or to declare publicly their party affiliation when they apply to vote at the primary election, impairs the secrecy of the ballot. Many voters regard this requirement as offensive and an invasion of their rights; others who do not regard themselves as partisans are reluctant to register as such, and consequently are deterred from voting at all in the primary election (which may be, in fact, more pivotal than the final election).

The open primary is usually favored by persons who are largely independent in their outlook and who are accustomed to vote for the man rather than for the party, particularly in state and local elections. They are generally critical of political parties as they operate in this country and regard them as not only ineffective and often meaningless in state and local government but also frequently harmful as well. While they dislike the forced party alignment which the closed primary requires, they recognize, nevertheless, that in most states the primary election is the decisive contest and are unwilling to be restricted in their right to participate in the primary. They prefer the open primary because it avoids the requirement of public declaration or registration of party affiliation and permits the voter at the primary election to choose, in the secrecy of the polling booth, the ballot of the party in which he wishes to vote. The independent voter and the voter who does not regard himself as a strong party man, they contend, is entitled to participate in the primary election and will vote as intelligently and as patriotically as the bitter partisan. They maintain that the amount of "raiding" in the primary is relatively small and that, while independents and persons who do not regard themselves as strong partisans usually vote in the primary of the dominant party when contests occur, they vote for the candidates whom they favor and expect to support in the final election.

Amount of Cross-Over Voting

The extent to which voters in open primary states cross over and vote in the primary of the opposite party is not known and, because of the secrecy of the ballot, would be difficult to ascertain. It should be noted that even in closed primary states, particularly those which rely on the challenge method of party test, voters are able to cross over and vote in the opposite party primary when there are no real contests in their own. Many voters in open primary states, who regard themselves as independent in their party affiliation, feel free to vote in the primary where the most important contests are taking place. In closed primary states it is common practice for independent voters to register and vote in the primary of the dominant party. It would be difficult to ascertain to what extent the participation of independent voters in the primary election prevails more widely in one type of system than the other, but it may be assumed that it is more common in open primary states. As a rule, however, the vote cast in the primary election, aside from the "solid south," is considerably lower than in the final election because of the tendency for only party regulars to come out and vote in the primary.

Another type of cross-over voting is where voters enter the opposite primary and vote for candidates whom they have no intention of supporting in the final election, hoping to nominate a weak candidate so as to improve the chances of the candidate of their own party. This practice is usually designated as "raiding" the opposite party. In a few closed primary states—Illinois, New Jersey and others, for example—there have been notorious cases of this kind where large numbers of voters crossed over as a result of a deal between political bosses.[18] Party leaders usually discourage raiding for fear that their regular voters may be encouraged to split the ticket in the final election. The available evidence seems to indicate that voters who cross over to the opposite primary on their own volition usually vote for the candidates whom they favor, and vote for the same candidates in the final election.[19]

One of the generally unrecognized effects of the direct primary, whether open or closed, is that both voters and candidates tend to identify themselves with the dominant party in state or local elections. In closed primary states they register as members of the party, though their attachment to it may be slight; in open primary states they are free to vote in the primary of either party regardless of their individual leanings or sympathies. Candidates also are impelled to identify themselves with the dominant party if they aspire to a public career. The result is to build up a one-party system in which the second party is rarely able to constitute a real challenge to the dominant party.

Many states, not merely in the "solid south," may be regarded as essentially one-party states. The one-party situation obtains even more widely in local elections. In a number of states, New York, for example, the two major parties are evenly matched in state elections but each party is predominant in certain areas. The absence of a true two-party system in many parts of the country is an important fact which needs to be taken into account in any consideration of the nominating system. It will be generally agreed that a one-party system is not desirable and that two vigorous competing political parties are essential to healthy party life.

Washington Blanket Ballot Primary: Pro and Con

A third type of primary is the "blanket ballot" system adopted by the state of Washington in 1935. A single blanket ballot is used at the primary election covering all parties. The names of all candidates, irrespective of party affiliation, are grouped together under the office which they seek. The name of each candidate is followed on the ballot by the name of the party whose nomination he seeks. Voters are permitted to vote for any candidate whom they favor, irrespective of party affiliation. A voter may thus vote in the Republican nomination contest for governor and in the Democratic contest for senatorial nomination on the same

18 See Clarence A. Berdahl, "Party Membership in the United States," 36 *Political Science Review* (1942), 16-51, 241-63.

19 James K. Pollock, *The Direct Primary in Michigan, 1909-1935*, Ann Arbor, 1943, 60.

ballot paper. The candidate of each party who receives the highest vote in the primary becomes the nominee of the party in the final election.

The major advantage claimed for the system is that it gives voters freedom to vote for the candidates of their choice. Voters in Washington have long been noted for their independence. Prior to 1932 the state was strongly Republican, electing less than a dozen Democratic members to the state legislature. Nevertheless, even at that time the voters elected a Democrat to the United States Senate. When the political upheaval of 1932 brought the Democratic party into power in the state and established a two-party system, the proposal for a blanket ballot primary, which was advanced by the State Grange, received widespread support from voters who saw no real reason why they should not be permitted to vote for the candidates whom they favored in either party in the primary election.

Advocates of the blanket ballot primary system do not regard the primary election as merely a party affair; they consider it in reality a public election and in most states the decisive election. The decisions of the United States Supreme Court in the "white primary" cases support this point of view. The plan makes it unnecessary for voters to register their party affiliation or to declare it publicly and it avoids disfranchising the independent voters in the primary election.

The principal criticism of the Washington blanket ballot primary is that it is too wide open, that voters should not be permitted in the primary election to vote for candidates in both parties but should be restricted to the candidates of the party with which they are affiliated. It is contended that the system disregards the fundamental purpose of the primary election, which is to nominate the candidates of each party and, as such, should be restricted to members of the party. Critics of the plan regard it as essentially a nonpartisan primary which in the long run will weaken party alignment and tend to destroy political parties. The system has been criticized by some party leaders and strong party men in the state who prefer the closed primary which prevailed before 1935 but, in the main, it is accepted by leaders of both parties and there has been little agitation to go back to the former system.

A careful analysis of the operation of the Washington primary law during its first twelve years indicates that in only four contests out of 34 for statewide offices was there any substantial number of voters who crossed over and voted in a contest in the opposite party, and in only one case does it appear that the results may have been changed by cross-over voters.[20] Voters of both major parties, though free to vote for can-

20 See Daniel M. Ogden, Jr., "The Blanket Primary and Party Regularity in Washington," 39 *Pacific Northwest Quarterly* (1948), 33-38, summarizing the findings of a master's thesis by the author at the University of Chicago. See also Claudius O. Johnson, "The Washington Blanket Primary," 33 *Pacific Northwest Quarterly* (1942), 27-39, and Daniel M. Ogden, Jr., "Parties Survive Cross-Voting," 39 *National Municipal Review* (1950), 237-241. The case in which the results of the primary may have been affected by "cross over" voters occurred in 1936, when many Republican voters cast their ballots at the primary for the incumbent Democratic governor, Mr. Martin. His opponent, Mr. Stevenson, was a left-wing candidate who had attracted a wide

didates of an opposing party, have voted with surprising regularity for candidates of their own party. The total vote polled by all candidates of a party for a particular office has seldom varied by more than 5 per cent of the median vote cast by the party for all offices. Voters have crossed over only when they felt strongly about the election and favored the candidate of the opposite party. It is generally believed that voters who cross over in the primary support the candidates of their choice in the final election also.

The Washington type of primary does not appear to have weakened political parties, which have continued to function there very much as they did under the previous system. Since the plan has been in effect only fifteen years, and in only one state, it is perhaps too early to assert what its long run effects on political parties will be. It may be noted, however, that although prior to 1932 the state was predominantly Republican, within recent years the two major parties have been fairly evenly matched, which may be attributed in part to the novel primary system. The plan is highly regarded by the Grange, which was responsible for its adoption, and appears to have the approval of voters generally.

A final argument for the blanket ballot primary is that it provides voters always with alternative choices in the primary, and hence the means to voice their disapproval of candidates who are proposed by the party organization. If the party organizations are authorized to propose candidates, as recommended in this report, the effect will be to strengthen the party organization and to give it much greater influence than it has had heretofore under the direct primary. The experience of Colorado over a period of nearly 40 years with a pre-primary party endorsement of candidates indicates that those who receive the party endorsement are usually unopposed, and hence the voters seldom have a choice in the primary. The effect of a single, blanket ballot in the primary would be to afford voters always an alternative choice and hence the party organizations would, of necessity, have to propose candidates who are acceptable to the rank and file of the party.

The Rules for Counting

Recommendation No. 9. The candidate of each party who polls the highest vote within the party shall receive the party nomination. In strongly one-party states it may be advisable to provide for a second or "run-off" primary election between the two highest candidates in case no candidate receives a majority at the first primary.

following as a radio announcer and was strenuously opposed by the more conservative elements in both parties. The Republican candidate, who was unopposed, was a former governor of the state, Mr. Hartley, an ultra conservative who had lost most of the following he once had. If the Democrats had nominated Mr. Stevenson the voters would have been confronted with a choice between an ultra radical and an ultra conservative, neither of whom was acceptable to the majority of voters. Mr. Martin was unquestionably the stronger candidate, and won the election by an overwhelming majority.

Most states at present follow the recommendation above for r
ination of the candidate with the highest or plurality vote in the
mary, though there are obvious objections to this rule. Frequently,
didates who receive less than a majority are nominated and the pri
elections are subject to manipulation by introducing candidates to
opposition. The alternative of providing a second or run-off primar
is the practice in most southern states, is usually regarded as too bur
some and expensive to be adopted. In the south, as is well known,
final election is more or less a formality and the real contest takes p
in the Democratic primaries. Because of this fact, most southern s
provide a run-off primary as a means of assuring that the nominee
have received a majority vote. No northern state uses this system.

The use of a system of preferential voting in the primary elec
would obviate the necessity for a second primary and also avoid th
fect of plurality nominations. However, the only workable schem
preferential voting is one in which the counting rules provide tha
no candidate receives a majority, the candidate with the lowest
shall be dropped and his ballots transferred to their second choices,
this process kept up until a candidate receives a majority or only
candidates remain. Preferential voting is used successfully in a nu
of Canadian provinces which have a very short ballot but has n
found favor in this country. With the typical ballot of the Amer
state, it would be more difficult to vote and to count; but if it were
successfully it would avert the hazards of plurality nominations in
infrequent three-sided (or multi-sided) contests.

Recommendation No. 10. If the Washington blanket ballot type of primary is used, it should be provided that any candidate who receives a majority of all votes cast in the primary shall be declared elected.

The advantages of this are: (1) it makes it possible for candi
to be elected to public office after a single campaign instead of ha
to incur the bother and expense of two. This will make public
more attractive to men and women of ability who may be willing t
through one campaign but are unwilling to run for office if it req
two campaigns; (2) it will increase interest and attention in the pri
election and result in a larger vote being cast.

The objections to the provision are: (1) the vote cast at the
mary election may be small and, hence, the rule might result in elec
by a small minority of the voters, though a majority of those votin
the primary; (2) since many offices would be filled at the primary
tion, the final election would no longer be a clear-cut contest bet
the two major parties; (3) in close contests the candidate who rec

Primaries ruled for parties only

Examiner News Services

WASHINGTON — The Supreme Court held today that independent voters have no constitutional right to participate in primary elections.

The justices acted without issuing an opinion. They affirmed a three-judge federal court decision that upheld Connecticut's law limiting primary participation to members of political parties.

The lower court ruled that Connecticut's law was an appropriate means for the Legislature to preserve "the integrity of the electoral process."

Connecticut has an interest, the court said, in assuring "that primary election results reflect the will of party members, undistorted by the votes of those unconcerned with, if not actually hostile to, the principles, philosophies and goals of the party."

The state law was challenged by Nathra Nader and Albert Snyder, independent voters who sought to vote in Connecticut's 1976 primary. They claimed that by limiting participation to party members, the state denied them their right to vote at a critical stage of the electoral process.

The three-judge court noted that Connecticut provides petition procedures for placing independent candidates on the ballot and that party registration, enabling a person to vote in the primary, is easy.

"Connecticut's voting laws clearly provide avenues for supporting candidates of one's persuasion without affiliating with an established 'major' political party," the court said.

Limiting primary participation serves the rights of those who wish to join a party, the court said, and lets party candidates know who can vote to nominate them and presumably who is sympathetic with the political goals of the party.

"... In order to protect party members from 'intrusion by those with adverse political principles,' the lower court concluded, "and to preserve the integrity of the electoral process, a state legitimately may condition one's participation in a party's nominating process on some showing of loyalty to that party."

The court also:

• Ruled that the exclusion of even one prospective juror for general scruples against capital punishment automatically voids any death penalty imposed in a

High court takes Redwood City porn sales case

United Press International

WASHINGTON — The Supreme Court today agreed in a California case to decide whether "pandering" can be a factor in an obscenity case when there was no evidence the defendant tried to exploit the pornography commercially.

The court accepted for later argument and decision the appeal of Roy Splawn, a Redwood City bookstore owner convicted of selling some pornographic films to a part-time policeman. The sale took place only after the policeman had asked for the material several times.

Splawn's conviction was affirmed a second time by the California Court of Appeal after the Supreme Court established new guidelines for state obscenity cases.

Splawn was sentenced to 91 days in the county jail, one day suspended, and fined $1,000, plus state assessment. He has been free on bond of $1,250.

Copy of U.S.D.C. Conn. opinion is attached

cially neutral; however, no black person has ever been elected to city office, notwithstanding black population levels in excess of 30 percent. While support of the city's black voters is actively sought by all candidates in city elections, blacks appear condemned to submergence in the local political sphere for the foreseeable future. Where black voters have provided the margin of victory, their effect has been only to tip the balance in favor of either of two white candidates. This is not the sort of meaningful access to political processes intended by the Fourteenth Amendment.

The city has a long history of official racial discrimination and unresponsiveness that have long affected all aspects of the lives of the city's black citizens. Only recently have the legal obstacles to black voting been removed. Housing remains almost totally segregated, and residual effects of past discrimination linger in public employment. Black voter registration percentages remain lower than proportionate white registration.

At-large voting for city commissioners has been the rule since 1910. Because blacks were disenfranchised at that time, the court perceives no "tenuous policy" underlying the use of at-large voting in the city.

In the past, local officials clearly neglected their responsibilities to the needs of black persons. Recreational facilities were completely segregated, and those in black neighborhoods were inferior. Blacks were not appointed to committees and boards of local importance, and the record of black employment by the city was, and still is, shameful. Finally, governmental services and facilities generally were disproportionately poor in black neighborhoods. While there are now some sincere efforts to achieve racial fairness in dispensing public benefits, the record bespeaks many still lingering failures remaining to be rectified. The present political scheme of things has not, and will not, guarantee the black minority any more than peripheral participation in the solution.

The majority primary law, the requirement that candidates run for specific seats, the requirement that city commissioners reside only in the city and not in any specific part of it, and racially polarized voting have all exacerbated the almost total foreclosure of blacks from truly effective exercise of the ballot. Accordingly, those portions of the city charter that require only that various commissioners be residents of the city—from no particular neighborhood, district or section—and by common consent and practice during the 26 years since the charter's adoption all elected commissioners have run at-large, operate impermissibly to dilute the voting power of black voters in violation of the Equal Protection Clause. These provisions deprive black voters as a class of the opportunity meaningfully to participate in the political processes and to elect legislators of their choice. Of course, as the chief executive officer of the city, necessarily the mayor must be elected by voters in an at-large election.—Dawkins, J.

—USDC WLa; Blacks United For Lasting Leadership, Inc. v. Shreveport, Louisiana, 7/16/76.

PRIMARIES—

Connecticut law that restricts voting in primary to voters enrolled with party holding primary does not deny voters registered independently of any party equal protection or freedom of association and does not infringe their right to vote.

The independent voters argue that the alternative avenues of political activity open to them under state law are ineffectual and unrealistic, since in most general elections only the Democratic and Republican nominees have reasonable chances of success. But any dominant position enjoyed by the major parties is not the result of any improper support or discrimination in their favor by the state; it is because over a period of time they have been successful in attracting the bulk of the electorate so that they now have substantial followings.

The independents also argue that the challenged law limits their constitutionally protected right not to associate. It is true that in order to vote in a party's primary, a voter must publicly affiliate with that party. But enrollment imposes absolutely no affirmative party obligations on the voter in terms of time or money, and it does not even obligate him to vote for the party's candidates, or to vote at all. State law does permit erasure of the voter's name from the party's enrollment list upon a proper showing that he does not support the party's principles or candidates; but in actual practice this provision is not used. Such limited public affiliation is simply not comparable to the coerced orthodoxy imposed by government officials in cases such as West Virginia State Bd. of Education v. Barnett, 319 U.S. 624 (1943).

The independent voters also argue that the public nature of enrollment violates their right to privacy or association by potentially subjecting them to harassment because of their affiliations with a party. It is insufficient, however, for them to merely raise the spectre of harassment; they must make a detailed factual showing of actual threats or incidents of harassment.

