

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5331 SJUD SJR 15 - HB 2

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STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 463 3806

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 30, 1986

SUBJECT: Right of a citizen to keep and bear arms  
[CSSJR 39(Judiciary) am]

TO: Representative M. Mike Miller  
Chair, House Judiciary Committee

FROM: Richard A. Bradley  
Legislative Counsel

Hayden Kaden has asked that I comment on three issues relating to this resolution proposing a constitutional amendment.

The amendment proposed under CSSJR 39(Judiciary) am would amend art. I, sec. 19 of the Alaska Constitution, "Right to Bear Arms". The resolution contains a statement of "Legislative Intent".

It may be desirable to summarize each to set the stage for the comments that follow.

Section 1 of CSSJR 39(Judiciary) am amends as follows:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of each citizen of the state [THE PEOPLE] to keep and bear arms for lawful defense of self, family, property, and the state and for lawful hunting, recreation, and other lawful purposes, shall not be infringed by the state or by a borough or city of the state.

Sec. 2(a) of CSSJR 39(Judiciary) am states legislative intent: "the legislature intends only that the amendment . . . [provide] that the right to keep and bear arms is an individual rather than a collective right." And the "amendment, if adopted, should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used." [It] "should not be used to repeal or to

render unconstitutional existing statutes . . . or existing municipal ordinances."

I. What is the effect of an expression of legislative intent in a constitutional amendment?

I believe that the courts will give deference to legislative intent. There is an existing history of them doing that. In Alaska Public Employees Ass'n v. State, 525 P.2d 12, 17 - 18 and in Seward Marine Services, Inc. v. Anderson, 643 P.2d 493, the Alaska Supreme Court considered the extent to which it would consider evidence of legislative intent apart from that stated in the legislation itself. In each case, even though it would seem that extraneous evidence is weaker than legislative intent stated within the legislation itself, it considered the offered evidence carefully.

A statement of legislative intent in the context of a constitutional amendment would be entitled to equal weight as compared to a statement of legislative intent in legislation if everything were equal. Everything is not, however, equal.

There is a unique mechanical problem in the case of a constitutional amendment. In the usual statement of legislative intent, the theory and the fact is that those who vote for the bill have the statement of the legislative intent before them (if it is incorporated into the bill) as they vote or, in the case of the governor, when it is reviewed before signature or veto.

There is a difference here. The voters of the state who actually approve or reject the amendment will not have the statement of legislative intent before them. As a matter of law, it seems that they will have only section 1 of the resolution before them. See art. XIII, sec. 1 of the Alaska Constitution: the "lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot . . . "

In an attempt to address that problem, sec. 2(b) of CSSJR 39(Judiciary) am directs the Legislative Affairs Agency, as it prepares the "neutral summary" under AS 15.58.020, to "consider" the statement of legislative intent. It is presumably only through the neutral summary published in the voter's pamphlet that a voter may become aware of sec. 2(a) of the resolution.

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I am satisfied that the Agency, when it considers CSSJR 39(Judiciary) am, will prepare a neutral summary. The law requires no less. Some of the problems that the Agency may have in the preparation of the summary are suggested below.

The general rule is that the legislative intent will be considered only after the substantive language has itself been considered and then only if the court is unable to determine what the legislature intended from the substantive language. The corollary of the rule is that the legislative intent will not be considered if the substantive language is clear or to the extent that the legislative intent contradicts, in some fashion, the substantive language.

It is these points that present the problem for legislative intent.

Sec. 2(a) states that the legislature intends that the "right to keep and bear arms" be "an individual right rather than a collective right." Consistently with that, the amendment deletes the reference to the "well-regulated militia being necessary to the security of a free state".

The very substantial problem is that the language added in provides that the purpose of the right to bear arms is "for lawful defense of self, family, property, and the state". [Emphasis added.] It seems clear that the focus of the amendment is broadened; individual purposes for the right are affirmed. But the amendment also states a collective purpose: the "defense of . . . the state". To the extent that the "legislative purpose" seems inconsistent the substantive language of the amendment itself, the court must disregard the legislative purpose.

I assume that the legislative purpose of the amendment "not [being] used to repeal or render unconstitutional existing statutes . . . or existing municipal ordinances" will be effective.

II. What is the likely effect of the language of the amendment on existing laws against concealed weapons, etc.?

The legislative purpose says that the amendment should have no effect on those laws; predictions of actual effect in this area are, however, somewhat difficult.

The amendment and its analogs in the U.S. Constitution and in the constitutions of other states have a long history: 1

think it is fair to say that the amendment has a meaning and an understanding that is larger than the language of the section itself; I see no reason to suggest that the amendment changes these understandings.

It has been said that the provision in the U.S. Constitution goes back to 1689. The English Bill of Rights, enacted by Parliament in 1689, granted the English the right "to have Arms for their Defence, suitable to their Conditions, and allowed by Law." See State v. Kessler, 289 Or. 359, 614 P.2d 94 (Oregon 1980).

The Kessler case and State v. Delgado, 692 P.2d 610 (Oregon 1984) construed the Oregon version of art. I, sec. 19. It provides "The people have the right to bear arms for the defence (sic) of themselves, and the State, . . ." [Art. I, sec. 27, Oregon Constitution.] It seems clear that the language of the Oregon Constitution is identical in function and almost identical in language to that contained in CSSJR 39(Judiciary) am. It should be reasonable, therefore, to expect them to be construed similarly.

The Kessler case involved a prosecution for the possession of a "billy", an item the possession of which was prohibited as a "slugging weapon."

The Oregon court noted that in colonial time and during the Revolutionary War, weapons used by militiamen and by individuals in the defense of their home or their person were the same. The court noted that the historical analysis of the provision indicated that

the drafter intended "arms" to include the hand-carried weapons commonly used by individuals for personal defense. The club is an effective, hand-carried weapon which cannot logically be excluded from this term. We hold that the defendant's possession of a billy club in his home is protected by Article I, section 27, of the Oregon Constitution. [614 P.2d at 100.]

The Delgado case involved possession of a switchblade.

The appropriate inquiry in the case at bar is whether a kind of weapon, as modified by its modern design and function, is of the sort commonly used by individuals for personal defense during either the revolutionary or postrevolutionary era, or in 1859 when Oregon's consti-

Representative M. Mike Miller

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tution was adopted. In particular, it must be determined whether the drafters would have intended the word "arms" to include the switch-blade knife as a weapon commonly used by individuals for self defense. [692 P.2d at 612.]

The Oregon Supreme Court agreed that a law that sought to prohibit possession of the "jackknife" or "mere pocketknives" would violate the Oregon constitution.

The only difference is the presence of the spring-operated mechanism that opens the knife. We are unconvinced by the state's argument that the switch-blade is "so substantially different from its historical antecedent" (the jackknife) that it could not have been within the contemplation of the constitutional drafters. They must have been aware that technological changes were occurring in weaponry as in tools generally. [692 P.2d at 614.]

Note that the provisions of Alaska law now prohibit the possession of a switchblade. See AS 11.61.200.

It is possible that the reference in the amendment to art. I, sec. 19 to "lawful" uses may be adequate to authorize regulation of an "unlawful" use, that is, to define what is unlawful.

On the other hand, a constitutional provision granting the legislature the authority to characterize a use as unlawful may then authorize a regulation that was unintended by the sponsors of the amendment.

I agree that such a result in this state is unlikely for more practical reasons. But that result occurs because of the understandings on the amendment, not really because of the language itself.

### III. Elimination of militia concepts.

Your third question asks whether it would be possible to eliminate the "well-regulated militia" concepts while permitting reasonable regulation. The answer is a qualified yes; I think it is clear that some context for the regulation must be offered. Consider the section with the "militia" eliminated:

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SECTION 19. RIGHT TO BEAR ARMS. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of the people to keep and bear arms shall not be infringed.

With no context for the regulation, the statement becomes absolute and no regulation would be possible. Accordingly, I believe that some threshold basis for the regulation (such as that in SJR 39) must be offered by the constitution.

If I may be of further assistance, please advise.—

RAB:mkr  
m5/046

Section 19. RIGHT TO KEEP AND BEAR FIREARMS [ARMS]. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of an individual, who is not otherwise prohibited by federal law from receiving firearms, [THE PEOPLE] to keep and bear firearms for lawful purposes, consistent with the obligation of government to protect the public welfare and safety, shall not be infringed, except that the manner of keeping, bearing, or using firearms may be regulated by law

Section 19. RIGHT TO KEEP AND BEAR FIREARMS [AFMS]. The [A  
WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A  
FREE STATE, THE] right of a citizen of the state [THE  
PEOPLE] to keep and bear firearms for lawful purposes [ARMS]  
shall not be infringed, except that the keeping, bearing, or  
using of firearms may be regulated by law.

Bradley  
5/5/86

Original sponsors: Rodey, Abood,  
Bennett, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
 2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 39 (Judiciary)  
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 Proposing an amendment to the Constitu-  
 6 tion of the State of Alaska relating to  
 7 the right of a citizen to keep and bear  
 8 arms.

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

10 \* Section 1. Article I, sec. 19, Constitution of the State of Alaska,  
 11 is amended to read:

12 SECTION 19. RIGHT TO KEEP AND BEAR FIREARMS [ARMS]. The [A  
 13 WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE  
 14 STATE, THE] right of a citizen of the state [THE PEOPLE] to keep and  
 15 bear firearms for lawful purposes [ARMS] shall not be infringed except  
 16 that the keeping, bearing, or use of firearms may be regulated by law.

17 \* Sec. 2. The amendment proposed by this resolution shall be placed  
 18 before the voters of the state at the next general election in conformity  
 19 with art. XIII, sec. 1, Constitution of the State of Alaska, and the elec-  
 20 tion laws of the state.

Bradley  
5/9/86

Original sponsors: Rodey, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE JOINT RESOLUTION NO. 39 (Judiciary)

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STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 9, 1986

SUBJECT: Right to bear arms  
(Work Order No. 14-SJ39)

TO: Representative M. Mike Miller  
Chair, House Judiciary Committee

FROM: Richard A. Bradley  
Legislative Counsel 

Hayden Kaden has requested a CS for SJR 39. It is enclosed as requested.

The amendment is changed in the second house. I believe we may have provided you with a concurrent resolution to address the question.

The resolution continues the "legislative intent" language in sec. 2. As my April 30 memorandum to your committee on the Senate version of this resolution suggested, we do not believe that "legislative history" is placed before the voters and therefore will not be considered before them.

Thus, the language of sec. 3 that directs the lieutenant governor to place the "legislative history" before the voters may be ineffective. Article XXX, sec. 1 of the Alaska Constitution tells the lieutenant governor what to place before the voters; it provides, in pertinent part:

SECTION 1. AMENDMENTS. \* \* \* The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. \* \* \*

Thus, as you see, the amendment itself is not placed before the voters but only "a ballot title and proposition summarizing each proposed amendment". If the lieutenant governor follows the constitution, which seems to offer mandatory

Rep. M. Mike Miller  
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language, the lieutenant governor may not follow the instructions added in sec. 3 of the resolution.

And I also believe that the amendment to sec. 2(b) of the resolution is also ineffective in its instruction to the Legislative Affairs Agency to "include" the statement of legislative intent in the neutral summary.

Since the language in sec. 2 of the resolution is not law and has not (and cannot) amend the instructions to the Agency, the Agency will continue to be bound by the requirements of AS 15.58.020(6)(C). Those provisions now provide:

Sec. 15.58.020. CONTENTS OF PAMPHLET. Each election pamphlet shall contain

\* \* \*

(6) for each ballot proposition submitted to the voters by initiative or referendum petition or by the legislature,

\* \* \*

(C) a neutral summary of the proposition prepared by the Legislative Affairs Agency:

\* \* \*

It seems that the obligation of the Agency is to prepare a summary (rather than simply accept a summary not prepared in the Agency). The Agency is also obligated to ensure that the summary is neutral (not weighted by any external considerations beyond the language of the actual proposed amendment itself).

I believe, therefore, that the Agency may consider the legislative history but cannot "include" as its own the legislative history suggested in sec. 2(a).

If I may be of further assistance, please advise.

