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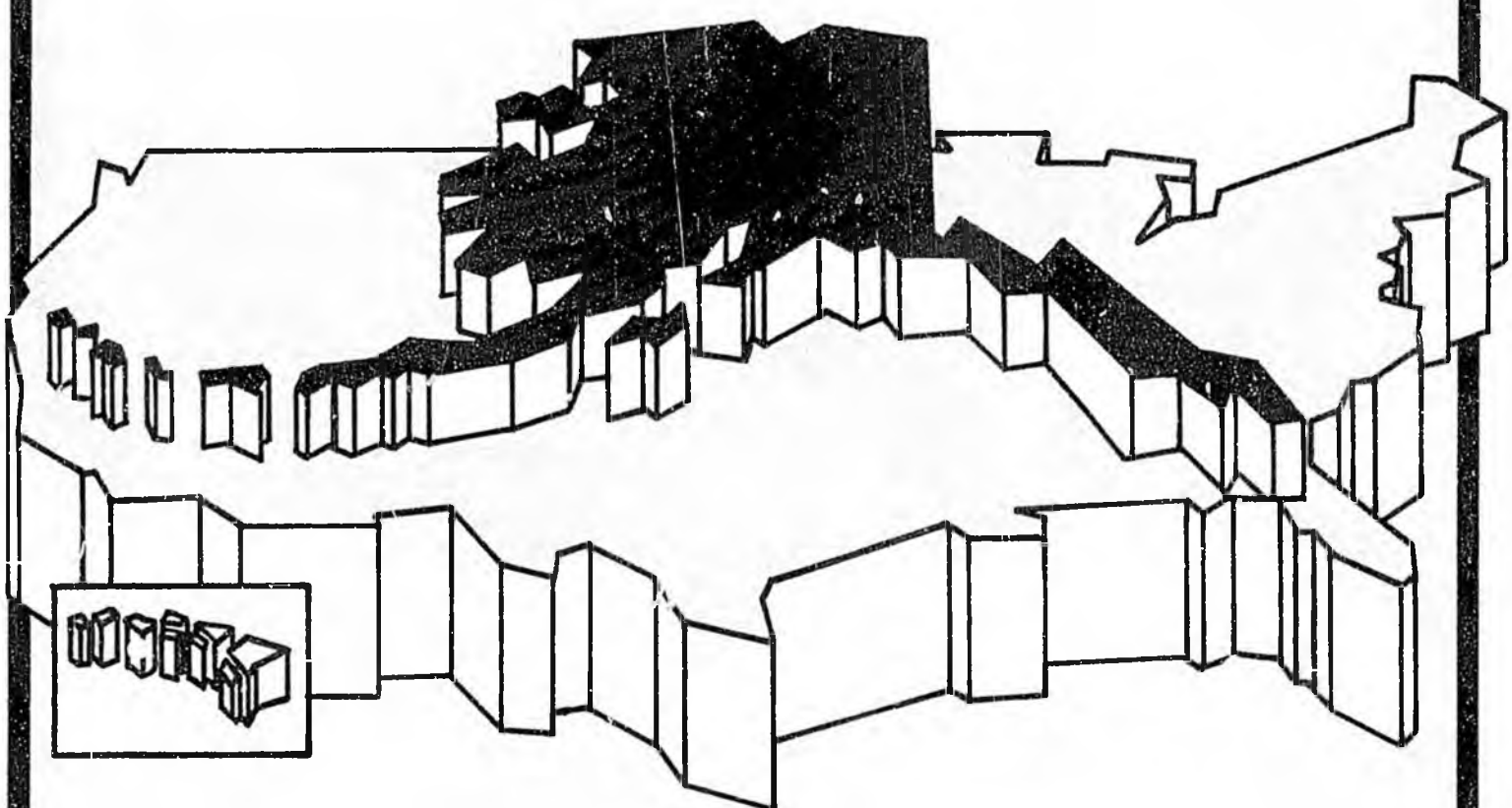
MORE PERFECT UNION

A Plan for Action



FINAL REPORT

By the Alaska Statehood Commission

January 24, 1983

President of the Alaska Senate
Speaker of the Alaska House

Dear Mr. President and Mr. Speaker:

We submit the Alaska Statehood Commission's final report as required by Chapter 161 SLA 1980 and by vote of the people. This report concludes our two-year study of Alaska's relationship to the United States. It sets forth a plan for action to improve that relationship.

In our first year we studied alternative forms of association that the people of Alaska might seek with the United States. We determined that all alternatives to statehood are now undesirable. We have concentrated our final efforts on the positive contributions that Alaska might make to improve the union. The evolution of our nation is not complete--nor are the promises of Alaska's Statehood Act of 1958 all fulfilled.

Once a forgotten territory, Alaska today is a state unique in size, cultures, and resource potentials. Alaska is a redoubt of the nation's military defense. Alaska daily pumps one out of every five barrels of oil the nation produces.

But with our new prosperity and importance come louder demands from our countrymen. Events of the 1970s and now congressional moves to limit state resource revenues teach us that we cannot afford to ignore developments from the Potomac.

As the least populated state of 50, our hopes lie in persuasion and a commitment to national unity.

When a dispute looms with the federal government, we must be ready to act. We must have research facilities already in place with facts in hand. We must stimulate coalitions of like-minded states. We must bring to Alaska those who make or sway national opinion so that they can see our situation for themselves. We must take our cases to the courts. We must gird ourselves with facts and friends.

We thank the people of Alaska for this opportunity to study and to serve. We submit this plan for action with the conviction that good government can be made better.

Sincerely,

John B. (Jack) Coghill, Chairman

MORE PERFECT UNION

A Plan for Action

FINAL REPORT

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PREFACE

A majority of Alaskans voting on Aug. 26, 1980, authorized the creation of the Alaska Statehood Commission. They directed the commission to study the status of the people of Alaska within the United States, and to make recommendations on that relationship.

It was the first time since the Civil War that citizens of a state have by their vote indicated unease with federal union.

The law provides for 11 commissioners: five appointed by the governor, two appointed by the president of the Senate, two by the House speaker, and two by the Legislative Council. We first gathered on Oct. 22, 1980, in Constitution Hall at the University of Alaska-Fairbanks. In 27 months of work, we met and heard public comment in Barrow, Kotzebue, Anchorage, Nenana, Fairbanks, Juneau, Ketchikan, Sitka and Homer. We contracted for 14 expert studies totaling 2,000 pages, on topics ranging from an oral history of the statehood movement to an analysis of the flow of funds between Alaska and the federal government. Commission staff prepared other research at our direction.

In the final pages of this report readers will find a research bibliography. Full copies of our contract research are available at state legislative information offices and most public libraries.

In January 1982 we published our first findings, entitled *More Perfect Union: A Preliminary Report*. That spring we held statewide teleconference hearings on the report.

In this final report, we set forth 29 recommendations. Some of them do not originate with the Statehood Commission; for example, a legal action fund for the states is a suggestion from the U.S. Advisory Commission on Intergovernmental Relations. Because our enabling legislation charged us to preserve Native interests, we checked to ensure that none of the actions we recommend would interfere with the legal rights of Natives. None would.

Together, our two reports give a complete picture of our duties and how we discharged them. Our preliminary report stressed findings and conclusions--few of which changed after its publication. Our final report recommends deeds: hence the title, *More Perfect Union: A Plan for Action*.

Executive Summary

History, economics and technology have combined to offer Alaska a chance for leadership beyond its borders. Once isolated, but no more, Alaska must become a vigorous actor on the national scene, eager to dispel ignorance about itself, a state eager to support the powers of all states, a state willing to break new trails with other states in forming new compacts and coalitions to solve mutual problems. Alaska must speak out against abuses of federal power, in the press and in the courts and in councils of the states and of the nation.

In August 1980 Alaskans created the Alaska Statehood Commission to study and make recommendations on the relationship of Alaska to the United States.

We considered the benefits and liabilities of commonwealth, of free association, of territoryhood, and of partition. We studied independence by legal means. None is preferable to statehood.

We have spent more than two years on this work. We compared the government we have with the Constitution we honor. We studied alternative forms of association with the United States.

We considered the benefits and liabilities of commonwealth, of free association, of territoryhood, and of partition. We studied independence by legal means. None is preferable to statehood.

We do believe that our union needs fundamental change, for federal influence has grown without guidance. But one state out of 50 can do little on its own. All states must share in the work: to write rules to clarify Article V of the U.S. Constitution, which empowers states to propose amendments; to take joint legal action to oppose federal intrusions; to sponsor a national gathering to forge a balanced federalism. Gaining control of our union will take decades of work.

Alaska has the money and the need to spur these and other nationwide projects. We must become an activist state, reaching out for coalitions obvious (western and resource states) and not so obvious (the fishing states of Massachusetts and Maine). We must defend our regional interests with research, persuasion, and pragmatic politics. We must refuse federal grant money if it comes with conditions that undercut our self-determination.

States cannot passively depend that court decisions will quote the 10th Amendment to stop federal action. The 10th Amendment, which reserves unspecified powers to the states, needs action by the states to flesh it out.

We learned that full statehood has not yet come to Alaska.

The Alaska Statehood Act contains mutual promises between the people of Alaska and the federal government. The federal government in 1959 promised to transfer to Alaska an entitlement of 103 million acres of land by 1984. The national government would not meet that deadline and had to extend it to 1994. Alaska sued to get action. The Interior Department promised in a 1981 out-of-court settlement to transfer 13 million acres each year until the total is satisfied. The lesson of the past is clear: the federal government will not honor the land and revenue-sharing pacts of the Statehood Act without Alaska's constant vigilance.

Alaskans also have agreements to keep. When we voted for the Alaska Constitution and for the Statehood act we promised to surrender forever all claims to federal lands in Alaska. We should not now repudiate this "clause irrevocable" to pursue fruitless court suits claiming title to this land.

This report is addressed to Alaskans and dwells on Alaskan particulars. But every state has some problems with federal dominance, be it Hawaii with the Jones Act, Florida with immigration, California with accelerated federal oil leasing of the Outer Continental Shelf, or the New England states with federal treaties that parcel out fisheries.

We studied the powers of the states. We reject the notion that our governmental system forms a pyramid of power with the federal government seated on top. The states and federal government

are partners. Each has important duties. States contribute new ideas. They train national leaders. States adapt national goals to local realities. We are a federal republic and federalism thrives in diversity, on pluralism. A federal nation will always have variety; states have different needs and incomes, different economies, different penalties for crimes, different kinds of local government powers. And, at any given time, some states once poor--like Alaska--prosper while others count pennies. This is nothing new. Wealth flows among the states under the pull of the fickle but irresistible tides of population, economy, and technology. Some resource-poor states would breast these tides. Their officials appeal for federal laws to cap state severance taxes on energy resources, encouraged by a 1981 U.S. Supreme Court opinion[1] that Congress does have power to limit states' mineral revenues. They call for changes to the Windfall Profits Tax[2] to put a levy on states' royalty incomes. Either law would pull down a pillar of state sovereignty: the power to raise necessary revenues. Either law eventually would hurt the states now advocating them, for the precedent once established would spread to all state revenue measures.

We Alaskans wince at the unfamiliarity the leaders of these states display about our wealth, our resources, our climate, and our needs for the highways and the sewers and the safe-water systems that other states take for granted. We must dispel this ignorance with facts and better press relations. We also must educate our own children about the history and cultures of our state, and its niche in the union. We must teach every schoolchild the rights and responsibilities of American and Alaskan citizenship.

Resource-poor states, mainly those of the Northeast and Midwest, also lobby for new grant formulas which would cut federal aid to prosperous states. Alaskans do not automatically oppose some level of redistribution. Already the federal government collects $3 in taxes on general economic activity in Alaska for every $1 it spends here. It collects 46 percent of the total revenue from the Prudhoe Bay oil field owned by the state. The state collects 31 percent.[3]

We must make clear that a healthy and prosperous Alaska is in every American's interest. From Alaska comes one-eighth of the nation's gold; one-fifth of the nation's oil production; and two-fifths of its harvested fish. Off Alaska is the world's richest salmon fishery. Alaska has 10 of 16 strategic minerals needed for the nation's security.[4] In Southeast Alaska is one of the world's biggest metal deposits: a mountain of molybdenum called Quartz Hill. Alaska--once thought hopelessly distant from arteries of trade --now sits at the hub of international air routes and the Pacific Rim trade. Half the world's population lives on the Pacific Rim.

A federal nation will always have variety; states have different needs...

Alaska's bounty and its trade suffer under such federal laws as the Export Administration Act of 1979, which bans the export of Alaska oil, and the Jones Act, which requires U.S. shipping between U.S. ports. Some Alaska oil fields and mineral deposits will never develop due to the artificially high transportation costs these shipping acts breed. Further, these laws sap revenue from the deposits we have already opened. Lifting the oil export ban could raise Alaska's oil revenues $500 to $800 million yearly, and increase federal revenues $1.2 to $1.8 billion yearly.

Problems like the Export Administration Act need immediate attention. Other tasks--like rebuilding the powers of the states--will take years. Some changes we Alaskans may have to accept for the good of the nation though they do not profit us in the short term. But eventually we will see the states transformed, giving new life to the nation Abraham Lincoln called the "last, best hope of earth."

Therefore, we recommend:

1. Alaska should become an activist state. It should take a lead among states to define the boundaries of state powers in our union.

2. Repeal of the Jones Act will serve Alaska's and the nation's interest, and Alaska should seek repeal. In the short term, the state should dedi-

[1] *Commonwealth Edison v. Montana*, 69 L. Ed.2d 884.

[2] A federal district court judge in Wyoming recently ruled the Windfall Profits Tax Act unconstitutional on the grounds that geographic distinctions in the act exempting some areas of Alaska from taxation violate Article I, Section 8 of the U.S. Constitution. This section requires that "excises shall be uniform throughout the United States." Whatever the outcome of the lawsuit, Alaskans should consider the advantages of dropping the current geographic exemption in favor of an exemption for new oil development regardless of location. Such an approach might answer both the constitutional challenge and legitimate national energy interests. It might strengthen Alaska's role in the federal system.

[3] Industry collects 23 percent. These percentages reflect the *total* take of revenue from the field. They do not reflect the shares which would be taken by each if wellhead price went up. If the wellhead price goes up, the division of these additional dollars is weighted even more toward the federal government, largely due to the federal Windfall Profits Tax. If, for example, wellhead price of Alaska oil went up one dollar after repeal of the Jones Act, the federal government would capture about 60 cents of the increase, the state 28 cents, and industry 10 cents.

[4] These are in deposits believed to be commercially viable. However, the bulk of Alaska's cobalt and nickel ores are located in Glacier Bay National Park, which is not open to mining. Geologists estimate that Alaska has one-sixth of the nation's cobalt reserves and one-fifth of its nickel.

cate itself to getting the Jones Act amended to allow the use of foreign-built ships in the Jones Act trade.

3. Alaska and our congressional delegation should vigorously oppose extension of that portion of the Export Administration Act of 1979 which bans the export of Alaska North Slope oil. This law expires in September 1983.

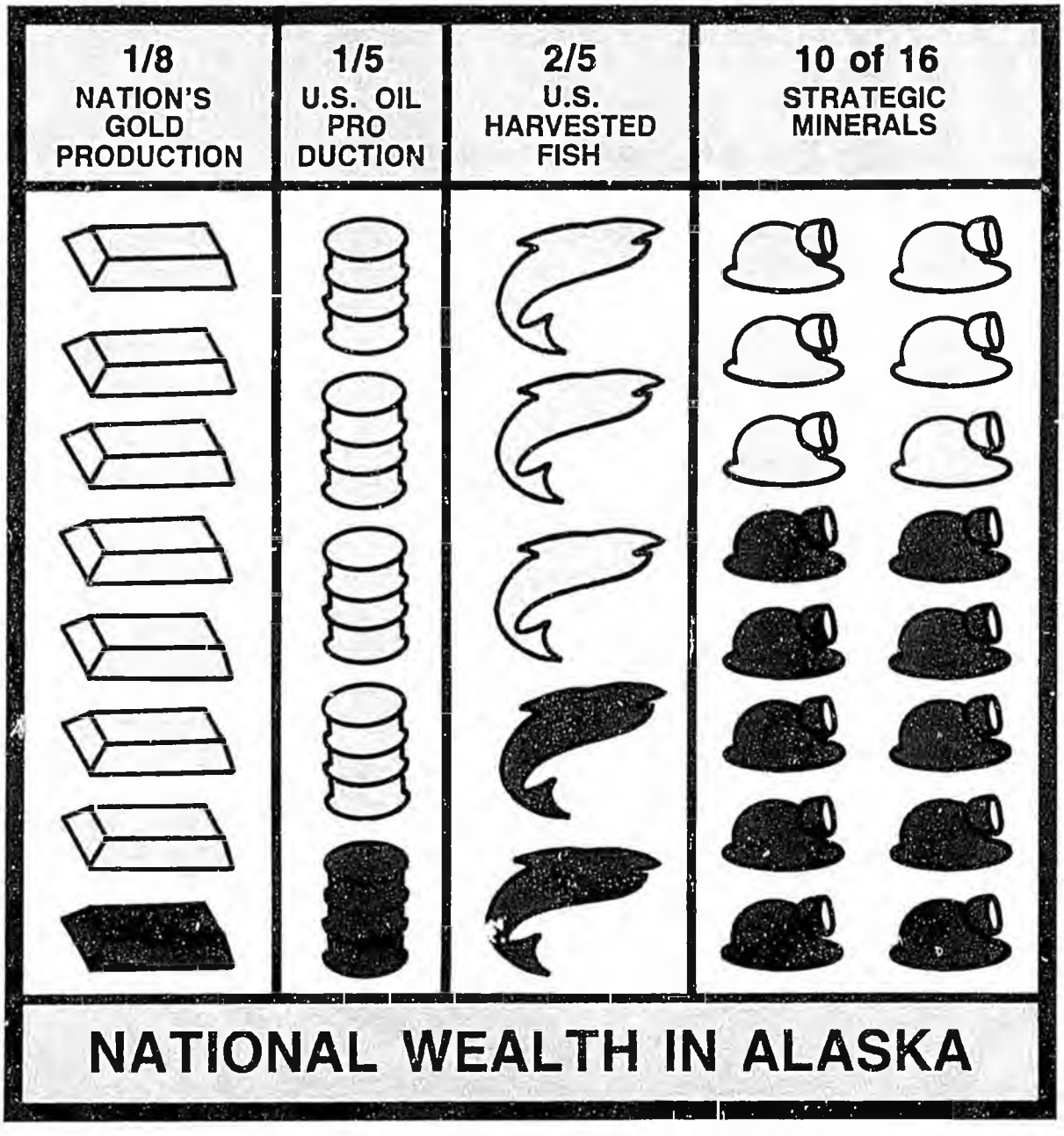
4. Alaska must act immediately to create in Washington, D.C., a research and advocacy institute and ask other resource states to join in supporting it. The institute would combat efforts in Congress to limit or tax state resource revenues.