They further argue that the state may not force them to comply with the challenged law unless it establishes that the law serves a compelling state interest by the least drastic means available. A political party, however, is a voluntary association. Its ultimate goal is to win elections. It seeks to nominate those candidates who are most likely to win elections while remaining faithful to the policies and philosophies of the party's membership. Constitutionally protected associational rights of its members are vitally essential to the candidate selection process. Any attempt to interfere with a party's ability to organize itself in the way that will make it the most effective political organization is also an interference with the associational rights of its members. The rights of party members may to some extent offset, the importance of allegedly conflicting rights asserted by persons challenging some aspect of the candidate selection process. More importantly, the state has a legitimate interest in protecting party members' associational rights by legislating to protect the party from intrusion by those with adverse political principles.

Additionally, a state has a legitimate interest in protecting the overall integrity of the electoral process. This includes preserving parties as viable and identifiable interest groups, insuring that the results of primary elections accurately reflect the voting of party members. Parties should be able to avoid primary election outcomes that will confuse or mislead the general electorate to the extent it relies on party labels as representative of certain ideologies. The Supreme Court has recognized the legitimacy of this state interest in a number of decisions.

It is clear from these cases that, in order to protect party members from intrusion by those with adverse political principles and to preserve the integrity of the electoral process a state may legitimately condition one's participation in a party's nominating process on some showing of loyalty to that party, and that is precisely what Connecticut does. The enrollment process is not particularly burdensome, and it is a minimal demonstration by the voter that he has some commitment to the party in whose primary he wishes to participate.

The independent voters argue that the law does not accomplish legitimate state goals because the waiting period for persons who are independent voters is less than three weeks, and that this is an insufficient period to deter fraudulent or deceptive conduct by those planning it. But this argument goes only to the length of

the waiting period, and not to the method used. The legislature has determined that enrollment 18 days before the primary is sufficient to demonstrate that a previously independent voter will not engage in disruptive or deceptive voting conduct inconsistent with the associational rights of other party members and the preservation of the integrity of the nominating process. The legislature has, with some logic, imposed a longer waiting period on voters previously enrolled in other parties, as they are perhaps more likely to have a hostile motivation.

The claim that Connecticut could prevent raiding and other distortive or deceptive conduct by a less drastic means, namely, criminal sanctions against the perpetrators, is not persuasive. Assuming arguendo that the least drastic means test applies here, that standard does not require the state to chose ineffectual means to accomplish its goals. Although criminal sanctions might be effective to punish the ringleaders of any raid, it would be difficult to detect and punish individual voters who engaged in the proscribed conduct. Unless the deterrent aspect of the law were totally effective, such a law would apply only after the damage had been done and would be in the nature of punishment, not remedy. The state obviously cannot conduct a test on each voter to determine his political ideas before allowing him to vote in a primary, and the enrollment requirement is a constitutionally acceptable surrogate.

The independents also argue that the law deprives them of equal protection by denying them the right to participate in elections in which they are interested and by which they are affected to the same extent as those persons who may vote, solely because the independents do not enroll in political parties But the independent voters are not interested in primary elections in the crucial, distinguishing aspect that party members are interested. Specifically, they are not interested in nominating the candidate who presents the best chance of winning the general election while remaining most faithful to party policies and philosophies. The constitutional validity of this distinction between enrolled party members and other voters, on which the challenged law is based, is at least implicit in the Supreme Court's flat statement in Ray v. Blair, 343 U.S. 214 (1952), that "a state might reasonably classify voters or candidates according to party affiliations." The challenged law, therefore, does not make an invidious discrimination that would offend the Constitution. Not every limitation or incidental burden on the exercise of voting rights is subject to a strict standard of review. Similarly, a state statute or policy must cause more than a minimal infringement of First Amendment rights before a state is called upon to provide a compelling interest justification. The court, therefore, holds that the challenged law is reasonably related to the accomplishment of legitimate state goals.—Anderson, J.

—USDC Conn (three-judge court); Nader v. Schaffer, 7/14/76.

Evidence

TAX RETURNS—

Yacht owner's federal income tax returns are subject to discovery in Jones Act case as relevant to issue of whether, at time of injury, yacht was being used for business purposes even though owner's income is not directly in issue.

In this Jones Act case, the complaint alleges that the injured party was a crew member of a yacht that, at the time of injury, was being used for business purposes. The yacht owner denies that he was using the yacht in the pursuit of his business at the time of the injury. Thus, the critical question is whether at the time of the injury, the yacht was being used for a business purpose or for a pleasure voyage. The issue here is whether the yacht owner's federal income tax returns are subject to discovery even though his income is not an issue in the case. Those seeking the discovery compelling production of the documents contend that the returns will reveal the extent to which the vessel had been used in a business capacity and, therefore, are relevant and material to the question of whether the yacht was being used for a business purpose at the time of injury.

As a general rule, federal income tax returns are subject to discovery in civil suits where a litigant tenders an issue as to the amount of his income. This is consistent with the public policy against unnecessary disclosures of federal returns. Such returns are not absolutely privileged from discovery, but federal courts have been cautious in ordering the disclosure of tax returns, and in most instances, it has been held that production of a tax return should not be ordered unless there appears to be a compelling need for information that is not otherwise readily attainable.

In this case, the extent to which the vessel had been used for a business purpose, as may be revealed by the business deductions showing on the federal tax returns is relevant to the factual issue raised by the owner's denials. Indeed, it may be the only source of this information available to the injured party. As a litigant, the yacht owner ought not be permitted to raise an issue upon which his tax returns may pass significant light and then claim that his returns are not subject to disclosure. Thus, the income tax returns are subject to discovery in this case, even though the owner's income is not directly in issue. It is not enough that the owner examine the contents of the return and swear by affidavit as to what they contain.—Leighton, J.

—USDC Nlll; Shaver v. Yacht Outward Bound, 6/25/76.

Labor

EQUAL OPPORTUNITY—

Complaint challenging as racially discriminatory employer's disqualification for manual labor of workers who suffer from bone degeneration, which is condition commonly resulting from sickle cell anemia disease that affects blacks almost exclusively, sufficiently raises both "intent" and "effect" claims under Title VII of 1964 Civil Rights Act.

The employee successfully passed a preemployment physical examination and performed satisfactorily as a manual laborer during a probationary period. His continued employment was dependent upon the results of a second medical examination generally given around the 90th day of an employee's probationary period. Such examination determined that the employee suffered "bone degeneration in his spinal region and was physically disqualified for any manual labor job at the plant." The employee, and his personal physician, when informed of the bad back diagnosis informed the company doctor that the bad back diagnosis could be explained by his history of sickle cell anemia, a blood disorder affecting black Americans almost exclusively. The company thereafter terminated the employee.

The district court rejected the employee's assertions that he was "discharged because the [company] suspected that [he] has sickle cell anemia, a disease common to Black Americans," and that he was discharged for "reasons made unlawful by Title VII * * *."

This case must be remanded for further consideration of the possible liability of the employer based on employment practices that are fair in form but discriminatory in operation. As construed by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424, 39 LW 4317 (1971), Title VII requires the "removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the

cess to the entrenched and well-organized."

ROSALINE LEVENSON
California State University, Chico

Louisiana Adopts Open Election System

Louisiana has abolished its closed primary method of nominating candidates for state and local elections and has replaced it with an "open election" system. Passed by the legislature, signed by Governor Edwin W. Edwards and approved by the United States Department of Justice, the new system will go into effect for the regular state elections in November.

Unlike any other election process, the open election combines elements of nonpartisanship and the open primary (particularly the "blanket" primary variation) found in other states. Instead of a Democratic primary and runoff (if needed) followed by a general election if there is Republican, independent or third-party opposition, all candidates regardless of party affiliation will be listed alphabetically. Democras, Republicans, third party and independents will all run on the same ballot against each other. Should no candidate receive a majority, there would be a runoff between the top two.

These features are quite similar to those of a nonpartisan election, but there is an additional provision of the open election which distinguishes it from other systems. The party affiliation of the candidates will be indicated on the ballot next to their names. There is no effort here to create a nonpartisan election climate; Republicans and Democrats will be labeled as such. If a third party were to gain legal status, its candidates would also be listed with a party designation. Independents will be identified by the phrase "No Party" unless they request no label. The voter may cast a ballot for any candidate regardless of the party affiliation of either. If no one receives a majority in the first election, the runoff could involve any combination of candidates and parties.

This legislation does not apply to congressional, presidential or party committee elections, which remain partisan in nature. There may be some confusion when local elections are held at the same time as congressional primaries. When that occurs, Democratic voters will participate in a closed primary for the congressional races and in the open election for local offices. (Republican congressional candidates are normally designated by the party without any primary.) Voters who are not Democrats may vote only in the local contests. There is a great potential for confusion in such situations.

While the open election bill passed both houses of the state legislature (both heavily Democratic; there are only four Republican members), the measure did produce considerable debate in the chambers and throughout the state. Proponents of the new process cited four main arguments in favor of the change. Most often mentioned was the fact that the state could save hundreds of thousands of dollars by reducing the number of elections from three to two. In addition to saving the state money, the reduction in the number of elections, and thus the length of the campaign, would cut campaign costs.

It was also pointed out that under the proposed system there would be no advantage for latent Republicans to retain their Democratic registration. A widely held assumption in Louisiana politics is that many voters who might want to register as Republicans become affiliated with the Democratic party instead because most elections are decided in the Democratic primaries. One argument was then that the open election would lead to the development of larger numbers of registered Republicans and thus a stronger two-party system.

Another argument focused on the advantages of the new system to the voter. The voter would be able to look at all candidates for a particular office at the same time and vote for first choice in the first election rather than having to wait possibly until the general election assuming the first choice were a Republican or independent. Moreover, the voter would have to participate in only two elections rather than three.

Least discussed but probably most important of the arguments for the change was that it would eliminate the unfair advantage the Republican party is now believed to have. Less than 3 percent of Louisiana voters are registered as Republicans, yet the Republican party can force the Democratic nominee into a third campaign (the general election) simply by designating a nominee. In theory, then, the party of 3 percent of the voters can require a candidate submitted to 97 percent of the voters to once again go before the people.

Opponents of the new election system argued that it would not contribute to the development of competitive party politics. They noted that while some voters might be encouraged to change their registration from Democrat to Republican because they could now participate in state and local elections without reference to party affiliation, the Republican party would no longer enjoy an automatic spot in the general election. Instead Republican candidates would be grouped together with Democrats and independents in the first election with no guarantee, and perhaps little chance, of getting into the second election. If a voter does change his registration from Democrat to Republican this will prohibit him from participating in the Democratic congressional primaries which are still "closed."

Furthermore, whatever sense of party responsibility might have developed in the state would be destroyed by eliminating any party role in the nominating process. Cohesive, identifiable parties would not emerge under this proposal.

Most important, critics perceived that the state political leadership had found a way to relieve Democrats of the necessity of running against a Republican in the general elections. Republican opponents in particular believed that this measure was, despite protestations to the contrary, aimed at weakening their already precarious foothold in Louisiana politics.

DONN M. KUATZ, II
University of Southwestern Louisiana

Maine's Independent Governor Succeeds with Legislature

Despite fears of a stalemated state government in Maine which arose after the 1974 election of an Independent governor, a Republican Senate and a Democratic House of Representatives, substantial cooperation emerged during the regular session of the 107th legislature. The session, which adjourned in early July, was the longest in Maine's history.

Governor James B. Longley was successful in carrying out a "no new taxes" pledge made during his election campaign. The legislature defeated various efforts to increase the rates of the income and gasoline taxes, and finally accepted without major revisions the governor's $703-million, two-year budget. The financial plan generally establishes a moratorium on new programs and sets out a first-year reduction of approximately 5 percent in Maine's 13,000 state employees.

Governor Longley vetoed more measures (26) than any Maine chief executive in half a century. The governor based most vetoes on the factor of costs. The legislature upheld a veto of a controversial bill creating a Maine medical school, though it did vote to override rejection of a $4.9-million social services supplemental bill. Altogether the legislature enacted 14 measures over the governor's opposition, marking the first legislative

TABLE 8

PRIMARY ELECTIONS FOR STATE OFFICERS

State or other jurisdiction	Dates for 1976-77 primaries for officers with statewide jurisdiction*		Method of nominating candidates (a)	Party affiliation for primary voting		Voters receive ballot of	
	1976 primary	Runoff primary		Recorded on registration form	Declare for party ballot	One party	All parties participating
Alabama	May 1	June 1	C,P(b)	...	★(c)	★	...
Alaska	Aug. 24	...	P	...	...	...	★(d)
Arizona	Sept. 7	...	P	★	...	★	...
Arkansas	May 25	June 8	P	...	★(c)	★	...
California	June 8	...	P	★	...	★	...
Colorado	Sept. 14	...	X(e)	★	...	★	...
Connecticut	(f,h)	...	X(f)	★(g)	...	★(h)	...
Delaware	Sept. 11	...	X(f)	★	...	★	...
Florida	Sept. 7	Sept. 28	P	★	...	★	...
Georgia	Aug. 10	Aug. 31	C,P(b)	...	★(i)	★	...
Hawaii	Oct. 2	...	P	...	★(j)	★	...
Idaho	Aug. 3	...	P	...	...	...	★(k)
Illinois	March 16	...	C,P(l)	...	★(m)	★	...
Indiana	May 4	...	C,P(b)	...	★(i)	★	...
Iowa	June 8	...	X(n)	★(o)	...	★	...
Kansas	Aug. 3	...	C,P(b)	...	★(j)	★	...
Kentucky	May 25	...	P	★	...	★	...
	(1977) May 24	...					
Louisiana	...	...	P	★	...	...	★(d)
Maine	June 8	...	P	★	...	★	...
Maryland	May 18	...	P	★	...	★	...
Massachusetts	Sept. 14	...	P	★(p)	...	★	...
Michigan	Aug. 3	...	CP(q)	...	...	...	★(k)
Minnesota	Sept. 14	...	P	...	...	...	★(k)
Mississippi	June 1	June 22	P	...	★(c)	★	...
Missouri	Aug. 3	...	P	...	★(m)	★	...
Montana	June 1	...	P	...	...	...	★(k)
Nebraska	May 11	...	P	★	...	★	...
Nevada	Sept. 14	...	P	★	...	★	...
New Hampshire	Sept. 14	...	P	★	...	★	...
New Jersey	(1977) June 7	...	P	...	★(m)	★	...
New Mexico	June 1	...	P	★	...	★	...
New York	Sept. 14	...	CC,P	★	...	★	...
North Carolina	Aug. 17	Sept. 14	P	★	...	★	...
North Dakota	Sept. 7	...	P	...	...	...	★(k)
Ohio	June 8	...	P	...	★(l)	★	...
Oklahoma	Aug. 24	Sept. 21	P	★	...	★	...
Oregon	May 25	...	P	★	...	★	...
Pennsylvania	Apr. 27	...	P	★	...	★	...
Rhode Island	Sept. 14	...	P	...	★(m)	★	...
South Carolina	June 8	(r)	C,P(b)	...	★(s)	★(s)	...
South Dakota	June 1	...	X(u)	★	...	★	...
Tennessee	Aug. 5	...	P	...	★(m)	★	...
Texas	May 1	June 5	P	...	★(c)	★(s)	...
Utah	Sept. 14	...	X(e)	...	...	...	★(k)
Vermont	Sept. 14	...	P	...	...	...	★(k)
Virginia	(1977) June 7	...	C,P(b)	...	★(c)	★	...
Washington	Sept. 21	...	P	...	...	...	★(d)
West Virginia	May 11	...	P	★	...	★	...
Wisconsin	Sept. 14	...	P	...	...	...	★(k)
Wyoming	Sept. 14	...	P	★(t)	...	★	...
District of Columbia	May 6	...	P	★	...	★	...
Guam	Sept. 4	...	P	...	...	...	★(k)
Puerto Rico	(u)	(u)	C	...	★(s)	★	...

*Primaries for statewide offices in 1977 include (1977) before the date. For a listing of candidates to be voted upon, see "General Elections in 1976 and 1977."

(a) Abbreviations: C—Convention; P—Direct primary; CP—Some candidates in convention, some in direct primary; X—Combination of convention and direct primary; CC,P—State Central Committees or direct primary.

(b) The party officials may choose whether they wish to nominate candidates in convention or by primary elections. Usually major party candidates are elected by primary.

(c) Political party law prescribes individual party membership.

(d) Blanket primary—voting is permitted for candidates of more than one party.

(e) Preprimary endorsement assemblies are held in Colorado and preprimary conventions are held in Utah. If one candidate in Utah receives 70 percent of the delegate vote he is certified the candidate and is not required to run in the primary.

(f) A post-convention primary can be held if convention action is contested by a candidate receiving a specified minimum percentage of the convention vote: Connecticut, 20 percent; Delaware, 35 percent.

(g) A party enrollment list of party members is maintained separate from the registration books.

(h) Primaries of different parties are held on separate days.

(i) By written declaration. Ohio: party selection in primary is noted on registration slip at each election.

(j) Party designation is made the first time a voter participates in a primary election by his selection of a "party ballot." This designation becomes permanent until changed at the City Clerk's office no later than 19 days before another primary. Kansas: 20 days.

(k) Voter is restricted to candidates of one party only. Ballots of all parties are received by voter and his party selection is private.

(l) Trustees of the University of Illinois are the only state officers nominated in convention.

(m) By oral declaration or request for ballot.

(n) If for any office no candidate receives 35 percent of votes cast at the primary, a convention is held to select a candidate.