RAB:ml  
095/m5

Municipality  
of  
Anchorage



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ANCHORAGE, ALASKA 99502-0650  
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TONY KNOWLES,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

February 25, 1986

TO: Members of the Senate Judiciary Committee

Re: Senate Joint Resolution No. 39

The proposed amendment to Article I, Section 19 of the State Constitution set forth in Senate Joint Resolution No. 39 could, in its original form, preclude the regulation of conduct which has traditionally been considered to be criminal. Of particular concern is the clause beginning on line 15 which specifies "...personal defense and for the defense of family, property...". This provision could be read to invalidate all existing state and municipal laws governing the use of firearms for self-defense and the defense of property. Historically, the right to use firearms to protect self, family, and property has been curtailed. The amendment in its present form would cast doubt on the viability of continued regulation of such items.

The amendment, in its present form, would also have the likely affect of nullifying state and municipalities laws regulating the possession of firearms. This is because of the deletion of provisions referencing a "well regulated militia." Historically, the courts have interpreted that phrase as creating not a personal right to bear arms, but rather a right of the state to maintain a militia. The deletion of that phrase would cast doubt on the validity of all previous court decisions pertaining to the interpretation of section 19, and a similar provision of the Federal Constitution. With the deletion of that body of law, the phrase "shall not be infringed" would take on a whole new meaning. Thus, the state and local governments could lose the ability to regulate such activities as the carrying of concealed weapons and the obliteration of serial numbers on firearms.

The provision could easily be amended so as to affirm the right of the individual to own and possess firearms (as opposed to the right of the state to maintain a militia) without precluding the Legislature's ability to prescribe certain conduct with respect

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to the use and possession of deadly weapons. First, I would propose a change to line 15 whereby the term "personal" would be replaced by "lawful" and the phrase "and for the defense" be replaced by the phrase "of self". In addition, line 17 should be changed by adding language after the term "city" which would read "...except that the manner in which arms are possessed may be subject to reasonable regulations designed to protect the public safety".

In addition, if the Committee's intent is merely to establish a personal right to the ownership and possession of firearms and not to overturn existing laws governing the use of firearms, then such intent should be plainly set forth in a permanent report that will serve in the future to guide the courts. Furthermore, if the additional language I have suggested is added to the amendment, the Committee report should clarify the Committee's intent by specifying that the ability of state and local government to impose reasonable regulations on the possession of firearms would include laws curtailing the possession of concealed weapons or weapons that have altered identification marks, but would not include the right of the state or local government to enact an outright ban on the ownership or possession of arms.

Very truly yours,

DEPARTMENT OF LAW

Jerry Wertzbaugher  
Municipal Attorney

JW:gml

# Municipality of Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4545

TONY KNOWLES,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

May 6, 1986

Members of the House Judiciary Committee

Re: SJR 39

The Municipality does not oppose a constitutional amendment that redefines the "right to bear arms" as a personal right vested in each citizen of the state. We are very concerned however with the way in which the measure is now drafted. Our concerns are based on the fact that the present language, quite arguably, would not permit the state or a municipality to regulate either the type of arms possessed or the manner and circumstances of possession.

While the version passed by the Senate clearly allows regulation of the use of arms, many existing laws do not relate to the simple use of a weapon, but rather to its function and to the manner and circumstances in which it is possessed. Public safety concerns demand that the state legislature and local assemblies be permitted to ban certain types of arms such as bombs, hand grenades, machine guns, silencers, sawed-off shotguns and bullets designed to pierce protective devices worn by law enforcement officials. We believe likewise that the constitution should permit the Legislature to bar the possession of arms by certain classes of convicted criminals, intoxicated or mentally disturbed persons. Finally we feel it is essential to control the circumstances in which otherwise lawful weapons are possessed by limiting the carrying of concealed weapons, the possession of loaded firearms on licensed premises, the possession of a firearm by a minor without parental consent, et cetera. We reiterate the position taken by Attorney General Harold Brown in his March 26, 1986 letter regarding SJR 39:

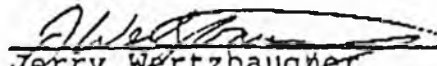
These statutes [that would be invalidated by SJR 39] serve an important public safety function by carefully regulating the possession of especially dangerous weapons or weapons

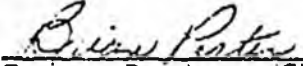
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carried in an especially dangerous manner or place. If the legislature does not intend to render these statutes unenforceable, nor to foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds for example), then the legislatures intent to continue to allow a reasonable regulation by law should be made clear

The clarity of intent referred to by the Attorney General must be embodied in the measure itself. Otherwise both State and Municipal prosecutors will face a flurry of legal challenges by those charged with weapons-related offenses.

In conclusion, we urge that if the committee does not intend to invalidate existing statutes and ordinances regulating the type of arms that may be possessed, and the circumstances of possession, then it must embody this intent clearly within the amendment that is offered to the voters for ratification.

  
\_\_\_\_\_  
Jerry Wertzbaugher  
Municipal Attorney

  
\_\_\_\_\_  
Brian Porter, Chief  
Anchorage Police Department

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

May 8, 1986

The Honorable M. Mike Miller  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Miller:

You have asked this office to comment upon the effect of "legislative intent" language currently contained in a resolution now under consideration by the House Judiciary Committee: CS SJR 39 (Jud) am. This resolution, if passed, would place a proposed constitutional amendment before the voters at the next general election. The resolution contains an amendment to art. I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. The stated purpose of the proposed amendment is to establish that the right to keep and bear arms under the state constitution is an individual right, rather than a collective one.

The proposed constitutional amendment now states that a citizen's right to keep and bear arms "shall not be infringed by the state or by a borough or city of the state." During consideration of CS SJR 39 (Jud) am on the Senate floor Senator Vic Fischer proposed an amendment which would have added the phrase "except that the manner of keeping and bearing arms may be regulated by law." This proposed amendment was rejected by the Senate on a vote of 16 to 2. See Senate Journal, March 26, 1986, at pp. 2166-2167. The Judiciary Committee version of the resolution, adopted with amendment by the Senate, contains a section entitled "legislative intent." Section 2 of CS SJR 39 (Jud) am now provides, in part, that the proposed constitutional amendment "should not be construed to preclude the regulation of the manner in which arms may be borne, carried, or used."

We are concerned that the language presently contained in CS SJR 39 (Jud) am might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shot guns, prohibits possession of a firearm while intoxicated, the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm

on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-11.61.220.)

These statutes serve an important public safety function by restricting the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend that the proposed amendment of art. I, sec. 19 would render these statutes unenforceable, nor foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear.

It may be that the Senate, in rejecting the amendment proposed by Senator Fischer but adopting section 2 of CS SJR 39 (Jud) am, believed that it was not necessary to explicitly state in the proposed constitutional provision that regulation of firearms by law is allowed, as this point is included in their "legislative intent" language. As a general rule, however, a measure will be enforced according to the plain meaning of the language on its face. 2A C. Sands, Sutherland Statutory Construction § 45.02 at 4 (4th ed. 1984); Wilson v. Municipality of Anchorage, 659 P.2d 569, 571 (Alaska 1983). It is a "fundamental principle of statutory interpretation ... that a statute means what its language reasonably conveys to others..." North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 540 (Alaska 1978); South Central Health Planning v. Commissioner, Dept. of Administration, 628 P.2d 551, 553 (Alaska 1981). 1/

While the courts in Alaska may consider a measure's legislative history to the extent it may assist the court in correctly interpreting the measure, a legislative committee report or formal statement of legislative intent may not be used to give the statute a meaning not fairly contained within its words. Chicago, M., St. P. & P. R. Co. v. Acme Fast Freight, 336 U.S. 465, 93 L.Ed.2d 817, 69 S.Ct. 692 (1949); North Slope Borough, 585 P.2d at 540.

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1/ Although general rules of legal interpretation are most often expressed in the context of statutory interpretation, the same rules apply to the interpretation of legislative resolutions and constitutional amendments. 1A C. Sands, Sutherland Statutory Construction § 29.08 at 500 (4th ed. 1985).

When a reviewing court decides that it must consider the legislature's intent in order to construe a provision, the text of the measure itself is still considered the best evidence of legislative intent. See 2A C. Sands, Sutherland Statutory Construction § 46.03 at 82 (4th ed. 1984) and the cases cited there. Where the terms of a provision are clear and straightforward, the intent of the legislature will be based on those terms, even if the apparent intent conflicts with a statement of legislative intent or a committee report. See Caminetti v. United States, 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192 (1917) and 2A C. Sands, Sutherland Statutory Construction § 48.06 at 308 (4th ed. 1984).

In Commercial Fisheries Entry Commission v. Apokedak, 680 P.2d 486 (Alaska 1984) Apokedak, relying upon legislative intent language contained in the "preamble" to the Limited Entry Act, urged the state supreme court not to adopt a literal construction of the act. The court refused to adopt the interpretation suggested by Apokedak, stating: "a statutory preamble ... can neither restrain nor extend the meaning of an unambiguous statute; nor can it be used to create doubt or uncertainty which does not otherwise exist." 680 P.2d at 488, n.3. Thus, to the extent that language contained in the "legislative intent" section of CS SJR 39 (Jud) am conflicts with the plain meaning of the terms of the constitutional provision, it is the constitutional language which will control.

The courts may also consider the history of legislative action taken on a given measure when determining legislative intent. Generally, the rejection of a proposed amendment indicates that the legislature did not intend the bill to include the provisions embodied in the rejected amendment. Lapina v. Williams, 232 U.S. 78, 58 L.Ed. 515, 34 S.Ct. 196 (1914); United States v. Great Northern Railway Co., 287 U.S. 144, 155, 77 L.Ed. 223, 53 S.Ct. 28 (1932); 2A C. Sands, Sutherland Statutory Construction § 48.04 at 302, § 48.18 at 341 (4th ed. 1984). Thus, a reviewing court may well conclude that if the legislature had intended to allow the continued regulation by law of some aspects of a person's right to possess arms it would have adopted the language proposed by Senator Fischer during the Senate's consideration of the resolution. See, e.g., North Slope Borough, 585 P.2d at 541; Wilson, 669 P.2d at 571.

Perhaps the most important consideration here is that in the case of a measure (such as this one) which is to be decided by a vote of the electorate, descriptive statements accompanying the proposition are an important source of

guidance for interpretation. 2A C. Sands, Sutherland Statutory Construction § 48.04 at 301, § 48.19 at 345 (4th ed. 1984); State v. Lewis, 559 P.2d 630, 637-638 (Alaska 1977), cert. denied, 97 S.Ct. 2943, 432 U.S. 901, 53 L.Ed.2d 1073.

Under art. XIII, sec. 1 of the Alaska Constitution, the lieutenant governor is required to prepare a ballot title and a summary of the proposed constitutional amendment. The election pamphlet prepared pursuant to AS 15.58.010 must contain: 1) the text of the proposed constitutional amendment, 2) the ballot title and summary prepared by the lieutenant governor, 3) "a neutral summary" of the proposition prepared by the Legislative Affairs Agency, and 4) advocacy statements for and against the proposed amendment. AS 15.58.020(6). Thus, although the resolution directs the Legislative Affairs Agency to "consider" the statement contained in section 2 of CS SJR 39 (Jud) am when preparing its neutral summary for the ballot, this language will not appear on the ballot, and may well not appear in the elections pamphlet. Since, in the final instance, a reviewing court will look to the intent in the minds of the voters who voted to adopt the constitutional amendment, the legislature's statement of its intent when placing the measure on the ballot has limited significance. Lewis, 559 P.2d at 637-638.

One of the main purposes of a constitution is to limit legislative power. Ordinary acts of the legislature (i.e., statutes), whether adopted before or after a given constitutional provision, cannot be given effect if the statute conflicts with a substantive provision in the constitution. Thus, an amendment to the constitution may expressly, or by implication, repeal existing legislative enactments. Rhode Island v. Palmer, 253 U.S. 350, 64 L.Ed. 946, 40 S.Ct. 486 (1919); 1A C. Sands, Sutherland Statutory Construction § 23.20 at 387 (4th ed. 1985). The possibility that the language proposed in SJR 39 could be interpreted as invalidating some portions of Alaska's present criminal code is a real one, as this has occurred in similar circumstances in other states. See, for example, State v. Kessler, 289 Or. 359, 614 P.2d 94 (1980) and State v. Delgado, 298 Or. 395, 692 P.2d 610 (1984).

