

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990
5768 HOUSE JUDICIARY 8672

172

Original sponsors: Gruenberg and
Zawacki

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 181 (JUD)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the private manufacture of and
7 the definition of an alcoholic beverage; and provid-
8 ing for an effective date."

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

10 * Section 1. AS 04.21 is amended by adding a new section to read:

11 Sec. 04.21.015. PRIVATE MANUFACTURE OF ALCOHOLIC BEVERAGES. (a)
12 Except as provided in (b) of this section, the provisions of this
13 title do not apply to the private manufacture of alcoholic beverages.

14 (b) This section does not apply to AS 04.16.050, 04.16.051,
15 04.16.080; AS 04.21.010, 04.21.020; alcoholic beverages manufactured
16 in a quantity that exceeds the limit imposed on private manufacture
17 under federal law; or an area that has adopted a local option law
18 under AS 04.11.490 - 04.11.500.

19 * Sec. 2. AS 04.21.080(b)(1) is amended to read.

20 (1) "alcoholic beverage" means spirituous, vinous, malt or
21 other fermented or distilled liquids, whatever the origin, that are
22 intended for human consumption as a beverage and that contain one-half
23 of one percent or more of alcohol by volume, whether produced commer-
24 cially or privately;

25 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
26
27
28
29

HB

188

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 21, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/2/89

The JUDICIARY Committee considered:

HB 188

HOUSE BILL NO. 188 [ADDITIONAL SUPERIOR COURT JUDGE AT KENAI]
"An Act increasing the number of superior court judges designated for the Third Judicial District to provide an additional superior court judge at Kenai; and providing for an effective date."

RECOMMENDS:

- replacing with _____ the same title
- the 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
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published:
Court System
- zero fiscal notes(s) published:

SIGNING DO PASS:

[Handwritten signatures]

SIGNING OTHER THAN DO PASS: (Do Not Pass, No Recommendation, Amend)

[Handwritten signature: J. Ellis no rec.]

[Handwritten signature: Chairman's signature]

Chairman's signature

HB 188 - Additional Superior Court Judge at Kenai

Justification Summary

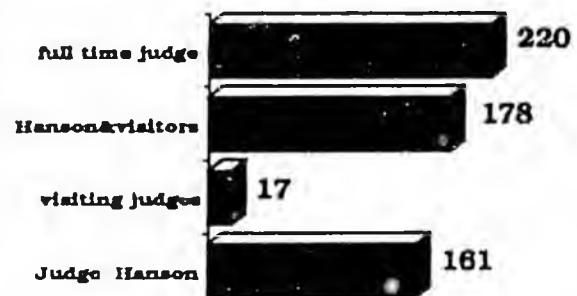
Representative Mike Navarre

In FY88, the Kenai Court:

- ☛ had the highest number of filings per judge in the state, 3925 (Palmer 3251; Anchorage 2382; Valdez 395)
- ☛ experienced a 26% jump in trial activity (Palmer, no change; Anchorage minus 46%; Fairbanks +23%)
- ☛ experienced inordinate delays in routine matters
- ☛ spent \$71,375 on jury costs
- ☛ assigned all civil trials to visiting judges

Kenai's retired judge, James Hanson, is budgeted to work pro tem 2 weeks a month but frequently works another 1 or 2 weeks. In 1988, he worked 161 days, which is 73% of what a full-time judge works. Besides Judge Hanson's pro tem work, other judges travelled to Kenai. **Hanson plans to retire completely at the end of June.** This will leave a single judge with the work of almost two judges.

**Kenai Superior Court
Judge Days, 1988**



In 1986, the State Bar Association unanimously recommended an additional Superior Court Judge for Palmer and Kenai.

Kenai Superior Court

Full-time v. Part-time costs (in \$)



FY85 - FY88 the court experienced a 348% increase in children's matters filings, the highest in the state. (Juneau-next highest- plus 293%; Anchorage plus 16%; Fairbanks minus 29%)

The recently-appointed temporary district court judge has no assurance of being reappointed next year.

**STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: <hr/> Revision Date: Title: An act increasing the number of superior court judges...3rd district Sponsor: Navarre-Swackhammer-Gruenberg Requestor: Judiciary	Bill Version: SB 188 Publish Date: 2/21/89 Agency Affected: Alaska Court System BRU: Trial Courts Components:
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EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	195.0	257.6	257.6	257.6	257.6
Travel
Contractual
Supplies
Equipment	2.0	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	197.0	257.6	257.6	257.6	257.6
CAPITAL
REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	197.0	257.6	257.6	257.6	257.6
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	197.0	257.6	257.6	257.6	257.6

POSITIONS:						
Full-time	. . . .	4.0	4.0	4.0	4.0	4.0
Part-time	. . . .	(2.0)	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: <i>Jan Strandberg</i> Division: Alaska Court System	Phone: 264-8228 Date: 03/01/89
Approved by: <i>Stephanie Cole, for -</i> Arthur H. Snowden, II, Administrative Director	Date: 03/01/89
Agency: Alaska Court System	

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

ALASKA COURT SYSTEM

HB 188

Fiscal Analysis

Personal Services:

<u>Position Title</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge, Kenai PFT, 12 months, range 28E with 74 cola	\$82,716	\$55,710	\$138,426
Law Clerk I, Kenai PFT, 12 months, range 13D	31,476	12,197	43,673
In-Court Clerk, Kenai PFT, 12 months, range 12A	26,604	11,132	37,736
Secretary II, Kenai PFT, 12 months, range 12A	26,604	11,132	37,736

	Total Personal Services		257,571
Less existing funding for pro tempore judge and secretary (1)			62,500

	Net Personal Services		195,071
Equipment: (for Law Clerk position) (one-time cost)			
Desk, chair, typewriter, statutes, rules of court			1,962

Total Cost (first year)			\$197,033
			=====

(1) Calculation of Existing Funding:

	Amount	Total
FY 82 - Original funding (Free Conference Committee)	\$57,200	\$57,200
FY 83 - 5% salary increase	2,900	60,100
FY 85 - 5% salary increase (funded at 80% of actual)	2,400	62,500

ALASKA COURT SYSTEM

HB 188 - ANALYSIS

A new superior court judge in Kenai will require a staff consisting of a law clerk, in-court clerk and secretary. Because a pro tem judge and staff have been budgeted to provide judicial and staff services, the cost of a new judge and staff will be reduced by the amount that the court system would expect to pay for the pro tem judge and staff for one fiscal year. The only equipment needed is that required by the law clerk.

**STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____ Bill Version: HB 133
 Publish Date: 2/1/89

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An act relating to obscenity BRU: Trial Courts

Sponsor: Miller, Martin, & Leman Components:
 Requestor: Judiciary

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL

REVENUE

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time

Part-time

Temporary

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* Jan Strandberg, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 02/28/89

Approved by: *Stephanie Cole, fax-* Arthur H. Snowden, II, Administrative Director Date: 02/28/89
 Agency: Alaska Court System

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

HB

192

HOUSE COMMITTEE REPORT

3/22

(7)

Date Referred: February 23, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 192

HOUSE BILL NO. 192

[ABSENTEE BALLOTS/COURT ORDERED ELECTIONS]

"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators; and providing for an effective date."

RECOMMENDS:

- replacing with 15 HB 192 (S-A) the same title
- the 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
- zero fiscal note Elections
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature] BOUCHER

[Signature] MAELEAN

[Signature] SPONHOLZ

[Signature] MENARD

[Signature] DONLEY

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

[Signature] ZAWACKI

[Signature] HARLEY

[Signature]
Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: 12/7/89 Agency Affected: Office of the Governor
 Title: Absentee Ballots, certain court orders re: elections, and to the governor's BRU: Elections
 Sponsor: power to appoint legislators Components: I - Elections
 Requestor: The Judiciary Committee II - Primary & General
 SPONSOR: The Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
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: Linda Edgeworth Phone: 465-4611
 Division: Division of Elections Date: 12/8/89

Approved by Commissioner: [Signature] (Acting) Date: 12.11.89
 Agency: Division of Elections

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: 3/1/90
Title: Relating to Absentee Voting
from outside the United States
Sponsor: Rules/Governor
Requestor: Rules/Governor

Agency Affected: Office of the Governor
BRU: Elections
Components: I Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
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)

The fiscal impact for FY 90 is -0-

Prepared by: Linda Edgeworth
Division: Division of Elections

Phone: 465-4611
Date: 3/1/90

Approved by Commissioner: [Signature]
Agency: _____

Date: 3-1-90

Distribution (by preparer):

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

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- Item 4: Comments by Division of Elections
January 31, 1989
- Item 5: Alaska Statute: Sec. 15.20.081
- Item 6: Memorandum from Rep. Goll re: HB 192
March 20, 1989

HOUSE COMMITTEE ON STATE AFFAIRS

**RECAP OF
HB 192**

Absentee Ballots/Court Ordered Elections

Received February 22, 1989
by The Judiciary Committee

Heard March 21, 1989

Committee Substitute adopted March 21, 1989

Passed Out of Committee March 21, 1989
5 Do Pass
2 No Recommendation

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 23, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 192

HOUSE BILL NO. 192 [ABSENTEE BALLOTS/COURT ORDERED ELECTIONS]
"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators; and providing for an effective date."