(o) Party affiliation may be changed at the primary, but if challenged, a voter must take an oath that the change is made in good faith. The new party designation is entered on registration form.

(p) A voter who is a member of no party may declare to vote in a party's primary up to and including election day. By filling out a card after he votes, an elector may return to being a member of no party after the election.

(q) The Governor is the only state officer nominated by primary election.

(r) First runoff held two weeks after primary; second runoff held two weeks after that, if necessary.

(s) Polling areas for the different parties are physically separate.

(t) Party affiliation can be declared if uncommitted, or changed at the polls on primary election day.

(u) Primaries are not mandatory unless party regulations require them.

Alaska State Legislature

House of Representatives

Committee on State Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

March 20, 1978

SUBJECT: March 2nd teleconference with the New Capital Site Planning Commission

TO: Senator Ed Willis, Chairman
and Senate State Affairs Committee

FROM: Representative Bob Bradley, Chairman
House State Affairs Committee

Attached you will find the transcript from the March 2, 1978 teleconference with Anchorage, Ketchikan, Fairbanks, Nome and Bethel.

Some very good questions arose in the testimony, so I had the proceedings trahscribed to help all of us in critiquing the legislation over the next couple of weeks.

Hope you will find this helpful.

Alaska State Legislature

House of Representatives

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TRANSCRIPT OF TELECONFERENCE HEARING
CAPITAL RELOCATION FINANCIAL PLAN

HOUSE BILL 857

March 2, 1978
Juneau, Alaska

COORDINATOR:

I am Peter Frometh teleconference network coordinator. I want to welcome you to the second video conference of this legislative session. The subject of todays video conference will be a hearing before the House State Affairs Committee on the subject of the Capital Relocation Financial Plan. During these hearings remote site participants will have the opportunity to address questions or enter discussion or bring testimony before the committee and before the Capital Planning Site Commission on the subject of the Capital Relocation Financing Plan and the accompanying legislation, House Bill -- the empowering legislation, House Bill 857. Before we begin I'd like to remind all those of you who are participating that a teleconference is designed to serve the ends and accommodate the conventions of a traditional committee hearing. That is to say all discussion whether testimony or question and answer or discussion between committee members, members of the commission and remote participants shall be initiated at the discretion of Chairman Bradley. Any questions subsequent to testimony, once again, will follow Chairman Bradley's recognition of a committee member or a remote site participant. We have, I understand, 10 to 20 people who are interested in testifying today. Because the subject at hand is rather a cumbersome one, we ask you to confine testimony to approximately 5 minutes and confine your remarks as much as possible to the issue at hand. Chairman Bradley's indicated he's ready to begin so I'll turn the mike over to Chairman Bradley now.

CHAIRMAN BRADLEY:

Thank you. On behalf of the Alaska State Legislature, specifically the House of Representatives, this committee and the Capital Site Planning Commission welcomes you and thanks you for your attention. I'd like to introduce the Capital Site Planning Commission Chairman, Vice-Chairman and designee for the Mayor of Juneau at this time and then introduce the committee members, then we'll go back to the Capital Planning Commission itself -- for all of you, House Bill 857, any subsequent remarks of the individuals from the Capital Planning Commission wish to make. At this time I'd like to introduce the

Chairman of the Capital Planning Commission, Chuck Behlke; the Vice-Chairman, Arliss Sturgulewski and the commission member who is the designee of the mayor of the municipality of Juneau, Bill Corbus. Mr. Corbus is from Juneau, Chuck Behlke's from Fairbanks, Arliss Sturgulewski's from Anchorage. And following on down the members of the committee -- to my left is the Vice-Chairman of the House State Affairs Committee, the only member on the House State Affairs Committee not from the community of Anchorage, the jurisdiction of Anchorage, Al Nakak, Representative from Nome; following on down, Representative Joe McKinnon from Anchorage; Representative Bill Miles from Anchorage; Representative Kris Lethin from Anchorage; Representative Tim Kelly from Anchorage. And at this time we'll turn approximately 20 minutes over to the Capital Site Planning Commission, Commissioners, to explain an overview of the process in designing and planning for the new capital city at Willow. Chairman Behlke.

MR. BEHLKE:

Thank you. Prior to looking at and discussing the financial plan, I'll spend several minutes giving you an overview of what the commission has done here so that you can understand where we're coming from and what we've attempted to achieve. I want to point out first, that there were 9 voting members of the Capital Site Planning Commission and there were several ex officio members from State Government and 2 ex officio members from the State Legislature, Senator Ed Willis and Senator Bradley, who's the Chairman of this meeting today. These people have sat in on Capital Planning Commission meetings, they've worked with the Capital Planning Commission, they've served on subcommittees and so on and have except for the vote worked virtually as hard as any of us have. And I can assure you that we've all worked very hard.

At the beginning of the process and this began for us on June 23rd of last year, the Commission determined that it did not wish to turn the job of planning the new capital over to a single consultant firm. We felt that this would not give us the options and so on that we desired. We each wanted to be involved in the process. We wanted to have options to consider, to be able to debate, to work through and to choose from. We recognized that to do this it would be absolutely necessary that we have an Executive Director with new town design and development experience. None of us knew anything about new towns. We had heard of a few but we really didn't know the workings of new towns. By the end of July, after a good deal of homework, we came down to one name whom we felt would be the best person in the entire nation to head this project and that was Mr. Morton Hoppenfeld. We got him interested in our project and it was not very difficult to do so because it is an extremely exciting project and Mr. Hoppenfeld came to Alaska, visited with us and with a little more arm twisting, he determined that he

would like to come with us as an Executive Director for the time period roughly September lst to about the lst of May. He took leave from a university position at the University of New Mexico and did come with us. And we've been nothing but pleased with Mr. Hoppenfeld from the first moment he arrived. There are several important points which have surfaced during our studies which the commission desires that you and the public be made aware of prior to Mrs. Sturgulewski's presentation of the details of the financial plan. First, the commission is the New Capital Site Planning Commission. It's not a move the capital committee, nor a don't move the capital commission. The Legislature and the State's electorate have to make those types of policy decisions. We're not in business to do that. We are definitely nothing but a planning commission. We're not selling anything except perhaps planning. We've, I'm sure, all come to the point where we really believe in planning. In all of our work, however, we have had to operate under the assumption that the capital will indeed move to Willow. Without planting that assumption firmly in our minds and keeping it there throughout this process regardless of possible personal pain in doing so, and there's considerable pain in making that assumption on the part of a few of the members of the commission, we could not have developed a realistic plan. The financial plan that Mrs. Sturgulewski will give you an overview of in a few moments is one which has been developed principally by our consultants in a good deal of debate with the commission and these consultants are experts in new town design. They have designed, planned and developed the city of Columbia, Maryland and this has been a successful new town to this point. We hired these consultants specifically for that reason. We wanted new town consultants to consult for us on our proposed new town. All of the consultant's recommendations to us have, however, been brought to the commission. They've been debated, discussed, reviewed and finally voted upon in the commission. And if there's something that the commission felt it could not buy that the consultants were presenting to us, we didn't buy it. We said, no, we just simply can't buy that. So the commission has indeed made the policy decisions with regard to virtually all aspects of new capital design.

All the planning documents which we will present to the Legislature and to the public should certainly be tools for discussion of alternatives for beginning the project and for assessment of change. They should be adjusted whenever future events indicate that this commission and it's consultants did not forsee all. We have no allusions that we have foreseen all. We feel our results to be as good as a hard working, and we hope reasonable, group of citizens of Alaska could arrive at today. They should not, however, be regarded as forever fixed and unchallengeable. As a matter of fact we'll probably be challenging some of these results we've arrived at thus far in the ensuing months.

The legislation establishing this commission suggested that we plan for a new capital city to accommodate in 1990, 30,000 people. However, during the course of our studies we found that there were additional State employees, central State employees, that had

not been foreseen in the previous studies who are in existence in Alaska and we determined that it would be impossible to reasonably get the capital completely moved and all the central governments moved to Willow by 1990. We also found that there would be, probably a two year minimum, minimum of two year delay, because of environmental factors. So we have projected that the capital, according to our plan would be completely moved by 1994 and at that time the city would house 37,500 people. In making our estimates of central State employees, which, and the number would have grown to 8,650 by 1994, we have assumed a 6% per annum increase rate in State employees. It must be very clearly understood that this financial plan, as the legislation directed for the development of the new city, which will accommodate not only the present level of State employment and population associated with it, but will also accommodate an additional 2 employees, roughly 2 employees, for everyone holding a central State job today, plus the population associated with that growth rate in central government. Thus this financial plan should not be confused with that of simply relocating todays capital to Willow. The actual cost of relocating todays capital represents approximately 50% of the total cumulative cost presented in the plan. Care must also be taken and Mrs. Sturgelewski will point this out to you in a few minutes, the difference between the financial implications to the State and the financial implications to the private sector that would be developed from this capital relocation. The new capital city which we've planned for and estimated the cost for, would attract new residents and would be a very attractive city in which to live. If it were less than attractive, the potential residents would not wish to live there and the proposed business community could not survive. Conversely, without the presence of businesses, people would not want to move into this community. So it's necessary that this city have amenities available to the first residents of the city, otherwise they will live somewhere else. The actual amount of amenities which we put into this, planned for in this city, is relatively small in comparison to the overall cost of the total city. We do have some swimming pools. We do have some tennis courts. We have a racquet club and so on, but these costs are not tremendously high and they should indeed create additional land values which the State will realize with the development of that land and the sale of that land. The commissioners felt that the new city should fit into the existing State organizational patterns for municipalities, Hence early on it would become a second class city and then very quickly a first class city as it developed. We proposed that a public corporation, the Alaska Capital City Development Corporation be created because of the entire job of seeing that the new city be developed and that the development progress on schedule. We feel a capital development corporation could do its job only if it were exempted from any elements of the State's Procedures Act. Planning delays associated with the following of those codes for a job of this nature would be prohibitive. Because of cost escalations which are simply inflation, delays, according to our projections, cost the State today approximately $400,000 per day or 160 million per year. By 1986, delays would cost $600,000 a day or approximately 240 million dollars per year. Hence the job must progress with an absolute minimum of hinderances.

We feel we have provided adequate controls, however, on the capital development corporation to avoid abuses of its imposed special status. The commission's enabling legislation completely omitted the possibility of our planning for and costing a no move scenario, that is leaving the capital in Juneau. Some no move cost estimates were suggested by our Juneau indemnification study and from the Willow site study. These are, however, uncomparable basis and are not, however, on a comparable basis with the Willow study and are very approximate. Thus, they should not be used with a high level of confidence. A no move study would provide a true basis for comparing the costs of the move versus no move, which is, of course, a burning question across Alaska and we have sought additional funding and additional authorization in order to study this, because we very definitely feel that this is important to the people of Alaska. But it was omitted from our initial charge and this is why we have not thus far done that job.

We have also found the possibility of what we have referred to as a split move. This is the possibility of leaving some of central State government in Juneau and moving the remainder to Willow. We have not gotten into this very far. It's something that cropped up rather late in our studies and we don't know whether it would work or not. We do not however have the funding for this and will be seeking probably, or possibly, more funding from the Legislature to study this possibility. There's an indication, however, that a cost of perhaps 25% could be saved in the overall cost of moving the capital while saving the Juneau community, if indeed the capital is moved to Willow. One of the very effective techniques that we've used through our planning process has been that of receiving early reports from consultants. The commission has used these planning reports, mulled them, tossed them back to the consultants and changed them, so during the course of all this we've found that (indisc.) there are two or three different sets of numbers which have come out to the public. The numbers you see today are the ones we're going to hang in with, at least for the present. With those remarks, I'm going to turn this over to Mrs. Sturgulewski who will present the financial plan quickly to you and then Mr. Corbus will talk just briefly about the physical plan.

MRS. STURGULEWSKI:

Mr. Chairman. Thank you Mr. Behlke. I wonder if you might help me at the graph. We might be mentioning a few of the things that Chairman Behlke has done over. But there's a very complex and comprehensive plan and so perhaps it won't hurt to touch on a few of the points briefly.

Just a few remarks before we get some graphs that we have prepared on the wall -- we're again now envisioning that the new capital city would have some 30,000 people by 1980 and 37,500 by 1994. Construction would begin, as pointed out earlier, in 1980, with the first homes and offices and services available by July of 1982.

The growth of the Matanuska-Susistna region, looking somewhere in the population of 120,000 people by the period of 1990 to 1995, that coupled with the capital move, we're looking toward seeing a doubling of the projected size of the capital city possibly after 1994 and that is included in our planning. Mr. Corbus will be talking about that a bit more. We're talking in total cost for this population of 37,500 of 1.6 billion expressed in 1978 dollars. However, we have escalated our cost, all costs, at 8% so we result with a 3.5 billion dollar figure by the time the move is completed of the central positions that would be in 1994. It was mentioned a bit about the structure we're talking about. The omnibus bill that has been presented to the Legislature and will be under their review and scrutiny in the forthcoming week calls for setting up of this public development corporation that would basically have the overall responsibility for the planning and supervising of the development of the new capital city, including the government center and related facilities. We would be setting up a new municipality. We were very careful to try and work it out so that it would fit within the existing kind of municipalities we have throughout the state. We don't want a strange new creature here that would take special laws and concerns. They would, of course, have the responsibility, like municipalities do in other areas, of providing services within the capital city.

To get into some of the costs, again, we're talking about 966 million in Alaska State Obligation Bonds that would be sold in the period between 1980 and 1994. And a 1.327 million would be authorized from the State's general fund. And again we're assuming in this an 8% cost escalation. We'll get into some details of how those are used in just a moment. But on the overall financial impact, I think it's important to note that the preliminary analysis that we have suggests that requirements for the State general fund could be met without significant impact on the State. But that a new State capital could represent a significant call on State bonding capacity over the next 15 to 20 years. We did have a financial consultant assist us in this area but in a sense we have to fit out plan into what the State is doing and there are many factors and information we don't have obviously under the control of the Capital Site Planning Commission. So that is just a very general statement of how it might impact. One thing I think it's important to keep in mind when we're talking about the figures, is the very significant impact of inflation. We picked the figure of 8%. That seemed to be about the best information we had available, but it means that a dollar cost today could be a three seventeen in 15 years.

Very briefly, on the chart the total investment, again, in escalated dollars, is 3.5 billion. Of that the State portion is approximately 35% and 65% would be the private share. That would be basically the housing, commercial industrial types of things. The State share would get into many different things. We'll go into some

more detail office facilities, special facilities and so on. The Federal share, approximately 3%. We're talking there in terms of sewer, water, airport grants. The impact on the Matanuska-Susitna Borough is deemed to be zero, in other words, minimal. The new municipality, 5% and then the 65% for various private costs. Take a look at the G-O Bonding and we are proposing in the legislation that this total amount go to the voters. It's a part of the omnibus bill. It would be 966 million dollars, that's escalated 1994 dollars. We're talking here a total average although there's a development plan that carries differing amounts and differing years. However, the average would be 64 million dollars a year. The impact on the general fund would be 1 billion 328 million over the figure. That includes amortization of bonds and we'll talk about that in some detail. Your total requirement, that is G-O Bonds and general fund, again in escalated dollars, would be 2.006 million. That includes both bonds and general fund. Talk about the State requirements from the general fund. We have a number of components in that and I'll just mention those briefly since we're running short on time. We're talking here about debt service on bonds, about the indemnification to Juneau and related costs. That figure, and I'm sure of some interest, is 435 million. It talks about State/municipal revenue sharing. The provision of some 500 units of elderly and low cost housing, some special aids to the Alaska Housing Finance Corporation so that they can provide lower cost loans and some middle income housing. Under G-O Bonds, the figure again, the 966 million -- I've learned to rattle those off here with great alacrity of late. The State office complex, some 62%, 604 million; highways, 7%; University of Alaska facilities, 1% and schools, and this includes the total cost of building of schools, 27%; airport, water, sewer grants -- they would be matched by some federal funding at 3%. I think we're short of time, did not get into funding basically of the development corporation. That would be handled mainly with a loan from the general fund and through the use of land sales and so on. The dollars would be repaid back to the State over a period of time and we can get into the specifics of that. Thank you, Mr. Chairman. Mr. Chairman, would you like Mr. Corbus to go ahead to give a bit on the development city itself, or the city itself?

CHAIRMAN BRADLEY:

Yes, please.

MR. CORBUS:

Mr. Chairman, I'm going to have Mr. Behlke go up to the map so he can point out things as I go here. As you're probably all aware, the Willow site is located approximately 30 miles north of Anchorage. It is on the southwest side of the site the Parks Highway goes along. That highway connects Anchorage and Fairbanks and to the north of the site we have Hatcher Pass Highway. The city itself will be

located in the southwestern portion of the 100 square mile area. It is located to the southwest of Deception Creek, which is sort of a natural riding line between different types of topography. The site itself is located on gently rolling countryside that has a few small lakes intermixed with it. We have selected a linear type design for the city layout. The capital or the downtown portion of the city is the large area in orange and we have three neighborhoods or residential districts, each of which has a small town center. The transportation system, road system, winds within the neighborhood leading to the downtown area. Turning to the downtown area itself we have the capitol complex located right in the center of the town and to the south of that would be the Governor's Mansion. The main street of the town will be closed to all automobile traffic. But it will be open to buses. The idea is that we're going to try to discourage the use of automobile transportation within the town. The office complexes that the government workers will be in to the east of the capitol complex and would look something like the drawings over on the other side there Mr. Chairman -- over there on the wall there to the left of the 100 square mile map. The transportation system is one that will tend to encourage people to take the bus to go to work or to walk to work, rather than to drive their automobile as exampled by the fact that the parking area for the automobiles will not be in the downtown area. The last feature that we should keep in mind about the new city is that we have built it so that it can be expanded ultimately to a population of 75,000 or larger. In light green on the center map there you see areas where future neighborhoods could be developed in the future. That's a brief overview of what the new city will be like, Mr. Chairman.