5. The state Board of Education and Alaska school districts should require the teaching of Alaskan history, citizenship and culture.

6. The Alaska State Legislature should pass a resolution applying to Congress under Article V of the U.S. Constitution for the calling of a national constitutional convention. The convention's sole duty would be to define the procedures governing all future constitutional conventions called by the states.

7. Alaska should take the initiative to establish a legal action fund for the states. Lawyers for this fund would sue to oppose illegal and coercive federal restrictions, regulations burdensome to state and local government, and excessive use by Congress of its commerce powers to override state and local laws.

8. Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.



Shown here are some of the national assets Alaska supplies.

9. Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

10. The governor of Alaska should prepare the political impact statements on proposed major federal actions. Eventually, the National Governors' Association should prepare them on the behalf of all states.

11. Alaska's governor should invite the leaders of northwestern states and the western Canadian provinces and territories to join Alaska in establishing a conference modelled after the New England Governors and Eastern Canadian Premiers Conference. The governor should establish in the executive branch an interagency task force on foreign relations.

12. The Legislature and the governor should immediately invite representatives of Hawaii and the noncontiguous possessions to meet with them to explore setting up a permanent coalition to deal with such common interests and problems as the effects of discriminatory transportation laws.

13. Alaska must vigorously police federal implementation of the Alaska Statehood Act. We should insist that the remaining land transfers be completed within four years, and we must guard against congressional attempts to unilaterally change the Statehood Act or Alaska Constitution. The Legislature should authorize and direct the lieutenant governor to place all such attempted changes in the Statehood Act or Alaska Constitution before Alaskan voters in a ballot proposition.

14. Alaskans should consider two amendments to the state constitution which will clarify Alaska's powers as a sovereign state and its authority to engage in foreign relations.

15. State officials should refuse federal grants carrying particularly burdensome requirements.

16. The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

17. The governor should establish an office of external relations on his staff, to be headed by a special assistant charged with coordinating Alaska's expanded relations with other states and with foreign nations.

18. The State of Alaska should explore with the federal government and Native organizations the establishment of a permanent joint fact-finding and advisory body to air and help reconcile problems that arise over land, resources and other interests.

19. The Legislature, in order to give all Alaskans the greatest measure of home rule, should divide Alaska's single unorganized borough into regional unorganized boroughs in accordance with the intent of the state constitution.

20. The state should establish an Alaska information office under the governor's direction to produce clear, objective, precise information about Alaska for nationwide distribution and to arrange for visits to Alaska by members of the national press corps, members of government and other opinion-makers.

The State-Federal Relationship

We on the Statehood Commission believe that the state of Alaska has a special role to play in the nation--one that it must play if it and other states are to preserve their historic and constitutional jurisdictions in the American republic.

Alaska, we think, must become a vigorous actor on the national scene. It must become a state eager to dispel ignorance about itself, a state eager to support the powers of all states, a state willing to break new trails with other states in forming new compacts and coalitions in order to solve mutual problems. Alaska must be willing to speak out against abuses of federal power, in the press and in the courts and in the councils of the states and of the nation--not just for its own purposes but just as much to maintain the relationship known as federalism, in which the states have their important roles to play and the national government has its separate and co-equal role.

Alaska, we think, must become a vigorous actor on the national scene.

This report is addressed to Alaskans and thus dwells on Alaskan particulars.[5] But it could just as well dwell on the problems that New England and Pacific Northwest states have with federal treaty making on fisheries; on Hawaii's difficulties with the Jones Act; on California's concerns about federal oil leasing of the Outer Continental Shelf; on Nevada's complaints against the dominant landlord within its borders, Uncle Sam; on Washington State's battle to prevent Washington, D.C., from overriding state rules on siting energy facilities; or on Montana's efforts to retain some control over how strip mines are developed within its borders.

In our preliminary report we told Alaskans that "Alaska's short history as a state happens to coincide with a 20-year national diminution of the power of all the states through the actions of the federal government," and added that "Our studies on the status of Alaska within the United States have shown us...that the penetration of the federal government into the farthest corners of American life is the rule, not the exception. We share the burden with others" (*More Perfect Union: A Preliminary Report*, p.1).

We still hold to this view. The question is: What can Alaska do about it?

"The states' principal tasks," write Daniel Elazar and Stephen Schechter of the Center for the Study of Federalism in a report prepared for the Statehood Commission and Office of the Governor,[6] "are to govern--to make and implement policies within their respective spheres of jurisdiction, not simply to administer programs developed by the federal government--and to share in the governance of political conduct for the country as a whole.

"This role of the states--as polities, not middle managers--is constitutionally correct and historically accurate." (p. ii.)

Schechter and Elazar call for the states to rebuild their roles in the federal system by practicing "federalism without Washington"--by educating their citizens to what statehood means, by strengthening bonds between citizens and their states, by exercising such constitutional powers as amending the U.S. Constitution, by forming coalitions and making compacts with other states without federal approval, and by entering into relations with foreign governments, notably Canadian provinces.

By circumstance, Alaska now has the financial resources that will allow it to move out of its traditionally isolated position in the family of states to become a catalyst for change in the nation--if it chooses to do so. If we Alaskans choose to become isolated, choose to curse the

[5]Readers will note that some federal-state issues--like state control of fisheries or state authority to give resident preference--do not receive much attention in this final report. This is not to suggest that these conflicts are unimportant or soon to be solved. Rather, we found the key questions in these conflicts either too technical (e.g., the biological justification for the North Pacific Fishery Management Council's cutback in the king salmon harvest) or too quick-changing. As a short-lived study commission with limited resources, we directed our efforts to research which would not go quickly out of date.

[6]*The Role of the States as Polities in the American Federal System*, 1982.

darkness when providence has provided us with a plenitude of candles to light, then we shall make no lasting contribution to the nation which we love. And our particular problems with the federal government, of which also we have a plenitude, will continue to bear sore upo is.

Our charge on the Stateho ommission over the past two years ha examine our state's relationship wi... ed States, study alternatives, report and recommend.

We reported that statehood is eminently preferable to any alternatives to statehood. We see no reason to change that conclusion. We also reported that one state among 50 is weak. Only states acting together can determine where the limits to federal power may be.

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Deliberate federal policies delaying the transferral of lands owed the state under the Statehood Act of 1958 did anger Alaskans. Deliberate federal actions shrinking the amount of available lands from which the state might make its choice for transfer also angered Alaskans. That anger cooled recently after the U.S. Department of the Interior, in order to settle a suit brought by the state of Alaska, agreed to complete the land transfers. It promised to be Alaska's "good neighbor."

But as we have warned, these changes in policy are as much political as legal. A later administration may revert to delays and sleight of hand. Vigorous monitoring of land transfers and a resolve to use all legal and political means to enforce them remain our only guarantee that soon the state of Alaska will acquire all of its promised lands of 103 million acres.

We retain our sympathies with those in this state and others who would lay state claim to title to the federal public lands. Sentiment for such action is strong in this state, as the results of the November 1982 election show. But we must repeat that making such a claim in court would be futile. It would waste time and money and deliver disappointment. No such claim has ever succeeded in the federal courts.

For Alaska to make such a claim would violate the language of Article XII, Section 12 of the state Constitution, by which "The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union."

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The most dangerous threat to this state and all the states remains the orchestrated efforts of Northeast and Midwest members of Congress to put a federal limit or tax on state resource revenues.

Bills pend in Congress. Pressure, excited by propaganda, builds to pass them.

These measures aim to nationalize, for the first time in the republic's history, the main revenues of resource states These bills also seek to dictate how resource states may spend any resource-tax dollars left to them. Should one of these bills become law, it would strike away one pillar of the

The most dangerous threat to this state and all states remains the orchestrated efforts of Northeast and Midwest members of Congress to put a federal limit or tax on state resource revenues.

states' sovereignty: the power to raise and allocate revenues within their borders.

All states should fear such a new, radical federal intrusion.

Resource states will need friends in this battle for self-determination. When we Alaskans ponder how to spend our short-lived oil bounty--whether on dams, roads, environmental protection or on checks to all residents--we must give regard to what people in other states think. Residents of other states see oil from Alaska as their oil too. We must respect their opinions by providing them with precise, clear information about how well we are managing our resources:

> "Americans must perceive that Alaskans are managing their wealth in a manner consistent with the national interest. To the extent that Alaskans are seen departing from that national interest, the federal government, responding to public opinion, will intervene to limit or cut off the revenue flow. ....Americans are somewhat tolerant of great wealth but *only* when wed to some concept of stewardship" (Havelock, p. 9).

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Alaska, like Hawaii and most of the other noncontiguous parts of the United States, plays unwilling host to the extra U.S. maritime costs imposed on it by the federal Jones Act--the Merchant Marine Act of 1920. Alaska by itself supports one-third of the Jones Act fleet.

That fleet, protected from foreign competition, takes huge amounts of money from the pockets of Alaskans, individually and corporately. The act adds $41 million a year to the cost of goods coming into the state, and thereby helps raise our cost of living.

But the worst effects of the Jones Act are those on the state's revenues from oil and on the future of state mineral development. Each year, because of the Jones Act, the state treasury is denied from *$63 million to $176 million in oil revenues* (Tussing, p. 25).[7] As Tussing points out, the long-range

[7]See also the Statehood Commission publication *The Jones Act and its Impact on the State of Alaska*, by Simat, Helliesen and Eichner, 1982; and Congressional Research Service, "Effect of the Jones Act on the State Economy of Alaska."

effects of the act will be to chill exploitation of oil fields with high developmental costs--including that of the Ugnu field on the North Slope of Alaska, possibly the biggest oil deposit in North America. Every oil field that the Jones Act prevents from being developed is an oil field removed from the nation's strategic oil reserve. In times of national crisis, an undeveloped oil field cannot yield a drop for the national welfare.

Alaska must exert all of its political and persuasive powers to get national support to amend and then repeal the Jones Act. Hawaii and the U.S. island possessions are natural allies for that effort. But other states will join us when they learn that the Jones Act, written to preserve a national maritime fleet for use in time of war, instead has acted to make that fleet shrink.

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A related and equally major problem is the federal ban on the export of Alaska oil to Japan and other nations. Lifting this ban might ultimately raise Alaska's oil revenues $500 million to $800 million annually (Tussing, p. 27 ff.). Since the federal government earns more than twice as much in taxes on each barrel of Alaska oil than does the state of Alaska, lifting the export ban could also increase federal revenues by $1.2 to $1.8 billion yearly. Exporting Alaska oil to Japan would help balance our country's $16 billion annual trade deficit with that nation.

The Export Administration Act of 1979 imposes the export ban. That law expires Sept. 30, 1983. Alaska's officials must create the national will to ensure that this portion of the Export Administration Act expires forever. The entire nation will benefit.

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The particulars of Alaska's actual or potential problems with the federal government can fill a catalog. It is no wonder that the state is suing the federal government over federal plans to allow wide-open oil exploration and development of the Outer Continental Shelf (as are California and Washington). *Three quarters of the Outer Continental shelf under the U.S. flag--74 percent--surrounds Alaska. The impact of development will fall on fisheries, wildlife and small vil-*

Economic activity in Alaska puts more dollars into the federal treasury than the federal government spends in Alaska.

lages in remote Alaska. However, the state will derive no major revenues from successful OCS oil discoveries. Nor will other OCS states. That money will go to the federal treasury.

Alaska's large fisheries are finite; the demand on them is heavy. Like other coastal states, Alaska manages streams and manages coastal areas out to the three-mile limit. But the Alaska resource swims in and out of federal treaty areas and international zones of management and the fishermen follow. A host of federal and state agencies and advisory and rule-making bodies involve themselves in regulating the fragile resource. The resulting management complexities fuddle laymen and turn ordinary fishermen into frustrated pilot-house lawyers. Federal treaty-making and management powers require unceasing vigilance from the state's chief officials and virtually dictate that Alaskan fisheries officials seek to make common effort on the federal level with their counterparts from Maine and Massachusetts, and from Washington, Oregon and California.

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The large federal presence in Alaska (one out of five nonagricultural jobs) creates special sensitivities to the gyrations of national budget making. While the federal government spends large amounts in Alaska that benefit the economy, it must be recognized that for every $1 that the national government spent in this state in fiscal year 1981, the U.S. Treasury earned $3 from general economic activity in Alaska (Institute of Social and Economic Research, 1982).

Alaskans must not shy from pointing out that the oil wealth benefiting this state pours huge sums into the coffers of the national government. Alaska is paying its own way in the family of states and could pay more if oil export is allowed and if oil development is allowed without unnecessary federal fetters.

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Our research indicates that problems are bound to flow from the complicated patterns of land ownership developing in Alaska because of federal land withdrawals and because of the federal government's land transferrals to the state and to Alaska Natives.

When the transferrals are complete, Natives and their organizations will have title to 11 percent of Alaska's land. The state will have title to about 29 percent. Private ownership other than that of Native organizations will be about 1 percent. The federal government will own and manage the rest, nearly 60 percent. All these landowners will meet in conflicts over road and other transportation corridors. They will differ over management of fish and game. A permanent way must be found to ease these difficulties and resolve the important factual disagreements.

Frictions also will result from national laws that apply with peculiar force to unique conditions in Alaska. Under the laws the U.S. Army Corps of Engineers is charged with issuing permits to allow discharge of dredge and fill materials into United States waters, including wetlands. Few will argue the necessity for such regulation in general. *But 57 percent of all of Alaska (223 million acres) is wetlands, including 75 percent of the North Slope, where major oil development is centered* (Arctic Policy Review, p. 8). We cannot believe that Congress intended to put more than half of the entire area of a single state under the Corps' permitting procedures.

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We should like to return to the point made at the beginning of this discussion: Alaska shares with other states a general loss of state powers because of recent federal growth into state and local affairs in the past two decades.

This raises an implied question: What are states good for?

When a federal program fails...the shock waves vibrate from Key West to Kotzebue.

States can be excellent problem solvers. In this regard, they have been innovators--"laboratories of democracy." States pioneered open-meetings laws, campaign-reporting laws, pollution-control laws, open-housing laws, and job-safety laws, to mention a few. Not every idea in every state is good. But when a program fails, the state line confines the error. When a federal program fails--witness federal regulations and spending for standardized wastewater treatment plants--the shock waves vibrate from Key West to Kotzebue.

States serve as "fail-safes" when federal action fails to occur or breaks down. In the energy crises of the past decade, the states acted to ration gasoline while the federal government debated. They also enacted energy-saving codes and restrictions and energy-related loan programs, all tailored to their unique conditions.

States train leaders for national office. Of 40 U.S. presidents, 24 had held state or local office; 14 were governors.

States protect diversity. Within the bounds of the Constitution, citizens of a state may impose upon themselves political limits that citizens in other states may not relish. Some states impose a death penalty. All regulate liquor and its use, but differently. All administer a special body of criminal and civil law. Alaskans for instance, have set for themselves stronger rights of personal privacy than people elsewhere.

States, by encouraging citizen participation in the democratic process, provide political access to those desiring a change in national policy. Where a central government controls all governmental affairs, political dissidence is shut out, if not silenced. No better reason exists for maintaining the powers and the health of all the states.

But more than all these, states remain independent governments under the U.S. Constitu-

tion, with independent rights. It is the Constitution which is supreme over the states, not the national government,[8] though the practice of the past 20 years has worked to establish federal supremacy.

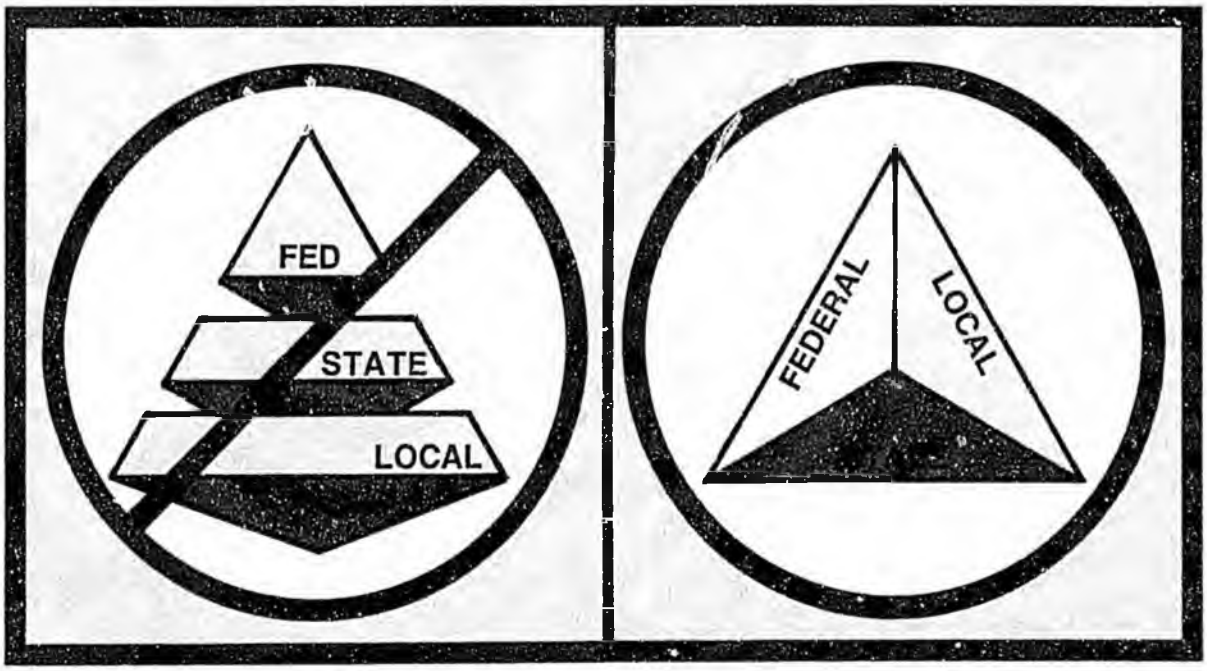
This situation has stemmed from the national government's need to concentrate its powers to meet economic and military crises. It has also stemmed in great part from the federal government's overwhelming ability to create and control money. States, municipal governments, private firms and other special interests have lined up to dip dollars out of the national pool, to water such programs as job training, public housing and mass transit, the upgrading of schools and the studies in them, and to fund a host of new social services.