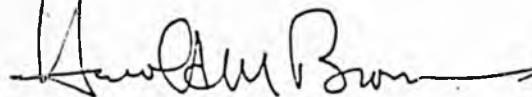
Principals of both common sense and responsible draftsmanship dictate that a well-drafted statute or constitutional provision should reduce the need for disputes about interpretation. 2A C. Sands, Sutherland Statutory Construction § 45.02 at 5 (4th ed. 1984). Statements of "legislative intent" are not an adequate substitute for clear, unambiguous language in the proposed constitutional amendment. A more precisely drafted amendment would minimize the

The Honorable M. Mike Miller  
Alaska State Legislature

May 8, 1986  
Page -5-

possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harold M. Brown", with a long horizontal flourish extending to the right.

Harold M. Brown  
Attorney General

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

State Sheriff's Office

BOUCHER - STATE CAPITOL  
JUNEAU, ALASKA 99801  
PHONE: (907) 455-5570

March 26, 1986

RECEIVED

MAR 26 1986

Dept. of Law  
Administration

The Honorable Vic Fischer  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: S.J.R. 39

Dear Senator Fischer:

You have asked for the Department of Law's comments upon the current language of S.J.R. 39, a resolution proposing an amendment to Article I, sec. 19 of the state constitution, relating to a citizen's right to keep and bear arms. As I understand it, S.J.R. 39, as amended on the Senate floor yesterday, provides that art. I, sec. 19 of the Alaska Constitution will be amended to read:

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right of each citizen of the state [THE PEOPLE] to keep and bear arms for lawful defense of self, family, property, and the state and for lawful hunting, recreation, and other lawful purposes, shall not be infringed by a state or by a borough or city of the state.

We are concerned that the language presently contained in S.J.R. 39 might allow later constitutional challenge to some existing state statutes. Present law, for example, prohibits a convicted felon from possessing a concealable firearm, prohibits possession of certain weapons such as bombs, hand grenades, silencers, and sawed-off shot guns, prohibits possession of a firearm while intoxicated, or the discharge of a firearm from, on, or across a highway, the carrying of a concealed weapon, possession of a loaded firearm on licensed premises, or possession of a firearm by a minor without parental consent. (See AS 11.61.200-.220.)

These statutes serve an important public safety function by carefully regulating the possession of especially dangerous weapons or weapons carried in an especially dangerous manner or place. If the legislature does not intend to render

The Honorable Vic Fischer

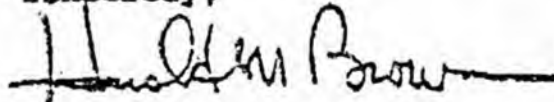
March 26, 1986  
Page -2-

those statutes unenforceable, nor to foreclose a future legislature from adopting similar provisions (prohibiting possession of loaded firearms in a church or on school grounds, for example), then the legislature's intent to continue to allow reasonable regulation by law should be made clear. The possibility that the language proposed in S.J.R. 39 could be interpreted as invalidating some portions of Alaska's present criminal code is a real one. See, for example, State v. Kassler, 614 P.2d 94 (Ore. 1980), and State v. Delgado, 692 P.2d 610 (Ore. 1984).

We believe that any possible ambiguity could be eliminated by the addition, at the end of the current language, of the phrase "except that the manner of keeping and bearing arms may be regulated by law." This suggested language is based upon similar provisions in the constitutions of several other states, including Florida (art. I, sec. 8), Georgia (art. I, sec. 1), and Utah (art. I, sec. 6). The addition of this clause would make it clear that, although a citizen's basic right to keep and bear arms may not be infringed, reasonable and appropriate regulation of the manner in which arms are kept or borne (i.e., possession by felons, by minors, in a bar, while intoxicated, etc.) is not an infringement on an individual's constitutional right. Mr. Rupe Andrews, Alaska Field Representative for the National Rifle Association, has indicated that his organization would not object to the inclusion of this additional language in S.J.R. 39. I also suggest that you consider retaining the language in the present constitutional provision "the people," rather than change it to "each citizen of the state." State constitutional provisions have traditionally recognized the equal rights of all residents of the state, regardless of the resident's national origin.

A carefully drafted amendment would minimize the possibility that, should the proposed constitutional amendment be adopted, a criminal defendant would later be able to argue that a criminal weapons misconduct statute is unconstitutional because it violates his right to keep and bear arms under art. I, sec. 19 of the state constitution.

Sincerely,



Harold M. Brown  
Attorney General

HMB:GAR:gb-13

# INQUIRY

## Topic: HANDGUN CONTROL

*Sarah Brady, 43, was recently named to the board of Handgun Control, Inc. a national group working to restrict handgun availability. Many members or their relatives have been handgun crime victims. Her husband, James Brady, presidential press secretary, was seriously wounded in the 1981 assassination attempt on President Reagan. She was interviewed by free-lance journalist Steve Vliker.*



Sarah Brady

## Handguns give me a feeling of horror

**USA TODAY:** As a new board member of Handgun Control, Inc., you recently urged Congress to put tougher controls on handguns. Had you ever considered doing that before your husband, James Brady, was shot by John Hinckley in 1981?

**BRADY:** I had always felt something was needed to ensure handguns didn't get into the wrong hands. I don't believe in arming criminals or mentally incompetent people or drug addicts or children. I've always felt that it was too easy for them to purchase handguns.

**USA TODAY:** Didn't you get rid of a family hunting rifle after Jim was shot?

**BRADY:** It wasn't as a result of the shooting. I have a 6-year-old son and I have no need for a hunting rifle myself, so I just saw no reason to keep it here in the house. There was too great a chance for it to get stolen.

**USA TODAY:** Does Jim share your views on handgun control?

**BRADY:** He agrees that measures should be taken to keep guns out of the wrong hands. This is what I'm fighting for. And I think he certainly has applauded my efforts.

**USA TODAY:** How is he feeling?

**BRADY:** He's doing terrific.

**USA TODAY:** What is his schedule like now?

**BRADY:** He still is the press secretary. He goes to work at the White House just one day a week. He's still involved in intensive therapy.

**USA TODAY:** Now that you're in front of the cameras talking about handgun control, do you have a greater appreciation for the role of a press spokesman?

**BRADY:** (laughs) I certainly do. He's the pro in the family.

**USA TODAY:** Has he given you tips on how to handle the media?

**BRADY:** He tells me always to be thorough and to think about what I say, and to be honest.

**USA TODAY:** Your little boy was two years old when Jim was shot. He's almost seven now. Does he remember it at all?

**BRADY:** Oh, certainly. I'm sure he remembers. It's been hard for him, but he's managed it very well.

**USA TODAY:** Do you think violence on television affects him?

**BRADY:** I don't know that he is particularly adversely affected at this point. I try to monitor very closely what he watches. I do think there is a lot of violence on television. But it's parents' responsibility to see that children don't watch those kinds of shows.

**USA TODAY:** What is Handgun Control, Inc.?

**BRADY:** A group of concerned citizens, very much like myself. Many have been victims or have family members who were victims of handgun misuse.

**USA TODAY:** How are you helping the group?

**BRADY:** I'm just a volunteer worker. I like to take every opportunity I can to talk to people throughout the country and try and make them realize that by asking Congress for these controls we're not advocating banning, confiscating or interfering in any way with a law-abiding citizen's right to purchase a gun for a sporting or legitimate purpose. We're just trying to make it more difficult for criminals or irresponsible people to purchase guns.

**USA TODAY:** Why did you join this effort?

**BRADY:** Because last summer the Senate passed the McClure-Volkmer bill, which I consider to be a fairly dangerous bill. It is opposed by every major law enforcement organization in the country. When I saw that pass, I thought it was time to speak out and see if I couldn't help make sure that it did not pass in the House of Representatives.

**USA TODAY:** Doesn't the National Rifle Association support this bill?

**BRADY:** On the McClure-Volkmer Gun Decontrol Bill, the NRA is very out of step with law enforcement and with the majority of the people throughout the country. I don't even think the NRA's members — the fine citizens throughout the country — realize that law enforcement opposes McClure-Volkmer.

**USA TODAY:** What would this bill, which is pending in the House, do?

**BRADY:** Today, to purchase a handgun, you must buy it in the state where you live. That makes a lot of sense. This bill takes that requirement away.

**USA TODAY:** How would it affect inspections of gun dealers?

**BRADY:** Now, gun dealers are required to keep certain records and, as with other record-keeping processes, they are subject to inspections — surprise inspections, the same as with elevators. This bill would take away surprise visits, allowing the gun dealers to have quite a bit of notice to get their records in order. I say they should have those records in order constantly.

**USA TODAY:** Some people think liberals are for gun control and conservatives are against it. Is that true?

**BRADY:** That's absolutely ridiculous. I'm a conservative Republican. I know many who are conservative and Republican who are not for arming criminals and who are for taking some steps to ensure that criminals do not get handguns.

**USA TODAY:** Doesn't that get the heavy hand of government too involved in the lives of private citizens?

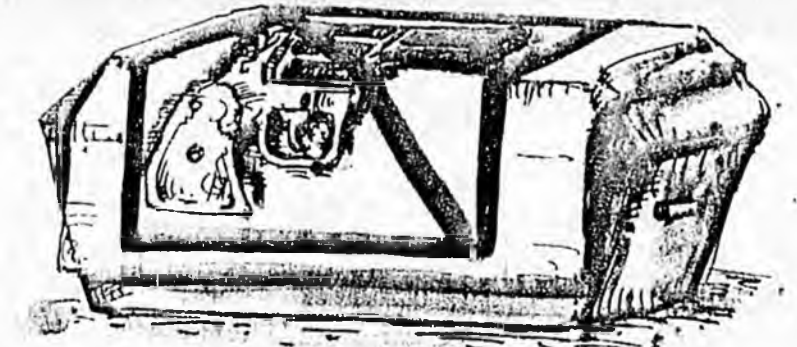
**BRADY:** When private citizens are involved in something as important as the sale of a handgun — possibly to a criminal — then gun dealers have a responsibility to maintain proper records and to only sell these weapons to the proper people.

**USA TODAY:** What do you consider legitimate uses for handguns?

**BRADY:** Sporting purposes: target shooting, hunting, protection of the homes of citizens.

**USA TODAY:** What should be in a federal handgun law?

**BRADY:** To make it more difficult for criminals or irresponsible people to purchase handguns, we would like to see the ban on interstate sales maintained, and a reasonable waiting period instituted. When a person goes to purchase a handgun in the state in which



By Susan Harlan, USA TODAY

he lives, he would have to wait a certain amount of time so that the police can do a background check to see that person doesn't have a criminal record.

**USA TODAY:** Are handgun controls in Europe stricter than they are in the USA?

**BRADY:** Oh, yes. Every major country in Europe has much stricter controls than even I would probably advocate at this point. And, of course, they also have much less violence and much less shooting than we do.

**USA TODAY:** Did John Hinckley have to wait when he bought his handgun?

**BRADY:** No. There is no background check or waiting period in effect now, nationwide. Hinckley walked into a gun shop in Texas — a state which he was not a resident of — lied on his form that he lived in Texas, and was given a handgun immediately. Had there been a waiting period, it probably would have been discovered that he was not a resident of Texas and that he had been detained by Tennessee police weeks earlier for attempting to take handguns aboard an airline. So had there been a background check and waiting period, he probably would not have been able to buy the gun that was used to shoot the president and my husband.

**USA TODAY:** What are your feelings about John Hinckley?

**BRADY:** I try not to think about him. That's a difficult question.

**USA TODAY:** Has anyone in the Reagan administration asked you why you're taking this anti-handgun position?

**BRADY:** No, certainly not on an official level. I've had some friends at different levels in the administration who expressed agreement with me, but certainly nothing in the way of anything official.

**USA TODAY:** Many Northeast states with large urban populations have stricter handgun controls than some Western states. Doesn't this help?

**BRADY:** Nothing will do away with the problem unless you make it nationwide. No matter how strict gun laws are in New York, if you can run down to Virginia and purchase 57 handguns and run back up

to New York and sell them on the street — which is done every day — you are still going to have violence.

**USA TODAY:** Do you feel safe in Washington, D.C., at night?

**BRADY:** Oh yes. Of course there is no place in the country where there might not be somebody walking. But I feel fairly safe walking the streets of Washington. We have good laws here, a good police force.

**USA TODAY:** After the shooting, if you heard a car backfire did you instinctively jump?

**BRADY:** Yes, I went through that. Looking at that gun now — essentially a small, concealable type of handgun — I get a feeling of horror and evil connected with that, as opposed to looking at a good hunting rifle or something that has a legitimate sporting purpose.