CHAIRMAN BRADLEY:

Thank you very much Bill. We appreciate those remarks from Chairman Behlke and Vice-Chairman Sturgulewski and Commission Member Corbus. I know people have been very patient, those people who want to comment, but I'd like to make just a brief personal observation. As you all know, this is a sensitive matter and a timely matter and I'd like to personally point out that I've worked with the 9 commission members since the middle of June. It's my feeling that they're just fine Alaskans and they've done an outstanding job. There's no question that there's controversy regarding this question. But notwithstanding that, certainly good Alaskans, basically the best and the brightest, I believe, and certainly planning patriots. Enough backslapping, I guess, from that point and there are some personal friends. I like them all. So without any further adieu, I will go to the community of Ketchikan, Sandy, are you there?

SANDY:

Mr. Bradley, we are here and ready?

CHAIRMAN BRADLEY:

Okay, if you would bring the first witness up please. The procedure

is to -- for the witness to state his or her name; pause for a second so that I can acknowledge them, for the record; and then we're approximately limiting the testimony to five minutes, but possibly we can expand that and so hopefully all communities that are going to participate can hear me. If we can be absent the acrimony regarding the no move or do move, it will be greatly appreciated, thank you.

MS. FINNEY:

Yes, thank you. This is Helen Finney, (indisc. -- address).

CHAIRMAN BRADLEY:

Okay, thank you very much Helen Finney from Ketchikan. You're recognized and may proceed.

MS. FINNEY:

In my usual way I'll give 10 minutes of testimony in 5 minutes. I'll try to talk more slowly. I have some general concerns about this bill and one of them is the tremendous power of the Governor in the development corporation. The corporation is all appointed except the mayor and there's no provision that I could find for the people to have an influence on their selection or even (indisc.) or give a confidence vote later on (indisc.). My second general concern is of the effect on the rest of the State finances and public improvement schedules. With so much going into one project, the rest will be spread even thinner across the state. Third, I question the (indisc.), let me explain that it is necessary to accomplish the construction, but I question the exemption from the rules and regulations that the rest of us have to live by. A long project could benefit from shortcuts (indisc.). With some citizens waiting as long as 4 years for a permit from the State, the only fair way to speed up the capital construction would be to speed up the process for the rest of us.

Another concern in the cost package that's presented. We need to be given facts on the total cost, all the debt service should be included. You could go even further, if it were possible, which it's not. But an additional cost to the taxpayers around the state is the escalating cost of other projects which will have to be postponed while the capital gets the major part. Built into the Bill seems to be an assumption that 50% of the costs relating to the projected expense of a central State government, that somebody is wisely planning an expense of that magnitude in spite of a citizen outcry against it. It's frankly frightening.

On some specifics Sec. 44.62.015, I don't feel it's fair to change Alaska Housing Finance regulations to accommodate people regardless of income in one instance. Either it's fair for us all or it is not fair. Also the ASHA provision -- when there are other low income people who've been waiting for years to get housing help, why give priority to a new capital except to encourage some to live there. Using money from a special reserve account of the Alaska

Municipal Bond Bank Authority has got to mean less for the other established communities in the state and their needs (indisc.).

Sec. 44.60.020 gives the governor power beyond belief. The directors serve at the pleasure of the governor with no provisions for succeeding or non succeeding terms by one director. I also feel that the term shall when used as the terms of the directors which were originally staggered (indisc.) conflicts with the phrase "the pleasure of the governor". Also there are exemptions from State law in this section that need justification before I could agree. Sec. 36.010.010. Definite language someplace about recording all telephone meetings of the corporation should be included and the tapes of the proceedings kept on file until some years after the corporation self destructs. I agree that the directors should be well enough paid for their services hopefully to keep any of them from turning a private deal at any point. I don't see safeguards, however, is there an exposure provision implicit in the setup? Should not conflict of interest be a big enough issue to be addressed specifically? It seems to me that would be a major concern, depending on which side you're on. Will it be possible to serve as a director and still do the job on another full time job? (Indisc.) If so, would the person get double paid for those days he holds each job? Why is the corporation exempted from parts of the Administrative Procedures Act?

Sec. 46.63.020. I would ask that notice appear in the Ketchikan Newspaper, as well as the Juneau paper. This would serve to cover the southern part of southeast in much the way Fairbanks covers the central part of the state. The Juneau paper is not widely (indisc.). And I wondered how the (indisc.) figure of a population of 37,500 was set. That seems pretty high considering that the other areas (indisc.). I note that the members of the advisory board are not slated for compensation beyond expenses and they will have to meet at least five times a year. I question whether this balances with the dollars that the corporation itself receives.

Sec 44. (indisc.), the number of acres was not listed in the copy of the Bill I had and it needs to be set before comments are made. Except that it has been reported elsewhere that the state business was slated for nearly five times the square footage now enjoyed in Juneau. I would assume this means growth again, or does it mean also moving all the Anchorage offices. I think you answered that question, (indisc.) combination.

Sec. 44.63.040. The capital construction seems to be given priority on permits here again and I feel this is very unfair. The government should be (indisc.) even more, subject and subjected to the permit system as the rest of us. A lot of the private sector would like to take their appeals directly to the governor and have the governor have things move along faster.

Sec. 44.63.050. I would be interested in provisions of the Alaska

Land Act and why real property in the capital should be exempt from that but I didn't have time to investigate and find out what it was about.

The money in the appropriations, a couple of sections down, isn't it the usual practice for the Legislative Budget and Audit Committee to examine accounts "from time to time" to avoid (indisc.) or should the frequency be designated (indisc.) considering the (indisc.) of this project?

Sec. 44.63.175. I don't see how this loan and this corporation and the powers granted in this loan can be in all respects for the benefit of the people. (indisc.) I think I should say in this section though, the corporation shall, not may, make payments to the capital city in lieu of taxes, unless you change the whole setup and allow the corporation to be taxed.

The Reserve Fund Section. Again this has to be (indisc.) to the rest of us. (indisc.)

And 44.63.110. I do not think we should approve a measure or even a minor move for the University of Alaska in this particular package. Let them get their own act cleaned up and the reputation of the University built by good administration. More new buildings aren't the answer there and the growth rate simply does not justify it.

The bonding proposition, because of the enormousy of the issue, should be written in native language. By that I mean somehow the amount of dollars must be made relevant to the voter's level. Once you break the billion dollar barrier, or even break a twenty dollar bill, the rest goes equally.

On into the latter part of the Bill, Sec. 29.18.540 on the Boundaries. No change in boundaries is effective without the approval of the legislature and the governor. I wonder about annexation and I also wonder if this isn't keeping away from the capital city rights that they would rightfully want once it is a reality?

In the transition provision, I question that a council will find it large enough considering the size of the community projections. I wonder if it was a misprint when the lieutenant governor designated only 25 when the first city election would be held, because if the first 25 elect five of their numbers, the first 25 residents, it seems to me they should have very short terms or the first council will have an enormous power advantage.

Finally I would state again my really deep concerns that money aside, our State government and employees should be set up in a near perfect (indisc.) city in the north, living in an environment removed from the reality of the rest of the state. One thing that government and many of its environs seem to be amused at the economic reality. (Indisc.) the rest of us, the employers of government, if you will, on the (indisc.) outside (indisc.) of a fairness

and democracy we hoped for. How about (indisc.) city for all of us. Think what the money could do if expended with that idea in mind. Although I realize that the commission is doing the task and I appreciate the enormity of the task, but I think that material sent out so far is (indisc.) and I understand the position we're in. I'm just trying to tell you mine. (Indisc.)

CHAIRMAN BRADLEY:

Mrs. Finney, thank you very much for your remarks. Your homework was appreciated and substantive and the committee thanks you I'm sure as well as the commission. Is there anyone who would like to respond at this time to Mrs. Finney's questions?

MR. BEHLKE:

There were so many questions that I'm not sure we can respond to all of them but I would certainly have to say it's gratifying to see that someone in the State of Alaska has read that Bill by golly.

MRS. STURGULEWSKI:

Mr. Chairman, I just might say to my good friend Helen that we're among the few women serving in local elected positions, so we do have some empathy going there. But we will be down to Ketchikan for a public hearing and we will get a copy of this so we can personally hopefully respond to some of the people in Ketchikan on the issues that were raised.

CHAIRMAN BRADLEY:

Thank you Mrs. Sturgulewski. The first speaker was Chairman Behlke. For the purposes of notification, I'd like to state that the House State Affairs Committee will transcribe all the testimony and make it available to the members on the House Committee and carry it over to the Senate State Affairs Committee and to the commission itself. Mrs. Finney, on behalf of the committee and commission, I thank you very much for your cogent remarks and we appreciate it, thank you. The next witness please. Next witness please.

MR. WENDTE:

Yes, Mr. Chairman, my name is Ron Wendte, (indisc.) as President of the Ketchikan Chamber of Commerce.

MR. BRADLEY:

Mr. Wendte, go ahead, please.

MR. WENDTE:

Thank you, Mr. Chairman. I would first of all like to compliment

the Capital Site Planning Commission on their work. I have worked with Chairman Behlke in the past and I think he has lived up to his fine reputation. However, with that general statement, I would like to address one part that I think the commission did fail to thoroughly document and that would be the effect on the other communities of Alaska once this capital move process begins. The commission has done a fine job on studying the effects on Willow and Juneau. However, the rest of us feel kind of left out in the cold. The commission does acknowledge a shortcoming in their report in stating that it is unlikely the state could maintain the current level of capital expenditures in areas outside of Willow and Juneau. However, they fail to assess the impact of that situation. Those of us outside of Willow in Ketchikan have grave concerns and will be looking at a very tight situation, I'm sure,in the area of general obligation bonding from the state. We here in Ketchikan are faced with a difficult circumstance. The d-2 and the attitude of Washington for the Tongass Forest will certainly result in loss of jobs here in Ketchikan. When they talk of the loss of 1,800 jobs in Southeast Alaska if that legislation should pass, they're talking about Ketchikan. So the result of that is that Ketchikan has to look to other economic areas, we have to look to improving our fishing situation, looking to tourism, of course mining and the Borax situation is under discussion also. All of this will result in a demand from the people in Ketchikan as far as general obligation bond projects. Port development, possible participation in the Borax project and various areas of improvement on our highways, improvements in our airports, the result of the capital move and the State's inability to maintain even the current level of bonding, general obligation bonding, with the same inflation factors that the commission has documented (indisc.) $1.00 today will be $3.17 fifteen years from now, I can only assume that for now we should maintain the level of bonding that we have now and we're only going to get a third more fifteen years from now. And so while we are paying the people of Juneau for the damage done by the capital move and while we are creating a very pristine atmosphere for the people of Willow for the government employees, the rest of us are going to get caught holding the bag. The improvements we need are not going to be done. I notice that there is provisions for all kinds of amenities that the other communities of the state, including Anchorage, are currently trying to get through the legislature either through a State support of municipalities or direct State (indisc.). Recreational facilities, libraries, police and fire protection, offices, a museum, (indisc.), transportation, (indisc.). These are things that other communities in this state are seeking to get assistance from the State of Alaska and now because of this desire to create a pristine city, the rest of the state is going to have to sit back. I think that's a deplorable situation and I certainly think that the Legislature and the commission should expand to a great degree this particular aspect that it is unable to address.

I think everyone on that committee must recognize that the people in this state are concerned about the benefit and the extra conditions that State employees are now receiving, both in terms of salary that

private industries are having trouble keeping up with, the other benefits that the private sector cannot begin to match in many levels of State employment sector. Yet when you move these State employees to Willow, you are handing them over many, many additional benefits (indisc.) facilities. I'm sure going to have to agree with Chairman Behlke that it is absolutely necessary to attract people to that town, they're going to have to give them that, but you're giving the State employees that while the rest of us wait and the whole impact of that is the biggest shortcoming, I think, of this entire move. The pitiful situation, I think once the capital moves is also that in looking at Southeast Alaska, the people of Juneau are going to have every right to make significant claims on the State of Alaska for the damages caused by that move and they'll have every right to do so but then the (indisc.) of the situation is that as the rest of the State balances off, particularly the funding in Southeast Alaska, Juneau, I'm sure, is going to end up with the lion's share of that while Ketchikan, Sitka, Petersburg and Wrangell have to sit and wait while the State pays off Juneau. That's just a difficult situation. We certainly support the efforts of our sister city in Southeast as far as the damages that Juneau will incur. I think we're also going to be jealous of the situation that the State is going to place them in and that also is going to compound the impact on the areas of Southeast, outside of Juneau. With that, Mr. Chairman, I think my time is up. I thank you for this opportunity and for this type of conference, that we can contact you in this manner.

CHAIRMAN BRADLEY:

Mr. Wendte on behalf of the committee and the commission, let me thank you for your candor and your timely remarks and your provocative observations. It's appreciated. Let's go now -- I believe there's one other person in Ketchikan -- I'd like to hold that individual. I was informed that the prior two speakers had a time deadline. I'd like to move, if I might, to Fairbanks to April. April, are you there in Fairbanks?

APRIL:

Yes, Mr. Chairman, we're here and our first witness will introduce herself to you at this time.

CHAIRMAN BRADLEY:

Thank you.

MS. NORDALE:

Thank you, Mr. Chairman, my name is Mary Nordale. I'm a resident of Fairbanks and I'm a member of the FRANK Committee, (indisc.).

The concerns that the FRANK Committee have concerning the (indisc.) have begun to be more identified and I've listened to the testimony of Mrs. Finney and Mr. Wendte of Ketchikan (indisc.) many of our concerns as well and I shant go over the material that's been presented by them but I do want them to know that we endorse their concerns and request that the Legislature address themselves to the matters that they have brought to your attention.

As you know the FRANK Committee has sponsored an initiative to require that all of the costs be placed on the ballot. We have reviewed the financial plan that has been presented by the commission and we have some very deep questions about it. (Indisc.) to review the report. First of all, we do not have an assessment of State needs. I think that Mr. Wendte brought this up. Nowhere has the State developed an overall assessment of State needs. Neither have the communities, the municipalities and boroughs had an opportunity to assess their needs as well. As a consequence, we are in a very poor position to judge the effect of the bonding package for the capital city vis-a-vis the needs throughout the rest of the State and I think it would be irresponsible if we do not make an effort at this time to do so. After all, the State (indisc.) if they are not met at the time of the decision on construction of the capital, we will still be in a deficit position (indisc.) throughout the state. We are particularly concerned about the ability of the smaller communities lying outside the major municipal areas of Fairbanks, Anchorage, Juneau and Ketchikan to meet their needs as their growth (indisc.). (Indisc.) in the areas of the bush, we simply do not know what's going to happen to them and we need to know the impact on them. We have some concerns that the General Obligation bond package may be (indisc.) because there are so many subsidies automatically provided within the financial plan developed by the commission without explanation and without an ultimate determination of how they may be paid. I'm particularly concerned about the total costs to residents in the capital city. If the (indisc.) are to be funded at a higher rate (indisc.), we must be aware of what the ultimate rate to the consumer will be. And there is no ultimate cost to the consumer provided in any of the financing plans -- in other words, we don't know what the average State employee living in Willow is going to have to have in order to pay for shelter, facilities and the other costs to live in Alaska. (Indisc.). As to the Capital Development Corporation Bill, I was really shocked by it. It seems to create a Bill within a Bill contrary to the Constitution of the State of Alaska. It creates a (indisc.) city with advantages that no other community in the State of Alaska has. It provides a corporation to build this, a corporation which has no constraints on its activities. There is no legislative (indisc.) on the activities of the corporation. They are free from every legal constraint that other municipalities must abide by. The constraints that are now on Juneau are necessary constraints to ensure (indisc.) and without those constraints, it's difficult to project what the activities of the corporation will be. I think it's extremely important that we know what this corporation is going to do and I think that legitimately other communities in the State of Alaska

might also ask for this kind of legislation (indisc.) Assuredly, it's nice to (indisc.) and sometimes we can even save money by doing so, but the cost, the social and political and emotional cost to the people of Alaska is going to be hard to pay. I think that all of the boroughs and cities within the unorganized boroughs should be told to determine what their estimates of the effect on them will be and I think that we need to know what the ultimate cost to the consumer will be.

A brief review of the costs that have been developed on the land, for instance, residential land, homesites, indicate that the average cost of homesites for land only, will exceed $50,000. Then when you build a house on that land you have ultimately averaged 120 to 130 thousand dollars. And that is absolutely out of the question for most people. (Indisc.) And when you get to a home of that cost (indisc. -- concerning the effect on the mortgage). Overall, the Bill is a disaster and it betrays a real lack of skill in its drafting. There are some provisions in there that are totally inexplicable. One is that it requires all the municipalities and boroughs in the state to cooperate and the term is shall that is used. It doesn't say what areas the other (indisc.) are going to have to cooperate with the Capital Development Corporation but I think it's pretty easy to assume that if there is a balancing between one community and the other community, the capital community, in terms of State aid of any kind or a municipal bond issue (indisc.) it would seem that the inherent language of this statute would require the other municipality, not the capital, to bow out and withdraw whatever request that they have.