This federalizing of state and local matters has created a false metaphor. It is that of the intergovernmental pyramid. In this metaphor at broad bottom rests a foundation of municipal governments. In the middle hunch the states. At the peak, at the top of the heap, drawing sustenance from below and dispensing money and orders from above, is the federal government. This model, as Schechter and Elazar point out, perverts history and the Constitution.

The states are not "middle managers," responsible for carrying out the federal directives from above. The states are partners under the Constitution with the national government. They must assert their role in that partnership--manage their own affairs and polish their powers.

Alaska, to deal with its particular problems, must brandish the benefits of statehood. For the good of the nation, it and other states must resist the federal drive toward supremacy. Our problems cannot be dealt with passively. Alaska should exercise its rights to make compacts with other states; should exercise its power to contract with Canadian provinces and territories; should exercise its voice in urging other states to join with it in coalitions to solve mutual difficulties; should use its wealth to defend its prerogatives and thus the prerogatives of all states.

That is why, after two years of study, we recommend that Alaska become an activist state, one willing to dispel ignorance about itself, one willing to break trails, and one willing to speak out knowledgeably--in the press, and in the courts and in the councils of the states and the nation.



The false metaphor of federal dominance distorts the historical and constitutional basis of the Union.

[8]See *The Role of the States as Polities in the American Federal System*, by Schechter and Elazar, p. 12; and the Constitution's "supremacy clause," Article VI, Section 2.

Recommendations

1 Alaska should become an activist state. It should take a lead among states to define the boundaries of state powers in our union.

In our two years of work, we have studied federal-state conflicts both past and present. We noted the powers at stake. We considered who won each argument, and why. Distilling these principles, we applied them to the state of Alaska.

Our conclusion is that action must force each issue.

If resource states feel threatened by propaganda from the Northeast-Midwest Institute, the solution is to generate our own research and distribute it in the same circles of press and Congress. If other resource states are slow to get underway on this, then Alaska should put up seed money to get a research agency started.

If we need an agreement with another state or a Canadian province, we should proceed to get it. We need not seek Congress's approval. Our research shows that the Supreme Court rarely invalidates such agreements for lack of congressional consent. In fact, seeking congressional approval often produces delay and unwanted conditions tied to this consent.

Some federal grants require a reorganization of state practices as a condition of receiving money. If we do not like to be thus dictated to, we should refuse the grant and take our protest to those who write the conditions.

In government, power flows to those who use it.

Across the nation, state officials moan about federal intrusion. Yet they have shunned using the built-in control the Constitution offers: the states' power to propose and ratify amendments independent of Congress. The framers saw amendments suggested by the states sitting in convention as vital to equilibrium between states and the national government. But the states have never held such a convention.[9] All proposals have seeped through Congress, which consistently favors federal sprawl at the expense of the states.

The greatest hindrance to a convention for proposing amendments is the lack of procedural rules. If the states want results, they should first assemble a constitutional convention solely to set rules for future conventions.

If Alaska or another state feels a federal action violates the constitutional balance of powers, it should promptly sue. As important as the suit is getting support from all states and municipalities affected by the action. The best way to organize this support is through a legal action fund.

Our point is simple: the federal government responds poorly to suggestions from the sidelines. To preserve their powers states must use their powers and accept the risks that such action brings.

2 Repeal of the Jones Act will serve Alaska's and the nation's interest, and Alaska should seek repeal. In the short term, the state should dedicate itself to obtaining an amendment to the Jones Act which would allow the use of foreign-built ships in the Jones Act trade.[10]

Alaskans have long felt that the federal law called the Jones Act, also known as the Merchant

[9]It is important to add that states can--with their resolutions calling for a convention--push a reluctant Congress into action. The U.S. Senate long opposed direct election of senators, but after two-thirds of the state legislatures called for a convention to propose this amendment, Congress did pass a similar proposal which was ratified as the 17th Amendment in 1913. If 34 states call for a convention to propose rules for Article V conventions. Congress will probably propose the rules in legislation to prevent such a first convention being held.

[10]Commissioner Davic strongly disagrees with the commission's conclusions and recommendations concerning the Jones Act. Commissioner Davic submitted additional materials supporting his position which are part of the official record of the commission.

Marine Act of 1920, works to the state's disadvantage. Our research on the economic effects of the Jones Act on Alaska confirms this intuition. We also found that the Jones Act--intended to protect and nurture a merchant marine for the nation's benefit in war and peace--is in fact destroying it.

This is one of the ironies of the Jones Act...our merchant fleet has dropped by half since World War II while the world tonnage has gone up sixfold.

The Jones Act requires that vessels carrying goods between U.S. ports be built in the U.S.; registered in the U.S.; and owned and manned by U.S. nationals. Jones Act vessels enjoy protection from free-market competition by foreign ships, which have much lower construction and manning costs.[11]

As typical of protected markets, higher freight rates result in the U.S. coastwise trade. In the contiguous states, where ships face lively competition from land transport, the coastwise liner trade in most cargoes has priced itself out of business. Rail and truck lines move the goods more cheaply.

This is one of the ironies of the Jones Act. It seeks to build a sheltered environment for U.S. vessels to create domestic prosperity and wartime security. Yet our merchant fleet has dropped by half since World War II while the world tonnage has gone up sixfold.[12]

Because they have no legal alternative to the Jones Act fleet, Alaska and Hawaii and the contiguous territories (except the Virgin Islands, which is exempt from the act) pay the higher freight rates which it imposes. These freight rates amount to a subsidy--the lifeline of the remaining Jones Act fleet.

If the nation feels it benefits from the Jones Act, it should distribute its costs evenly aross the nation. *As matters are, the Alaska trade now supports nearly one-third of the entire Jones Act fleet.*

The Jones Act burdens Alaska in several ways. Its strongest effect is to reduce state oil revenue. The act also raises the cost of all domestic freight coming to Alaska. And it discourages the development of new oilfields and mineral deposits in Alaska.

The Jones Act decreases state oil revenues because the extra shipping costs it imposes decrease the "wellhead" price of Alaska oil. Each extra dollar of shipping costs decreases the wellhead price by a like amount.

Wellhead price is the price upon which Alaska levies royalties and taxes.[13]

Our research shows that the Jones Act, by requiring the use of high-priced American tankers, reduces the wellhead value of Alaska oil by at least $225 million yearly, and perhaps as much as $630 million yearly. Because Alaska would get about 28 cents of each dollar increase in wellhead value (in taxes and royalties), *this means Alaska is foregoing between $63 and $176 million dollars yearly in state revenue.*

In addition to its effect on oil income to the state, the Jones Act adds approximately $41 million yearly to the cost of goods coming to Alaska in the liner trades, mostly consumer goods, building materials and business supplies.

The Jones Act chills the development of oil fields and mineral deposits which would be on the "margin" between profitable and unprofitable. An example is the huge Ugnu/Kuparuk oil-tar deposit west of Prudhoe Bay. If developed, it will have very high production costs. An extra dollar of shipping cost per barrel of oil can knell financial death for such a field.

This is perhaps the worst effect of the Jones Act--that down the years, the act will continue to sour the development of Alaska.

Strong lobbies back the Jones Act. We fear that total repeal of the act is unlikely to occur in the near term, though the entire nation would benefit from repeal. More domestic cargoes would move by water than now do (Tussing, p. 40). The federal government would reap $135 to $378 million more each year in revenue from Alaska oil, since it gets about 60 cents of each dollar increase in wellhead value.[14]

The state's long range goal must be to get the act repealed. One amendment to the Jones Act holds immediate promise. It would allow into the Jones Act trade *foreign-built ships* that meet American safety standards. It would keep in force the requirements of U.S. manning, U.S. registry, and U.S. ownership. The requirement of U.S. construction--by far the most expensive feature of the Jones Act--would be dropped. This would ease the burden on Hawaii, Alaska and other noncontiguous parts of the U.S. and would help expand the size of the U.S. merchant fleet.

[11]See the Alaska Statehood Commission publication, *The Jones Act and its Impact on the State of Alaska*, by Simat, Helliesen and Eichner, Inc., 1982.

[12]See the Alaska Statehood Commission publication, *Alaska's Economy and the Merchant Marine Act of 1920*, by Arlon R. Tussing and Associates, Inc., 1982.

[13]Wellhead price equals the price a refinery pays for a barrel of oil *minus* the cost of moving that oil from well to refinery. The price the refinery pays is roughly the "world price" for that grade of oil as determined by world market conditions and actions of the Organization of Petroleum Exporting Countries.

[14]Based on an annual increase in wellhead price of $225 to $630 million (Tussing, 1982, p. 2).

Our research shows that this change would bring a net increase in U.S. shipping jobs. New jobs in the resurrected contiguous-states coastwise trade would more than offset the jobs lost in U.S. shipyards now building merchant vessels.

We would hear the objection that some U.S. shipbuilding capacity would not be available should another protracted, non-nuclear conflict like World Wars I or II occur. Congress should weigh the alleged national defense benefits against the present-day costs of the act. The Jones Act breeds high prices and inefficiency. It is slowly destroying our U.S. merchant marine. The act must be amended; it ought to be repealed.

3

Alaska and our congressional delegation should vigorously oppose extension of that portion of the Export Administration Act of 1979 which effectively bans the export of Alaska North Slope oil.

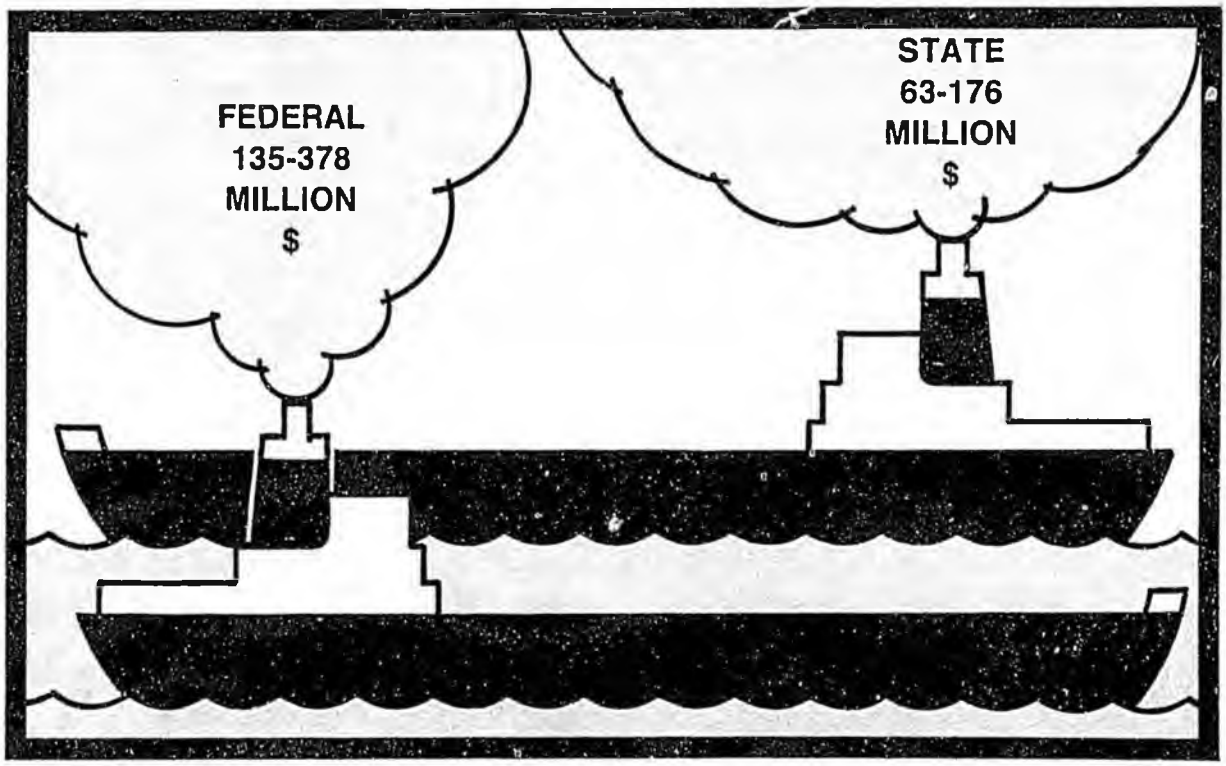
Federal law prevents the export of Alaska North Slope oil and keeps it from a natural market: Japan and the Orient. It forces this oil into expensive American tankers and depresses the price of Alaska oil in other ways as well. Lifting the export ban might ultimately increase Alaska's oil revenue by $500 to $800 million annually.[15]

Two federal laws encumber the export of North Slope oil. One is the Trans-Alaska Pipeline Authorization Act of 1973. It places difficult, but not insurmountable, obstacles to the export of any oil which has flowed down a pipeline sitting on leased federal land. (This law covers the Alaska pipeline and some pipelines in other states as well.)

The second law is a section of the Export Administration Act of 1979. It aims only at Alaska North Slope oil. It sets conditions so numerous and so harsh that, in effect, it lays a total ban on the export of this oil.

The Export Administration Act of 1979 expires on Sept. 30, 1983. State officials and the Alaska congressional delegation should devote themselves to blocking extension of that part of the act relating to North Slope oil. If Congress renews it, a national opportunity to export our oil will not come again for years. North Slope production may be declining by then.

The export prohibition, by default, requires



The effect of the Jones Act on wellhead price depresses federal and state oil revenues, in the dollar ranges shown.

OIL REVENUES LOST FROM JONES ACT RESTRICTIONS

[15]See pp. 25-28 of the Alaska Statehood Commission publication *Alaska's Economy and the Merchant Marine Act of 1920*, by Arlon R. Tussing and Associates, Inc., 1982.

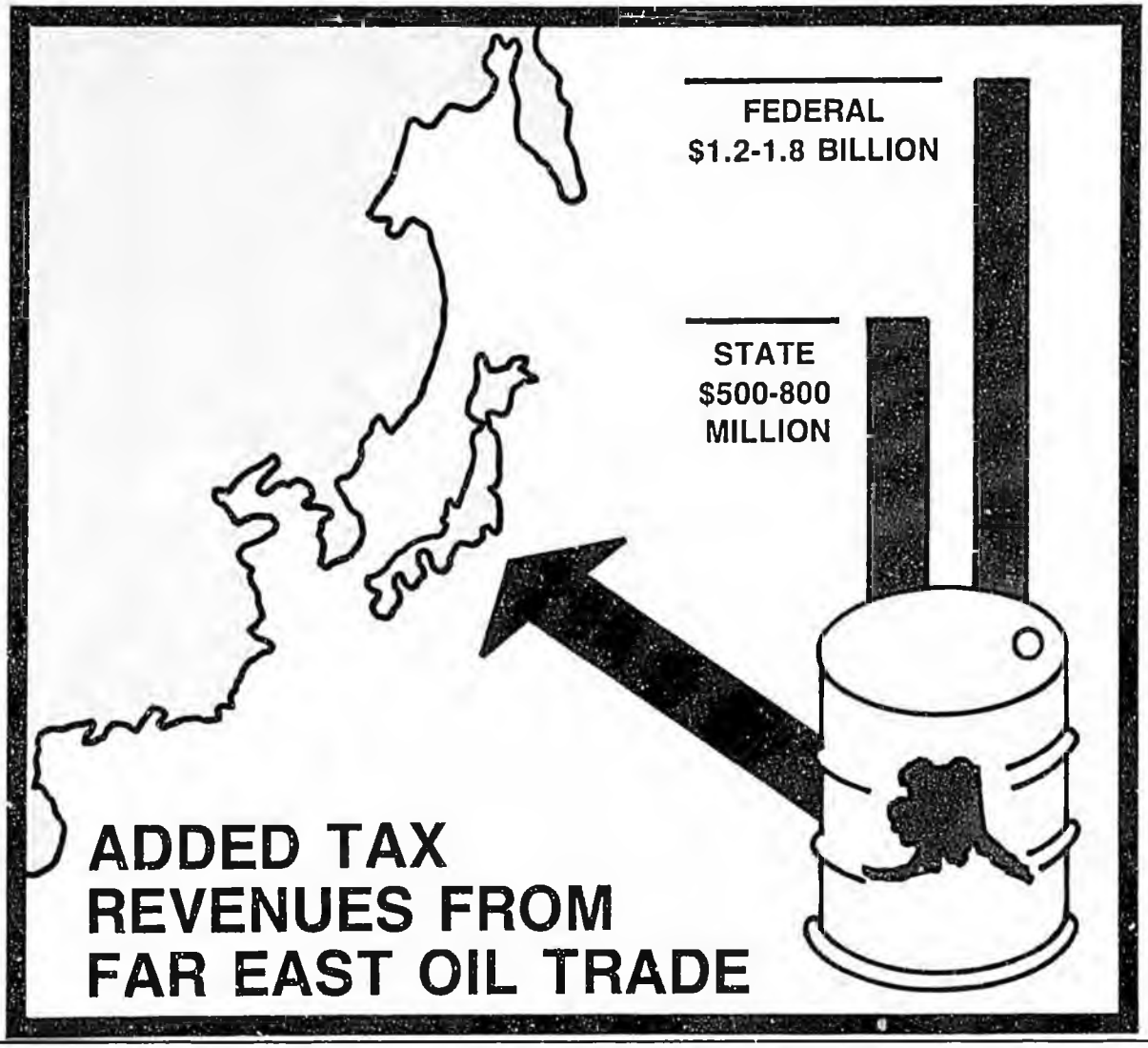
transport on high-priced Jones Act vessels, since we can't move our oil to other states by land. This is one factor depressing the wellhead price. The export ban also depresses wellhead prices by forcing Alaska oil into the wrong markets: the West Coast, which is flooded with Alaska and California crude; and the Gulf and East Coasts, which dictate a long and expensive round trip by U.S. flag vessels of 13,000 nautical miles via the Panama Canal, or 30,000 miles via Cape Horn. The round trip between Valdez and Yokohama, Japan, is about 7,000 miles.