RECOMMENDS:

- replacing with CS HB 192 (SA) the same title
 the 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
 zero fiscal note
 zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published:

 zero fiscal notes(s) published:

SIGNING DO PASS:

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

SIGNING OTHER THAN DO PASS: (Do Not Pass, No Recommendation, Amend)

[Signature (No Rec)]
[Signature (No Rec)]

[Signature]
Chairman's signature

Item 2

FISCAL NOTE

REQUEST:

Revision Date: 3/20/89
Title: Absentee Ballots, certain court orders re: elections, and to the governor
Sponsor: power to appoint legislators
Requester: The Judiciary Committee
SPONSOR: The Judiciary Committee

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
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: Linda Edgeworth Phone: 465-4611
Division: Division of Elections Date: _____
Approved by Commissioner: *[Signature]* Date: 3/20/89
Agency: Division of Elections

Distribution (by preparer):

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



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Item 3
RECEIVED

JAN 24 1989

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 1100
(907) 465-3991

January 24, 1989

MEMORANDUM

TO: Representative Peter Goll

FROM: Karen Oakley *ko*
Legislative Analyst

RE: Procedures for Resolving "Failed" Elections to State Legislatures
Research Request 89.137

You asked what constitutional and statutory provisions guided the procedures that were followed in resolving the extremely close race for House District 13, Seat A. In that election, the results of a recount were appealed to the Alaska Supreme Court, which set aside the results and ordered a new election. The temporary vacancy thereby created in the House was recently filled by appointment by the Governor. You asked why this case was handled as it was and how a similar case would be handled in other states.

This memo explains the constitutional and statutory provisions that guided the procedures followed in the most recent election for representative for House District 13, Seat A. A second memorandum to follow next week will describe how a similar situation would have been handled in other states.

THE 1988 ELECTION FOR THE REPRESENTATIVE FOR HOUSE DISTRICT 13, SEAT A

House District 13, which includes east Anchorage, is served by two representatives, both elected at large. In the 1988 General Election, Democrat David Finkelstein and Republican W.E. "Brad" Bradley vied for Seat 13-A in what turned out to be a very close election. A brief chronology of subsequent events follows:

- After the General Election, the Division of Elections certified Finkelstein as the winner based on counts of 3,549 votes for Finkelstein and 3,546 votes for Bradley, a three vote margin.
- At Bradley's request, a recount was conducted. The Division of Elections then certified Bradley as the winner based on counts of 3,563 votes for Bradley and 3,554 votes for Finkelstein, a nine vote margin.
- Upon certification of Bradley as the winner, Finkelstein filed an appeal with the Alaska Supreme Court.

- The Alaska Supreme Court referred the appeal to Superior Court Judge Joan Katz as a Special Master. Judge Katz concluded that because of various errors relating to the counting of ballots, the election should be set aside and a new election held.
- The Alaska Supreme Court reviewed the findings of Judge Katz. They remanded the case to the director of the Division of Elections with specific instructions regarding the counting of certain of the challenged ballots.¹ Nine absentee votes, which were found to be illegally cast and which had not been commingled, were to be deducted from the totals of the candidates for whom they were cast. After deducting these nine votes, a provisional winner was to be declared. The director was then to deduct, based on a proportionate formula, 51 illegally counted but commingled ballots from the totals of the candidates. If the provisional winner remained the winner after deduction of these 51 ballots, the director was to certify the provisional winner as the winner. If the provisional winner did not remain the winner, the director was ordered to promptly hold a new election.
- The director of the Division of Elections recounted the ballots as ordered by the court. After the first step in the recount process, Bradley was declared the provisional winner; after the second step, Finkelstein was the winner. Because the provisional result was overturned, a new election was ordered. Due to federal election requirements, a new election cannot be held any sooner than late March or early April.
- On January 17, 1989, Governor Steve Cowper appointed Democrat Ann Spohnholz to the House District 13-A seat until a new election can be held and a winner declared.
- On January 18, 1989, the House voted 27 to 12 that the Governor's appointee was qualified to be seated pending a new election.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This section discusses the constitutional and statutory provisions which determined the procedures followed in the present case involving the House District 13-A seat. Two topics are of concern: What procedure is followed when the results of a recount in a legislative race are appealed? What procedure is followed when there is a vacancy in the legislature because the results of an election have been set aside by court order?

¹A copy of the court order is attached.

Representative Goll
January 24, 1989
Page 3

Appeal of a Recount of a Legislative Election

Because Finkelstein won the General Election by a margin of only three votes, Bradley was authorized, pursuant to AS 15.20.430, to request that the Division of Elections conduct a recount. When the results of that recount showed that Bradley was the winner, Finkelstein had two options for appealing certification of the recount result: Pursuant to AS 15.20.510, he could appeal to the Alaska Supreme Court, or, pursuant to AS 15.20.520, he could appeal to the Alaska House of Representatives.

The authority for appeal of a recount to the House is found in Article II, Section 12 of the Alaska Constitution, which states that the houses of each legislature are the judge of the election and qualification of its members. There is no similar constitutional right to appeal a recount of a legislative election to the courts; that right is found only in statute. Presumably, the 1960 legislature, which passed both AS 15.20.510 and AS 15.20.520, wished to provide two options for candidates and other citizens to appeal results of a recount.

Finkelstein chose to appeal to the Alaska Supreme Court. AS 15.20.510 specifies the duties and powers of the court in considering the appeal of a recount as follows:

. . . The inquiry in the appeal shall extend to the questions whether or not the director has properly determined what ballots, parts of ballots, or marks for candidates on ballots are valid, and to which candidate . . . the vote should be attributed. The court shall enter judgement either setting aside, modifying, or affirming the action of the director on the recount.

The court order of January 11, 1989, which remanded the case back to the Division of Elections with specific instructions, essentially "set aside" the prior certification of the recount by the director.

Procedure for Filling Legislative Vacancies Due to a "Failed" Election

Article II, Section 4 of the Alaska Constitution addresses vacancies in the legislature. It provides:

A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

Representative Goll
January 24, 1989
Page 4

Alaska Statutes 15.40.320 - 15.40.470 set forth the procedures to be followed when filling certain types of legislative vacancies. For the purposes of the Election Code, "vacancy" is defined in AS 15.60.010(34). This statute provides that a

'vacancy' exists in an office when the person elected or appointed to the office resigns, retires, dies, is recalled, is rejected by majority vote on the question at an election, is convicted of a corrupt practice, is removed by impeachment, or is expelled.

The type of vacancy that was created in the House of Representatives when the court set aside the results of the recount for House District 13, Seat A does not appear to be covered by the Election Code. Since no provision is made in law for filling this type of legislative vacancy, the constitution provides that the governor shall fill the vacancy by appointment.

For the types of legislative vacancies specified in AS 15.60.010(34), confirmation by a majority of the members of the political party of the predecessor in the same house as the predecessor is required pursuant to AS 15.40.330(a). In the present case, confirmation by the full house was apparently not required by statute. Article II, Section 12 of the Alaska Constitution provides, however, that

. . . Each [house] is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. . .

Thus, the vote of the house "confirming" the Governor's appointment of Ann Spohnholz to fill the vacancy until another election can be held was within the prerogative of the house to be "judge of the election and qualifications of its members."

I hope you find this information useful. If you need additional information, please let me know.

Attachment

STATE OF ALASKA

OFFICE OF THE GOVERNOR

Item 4

DIVISION OF ELECTIONS
P O BOX AF
JUNEAU ALASKA 99811-0105
PHONE (907) 485-4611

January 31, 1989

The Honorable Peter Goll
Alaska State Representative
P. O. Box AV
Juneau, Alaska 99811

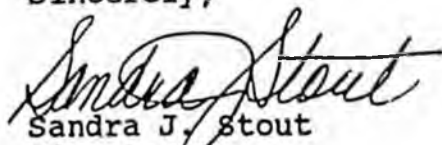
Dear Representative Goll:

The work draft of a bill related to absentee ballots, court ordered elections, and the governor's power to appoint legislators was presented to the Division of Elections for our review and recommendations, in order that they might be considered prior to the bill being introduced. I appreciate the opportunity afforded us to participate in this process.

The scope of our comments is limited to the provisions of the draft bill relating directly to our responsibilities for implementation and general administration of the election process. We offer no suggestions or comments relative to the power of the legislature to judge the election or qualifications of its members, actions taken by the courts, or authority of the Governor to fill vacancies by appointment, as these issues are beyond the scope of our authority or expertise.