In summary therefore, we would like to have an opportunity to put specific questions dealing with the issues to the committee in written form as the committee's deliberations proceed. But right now we would like to be sure that the Legislature itself will carefully analyze the Bill and the financing plan and as to the cost of the move and the cost of keeping the capital in Juneau, we think (indisc.) issues that the Legislature desires to address. We suggest to you that you have independent review of (indisc.) Capital Development Corporation or the Planning Commission simply to insure objectivity (indisc.). There are sections that I have concern, the financial plan (indisc.) determining what the people will be willing to pay, rather than what the cost will be. And I think that therefore an independent assessment of the (indisc.) question is going to ensure -- will assure the people of Alaska that the (indisc.) will be addressed. Thank you Mr. Chairman.

CHAIRMAN BRADLEY:

Mrs. Nordale, thank you very much for your remarks and of course they will be taken under advisement. For purposes of establishing (indisc.) on Constitutional matters, I believe, and this is sort of a leading question but, if my memory serves me correct, Mrs.

Nordale, you are a practicing attorney in the State of Alaska, is that not so?

MRS. NORDALE:

That's correct.

CHAIRMAN BRADLEY:

Thank you very much. Representative Miles has a question, Mrs. Nordale.

REPRESENTATIVE MILES:

Mrs. Nordale, this is Bill Miles, a member of the House State Affairs Committee. You raised a number of interesting questions in your statement. You also indicated that there are a number of questions that some of the FRANK committee members had yet to be raised. As it's fairly obvious we're going to be out of here in a 90 day session, when do you think you'll have all of those questions and points you'd like brought to light prepared for legislative consideration?

MRS. NORDALE:

I'd like to have about 10 days if I may Mr. Miles.

REPRESENTATIVE MILES:

It's not within the jurisdiction, obviously, of a committee member to say yes, you have 10 days or no you don't but we're just trying to get an idea of when they might be forthcoming. Thank you very much.

CHAIRMAN BRADLEY:

Mrs. Sturgulewski, Vice-Chairman of the Capital Planning Commission has a responsive question, Mrs. Nordale.

MRS. STURGULEWSKI:

I just wonder, Mr. Chairman, for my edification, would you prefer some comment on some of the issues that have been raised or is it more important that we hear from the public. As you know, we have worked with your --

CHAIRMAN BRADLEY:

Arliss, (indisc.)

UNIDENTIFIED SPEAKER:

I think that mike is working, Mr. Chairman.

MRS. STURGULEWSKI:

Mr. Chairman, just a question for information, would you care to

have some committee response or would it better, since we have a program where we're going to be coming down and really working step by step through this whole thing, would that be a more appropriate time to get into the details? Because we can talk to a lot of the issues but I would assume it's more important for you to hear from people at this point. Would you prefer we held off or what's your feeling?

CHAIRMAN BRADLEY:

Well to the point of cutting off response from any of the commission members or the committee, it's not my intention to do so, but I think if the responses or questions back to the witnesses can be brief, then so do it. And I don't think in many cases they can be.

MRS. STURGULEWSKI:

No, I think it goes really to the heart and the very complexity of this legislation the issues that are raised and I guess I only would like to make the statement that we can respond to everyone that has been raised. They're good questions, but the one thing that I think we need to talk about that's come up time and time again is what's this going to do to the other municipalities? I think it's important to note that they're not to hide behind anything, that we were very specifically charged and in certain cases directed by the Attorney General to carry out the legislation that was passed by this Legislature last year. It did not speak to the issue of the overall State financing and bonding and that is a prime concern. It was one of the difficulties that our financial consultant had is to really look at what's happening throughout the state and the long-range financial planning. Many times that information was not available so we look to that as an overall executive, legislative responsibility, the total dollars. Only we can't tellyou what this is going to cost and how it will fit into the big picture, we don't know because we don't have control over that big picture.

CHAIRMAN BRADLEY:

Thank you Mrs. Sturgelewski. Your remarks are well taken and it should be remembered by those viewing and hearing that the Capital Site Planning Commission was ordered under law, the color of statute, to proceed and accomplish certain narrow goals and that the Attorney General told them that they had to do that first and foremost and specifically. If there was any money left over they could branch out and be more liberal and more expansive. And, of course, money being (indisc,), appropriations being set why in many cases the dollars were just not there to expand on the allusive problems. At this time for the benefit at least of Representative Nakak, if not for everybody -- I'm trying to give a little dig to Al, well I'd like to go to Nome before the T.V. terminates. So Nome, Myrtle, are you there? Let me do it again. Myrtle in Nome, are you there?

MYRTLE:

Roger, Mr. Chairman, we are here and ready.

CHAIRMAN BRADLEY:

Okay, if you would have the first witness come forward, state ---.

MYRTLE:

But we do not have T.V. here, if you think that we're connected to television.

CHAIRMAN BRADLEY:

Okay, Myrtle, Al just kicked me under the table so I've been duly notified, proceed please.

MYRTLE:

Okay, Mr. Chairman, I have Mr. Bob Blodgett from Teller to testify for you.

CHAIRMAN BRADLEY:

Okay, if Mr. Blodgett would state his name for the record and then proceed in the confines of approximately five minutes, it would be appreciated, thank you.

MR. BLODGETT:

Mr. Chairman, My name is Bob Blodgett from Teller, Alaska.

CHAIRMAN BRADLEY:

Go ahead Mr. Blodgett.

MR. BLODGETT:

Mr. Chairman, my thoughts are as standard as a clay pigeon in a shooting gallery as I browse through Senate Bill 519. It is a dilemma and I view it as permitting a city development corporation to establish an autonomous coalition (indisc.). I must be very candid with you, Mr. Chairman, members of the committee and the planning commission that I have not had an opportunity to thoroughly study Senate Bill 519 as I only got it in hand last night at 9 o'clock. I am therefore respectfully requesting the courtesy of an opportunity to present written testimony to the committee within 10 days. Now then, we're 18 years down the road from the time when the first capital move initiative was defeated by a 5% vote by the voters of the State of Alaska. Since that time, the cost of such a move has escalated appreciably and that is conservative. I view this Senate Bill 519 as one of the steps that I would take in stopping planning to build a new home and I therefore analyze the cost benefit ratio as opposed to keeping and maintaining my existing home. The bonded indebtedness is a very important factor which I feel has been too lightly touched upon in Senate Bill 519. I have serious reservations about the proposed bond figure of 966 billion dollars. I'd like to make it clear that from the very beginning I was a State

capital move general -- in the move -- in the effort, moving the capital. I still believe that there must be (indisc.) to do so I believe we have become (indisc.) delusions of grandeur. I see no reason we cannot move our seat of state government and establish it in a pristine city in a little pentagon, so to speak and operate state government (indisc.). I don't see why we need to stereotype every other state in the nation with grandiose governor's mansions and the whole nine yards, all the gingerbread that goes along with it. Let's run our state government like a business. Like New York Life Insurance runs their business or the oils companies or Sears Roebuck or any other business. The financial wizards that projected the costs, the initial cost projections for the trans-Alaska pipeline was most certainly shot down with the completed costs ending up at some 9 billion dollars. Likewise our financial wizards, the consultants that they engaged to project costs for the capital site construction, capital city, projections can very well be shot down equally as well. They don't have any better crystal ball than the trans-Alaska pipeline economists had. I'm convinced of that. (Indisc.) we are benefiting throughout Alaska with improved communi ations, including television. I feel that we're coming closer to our state capital in Juneau through telecommunications and television. There is a long ways to go in improving the long line telecommunications service to the state. The Legislature is aware of that. But still I feel that we as Alaskans are closer to our state government than we've been at any time in history. Now, as a prudent man, in shopping for a new home, I just hope that also a legislative body and the people of Alaska likewise assume the stance of a prudent man and give very serious consideration to the oftentimes used legislative parliamentary (indisc. -- cough). Mr. Chairman, I move that we rescind our action on the referendum to move our state capital (indisc.) on our referendum to the people for reconsideration or what we then therefore in effect as Alaskans if the action if not rescinded well we as Alaskans then therefore rescind the capital move by rejecting the bonding proposition at the polls -- if we as Alaskans reject the bonding proposition we then therefore reject the capital move. I am not at all anti-Anchorage. Please understand this. Anchorage is the commercial transportation, financial center of the State of Alaska and a substantial center of government in the State of Alaska. Just as Chicago is. Just as San Francisco is. (Indisc.) If we move the capital of the State of Alaska now, the way the costs are, why not move the United States Capital, Washington, D. C. to Denver? I have severe reservations about it. I do not mean to deviate from Senate Bill 519, but as I stated earlier, my thoughts are as standard as a clay pigeon in a shooting gallery. Another thing that I have very real concerns with is the (indisc.) fish and game habitat in the glacial bay mining area of the Susitna, the Willow area. They think because the Fish and Game Department, Environmental Affairs, who do not have any hard and fast regulatory procedures in controlling the lakes, rivers, streams in that area -- the lakes there that should be confined to sail boating or canoeing or row boats, they're not. They are loaded with speed boats. They're loaded with trash. They're loaded with (indisc.) debris and oil cans. Development of the new state capital in the Willow area is going to put (indisc.) pressure on the fish and wildlife habitat in that area. We have (indisc.) responsibility to do that and cope with it before any construction

begins. I thank you for your courtesy and your time and I hope that you will afford me an opportunity to reply in writing to Senate Bill 519.

CHAIRMAN BRADLEY:

Mr. Blodgett, thank you for your remarks. We appreciate them. And yes, the committee will accept your questions and written comments, hopefully within 10 days. That's of course not a hard and fast date, Mr. Blodgett, but of course one that would be convenient in our deliberations and so again we thank you and we'll sign off with Nome right now and go to the community of Anchorage. Charity, are you there?

CHARITY:

Yes, Mr. Chairman, and we have a witness for you, Jerry McCutchen (ph).

CHAIRMAN BRADLEY:

If Mr. McCutchen would state his name for the record, then he has the floor for approximately five minutes, thank you.

MR. MCCUTCHEN:

For the record, my name is Jerry McCutchen. (Indisc.) couple of billion dollars for a capital move. I don't think two billion dollars for a capital move (indisc.) then we just ask the Royalty Oil and Gas Board for a contract with some 10 billion dollars deliberating for three days. (indisc.) ramifications of their actions. Regarding the capital move, I was for the capital move way back in 1954 before most of you were here in Alaska. There was a beautiful site over at Lake Loraine, opposite Anchorage, which was owned by the Territory of Alaska at that time. Since then I've been turned off of the capital move because it (indisc.) land grab and I suppose the last straw for me was when the State of Alaska changed its land leasing policy and went to long term (indisc.) leasing rather than (indisc.) leasing. I think the only way the State of Alaska can see any value on the land, so called 100 square miles is by (indisc.). I'd like to call to your attention the example of Valdez where they built a new city and new restrictions came down and a lot sold for $800 apiece. Those lots had water, sewer, paved streets, buried power lines, the city was furnished with a municipal building, boat harbor and a new dock. I think we're going to see the same thing happen right here. We put in all the amenities on the lots, you will not be able to recover your costs. I think the only way you can do it is with a leasing program and with a leasing program not just a long term lease, a leasing program based upon five year (indisc.). (Indisc.) or capital move many years before most of you ever were in this country, before we ever had statehood I'm pposed to it now. I don't think it's going to work. I think we're (indisc.). Another thing I see, unless somewhere along the line the Legislature's going to raise the taxes on the oil industry

come to grips with it realistically rather than running around from place to place. (Indisc.) start looking at (indisc.), (indisc.) how much does Saudi Arabia get, we're not going to get anywhere because the kind of money we're going to take to build a new capital is going to have to come from oil revenues, that's it. Thank you.

CHAIRMAN BRADLEY:

Thank you very much Mr. McCutchen -- our next witness please.

CHARITY:

(Indisc.)

CHAIRMAN BRADLEY:

Okay, thank you Charity, we'll move back to the community of Ketchikan and check in with Sandy to see if there are any witnesses left there. Sandy?

SANDY:

Mr. Chairman, we had one other witness scheduled but he hasn't appeared yet so at this time we're through.

CHAIRMAN BRADLEY:

Okay, thank you Sandy and thank you Ketchikan. April in Fairbanks, is there anybody who wishes to approach the committee on the subject?

APRIL:

Yes, Mr. Chairman, we have one other witness who wishes to talk to you at this time.

CHAIRMAN BRADLEY:

Thank you.

MR. BETTISWORTH:

My name is Charles Bettisworth and I'm a Fairbanks resident and a member of the FRANK Committee.

CHAIRMAN BRADLEY:

Go ahead Mr. Bettisworth.

MR. BETTISWORTH:

I too would like to compliment the commission on the amount of work that they've done. I think the commission and it's staff have been

very diligent and very dedicated and have worked very hard in a very short time span to accomplish the work that's before the Legislature now. The purpose of the FRANK Committee was to assure that the voters of this state (indisc.) in decision making on the capital move financing process. I think it's imperative that this information on financing of the capital move be made very clear to the voters of the state. I think it's going to be incumbent upon the Legislature because none of us have the ability or the time to dig through the financial plan that was presented by the commission. We have had an opportunity to go through it partly and there are some questions that we'd like to raise. I'm going to speak specifically to the financial plan that was presented by the commission. While the commission indicated that there would be a 956 million dollar bond package and a 1.362 billion dollar general fund package, it is also a requirement that 520 million dollars in Municipal Bond Bank and Alaska Housing Finance Corporation bonds. And further, in addition, it seems that there is 200 million in special development corporation bonds. These bonds do not (indisc.) to be state bonds. However, both the Municipal Bond Bank and the Alaska Housing Finance Corporation bonds are optional decisions by those entities. If those entities do not decide to take on those obligations, the State would have to provide those dollars. (indisc.) the Alaska State Housing Finance Corp., those extra dollars for the cost of housing would accrue to the land owners, (indisc.) residents of the city.

With respect to the 200 million in C.D.C. bonding, those monies we will assume will pass to the municipality at the time the C.D.C. would self destruct. (Indisc.) would accept those bonds is by referendum. If they did not, then the State would be obligated to pick up those bonds.

With respect to the land revenue predictions by the planning commission points out that they will generate 502 million dollars. Which means by our calculations here, that lots would cost for quarter acre lots, $60,000 each, that's the appraised value, and it's difficult to (indisc.) back to 1975 because the factor (indisc.) over a number of years. The half acre lots are $78,000, material is $35,000. (Indisc.) seems it might be more like (indisc.) $30,000 for a quarter acre lot, $40,000 for a half acre lot and something like $17,500 for trailers. The question I have is can citizens of the city afford these costs and if they cannot, will the State raise the salaries of these people to pay for these additional costs and if so, isn't that also a cost to the State? Basically I think we're talking about a subsidy to Alaska State Housing Finance Corporation to the residents of Willow, a special subsidy which others of us in the State are not, is not available to the others of us in the State. Basically the Alaska Housing Finance Corporation is using the public financing to finance private development.

The Capital Planning Commission financial report also makes a point of indicating that at the end of the development period in 1994, there will be 245 million dollars worth of land remaining. I think it's also worthwhile to point out that there will also be 624 million dollars in debts of which an additional 420 million dollars in interest must be paid on that debt. Chairman Behlke indicated there and also here in Fairbanks earlier this week, that they expect the people of Mat-Su, the Mat-Su Borough, that there would be no impact on that borough by the movement of 37,500 people to that area by 1994. The Capital Planning Commission statistics show that, or indicate, that 80% of the new residents will live in Willow and 20% will live elsewhere, but presumably in the Mat-Su Borough. Their calculations, the Capital Planning's calculations, estimate that $10,850 of intrastructure costs per person are required. In the Mat-Su Borough then, we are talking about an impact to the Mat-Su Borough of 200 million dollars. With respect to the issue of 80% (indisc.) of new residents to the Willow area, I personally think that that's a very optomistic estimate and given Alaskan's penchant for free living, or living free, I think that the expectations could be more on the order of 50%. I don't think that the Alaskan life style is such that you will be able to capture that kind of market. The final thing I'd like to bring up is in the paper tonight -- I have not had the opportunity to look at this in the financing plan -- the estimate to keep the capital in Juneau is 971 million dollars. The estimate to build the new capital in Willow is 966 million dollars. I find it very hard to believe it's going to cost 5 million dollars more to keep the capital in Juneau than it is to build a brand new city in Willow. I guess with these questions that we've found in a very short review of the financial plan, it is incumbent upon the legislature to do a very careful job in scrutinizing the numbers that are defective in the financial plan. I thank you, Mr. Chairman and the committee and the commission.

CHAIRMAN BRADLEY:

Mr. Bettisworth, thank you for your remarks and your time. Let me just go through the communities and see if there's anybody else who wishes to testify. Sandy has anybody shown up in Ketchikan who wants to address the committee? [No response] Well I guess not. Charity, is there anybody in Anchorage who wishes to address the committee?

CHARITY:

We have no more witnesses at this time, Mr. Chairman.

CHAIRMAN BRADLEY:

Okay, thank you Charity, then we'll sign off for Anchorage.