Removing the export ban could ultimately raise wellhead prices by $2-3 billion per year, and state revenues by $500-800 million per year. It could raise federal revenues by $1.2 to $1.8 billion per year.[16] *Exporting Alaska's oil would help balance our nation's $16 billion trade deficit with Japan.*

If Congress were to lift the ban, probably all the Alaska oil now going to the Gulf and East Coasts, and the Alaska oil now surplus to the West Coast, would go to the Far East.[17] The shortfall resulting on the Gulf and East Coasts would be filled with Mexican and Mideast oil now going to Japan.

This "triangle trade" would have advantages to all concerned. Transportation costs would drop, Mexico would earn more per barrel for its oil, and U.S. Windfall Profits Tax receipts would climb. Japan and the U.S. would even their trade imbalance. The change would ease the West Coast oil glut.

Lifting the export ban would bring reason to the economics of Alaska oil.



Because of lower transportation costs to overseas customers, allowing the export of Alaska oil would increase the nation's and Alaska's tax revenues.

[16] These dollar savings would not show up immediately, however, as oil companies would want to pay off some of their capital costs: tankers in use and their commitments to a new Panama pipeline.

[17] We have considered the objection that foreign tankers would pose a hazard to Alaska waters. We feel that the hazard is not necessarily any greater than that by U.S. flag tankers. Foreign tankers can be required to meet U.S. safety standards. And foreign vessels now dock at Valdez, loading oil for the Amerada Hess refinery on St. Croix in the Virgin Islands. (The Virgin Islands, though an American possession, is exempt from the Jones Act, and foreign tankers take oil there.)

4

Alaska must act immediately to create in Washington, D.C., a research and advocacy institute and ask other resource states to join in supporting it. The institute would combat efforts in Congress to limit or tax state resource revenues.

Efforts to strip Alaska and other resource states of revenues from oil and other energy sources center around the Northeast-Midwest Congressional Coalition and its research arm, the Northeast-Midwest Institute.

The Institute has become the dominant source of detailed information about resource extraction and taxing available in Washington to the national press, members of Congress and other federal officials.

The Coalition and the 18 states it represents seek to have resource incomes of individual states pooled by federal law and redistributed to all states. Such federal action would be a major blow to one of the last pillars of state sovereignty: the power to raise and allocate revenues. The Coalition even wants the federal government to prescribe how individual states may spend resource revenues.

The Northeast-Midwest Institute is only too happy to provide facts, figures and research documents to bolster efforts in Congress to nationalize the incomes of what the Coalition has tagged the "United American Emirates," the oil-producing states.

A major political battle looms. It will be fought largely in the newspapers and on radio and television for the hearts and minds of the general public.

The need for a counterbalancing institute of resource states seems obvious and may be critical. Such an organization would perform and publish scholarly research on matters of special interest to the resource states. The institute must be located in Washington, D.C., for maximum accessibility, effect and credibility. It is very important for reporters, the administration, members of Congress and their staff to have personal access to the institute's researchers as well as to its publications.

Alaska must lead in starting such a research and advocacy institute and keeping it funded. The Legislature should provide the governor with money enough to fund the institute's first years and convince other states to join the effort. To do nothing or to delay too long in face of an obvious threat to Alaska's financial well-being will only turn the threat into an impoverishing reality.

5

The state Board of Education and Alaska school districts should require the teaching of Alaska history, citizenship and culture.

The Statehood Commission worries that in our oil-propelled rush into the mainstream of the nation's economy, we may be cutting our ties with what is special about Alaska. Further, by failing to attend to our history we risk repeating mistakes made during Alaska's early days of copper, gold and fishing booms and busts.

We have a system of public and private education second to none, and yet we do not require education about our state's history.

Alaska's long isolation from the other states has ended. Arctic villages once accustomed to occasional newspapers by barge and dogsled now receive their baseball games televised live via satellite. One out of three Alaskans has lived in the state less than five years.

It is not easy to preserve our heritage with such turnover and in the face of a mass culture tuned to a common denominator, but we must try. We have a system of public and private education second to none, and yet we do not require education about our state's history. We do not require instruction on our rich and varied regional and statewide cultures.

We should also teach every student--from elementary through post-secondary schooling--the reciprocal duties between citizen and state, and between citizen and national government. A citizenship program should teach respect for the dignity of every individual; the observance of rules written for the common good; respect for private and public property; strong ethical values; development of a social conscience; and democratic ideals.[18] If Alaska needs a model it need look only as far as the education required of aliens requesting U.S. citizenship. It is paradoxical that naturalized citizens often have a better knowledge about America than those born here.

The Legislature should speed development of the classroom material required, and make the materials available to all public and private school systems.

Education is Alaska's opportunity to invest in the next generation of voters and leaders. It is our preventive medicine against the repetition of past mistakes. It can be our way of preserving and

[18]In 1980 the Anchorage School Board approved a similar list of goals for a citizenship education program.

promoting our heritage as Alaskans, and our way of helping youth understand they have dual citizenship, to the state and to the nation.

6 The Alaska State Legislature should pass a resolution which would apply to Congress under Article V of the U.S. Constitution for the calling of a national constitutional convention. The convention's sole duty would be to define the procedures governing all future constitutional conventions called by the states.

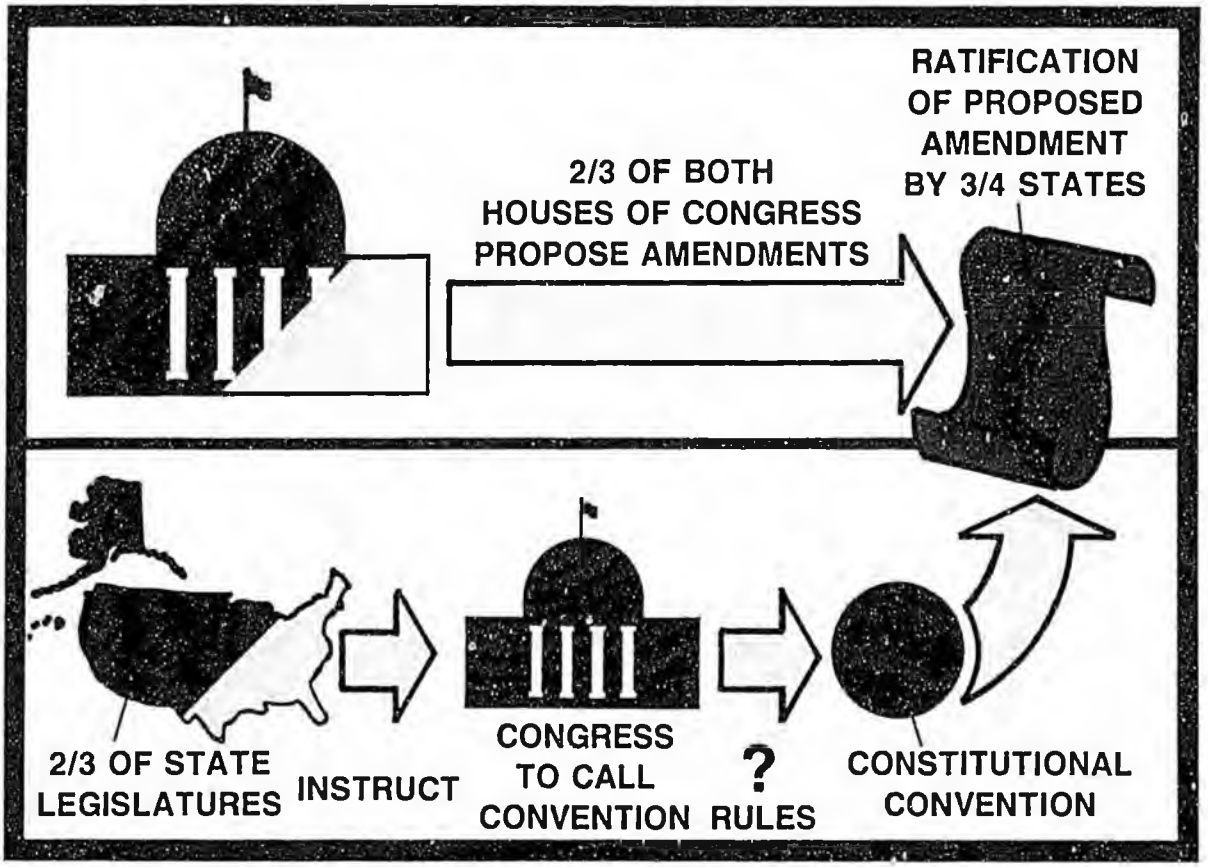
The national interest demands that these rules be written. Until they are, the states will continue to be shut out from proposing amendments in convention. The Founding Fathers thought this amending power fundamental to keeping the state-federal balance.

Alaska has much to gain by taking an early lead in causing discussion on the rules. High-population states may seek rules which would apportion votes to disfavor low-population states.

Under our Constitution an amendment must pass two hurdles: it must be proposed and it must be ratified. A proposal can come by way of Congress or by way of a national constitutional convention. Congress must call such a convention if two-thirds (now 34) of the states request it. After an amendment is formally proposed, three-quarters of the states (now 38) must ratify it through their legislatures or with in-state conventions called for that purpose. Ratification is difficult. Only 16 amendments have been ratified since the adoption of the Bill of Rights nearly 200 years ago.

The first and last constitutional convention was held in the summer of 1787.

Despite the success of the last convention, some fear that another convention would run wild, sack the Bill of Rights and demolisn 200 years of constitutional carpentry. This fear has been nurtured by the lack of clear rules governing



Flow chart illustrates steps required for amending the U.S. Constitution.

METHODS OF CONSTITUTIONAL AMENDMENT

a state-called convention to propose amendments.

The rules are long overdue, but we doubt that Congress will write them.[19] It prefers to hold up the specter of a runaway convention to discourage the states ever asking for one. In this way Congress keeps complete control over which amendments are submitted for ratification.

The states must force the issue under Article V by calling for a convention to amend Article V. Rules must set out how convention votes would be apportioned and should define the scope of a convention's proposing powers. We believe a convention should be limited to the consideration of subjects named in the state resolutions asking for a convention. It should not have blanket authority to propose other amendments.

For Alaska, a federal convention has both danger and opportunity. Much depends on how votes are apportioned at the convention. We recommend the Alaska Legislature, in its resolution, call for equal votes by state. Under this plan, if there were 500 votes to go around, Alaska would have 10 votes, or 2 percent.

Were apportionment to follow a congressional model (votes according to the size of a state's congressional delegation), Alaska would have only 3 out of 500, or 0.6 percent of the votes. If votes are apportioned strictly by population, Alaska would have still fewer: 1 out of 500, or 0.17 percent of the votes.

Equal votes among the states would be true to the plan of the Constitutional Convention of 1787. That convention was "first and foremost a gathering of states" (Rossiter, p. 68) We suggest emulating the U.S. Senate: two delegates per state in a constitutional convention, for a total of 100 votes.

7 Alaska should take the initiative to establish a legal action fund for the states. This fund would oppose illegal and coercive federal restrictions, regulations burdensome to state and local government, and excessive use by Congress of its commerce powers to override state and local laws.

At present no one adequately represents state and local views when federalism questions come up in court--questions such as, "What does the Constitution say about this conflict between state and federal government?"

The federal government has the Office of the Solicitor General. Special-interest groups--often at odds with state and local governments--have their legal defense funds.

In short, state and local governments must start working together to oppose creeping federal intrusions.

But lawyers for state and local governments find themselves outgunned in the higher courts on complex federalism questions. They speak only for their employer, but the court decisions handed down will infuse the internal workings of all state and local governments, rewriting charters and constitutions and increasing liability to civil lawsuits.

In short, state and local governments must start working together to oppose creeping federal intrusions.

They triumphed on one of the few occasions they did work together--in the mid 1970s, challenging federal power to impose minimum wage and overtime laws on state and local governments. The National League of Cities, the National Governors' Conference, 19 states, and three municipal governments joined in a lawsuit to defend their authority to set wages and hours. The outcome was a landmark victory for state and local powers: the Supreme Court decision in *National League of Cities v. Usery*, 426 U.S. 833 (1976). It was one of few times in which the Court has held that the 10th Amendment (reserving powers to the states) is a limit on federal action.

Alaska should take the lead to get a legal action fund for state and local governments underway. It should put up money to operate the fund for one year. Lawyers for this fund would file lawsuits and intervene in others as advocates for all state and local governments, at all levels of court.[20]

A century ago the fundamental questions of union and disunion, of federal and state powers, were debated on the floors of Congress and bloodied the fields of Shiloh and Antietam. Today the arena is not Congress, not the battlefield, not even the halls of bureaucracy. The deepest inquiries of our union now pivot on what judges say. States have ignored this fact too long. They should pool their energies and channel them accordingly.

[19]The weight of academic opinion is that Congress does have the power to pass laws defining convention procedures.

[20]A pilot project underway is a move in the right direction. A private foundation and seven nationwide state and local government organizations have brought to being the State and Local Legal Center. Two attorneys will monitor the Supreme Court and will research and help prepare arguments for these governments. However, current plans aim only at the Supreme Court and providing assistance there. We believe active intervention at all levels is needed.

8 Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.

Not since 1787 have the leaders of the nation met to talk over the health of the relationship between the central government and the states.

In that time the federal government has grown in power far beyond that envisioned by the nation's founders, for reasons good and bad. In the past year, we have discovered no evidence to make us retreat from our statement in our preliminary report that:

> "By anyone's standards, the system of government in the United States has become greatly centralized, highly bureaucratized, frighteningly intergovernmentalized and often so complicated that it seems to be paralyzed..."
> *(More Perfect Union, p. 26)*

We think other Americans feel it is time to take a good look at what their governments have become....

On the national level, recent discussions about federalism have failed to center on a fundamental restructuring of the relations between Washington, D.C., and the 50 states. Instead they have dealt with the more superficial matter of swapping responsibilities for who pays for certain health and welfare programs.

There is no doubt that since the founding, and especially in the two decades just past, federal powers have waxed, while the powers of the states have waned. The question is whether this process should continue without examination by the president, the governors, and other chief appointed and elected officials of the nation and the states.

We think not. We think other Americans feel it is time to take a good look at what their governments have become, to determine what is the proper role of the central government and the sovereign states in our federal system.

There has long been talk about having a national meeting to raise national consciousness about the respective roles of the central government and of the states. But no one has taken the first step to make such a convocation happen.

Alaskans, if they are serious about staking out federal powers, can take that first step by putting down the seed money to have the nation's governors organize the convocation. Alaska can even offer to host the convocation in Alaska, in 1984 during the 25th anniversary celebration of Alaska's accession to statehood.

But whatever the place, Alaska should do what it can to stir the nation and get this convocation underway.

9 Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

Since the ratification of the 17th Amendment,[21] which took the duty of electing U.S. senators from the legislatures and replaced it with direct election by the people, the states have lacked a collective voice in setting national policy. The states should contemplate proposing substantive amendments to the Constitution which would strengthen state roles, protect proper state powers, and counter federal growth.

The topic of possible amendments is perfectly suited to the agenda of a national convocation on federalism (Recommendation 8).

Over the years a variety of amendments have been proposed to alter the relationship between federal and state governments. Among them:

- a "state veto" of federal legislation (except for federal laws dealing with defense, foreign affairs or civil rights) by a vote of two-thirds of the state legislatures;
- a measure prohibiting the federal government from imposing any condition upon the states by grant requirements that it could not impose constitutionally by statute or regulation; and
- a "court of the union" composed of the chief justices of every state's supreme court. Assembled at the request of five states, this court would have the power to overrule any U.S. Supreme Court decision.

We are not prepared to endorse any of these proposals. We offer them for scrutiny as ways in which states might assert more control over national decision-making.

Critics have pointed to the states' poor record in championing civil rights during the 1950s and 1960s. They argue that any amendment strengthening state powers will reverse the progress of the last 30 years.

State officials reply that states have come a

[21] Under the original Constitution state legislatures named senators for each state. Alexander Hamilton said this power was an "absolute safeguard" to the states, and one which could not be dropped without "an entire dereliction of the federal principle" (*The Federalist Papers*, No. 59). Towards the end of the 19th Century, though, this duty was causing many deadlocks and much hard feelings in the legislatures. By 1912 two-thirds of the states called for a national convention to propose an amendment providing for direct election of U.S. senators. Congress forestalled this convention by proposing a similar amendment. The states ratified the amendment in 1913.

long way since then; legislatures are now apportioned by population and four-fifths of the states have modernized their constitutions since 1950. The U.S. Advisory Commission on Intergovernmental Relations ran a diagnostic check on state governments recently and found a system vastly improved from 20 years ago. "The transformation of the states, occurring in a relatively short period of time, has no parallel in American history," said the group in 1981 (*State and Local Roles in the Federal System, In Brief*, p. 3). ACIR has been studying federalism since 1959.

What amendments are needed and what states would do with them are questions for the nation. We do feel that in a contest the rights of individuals must take precedence over both state *and* federal powers.

We are confident that one or more constitutional amendments, carefully drafted, could rebalance our union without endangering civil rights.

10 The governor of Alaska should prepare political impact statements on proposed major federal actions. Eventually, the National Governors' Association should prepare them on the behalf of all states.

We agree with the finding of the Advisory Commission on Intergovernmental Relations that federal influence "has become more pervasive, more intrusive, more unmanageable, more ineffective, more costly, and, above all, more unaccountable."[22] Especially in the last 20 years, the federal government has grown a new limb for every problem brought to its attention until it has more legs than a centipede: it has grant programs aimed at urban unrest, railroad crossings, firefighting, the design of dam spillways, and thousands more. We have had rule by reaction.

The states are partly responsible. They have abdicated their role in formulating national policy. They have failed to react in a timely fashion to proposed extensions of federal power which shift the constitutional balance.

We recommend that the governor of Alaska selectively issue political impact statements on the likely effects--on all states--of proposed new federal policies. Later, Alaska should encourage the National Governors' Association to take over this duty for all states.