## A nation of handguns

There are more than 60 million handguns in the USA today, up from fewer than 10 million in 1953. At the current rate of production — one is produced every 13 seconds — there will be 100 million handguns in civilian hands by the year 2000. Each year:

- More than 20,000 USA citizens are killed by handguns; every 2½ minutes someone is injured.
- About 300,000 crimes are committed with handguns.
- More than 200,000 privately-owned handguns are stolen.
- An estimated \$500 million is spent treating people who have been shot with handguns.
- And every day, on the average, one child under the age of 14 is killed with a handgun.

Source: Handgun Control, Inc., Washington, D.C.



# Police, NRA Brace for Rematch on Gun Control

Emboldened by a last-minute comeback in the 99th Congress and fortified with new-found experience, organization and unity, law enforcement groups are digging in to defend the nation's gun control laws against new attacks from the redoubtable National Rifle Association (NRA).

In the 99th Congress, the NRA caught the police off duty and forced Senate passage of a bill that would have significantly rolled back the landmark 1968 gun control law.

But when the measure went to the House, the police groups, bolstered by Handgun Control Inc., a gun control lobby, entered the fray and kept the NRA in check during the last weeks of legislative skirmishing.

The law officers emerged with two notable come-from-behind victories. The final version of the gun bill (PL 99-308) barred the sale of new machine guns and maintained the ban on the interstate sale of handguns. (1986 Weekly Report p. 1034)

Now the NRA is taking aim at these issues and new fights are looming. The police are determined not to make the same mistakes again, and their year-old organization, the Law Enforcement Steering Committee, is preparing to hold the line.

But with memories of last year's bitter fight still lingering, the NRA's top legislative strategists want to keep the din of battle at a manageable level this time around.

"There has been a tendency to sensationalize these issues, to put headlines out there that bear little relationship to what the real situation is on a specific issue," says Wayne LaPierre, the director of the NRA's Institute for Legislative Action and the man who ran the 1985-86 gun campaign.

"We are going to be doing everything we can to urge people to look behind the sensational headline and focus on the real situation."

James J. Baker, the NRA's director of governmental affairs, echoes LaPierre's views, and, referring to the police groups, adds, "I don't think

—By Nadine Cohodas

## NRA Wants to Lift Ban on Machine Guns

[the gun control fight] helped either of us."

"A lot of their members are our members as well. We should try to minimize our differences."

The NRA has designated Rep. Larry E. Craig, R-Idaho, to meet with those police who are NRA members and who supported the organization last year, in an effort to devise a plan for reconciling differences with the law enforcement groups.

*"We regret that we have to operate in this fashion. . . . We think it is unfair that we have to compete with other interest groups."*

—Cornelius J. Behan, Baltimore police chief



But Richard Boyd, president of the Fraternal Order of Police (FOP), is doubtful of rapprochement. "We're not disposed to mend those fences unless the NRA significantly changes its views," says Boyd, whose organization represents 193,000 police officers.

### Battle Preparations

Although the police groups say they are not looking for a fight, they are preparing for the worst, a testament to the gun lobby's political might. In the 1986 campaigns, for example, Federal Election Commission figures show the NRA spent more than \$1.7 million to help its congressional candidates.

"We are definitely ready for any-

thing the gun lobby springs," says Hubert Williams, president of the Police Foundation, a research group in Washington, D.C., that is represented on the 12-member Steering Committee.

Detroit police officer Robert T. Scully, president of the 90,000-member National Association of Police Organizations, thinks of the committee, which meets regularly in Washington, as "preventive medicine."

"I hope we don't have continued confrontation with the NRA," he says. "But whatever pops up on a national level, we will be prepared."

The police message to the gun groups is, "Don't even think of trying

to sneak something past us," says Martha Plotkin, associate director of the Police Executive Research Forum (PERF), a group providing research and technical support to local police organizations.

Baltimore police Chief Cornelius J. Behan, president of PERF, says the law enforcement community was forced into an activist role. "We regret that we have to operate in this fashion," he says. "We see ourselves as an arm of government. We think it is unfair that we have to compete with other interest groups." But until the police organized, Behan says, "we were not heard or listened to."

The police groups are now a formidable force, but gun lobbyists con-

While the 1968 law and the revisions last year include provisions that bar certain people, such as convicted felons and drug addicts, from purchasing guns, there is no way salesmen can validate an applicant's qualifications.

Proponents of a waiting period contend it would give the police a chance to check the credentials of purchasers.

A gun bill that emerged from the Senate Judiciary Committee in 1982 included a 14-day waiting period, but the measure never reached the floor. (1982 *Almanac* p. 415)

Gun groups oppose the waiting period, claiming it is an unnecessary inconvenience and amounts to assuming a potential buyer is guilty until proved innocent.

Other firearms issues likely to emerge in this Congress include:

- **Ammunition Ban.** Rep. Mario Biaggi, D-N.Y., introduced a bill (HR 538) Jan. 8 to roll back provisions in the 1986 law that lifted licensing and record-keeping requirements on the interstate shipment of ammunition.

Biaggi's bill would ban in-state shipments except by federally licensed dealers, manufacturers, exporters and importers, and collectors shipping to one another.

Gun Owners of America seized upon the changes in the 1986 law, sending out mailings to members offering them special over-the-phone deals on ammunition.

Biaggi says the problem with mail-order ammunition is that there is no way to make sure it is not being sold to people who are prohibited by law from buying it. For example, no one under 18 is permitted to buy ammunition for rifles or shotguns, and no one under 21 can buy ammunition for handguns.

Pratt contends the bill is anti-consumer, but a Biaggi spokesman calls that "absurd."

"We fully support the rights of citizens to own and use firearms," he says. "We're looking for reasonable controls. . . . We're looking to help the law enforcement community."

- **Bullet Ban.** Sen. Daniel Patrick Moynihan, D-N.Y., has introduced a bill (S 25) to ban the production of .25 and .32 caliber bullets. Moynihan says a survey of shootings involving New York City police from 1975-85 showed that 25 percent of the bullets used were .25 or .32 caliber.

Gun groups flatly oppose the bill, and even some gun control advocates, while praising Moynihan's effort,

think it may not be effective because it would prompt a shift to guns using different bullets.

- **Plastic Guns.** Rep. Robert J. Mrazek, D-N.Y., is planning to introduce a bill that would impose a "flexible ban" on plastic guns. The bill would ban the domestic manufacture or importation of any firearm the secretary of the Treasury determines cannot be detected by security devices.

### Battles in Local Jurisdictions

In addition to its work on Capitol Hill, the NRA expects to be involved in several legislative battles on the state level. Last year, according to Ted Lattanzio, head of the NRA's State and Local Affairs Division, the NRA donated more than \$750,000 to state and local candidates. Lattanzio says 83 percent of the NRA-supported candidates were elected.

A key item on the NRA's agenda is pushing "pre-emption" legislation that would prevent cities and counties from enacting gun control laws more

stringent than statewide laws.

Lattanzio says legislation will be introduced on behalf of the NRA in 16 states, with highly visible fights expected in Michigan and Florida.

The NRA will be up against law enforcement groups in this arena as well. Spokesmen say the police groups will organize to defeat the pre-emption statutes.

Detroit officer Scully, who worked to stop a statute in Michigan last year, says, "We don't want to take local control away from city or county governments. That's a ploy by the NRA that cuts down on the individual police chief's [ability to do] his job."

Another legislative push — one that won't put the NRA at odds with the police — is a "hunter-harassment" proposal. Bills will be introduced in 13 states to create stiff civil penalties for people who try to interfere with lawful hunting. Lattanzio says it is aimed at animal rights groups that have published a "21-point pamphlet on how to stop a lawful hunt." ■

## Hastings Responds to Charges

Federal District Judge Alcee L. Hastings of Florida has filed a two-pronged response to impeachment charges, stemming from his acquittal in 1983 on bribery charges.

Hastings, who is black, denounced the disciplinary procedure being used against him, saying it was "infected by a form of racism" and had more in common with a Moscow political trial than an American judicial proceeding. He claimed that the entire investigation and the underlying bribery prosecution were biased and were "conducted in a manner . . . to provide just cause for outrage as well as alarm."

The 11th U.S. Circuit Court of Appeals, which includes Florida, began investigating Hastings shortly after his acquittal. A special 11th Circuit investigative committee recommended that Hastings be removed from office, on the grounds that he had fabricated his defense and should have been convicted. The 11th Circuit accepted those findings and forwarded them to the Judicial Conference, which gave Hastings a chance to respond. (1986 *Weekly Report* p. 2280)

On Jan. 16 he petitioned the House and Senate to terminate the judicial investigation and to repeal or amend the 1980 judicial discipline law (PL 96-458) that is the basis for the probe.

The Judicial Conference is scheduled to meet in March and could decide then whether to end the investigation or to forward the impeachment recommendation to Congress.

Hastings' Senate petition was quickly referred to the Judiciary Committee, but as of Jan. 22, his House petition was still at the Speaker's office.

Rep. Robert W. Kastenmeier, D-Wis., who helped draft the 1980 discipline law, said in an interview Jan. 21 that it was unclear what Congress would do with the Hastings petition. Kastenmeier said he believed that the Judicial Conference should be allowed to proceed and either forward an impeachment recommendation to Congress or drop the matter.

Kastenmeier added, however, that he had intended to take another look at the judicial discipline law in the 100th Congress, even before Hastings suggested that.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**



## Police, NRA Brace for Rematch on Gun Control

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But with memories of last year's bitter fight still lingering, the NRA's top legislative strategists want to keep the din of battle at a manageable level this time around.

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—By Nadine Cohodas

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The police groups are now a formidable force, but gun lobbyists con-

tend the Steering Committee does not represent the views of most policemen.

"I still think those organizations aren't representative of the feelings of the rank and file," says the NRA's Baker.

Comments like that anger police leaders, particularly Scully, who won re-election to his police group post in December. "The leadership of the NRA are not sworn police officers, and they are not elected to those positions by police officers," he says.

The police leaders say they have learned to play politics, and a major lesson, according to Boyd, is that members of Congress must be told they "will be held accountable at home" for their votes on law enforcement issues.

The police groups are encouraged by the Democratic takeover of the Senate. While many Democrats support the gun groups, the police are nonetheless optimistic about having more sympathetic ears at the Senate Judiciary Committee, which would be the starting point for most legislation.

Chairman Joseph R. Biden Jr., D-Del., said in an interview he will oppose efforts to eliminate the machine gun ban.

#### New Definitions, New Allies

The gun fight last year also created a new law enforcement litmus test and brought about a partial realignment of political forces.

In the past, police groups generally supported members who were "tough on crime," favoring, among other things, preventive detention and the death penalty.

But while those issues remain important to the police, the gun control battle emphasized the significance of two other elements — police safety and the ability of law officers to protect the public. The law enforcement groups opposed the gun control bill because they felt it would create problems for the police in protecting themselves and in fighting crime, and they judged members on that basis.

This change in emphasis was reflected in the "congressman of the year" award Scully's organization gave to Sen. Howard M. Metzenbaum, D-Ohio, in December.

Metzenbaum, one of the Senate's most liberal members and hardly a conventional "law and order" man, was instrumental in crafting pro-police amendments to the Senate version of the gun control bill and in protecting law enforcement provisions in the

House bill that eventually came back to the Senate for approval.

#### The Agenda

The NRA and its allies, Gun Owners of America and the Citizens' Committee for the Right to Keep and Bear Arms, will probably set the initial firearms agenda for the 100th Congress. The police groups are still sorting out their priorities, spokesmen say.

Almost before the ink was dry on last year's gun law, gun groups said they wanted to repeal the ban on new machine gun sales.

That section was a last-minute addition on the House floor that barred all future sales and possession of machine guns by private citizens. It did not affect existing machine guns.

The amendment was adopted by voice vote, and was later accepted by

#### Handgun Fight Less Predictable

The gun groups are more optimistic about repealing the ban on the interstate sale of handguns. When the gun bill passed the Senate in 1985, it included provisions lifting the handgun ban. But that was before the police got involved in the fight.

When gun legislation started moving through the House, the law officers organized and pressed hard to keep the handgun ban.

An amendment by William J. Hughes, D-N.J., restoring the ban prevailed 233-184. The Senate accepted that provision, even though it had killed a similar proposal in 1985, 69-26. (1985 Almanac p. 228)

Now the police are ready for a rematch on handguns.

"Just in the city of Detroit last year we had five police officers killed in the line of duty — one was from a

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*"A lot of [police group] members are our members as well. We should try to minimize our differences."*

—James J. Baker,  
National Rifle Association



the Senate without change.