I hope that the comments enclosed are helpful to you and your committee. Please feel free to contact me if I or a member of my staff can be of further assistance.

Sincerely,


Sandra J. Stout
Director

Enclosures

COMMENTS ON WORK DRAFT
6-0512A (COOK)
BY GOLL

Division of Elections
Sandra J. Stout
Director

January 31, 1989

"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators."

The draft bill attempts to address the issues that were raised during the suit brought before the Supreme Court relative to the 1988 General Election for House District 13, Seat A.

Sections 1 and 2 deal with the Supreme Court's ruling in Finkelstein v. Stout, et. al., regarding ballots witnessed by two witnesses who each signed on a different date. The court ruled that these ballots should not have been counted. These sections are designed to clarify that the voter's certificate is to be signed in the presence of the witnesses, and that the witnesses sign their attestation at the same time and place. As indicated in testimony presented at the House Judiciary hearing on January 25, 1989, we believe that a statutory remedy is not necessary to satisfy the requirements of the court's ruling. We suggest that the remedy could be accomplished administratively through a re-design of the forms used for by mail voting, and through clarification of the instructions provided to voters and the witnesses as part of the by mail ballot packet. Attached are samples of the kinds of modifications which could be made which would satisfy the court's ruling.

Our major concern with the wording of Section 1 in the work draft, is that while the requirements are made very clear, they also create a potential "mine field" of opportunities for voters or their witnesses to err in completing their forms, resulting in the voters' ballots not being counted. Requiring that we provide three different places where different individuals must write in a date, may cause more confusion, rather than less, on the part of voters and their witnesses. As brought out in the Supreme Court testimony, by displaying three different lines on which dates can be written, it could be construed or interpreted by the voters

and their "civilian" witnesses that different dates are actually permissible.

If the legislature deems it advisable to provide clarification in statutes in addition to administrative remedies already contemplated, we would suggest simplification within the work draft wording of Section 1 as follows:

Section 1. AS 15.20.081(d) is amended to read:

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of [HAVE THE BALLOT WITNESSED BY] two persons over the age of 18 years, who shall sign as witnesses and attest to the date on which the voter signed the certificate in their presence, and, in addition, the voter shall provide the certification prescribed in AS 09.63.020.

Based on this suggested wording, the Division, would also recommend that Section 2 relating to AS 15.20.203(b) be eliminated as subsection (2) sufficiently addresses the

issue of deficient witnessing as grounds for not counting a ballot cast by mail.

Sections 3 and 4 provide for the conduct of new elections should an election be set aside by the court. We note that the general wording of Section 3 relative to court action in recount appeals is carried forward in Section 4 to provide conformity relative to court ordered elections as a result of election contests.

The Division of Elections raises no objection to the general content of these sections except the stipulation that the new election be held within 30 days of the election order. In practical terms this time frame would be virtually impossible to implement. One of the major factors is the requirement that Alaska request preclearance from the United States Department of Justice prior to enforcing any change in election procedure under Section 5 of the Voting Rights Act of 1965, (42 U.S.C. 1973, et seq.). Special elections are considered changes in normal procedure, and are therefore subject to this preclearance requirement. The U. S. Department of Justice is allowed 60 days for their review. While expedited preclearance can be requested, granting of special handling is granted at the discretion of the Department. Therefore, every attempt should be made to accommodate the 60 day period. That means that the period of time between the order calling for a new election and election day is usually somewhat longer than 60 days because decisions regarding any special procedures which will be necessary in the conduct of the special election must also be addressed in the preclearance request.

The Division would recommend that the selection of the actual date remain somewhat discretionary in order that the Director can adequately review the scope of the court's order, seek legal counsel regarding any special procedures which may be necessary, and to determine the time necessary to provide adequate public notice, prepare and distribute election materials, and to appoint and train election personnel.

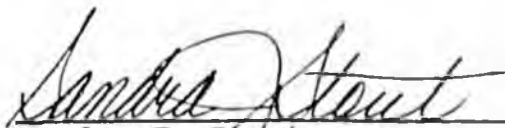
The Division would recommend the following relative to the scheduling of the new election:

The director shall promptly schedule a special election to be held not more than 90 days after the date of the court's order, and the director shall supervise the election in the general manner prescribed by this title.

Finally, with regard to an effective date for this bill if it is introduced, we note that the Division anticipates that many of our forms will have to be revised. Our current stock of supplies and forms were ordered prior to the 1988 statewide elections in quantities expected to last through December of 1989, at which time we would begin design and ordering for the next major election cycle. Because no statewide elections are anticipated for this year, and in order to avoid the expense of total replacement of current stock at this time, consideration might be given to postponing the effective date for Section 1 until January 1, 1990.

DATE:

January 31, 1989



Sandra J. Stout
Director

denied, 441 U.S.
60 L. Ed. 2d 376

it. [Repealed, §
15.20.061, 15.20.071.

representative.
may apply for an
to the following

district in which the
election up to and

AS 15.20.048(b);

to and including

voting station des-
ignated for absentee voting

the voter's designee or
the board chairman in
been designated.

personal representa-
tive ballot shall
be applied to the personal

representative
by the applicant
physician or a state-

applicant will be
if the applicant has a
physical disability.

absentee ballot to
the applicant may
proceed to mark the

envelope, to place the
ballot in the envelope,
and to place the voter's certifi-

cate and the voter's
signature thereon. The voter must
return the ballot to the per-

sonal representative
not later than elec-
tion day. The ballot to the per-
sonal representative
shall be returned to the
election official

who provided the ballot. The absentee ballot must be returned to the election official not later than 8:00 p.m. on election day.

(d) Each election official shall keep a record of the name and signature of each personal representative requesting an absentee ballot and the name of the person on whose behalf the ballot is requested. The election official shall record the date and time the absentee ballot is provided and the time the ballot is returned to the election official.

(e) A candidate for office at that election may not act as a personal representative. (S 87 ch 100 SLA 1980; am S 8 ch 85 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (c) in the second sentence deleted "the back of" preceding "the envelope" and substituted "witness and date the signature of the voter" for "sign as attesting witness and date his signature," added the third sentence, in the fourth sentence substituted "the" for

"his" preceding "personal representative," in the present last sentence deleted "within three days from the date it is obtained but" following "election official," and deleted the former last sentence, concerning the untimely return of an absentee ballot.

NOTES TO DECISIONS

Former sections governing absentee ballot voting construed. — See Hammond v. Hickel, Sup Ct Order (File Nos 4281, 4282, 4283, 4284, 4285, 4291), 580

P 2d 256 (1978), cert denied, 441 U.S. 907, 99 S. Ct. 1998, 60 L. Ed. 2d 376 (1979)

Sec. 15.20.080. Date for application in person. [Repealed, S 231 ch 100 SLA 1980. For current law, see AS 15.20.061.]

Sec. 15.20.081. Absentee voting by mail. (a) A qualified voter may apply by mail to the director for an absentee ballot. The application shall include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. Persons residing outside the United States and applying to vote absentee in federal elections in accordance with AS 15.05.011 need not include an Alaska residence address in the application.

(b) An application for an absentee ballot by mail must be post-marked not less than ten days before the election for which the absentee ballot is sought. The absentee ballot application shall permit the person to register to vote under AS 15.07.070 and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote.

(c) After receipt of an application by mail, the director shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious mail service. The material shall be sent only if they are ready for distribution. The return envelope sent with the materials shall be addressed to the election supervisor in the district in which the voter is a resident.

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall have the ballot witnessed by two persons over the age of 18 years and, in addition, shall provide the certification prescribed in AS 09.63.020.

(e) An absentee ballot must be marked on or before the date of the election. Except as provided in (d) of this section, a voter who returns the ballot by mail shall use a mail service at least equal to first class and mail the ballot not later than the day of the election to the election supervisor for the election district in which the voter seeks to vote. The ballot may not be counted unless it is received by the close of business on the 10th day after the election. If the ballot is postmarked, it must be postmarked on or before election day. After the day of the election, no ballots shall be accepted unless received by mail.

(f) The director may require a voter casting an absentee ballot by mail to provide proof of identification or other information to aid in the establishment of the voter's identity as prescribed by regulations adopted under the Administrative Procedure Act (AS 44.62).

(g) The director shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the election supervisor and the dates on which the ballot was executed and postmarked.

(h) An absentee ballot returned by mail from outside the United States or from a military APO or FPO address that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the 15th day following the election. (§ 87 ch 100 SLA 1980; am § 63 ch 6 SLA 1984; am §§ 9 — 11 ch 85 SLA 1986)

Effect of amendments. — The 1984 amendment made a series of technical and internal reference changes in subsection (d).