A political impact statement need not be as long as the average environmental impact statement[23] to be effective. Those charged with writing the political impact statements would monitor proposed federal mandates, statutes, executive orders and new Supreme Court decisions. The writers would select perhaps a dozen impending federal actions per year for 10-page impact statements. The impact statements would describe the likely effects on state governmental organization, on present state programs, on innovation, on traditions, and on state citizenship.

Well-researched and objective political impact statements, if prepared enough in advance, will command attention from the nation's decision-makers and the press. The statements will speak about the health of our union.

11 Alaska's governor should invite the leaders of other northwestern states and the western Canadian provinces and territories to join Alaska in establishing a conference modelled after the New England Governors and Eastern Canadian Premiers Conference. The governor can prepare for such a conference by establishing in the executive branch an interagency task force on foreign relations.

One of the ways a state can match powers with the federal government is by building coalitions. Coalitions have two virtues. Political strength is greater in sum than in parts, and coalitions can settle cross-border problems without intervention from Washington.

Since 1973 six New England governors have been meeting with the premiers of five eastern Canadian provinces. This organization is called the New England Governors and Eastern Canadian Premiers Conference. It is a model of state-provincial cooperation.

After 10 years, participants report themselves pleased with the progress made in smoothing potential conflicts, cooperating in projects, and exchanging information. "The search for answers need not stop at the boundary," says former Maine governor Kenneth M. Curtis (Schechter and Elazar, p. 64).

In 1983 the governor of Alaska should prompt a meeting with the leaders of the northwestern states, Alberta, British Columbia, and the Canadian territories. These leaders, joining in a Western States and Provinces Conference, would have much to discuss: minerals and port development, hydroelectric and other energy projects, a railroad to the Arctic, fisheries, tourism, cold-

[22]ACIR, *The Federal Role in the Federal System: The Dynamics of Growth, In Brief*, 1980.

[23]Required by federal law since 1969, these statements are written to describe the probable environmental effects of a new federal action. They list the effects of alternative actions as well. A typical EIS can run to hundreds or even thousands of pages.

GLOBAL PROJECTION CENTERED ON ANCHORAGE, ALASKA

Alaska's geographic role in national defense speaks for itself. Geography suggests a natural trade relationship between Alaska and such Pacific Rim nations as Japan and Korea, which need food and mineral resources for their burgeoning populations and industrial enterprises. Distances between Anchorage and selected world cities is shown in statute miles.

climate research, and migratory wildlife management.

To facilitate this conference and to expand Alaska's relations with the international community at large, we recommend that the governor create an interagency task force on foreign affairs.

With such action states can take charge of the regional interests they claim Washington is neglecting.

This task force would join a foreign-relations specialist[24] on the governor's staff with representatives of the Council on Science and Technology, and the Departments of Fish and Game, Commerce and Economic Development, Natural Resources, Transportation and Public Facilities, and Law.

With such action states can take charge of the regional interests they claim Washington is neglecting.

12 The Alaska Legislature and governor should immediately invite representatives of Hawaii and the noncontiguous possessions to meet with them to explore setting up a permanent coalition to deal with common interests and problems, such as the effects of discriminatory transportation laws.

Not being geographically connected to the first 48 states has threaded the histories of Alaska, Hawaii, Puerto Rico, the Virgin Islands, American Samoa, Guam and now the Northern Marianas with a common experience--that of suffering second-class political citizenship.

Alaska and Hawaii overcame this burden in 1959 by achieving statehood, but even now, remnants of territorial status remain for them in the form of discriminatory laws. The Jones Act is the best example.

The nonstate possessions remain politically impotent. None have a voting delegate to Congress. None vote in elections for president.[25]

Helping any possession to achieve greater self-government through democratic means can only benefit Alaska. If statehood occurs, the new senators and the new congressmen will understand the problems of noncontiguity and can be supposed to join Alaska's delegation in overcoming them.

For the present, the noncontiguous states and possessions share concerns about oil exploration on the Outer Continental Shelf, about fishing, about treaty making, about delayed economic development, and about transportation systems or their lack.

Alaska, for example, must out of principle oppose any efforts to make the Jones Act apply to the Virgin Islands, the one island territory excepted from the act. The Virgin Islands has built an oil-refining industry around that exception, which lets foreign tankers carry American oil to Virgin Islands docks. Some of that oil is from Alaska.

One item for discussion by the noncontiguous parts of the United States could be the establishment of a federal Region 11 just to coordinate federal programs applying to them. Under the existing federal structure of 10 administrative districts, the needs of the noncontiguous areas sometimes get treated as the needs of barely remembered stepchildren.

The western noncontiguous states and territories should also have a distinct federal appellate circuit, the 11th Circuit Court of Appeals.

Alaska in any case has the need to develop new coalitions of friends, and it should reach out to Hawaii and the noncontiguous possessions to ask them to talk over the opportunities for mutual advantage.

13 Alaska must vigorously police federal implementation of the Alaska Statehood Act. We should insist that the remaining land transfers be completed at the rate agreed upon in 1981 (13 million acres transferred to the state per year) and we must guard against congressional attempts to unilaterally change the Statehood Act and the Constitution of the State of Alaska. The Legislature should authorize and direct the lieutenant governor to place all such attempted changes in the Statehood Act and the state's constitution before the voters in a ballot proposition.

In our preliminary report we documented the failure of the federal government to carry out the contract it made in the Alaska Statehood Act of

[24]See Recommendation No. 17. We envision this task force as separate from but working with an office of external relations.

[25]For a complete description of the political status of America's possessions, see the Alaska Statehood Commission publication, *Hawaii and the U.S. Territories*, by Howard Bray and Doris Deakin, 1981.

1958.[26] Land conveyances are years behind schedule. The land freeze of 1966, followed by federal land withdrawals of the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA, commonly known as the D-2 Act), prevented the state from choosing which lands it wanted for the remainder of its entitlement. The state is facing many difficulties gaining access to lands it holds within blocks of land withdrawn under ANCSA and ANILCA.

In an outrageous move to pre-empt all state opposition, Section 10 of ANCSA put a unique one-year statute of limitations on lawsuits by the state. It penalized legal action with a "blackmail clause"[27] promising to stop all state land transfers for the duration of any suit against ANCSA, however valid.

The federal government may renege again on its land conveyance obligations if Alaska fails to muster its full legal, economic, and political powers to compel the federal government to live up to its solemn promises.

We have been monitoring the fulfillment of an out-of-court settlement between Alaska and the federal government on the rate of land conveyances. In this settlement, *Alaska v. Reagan* (1981), the Interior Department promised to convey 13 million acres per year to the state.

The department has so far kept its promise. It conveyed 13,310,856 acres to Alaska in fiscal year 1981. At the agreed pace of 13 million acres per year, Alaska should have all its Statehood Act lands by the end of 1985.

By Oct. 1, 1982, the federal government had transferred 65,644,104 acres to the state, including about 62 percent of the state's general grant of 102,550,000 acres. Native corporations held 23,202,420 acres towards their entitlement of 40 million acres. Private holdings, not including Native lands, are approximately 2 million acres, or less than 1 percent of Alaska's land.

The federal budget will get tighter, however, and with four more years of conveyances to go, the pace of transfers could slow. State officials and Alaska's congressional delegation should make clear that federal funds for carrying out the Statehood pact are not "optional," to be cut back like a federal grant for library improvements or rat control.

It is time to wind up implementation of the Statehood Act. The federal government is already behind schedule, and in 1980 had to extend the compliance deadline to 1994, 10 years beyond the original 25-year deadline of 1984.

Alaskans should stand against any unilateral attempts by Congress to change any provision of the Alaska Statehood Act, for the act is a compact between the United States and the people of Alaska. Similarly, Alaskans should not permit Congress to rewrite the Alaska Constitution.

It is time to wind up implementation of the Statehood Act.

Congress may attempt to change the formulas contained in the Statehood Act for revenue sharing from mineral revenues from onshore federal lands: 90 percent to the state and 10 percent to the federal government. The Interior Department attempted a unilateral change recently. In 1975 and until corrected by the U.S. Supreme Court, Interior altered the sharing formula for oil revenues from the Kenai National Moose Range to give 75 percent to the federal government, 25 percent to the Kenai Peninsula Borough, and nothing to the state. The Supreme Court set the Interior Department straight on this matter, but we are concerned with the Court's language suggesting that these percentages can be changed in the future, at Congress's discretion.

The Legislature in an omnibus bill should authorize and direct the lieutenant governor to place any proposed change to the Statehood Act or Alaska Constitution before Alaska's voters in a ballot proposition, asking them to say yes or no to the change.

The Alaska Statehood Act required the consent of Alaskan voters to become effective.[28] Similarly, Alaskan voters should have the opportunity to pass upon suggested changes to the Statehood Act. If the voters disapprove the change the state will have a mandate to oppose the attempted change in court.

In our two years of study we have devoted more time to monitoring implementation of the Alaska Statehood Act than to any other issue. Other agencies will continue the scrutiny as the commission expires, for Alaska has not yet achieved full statehood.

14

Alaskans should consider two amendments to the state constitution which will clarify the philosophy and the powers of our state government in the federal union.

We suggest few additions to the Alaska Constitution. Ratified in 1956, it is recognized nationwide as a model charter, for its brevity, clarity, and innovations. Federal powers have done a lot

[26]For a detailed discussion of the Alaska Statehood Act, see the Statehood Commission publication, *The Concept of Statehood Within the American Federal System*, 1981, pp. 89-120.

[27]Section 10 of ANCSA, 43 U.S.C. Sec. 1609.

[28]Sec. 8(b), Public Law 85-508, July 7, 1958.

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of growing since then. however, and we offer two possible amendments to help define Alaska's role.

The first addition is modelled after Article I, Section 1 of the Texas Constitution. That section of the Texas Constitution reads:

> "Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States."

A similar amendment to the Alaska Constitution can serve to link the ideas of citizenship, statehood, and local self-government.[29]

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution.

A second amendment would clarify the state's power to cooperate with foreign nations.

Article XII, Section 2 of the Alaska Constitution now reads:

> "The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose."

We suggest adding a phrase after the words "on matters of common interest":

> "...and to the extent consistent with the Constitution of the United States, with foreign nations."

An early draft of this section of the Alaska Constitution contained a very similar phrase,[30] but the framers deleted it for fear that Congress would not approve a state constitution referring to foreign cooperation.

Research for the Statehood Commission (Schechter and Elazar, pp. 57-68) shows that American courts allow states much leeway to engage in friendly relations with Canada and other nations. A 1978 study located 766 agreements and understandings between American states and Canadian provinces (Swanson, pp. 221-265).

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution. Our research shows that states *are* sovereign entities, and they *do* have some powers to engage in friendly foreign relations. The above two amendments to the Alaska Constitution would elaborate those powers.

15 State officials should refuse federal grants carrying burdensome requirements.

The federal government exercises control over more subject areas by grant requirements than by direct orders to state and local governments. It is through grant conditions, for example, that the federal government enforces a national 55 mph speed limit upon the states.

The U.S. Supreme Court allows the federal government to impose controls on the states by conditional funding that would be otherwise unconstitutional if imposed by federal statute or regulation. The Court places few limits to what a federal grant can demand, reasoning that a state can always turn the money down.

In reality, most state and local governments cannot afford to turn down federal money even if they wish. In many cities, grants once seen as "extra" now keep the buses running and the lights on in City Hall. This poor state of affairs grows in part from the federal government's hogging of the tax base.

Alaska is prosperous enough--for the time being--to turn down some federal grants when the conditions or the paperwork required are not worth the dollars. State officials should inventory grant programs, comparing the drawbacks and benefits of each, and be prepared to turn down offers of federal money.[31] The state should reject grants demanding reorganization of state government.

[29] A detailed discussion of these and other amendments to the Alaska Constitution may be found in the Alaska Statehood Commission publication, *The Role of the States as Polities in the American Federal System*, by Stephen Schechter and Daniel Elazar, 1982.

[30] See committee proposal No. 12, introduced in the Alaska Constitutional Convention Dec. 16, 1955. That phrase read, "...and to the extent consistent with the laws of the United States, with foreign nations."

[31] This inventory is a good idea anyway, as the federal money available for grants is dropping sharply. The state should know in advance which grants are worth fighting for and which are not.

Our research[32] indicates that a state can, by rejecting a grant it accepted in prior years, embarrass the federal bureaucracy into reforming the grant and pruning the tendrils of conditions which have sprouted from it.

16

The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

Basic data about the federal government's economic relationship with Alaska has been difficult to obtain in coherent form from either federal or state agencies, though this information is critical for defending against congressional efforts to confiscate or limit state oil and other resource revenues.

The information is also critical for showing our fellow Americans through the national media that Alaska contributes more to the national treasury than it withdraws.

Because of the lack of available data, the Statehood Commission commissioned two studies on federal revenue and spending in Alaska from the University of Alaska's Institute of Social and Economic Research (ISER, 1981, 1982).

The first study, covering federal fiscal year 1980, showed that the federal government was earning $2 from general economic activity in Alaska for every $1 that it spent here. The second study, for fiscal year 1981, showed that by then the federal government was earning $3 in Alaska for every $1 that it spent.

The latter study showed that economic activity in Alaska accounted for one-sixth of all of the federal government's Windfall Profits Tax revenues in 1981 and one-twentieth of all of its revenues from corporate income taxes.

The studies also showed that the federal income tax lands unfairly on Alaskans, hurting families and businesses and distorting investment decisions in this state.

Put in the larger context of economic data about Alaska's high cost of living, its lack of transportation and of energy systems and its lack of adequate housing, the information from these economic studies can show the fair minded that Alaska not only is paying its way in the family of states but has urgent needs at home for its income from temporary oil supplies. Poor until recently, Alaska needs to catch up in supplying to its citizens the basic services that other states offer and most Americans take for granted.

A general theme in this final report from the Statehood Commission is that Alaska must collect more precise, reliable information about itself and disperse it widely across the nation and the state.

Keeping up with how much the federal government earns from Alaska and how much it spends here is a key part of that effort.

17

The governor should establish an office of external relations on his staff, to be headed by a special assistant to coordinate Alaska's expanded relations with other states and with foreign nations.

Much of this report argues the necessity for Alaska to reach out to other states and its neighbors in Canada to establish new coalitions, working groups and conferences to deal with mutual needs.

This work is so important that the Statehood Commission feels that one high-ranking official reporting directly to the governor should have the responsibility of coordinating and directing these efforts with all parts of state government.

It is just as important, however, that this office also concern itself with Alaska's efforts to strengthen its relationships with many foreign nations, especially those with which it trades and those with which it hopes to increase trade.

It is not generally known that in 1981 *"Alaska rated number one in the nation for exports as percentage of total shipments from the state. Furthermore, export-related employment in Alaska was 34.7 percent of jobs in Alaska's manufacturing sector, which includes seafood processing"* (Hemphill, p. 2).

Alaska's exports to foreign markets in 1981 equalled $1.2 billion; its imports from foreign countries totaled $229 million, according to Hemphill. Alaska thus was one of the few U.S. states in 1981 with a positive trade balance and so made a significant contribution to the country's trade situation.

Japan bought most of Alaska's exports--$935 million worth. Japan also was the largest exporter to Alaska--$59 million in goods.

Four classes of goods made up the bulk of Alaska's 1981 exports: seafood products, at $427 million; liquefied natural gas, at $310 million; forest products, at $278 million and fertilizers, at $133 million. These figures do not include goods shipped from Alaska to other U.S. states for reprocessing and export.

The nation and Alaska need to expand markets for these products and to find markets for such other Alaska products as coal, other minerals and grains. Developing these markets demands con-

[32] See the Alaska Statehood Commission publication, *Shifting Power from the Federal Government to the State of Alaska*, by Harold Hovey, 1982.

centrated, coordinated and sensitive effort from the state's administration.

An office of external affairs also can respond sensitively to events at home and abroad that will have major effects on Alaska's well-being. An example is the extensive ban and then recall of Alaska canned salmon last year after a Belgian died from botulism from a defective can. The ban by the United Kingdom and other members of the European Economic Community came as a surprise to which the state was slow to react because Alaska had no one representing its interests in Brussels, headquarters and economic intelligence center for the European Community.

The need to maintain and search out such overseas representation in Japan, Korea and other Pacific Rim nations speaks plainly from Alaska's export figures and from Alaska's geographical position.

Reaching out overseas and to our Canadian neighbors and to other U.S. states will be, we think, a most important task for Alaska and the nation's future. The direction and coordination must come from the governor through a permanent office.

18 The state of Alaska should explore with the federal government and Native organizations the establishment of a permanent joint fact-finding and advisory body to air and help reconcile problems that arise over land, resources and other interests.

The relationship between Alaska Natives and the state of Alaska is rich and complex. It affects and in turn is affected by the Natives' relationship to the federal government. This complexity alone guarantees many possible points of friction, some of which have been, are still or soon may be in the courts.