"The whole machine gun issue doesn't bear a lot of relationship to reality," says the NRA's LaPierre. He contends that there is no record of a lawfully owned machine gun ever having been used in a crime.

"How many do we have to have killed before we have to have a ban on it?" retorts FOP's Boyd. "Is it one or 10,000 a year? Why can't we have some preventive measures?"

The gun lobbyists are not optimistic that anything will be done soon.

"Philosophically, it's something I desire, but I think it is going to be hard in the 100th Congress," says John M. Snyder, public affairs director for the Citizens' Committee.

And Lawrence D. Pratt, executive director of Gun Owners, concedes, "It looks difficult."

shotgun, the other four by handguns," says Scully.

And Boyd argues that allowing unrestricted interstate sales of handguns would make it "almost impossible for us to keep a hand on the sale and exchange" of the weapons. "We can't even do it in-state now."

If the gun owners want the ban lifted, Boyd adds, "they'll have to give us something. . . . We'd offer them in return something like a 30-day waiting period."

#### Other Firearms Issues

A uniform waiting period between the purchase and receipt of a handgun is high on the agenda of Handgun Control, but it is anathema to the NRA.

Metzenbaum and Rep. Edward F. Feighan, D-Ohio, are expected to introduce waiting-period legislation early in February.

While the 1968 law and the revisions last year include provisions that bar certain people, such as convicted felons and drug addicts, from purchasing guns, there is no way salesmen can validate an applicant's qualifications.

Proponents of a waiting period contend it would give the police a chance to check the credentials of purchasers.

A gun bill that emerged from the Senate Judiciary Committee in 1982 included a 14-day waiting period, but the measure never reached the floor. (1982 Almanac p. 415)

Gun groups oppose the waiting period, claiming it is an unnecessary inconvenience and amounts to assuming a potential buyer is guilty until proved innocent.

Other firearms issues likely to emerge in this Congress include:

• **Ammunition Ban.** Rep. Mario Biaggi, D-N.Y., introduced a bill (HR 538) Jan. 8 to roll back provisions in the 1986 law that lifted licensing and record-keeping requirements on the interstate shipment of ammunition.

Biaggi's bill would ban in-state shipments except by federally licensed dealers, manufacturers, exporters and importers, and collectors shipping to one another.

Gun Owners of America seized upon the changes in the 1986 law, sending out mailings to members offering them special over-the-phone deals on ammunition.

Biaggi says the problem with mail-order ammunition is that there is no way to make sure it is not being sold to people who are prohibited by law from buying it. For example, no one under 19 is permitted to buy ammunition for rifles or shotguns, and no one under 21 can buy ammunition for handguns.

Pratt contends the bill is anti-consumer, but a Biaggi spokesman calls that "absurd."

"We fully support the rights of citizens to own and use firearms," he says. "We're looking for reasonable controls... We're looking to help the law enforcement community."

• **Bullet Ban.** Sen. Daniel Patrick Moynihan, D-N.Y., has introduced a bill (S 25) to ban the production of .25 and .32 caliber bullets. Moynihan says a survey of shootings involving New York City police from 1975-85 showed that 25 percent of the bullets used were .25 or .32 caliber.

Gun groups flatly oppose the bill, and even some gun control advocates, while praising Moynihan's effort,

think it may not be effective because it would prompt a shift to guns using different bullets.

• **Plastic Guns.** Rep. Robert J. Mrazek, D-N.Y., is planning to introduce a bill that would impose a "flexible ban" on plastic guns. The bill would ban the domestic manufacture or importation of any firearm the secretary of the Treasury determines cannot be detected by security devices.

### Battles in Local Jurisdictions

In addition to its work on Capitol Hill, the NRA expects to be involved in several legislative battles on the state level. Last year, according to Ted Lattanzio, head of the NRA's State and Local Affairs Division, the NRA donated more than \$750,000 to state and local candidates. Lattanzio says 83 percent of the NRA-supported candidates were elected.

A key item on the NRA's agenda is pushing "pre-emption" legislation that would prevent cities and counties from enacting gun control laws more

stringent than statewide laws.

Lattanzio says legislation will be introduced on behalf of the NRA in 16 states, with highly visible fights expected in Michigan and Florida.

The NRA will be up against law enforcement groups in this arena as well. Spokesmen say the police groups will organize to defeat the pre-emption statutes.

Detroit officer Scully, who worked to stop a statute in Michigan last year, says, "We don't want to take local control away from city or county governments. That's a ploy by the NRA that cuts down on the individual police chief's [ability to do] his job."

Another legislative push — one that won't put the NRA at odds with the police — is a "hunter-harassment" proposal. Bills will be introduced in 13 states to create stiff civil penalties for people who try to interfere with lawful hunting. Lattanzio says it is aimed at animal rights groups that have published a "21-point pamphlet on how to stop a lawful hunt."

## Hastings Responds to Charges

Federal District Judge Alcee L. Hastings of Florida has filed a two-pronged response to impeachment charges, stemming from his acquittal in 1983 on bribery charges.

Hastings, who is black, denounced the disciplinary procedure being used against him, saying it was "infected by a form of racism" and had more in common with a Moscow political trial than an American judicial proceeding. He claimed that the entire investigation and the underlying bribery prosecution were biased and were "conducted in a manner... to provide just cause for outrage as well as alarm."

The 11th U.S. Circuit Court of Appeals, which includes Florida, began investigating Hastings shortly after his acquittal. A special 11th Circuit investigative committee recommended that Hastings be removed from office, on the grounds that he had fabricated evidence and should have been convicted. The 11th Circuit affirmed the charges and forwarded them to the Judicial Conference, which gave Hastings a chance to respond. (1986 Weekly Report p. 2280)

On Jan. 16 he petitioned the House and Senate to terminate the judicial investigation and to repeal or amend the 1980 judicial discipline law (PL 96-458) that is the basis for the probe.

The Judicial Conference is scheduled to meet in March and could decide then whether to end the investigation or to forward the impeachment recommendation to Congress.

Hastings' Senate petition was quickly referred to the Judiciary Committee, but as of Jan. 22, his House petition was still at the Speaker's office.

Rep. Robert W. Kastenmeier, D-Wis., who helped draft the 1980 discipline law, said in an interview Jan. 21 that it was unclear what Congress would do with the Hastings petition. Kastenmeier said he believed that the Judicial Conference should be allowed to proceed and either forward an impeachment recommendation to Congress or drop the matter.

Kastenmeier added, however, that he had intended to take another look at the judicial discipline law in the 100th Congress, even before Hastings suggested that.

SJR

25

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: \_\_\_\_\_  
 Title: Proposing an amendment to the Constitution  
of the State of AK relating to income from the permanent fund.  
 Sponsor: Haiford Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senate State Affairs Committee Phone: 465-4522  
 Division: \_\_\_\_\_ Date: \_\_\_\_\_  
 Approved by ~~Committee~~ Senator Mitch Abood Date: 4-20-88  
 Agency: Senate State Affairs Committee

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

SJR

33

5-0924L ✓  
Bannister  
5/14/87

Original sponsor: Kerttula

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
 2 CS FOR SPONSOR SUBSTITUTE FOR SENATE JOINT RESOLUTION NO. 33 (Judiciary)  
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 Relating to the labeling of irradiated  
6 food.

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

8 WHEREAS the exposure of food to radiation has been promoted by the  
9 United States government for many years to prolong the shelf life of food  
10 by killing organisms, such as insects, mold, and bacteria, that damage  
11 food; and

12 WHEREAS over the past two decades pork, potatoes, wheat, and more than  
13 60 spices have been approved for radiation by the United States Food and  
14 Drug Administration but the irradiation process has not been widely used in  
15 this country; and

16 WHEREAS on April 18, 1986, the Food and Drug Administration extended  
17 its approval of irradiation to all fruits and vegetables and required the  
18 labeling of food at the wholesale and retail levels with the words "TREATED  
19 BY RADIATION" and a picture of the international symbol for radiation, a  
20 stylized tulip; and

21 WHEREAS the labeling requirements do not extend to food products that  
22 contain irradiated ingredients, and the "TREATED BY RADIATION" labeling  
23 requirement is due to expire in 1988 before irradiated foods arrive in  
24 large quantities on grocery store shelves; and

25 WHEREAS the Food and Drug Administration states flatly that after  
26 reviewing all pertinent data it has not found a reason to be concerned  
27 about the safety of consuming food that has been irradiated within the  
28 dosage levels specified by federal regulations; and

29 WHEREAS, aside from concern about the reliability of the Food and Drug

1 Administration studies, American consumers are entitled to know whether the  
2 foods, and the components of the food, that they purchase have been irradi-  
3 ated so that they can make their food choices accordingly; and

4 WHEREAS the long history of stringent labeling requirements for the  
5 chemical additives and ingredients in food provides ample precedent for the  
6 labeling of irradiated foods as irradiated;

7 BE IT RESOLVED that the Alaska State Legislature respectfully requests  
8 the United States Food and Drug Administration to adopt regulations requir-  
9 ing food whose components have been irradiated to be labeled as "irra-  
10 diated" and to cancel the expiration date for the current labeling regula-  
11 tions.

12 COPIES of this resolution shall be sent to the Honorable Ronald  
13 Reagan, President of the United States; the Honorable Frank E. Young,  
14 Commissioner of the United States Food and Drug Administration; and to the  
15 Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and  
16 the Honorable Don Young, U.S. Representative, members of the Alaska delega-  
17 tion in Congress.  
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29

SJR

52

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SJR 52  
PUBLISH DATE: 1/19/88

**REQUEST:** **FISCAL NOTE**

Revision Date: 1/25/88  
Title: Constitutional amendment relating to legislative vote required to pass  
Sponsor: FANNING / certain tax bills.  
Requestor: Senate Judiciary

Agency Affected: Office of the Governor  
BRU: Division of Elections

Components: II - Primary & General Elections

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>2.2*</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING:** (Thousands of Dollars)

GENERAL FUND	0	2.2*	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

\* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: 1/22/88

Approved by Commissioner: [Signature] Date: 2/1/88  
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/1/88  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

**CONTINUATION of FISCAL NOTE ANALYSIS**

**For Bill/Resolution No. SJR 52**

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

SJR

53

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SJR 53  
PUBLISH DATE: 1/19/88

FISCAL NOTE

REQUEST:

Revision Date: 1/25/88  
Title: Constitutional amendments relating to state personal income tax, real property tax, and retail sales tax.  
Sponsor: FANNING/  
Requestor: Senate Judiciary  
Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES	0	2.2*	0	0	0	0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote

(cont.)

Prepared by: Linda Edgeworth  
Division: Elections

Phone: 465-4611  
Date: 1/22/88

Approved by Commissioner: [Signature]  
Agency: Office of the Governor, Division of Elections

Date: 2/1/88

Distribution (by preparer): 2/1/88  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

**CONTINUATION of FISCAL NOTE ANALYSIS**

**For Bill/Resolution No. SJR 53**

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

SJR

60

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: SJR 60  
PUBLISH DATE: 2/3/88

FISCAL NOTE

REQUEST:

Revision Date: 2/4/88  
Title: Constitutional amendment relating to terms of legislators.  
Sponsor: COGHILL  
Requestor: Senate Judiciary

Agency Affected: Office of the Governor  
BRU: Division of Elections  
Components: II - Primary & General Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	2.2*	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	2.2*	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\* Costs included cover 2 to 3 additional pages in each Official Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote (cont.)

Prepared by: Linda Edgeworth Phone: 465-4611  
Division: Elections Date: 2/4/88

Approved by Commissioner: [Signature] Date: 2/4/88  
Agency: Office of the Governor, Division of Elections

Distribution (by preparer): 2/8/88

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Bob Evans

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 60

counting purposes. However, these costs are based on the assumption that all candidates and issues will fit on three ballot cards, which is the norm. It should be noted, however that should the inclusion of this issue require a 4th ballot to be printed, the cost increase would have to be calculated at 16 cents per ballot x approximately 320,000 voters. The total cost of printing the additional ballot card would be \$51.2.

Under these circumstances the fiscal note would be:

53.4

SR

||

# STATE OF ALASKA



## SENATE JUDICIARY COMMITTEE

SEN. JAY KERTTULA  
SEN. ARLISS STURGULEWSKI  
SEN. RICK HALFORD  
SEN. JOE JOSEPHSON  
SEN. PAT RODEY

P.O. BOX V  
STATE CAPITOL  
JUNEAU, ALASKA 99811  
(907) 465-3717  
(907) 465-3771

2-23-87

MEMO

TO: SENATE JUDICIARY MEMBERS

FROM: Beth Kerttula, Staff Co-counsel

For your information: Richard I. Pegues, Director of Administrative Services, says that the cost for one hour of an attorney's time and over-head for the Department of Law to do Legal work is \$90.00.