The 1986 amendment in subsection (b) in the first sentence deleted "more than six months nor" following "postmarked not" and substituted "ten" for "seven" and added the second sentence; in subsection (e) deleted "and attested" following "marked" in the first sentence, in the sec-

ond sentence substituted "Except as provided in (h) of this section, a" for "If the" and "a mail service at least equal to first class" for "the most expeditious mail service" and "for the" for "in his," inserted "who" preceding "returns," deleted "he" following "ballot by mail" and added "in which the voter seeks to vote" at the end of the sentence, and added the third and last sentences of the subsection, and added subsection (h).

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- (2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;
- (3) a notary public;
- (4) a United States postmaster; or
- (5) a commissioned officer under AS 09.63.050(4). (§ 1 ch 37 SLA 1981)

Collateral references. — 58 Am. Jur. 2d, Oath and Affirmation, ¶ 6 — 10
67 C.J.S., Oaths and Affirmations, ¶ 5 — 7

Disqualification of attorney, otherwise qualified, to take oath or acknowledgment from client. 21 ALR3d 483

Sec. 09.63.020. Certification of documents. (a) A matter required or authorized to be supported, evidenced, established, or proven by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making it (other than a deposition, an acknowledgment, an oath of office, or an oath required to be taken before a specified official other than a notary public) may be supported, evidenced, established or proven by the person certifying in writing "under penalty of perjury" that the matter is true. The certification shall state the date and place of execution, the fact that a notary public or other official empowered to administer oaths is unavailable, and the following:

"I certify under penalty of perjury that the foregoing is true."

(b) A person who makes a false sworn certification which the person does not believe to be true under penalty of perjury is guilty of perjury. (§ 1 ch 37 SLA 1981)

Collateral references. — 1 Am. Jur. 2d, Acknowledgments, ¶ 32 — 79

1 C.J.S., Acknowledgments, ¶ 83 — 145

Sec. 09.63.030. Notarization. (a) When a document is required by law to be notarized, the person who executes the document shall sign and swear to or affirm it before an officer authorized by law to take the person's oath or affirmation and the officer shall certify on the document that it was signed and sworn to or affirmed before the officer.

(b) The certificate required by this section may be in substantially the following form:

Subscribed and sworn to or affirmed before me at _____
on _____
(date)

Signature of Officer

Title of Officer



STATE OF ALASKA
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: Representative H. A. "Red" Boucher, Chair
House State Affairs Committee

FROM: Representative Peter Goll

RE: HB 192, relating to absentee ballots, court
ordered elections, and the governor's power to
appoint legislators.

DATE: March 20, 1989

I requested that this bill be drafted in the aftermath of the Supreme Court's ruling in Finkelstein v. Stout, et. al. One of the issues decided by the court was that ballots witnessed by two witnesses who signed on different dates should not have been counted.

Section 1 clarifies the procedure required for the witnessing of absentee ballots by two witnesses when a person qualified to administer oaths is not available. The new language requires that the voter's certificate be signed in the presence of two witnesses, and that the witnesses sign their attestation at the same time and place.

Section 2 of the bill adds a new subsection to existing law dealing with appeal from the decision of the Director of the Division of Elections after a recount. Present law provides that the "court shall enter judgment either setting aside, modifying, or affirming the action of the director on recount." The new section provides that if the court finds that it is not possible to ascertain whether certain ballots are valid or to which candidate or proposition the vote should be attributed, and the ballots, if counted, could change the outcome of the election, the court shall set aside the recount results and order a new election.

The court has had implied authority to order a new election when it "sets aside" an election. This bill merely provides statutory authority for such an action in both sections 2 and 3. Those sections also require that the election be held within 90 days from the date of the court's order.

Representative H.A. "Red" Boucher
Page 2
March 20, 1989

Finally, sections 2 and 3 effectuate Art. II, Sec. 4 of the Alaska Constitution which provides:

"A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment."

AS 15.40.320 - 15.40.470 set out the procedures to be followed when filling certain types of legislative vacancies. The type of vacancy which occurred when the Bradley - Finkelstein election was vacated is not presently covered by statute and this bill merely addresses that type of vacancy by providing that the governor shall appoint a qualified person to serve until the results of a new election are certified and the successor takes office.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811 0105
PHONE (907) 465-4811

RECEIVED JAN 31 1989

January 31, 1989

The Honorable Peter Goll
Alaska State Representative
P. O. Box AV
Juneau, Alaska 99811

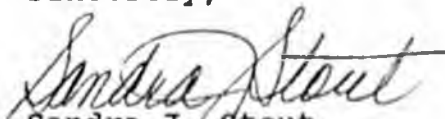
Dear Representative Goll:

The work draft of a bill related to absentee ballots, court ordered elections, and the governor's power to appoint legislators was presented to the Division of Elections for our review and recommendations, in order that they might be considered prior to the bill being introduced. I appreciate the opportunity afforded us to participate in this process.

The scope of our comments is limited to the provisions of the draft bill relating directly to our responsibilities for implementation and general administration of the election process. We offer no suggestions or comments relative to the power of the legislature to judge the election or qualifications of its members, actions taken by the courts, or authority of the Governor to fill vacancies by appointment, as these issues are beyond the scope of our authority or expertise.

I hope that the comments enclosed are helpful to you and your committee. Please feel free to contact me if I or a member of my staff can be of further assistance.

Sincerely,


Sandra J. Stout
Director

Enclosures

COMMENTS ON WORK DRAFT
6-0512A (COOK)
BY GOLL

Division of Elections
Sandra J. Stout
Director

January 31, 1989

"An Act relating to absentee ballots, to certain court orders regarding elections, and to the governor's power to appoint legislators."

The draft bill attempts to address the issues that were raised during the suit brought before the Supreme Court relative to the 1988 General Election for House District 13, Seat A.

Sections 1 and 2 deal with the Supreme Court's ruling in Finkelstein v. Stout, et. al., regarding ballots witnessed by two witnesses who each signed on a different date. The court ruled that these ballots should not have been counted. These sections are designed to clarify that the voter's certificate is to be signed in the presence of the witnesses, and that the witnesses sign their attestation at the same time and place. As indicated in testimony presented at the House Judiciary hearing on January 25, 1989, we believe that a statutory remedy is not necessary to satisfy the requirements of the court's ruling. We suggest that the remedy could be accomplished administratively through a re-design of the forms used for by mail voting, and through clarification of the instructions provided to voters and the witnesses as part of the by mail ballot packet. Attached are samples of the kinds of modifications which could be made which would satisfy the court's ruling.

Our major concern with the wording of Section 1 in the work draft, is that while the requirements are made very clear, they also create a potential "mine field" of opportunities for voters or their witnesses to err in completing their forms, resulting in the voters' ballots not being counted. Requiring that we provide three different places where different individuals must write in a date, may cause more confusion, rather than less, on the part of voters and their witnesses. As brought out in the Supreme Court testimony, by displaying three different lines on which dates can be written, it could be construed or interpreted by the voters

and their "civilian" witnesses that different dates are actually permissible.

If the legislature deems it advisable to provide clarification in statutes in addition to administrative remedies already contemplated, we would suggest simplification within the work draft wording of Section 1 as follows:

Section 1. AS 15.20.081(d) is amended to read:

(d) Upon receipt of an absentee ballot by mail, the voter, in the presence of a notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postal official, registration official, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall sign the voter's certificate in the presence of [HAVE THE BALLOT WITNESSED BY] two persons over the age of 18 years, who shall sign as witnesses and attest to the date on which the voter signed the certificate in their presence. and, in addition, the voter shall provide the certification prescribed in AS 09.63.020.

Based on this suggested wording, the Division, would also recommend that Section 2 relating to AS 15.20.203(b) be eliminated as subsection (2) sufficiently addresses the

issue of deficient witnessing as grounds for not counting a ballot cast by mail.

Sections 3 and 4 provide for the conduct of new elections should an election be set aside by the court. We note that the general wording of Section 3 relative to court action in recount appeals is carried forward in Section 4 to provide conformity relative to court ordered elections as a result of election contests.

The Division of Elections raises no objection to the general content of these sections except the stipulation that the new election be held within 30 days of the election order. In practical terms this time frame would be virtually impossible to implement. One of the major factors is the requirement that Alaska request preclearance from the United States Department of Justice prior to enforcing any change in election procedure under Section 5 of the Voting Rights Act of 1965, (42 U.S.C. 1973, et seq.). Special elections are considered changes in normal procedure, and are therefore subject to this preclearance requirement. The U. S. Department of Justice is allowed 60 days for their review. While expedited preclearance can be requested, granting of special handling is granted at the discretion of the Department. Therefore, every attempt should be made to accommodate the 60 day period. That means that the period of time between the order calling for a new election and election day is usually somewhat longer than 60 days because decisions regarding any special procedures which will be necessary in the conduct of the special election must also be addressed in the preclearance request.