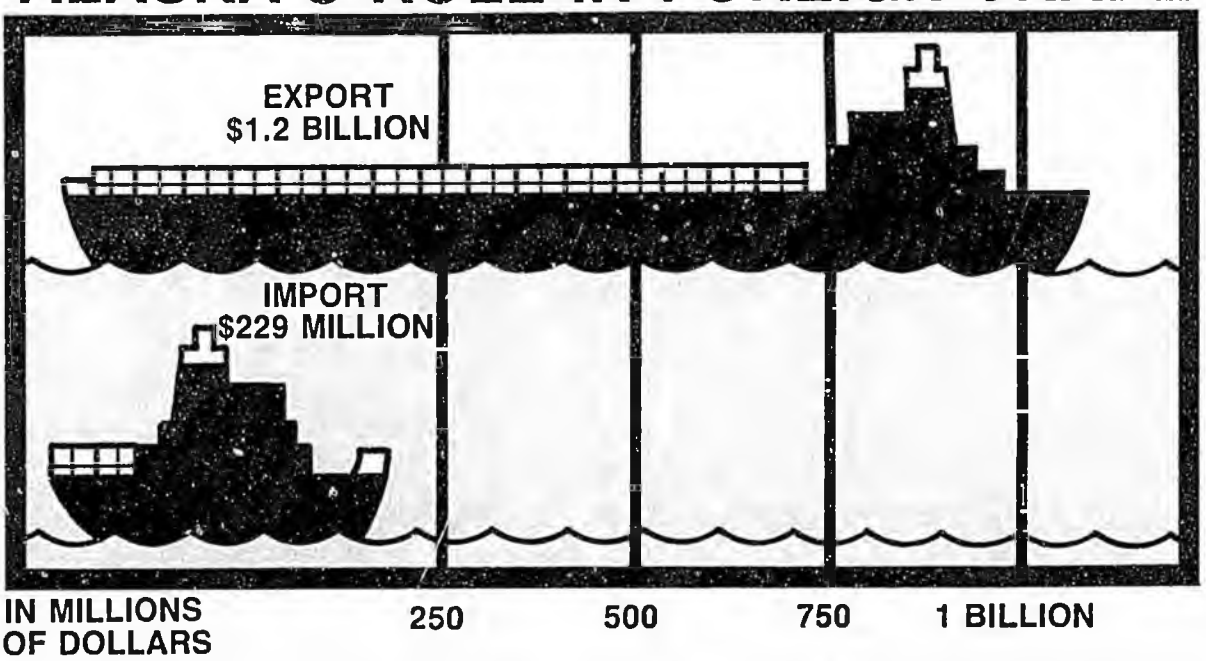
The state's 64,103 Native citizens comprise 16 percent of the state's 401,000 population (1980 Census). This density is twice that of any other state with large Native populations. Natives have a special trust relationship with the federal government which endows them individually and corporately with a web of rights additional to those enjoyed by the non-Native population.[33]

Overall, 80,287 Natives in and without the state are certified under the Alaska Natives Claims Settlement Act. Of the 64,000 living in the state, about 50,000 reside in villages, of which 212 are recognized by the Settlement Act. Beyond the villages, the act incorporates Natives into 13 regional corporations, 12 for Natives within the state and one for those without.

Native institutions own, will own or have in trust 11 percent of Alaska's land. The state owns or will own 29 percent. Private owners other than Native organizations have about 1 percent. The federal government will own the rest.

The complicated patterns of land ownerships and the speed with which some lands are being transferred from the federal government to other

ALASKA'S ROLE IN FOREIGN TRADE



Graph illustrates Alaska's positive contribution to the nation's trade balance.

[33]See the Alaska Statehood Commission publication, *Native Rights*, by the Alaska Department of Law, 1982.

owners inevitably give rise to problems of arranging for or planning for rights of way and of preserving traditional means of access.

Central to land and other disputes which have or which will arise is the federal role. "The basic fact which must be considered by the state of Alaska in its dealings with the Alaska Natives is the overriding federal interest in this matter. All of the institutions of federal Indian law...have the effect of ensuring federal supremacy here" (Alaska Department of Law, p. 18).

The Statehood Commission thinks it would be wise to have in place a fact-finding and advisory body that through its presence and proceedings might allow disputes to reach amicable settlement without recourse to long and expensive lawsuits or emotionally rendering political action. The lessons learned through such a body might, in time, suggest pieces of intergovernmental legislation to formalize use of those pathways that lead away from disputes and toward mutual understanding and agreement.

19 The Legislature, in order to give all Alaskans the greatest measure of home rule, should divide Alaska's single unorganized borough into regional unorganized boroughs in accordance with the intent of the state constitution.

In our preliminary report, we urged the Legislature to take special notice of the desires within Alaska for greater regional self-government, noting that:

> "...just as we ask the United States to listen to us, we must listen when we hear the requests from within Alaska for greater self-control of lives, land, waters, fish, game, trade or commerce."

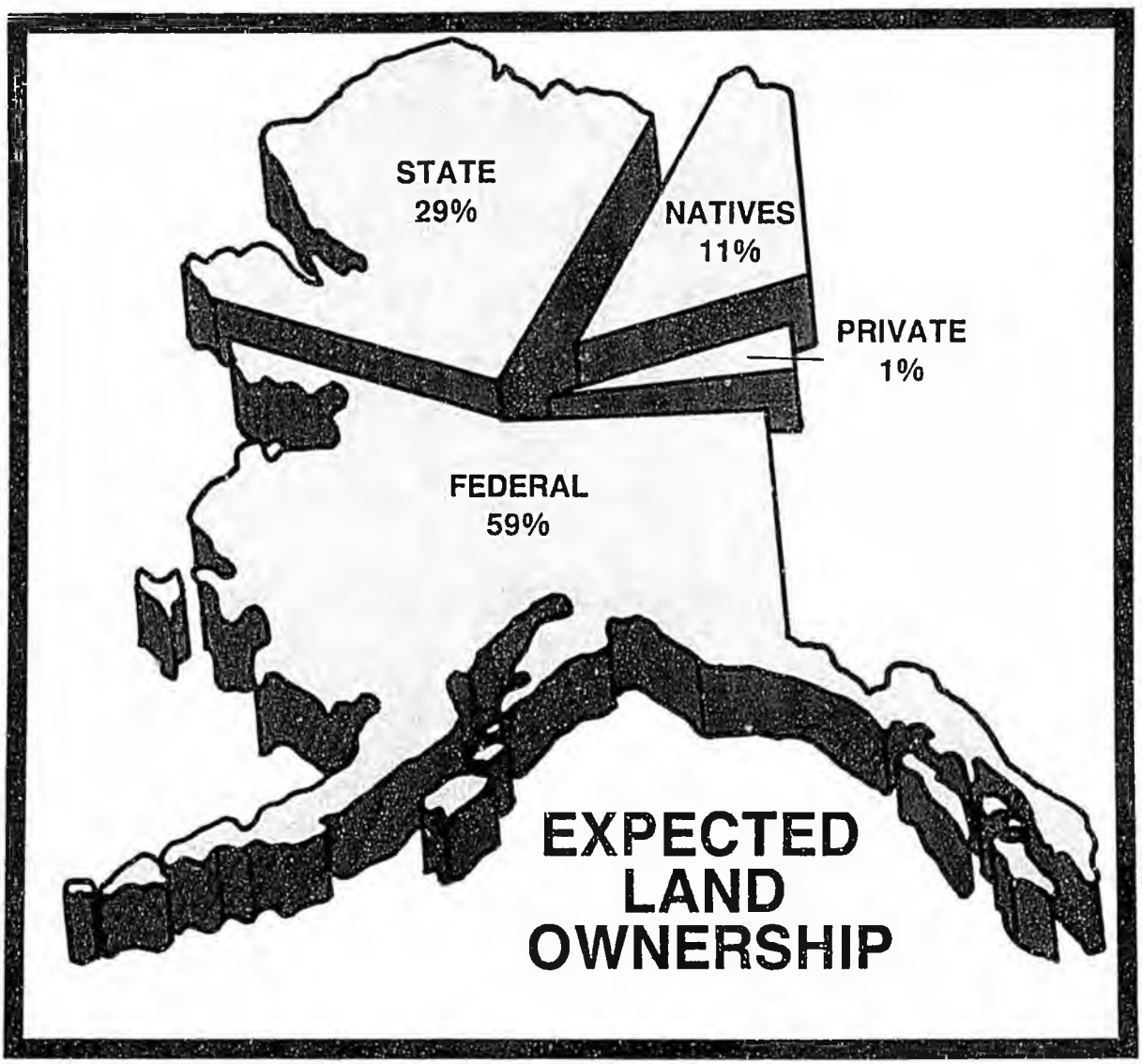


Figure shows only the percentage of ownership, not geographic distribution.

These requests are not new. The Legislature's Joint Committee on Local Government heard and studied them thoroughly in 1979. In its final report, "Local Government Study--1979," the committee proposed that the single unorganized borough be divided into regional unorganized boroughs "in accordance with the intent of the state constitution."

But legislative proposals stemming from that study have not progressed into law. The organized boroughs cover some but not all main population centers. The single unorganized borough covers the rest of the state--*nearly 75 percent of Alaska's land area*--as a kind of catch-all limbo.

There is no doubt that the writers of the state constitution intended for the whole state to be divided into both organized and unorganized boroughs, according to state Sen. Victor Fischer, a member of the Constitutional Convention's Committee on Local Government and author of an authoritative history of the convention. The working papers of the convention evidence the accuracy of his conclusion.

...just as we ask the United States to listen to us, we must listen when we hear the requests from within Alaska for greater self-control of lives, land, waters, fish, game, trade or commerce.

So we note the irony that Alaska, with its desire to keep power from centralizing further in Washington, D.C., is nevertheless the only state of size to govern many citizens in remote areas directly from the state capitol. There is no evidence that remote rule from Juneau is any better or wiser than remote rule from the Potomac.

The Legislature can remedy the situation by exercising its constitutional power to act as the assembly for the unorganized borough. It can divide the single, huge unorganized borough into smaller unorganized boroughs or service districts with regional headquarters. That will afford local people the chance to start evolving their own forms of home rule tailored to their varying local circumstances.

The sooner this division is accomplished, the nearer the state will be to the American ideal--and the Alaskan ideal--of letting local people manage their local affairs.

20 The state should establish an Alaska information office under the governor's direction to produce clear, objective, precise information about Alaska for nationwide distribution and to arrange for visits to Alaska by members of the national press corps, members of government and other opinion-makers.

Alaskans complain that they are misunderstood by people in other states. The complaint surfaces when major Alaskan issues--federal land withdrawals, wolf control, $1,000 payments to residents from the state's Permanent Fund earnings--stimulate coverage and opinions in the national media. Often the misunderstanding has major effects, especially when the issue pits Alaska against other interests seeking to determine the outcome of such major federal legislation as the Alaska National Interest Lands Conservation Act, which carved an area the size of California out of Alaska for federal preservation.

One poll (Dittman, 1981) indeed shows that while most Americans have romantic and fond feelings about Alaska, their actual knowledge about Alaska's conditions is poor, leading some (33 percent) to the opinion that Alaska should share any budget surpluses with other states. That opinion might be ignored were it not that pending in Congress are bills that would require Alaska to share its oil revenues with other states.

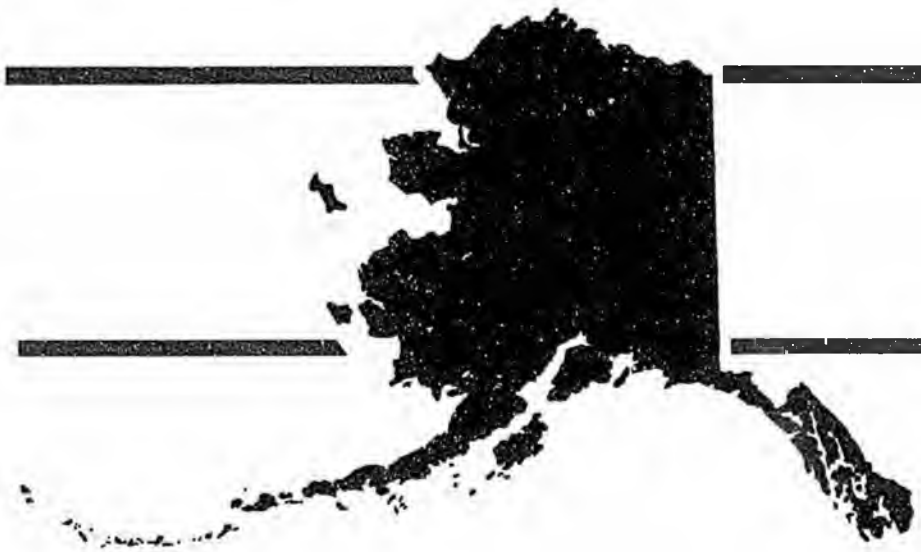
A follow-up poll by Boston University, the Office of the Governor reports, shows that a concerted nationwide informational campaign can change opinions about Alaska for the better--shows that facts induce most people to conform their opinions to reality.

Since Alaska's pending major battles must be fought in the national arena, it follows that an ongoing informational effort is necessary. Such an effort would alert the national press to credible information about Alaska. It would also take the form of offering press members and other opinion-makers tours of Alaska to witness the situation and the issues here for themselves.

A key part of the effort of a state information office would be to *anticipate* issues and reactions to them and prepare material accordingly.

Such an office cannot merely be part of a governor's regular press effort. Such an office must stay divorced from the daily fires of politics, so that it can work on the long-range information problems and look ahead to see what fact booklets, what films, what tapes, what tours and other efforts must be prepared. While its director must answer to the governor, its staff should have civil-service protection in order to carry out long-range work, maintain continuity and serve the Alaskan public at large.

In short, such an office must be part of the regular structure of government, regularly budgeted, and directed to overcome a major problem of this state's relations with the rest of the nation: ignorance.



Conclusion

In a letter to New York City newspapers which was the first of 85 essays later known as the Federalist Papers, Alexander Hamilton raised the question of "whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force."

Alaskans, with a vote setting up the Statehood Commission, asked whether we can *restore* a good government by the exercise of reflection and choice. A republic needs constant attention. Many forces work to skew and bend the structure of government. These forces, operating completely outside constitutions and charters, often spring from impulses of the moment.

More government is not necessarily a bad thing, but over the last century its growth--at all levels--has flowed down the channels of quick reaction and not those of conscious choice. The simple and clear words of our Constitution are so crusted with 200 years of courtroom interpretation that we govern ourselves today with a shadowy charter clear only to some federal judges and a small group of lawyers.

We have directed our attention to what the state can do. Alaska can be a leader, seizing opportunities for action to defend its interests, and reaching out to the nation with a message of what Alaska can offer. The last decade and its controversy over land withdrawals teach that we can find refuge in isolation no longer.

Alaska can build its strength from within by granting the regional self-government promised in the Alaska Constitution. Alaska can protect its revenue powers from raids by coalitions of resource-poor states by joining with other resource states for research, persuasion, and pragmatic politics. It can block federal intrusions by turning down grants and leading a call by the states for a convention to set the rules for future conventions to amend the U.S. Constitution. It can work with other nations.

In short, the powers of a state are defined not so much by words on paper but by its willingness and its ability to forge destiny by action and example.

Alaska can be a leader, seizing opportunities for action to defend its interests, and reaching out to the nation with a message of what Alaska can offer.

Alaska is able. We are strong in revenues and resources. We have the resilience and the self-reliance of those who live in a land of climatic extremes that tolerates little weakness.

Are we Alaskans willing to undertake this work of years? We believe we are, for Alaskans--with a history of territorial paternalism followed by statehood--know that citizens receive precisely the quality of government that they demand.

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Sworn to duty Oct. 22, 1980*

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Fairbanks
Governor's Appointment
Sworn to duty Oct. 22, 1980

Nelda Calhoun
Homer
Senate Appointment
Sworn to duty Oct. 22, 1980

John B. (Jack) Coghill, Chairman
Nenana
Senate Appointment
Sworn to duty Oct. 22, 1980

Evelyn L. Conwell, Vice Chairperson
Kotzebue
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Sworn to duty Aug. 20, 1981

John E. Dapcevich
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Sworn to duty Oct. 22, 1980

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Brian Rogers
Fairbanks
House Appointment
Sworn to duty Oct. 22, 1980

**Commissioner Boucher resigned and was reappointed.*

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More Perfect Union
A Plan for Action
Final Report by the Alaska Statehood Commission

1958.[26] Land conveyances are years behind schedule. The land freeze of 1966, followed by federal land withdrawals of the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA, commonly known as the D-2 Act), prevented the state from choosing which lands it wanted for the remainder of its entitlement. The state is facing many difficulties gaining access to lands it holds within blocks of land withdrawn under ANCSA and ANILCA.

In an outrageous move to pre-empt all state opposition, Section 10 of ANCSA put a unique one-year statute of limitations on lawsuits by the state. It penalized legal action with a "blackmail clause"[27] promising to stop all state land transfers for the duration of any suit against ANCSA, however valid.

The federal government may renege again on its land conveyance obligations if Alaska fails to muster its full legal, economic, and political powers to compel the federal government to live up to its solemn promises.

We have been monitoring the fulfillment of an out-of-court settlement between Alaska and the federal government on the rate of land conveyances. In this settlement, *Alaska v. Reagan* (1981), the Interior Department promised to convey 13 million acres per year to the state.

The department has so far kept its promise. It conveyed 13,310,856 acres to Alaska in fiscal year 1981. At the agreed pace of 13 million acres per year, Alaska should have all its Statehood Act lands by the end of 1985.

By Oct. 1, 1982, the federal government had transferred 65,644,104 acres to the state, including about 62 percent of the state's general grant of 102,550,000 acres. Native corporations held 23,202,420 acres towards their entitlement of 40 million acres. Private holdings, not including Native lands, are approximately 2 million acres, or less than 1 percent of Alaska's land.

The federal budget will get tighter, however, and with four more years of conveyances to go, the pace of transfers could slow. State officials and Alaska's congressional delegation should make clear that federal funds for carrying out the Statehood pact are not "optional," to be cut back like a federal grant for library improvements or rat control.

It is time to wind up implementation of the Statehood Act. The federal government is already behind schedule, and in 1980 had to extend the compliance deadline to 1994, 10 years beyond the original 25-year deadline of 1984.

Alaskans should stand against any unilateral attempts by Congress to change any provision of the Alaska Statehood Act, for the act is a compact between the United States and the people of Alaska. Similarly, Alaskans should not permit Congress to rewrite the Alaska Constitution.

It is time to wind up implementation of the Statehood Act.

Congress may attempt to change the formulas contained in the Statehood Act for revenue sharing from mineral revenues from onshore federal lands: 90 percent to the state and 10 percent to the federal government. The Interior Department attempted a unilateral change recently. In 1975 and until corrected by the U.S. Supreme Court, Interior altered the sharing formula for oil revenues from the Kenai National Moose Range to give 75 percent to the federal government, 25 percent to the Kenai Peninsula Borough, and nothing to the state. The Supreme Court set the Interior Department straight on this matter, but we are concerned with the Court's language suggesting that these percentages can be changed in the future, at Congress's discretion.

The Legislature in an omnibus bill should authorize and direct the lieutenant governor to place any proposed change to the Statehood Act or Alaska Constitution before Alaska's voters in a ballot proposition, asking them to say yes or no to the change.

The Alaska Statehood Act required the consent of Alaskan voters to become effective.[28] Similarly, Alaskan voters should have the opportunity to pass upon suggested changes to the Statehood Act. If the voters disapprove the change the state will have a mandate to oppose the attempted change in court.