For a seven and one-half hour work day the amount would equal \$675.00. For one week's worth of work the amount would equal \$3,375.00. For two week's worth of work the amount would equal \$6,750.00.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: SR 11  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "Requesting the Governor to direct the filing of an amicus brief..."  
Sponsor: Sen. Coghill  
Requestor: Senate Judiciary Committee

Agency Affected: Department of Law  
BRU: Legal Services

Components: Legal Services Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Pegues*

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services

Phone: 465-3672  
Date: Feb. 23, 1987

Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schaible, Atty. Gen.  
Agency: Department of Law

Date: Feb. 23, 1987

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SR 11

This resolution requests the Governor to direct the attorney general to file an amicus curiae brief on behalf of the state, in Sierra Club v. Bureau of Land Management, which is now before the United States Court of Appeals for the Ninth Circuit. Preparation and filing of the brief can be handled using existing staff and resources within one to two weeks time, once work begins.



# Alaska State Legislature

## Senate

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

TO: Senator Coghill

FROM: Resource Committee Staff

RE: Sierra Club vs. Bureau of Land Management

DATE: February 5, 1987

A handwritten signature in black ink, appearing to be "J. B. Burling", written over the "FROM" and "RE" lines of the memorandum.

---

As per your request for further information regarding the status of recent development in this case, following U.S. District Court Judge James von der Heydt's ruling in this matter.

1. Yesterday, February 4, 1987, von der Heydt ruled on the Sierra Clubs motion for an injunction stopping mining activity while their appeal of his ruling (allowing mines affecting five acres or less to proceed under BLM present approval process) was heard by the Ninth Curcuit Court.

2. Sierra Club is still expected to ask the Ninth Curcuit for an injunction stopping mining until this court rules on the merits of their appeal.

3. The State of Alaska has two opportunities to file an Amicus Curiae brief. Mining interests and their legal council, James Burling with Pacific Legal Foundation, feel it is extremely important for the state to enter a position, in the form of an Amicus Curiae brief, now.

4. The first opportunity would be to file an Amicus Curiae on the motion for an injunction to shut down mining. This brief would have to be submitted to the court within the next two weeks. It should address the importance of mining to Alaska's Economy and the adverse impacts that would result to the to the state if mining was shut down.

5. The second opportunity would be to file an Amicus Curiae on the merits of the Sierra Clubs appeal. This brief would have to be filed within the next couple of months. If the brief described in 4 is not filed, this brief should address those points, as well as others presented in the appeal. Such as mining's historical significance, its compatibility with other resource uses in a multiple-use management scenario and the insignificance of mining activities impacts to the environment. There are probable other points but staff has not had the opportunity to review Sierra Clubs appeal brief yet.

6. The state is under no liability to become an intervenor in this case if it files Amicus Curiae motions. And in fact could file both motions, 4. and 5. if the administration was inclined to do so.

7. The parties to the Sierra Club vs. BLM et.al. lawsuit are:

Plaintiffs: Sierra Club,  
Northern Alaska Environmental Center,  
Wilderness Society,  
Birch Creek Village Council,  
Minto Village Council,  
Golovin Traditional Council,  
Nunam Kitlutsisti  
and Cenaliulriit Coastal Management District

3 environmental organizations  
5 native organizations

Defendants: Micheal Penfold, Director of the Alaska State Office of the  
Bureau of Land Management;  
Donald P. Hodel, Secretary of the Interior;  
Robert F. Burford, Director of the Bureau of Land  
Management;  
Donald E. Rundberg, Acting District Manager of the  
Fairbanks District Office of the Alaska  
State Office of the BLM;  
Wayne A. Boden, District Manager of the Anchorage District  
Office of the Alaska State Office of the  
BLM;  
Department of the Interior; and  
Bureau of Land Management.

Intervenors: Alaska Miners Association  
Miners Advocacy Council  
Resource Development Council  
Joseph Vogler

8. The Sierra Clubs "Motion for Preliminary Injunction" filed February 18, 1986, ask the U.S. District Court for Alaska to "prohibit the federal defendants from taking the following actions:"

1. approving any mining operations on public lands in Alaska;
2. issuing long-term camping permits to miners in the Wild and Scenic River corridors;
3. approving any mining operations on any tributaries or streams which flow into the Minto Flats;

The complain further requested that the court "order the federal defendants to stay every mine on the public lands in Alaska, whether previously approved or not, until such time as the federal defendants complete the following reviews:"

1. an environmental assessment of the mine;
2. a comprehensive environmental impact statement analyzing cumulative impacts, on the rivers and tributaries of the wild river systems;
3. subsistence evaluations of the mines under title VIII of ANILCA;
4. and hold public hearings in relation to subsistence reviews under title VIII of ANILCA

The Memorandum in support of the requested injunction above, argues aesthetic, subsistence, and wildlife values are being adversely impacted. As well as claiming mines violate water quality and reclamation regulations. Basically they argue that while a mine is in operation a person should not know it is there, and the areas disturbed by the mines should be returned to "natural conditions" on an annual basis.



# Alaska State Legislature

## Senate

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

TO: Senator Coghill

FROM: Resource Committee Staff

RE: Progress of Sierra Club vs. Bureau of Land Management Lawsuit

DATE: February 4, 1987

---

As reported in the media recently, U.S. District Court Judge James von der Heydt has issued a ruling in this case, which favors the BLM and therefore is good news for the states mining industry.

Basically, von der Heydt's ruling says that the BLM is not required to perform environmental and subsistence studies on placer mining operations that disturb five acres or less, before allowing these types of mines to proceed. This ruling did not address whether the BLM must perform cumulative Environmental Impact Statements on Alaska's three Wild and Scenic rivers. But we should remember that the out come of this suit may have severe economic consequences for Alaskan placer miners.

Yesterday (February 3, 1987), we learned that the Sierra Club and the Native organizations which filed this lawsuit in '86 about this time, have appealed von der Heydt's decision to the U.S. Ninth Circuit Court. In the mean time, Sierra Club has asked the District Court to issue an injunction to stop all mining, while their appeal is heard by the Ninth Circuit.

Once again the environmentalists are asking the court in their appeal to remove a valuable segment of Alaska's economy, until their agenda is met. This agenda, according to materials published by the Sierra Club, includes stopping all strip mining in this state.

Memorandum  
page 2  
February 4, 1987

We expect that if Sierra Club does not receive their requested injunction on mining from the District Court, they will ask the Ninth Circuit Court to issue the injunction, as part of their appeal.

Although a panic atmosphere is likely to be experienced with in the mining community at this time, it would be prudent for this Administration, with the support of the Legislative bodies, to file an Amicus Curiae brief, regarding the States position on mining and the adverse impacts to our economy that would be realized if mining was stopped. This action should be taken immediately with the Ninth Circuit Court. An Amicus Curiae legal brief is basically a "friend of the court" action that interested parties, which are not directly named in a lawsuit, may use to notify the court of impacts that may result to them, through any actions the court may take.



# Miners Advocacy Council

P.O. Box <sup>73824</sup> ~~83909~~

Fairbanks, Alaska 99708?

February 10, 1987

Grace Schaible, Attorney General  
State of Alaska, Dept. of Law  
Room 412, State Capitol Bldg.  
Pouch K  
Juneau, Alaska 99801

FEB 17 1987

Re: Sierra Club v. BLM

Dear Attorney General Schaible:

The Miners Advocacy Council (MAC) would like to express our immediate concern for the lawsuit filed against BLM which seeks an immediate injunction against mining on BLM lands in Alaska. This lawsuit affects the entire Alaska mineral industry threatens its already struggling survival.

Most of Alaska's placer mining occurs on BLM lands. The injunction filed by the Sierra Club against the National Park Service caused active NFS mines to decline from 30 in 1985 to 1 in 1986. Gold production from these mines dropped 90 percent, and 175 jobs were lost according to state statistics. If similar results follow from the BLM injunction, most placer mining in Alaska will cease and venture capital for any Alaskan mineral exploration and development will dry up.

MAC hereby requests that the State of Alaska intervene on behalf of the defendant (BLM) to protect the State's interests from such environmental extremism. The State of Alaska and the BLM standing together would be a strong message. To stand idle and watch Alaska's BLM lands be stripped of their mineral development potential would demonstrate blatant complacency toward the ills of the mineral industry and those affected by declines in the mineral economy.

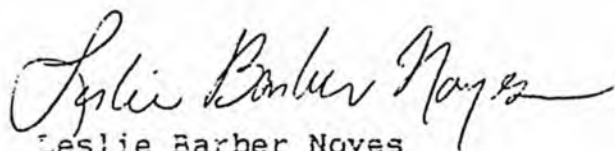
page 2

The Alaska Senate has already acted in response to this threatened injunction by passing a resolution (SR!!) asking for the Governor's participation.

Governor Cowper stated in a press conference today that you would be examining the Senate resolution. He said he would act to respond as needed--based on your conclusions. MAC would like to see the Cowper administration demonstrate a willingness to achieve positive policies toward mineral resource development by action now. We all know that if the Sierra Club wins a suit of this magnitude, such detrimental defeat could surely mark the "death" of mining in Alaska.

Please keep the Miners Advocacy Council immediately informed of your actions and decisions regarding this critical matter. Thank you.

Sincerely,



Leslie Barber Noyes  
Executive Director

cc: Judy Brady, Commissioner DNR  
Alaska Senator Jack Coghill  
U.S. Senator Frank Murkowski

## Sierra Club to re-appeal on mine study

The Sierra Club Legal Defense Fund has appealed its lawsuit seeking to have the Bureau of Land Management perform environmental assessments on small placer mining operations to the Ninth Circuit Court of Appeals in San Francisco.

Last Friday, U.S. District Court Judge James von der Heydt ruled that BLM was not required to do the assessments before allowing miners working five acres or less to proceed.

On Wednesday the Sierra Club

defense fund, representing a coalition of environmental and Native groups, suffered a second, and expected, setback when von der Heydt issued an order denying its motion for an injunction prohibiting any mining during the appeal process.

The lawsuit had argued that the BLM erred by failing to perform environmental assessments on each mining operation on federal land before allowing it to begin production.

Von der Heydt ruled that the BLM is not required to perform such studies on placer mining operations that disturb five acres or less. About 242 mining operations on federal land fall into that category, according to the BLM.

"Those mines are 80 percent of the mines BLM regulates," said

Philip Barnett, attorney for the defense fund. "They cause most of the damage."

"The denial by the district court (of the motion for injunction) is only to be expected," he said. "After all, he denied us on the merits (of the case) . . ."

Barnett said he probably will make the same request of the appeals court. "We'd like to see the review process in place for this summer. That's what we've been asking for all along," he said.

James Burling, attorney for the Pacific Legal Foundation, which has been involved in the litigation, said the appeal was expected, but not so soon after the initial decision. He said it appears Barnett will "do anything he can to get mining shut down before the 1987 season proceeds."

## Snowmachine said to cause house fire

A snowmachine, brought inside to thaw out, caused a \$10,000 house fire early Wednesday morning.

According to the city fire inspector, the snowmachine was brought inside 1500 Aurora Drive and propped on its side in the furnace room. Although the owner didn't realize it, fuel leaked out of the snowmachine's tank and evaporated. When the furnace kicked on, it ignited the fumes.

The home is owned by Debbie Van Huezen.

The owner of a house that burned down in North Pole last month was jailed at Fairbanks Correctional Center, after fire officials discovered an outstanding felony warrant for his arrest.

Jessie Hasha was charged with being a fugitive from justice and is awaiting extradition to Texas.

According to state fire officials, the wood frame house at 587 Florence Road caught fire because an oil-fired, forced-air furnace was improperly installed on a plywood floor. The floor eventually ignited.

It was during the routine investigation of the fire that the warrant was discovered.

## Black

## tonight

The Fairbanks Month Committee the Eielson Air I History Month Co soring several ev

The first event Miss Black He tonight at 7 p.m. a theater. The cor Miss Black Hei several prizes reign at each of t Month activities A \$2 donation to College Scholar quested.

Friday and Satu plays about the l produced and dir sons, will be hel Schaible Auditor iversity of Alaska ets are \$10 for ad students. Money the Black History ward program..