The Division would recommend that the selection of the actual date remain somewhat discretionary in order that the Director can adequately review the scope of the court's order, seek legal counsel regarding any special procedures which may be necessary, and to determine the time necessary to provide adequate public notice, prepare and distribute election materials, and to appoint and train election personnel.

The Division would recommend the following relative to the scheduling of the new election:

The director shall promptly schedule a special election to be held not more than 90 days after the date of the court's order, and the director shall supervise the election in the general manner prescribed by this title.

Finally, with regard to an effective date for this bill if it is introduced, we note that the Division anticipates that many of our forms will have to be revised. Our current stock of supplies and forms were ordered prior to the 1988 statewide elections in quantities expected to last through December of 1989, at which time we would begin design and ordering for the next major election cycle. Because no statewide elections are anticipated for this year, and in order to avoid the expense of total replacement of current stock at this time, consideration might be given to postponing the effective date for Section 1 until January 1, 1990.

DATE:

January 31, 1989

Sandra J. Stout
Sandra J. Stout
Director

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-0105
PHONE (907) 465-4611

April 3, 1989

The Honorable Peter Goll
Co-Chairman
House Judiciary Committee
P. O. Box V
Juneau, AK 99811

Dear Representative Goll:

We have appreciated the opportunity to work with you on House Bill 192. We support the bill, however, we would suggest the following amendment:

Lines 22 and 23: Delete the words "and date".

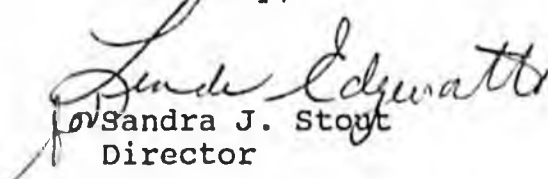
We believe that the date of the voter's signature and attestation by the witnesses is already adequately covered in lines 24 through 26.

Our objective is to make the witnessing requirement as simple as possible, and to eliminate any potential confusion we can. As was brought up in Finkelstein v. Division of Elections by displaying more than one line on which a date can be entered, one could construe that two different dates are acceptable.

Enclosed for members of the Judiciary Committee of samples of the voter instructions and the oath and affidavit envelope we have used in the District 13 Special Election. The clearly state the responsibility of the voter and the witness(es) that the signature of the voter must take place in the presence of the witness(es). Additionally, we have added an oath which the witnesses take at the time they attest to the voter's signature. We believe these measures adequately address the issues raised in the litigation.

We respectfully request your consideration of the amendment we propose.

Sincerely,


for Sandra J. Stoyt
Director

DIVISION OF ELECTIONS
P.O. BOX AF
JUNEAU, ALASKA 99811-9974

FIRST CLASS



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST CLASS PERMIT NO. 12 JUNEAU, ALASKA 99811-9974
POSTAGE WILL BE PAID BY ADDRESSEE

POSTMASTER — OFFICIAL BALLOT — DO NOT DELAY

**GENERAL INSTRUCTIONS
FOR VOTING BY MAIL
APRIL 4, 1989**

**HOUSE DISTRICT 13
SPECIAL ELECTIONS**

Your ballot for this election must be voted, witnessed and mailed not later than April 4, 1989. If you mail your ballot on the last day, remind your postal clerk that the envelope must be post-marked not later than April 4, 1989.

VOTING YOUR BALLOT

1. Choose your candidate, and with a pen, mark an "X" in the box to the right of the name.
2. After you have marked your ballot, put it in the **SECURITY ENVELOPE** before placing it in the return mailer.
3. **THE LAW REQUIRES THAT YOU FILL OUT THE INFORMATION ASKED FOR ON THE RETURN MAILER. IF IT IS NOT COMPLETE, YOUR BALLOT WILL NOT BE COUNTED.**

VOTER OATH

1. To vote in this election, you must be a registered voter **AND** an Alaska resident. You are asked to give your physical residence address **WITHIN THE STATE OF ALASKA**. This means:
 - give your street address, highway name, milepost, trailer park and space number, tract or plat number. **DO NOT** use a P.O. Box, PSC Number, Star or Rural Route Number as a "residence" address.

(Instructions continued on reverse side)



Filed and Entered
APPELLATE COURTS of the
STATE of ALASKA

IN THE SUPREME COURT OF THE STATE OF ALASKA

JAN 11 1989

DAVID FINKELSTEIN,)
)
 Appellant,)
)
 v.)
)
 SANDRA STOUT, Director of the)
 Alaska Division of Elections,)
 and STEPHEN A. McALPINE,)
 Lieutenant Governor of Alaska,)
)
 Appellees,)
)
 and)
)
 W.E. "BRAD" BRADLEY,)
)
 Appellee/)
 Intervenor.)
)

CLERK
By _____

ORDER¹

No. S-3107

Before: Matthews, Chief Justice, Rabinowitz,
Burke, Compton, and Moore, Justices.
[Rabinowitz, Justice, and Moore, Justice,
dissenting.]

I. INTRODUCTION

This is an election recount appeal brought pursuant to AS 15.20.510(2). This court referred the appeal to the Honorable Joan M. Katz of the Superior Court as a Special Master on December 8, 1988. Judge Katz filed her report on January 5, 1989. The report contains a detailed analysis of the challenges from all parties and of the evidence submitted in connection with the

1. An opinion, and partial dissenting opinions, will follow.

challenges.² The following introduction contained in the report sets the context of this case:

In the general election of November 8, 1988, David Finkelstein and W.E. "Brad" Bradley vied for Seat A in House District 13. After the election, Finkelstein was certified by appellee Stout, Director of the Division of Elections, to be the winner of that race. The count was 3,549 to 3,546.

At Bradley's request, a recount was conducted on December 1 and 2, 1988. Based on the recount, Stout certified that Bradley had defeated Finkelstein 3,563 to 3,554, a nine vote margin.

In the course of the recount, Stout determined that 26 votes had been improperly counted. Finkelstein Ex. 1. The ballots had been commingled, rendering it impossible to ascertain for whom they had been cast. Based on the formula set forth in Hammond v. Hickel, 588 P.2d 256 (Alaska 1978), cert. denied, 441 U.S. 907 (1979), Stout proportionately reduced Bradley's vote total by 15.02 votes and Finkelstein's total by 9.98 votes. These reductions resulted only in narrowing the gap between the candidates to 3.96 votes. Having determined that the outcome of the election would not have been different based on the rejected ballots, Stout certified the election results premised on the recount totals demonstrating Bradley to be the prevailing candidate by nine votes.

Judge Katz concluded that because of various errors relating to the counting of ballots, the election should be set aside and a new election held. As explained herein, we conclude that a new

2. We express our gratitude to Judge Katz for her thoughtful and expeditious report.

election may be necessary depending on the count of nine illegally cast absentee ballots which were not commingled³ and on the precise proportionate reduction formula employed by the Director.⁴ For ease of reference we will adopt the same numbering system and terminology employed in the Master's Report.

II. SPECIFIC BALLOT CHALLENGES

A. Appellant's Challenges

1. Absentee ballot envelope oaths suggesting no permanent Alaskan residence

Finkelstein challenged fourteen absentee ballots in this group. Judge Katz accepted the challenges in three cases and rejected the other eleven. A majority of the court is of the view that none of the challenges should have been accepted. There was sufficient evidence in each case so that the voter's intent to indicate a new legal residence outside of the district was unclear. In the absence of a clear expression of intent to change a legal residence the residence cannot be considered to have been changed. Fischer v. Stout, 741 P.2d 217, 222-23 (Alaska 1987).

3. See part II.A.7., infra.

4. See part II.B.3., infra.

2. Post-election affidavits
demonstrating non-residency

After the election and the recount, twenty-one voters signed registration affidavits stating that they were not residents of the district at the time of the election. The Director of Elections had counted the votes of these individuals and they have been commingled. Judge Katz declined to apply the proportionate reduction formula set out in Hammond v. Hickel, 588 P.2d 256, 260 (Alaska 1978), cert. denied, 441 U.S. 907 (1979) to these votes. We agree with this conclusion. In our view, this objection was untimely as it was raised after the recount was concluded.

3. Military post office
box "residences"

Eleven challenges were considered under this category. All of the challenges were rejected by Judge Katz. We concur.

4. Absentee ballot
lacking witness signature

One challenge was made under this category which was accepted by Judge Katz. On the place for the signature of the witness, with respect to this absentee ballot, there is only a postmark, with no signature. We agree with Judge Katz that this ballot should not have been counted.