In our two years of study we have devoted more time to monitoring implementation of the Alaska Statehood Act than to any other issue. Other agencies will continue the scrutiny as the commission expires, for Alaska has not yet achieved full statehood.

14 Alaskans should consider two amendments to the state constitution which will clarify the philosophy and the powers of our state government in the federal union.

We suggest few additions to the Alaska Constitution. Ratified in 1956, it is recognized nationwide as a model charter, for its brevity, clarity, and innovations. Federal powers have done a lot

[26] For a detailed discussion of the Alaska Statehood Act, see the Statehood Commission publication, *The Concept of Statehood Within the American Federal System*, 1981, pp. 89-120.

[27] Section 10 of ANCSA, 43 U.S.C. Sec. 1609.

[28] Sec. 8(b), Public Law 85-508, July 7, 1958.

of growing since then, however, and we offer two possible amendments to help define Alaska's role.

The first addition is modelled after Article I, Section 1 of the Texas Constitution. That section of the Texas Constitution reads:

> "Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States."

A similar amendment to the Alaska Constitution can serve to link the ideas of citizenship, statehood, and local self-government.[29]

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution.

A second amendment would clarify the state's power to cooperate with foreign nations.

Article XII, Section 2 of the Alaska Constitution now reads:

> "The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose."

We suggest adding a phrase after the words "on matters of common interest":

> "...and to the extent consistent with the Constitution of the United States, with foreign nations."

An early draft of this section of the Alaska Constitution contained a very similar phrase,[30] but the framers deleted it for fear that Congress would not approve a state constitution referring to foreign cooperation.

Research for the Statehood Commission (Schechter and Elazar, pp. 57-68) shows that American courts allow states much leeway to engage in friendly relations with Canada and other nations. A 1978 study located 766 agreements and understandings between American states and Canadian provinces (Swanson, pp. 221-265).

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution. Our research shows that states *are* sovereign entities, and they *do* have some powers to engage in friendly foreign relations. The above two amendments to the Alaska Constitution would elaborate those powers.

15 State officials should refuse federal grants carrying burdensome requirements.

The federal government exercises control over more subject areas by grant requirements than by direct orders to state and local governments. It is through grant conditions, for example, that the federal government enforces a national 55 mph speed limit upon the states.

The U.S. Supreme Court allows the federal government to impose controls on the states by conditional funding that would be otherwise unconstitutional if imposed by federal statute or regulation. The Court places few limits to what a federal grant can demand, reasoning that a state can always turn the money down.

In reality, most state and local governments cannot afford to turn down federal money even if they wish. In many cities, grants once seen as "extra" now keep the buses running and the lights on in City Hall. This poor state of affairs grows in part from the federal government's hogging of the tax base.

Alaska is prosperous enough--for the time being--to turn down some federal grants when the conditions or the paperwork required are not worth the dollars. State officials should inventory grant programs, comparing the drawbacks and benefits of each, and be prepared to turn down offers of federal money.[31] The state should reject grants demanding reorganization of state government.

[29]A detailed discussion of these and other amendments to the Alaska Constitution may be found in the Alaska Statehood Commission publication, *The Role of the States as Politics in the American Federal System*, by Stephen Schechter and Daniel Elazar, 1982.

[30]See committee proposal No. 12, introduced in the Alaska Constitutional Convention Dec. 16, 1955. That phrase read, "...and to the extent consistent with the laws of the United States, with foreign nations."

[31]This inventory is a good idea anyway, as the federal money available for grants is dropping sharply. The state should know in advance which grants are worth fighting for and which are not.

RECORDS CERTIFICATION

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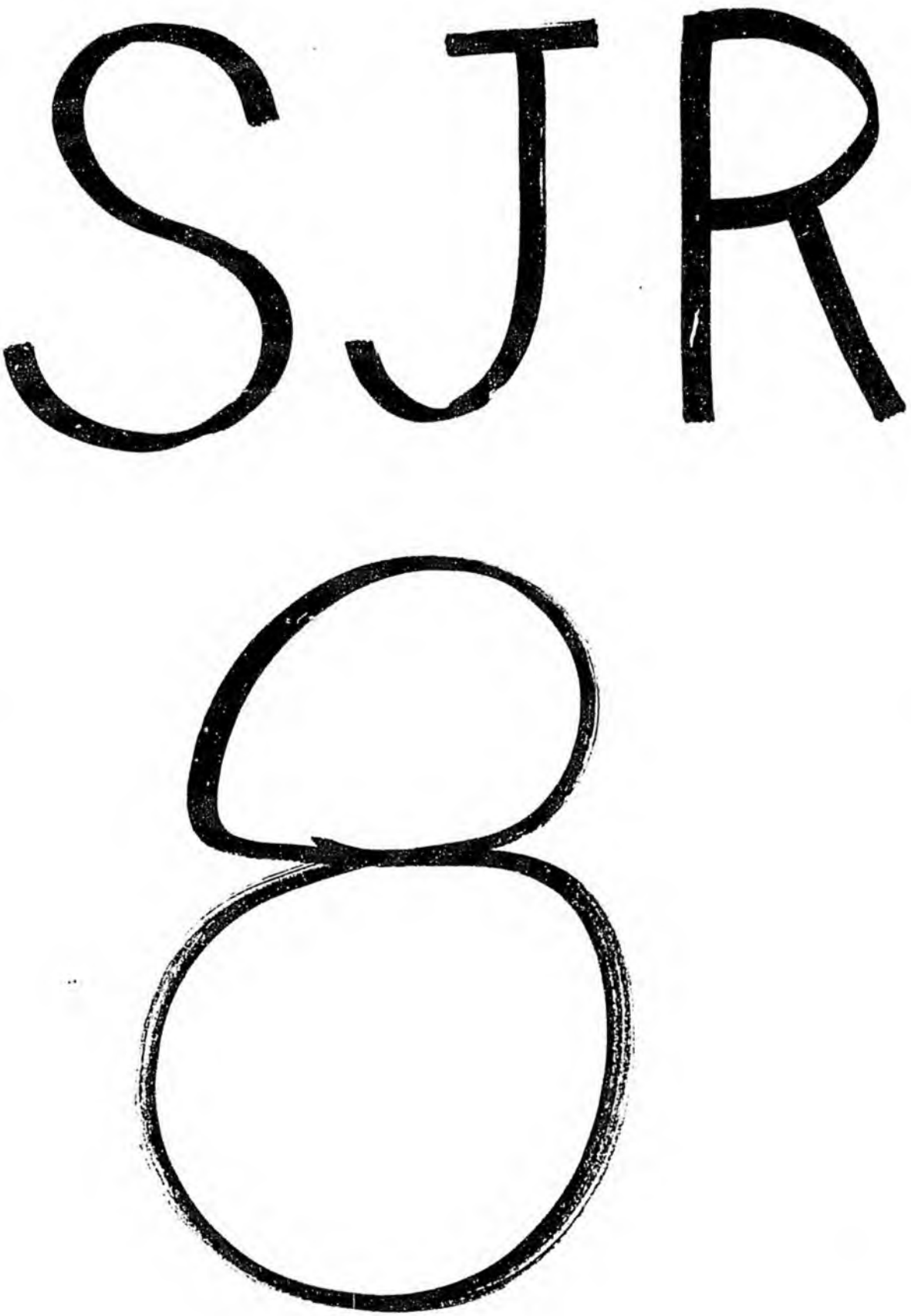
SJR
8

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

February 22, 1986

To: Members of the Senate State Affairs Committee
From: Senator Jack Coghill
Re: SJR 8

This letter is in response to the questions your committee posed to my staff member, Blake Call, during the hearing on SJR 8 last week. I apologize for not being at the hearing. I had previous commitments.

To committee had two questions on the wording and the actions of the resolution.

1. Senator DeVries questioned the wording on page one, line 26. Specifically, she asked why there was no reference to the calling of a constitutional convention for specifically dealing with a balanced budget amendment.

The answer to that is this: the fifth whereas of SJR 8 (which line 26 is a part of) deals with the powers that states have in calling constitutional conventions, not with the specific call for a constitutional convention that is mentioned on page 2, lines 2, and lines 11-12. Line 26, page 1, then, deals only with the powers of states and is not in contradiction to the two other mentions of a call for a constitutional convention.

2. Senator Victor Fischer questioned the ability of a present legislature to rescind a legislative resolve from a previous body and requested a legal opinion. The simple answer would be that the legislature is constantly rescinding the actions of previous legislatures each time that it writes new laws and amends existing ones. My staff contacted legal services regarding the legality of rescinding a previous legislative resolve as per your request. Attached is the response from legal services on that question. The most firm answer that we were able to get was that the question is debatable, and that there is nothing to prevent the legislature from rescinding a previous resolve.

I hope that this answers your questions, I look forward to addressing the committee in person as soon as possible on this very important resolution.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

M E M O R A N D U M February 20, 1986

SUBJECT: Request by the state for a Constitutional Convention (SS SJR 8)

TO: Senator Jack Coghill

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

You have asked whether the state may withdraw a request for a constitutional convention to consider an amendment to the United States Constitution. The question arises in the context of Legislative Resolve No. 1, SLA 1982 by which the legislature requested Congress to submit to the states for ratification an amendment which would require a balanced federal budget and, in the alternative, requested that a convention be called for the purpose of proposing the amendment.

Article V of the Constitution of the United States provides for the amendment of the constitution as follows:

> The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendment to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: Provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article, and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

Thirty-two proposed amendments to the constitution have been submitted to the states for ratification upon the vote of Congress and the convention method has never been used. Consequently, many questions remain unresolved regarding the application of the convention method of proposing amendments to the constitution. (The Constitution of the United States of America, Analysis and Interpretation, U. S. Government Printing Office, Washington, D.C., 1973) Among the undecided questions is the one that you ask -- whether a state that has requested a convention may rescind that request.

Although the validity of the withdrawal of a request for a constitutional convention has not been considered, the related question of whether a resolution to ratify an amendment may be rescinded by a state has come up. The Fourteenth Amendment was ratified by Ohio and New Jersey, both of which subsequently passed rescinding resolutions. The legislatures of Georgia, North Carolina, and South Carolina rejected ratification, but new legislatures subsequently ratified the amendment. The Secretary of State issued a proclamation reciting that 29 states had ratified, including the two which had rescinded and the three which had ratified after first rejecting the amendment, and noted that, if all the ratifications were valid, the amendment itself had been ratified. Congress adopted a resolution the next day listing all 29 states which had ratified and concluding that the ratification process was completed, (The Constitution of the United States, supra, 1978 Supplement, pages 572-578).

Based partly upon the Fourteenth Amendment precedent, in a later case six of the eight participating Justices agreed that the power of rejecting states to ratify and the power of ratifying states to rescind presented political questions and that Congress' discretion to decide the issues was final and unreviewable by the courts, (Colman v. Miller, 307 U. S. 433 (1939)). Justice Black with three other Justices would have gone further and held that Congress had the final, unreviewable determination with respect to every step in the process of submission and ratification of a constitutional amendment. The problem was recently presented again during the Equal Rights Amendment ratification process, but left unresolved.

If the United States Supreme Court follows the precedent of the Fourteenth Amendment and the reasoning in Colman v. Miller it would appear that the question of whether a state may withdraw a request for a constitutional convention would

be a matter left to Congress to decide, rather than the court. The Special Constitutional Convention Study Committee of the American Bar Association has also concluded that Congress has the power to determine procedures for the calling and conduct of a national constitutional convention. (Amendment of the Constitution by the Convention Method under Article V, American Bar Association, 1974). In any case, the function of a state legislature in amending the federal constitution is derived entirely from the United States Constitution and questions regarding that function cannot be resolved at the state level, (Opinion of the Justices of the Senate, 366 N.E.2d 1226 (Mass. 1977)). Consequently, assuming that is the desire of the legislature, it appears that the only course the state has is to rescind its call for a convention and wait for the federal government to determine whether or not that rescission is effective.

Congress has considered legislation that would establish procedures for conducting a constitutional convention, although none has passed yet. (See S. 215, 1967; S 1272, 1973) The proposals have included a provision allowing a state to withdraw a request for a convention if this is done before two-thirds of the states have requested a convention on the same topic. This suggests that Congress is likely to find that Alaska may withdraw its request in this situation.

In passing I note that questions can be raised regarding the legal effect of Legislative Resolve 1, SLA 1982 itself. The request for a constitutional convention is conditioned upon limiting the subjects taken up at the convention. Otherwise, according to the resolution, "...this application and request shall no longer be of any force or effect...". There is considerable debate over whether a constitutional convention once called can be limited in scope but, since the situation has not come up, the debate has been strictly academic. While the Special Constitutional Convention Study Committee of the ABA concluded that a limited convention may be called, other commentators disagree. If a convention cannot be limited or can be, but isn't, will this request for a convention nevertheless be given effect? Even if the convention is limited in scope, does the fact that the state's request is conditional render the request somehow invalid?

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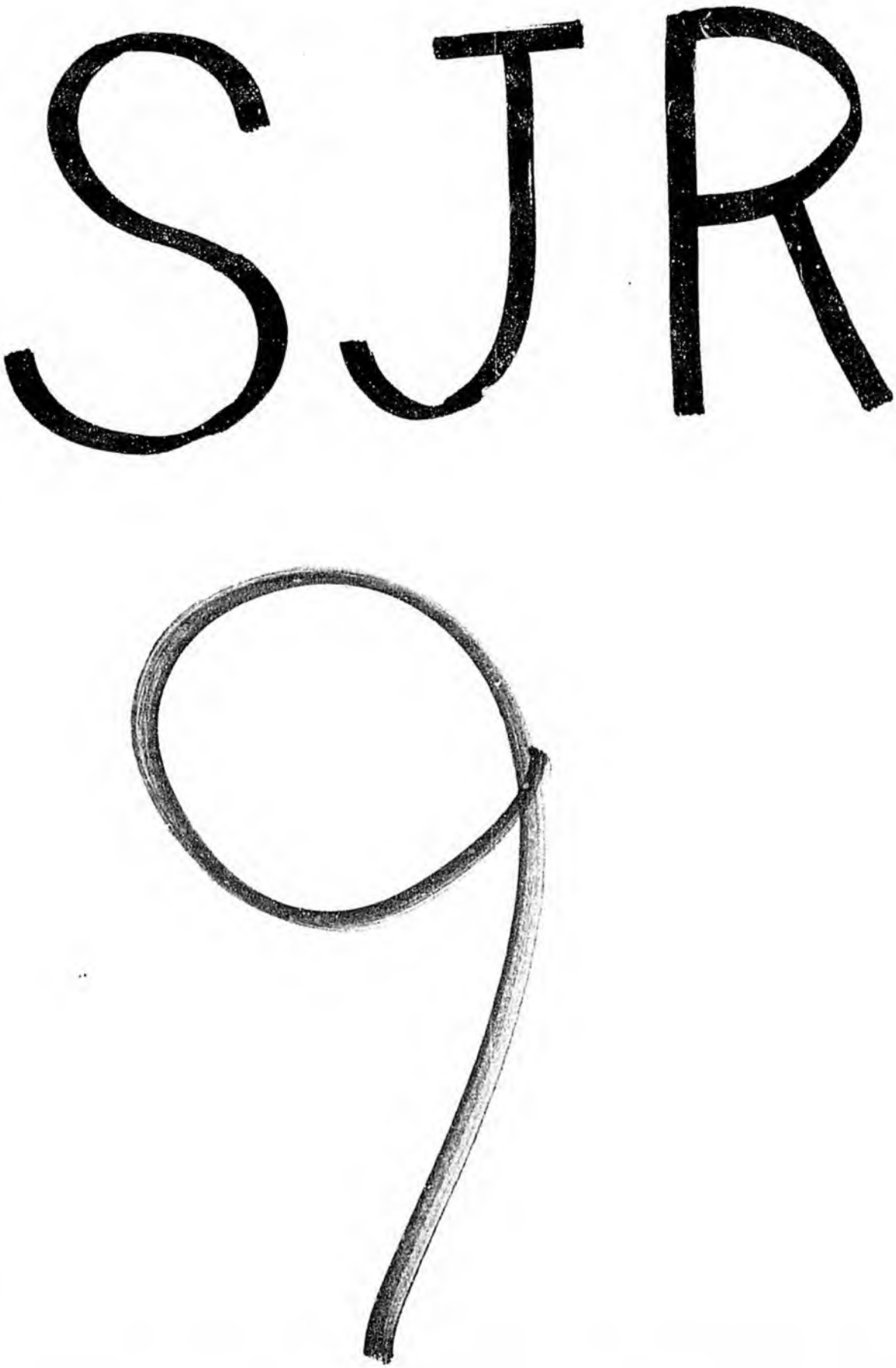
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SJR9 Proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general.

SATURDAY, FEBRUARY 1
10:00 a.m.

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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January 31, 1986

The Honorable Patrick Rodey
Chair, Senate Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Rodey:

Thank you for the opportunity to comment on the merits of Senate Joint Resolution 9. However, before beginning discussion of the issue of whether the voters of the State of Alaska should decide to amend the State's Constitution to provide for the election of the attorney general, I believe a number of the considerations involved in the issue need to be placed in perspective.

First, let's not forget that the 49th State is also 49th in population; with a population recently estimated at just over 525,000 people, Alaska has less residents than many cities outside. Yet, on the other hand, the State of Alaska is first in size; the nation's geographically largest State serves the needs of residents who range from Ketchikan all the way to Barrow. No other State must have a government capable of responding to and mastering such extremes.

Second, let's consider the history behind the formation of Alaska's particular form of government. Dr. Gordon S. Harrison, in A Citizen's Guide to the Constitution of the State of Alaska, provides the following insights:

> A strong governor, and a strong legislature are dominant features of Alaska's state government, and these reflect a reaction to the weaknesses of Alaska's governmental institutions during the territorial period. When Alaska was granted territorial status in 1912, a legislature was authorized. However, [the U.S.] Congress limited its powers and retained control over matters of vital interest to the residents of the territory. Congress, for example, restricted the

legislative power to raise revenue through bonding and taxation. It also withheld from the legislature the responsibility for management of the territory's commercial fish and minerals. Executive authority in the territory was similarly weak and ineffective. The governor and secretary of state were federal appointees, and administrative rulemaking and authority were dispersed among many independent boards and commissions.