Peter in Bethel, has anybody arrived to testify? Peter in Bethel, are you there? Peter's gone home. April in Fairbanks, sounds like a song. April, are you there?

APRIL:

I have no further witnesses.

CHAIRMAN BRADLEY:

Okay, thank you very much for your time. Myrtle in Nome, is there anybody else who wishes to address the committee?

MYRTLE:

Mr. Chairman, I don't have anyone else here to address the committee but I would like to say thank you, thank you. This is something really wonderful for us up here and I hope it spreads through the bush area here, or the Nome area and we can have more participants in the future. This is Nome clear.

CHAIRMAN BRADLEY:

Okay, Myrtle, is this the Myrtle Johnson that used to be on the CDC Board?

MYRTLE:

Roger Bob, hi.

CHAIRMAN BRADLEY:

Okay, hello, how are you?

MYRTLE:

I'm still on it.

CHAIRMAN BRADLEY:

Alright. Chairman Behlke of the Capital Site Planning Commission has some concluding remarks.

MR. BEHLKE:

Well I don't have concluding remarks but we will have a small contingency of commissioners in Nome the evening of the 9th of March and Kotzebue the evening of the 10th of March to discuss the capital plan and we'd like to have anyone who desires to hear anything more about this come out to see us.

CHAIRMAN BRADLEY:

Myrtle did you copy that, the 9th in the evening -- Myrtle, did you copy that -- Chairman Behlke said that members of the commission

will be in Nome the evening of the 9th?

MYRTLE:

Yes, Mr. Chairman, I copied and I haven't heard any of this on the radio. Do they have someone that's going to be airing this over our radio station so that the people will be aware of it and where they're going to be meeting?

MR. BEHLKE:

I don't have those details at this point.

CHAIRMAN BRADLEY:

Myrtle, we will make sure that it's P.R'd, the commission will, and thank you. Here's your Representative Al Nakak.

MR. NAKAK:

Yeah Myrtle, this is Nakak. I've got coming out in the paper today, I believe, announcements of this and I also will be travelling up to Nome and perhaps a couple other communities to visit and meet also with the planning commission and I believe I also go up to Kotzebue with them. Thank you Myrtle.

MYRTLE:

Okay, thank you Al. I've heard your messages on the radio concerning your trip up here and going to the different villages but I haven't heard that the commission was coming up to do anything on the 9th of March. But I'll appreciate any news about this and I'll gladly pass the news on. And if nothing further, this will be Myrtle in Nome clear with Juneau.

CHAIRMAN BRADLEY:

Okay, the Chair would like to make some concluding remarks. We'd like to thank everybody that participated for their time and effort and studying into this matter. I want to take this opportunity now to read a letter which I have just passed out to the committee of those who are still present and to the three commission members, an act on my part based on the controversy that surrounds not only the submission but possible constitutional affirmities regarding the Senate Bill on the capital financing plan and the House Bill that I am in receipt of, House Bill 857, I'd like to read that letter and then give a very terse and brief explanation. It's addressed to the Governor of the State of Alaska, Jay Hammond.

"Dear Governor Hammond:

In light of the controversy surrounding Senate Bill 519, I am returning its twin, House Bill 857, to your office for thorough review and any necessary modifications. It is my position that notwithstanding the Senate action in this matter, all deficits should be cured by the Department of Law and not by the Legislative Council. This situation involving extremely sensitive and complex issues represents a classic and unprecedented separation of powers problem. The Capital Site Planning Commission is by statute a creature of the Governor's Office. Consequently, it is essential that errors made pursuant to initial legislative drafting and discovered prior to any substantive committee consideration, be corrected by your legal staff in the Department of Law working in conjunction with the Planning Commission. We would hope to receive a sponsor substitute for House Bill 857 from your office in time to meet the Capital Planning Commission's March 15, final plan deadline, at which time the House State Affairs Committee intends to at that time undergo the substantive review of this legislation until we are finished and it passes out of our committee.

I thank you for your consideration in this matter."

Signed by me. I think it's important to take this act. The Senate, based on a memorandum from our legal counsel, Bill Berrier in Legislative Affairs, gave us the opinion dated February 27th, 1978, found possible constitutional affirmities and some other things, probably not as important but Senator Ziegler in the Senate sees it in a different way. He concludes that the Bill, since it was read across the desk, is our Bill. To quote him from a letter that he sent to the Governor of the State on March 1. I disagree with that and want to keep the process at least honest so one body's going to have it looked over by the legislative attorneys, this committee will have it looked over by the administration's attorneys and there's no games intended on this, it's simply an important procedural, legal issue that we shouldn't lose sight of so I personally have no big agenda but I simply want to keep the process objective and honest. So on behalf of the committee, on behalf of the commission, I'd like to thank all of you for participating and thank you very much.

COORDINATOR:

If the committee's finished, I'd like to make one announcement concerning the next video conference. On March 16th, there will be a two way video tape conference between Juneau, Anchorage, and Fairbanks. That means that the committee here in Juneau -- in that case the House Rules Committee, taking in House Bill 150, closed primaries, will see and speak with witnesses giving testimony

in Anchorage and Fairbanks in sequence. That's on Thursday, March 16th at approximately 12:30 to 3:25 Pacific time, 10:30 to 1:25 Alaska standard time and 9:30 to 12:25 Bering time. This concludes our audio and video broadcast for our second teleconference.

CHAIRMAN BRADLEY:

Okay, thank you very much.

(Off Record)

(On Record)

MRS. BERG:

My name is Carolyn Berg and the date is March 6th, 1978. And although I did not attend the telecommunications, I wish to make a statement as to House Bill No. 857, by the Rules Committee by request of the Governor, by request of the new Capital Site Planning Commission,"an Act relating to the new Alaska Capital and in connection therewith: establishing an Alaska Capital City Development Corporation and providing for its powers; authorizing the question of issuance of general obligation bonds in the amount of $966,000,000 over the period extending from 1979 through 1994, for the purpose of paying capital costs of the new Alaska capital to be placed before the voters; authorizing state loans to the development corporation; amending the Alaska Housing Finance Corporation Act and the Alaska Municipal Bond Bank Authority Act; authorizing loans to the Alaska State Housing Authority for housing for lower income persons; establishing a new capital city and providing for its powers; and providing for an effective date."

This has a long title and we do not believe it comes within the one (indisc.) limit to a Bill and we are saying that this legislation is completely unconstitutional and void. As you may remember, we have been appearing before the State Affairs Committee every meeting that they had last year on the capitals legislation, not voluntarily but involuntarily to hold the rights for Juneau. We are here today involuntarily only to hold the rights for Juneau. We are alleging that the capital initiatives, all of them, and all of the laws associated with them through the years and all of the committees and commissions and this particular Alaska Capital City Development Corporation are all unconstitutional and void inasmuch as we have a capital in the law. Now most people feel that when a territory becomes a state all territorial laws drop off and the state has to bring in order to the territory. This is not necessarily correct. We have an authority called (Indisc.), 265 Pacific 945, in which Mr. Justice Field sets out that there are three ways in which the United States can acquire or hold land within the limits of the state. The first of these ways is in accordance with Article 1, Section 8 of the Constitution where a section is made by the state of the land for governmental purposes defined in that section.

The second is by purchase or condemnation of land belonging to a private party and the third is by having public land at the time of the admission of the state into the union. Now this part of this opinion is extremely important. This opinion requires that the manner of acquiring the land has controlling effect upon the political control and the sovereign jurisdiction of the government. The rule is that if (indisc.) made under the above provision of the Constitution, the jurisdiction of the United States is exclusive. If the land is acquired and held in any other way, the United States (indisc.) and jurisdiction of the state is complete, except that it cannot interfere with the use of the land for governmental purposes. And we would like that underlined, starting with except.

Now going back in history, how we happened to get into this is the fact that Alaska was -- or Juneau has been the capital of Alaska for 72 years so we felt that was a big start. But we asked an old timer here (indisc.) whether he remembered when the capital was Skagway and he said yes, he remembered, he was just a boy but he remembered. He said that a whole group of people got together and gave, solicited money, (indisc.) people who owned property under this capital site so that they (indisc. -- people are talking in the room where the recording is being done overlapping on Mrs. Berg). (Indisc.) We went over to the land division and in the land division there's a folder called (indisc.) No. 78, and in it (indisc.) deeds that (indisc.) at the time this land was sold to the United States. and these deeds -- I have one of them here I'll read -- all look alike, but I have one of them here called the Nelson lot which was lot number 3 in block number 19 (indisc. -- people talking) in the new court building in Juneau, Alaska in the Recorder's Office and I'm going to record this deed except for the description of it, it's rather lengthy, but I'm going to record the (indisc.) [Whereupon Mrs. Berg reads from the document attached hereto as Exhibit A]

Now we disagree with these initiatives to take our capital away because we are alleging we have a capital under federal eminent domain, under these deeds. How can the Alaska Statehood Act (indisc.) Public Law 85-508, 85th Congress, H.R. 7999, July 7th, 1958, 72 Stat. 339 As Amended (indisc.) lot 32, which is the Governor's mansion and lot 19, which is the capitol to the state when these deeds distinctly state that there shall be no molestation on this property for this use. This authority that I stated here before People v. (indisc.), supra, also states on page 945 and I have this also (indisc.) that they cannot interfere with the use of the land for governmental purposes. The fact that the deed to the property on which our capitol stands is to the granting public corporation is of no significance as to said (indisc.) corporation is a governmental agency brought into being for the purpose of maintaining a governmental institution. (Indisc.) that this is a complete erasure under (indisc.) of our contract with the United States and is a secured transaction and therefore comes under the

Uniform Commercial Code, AS 45.05.782, 45.05.791, 45.05.786 U.C.C. Section 9-50129-5079-503. Because we did put money into this property, it is open to the Division of Lands to diminish areas of vagueness and uncertainty inherent in the present wording of AS 38.05.305 through the rule making power or by seeking a mandatory legislation. Now we have a townsite trustee who is responsible for determining through the Department of the Interior whether or not our capital has its title in the United States and we are now working with the trustee to determine this question.

Thank you for allowing me to give my statement. Juneau was made the, preserved as the capital by Congress under Alaska's Organic Act 37-512 dated August 24th, 1912, Section 2 which states Capital and seat of government: that the capital of the territory of Alaska shall be at the city of Juneau, Alaska and the seat of government shall be maintained there. The powers of a corporation like its corporate existence are derived from grant by the state all other sovereignty creating it and please underline all other sovereignty creating it. (Indisc.) 138 U.S. 19 S.Ct. 409, 32 L.ed. 837, this principle was well established in the civil law and adopted in corporate institutions from then on (indisc.-- people talking). The capital 77 program public broadcast about the legislative doings throughout the state brings the capital to all parts of Alaska. The dates are shown in the Senate and the House and the committees and are sent out to people in the state. By this very telecommunication that was broadcast (indisc.) -- 92nd broadcast about the Congress reserving the capital for Juneau on about March 10th, 1977 and another one in 1978 (indisc. -- people talking). There's no problem keeping in touch with people all over the state. The precedent has been set. Thank you for allowing me to give my statement and until the title of this capital is settled, we wish no more money to be expended (indisc.) because every cent is a tax against Juneau and I believe I have a few minutes left -- I have some figures here. So far $807,500 was spent in fiscal year 1976; 398,500 in 1977 and in 1978 there was appropriated one million, four hundred fifty eight thousand, four hundred dollars, making a total of two million, six hundred forty-four thousand, four hundred dollars of our tax dollars for moving the capital and it's titled in the United States and cannot be moved. We do not agree with this. Thank you very much.

[End of Proceedings]

The FRANK Committee

514 second ave.
suite 106
fairbanks, ak
ph. 452-1036

March 14, 1978

Representative Bob Bradley
Chairman, State Affairs Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: FRANK Committee - H.B. 857
Our File No. 122.2

Dear Mr. Chairman:

When C.B. Bettisworth and I testified via satellite (a positively thrilling experience for me) before the House State Affairs Committee on H.B. 857, you were kind enough to give us an opportunity to list in writing some of the questions and areas of concern that we, as members of the FRANK Committee, have. Regrettably, neither C.B. nor I can take the time from our occupations to give the bill the kind of attention it and you deserve. However, we do not think it fair to you and the other members of the committee, as well as the supporters of FRANK, not to set forth some of our thoughts on the subject.

The people of Alaska have been most fortunate in having at their service the men and women who are serving on the Capital Site Planning Commission. They are people of obvious dedication and integrity. They were charged with an immense task with too little time in which to do it and the fact that their plan is as complete and thoughtful as it is should hearten Alaskans in the knowledge that we do have in our midst people who are willing to make the sacrifices the members of the Commission have had to make in order to serve our best interests.

My remarks should not be taken as criticism of their efforts or as an attempt to impugn their motives. That we have something to discuss at all is evidence of their devotion, hard work and belief that only by their doing the best job possible would the rest of us have the information we need. If every municipality in Alaska could have a planning commission of such high standard as the Capital Site Planning Commission, this state could shortly begin to offer its people community environments which would make urban living a year-round pleasure.

Regardless of how it is approached or the assumptions on which it is based, a project the size of a new city of 37,500 must provoke discussion, criticism in the proper sense, and argument, also in the proper sense. Disagreements are inevitable, but only by an airing of them can we arrive at points of agreement or compromise. The building of a new city, when all other cities in the state are barely out of infancy, indeed when the state is barely out of infancy, can only provoke questions which the CPSC was not charged with answering. Those questions were reserved to the Legislature and it is in that forum that the policy questions must be debated. It is a difficult duty and one highly charged with emotion.

I hope this letter serves somewhat to dispel emotion and to direct our attention to the legislative proposal on a more analytical plane.

First of all, I have a number of questions as to the constitutionality of the bill in its present form and concept. It appears to violate the one-subject rule in at least four major areas. It sets up the Capital Development Corporation, authorizes bonding referenda, makes appropriations and incorporates the capital city. In addition, it appears to violate the special and local legislation prohibition by limiting the CDC to the capital city and in incorporating the city as it does. I am not in a position to render an opinion which would be useful to the committee on these questions, but it would appear that opinions should be obtained to insure that no challenge in the courts would be required on these points.

I understand that the Senate counterpart of H.B. 857 has been referred to Legislative Affiars for redrafting and I am assuming that some of the language problems contained in the House version will be eliminated. The draft appears not to have been prepared by professional drafters or under the supervision of professional drafters and, as a consequence, contains language not usually found in statutes. Since the language of the bill in several spots is unusual, one would have to suppose that the bill would be challenged in the courts just to obtain an interpretation of the language, let alone the intent.

On a point-by-point basis, I should like to address the following as they appear in the H.B. 857 version:

Page 3, Sec. 44.62.016(b): Expresses a legislative finding that the Alaska Housing Finance Corporation should make lower interest loans to all residents of the capital city without regard to income. Aside from the obvious constitutional question, this is patently unfair to the rest of Alaska's prospective homeowners.

Page 4, Sec. 44.63.020(a): Would create the development corporation as a public corporation and instrumentality of the state. This is inconsistent, not only as to the remainder of the subsection, but with a number of the rest of the provisions of the bill. For example, the corporation's powers are taken from the Alaska Business Corporation Act, with some add-ons for public corporations, but the corporation would not be subject to legislative oversight, except for the audit function. Any attempt to invade the powers of the corporation after an audit exception might very likely impair contracts.

Page 5, Sec. 44.63.020(b): Provides for appointment of the board of directors, but no legislative confirmation. Since there are no provisions to cover conflicts of interest except to prohibit a director from voting on a question in a board meeting, some safeguard should be included.

Page 7, Sec. 44.63.020(d): Permits telephonic board meetings. There is always a problem in meeting the "public meeting" requirement when telephonic board meetings are permitted. This is especially true when the board has emergency rule-making powers. I am not sure what "rule-making powers" mean in the context of this corporation, but apparently they could have long-range effect on the municipality which would ultimately be formed.

Page 7, Sec. 44.63.020(e): Permits the board to fix compensation for employees without regard to the state pay scales. While it may very well be true that no one in his right mind would take on the job of executive director of the corporation without substantially more compensation than permitted by the state merit system, some control over compensation should be required.

Page 7, Sec. 44.63.020(h)(1): Removes the corporation from the purview of the Administrative Procedures Act. It has been my experience that all agencies of the state which are not required to comply with the

APA violate consistently the due process and equal protection provisions of our constitution. Insofar as the corporation is concerned, since it has rule-making powers, removal from coverage of the APA is very dangerous. The remaining sections of (h) make a bow in the direction of public comment, but basically provide no meaningful response to the public when it sees itself damaged. That section alone would eventually become an"attorney-full-employment" provision.

Page 9, Sec. 44.63.020(i): Permits the corporation to die when it decides to. No one can require the citizens of the capital city to assume powers they refuse to vote for and if the corporation ceases to exist, the state would have to take over. In view of the very real probability that the corporation will be indebted for more than it has in assets or income when the 37,500 population figure is reached, the state could well be stuck with an immense debt. This must also be related to the requirement that the city commence its formal existence when it has 25 souls in permanent residence. The two provisions are wholly inconsistent.

Page 11, Sec. 44.63.025(6): Permits corporation to acquire property by condemnation. While it is true that private corporations can condemn property for specific purposes, no apparent limitation is imposed on the CDC. The CDC can condemn the property of a municipality. No other corporation in the state appears at this time to have such power.