5. Undated witness signatures

Three individuals cast absentee ballots on which the attesting official did not date his or her signature. Judge Katz accepted these three challenges. We disagree. The attesting official witness is required to date his or her signature. AS 15.20.081(d). However, we have held that this requirement is directory rather than mandatory and does not require invalidation of the ballot so long as the ballot in question is cast on or before election day. Hammond v. Hickel, 588 P.2d 256, 269 (Alaska 1978), cert. denied, 441 U.S. 907 (1979). The burden of proving ballot illegality in general and particularly that the ballot in question was not cast on or before election day is on the challenger. This burden was not carried as all three ballots were received by the Division of Elections prior to the election.

Alaska Statute 15.20.081(d) also requires voting in the presence of the attesting witness. While a majority of the court agrees with Judge Katz that this requirement is mandatory rather than directory, it is our view that Finkelstein did not carry his burden of showing a violation of this requirement.

6. Incomplete voter signature

One voter made a hand written mark which appears to be the beginning of a "K" in the voter signature blank of the voter oath on the back of the absentee ballot. A qualified attesting official witness attested that the oath was subscribed and sworn

to before the witness. Judge Katz ruled that this was not a signature as required by AS 15.20.081(d). She thus accepted the challenge made by Finkelstein. We disagree. The mark could be legally sufficient to serve as the voter's signature if that was the voter's intent. Fischer v. Stout, 741 P.2d at 225. Since the voter oath was properly attested as subscribed and sworn to, it is the view of a majority of the court that it has not been shown that the mark was not intended by the voter to serve as his signature.

7. Different witness dates

Thirty-two voters submitted absentee ballots which had been witnessed by two non-official witnesses on different dates. All of these votes were counted. However, the Division segregated nine of the total so that if they were counted illegally the votes can be directly deducted. The remaining twenty-three votes have been commingled. Judge Katz ruled that all thirty-two of these votes were properly counted. We disagree for the reasons that follow.

a.

Alaska Statute 15.20.081(d) sets out the procedures for voting absentee by mail. In relevant part, that section provides:

Upon receipt of an absentee ballot by mail, the voter, in the presence of (an official) . . . may proceed to mark the ballot in secret, to place the ballot in the small

envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official listed in this subsection who shall sign as attesting official and shall date the signature. If none of the officials listed in this subsection is reasonably accessible, an absentee voter shall have the ballot witnessed by two persons over the age of 18 years

In Fischer v. Stout, we interpreted this section to mean that the two non-official witnesses must be present when the voter signs the voter's certificate. We stated:

AS 15.20.081(d) and 6 AAC 25.110(a) specify the classes of persons authorized to serve as an attesting officer. If no appropriate officer is available, the voter may sign the voter's certificate in the presence of two persons over the age of 18 years and have those two witnesses sign the attestation form.

741 P.2d at 223 (emphasis added, footnote omitted). Thus, we interpreted the statute to mean that the role of the two non-official witnesses was the same as the function of the attesting official witness set forth in the statute.

One purpose of this statute is to insure that the ballot was marked by the voter, and not someone else, in circumstances free from coercion. The Mississippi Supreme Court has said concerning a similar requirement:

The certificate . . . in addition to certifying that the voter executed the affidavit, certifies the voter first exhibited a blank ballot which was not marked or voted before it was exhibited to the witness, and that the voter then retired out of the witness' presence but within his sight so that he could see that he voted but not how

he voted, that no one was present as he marked his ballot, that the voter was not solicited or advised in voting, and finally, that after making his ballot in secret, the voter placed it in the envelope, closed and sealed the envelope in the certifying officer's presence, and then signed and made affidavit to the first certificate.

It is thus clear that the Legislature intended both signatures to be on the envelope because there were subsequent requirements to best ensure the integrity of an absentee ballot.

Fouche v. Ragland, 424 So.2d 559, 561 (Miss. 1982).

Since one objective is to insure that the voter mark his or her own ballot and that the vote be uncoerced, it would make no sense to require secret voting in the presence of an official, while waiving the presence requirement when two non-official witnesses are used.

The legislative history of the present statute, AS 15.20.081(d), confirms the view that the ballot is to be voted in the presence of either an attesting official or two non-official witnesses. Prior to 1980, the predecessor section to AS 15.20.081(d) required only one attesting witness who need not be an official. The statute was, however, clear that voting had to take place in the presence of the attesting witness.⁵ Following

5. The former statute, AS 15.20.150, read as follows:

CASTING VOTE BY PERSONAL REPRESENTATIVE OR BY MAIL. Upon receipt of an absentee ballot

(Footnote Continued)

our decision in Hammond v. Hickel the legislature amended the statute, enacting AS 15.20.081(d) in its present form. The legislative committee memo accompanying the amendment said:

Requires a person authorized to administer an oath to witness the signature on an absentee ballot. In the instance that a qualified official is not available, two persons may witness the signature.

Alaska State Senate, Special Committee on Electoral Reform, Document dated April 23, 1980 (section by section analysis). There are two conclusions to be drawn from this comment. The first is that there was no intent to change the requirement of voting in the presence of an attestor. Had there been such an intent it would have been mentioned. Second, the two non-official witnesses were regarded as a substitute for the attesting official witness, if one was not available. What was to occur before the

(Footnote Continued)

through a personal representative or by mail, the voter, whether in or outside the state, in the presence of an attesting witness who is at least 18 years of age, may proceed to mark the ballot in secret, to place the ballot in the small blank envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of the above-listed official or described persons who shall sign as attesting witnesses. The voter may then return the ballot properly enclosed in the envelopes, by personal representative to the election official who provided the ballot or by the most expeditious mail service, postmarked not later than the day of the election, to the election supervisor in his district.

attesting official witness or the two non-official witnesses was regarded as identical.

b.

Having established what the law requires, the next step is to determine whether it was complied with. In the case of the thirty-two ballots containing witness signatures subscribed on different dates, it can be said with a high degree of confidence that the voter did not mark the ballot, place it in the small envelope, place the small envelope in the larger envelope and sign the voter certificate on the back of the larger envelope in the presence of both non-official witnesses. If this had been done, the dates following the witnesses signatures would be consistent. Thus, the certificates themselves rebut the presumption of regularity and demonstrate non-compliance with the law.

c.

The next question is whether the director properly counted these absentee ballots even though they were not cast in the presence of the non-official witnesses.

Alaska Statute 15.20.203 requires the district absentee counting board to examine each absentee ballot envelope to determine whether the absentee ballot has been properly cast. Part (b) of the statute provides as follows:

(b) An absentee ballot may not be counted if

- (1) the voter has failed to properly execute the certificate;
- (2) an official or the witnesses authorized by law to attest the voter's certificate fail to execute the certificate;
- (3) the ballot is not attested on or before the date of the election;
- (4) the ballot, if postmarked, is not postmarked on or before the date of the election; or
- (5) after the day of election, the ballot was delivered by a means other than mail.

The conditions set out in this statute are not exclusive. In Willis v. Thomas, 600 P.2d 1079, 1083 n.9 (Alaska 1979) we quoted the following language from Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978), which in turn quoted Rich v. Walker, 374 S.W.2d 476, 478 (1964) as follows:

All provisions of the election law are mandatory, if enforcement is sought before election in a direct proceeding for that purpose; but after election all should be held directory only, in support of the result, unless of a character to affect an obstruction to the free and intelligent casting of the vote or to the ascertainment of the result, or unless the provisions affect an essential element of the election, or unless it is expressly declared by the statute that the particular act is essential to the validity of an election, or that its omission shall render it void.

The requirement of voting in the presence of the non-official witness is, to use the terms of the language quoted above, "of a character to affect an obstruction to the free and intelligent casting of the vote . . . or to . . . affect an essential element of the election" As noted earlier, AS 15.20.081(d) is designed to insure that the vote cast is that of

the elector and that it was cast in circumstances free from coercion. Moreover, this requirement protects the integrity of the ballot process itself. Non-compliance with the requirements of AS 15.20.081(d) risks the frustration of these fundamental principles.

In Fischer v. Stout, 741 P.2d 217, 223, we noted that signing in the presence of the attester was a condition of ballot validity: "AS 15.20.081(d) provides that an absentee ballot will be valid only if the ballot envelope is signed by the voter in the presence of an attesting officer." This statement is dictum. It is, however, correct. Because the requirements of AS 15.20.081(d) serve both to protect the essence of free and intelligent voting and to safeguard the integrity of the ballot process, the requirements should be regarded as mandatory.

Desjourdy v. Board of Registrars, 266 N.E.2d 672 (Ma. 1971) is instructive. There twenty-two absentee ballots were not marked in the presence of a notary as required by Massachusetts law and the ballot envelopes were signed by notaries outside the presence of the voters. Id. at 676, 677. The Supreme Judicial Court of Massachusetts held that these ballots should not have been counted:

The procedure followed violated [the applicable statute] which sets up significant safeguards to ensure that the ballot represents the will of the voter. Its violation results in more than simply a technical irregularity. As these ballots stand, we have no way of knowing whether they were in fact marked by

those in whose names they were received and cast.