The youth awa highlight scholas ing arts achiev young people. A t be given to juni school students w essay writing co show. The talent s for Feb. 16 at 7 p Fairbanks Comm awards presentat youth social will t iversity Feb. 28 at

### NEWSPAPER BUNDLES

## For Sale

ONE to 9 BUNDLES

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20 to 25 BUNDLES

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## We just made it easier to pick up a wood stove.

From now until February 16, you can walk into the dealer listed below, buy a Vermont Castings Stove,

# New governor can help open mines again

News Miner 1/28/87

## Guest Opinion

By ROGER C. BURGGRAF

According to the Alaska Department of Commerce and Economic Development, Alaska has the capacity for a \$1 billion mining industry, which would add several thousand jobs to the economy.

Yet, in 1986, Alaska's mining industry fell from \$270 million to \$231 million. In comparison, British Columbia's mining industry approached almost \$2 billion in 1986.

The mineral industry spent only \$8.9 million on Alaskan exploration—89.5 percent less than its 1981 high of \$76 million. In British Columbia, the industry spent \$100 million—24 percent more than last year.

The state Division of Mining and Geological and Geophysical Surveys reports that 1986 gold production in Alaska dropped 16 percent, 390 jobs were lost statewide, and 27 percent of Alaska's miners closed their doors. In the neighboring Yukon Territory, gold production rose 5 percent.

In Alaska's Interior alone:

- mine employment dropped 52 percent—from 750 jobs to 375;
- the number of active operations declined 39 percent, from 135 to 83;
- mine expenditures fell 53 percent, from \$27 million to \$12.6 million.

Rural Alaska lost many of those jobs. Thirty-five percent of the placer mining payroll goes to employees who live in rural Alaska. Mining was Nome's largest private-sector employer this year.

In past years, low metal prices could be blamed for declines. However, in 1986 metal prices were up while fuel costs and interest rates were down. The price of gold rose 25 percent.

State economic geologist Tom Bundtzen credited declines in mineral industry expenditures in Alaska to: (1) the dramatic reduction in sand and gravel production due to slumping construction and oil field development; and (2) the negative effects of several lawsuits and strict state water quality regulations on the placer mining industry.

Due to the Sierra Club vs. National Park Service lawsuit, active placer mining operations in national parks declined from 30 in 1985 to one in 1986.

The Sierra Club vs. Bureau of Land Management lawsuit dampened mining on BLM lands. Of the 88 active operations in the Circle Mining District in 1985, only 18 operated in 1986. Only 11 plan on mining in 1987—down from 91 in 1984. About 80 percent of Alaska's placer mining occurs on federal lands managed by the BLM.

The water quality lawsuit, filed against the state by the Miners Advocacy Council and joined by the Northern Alaska Environmental Center, seeks to address flaws in state procedures for promulgating

water quality standards. The state sandbagged resolution of this issue, refusing to grant an administrative hearing until after the lawsuit was filed.

Lawsuits drain industry funds from research, development, and exploration. They drain environmental funds that could be more productively used.

Alaska's former governor had the opportunity to intervene in these lawsuits and chose not to.

On Dec. 17, Nerco announced that its corporate headquarters will be moved from Fairbanks to Vancouver, Wash., leaving only its exploration office in Alaska.

Prior to this announcement, Nerco President Lonny Heiner gave a speech to the Fairbanks Rotary on the pros and cons of mineral development in Alaska. He said that although Nerco's corporate headquarters were in Alaska, its mines were elsewhere—and the company needed to have a mine in Alaska. Nerco has spent \$60 million on mineral exploration in Alaska but has yet to develop an operating mine here.

The "pros" Heiner saw to Alaska mine development were:

- the potential for discovering large, rich deposits in largely unexplored Alaska;
- the prices of metals are beginning a recovery;
- the costs of operating including fuel, labor and interest rates are down.

The "cons" he noted against Alaska mine development were:

- high capital costs;
- lack of existing transportation and infrastructure;
- lack of detailed geologic mapping;
- an industry-wide perception of a negative political and regulatory climate.

Heiner noted that mineral prices are recovering for Alaska's competitors as well—continuing to make it difficult to compete for investment capital.

To begin to address some of the problems with mining in Alaska, Heiner recommended a public education program to let the world mining industry know which of Alaska's perceived regulatory problems were real and which weren't. He recommended that the state set up trade booths at mining conventions, such as the Northwest Mining Convention.

This convention was most recently held in December and Alaska had a display there, provided and staffed by the Alaska Division of Minerals and Forest Products, Department of Commerce and Economic Development, and competed with booths from Montana, Idaho, Oregon, Washington, and British Columbia.

Alaska's display may be missing next year—if future budget and travel cuts are made—just as industry money is beginning to flow again.

Over 83 major mining companies have left Alaska since the early 1980s. Heiner pointed out that disinvestment by mining companies will

continue in Alaska until government policies change.

Our new governor and legislators have the power to create the political and regulatory environment where a billion dollar mining industry is possible.

Now is the opportune time for the state to:

1. Settle the water quality lawsuit and develop reasonable, attainable water quality standards for placer mining;
2. Intervene in the Park Service and BLM lawsuits;
3. Create an attractive political and regulatory environment for mining;
4. Support the efforts of the Department of Commerce and Economic Development to attract and promote mineral development in Alaska.

If water quality problems and the current lawsuits are not resolved, Alaska's placer mining industry will continue its rapid decline. If the regulatory and political climate has not changed, new investment in the exploration for mineral resources in Alaska will continue to shift to other states and countries where the risks are lower and the business climate more hospitable.

The future of a large segment of Alaska's mineral industry is at stake and the problems that confront us are problems that can be resolved through strong leadership from the governor's office.

*Fairbanksan Roger Burggraf is president of the Alaska Placer Miners Association.*

2/24/87

Senator John B. (Jack) Coghill  
Alaska State Legislature

Pouch V  
Juneau, Alaska 99811  
(907) 465-4921

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



GOOD AFTERNOON MR. CHAIRMAN AND FELLOW SENATORS THANK YOU FOR SCHEDULING MY RESOLUTION IN SUCH A TIMELY MANNER.

SENATE RESOLUTION 11, IS GOOD POLICY, I HOPE THE MEMORANDUMS WHICH HAVE BEEN SUPPLIED THIS COMMITTEE FROM MY OFFICE HAVE BEEN HELPFUL IN YOUR COMING TO THE SAME CONCLUSION.

AS YOU WILL NOTE IN MY MEMO, THE INTENT OF THIS RESOLUTION IS TO REMIND THE GOVERNOR THAT 80 PERCENT OF THE STATES MIKING INDUSTRY IS STILL IN JEOPARDY OF BEING ELIMINATED FROM OUR ECONOMY.

THE RESOLUTION ITSELF HAS A LOT OF ROOM TO BE MADE STRONGER, BUT I HOPE THIS GENTLE PROD WILL ENCOURAGE THE GOVERNOR TO TAKE THE INITIATIVE AND ADDRESS THE ISSUE RAISED HERE AGGRESSIVELY.

THE PROBLEM THIS RESOLUTION ADDRESSES IS WHAT OUR PEOPLE IN THE RESOURCE AGENCIES CALL ENVIRONMENTAL BANKS SHOT LITIGATION. THIS TYPE OF COURT ACTION IS NOT AIMED AT ANY ONE DEVELOPMENT OPERATION, IT TARGETS AN ENTIRE INDUSTRY INDIRECTLY BY TAKING A GOVERNMENT AGENCY TO TASK.

ALL TO OFTEN OVER THE PAST 10 OR 15 YEARS, THE ENVIRONMENTAL COMMUNITY HAS FILED SUIT AGAINST STATE OR FEDERAL AGENCIES, FOR FAILURE TO PROPERLY IMPLEMENT REGULATIONS OR OVER THE REGULATIONS THEMSELVES. IN MANY CASES THEIR CONCERNS WHERE

NOBLE AND SUPPORTABLE PUBLIC INTEREST ACTIONS. IN THIS CASE HOWEVER, THEY ARE SHOT GUNNING EVERY MINER ON BUREAU OF LAND MANAGEMENT LANDS, REGARDLESS OF GUILT.

THERE IS NO DOUBT THAT THERE ARE A FEW BAD APPLES IN THE MINING COMMUNITY, WHO PERHAPS DON'T FOLLOW OUR ENVIRONMENTAL LAWS OR PROPER ENGINEERING TECHNIQUES IN THEIR MINING OPERATIONS, BUT THIS IS NO REASON TO PENALIZE THOSE MINERS THAT DO FOLLOW THE RULES AND HAVE ENVIRONMENTALLY SOUND OPERATIONS. BUT SIERRA CLUB IS, ATTEMPTING TO ~~TO~~ STOP ALL MINING UNTIL THE NINTH CIRCUIT COURT RULES ON THEIR APPEAL. THIS IS DIRTY POOL. IF THEY TRUELY HAVE A PROBLEM WITH A SPECIFIC MINING OPERATION WHY DON'T THEY ADDRESS THAT PARTICULAR MINE, RATHER THAN SHOOTING A BANK SHOT THAT WILL IMPACT ALL MINING?

YOU MAY ASK, AS I DID, IF THERE IS ACTUALLY A POSSIBILITY THE COURT MIGHT GRANT SIERRA CLUB THEIR REQUESTED INJUNCTION? THE ANSWER TO THAT RESULTED IN THIS RESOLUTION. COURT HISTORY IN MATTERS OF THIS NATURE INDICATES THAT THE POSSIBILITY IS VERY REAL, UNLESS, THE STATE, AS A REPRESENTATIVE PUBLIC ENTITY, NOTIFIES THE COURT OF THE STATES INTEREST IN THE MATTER, AS OUTLINES IN THE RESOLUTION.

LET'S FACE IT, MINING CREATES NEW WEALTH FOR THE STATE, THROUGH THE HARVEST OF MINERAL RESOURCES. MINING CREATES

JOB, AND THESE PEOPLE PAY TAXES, PROPERTY TAXES, SALES TAXES, FUEL TAXES, INCOME TAXES, BUSINESS TAXES AND THE LIKE. MINERS HAVE CREATED ACCESS ROUTES TO MANY REGIONS OF OUR STATE, THERE BY IMPROVING THE VALUE OF STATE RESOURCES ALONG THESE ROUTES. SOME EVEN ARGUE THAT MINING ENHANCES WILDLIFE HABITAT AND IMPROVES SOME AGRICULTURAL OPPORTUNITIES, LIKE CREATING SUITABLE GRAZING TOPOGRAPHIES FOR LIVESTOCK BY REMOVING MUSKEG AND PERMAFROST.

MINING IS NOT INCOMPATIBLE WITH ALASKAN'S OR ALASKA'S ENVIRONMENT. MINERS ARE IMPROVING THEIR OPERATIONS AND THERE BY LESSENING ANY IMPACTS WHICH MAY OR MAY NOT DISAPPOINT US. IF ALLOWED TO CONTINUE TO IMPROVE THEIR OPERATING TECHNIQUES, I'M CONFIDENT THEY WILL SOLVE ALL THE ENVIRONMENTAL PROBLEMS TO THE SATISFACTION OF ALASKA'S ENVIRONMENTAL COMMUNITY.

I DON'T THINK IT IS NECESSARY FOR ME TO REMIND YOU OF OUR NEED TO DIVERSIFY OUR STATE WIDE ECONOMY, OR OF THE BLOW SIERRA CLUB'S EFFORTS WOULD INFLICT ON THIS ECONOMY IF MINING IS STOPPED. BUT I WOULD LIKE TO RETURN TO A COMMENT I MADE AT THE OUTSET OF MY REMARKS. NAMELY, THIS RESOLUTION COULD BE STRONGER.

WE COULD BE ASKING THE GOVERNOR TO INTERVENE ON BEHALF OF THE MINERS IN THIS CASE, OR TO FILE AN AMICUS BRIEF ON THE MERITS OF SIERRA CLUBS APPEAL, BOTH WOULD REQUIRE

SUBSTANTIALLY MORE TIME TO BE INVESTED BY THE DEPARTMENT OF LAW. BUT, I WOULD RATHER SEE THE GOVERNOR BE ALLOWED TO MAKE THAT DECISION. I THINK THE STATE'S INVESTMENT HOWEVER LARGE OR SMALL WILL BE INSIGNIFICANT IN COMPARISON TO WHAT THE STATE'S ECONOMY WILL LOSE IF SIERRA CLUB ULTIMATELY WINS THEIR APPEAL. BUT THIS RESOLUTION IS ONLY A REMINDER, THE ISSUE OF COURT ORDERED MINE CLOSURES IS STILL OUT THERE.