Page 14, Sec. 44.63.025(19): Exempts the CDC from the usury laws. While there may be good reason for this, none appears to me.

In overall, Sec. 44.63.025 contains all of the powers of both a private and a public corporation, none of the constraints, and, it would seem, has more power than the state itself. Each provision should be reviewed carefully.

Page 16, Sec. 44.62.030: Preparation of development plan. While it makes some sense to require the corporation to prepare a more detailed plan than that presented by the Capital Site Planning Commission, considering the powers of the CDC, there could be developed a plan which did not conform to the CSPC plan and there is no mechanism for legislative review or additional voter approval. The CDC is free to do what it wants without adherence to the plan funded by the voters.

As an aside, the section numbers do not seem to have consistency. Codification might yield a strange order for the various sections if this problem is not dealt with.

Page 20, Sec. 44.63.040: Provides for cooperation of other entities. The CDC has the power to require other municipalities to render it aid even though such assistance may be detrimental to the people of those other entities. Even if such a provision could be found to be constitutional, I doubt seriously that it could be enforced.

Page 21, Sec. 44.63.040(e): Exempts CDC from the Environmental Procedures Coordination Act. Even if this could be found to be constitutional, the policy is not sound. We have learned in the construction of the pipeline that constant oversight by the environmental agencies is necessary.

Page 22, Sec. 44.63.045: Expands on condemnation authority. Note that on Page 23, line 9, the language "any purpose." In view of the fact that the condemnation authority given to the CDC seems to extend throughout the state, one can speculate too easily as to the possible purposes for which such authority can be used. The declaration of taking is an extraordinary weapon in the hands of the state, let alone in the hands of a private corporation, and its use should be limited to specific projects.

Page 23, Sec. 44.63.050: Loans to CDC. This section is very loosely drafted. It appears that the CDC could leave this loan to the end of the project, never repay it and leave the capital city with this additional debt load. This section should be clarified.

Page 24, Sec. 44.63.055: Property disposition. The CDC is exempted from the state land laws and disposition by sale or otherwise need not conform to any law applicable to other municipalities. Once the land is transferred to the CDC, it apparently can deal with it as if it were privately owned, not even subject to zoning requirements except as contained in the plan. In view of the projections contained in the financial plan about revenues derived from land sales, this would seem inconsistent. The argument can be made that normal, sound business practices would govern, but the debts of the CDC will eventually be debts of the state and the capital city, and more control should be had over land dispositions.

Page 25, Sec. 44.63.060: Land transfer to CDC. Since no apparent limitation is contained in the bill, it would seem that subsurface rights may be conveyed. Even if this section could be deemed constitutional, it is bad policy and should be cleaned up.

Page 25, Sec. 44.63.065: Construction contracts. The CDC is exempted from state bidding procedures and all construction could be on a negotiated basis. While it is perfectly permissible for a private corporation to negotiate its construction contracts, the CDC claims to be a public corporation and instrumentality of the state. Even if found constitutional, some standards should be incorporated to protect the people who ultimately will have to pay for the project. Also, please note that the mechanics' and materialmen's lien statute would not be [illegible]ted to be used. Since the CDC is neither the state nor a municipality, t[illegible]ce's Little Miller Act, A.S. 36.25.020, also would not be available. Contractors, subcontractors, and suppliers are left to a contract action only to recover sums due. This seems patently unfair.

Page 27, Sec. 44.63.070: Handling of money. Even though the Legislative Budget and Audit Committee can review the books, no sanctions can be applied against the corporation, other than the withholding of funds, I suppose, to enforce proper accounting and spending standards. If funds are withheld, of course, the project could die. The effect is no control at all.

Page 27, Sec. 44.63.175: Exempts CDC from taxation. On its face, this would make sense, at least in the early stages, but one can easily foresee the situation in which the capital city or the Mat-Su Borough needs additional revenue to function because of the CDC and cannot tax. I am not sure that the way in which this tax exemption is granted complies with state law and is certainly bad policy, without more limitation than exists in the bill. Also, the section seems to have been drafted by at least two people without checking for consistency.

Page 28, Article 4: Financing plan. This entire article is borrowed in pieces from existing statutes. Comparison with existing law should be made carefully to determine whether or not the changes are proper. It appears to attempt to incorporate into law those provisions which would be in aid of bond sales, but to leave the CDC free to manipulate its funds in a way which could lead to disaster.

Also, the article appears to create the situation of making the state the guarantor of the CDC bonds, despite the earlier disclaimer. If enacted in its present form, I see no way for the state to escape paying if the CDC does not, whether or not it can.

Since the entire thrust of the bill is to free the CDC from all constraints to the extent seen by its drafters, the overall effect is to leave the state ultimately liable for the debts of the CDC with no way to protect itself by controlling the CDC's actions.

Page 43, Sec. 44.63.130: Conflicts of interest. This section would not serve to protect the public from real conflicts of interest. Just prohibiting a board member from voting on an issue in which he may have a financial interest hardly is sufficient to prevent very substantial abuses of the powers granted to the CDC. This relates to my earlier comments about legislative confirmation of appointees to the board of directors.

As I indicated in my oral testimony, I regarded the incorporation portion of the bill with horror. I am not a skilled municipal attorney who could give you real expertise in this area. I would recommend that this portion of the bill be referred to one or more municipal attorneys in the state for their comments. The Alaska Municipal League could give you a list of names of people who are experienced in this area of the law.

This letter has assumed extraordinary length and for that I wish to apologize. It has been difficult, however, to keep my remarks as "brief" as they are. I hope that they will be of some service to the committeee in dealing with H.B. 857 or its successors.

Sincerely yours,

Mary A. Nordale

cc: C.B. Bettisworth
Carolyn Bushey
MAN:dn

March 20, 1978 Joint State Affairs Meeting 7:10 PM

Senator Willis, Chairman
Members present

Representative Miles
Representative McKinnon
Representative Kelly
Representative Nakak
Representative Bradley
Senator Huber
Senator Bradley

Commission members

Chuck Belke
Morton Hoppenfeld
Arlis Sturguluwski
George Morrison
Lee Kaufman
Lee McInerny
Bill Corbus

Morton Hoppenfeld made the general presentation. His outline is included with this summary.

Representative Nakak: What were the outer figures for getting water in the new city:

Morton: 2 million - 20 million

Senator Huber: On transportation. Did you ask the people who want the capital move if they wanted a public transportation system as opposed to private:

Morton: With the plan the way it is, you can use either mode.

Senator: Is the quality of air able to handle private vehicles?

Arliss S.: There isn't enough data, but the quality would be better than in Anchorage.

Senator Huber: When someone comes to visit you, will they be able to park in the street. Will there a place to park in town?

Morton: The plan does not require that you use the bus.

Chuck Belke: You can drive to within 1,500 feet of the capitol building.

Representative Bradley: Senator Huber's question will come up again. Were the people polled? 69 people have made all the decisions as agents of the people.

Senator Huber: We ought to be able to poll them for every question.

Morton Hoppenfeld continues to explain the publications that were sent to members of the State Affairs Committee.

Representative Dankworth: Is the 75% overbuilding for expansion going to be immediate?

Morton: No, gradual.

Representative Dankworth: Is each section filled up before land is opened.

Morton: Each section is almost filled up.

Representative Dankworth: Is there any income coming from the land not being used?

Morton: It's just there.

Senator Huber: What if you want to live where it's not open yet?

Arliss S.: 80% will want to live in town, because of the facilities. 20% will want to live somewhere else.

Morton: There are many different types of housing.

8:20 Recess

8:32 Convened

Morton Hoppenfeld continues his explanation.

Senator Huber: .....will the city need special legislation for taxes?

Morton: No.

Senator Huber raises questions regarding the charts the commission has prepared. The charts would be necessary to understand the questions. He did ask if they looked upon the government as an industry and they said they did.

Representative Dankworth: Did you consult HFC?

Morton: Yes.

Senator Huber: We are "imposing" a new economy on someplace that doesn't exist right now. It takes away from some place that does exist.

Representative Kelly: Is the city based mostly on government?

Morton: Yes...no other basic industry

Representative Kelly: When do you market the city industrially?

Morton: Before it's built.

General discussion

Representative Kelly: Are there figures on a split move?

Morton: There are some assumed figures.

Arliss S.: We are asking for an appropriation for a feasible study on a split move and a no move.

Representative Kelly: Can you build the capital cheaper?

Morton: Yes, there are many different ways, for example: develop more quickly, change the plans, reduce the size.....

Senator Huber: Where does the new capital city sit between tents and trailers and alabaster?

Chuck Belke: Not a posh city.

Meeting adjourned 9:45

April 4, 1978 Joint State Affairs Meeting in Governor's Conference Room

Members present

Willis, Bob Bradley, Miles, McKinnon, Kelly, Lethin

Two attorneys were present, Bill Berrier and Herb Berkowitz. They went through the bill section by section.

Joint State Affairs Meeting with Senator Willis and Rep Bradley Chairmen April 10, 1978

Members present

Senator Willis, Reps. Bradley, Kelly, Lethin, McKinnon, Miles

Lt. Governor Lowell Thomas passed out a small stack of memos from department heads reviewing their thoughts on the bills. He said he invited every dept. to attend accept Military Affairs.

10 minute recess

Bill Allen, Commissioner of Administration entertained questions

Rep Bradley asks if Mr. Allen knew that the Governor that morning had said that the Commissioners were at the disposal of the State Affairs Committee to rewrite the bill.

Kelly wanted to know what his objection to the split move was.

Mr. Allen said leaving data processing in Juneau would be bad because that's the information distirbution center and it just wouldn't be very efficient to have it separate. If the legislature says to leave it, it could be done.

Rep Kelly wants to know if telecommunications would help.

Commissioner Allen said that they wouldn't help right now, because they're not advanced enough. If an appropriation went through it would help them alot.

Rep Bradley asked how much of an appropriation.

Com. Allen replied 3.5 million.

Sterling Gallagher, Commissioner of Revenue was next to testify. He first stated that bonding the capital move would use up all of the state's bonding capacity. He said he is opposed to the CDC selling revenue bonds. His attached memo explaines his position more thoroughly. He thinks that a phased operation is a good idea, because it would help keep track of progress.

Rep Miles asks if the liquid surplus going down?

Mr. Gallagher answered yes.

Miles wanted to know how CDC is supposed to borrow money if there isn't any in the treasurey. Wants to know how much the state will loan.

Mr. Gallagher answered 117 million.

Mr. Morton Hoppenfeld explains why the CDC has power to sell bonds. Its because when the sewer is built, they can use it as collateral in case the community does not want to buy it.

Rep McKinnon asks what other agencys sell bonds.

Mr. Gallagher replies that the airport is the only unit selling bonds through the state.

Rep Lethin asks if you can use a 30 million lid.

Mr. Gallagher says yes, it's possible.

Rep Lethin wants to know if that means he would like to see a lid on all other municipalities.

Mr. Gallagher says he didn't say that.

David Rogers Asks if he (Mr. Gallagher) had seen the White Weld report.

Mr. Gallagher says that the capital move would have a huge impact on state's ability to bond other projects.

Dick Echin was present for the Alaska Housing Authority, but there were no questions.

5 minutes recess

Ms. Janice Gate from the Department of HESS says that they encourage the use of updated planning facilities for the health and social services aspects of the new capital.

Rep Bradley asks how would the planning agency respond to building a hospital in 5 years.

Janice Gate said that they would have to go through extensive needs requriements list.

Ed Kaiser, Deputy Commissioner of Fish and Game pledged their support in helping to manage the environment, etc.

Rep Miles asks his about a "color mosaic" costing 1/2 million $ that "Trenton" is asking for.

Mr. Kaiser explained that it is a very useful tool telling what animals use what land, etc.

There were no representatives from the Department of Education of Transporation.

Mr. Glen Akins from the Department of Environmental Conservation stated that getting state permits wouldn't be much of a problem, but that getting federal permits would be.

Deputy Commissioner Carl Gonger from C & RA said that they didn't want the local boundary commission to have the last say.

David Rogers said it was changed to no local boundary decisions without the approval of legislature and governor.

Mayor Overstreet testified on Juneau's behalf.

Representative Kelly mentioned that his population estimate of how many people would be left in Juneau was a gross exaggeration.

Mayor Overstreet calmly stood his groung and said that sound government would not be found in the split move. Sooner or later everything would be moved to Willow. The split move concept is just a sop. There is no reason to believe this community would survive.

Rep Miles said that the national tv broadcast was a distortion and very embarrassing.

Carolyn Berg gave her usual testimony, but kept it to 2 minutes.

Recess to call of the chair

JAY S. HAMMOND
GOVERNOR

LOWELL THOMAS, JR.
LIEUTENANT GOVERNOR

STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

April 10, 1978

Members of House/Senate State Affairs
Committees

Gentlemen:

At your request the various departments of the executive branch of government were asked to review capital city legislation and consultants' reports and submit their comments for your consideration. Governor Hammond requested my office to gather up these comments and coordinate our testimony.

Five departments have no comments to make at this time; one of them, the Department of Law, is awaiting the redrafting of legislation and may wish to comment then. Nine departments have responded with recommendations, questions and comments, all of which are contained in the attached memoranda.

I have asked those departments with concerns over legislation before you to be represented here this afternoon, preferably in the person of the Commissioner, in order to answer your questions or to testify further if you so desire.

The executive branch of government stands ready to help in any way it can during your deliberations over capital city legislation.

Thank you.

Sincerely,

Lowell Thomas, Jr.

Lowell Thomas, Jr.
Lieutenant Governor

07-C018

STATE
of ALASKA

MEMORANDUM

Revenue

TO: Lowell Thomas, Jr.
Lieutenant Governor
State of Alaska

DATE : April 4, 1978

FROM: Sterling Gallagher
Commissioner
Department of Revenue

SUBJECT:

I do not feel that the Community Development Corporation should be allowed to sell bonds. They should only be authorized to borrow from the State Treasury and then the loans should be appropriated by the Legislature because of the illiquid nature of the balance.

If they must borrow through the sale of bonds, they should be sold through the State Bond Committee. I agree with the method by which the general obligation bonds are sold, where they have a phased authorization on the bond sale.

One of the things I would like to insist upon is that in conjunction with the phased authorization of the bonds the Legislature shall each year review the funding status of the project to make sure that it lives within the amount of bonds authorized. The Legislature shall be responsible for insuring the total dollar figure is spent and properly managed so that there are no cost overruns. If there are cost overruns greater than expected the Legislature shall decide what the Community Development Corporation should delete.

All lands should be disposed of in a manner that reflects its full market value.

STATE of ALASKA

MEMORANDUM

Admin

TO: Keith Specking
Legislative Assistant
Office of the Governor

DATE: March 31, 1978

FILE NO:

TELEPHONE NO:

FROM: Commissioner B. B. Allen BA
Department of Administration

SUBJECT: Department of Administration
Capital Relocation Critique

As requested, my staff and I reviewed the Capital Relocation materials (primarily the Rivkin and Leonard Lane Reports), conducted a personal review of each Division and the following observations and comments are submitted.

I, as do my staff, feel that the Department of Administration should be one of the first agencies in Willow in the event of a move. This decision is predicated on the Governor and Legislature moving at the same time and the obvious need to establish services.

However, in contradiction to the Lane Report, this entire Department could not move at one time. Some Divisions such as Data Processing, General Services & Supply and Personnel & Labor Relations would have to leave certain central positions in Juneau indefinitely. In the case of the Division of Data Processing, this entire Division would have to be moved in phases which correspond with the moves of the various other agencies, due to the direct support afforded each. The Division of Personnel & Labor Relations and the Division of General Services & Supply also have unique and direct support service requirements and substantial personnel would have to remain in Juneau to support the remaining agencies until such time as the move was completed in 1994 which would create a need for staff increase. All other Divisions and offices in this Department could and would move in total when my office moved.

Without going into specific detail in this report, there are also various additional requirements and changes we would have to have in Willow. For example, the Division of Data Processing and Division of Communications should be housed in a separate Communications Center with special security and physical requirements, which should be adjacent to the Central Offices Complex. The Division of General Services & Supply can and should be housed in one location, inclusive of the Archives & Records Center. There are other minor changes which can be incorporated into a final design of the respective facilities.

Relative to the Rivkin Report and the Split Move Concept, the primary objection that we have is the recommendation that the Division of Data Processing remain in Juneau. This is totally unacceptable and could not be done. As noted above, this Division

directly supports various agencies and must remain with those agencies whether in Juneau or in Willow, however the Directors and other key administrative personnel would have to leave when my office leaves. It is not crucial that the physical computer facility and attendant staff personnel leave, however there would be considerable inefficiencies and additional costs if this were the case. Also, under no circumstances could the Division of Retirement & Benefits remain in Juneau. This office should be in as close a proximity to the legislature as possible, therefore it would have to be moved first also, in total.

Other than the above objections and some minor transportation and space requirements, we have no other conflicts with these two reports. However, the following comments are submitted as basic and fundamental concerns in the event the Capital is moved.

1. I feel all State agencies must review at least the two preceding reports to ascertain their validity and make their respective determinations as we have (if they haven't already), as to when and who they move.