This territorial scheme partly reflected the notion in Washington, D.C. that Alaska was too remote and too sparsely settled to warrant a greater measure of self-government. However, it also served the interests of federal bureaucracies with long-standing jurisdiction over Alaska's resources, as well as the interest of absentee corporations that exploited these resources. Here the issue was mainly the management of Alaska's fisheries, which were dominated by Seattle and San Francisco canning interests, and Alaska's mineral industries, which were dominated by major East Coast corporations. Alaskans long suspected a silent conspiracy between the bureaucratic managers and the corporate interests; they considered the weak, poor, and decentralized territorial government a result of that conspiracy.

It is not surprising that when crafting their own charter for self-government, Alaska's constitutional convention delegates created extraordinarily strong legislative and executive branches of government. This meant avoiding limitations, prohibitions, and debilitating hedges on the power of the legislature to act; and it meant avoiding the diffusion of executive power through boards, commissions, and numerous elected officials. These principles of legislative and executive organization were considered necessary to make government effective, accountable to the public, and free from the grip of special interests. While they were compromised somewhat in the final document, these ideals guided the delegates in their work.

> Alaska's constitution was written by territorial residents who reflected the unique political aspirations and experience of Alaskans. However, there is nothing parochial about the document. Indeed it embodies the most modern and progressive concepts of state constitutional draftsmanship. The delegates were aware of the current thinking of political scientists and state constitutional lawyers. They hired several experts from around the country to advise them, and they had at hand the "Model State Constitution" prepared by the National Municipal League. Contemporary theory matched well the ideas and inclinations of the Alaska delegates, but we cannot overlook the influence of this body of academic opinion on the shape of the final document. For example, much of the language used in the constitution was taken directly from the League's model constitution.

Finally, let's briefly look at the federal experience and the Office of the U.S. Attorney General before addressing Alaska's situation.

On the federal level, the U. S. Constitution provides that within the executive branch of government only the President is elected. The Constitution empowers the President to appoint the heads of all departments and they are responsible and accountable to the President. The U. S. Attorney General is the head of the Department of Justice and therefore a member of the President's Cabinet. The U. S. Attorney General appears on behalf of the government in all U. S. Supreme Court cases in which the federal government is interested and gives legal advice to the President and the heads of all federal departments. He is the supervisor of all federal prosecutors within the nation's criminal justice system. Language setting forth the U.S. Attorney General's duties was adopted as law in 1789 and still serves us well today. In all this time there has never been a serious suggestion raised that the U. S. Attorney General should be an elected official.

The U. S. Attorney General performs duties exactly equatable to those of this State's attorney general. In Alaska, the attorney general's civil division acts as advisor to the Office of the Governor and the other state departments; he or she also supervises the State's criminal section, appointing the chief of that section and the district attorneys.

Yet since we have never heard any responsible, reliable source on the national scene suggest that the government of the United States would be better off if the U.S. Attorney General were elected, why do we now hear a call for the election of Alaska's attorney general?

Before we begin to answer that question, we must also remember that between 1913 and 1959, some forty-six years, the citizens of the Territory of Alaska did, in fact, elect the attorney general. Given an opportunity to review the issue during Alaska's Constitutional Convention in 1955 and 1956, the elected delegates to that Convention - on the basis of the debate held and the information learned -- voted against establishing the head of the Department of Law of the new State of Alaska as an elective position (12 "yes" votes, 40 "no" votes).

Thus, after the experience of forty-six years under an elected attorney general, the citizens of Alaska, in approving the State Constitution in April of 1956, rejected that notion and returned to the model of the federal Constitution. Why? Let's list some of the reasons.

Accountability. As stated, the Alaska (and the U. S.) Constitution favors a strong executive. All executive power is vested in the governor. As a result, the people of Alaska know to whom they should turn when they are displeased with or distrustful of the administration of its government, and whom to thank when the government is functioning well. In states where executive branch officials other than the governor hold independent, elective office, it is the often divisive habit of the governor to blame the elected attorney general (and any other elected department heads) for many of that state's problems, and the other elected executive branch officials to similarly blame the governor and each other for the state's errors. For example, in states which elect the governor, the attorney general, and a treasurer, these officials are often at odds over revenue policies and methods of taxation, leading to serious public financing problems.

This division of public responsibility among various elected executive branch officials makes it difficult for the citizenry to feel confident in assessing which officials should, in fact, be called to task for perceived problems within the administration. The resulting confusion is very harmful to the development of accountability in government. As you know, it is hard to pin responsibility on a passing buck.

In the development of a model state constitution which, among other things, recommended the appointment of the attorney general, the National Municipal League stated:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all of the people, should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of the state. (Emphasis added.)

Studies on administrative reorganization usually argue that fragmentation of authority leads to irresponsibility; a single chief executive, however, who is held directly accountable through the electoral system, will -- as a consequence -- make his or her administration more responsive. As one delegate to Alaska's Constitutional Convention put it: the purpose of vesting the power of the executive branch in a single person was very basic: "we would know who to blame and could vote accordingly at the next election." Such direct responsibility to the public within the Executive Branch is at the core of our nation's system of representational democracy.

Efficiency. The operation of state government in Alaska is highly unified and coordinated; our small population both mandates and justifies this high degree of centralization. Alaska's attorney general, appointed by the governor as the head of the Department of Law, is the legal advisor to both the governor and other state officers. The governor and department heads request and receive advice only from attorneys within the Department of Law. All legal services are coordinated and centralized within the one department.

Experience in other states with elected attorneys general has shown that the governors in such states generally hire their own attorneys to advise the governor, rather than depend on the advice of an elected attorney general who may be of a different political or philosophical bent than the state's chief executive. In addition, the heads of the various departments within the executive branch also frequently hire their own attorneys, leading to a proliferation of "in-house" counsel to the staff of all major departments. Such counsel are employed by executive branch agencies to give department heads a

"second" opinion in controversial matters where the elected attorney general is known to hold opinions contrary to the policies of the governor and his or her administration. These "in-house" counsel usually do not have authority to litigate, but they do provide legal advice to department heads.

Without the centralized legal services and advice that occurs in Alaska, agencies in states with elected attorneys general rely on advice from their own lawyers and, therefore, the states receive differing interpretations regarding the legal issues that are daily raised. This, in turn, makes consensus on important issues among different agencies much more difficult to achieve. In states with elected attorneys general, public policy decisions by the executive branch are often delayed, to the detriment of both the public and the legislature.

In addition, counsel for the various departments frequently submit amicus briefs in litigation affecting their department's programs. It is not unusual in states with an elected attorney general to see four or five separate briefs filed in a single matter, each brief representing the varying viewpoints of the different agencies involved and all of them purporting to represent the state's position! If nothing else, this needless duplication insures that the courts and the public are confused about the state's policy on important issues.

The purpose of a strong, accountable executive is to specifically avoid such confusion in matters of policy; the State of Alaska must speak with one voice if its concerns are to be heard forcefully and clearly.

Cost. Inefficiency and lack of accountability add up to one thing: increased costs to the state. If Alaska were burdened with an elected attorney general, it has been estimated that the cost to the taxpayers of the additional legal counsel the governor and various State agencies and departments would require would easily exceed $1.0 million annually.

Even more costly, however, would be the expense to the State of setting up the attorney general's office as an "independent" department within the executive branch. Currently, many of the administrative services necessary and common to running the numerous departments and agencies of the State of Alaska are centralized, to avoid duplication of effort. If it was determined to fully isolate the elected attorney general's office from the organizational and supervisory control of the governor, in order to assure the office's independence, it would be necessary to provide special funds to the Department of Law

for it to separately perform the administrative functions now collectively administered (e.g., purchasing; leasing and supply; personnel; duplicating services; data processing). It is estimated that it would cost an additional $2.5 million to provide the degree of institutional independence that experience indicates is sometimes demanded of taxpayer's pocketbooks in states with elected attorneys general. Such a sum is an enormous increase over the Department of Law's current administrative overhead of less than $725,000.

Taken together then, the cost of the additional legal counsel required by the governor's office and other executive branch agencies, plus the additional administrative overhead resulting from the creation of an independent department approximates $3.5 million! Such is the cost that would have to be borne by Alaskans if a proposal to hav an elected attorney general were adopted by the voters. This added expense would occur at a time of declining oil revenues and in a State where size and population necessitates a unified administration if our government is going to function cohesively and efficiently.

Political In-Fighting. The delegates to the U. S. Constitutional Convention held a little less than 200 years ago recognized that a strong, centralized presidency was needed to guide a country as large and diverse as America. Similarly, the delegates to Alaska's much more recent Constitutional Convention recognized that our vast State, with its disparate interests and unique citizenry, required the unifying leadership that a strong executive would provide.

This holds true today more than ever. The last thing our State needs is an elected attorney general who may have a personal or political agenda which varies from the position of the governor. The friction between two elected administration officials could lead to a less responsive bureaucracy and to debilitating executive branch in-fighting.

In the Federalist Papers, number 70, written by Alexander Hamilton in 1783, he stated: "Energy in the executive is a leading character in the definition of good government." Energy, as used here, refers to the capacity of the the executive to make a decision and carry it out. If you elect the attorney general (or any other department head, for that matter), you will deprive the governor of that energy. His energy will be directed to the conflict within his cabinet that is generated by having an independent voice there.

The situation can be likened to having two governments in one municipality, like the former City and Borough of Anchorage or the City and Borough of Juneau. The history of Alaska's local governments shows that most of our major communities have wisely consolidated their cities and boroughs into one entity, so that the energy of the people that run them is not spent fighting each other but in addressing the principal problems of the community as a whole. You will deprive the executive branch of its capacity for effective leadership if you saddle the governor with an opponent within the system.

Experience shows that if the attorney general is an elected official, conflict with the governor is inevitable; rarely are relations cooperative and cordial. Wherever the governor and elected attorney general have differing viewpoints, opinions from the attorney general's office will be affected by the attorney general's desire to be viewed in the best possible public posture, rather than by those considerations that assist the executive branch and the public policy issues it is attempting to implement. An elected attorney general often has an ambition to be the governor and may therefore be in regular, fractious confrontation with the chief executive.

While political debate is a healthy and necessary part of our democracy, it can also be time-consuming and inefficient. This nation's Founders established a strong legislative branch, with its multitude of elected representatives, as the rightful forum for such political debates -- debates which generally lead to the passage of meaningful and beneficial laws. The executive branch, which is created to implement those laws, must -- of necessity -- be more efficient and less debilitated by internal debate or nothing would be accomplished. The pressing needs of Alaskan citizens demand that the State's executive branch remain accountable to the people through a single elected official, not through two (or more) officials vying for public popularity at the expense of responsiveness and responsibility.

Inappropriate, Political Influences. Unfortunately, the real world of politics makes it difficult for an attorney general elected to office to be free from political pressures. An elected attorney general is often criticized because, in framing legal opinions, his or her reading of the law is unduly influenced by the current political climate within the state and his or her desire to give "popular" advice.

There is also the concern that an elected attorney general is further inappropriately influenced by the need to be seen as responsive to the contributors to his or her campaign for

elected office. Even on its face it is clear that a very real conflict exists if an attorney general is placed in the position of attempting to balance legal considerations with the expressed desires of the contributors to his or her campaign for public office: such contributors might not be willing to provide financial support in the next election should the office's advice run counter to their private interests in a particular matter.

It is thus important to ask: is it appropriate for Alaska's top legal advisor to have a constituency to which he or she is responsive?

To illustrate: As you know, oil companies contribute heavily to political campaigns in Alaska. Let's assume -- for the moment -- that Alaska elects its attorney general and, like most other elected officials, that the attorney general received many contributions from oil industry interests during his or her campaign for the office. Alaska's Department of Law recently successfully defended from an attack by oil companies an oil tax program adopted by the Legislature some years back. The Department's aggressive defense of the tax legislation saved the state from having to refund a total of $1.8 billion dollars to a number of oil companies!

What if, while under an elected attorney general, the State had lost the case? In that instance, couldn't taxpayers have legitimately questioned whether the case had been forcefully and competently defended, knowing that the attorney general's campaign for elective office had been heavily financed by oil industry money? Citizens of this State must ask themselves why, in the light of such probable conflicts, there is mounting pressure among certain groups and by certain individuals to place the attorney general in such ethical binds by requiring a political campaign for the office. Who will really benefit?

Before concluding, there are a number of matters that are routinely raised by critics of our current system of government which need to be addressed.

First, because Alaska's attorney general is appointed by the governor, this question is often asked: "Can the attorney general be objective in providing legal advice that might affect the interest of an incumbent governor?" Which is to say, are those who support the status quo so naive as to believe the attorney general doesn't bend the law too far sometimes in giving the nod of approval to some action by the governor who appointed him or her to office?

John Havelock, a former Alaska Attorney General, recently discussed this issue. His first-hand comments are perceptive:

> Now certainly a lawyer is always anxious to please his client. A client who choses a lawyer not anxious to please is a fool indeed. But the interest in pleasing lies in showing the way through and around the labyrinth of the law, not in breaking it. Moreover, the attorney general is counsel to the office, not the person. Private sector lawyers are familiar with the distinction between counsel to the corporation and private counsel to members of the board, the chairman or a chief executive officer. If a governor has a personal problem, including the possibility of criminal or civil liability for wrongdoing, he had better get his own lawyer. The attorney general will not advise him. Several (probably all) Alaska governors have sought their own counsel at one time or another for purposes public and private. Past investigations and indictments and convictions of the state's most powerful political figures, not to mention the very recent impeachment proceedings, are not indications of weakness in the system but examples of how well it works. If an elected attorney general was making this kind of investigation much of the public would write it off as partisan politics.
>
> The State Attorney General, like his federal counterpart, is a direct descendant of the chancellor Sir Edward Coke, who drove James the First of England up the wall in the Seventeenth Century with his firm adherence to the proposition that even a king ruling under divine ordination cannot change the law. As a governmental officer, Coke saw his loyalty as running to the Crown, not to the person of the king, and so it is with Alaska's Attorney General. His first duty is fixed by oath - to support the constitutions and laws of the United States and of the State. The governor's writ extends no further than the law allows.
>
> Though the public routinely supports the popular election of judges, the attorney general, and DAs, two to one, lawyers in this state oppose election

> in inverse proportion. I suspect because they can see that the current Alaskan system produces a style of legal services obedient to the law, not to the appointing officer, and not to shifting popular majorities as would more likely be the case if these offices were elective. Elected and appointed attorneys general both struggle between the duty to the law and accountability to the people and popular opinion. But the accountability of an elected attorney general is more problematic than that of an appointed one. (Emphasis added.)

Practically speaking, as Mr. Havelock was, it is clear that the issues of public accountability and ethical conduct are tantamount. (Remember our State's experience during Territorial days.) Elected attorneys general have too many masters: first, there is political ambition; second, there is the consideration that must be given to the specific interests of their contributors; and third, there is the desire to issue opinions that are popular with the voters, decisions which are not necessarily the right -- or best -- advice to give to the executive.

The appointed attorney general needs only to balance his or her advice to the governor against the laws he or she has sworn to uphold, and in that manner assist the executive branch in going about its business lawfully.

Another argument often raised in this debate is that an elected attorney general would be an attorney "for the people." It is a very fundamental error to believe that an attorney general, whether appointed or -- in particular -- elected, is an attorney "for the people." An attorney general is the attorney to the executive branch (but does give advice to the legislature and the judicial system when asked). No citizen of any state can go up to the attorney general's office and say: "I want an opinion on a particular matter." The attorney general, whether appointed or elected, will, of necessity, tell that citizen: "we don't issue opinions for individual citizens; we can only give legal advice to state agencies."

It is easy to be cynical and note, however, that in one very real sense we will get an attorney "for the people" if the attorney general is elected. Experience in other states has shown that an elected attorney general is very much for the people: as long as you are one of the people who supported the attorney general, he or she will definitely be for you!

But do citizens want or really deserve a partisan attorney general? Although elections for attorneys general are usually called "non partisan," just as many mayoral elections in Alaska are "non partisan," the need to conduct a political campaign creates a partisan atmosphere that only the most naive would fail to acknowledge.

Nevertheless, it is also true, nationwide, that the state attorney general has become much more of a public advocate. Since the early 1970's in almost every state, including Alaska, the office of the attorney general has broadened the scope of its authority to include a range of activities that are firmly rooted in public advocacy and are now considered by the public to be a normal part of an attorney general's responsibilities. Offices previously content to serve merely as in-house counsel and advisors to executive branch officials have become more involved in consumer protection cases, anti-trust investigations, and intervention in utility rate cases.

It is no doubt the increase in these advocacy functions which has given rise to the impression that the attorney general is the "people's attorney." And while it appears that the attorney general is less a "company" person when cast in the role of advocate protecting the public's interest, it is no less true today than fifteen years ago that the attorney general is first -- and foremost -- counsel to the executive branch. Because, however, governors (and, hence, governments) respond to the demands of citizens and citizen interest groups, the growth in consumer advocacy within Alaska's own Department of Law reflects effective, responsive public policy at work in the executive (and legislative) branch.

In closing, let's remember that the delegates to Alaska's Constitutional Convention framed our Constitution along the lines of the federal Constitution because of the proven strength of the U. S. Constitution. A strong executive makes for a centralized and efficient government that is directly accountable to the people. Before amending Alaska's Constitution to provide for an elected attorney general, citizens should question what benefits will actually derive to the public from politicizing the office of the attorney general while forcing expensive and divisive realignments within the executive branch.

And it isn't as if the public had no say in the choice of the State's attorney general: the individual selected for the job in Alaska is appointed by a governor who is elected statewide by the voters, a governor whose political agenda has just been given the stamp of approval by the electorate. The appointment

of the attorney general must then be confirmed by the Legislature in joint session (a total of sixty men and women, also elected by the people). Confirmation hearings are held; the public gets a chance to hear about the person designated to serve as the attorney general; the Legislature can reject the appointment.

Surely the checks and balances are there. Surely the decision of the Founders in 1787 and Alaska's own delegates in 1956 deserve to be respected for the decisions they reached. Only substantial public need can justify amendments to our Constitutions. In this instance, I believe political whim or convenience should be turned down. Alaska is fortunate to have a strong executive form of government, and I believe we should keep it that way.

Please do not hesitate to contact me if you have any questions concerning this matter or if I can be of further assistance.

Sincerely yours,

Harold M. Brown
Attorney General

HMB/glg