I HOPE MY INTENTIONS ARE CLEAR ON THIS RESOLUTION, AND THAT YOU WILL TAKE TIMELY ACTION TODAY. THE WINDOW OF OPPORTUNITY TO FILE A REPUTABLE BRIEF IS CLOSING RAPIDLY, AND THIS MEASURE HAS ONE MORE COMMITTEE TO GO THROUGH.

THANK YOU AGAIN FOR QUICKLY ADDRESSING THIS RESOLUTION MR. CHAIRMAN.

ANY QUESTIONS?

Comments made in Judiciary Feb. 24, 1987

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

TOM-FYI

February 25, 1987

United States Court of Appeals for  
the Ninth Circuit  
United States Court of Appeals &  
Post Office Building  
P.O. Box 547  
Seventh & Mission Street  
San Francisco, CA 94101

RE: Sierra Club, et al v. Penfold, et al,  
No. A86-083 (D. Alaska Jan. 29, 1987)  
(Order granting partial summary judgment),  
appeal docketed, No. 87-3597 (9th Cir. February  
12, 1987).

Gentlemen:

On February 12, 1987, the plaintiffs in the above-entitled litigation filed an appeal from the United States District Court's January 29, 1987 order which denied plaintiffs' motion for partial summary judgment. On February 17, 1987, plaintiffs also filed with this court a motion for injunctive relief pending appeal. The State of Alaska has not participated in this litigation. However, the state may wish to submit an amicus curiae brief pursuant to Fed. R. App. P. 29 at an appropriate time during appellate briefing.

Although the state is not a current participant in the litigation, the state wishes to share with the court and the parties the state's concern over the pending motion for injunctive relief. The state shares plaintiffs' legitimate desire to ensure adequate protection of Alaska's unique land and water resources. The state also recognizes that one must understand potential environmental harms before one can properly balance such harms against the need for economic development. Environmental assessments and environmental impact statements may provide one method to assess and understand such harms. However, the mining activities

February 25, 1987

plaintiffs seek to enjoin play a significant role in Alaska's economy. Alaska's current economic plight, caused by sharply reduced world oil prices, increases the importance of a viable placer mining mineral industry. In short, the state has a substantial interest in the continuance of placer mining operations in an environmentally responsible manner.

A blanket injunction against mining operations on Bureau of Land Management ("BLM") land would not serve the interest of Alaska and its citizens. The injunction would also penalize the individual miners for BLM's alleged legal errors. If BLM has misapplied federal law, the burden for BLM's mistakes should not fall solely on the individual miners.

During the 1986 mining season, while the district court action was pending, the state helped the various parties negotiate a compromise interim settlement agreement. The interim settlement agreement allowed mining to proceed during 1986, but also required BLM to institute comprehensive measures to assess and respond to environmental problems caused by placer mining.

If plaintiffs' position warrants injunctive relief, the state urges the court to fashion relief in a manner consistent with the 1986 interim settlement agreement. In the alternative, the court might request the parties to negotiate a revised interim agreement and to submit the revised agreement to the court for approval. As in 1986, the state stands ready to assist the parties in any such negotiations.

The State of Alaska appreciates the court's consideration of the views expressed in this letter. Copies of this letter have been mailed to all parties of record.

Sincerely,



Pete Jeans  
Chief of Staff

Senator John B. (Jack) Coghill  
Alaska State Legislature

Pouch V  
Juneau, Alaska 99811  
(907) 465-4921

Box 55028  
North Pole, Alaska 99705  
(907) 488-0862



MEMORANDUM

TO: Senator Jay Kerttula  
Chairman, Senate Judiciary Committee

FROM: Senator Coghill

RE: SR 11; Requesting the Governor to direct the filing of an amicus  
brief in Sierra Club v. Bureau of Land Management to advise  
the court of the state's position.

DATE: February 19, 1987

---

SR 11 is a clear, concise request of the Governor to follow through on some of the statements he made along the campaign trail. I realize the governor is a very busy man right now, so this resolution is primarily intended to be a reminder.

Although the resolution does not go as far as the mining community would like, namely full intervention in the lawsuit, it does address their primary concern - that the state support their legitimate position as a segment of our economy.

The state must take this opportunity to support, at no liability, an industry which has such deep roots in the history of the development of Alaska.

I have included with this memorandum, two others which were prepared by my staff before we filed this resolution. Also included is a letter from the Miners Advocacy Council, and two articles from the Fairbanks Daily News-Miner.

I strongly urge do pass recommendations.



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

February 27, 1987

Senator Jay Kerttula  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Kerttula:

Recently a small delegation representing the Alaska Miners Association visited Juneau. We joined with the Alaska Truckers Association in hosting a brunch and did have an opportunity to meet and present our program to several legislators. We realize not everyone was in Juneau and also there were other commitments.

Since we prepared a briefing paper for our presentation I have enclosed it for your information.

Please do not hesitate to call me if you have questions or need to relay information to Alaska's miners.

Sincerely,

ALASKA MINERS ASSOCIATION

Curtis V. McVee  
Executive Director

Encl: AMA Briefing Paper

*Handwritten notes:*  
Hunt  
file  
on  
Coyhill Pass  
MAR 3 1987  
Sent



## ALASKA MINERS ASSOCIATION, INC.

### ALASKA MINERS ASSOCIATION

#### BRIEFING PAPER

##### The Association:

- It represents over 1000 members who are miners, professionals, business people and support industries.
- It represents Hard Rock, Placer, Coal, Sand and Gravel as well as Recreational Miners.
- It was incorporated in 1939.
- It is a Statewide organization with five Branches located in Alaska's major communities.

##### The Association Goals Are:

- To increase access to mineralized lands.
- To reduce unreasonable constraints on mineral development.
- To increase public awareness of the importance of mineral development.
- To provide services to membership to assist them in their mining activities.
- To increase minerals production in Alaska with attendant revenues and jobs.

##### Current Status of Minerals Industry in Alaska:

- 85 Exploration companies have left the State or gone out business in the past few years. This represents about a 76 million dollar annual reduction in expenditures since 1981.
- In 1986 the Placer mining industry suffered a 27% decrease in the number of mines, a loss of 390 jobs and a 16% decrease in gold production.
- In contrast the placer gold production in the Yukon Territory set a new record.
- Nevada opened up 14 new mines in 1986 employing 1560 more people.
- Exploration activities in B.C. increased 24% in 1986 - 10 times greater than Alaska.
- Alaska with all its mineral reserves ranks 41st among all the states in mineral production and 11th among the 15 Western states.
- Eight major projects now in the permitting stage together with gravel production and a 60 million dollar per year placer industry could bring mineral gross sales to over one billion dollars annually by 1992.
- It is not unrealistic to anticipate a 2 - 3 billion dollar mineral industry in Alaska by the late 1990's.
- Mineral reserves in Alaska represents near 100 billions of dollars.



## ALASKA MINERS ASSOCIATION, INC.

Alaska Miners Association  
Briefing Paper  
Page 2

- Alaska (not including offshore) encompasses 375 million acres - - 144 million acres of Federal land is closed to mineral entry - - 1.8 million acres of the States land is closed to mineral entry. Only 10% of the land open is considered favorable mineral terrains (24 million acres) - - only 7% of Alaska has been investigated for minerals in detail.

### What has to be done:

- Improve the mineral investment climate in Alaska by stabilizing regulatory requirement and making the permit processes predictable and reduce duplication.
- Improve the international trading environment.
- Bring domestic cost structures in line with international realities. (Look as costs generated by unnecessary legal and regulatory requirements).
- Keep lands available for mineral exploration and development.

### Legislation:

The Alaska Miners Association has some general as well as specific legislative priorities. The theme accompanying our legislative program is stability in laws and regulations effecting management of land and natural resources, reduction of duplication, realistic laws which balance between all uses, multiple use of State lands, and access to mineralized areas.

### Specific proposals:

- Water Quality - State Legislation which establishes direction for realistic water quality guidelines considering current scientific knowledge, economics and achievable standards. We feel that a policy/guidance statement concerning water quality is necessary. The AMA recognizes that the State must comply with the Federal Clean Water Act but feel that to go farther than this must involve some consideration of scientific/technical capabilities as well as economic feasibility.
- Minerals Policy Act - Alaska needs to establish a policy/philosophy concerning mineral development. Outside financing and investment capital will only be available if State Government expresses a positive attitude about minerals development.

Alaska Miners Association  
Briefing Paper  
Page 3

The Policy Act will also serve as guidance to the Executive Branch of State Government. This legislation is the key to expanding the industry and diversification of the States economy through utilization of our mineral reserves.

- Coastal Zone Management -

This program designed to provide protection to the Coastal Zone had done two things which have the potential to restrict mineral development in a major way. First the boundaries of the coastal zone are being extended far inland based solely on the range of anadromous fish. Second, the local Coastal Policy Councils are functioning as another government entity and can assume veto power over any project. These actions could be economically detrimental to the local Borough Government, States and even National interests.

- Mineral Closures - AMA has taken a strong position against DNR or other land designations closing land to mineral entry unless there is a showing that closure is necessary first, to protect other values and current laws and regulations are not sufficient and second, there is an analysis of mineral values which could be foregone if closure is effected, third there is a competent analysis of the unmitigable impacts of a mineral development scenario.

- Mining License Tax - This authority originates from a 1959 Act. Regulations were finally issued in 1986 by the Department of Revenue. About \$400,000 worth of revenues are collected annually through this tax. Revenues are declining as production primarily of sand and gravel decreased in 1986. Operator's on the Kenai Peninsula report a 40 to 60% reduction in sales. The new regulation layer the tax with the pit operator, the processing company and in some instances even a third party being taxed on the same commodity. In addition the base for computing the tax is gross revenues, hence it is a form of income tax. This does not appear to be the intent of the original law. The Alaska Miners Association recommend that the the Legislature re-evaluate this law. As currently administered it has the potential to destroy many of the sand and gravel businesses, a very undesirable objective.

HB

2





Official Business

# Alaska State Legislature

House of Representatives

Committee on Rules

P. O. Box V  
Juneau, Alaska 99811

Phone:  
(907) 465-3764  
465-3765

10:00 a.m. Floor Session

"10th day"

## HOUSE CALENDAR FOR WEDNESDAY, JANUARY 28th, 1987

HB 2 - "An Act providing for the adoption of the Uniform  
Simultaneous Death Act."  
(by Representative Gruenberg)

### CITATIONS

#### \*HONORING:

\*Robert B. Atwood - by Reps. Boucher, Barnes, Collins, Donley  
\*Dimond Lynx Volleyball Champions - by Reps. Hanley, Donley  
\*Representative Mike Miller - by Reps. Ulmer, Hudson,  
Grussendorf, Navarre, Pourchot, Koponen, Gruenberg, Goll, Davis,  
Sund, Cotten; Sen. Duncan

#### IN MEMORIAM:

\*Hazel Jaeger MacKinnon - by Reps. Sund, Hudson, Ulmer, Cotten,  
Taylor; Senator Jones, Duncan  
\*Henry F. Warner - by Sens. Bennett, Fahrenkamp, Sturgulewski

# HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS:

DATE: 1/27/87

The Judiciary Committee has considered HB 2  
"An Act providing for the adoption of the Uniform Simultaneous Death Act."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

*[Signature]*  
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*[Signature]*  
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*[Signature]*  
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**SIGNING OTHER RECOMMENDATIONS:**

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*[Signature]*  
 \_\_\_\_\_  
 Chairman's signature

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

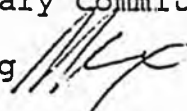
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

## MEMORANDUM

DATE: January 23, 1987

TO: Members of the House Judiciary Committee

FROM: Representative Max Gruenberg 

RE: HB 2, An Act providing for the adoption of the  
Uniform Simultaneous Death Act

The Uniform Simultaneous Death Act has been adopted in forty-eight states. Only the State of Louisiana has failed to adopt it.

Alaska adopted it but repealed it by mistake when it adopted the Uniform Probate Code.

The Uniform Simultaneous Death Act provides for each person's estate to be settled as though that person had survived the others in a case of simultaneous deaths. This avoids costly court disputes to establish the sequence of death when there is not enough evidence to determine who, in fact, died first.