2. A central agency with adequate staff must be organized under the supervision of this Department to organize and coordinate the move to Willow and manage and allocate space in the new facilities as well as the old. Presently these functions are handled by the Division of General Services & Supply in this Department, however the present staff is insufficient. We have some experience in large moves and, of course, are statutorily responsible for management of space in State buildings.

3. The exact agencies and their respective move dates must be coordinated through this Department as we must review all leases and their respective expiration dates to lessen the extent of any default payments and possible court action resulting from premature cancellation of leased space. Presently in Juneau alone the State has in excess of 140,000 square feet of leased space.

4. At this point I also feel that we should consider the consolidation of all State laboratory facilities in Willow. Presently the Departments of Environmental Conservation, Health & Social Services and Fish & Game have separate facilities which represent duplication of effort and facilities.

These are some of the obvious problem areas which will have a definite impact on State government and are submitted for review and consideration. They are not the only concerns we have, but they are primary in importance at this time.

I and my staff will be willing to discuss this with you, or whomever, at your convenience.

cc: General Services & Supply

Commerce: Econ Develop.

Alaska STATE HOUSING AUTHORITY

March 23, 1978

The Honorable H. Phillip Hubbard
Commissioner, Department of Commerce
and Economic Development
Pouch D
Juneau, Alaska 99811

Re: ASHA Involvement in the Proposed Capital Move

Dear Phil:

I have followed with interest the proposed ASHA involvement in the capital move, both in the legislation introduced concerning the capital move and in the newspapers. It is a requisite that some basic facts concerning public housing be conveyed to those members of State Government that are involved in the planning of the capital relocation.

Various figures ranging from $60 million to approximately $95 million have been postulated as the amount of funds necessary to provide public housing in the new capital city. These funds are projected to be loaned by the Department of Revenue to ASHA for the provision of low income public housing. However, as I stated in the bill analysis that I submitted concerning the Alaska Capital City Development Corporation legislation (SB 519 and HB 857), ASHA can provide low income public housing only through the utilization of a partial or total grant of the construction money, or a loan of the construction monies coupled with an ongoing rent subsidy in an amount sufficient to allow ASHA to amortize the construction debt burden.

For example, if we assume that a unit of housing provided for a low income family shall cost $60,000 and ASHA obtains a 40 year loan from the Department of Revenue at 7%, the monthly payment to amortize the loan shall be $372.86. Once administrative, maintenance and repair costs are added, the monthly cost to ASHA for providing this $60,000 house or apartment unit shall easily exceed $400 a month. Also assuming that a low income person will be incapable of paying more than 25% of his or her gross adjusted

TELEPHONE (907)279-7643 BOX 80 ANCHORAGE, ALASKA 99510

family income per year, and extrapolating from our experience in existing low income rental housing in the Anchorage area, the average rent per housing unit per month that a low income family can pay shall be approximately $90 to $100.

There is a substantial shortfall between $90 to $100 and $400+ per month per housing unit. Thus, absent a federal or state subsidy or grant, if 1000 housing units are provided by ASHA at the cost of approximately $60,000 per housing unit, ASHA shall accrue a deficit in excess of $300 per housing unit per month for a total of more than $300,000 per month.

ASHA has encountered the same type of deficit problem in the Marine View Apartments project in Juneau--there, ASHA attempted to provide low and moderate income housing without the aid of a grant or subsidy. The State of Alaska loaned ASHA $3.9 million at 3% interest (a very low interest rate), and the project has never been financially viable. Thus, it is difficult to conceive that, under similar conditions and absent a miracle, ASHA can undertake low income housing programs without the aid of a grant or subsidy.

Assuming that adequate notice for planning shall be available, it is reasonable to believe that low income housing in an adequate amount can be provided by utilizing federal funding and subsidies available through the United States Department of Housing and Urban Development (HUD).

If you have any questions or comments concerning this matter, please contact me at your convenience.

Best regards,

ALASKA STATE HOUSING AUTHORITY

Harry F. Goldbar
Executive Director

HFG:mmm

cc: Members of the Board
Pam Knode

The Alaska State Housing Authority (ASHA) presently provides housing in urban areas for lower income persons. SB 519 and HB 857, as they affect ASHA, authorize loans to the Alaska State Housing Authority for housing for lower income persons. This authorization is referred to in the title of the bills, and under section 44.62.015, entitled LEGISLATIVE FINDINGS AS TO CORPORATION AND OTHER PROVISIONS, Sub-paragraph (a) (2). And more specifically in AS 44.58.270 section 4.

However, based upon ASHA's past experience, in order to provide housing for low income persons, money for site acquisition, development and construction of the housing must be received in the form of a grant, or alternatively, an on-going rent subsidy must be provided for the entire life of any loan received for construction in order to allow ASHA to amortize the debt load and still provide housing that is economically accessible to low income persons.

ASHA is primarily dependent upon the United States Department of Housing and Urban Development (HUD) for its construction funding and rent subsidy receipts necessary to provide low income housing. ASHA's experience indicates that its ability to provide low income housing is only marginal, even at a very low interest rate, in the absence of a total or partial grant for the construction funding and/or a long term rent subsidy. The mere availability of loan funds does not insure the feasibility of the construction and on-going maintenance of a low income housing facility.

I suggest that the bill be revised to allow for grants for construction. Alternatively, ASHA can utilize low interest loans if a long term (for the life of the debt) rent subsidy is made available in an amount to insure the feasibility of a project or projects.

(6) Comments

1. Section 44.63.010(5) Legislative Findings, places the development corporation within the Department of Community and Regional Affairs, while Section 44.63.020(a) Alaska Capital City Development Corporation, places the development corporation within the Department of Commerce & Economic Development. This conflict will need to be resolved.

2. Section 44.63.040(e) Relationship of Corporation, the State and Municipalities. This subsection appears to abrogate due process especially in procedure and by placing ultimate permit responsibility on the hands of the Governor and not the courts.

3. Section 44.63.080, Bonds and Notes of the Corporation. This section provides the corporation with the power to issue its own bonds and notes without a debt ceiling restriction.

4. Section 44.63.090, Reserve Funds. Even though the permissive "may" is used, this section strongly suggests that the corporation will be relying heavily on State grants to the reserve funds set-up to retire the bonds and notes issued by the corporation. In addition, subsection (e) may be in conflict with Section 44.63.050.

STATE
of ALASKA

MEMORANDUM Health and Social Services

TO: The Honorable Lowell Thomas, Jr.
Lieutenant Governor

DATE: April 7, 1978

FILE NO:

TELEPHONE NO:

FROM: Helen D. Beirne, Commissioner
Department of Health and Social Services

SUBJECT: Response to Capital Site Planning Commission Reports and Legislation

The Department of Health and Social Services commends the Capital Site Planning Commission for preparing a comprehensive report within a stringent time frame.

One of the Department of Health and Social Services' primary goals is the prevention of health and social problems, and we are pleased to see that this goal is mentioned (Vol. 3, p. 33) in the Capital Site Planning Commission report. Careful planning for open spaces and outdoor and indoor recreation areas and facilities can help prevent behavioral health problems; and careful environmental planning, specifically a good water supply and adequate sewage treatment facilities, can go far toward preventing both mental and physical health problems.

The Department of Health and Social Services is concerned to know whether the Matanuska-Susitna Borough will accept health powers. One of the principles guiding the legislative recommendations of the Capital Site Planning Commission reads: "To maximize local government responsibility for providing governmental services as early as is feasible, consistent with assuring orderly development of the new capital city." The Department agrees with this principle; it is our belief that local government can best plan for, design and provide those health services needed by a particular community. The State's role should only be one of monitoring to assure that standards are met, that quality is maintained and that equal access is assured. Indeed, the Administration currently has a bill in the Legislature supporting the voluntary assumption of health powers by local entities (HB 206).

Such local government responsibility assumes, of course, that a city or borough has a population base adequate to generate revenues to support the services deemed necessary. We support the Commission's "pre-servicing" policy--the recognition that "adequate levels of municipal, community, and recreational services must be in place when people arrive to avoid a 'rawness' of living often present in other new communities." (Vol. 3, p. 8). The Commission has recognized that "an adequate level of such facilities will be in place for the first and subsequent stages of population growth. It is important that early development at Willow have good support facilities and services and not be a white collar variant on a pipeline construction site." (Vol. 3, pp. 21-22).

This realization that a variety of health and social services will be needed immediately suggests that some transitionary mechanism should be devised to permit State support for the services pending the local entity's capability of assuming control and financial support. Although the Capital Site Planning Report speaks somewhat specifically to the areas of financing utilities, government buildings, schools, roads and housing, little attention is given the financing of health and social programs. (Vol. 13, pp. 13-16).

The costs of providing health and social services to any community are high. The Capital Site Plan suggests that the public development corporation would charge fees to the owners of developed land to assist in defraying its costs for providing services to property owners (Vol. 13, p. 2). But even though low-interest loans would presumably be available from the State to augment the funding of such services initially, the costs for the property owners themselves could be substantial. Following the precedent which has been established in many other parts of Alaska, the tendency may be for the State to assume total financial responsibility for providing services on a continuing basis. But when financial dominance prevails, the design, scope and very flavor of services provided most often follow. If the intent is to develop a community with control of its own destiny, then careful attention should be given to the assumption of health powers either by the new capital community or by the Matanuska-Susitna Borough. In addition, the recommendation of the Capital Site Planning Commission advocating the creation of a new reserve fund under the Bond Bank Authority Act is commendable (Vol. 13, p. 37). Unless such precautions are taken, other equally needy communities in the State could witness a potential source of funds, such as bonding revenues, slipping from their grasp.

The Capital Site Planning Commission has recognized that the Capital City Development Corporation (CDC) will of necessity be forced to address the health and social needs of those involved in the early settling of the community. But the answers may not be readily available through the examination of the structures of government, as the Capital Planning proposal appears to suggest.

In response to the admitted complexities of health and social planning, Congress established in 1974 the National Health Planning and Resources Development Act. In some ways, the regional health planning system established under that Act (PL 93-641) resembles land-use planning, with Regional Health Systems Agencies (HSA's) taking the role played by local planning commissions. Just as planning commissions develop master plans outlining how land is to be used, HSA's are now preparing comprehensive plans describing how a community's health needs can best be met. A planning commission hears a developer's proposal, compares it to the master plan, listens to citizens and recommends to the local governing body whether it should rezone a tract of land. In a similar way, an HSA hears hospitals or others who propose to spend $150,000 or more on a health facility or service change, compares it to the comprehensive plan, listens to the citizens and recommends to the state

health commissioner whether he should grant a permit--called a Certificate of Need. Presumably all health facilities or services costing $150,000 or more built in the new capital city will be required to obtain this type of certification.

The State Health Planning and Development Agency has been developing detailed and comprehensive studies on the extremely complicated health care delivery system in Alaska. Some of the facets to be considered in addressing any health problem include prevention, diagnosis and treatment, rehabilitation, research, facilities and equipment, manpower, economics, and target population. The State Health Planning and Development Agency (SHPDA) continues to work on standards for future health services delivery as well as the concepts involved in coordinating and designing a health care system for Alaska. And the Health Systems Agencies (HSA's), as one component of an integrated statewide health planning effort, can provide valuable assistance to the new capital city. The Health Systems Agencies are consumer-oriented, but involve broad provider representation as well. The Southcentral HSA, whose region incorporates the Willow area, has expressed interest in participating in the capital planning process at an early stage. The Department of Health and Social Services hopes that this will be done.

In short, the Department of Health and Social Services, while recognizing the thorough work carried out by the Capital Site Planning Commission, does have some concerns about more detailed planning for health and social services delivery as the city develops. We have largely addressed health here, and have not entered into discussions of the plethora of other services which are necessary for any community. We recognize that our degree of involvement will depend to a large extent on the staging process which the Commission has described, and on the assumption of health powers by the Matanuska-Susitna Borough.

CAPITAL SITE PLANNING COMMISSION

310 'K' Street
Suite 708
Anchorage, Ak. 99501
(907) 276-3003

December 28, 1977

State of Alaska
RECEIVED
JAN 3 1978
Lieutenant Governor

Mr. Dick Logan, Chief
Habitat Protection
Subport Bldg.
Juneau, AK 99801

Dear Dick:

We would like to thank you for your participation in and contribution to the Capital Site Planning Commission workshop on environmental policy held on November 10, 1977. We apologize that it has taken so long for us to get this response to you, but this has been a very busy time for the Capital Site Planning Commission.

We hope that you had the opportunity to view the five alternate plans for the capital that have been exhibited at the Anchorage Historical and Fine Arts Museum.

Enclosed you will find a revised copy of the Commission's environmental policy which resulted from discussions at the workshop. Would you please review them and then if you would like to add or suggest changes, we would welcome such correspondence. Any further suggestions as they might influence the plans and later reality of the new capital will be appreciated.

Sincerely,

Morton Hoppenfeld
Executive Director

MH:mrb

Enclosure (1)

HABITAT
RECEIVED
JAN 3 1978

HEADQUARTERS
JUNEAU

January 27, 1978

Morton Hoppenfeld
Executive Director
Capital Site Planning Commission
310 K Street-Suite 703
Anchorage, Alaska 99501

Dear Mr. Hoppenfeld:

Subject: Capital Site Environmental Policies

The Department has reviewed the December 2, 1977, capital site environmental policies draft. The following comments are offered for the Capital Site Planning Commission's consideration. To facilitate the review process each section is identified by page number and title. Under the section heading each comment is numbered to correspond to the statement presented in the draft document.

Page 4 Surface and Subsurface Waters

1. In developed areas bordering Willow Creek, Little Susitna River, and Deception Creek, it will be necessary to treat surface drainage waters if there is not a natural vegetated zone to serve as a filter blanket. The minimum required treatment would be a settling basin system, and in areas where paved streets and parking lots are concentrated, a gravity oil and water separator will be necessary to insure water quality maintenance in these fisheries streams. Poor drainage planning has been a major factor in the degradation of anadromous fisheries streams like Campbell, Fish, and Chester creeks in the Municipality of Anchorage.

5. Development in flood plains should not be permitted. Also where recreational use may occur on easements, trails and facilities must be designed which will minimize bank and vegetation degradation due to heavy pedestrian or recreational use.

Page 6 Fish & Wildlife

3. Include, "feeding wintering, migrating, or calving" in this statement.

5. We support the concept of mitigation and replacement of lost habitat through enhancement of adjacent areas but hope this would not mean a loss of these areas to use by sport hunters due to "park" status.

6. If natural areas are too small in size they may not support smaller wildlife.

7. We are opposed to a "park" image which will restrict possible hunting for large or small game, particularly if it encompasses an area of 100 square miles. We would prefer that hunting be allowed where it can be compatible with other uses of the land surface and not make an "absolute" closure policy. For example, hunting for bear may ameliorate some of the nuisance animal problems. ADF&G should be the agency responsible for seasons and bag limits.

8. Research should not only be for setting regulations but also to identify crucial wildlife habitats, define moose movement corridors and define where airports, roads and other major construction should be avoided.

9. Harvest of fish is more a function of effort and not always based on type of tackle used. Fly fishing can be a very effective means of harvesting fish and can also result in a fishery taking much smaller fish than would be taken by other lures. We agree studies should be initiated to determine what proper regulation might be. Again, ADF&G should be the agency responsible for setting seasons and bag limits.

11. Add "present sport fishery and habitat."

The opportunity to review and comment on your draft environmental policies is appreciated.

Sincerely,

Ronald O. Skoog
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER / SUBPORT BUILDING – JUNEAU 99801

February 15, 1978

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JUNEAU

Mr. Mort Hoppenfeld
Executive Director
Capital Site Planning Commission
310 'K' Street, Suite 708
Anchorage, Alaska 99501

Dear Mr. Hoppenfeld:

I have just become aware of your plans for a detailed comprehensive environmental assessment for the new capital site. I understand that Rupert E. Andrews, Director of my Division of Sport Fish, and his staff have been helping you in some of the initial work.

My Habitat Protection Section is the primary group in this Department, however, that handles the broad spectrum of various environmental matters and is concerned with reviewing and issuing many different kinds of permits being handled by this Department and by other Federal and State agencies. Therefore, to represent the Department and to work with you in your detailed environmental planning, I have appointed Dr. E. Richard E. Logan, Chief of Habitat Protection, and his Regional Supervisor for the Anchorage Region, Thomas W. Trent. These two individuals will be responsible for coordinating all of the participation by this Department with the Planning Commission.

We are anxious to help you in any way we can in this important planning effort. Please advise me if you need additional help from my staff.

Sincerely yours,

Ronald O. Skoog

Ronald O. Skoog
Commissioner

STATE of ALASKA

MEMORANDUM

TO: Dick Logan, Chief
Habitat Protection Section
Juneau

DATE: March 8, 1978

FILE NO:

TELEPHONE NO:

SUBJECT: Capital Site Planning Commission - Biological Investigation Program

FROM: Loren W. Croxton
Cooperative Agreement Specialist
Habitat Protection Section
Anchorage

Attached please find the Biological Investigation Program we have presented to the Planning Commission for their preparation of an Environmental Assessment of the proposed Capital construction.

As I told you in our telephone conversation earlier today, this program was developed with input from all Divisions. Each of the Division representatives present at a 2/28 meeting was made responsible for Divisional input and for "clearing" with their respective Directors. John Vania assumed the responsibility for compiling the Game portion of the programs, Larry Heckart for the fishery portion.

The material they presented me is also attached for your information.