266 N.E.2d at 677 (citations omitted).

Kiehne v. Atwood, 604 P.2d 123, 133 (N.M. 1979) is another case where a court invalidated ballots because of attestation illegality. There the oaths on seven absentee ballots were notarized by the county clerk. The voters were not in the clerk's presence when they signed the documents. All of the voters testified that they wanted the county clerk to notarize their signatures. In invalidating the ballots, the court stated:

[A]s to the affidavits in question, swearing to and subscribing by the voter and attesting to by a notary or other official are not mere technicalities. The statutes prescribing these duties are not simply directory. The acts called for are significant safeguards against fraud and mistake, are necessary to preserve the purity of our elections, and are mandatory duties.

Id. at 133.

In Fugate v. Mayor and City Council of Town of City of Buffalo, 348 P.2d 76 (Wyo. 1959), twelve absentee ballot affidavit forms were attested to by an election official not in the presence of the affiants. Id. at 79. These votes were held to be illegal. Id. at 85. See also McCavitt v. Registrars of Voters of Brockton, 434 N.E.2d 620, 6289 (Mass. 1982) (ballots marked outside presence of notary held invalid).

The fact that the ballots in the present case were not cast in the presence of two non-official witnesses is due in part to the failure of the voter instructions on the voter oath form to state explicitly the requirement that the vote be cast in the presence of the witnesses. We have noted that errors "solely on the part of election officials" will not invalidate ballots. Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979) (registered voters' names not on voters' lists on election day). See also Fischer v. Stout, 741 P.2d at 223, 224. That observation, however, was not made where the official omission caused or contributed to a violation of a mandatory requirement, and we decline to extend it to such cases. A voter who has voted illegally has an interest in having his or her vote counted, and that interest stands on a high level where the source of the illegality lies with election officials. On the other hand, where the vote violates provisions designed to insure the integrity of the electoral process, the public has a supervening interest - that of fundamentally sound elections - which is protected by not counting illegal votes, regardless of the source of their illegality.

8. Ballots without postmarks
received after the election

Four challenges were made under this category, all of which were rejected by Judge Katz. We concur.

9. Unregistered voter

The state has conceded that the absentee ballot of the unregistered voter in question should not have been counted. Judge Katz concurred and accepted the challenge. We concur as well.

10. Punchmark ballots

Involved here are challenges to fourteen votes for Bradley where the punchmarks were placed in the boxes for both Bradley and Finkelstein. Judge Katz accepted three of these challenges, namely to ballots 29, 20, and 30. Judge Katz was evidently under the impression that ballot 29 had been counted. We are advised by all counsel that in fact it was not counted and thus it should not be subtracted from Bradley's total. Ballots 20 and 30 were called by the Director for Bradley. Judge Katz, however, was of the view that the voters' intent could not be determined from the ballots. We disagree. In our view it is evident that the voting machine was voting low and that the voters in these cases intended to vote for Bradley.

A different situation exists with respect to ballot 27. Judge Katz recommended that this vote be attributed to Bradley. We disagree and accept Finkelstein's challenge. There is no consistent pattern on this ballot of the punchmarks being either high or low. The intent of the voter cannot be determined.

On all other ballots within this category we concur with the recommendations of Judge Katz which upheld the Director.

B. Intervenor's Challenges

1. Absentee ballots lacking voter signatures

Bradley contends that fifteen absentee ballots which were not counted because they were not signed should have been included. Judge Katz held that the Division was correct in refusing to include these ballots. We concur.

2. Special overseas absentee ballots

Three voters submitted special absentee ballots and later mailed regular absentee ballots which for various reasons were held invalid. Bradley argues that under these circumstances the original special ballots of these voters should have been counted. The Division disagreed and Judge Katz recommended that the decision of the Division be upheld. We concur.

3. Proportionate Formula

In order to determine whether the errors in counting commingled ballots might have affected the election, a proportionate formula was employed. See Hammond v. Hickel, 588 P.2d 256, 260, cert. denied, 441 U.S. 907 (1979). Bradley contends that the formula was not strictly proportional because it failed to include ballots which were cast for write-in candidates or which were blank with respect to the

Finkelstein-Bradley race. We agree that the principle espoused by Bradley is correct. We are, however, uncertain as to what the precise ratio is which results from application of this principle. That should be determined by the Director on remand.

III. CONCLUSION

The Director certified that Bradley had defeated Finkelstein by nine votes, 3,563 to 3,554. We have accepted one challenge which reduces Bradley's total to 3,562 votes (part II.A.10. of this order, ballot 27). There were fifty-one illegal ballots which were counted and commingled. (Twenty-six found by the Director, twenty-three in accord with part II.A.7. of this order, and one each for parts II.A.4. and II.A.9.) In addition, there were nine illegal ballots which were counted but not commingled. (Part II.A.7.)


This case is REMANDED to the Director with the following instructions:

1. The nine segregated ballots should be deducted from the vote totals of the candidate for whom they were cast. A provisional prevailing candidate will then be apparent.
2. The appropriate proportional reduction formula should be applied to the fifty-one illegally counted commingled ballots.

3. If application of the proportional reduction formula does not change the provisional result noted in step 1, the Director should certify the prevailing candidate forthwith.

4. If application of the proportional reduction formula would change the provisional result achieved in step 1, a new election should be held promptly.

Entered at the direction of the court this 11th day of January, 1989.


DAVID A. LAMPEN
Clerk of the Supreme Court

RABINOWITZ, Justice, joined by MOORE, Justice, dissenting.

I dissent from the court's holding that the director improperly counted 32 absentee ballots which had been witnessed by lay persons on different dates. Thus, I would affirm the certification of the Director of the Division of Elections that W.E. "Brad" Bradley is the winner of the election for Seat A in House District 13.

This court's special master rejected the state's contention that the dating of lay witnesses signatures is only directory. Instead the special master ruled that it is a mandatory aspect of absentee voting that lay witnesses be present when the ballot is cast and the voter certificate is executed. AS 15.20.081(d). The special master further reasoned that normally the failure to comply with a mandatory provision which has as its purpose establishing "presence" should prove fatal to these ballots. Nevertheless the special master concluded that the director properly counted these disputed absentee ballots. In so doing the special master reasoned as follows:

However, once again, the Division has utilized procedures, in this case forms, that are seriously deficient. Option 2 under the witnessing affidavit provides in full:

If no authorized official is reasonably available, you may have the certificate witnessed by two persons over the age of 18.

Witness Signature _____ Date _____

Witness Signature _____ Date _____

at (City/State or Country) _____

Finkelstein Ex. 147, p. 1. Unlike the official executing an affidavit under Option 1, the lay witnesses are not told what it is that they are to "witness." They may reasonably believe that it is sufficient if a person they know to be the individual whose name appears on the oath brings the certificates to them to sign, after the fact. Such an interpretation would be consistent with the type of certification required on permanent fund dividend application forms.

While the witness' certificate is simply unclear, the instructions to the voter on the secrecy envelope are actually misleading. The voter is directed to take the certain steps. The first four are summarized below. The fifth step is quoted as it appears in the instructions.

[1. & 2. Mark the ballot.]

[3. Turn the ballot over and vote the other side.]

[4. After all choices have been marked, put the ballots in the secrecy envelope.]

5. Complete and sign the VOTER OATH on the back of the return mailing envelope. Also have your oath WITNESSED, using OPTION 1 or OPTION 2 described on the back of the return mailing envelope.

Two additional steps regarding mailing follow.

These instructions suggest that the voting process itself need not be witnessed. There is, furthermore, nothing said to inform the voter that his or her oath should be executed in the presence of the lay witnesses. To negate the votes of 35 individuals on the grounds that they did not meet requirements never made known to them or their witnesses would constitute disenfranchisement of a most

egregious sort. Under these circumstances, the ballots of these individuals were properly counted.

In my view the special master's analysis is in accord with this court's voting decisions. In Fischer v. Stout, 741 P.2d 217, 223, 224 (Alaska 1987) we said:

In Willis we upheld the decision of a master to count the votes of two voters whose names did not appear on the voters list because the registrars failed to send their registration applications to the Division of Elections. 600 P.2d at 1087. As in Willis, the error with regard to Ms. Munoz's application was 'solely on the part of the election officials.' Id. Her vote should have been counted.

An additional point in Fischer concerned whether the ballot of Daryl Wallace should have been counted. In attempting to correct an error in the address given on his voter registration card, the voter checked the box cancelling his registration. In regard to the issue we said:

Fischer argues that the voter registration card is confusing and that Mr. Wallace's ballot should have been counted. We agree . . . his vote should have been counted.^{1/}

Of additional significance is that portion of our decision in Fischer v. Stout where in connection with a name change issue it was observed that:

Accordingly, we will seek a construction of the phrase which avoids the wholesale disfranchisement of qualified electors. See

1. Fischer v. Stout, 741 P.2d 217, 224 (Alaska 1987).

Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978) (footnote omitted).^{2/}

The authorities alluded to above are reflective of this court's recognition that the right to vote is a fundamentally important right.³ Our own precedents are also in accord with the view that "Absentee voting regulation should not be construed in a manner that unduly interferes with the exercise of this right by those otherwise qualified to vote."⁴ In this regard the Supreme Court of Colorado further concluded that:

Nor should the exercise of the voting right be conditioned upon compliance with a degree of precision that in many cases may be a source of more confusion than enlightenment to interested voters. A rule of strict compliance, especially in the absence of any showing of fraud, undue influence, or intentional wrongdoing results in the needless disenfranchisement of absent voters for unintended and insubstantial irregularities without any demonstrable social benefit.^{5/}

2. Id. 741 P.2d at 225. In Carr this court noted:

Courts are reluctant to permit a wholesale disfranchisement of qualified electors through no fault of their own and '[where] any reasonable construction of the statute can be found which would avoid such a result, the courts should and will favor it.'

Carr v. Thomas, 586 P.2d 622, 626 (Alaska 1978).

3. Erickson v. Blair, 670 P.2d 749, 754 (Col. 1983).

4. Id. 670 P.2d at 754.

5. Id. 670 P.2d at 755.

(footnote continued)

Given the importance of the right to vote, and our decisions which have refused to disenfranchise voters due to mistakes of election officials, I conclude that the special master correctly upheld the director's decision to count these 32 disputed absentee ballots.⁶ As the special master noted the lay witnesses were given unclear instructions concerning the witness certificate. Additionally, the instructions to the absent voter were "actually misleading." In short, these inadequate directions failed to articulate the precise roles the voter and his or her witnesses were to play in the absentee voting process. Further, there is no indication in this record of fraud, voter coercion, intentional wrongdoing, or a pattern of similarity among the names of the witnesses who signed the witness certifications on these absentee ballots. In such circumstances I would not penalize the absentee voters for the failure of Alaska's election officials to furnish unambiguous instructions concerning the manner in which the absentee voter, and his or her

(footnote continued)

The Erickson court went on to reject the rule of strict compliance and in turn adopted a standard of substantial compliance concluding that such standard "is adequate to the task of both preventing fraud in the elections and preserving the absent voter's right of suffrage against unnecessary and technical restrictions."

6. Application of Moore, 154 A.2d 631, 637-38 (N.J. 1959).

two lay witnesses, were required to carryout their respective roles in the absentee voting process.⁷

7. Implicit in the resolution I would reach is my agreement with the state's contention that the requirements of AS 15.20.081(d) should be construed as directory, under AS 15.20.203(b)(2), for purposes of determining the consequences of any noncompliance on the part of lay witnesses in executing absentee voter certificates.

THE SUPREME COURT REVIEWS CHALLENGES TO
THE BALLOTS CAST AT A STATE SENATE
ELECTION.

The Supreme Court of Alaska held that there was required to be a partial recount of the ballots counted. It also held that

(1) the director of elections was without any statutory or administrative authority to set deadlines for the submission by candidates of specific ballot challenges; while it agreed that the deadlines were probably "wise and expeditious, streamlining the recount and providing faster certification," the court would not imply an authority to "arbitrarily limit the scope of a recount";

(2) a punch-card ballot that was signed by the voter could be counted; it was not, the court said, a "spoiled ballot" under AS 15.15.280 - 15.15.300 because it was "exhibited";

(3) a punchcard ballot that was marked with a pen could be counted, neither AS 15.15.360 (hand-marked ballot counting rules) nor AS 15.20.730 (rules for counting punch-card ballots) require a voter to use a punch-card machine if one is available;

(4) a residence described only as "Elmendorf Air Force Base" was sufficient to fix a voter's residence

since all of the base is within a single election district;

(5) a residence described as a post office box or private mail service is inadequate to fix a voter's residence within an election district unless additional information has also been provided;

(6) while a voter registered under AS 15.05.011 may vote only in a "federal" election, a person residing outside the United States is not required to register under that section and may instead register under AS 15.05.010 and vote in all state elections;

(7) absentee ballots that indicate a new permanent Alaskan residence outside the district may not be counted as to the candidates seeking election only within the district;

(8) that the failure of otherwise qualified attesting officers to identify the officer's authority does not invalidate the ballot; the presumption of validity may be rebutted only by an affirmative showing of a lack of authority; and

(9) the failure of state election registration officers to complete the registration does not disqualify the voter and the vote under a questioned ballot should be counted. Fischer v. Stout, 741 P.2d 217.

The Supreme Court of Alaska construed the law according to the apparent legislative intent. Legislative action is not recommended.

HB

195

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 24, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/28/89

The JUDICIARY Committee considered:

HB 195

HOUSE BILL NO. 195 [DIVORCE, DISSOLUTION, & ANNULMENT]
"An Act relating to divorce, dissolution, and annulment, and amending Rule 84(a), Alaska Rules of Civil Procedure."

RECOMMENDS:

- replacing with AS 11.095 (2)(a) the same title
- the 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
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
Mike Davis

SIGNING OTHER THAN DO PASS:

(Do Not Pass, No Recommendation, Amend)

[Signature] (No rec)
[Signature]
[Signature] (no rec)

[Signature]
 Chairman's signature

(7)

Date Referred: February 24, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/31/89

The Judiciary Committee considered:

HB 195

HOUSE BILL NO. 195 [DIVORCE, DISSOLUTION, & ANNULMENT]
"An Act relating to divorce, dissolution, and annulment, and amending Rule 84(a), Alaska Rules of Civil Procedure."

RECOMMENDATIONS:

- be replaced with C.S. HB 195 - the same title
- have 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):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) Court System
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

Do Not Pass No Rec Amend

[Signature]
[Signature]
Peter Joe
[Signature]
[Signature]

	Do Not Pass	No Rec	Amend

[Signature] / Peter Joe
Chairman's Signature

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: HB 195
Publish Date:

Revision Date: 3/10/89 Agency Affected: Alaska Court System
 Title: An act related to divorce and BRU: Trial Courts
 dissolution

Sponsor: Components:
 Requestor:

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	51.1	51.1	51.1	51.1	51.1
Travel	12.9	10.0	10.0	10.0	10.0
Contractual
Supplies
Equipment	2.5	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	66.5	61.1	61.1	61.1	61.1

CAPITAL

REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	66.5	61.1	61.1	61.1	61.1
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	66.5	61.1	61.1	61.1	61.1

POSITIONS:						
Full-time	. . . .	2.0	2.0	2.0	2.0	2.0
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: *Jan Strandberg* Jan Strandberg, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 03/10/89

Approved by: *Stephanie Cole, for* Arthur H. Snowden, II, Administrative Director Date: 03/10/89
 Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEM

FISCAL ANALYSIS

HB 195 - Divorce and Dissolution

<u>Personal Services:</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Custody Investigator, Range 18A, Anchorage, PFT - 12 months	\$37,548	\$13,526	\$51,074

Travel:

Custody investigator travel-

Monthly service to Fairbanks, Kenai and
Kodiak. Quarterly service to Ketchikan,
Sitka, Wrangell, & Petersburg

10,000

Forms Committee meeting- (one time cost)

Cost of Dissolution Forms Committee meeting in
Anchorage for two days with one and one-half days
of in-transit time.

2,900

Total Travel

12,900

Equipment: (one time cost)

Desk, chair, filing cabinet, and typewriter for each
new employee

2,574

Total First Year Cost

\$66,548
=====

ALASKA COURT SYSTEM

FISCAL ANALYSIS

Summary of FY 88 Filings - Dissolution of Marriage

<u>Court</u>	<u>Number of Filings</u>	<u>Estimated # of Cases Involving Children (1)</u>	<u>Estimated # of Cases Requiring Custody Investigation (2)</u>
Anchorage	1,455	975	98
Fairbanks	500	335	34
Palmer	191	128	13
Kenai	131	88	9
Kodiak	50	34	3
Juneau	139	93	9
Ketchikan	73	49	5
Sitka	39	26	3
Wrangell/ Petersburg	26	17	2
Others	76	51	5

- (1) Two-thirds of dissolution cases are estimated to involve children.
- (2) Ten percent of dissolution cases involving children are estimated to require custody investigations.

Although the estimated increase in dissolutions that will require custody investigations is principally centered in Anchorage and Fairbanks, each of the other superior courts is expected to be impacted as well. To meet these needs on a statewide basis, one new custody investigator will be hired in Anchorage to provide services to Anchorage, Fairbanks and other communities on an as needed basis.

The proposed standing master position in Fairbanks has been eliminated with the expectation that increased custody investigation support from Anchorage will partially assist the present judicial staff in absorbing the extra work engendered by heightened scrutiny.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

cc
1/19/89

February 24, 1989

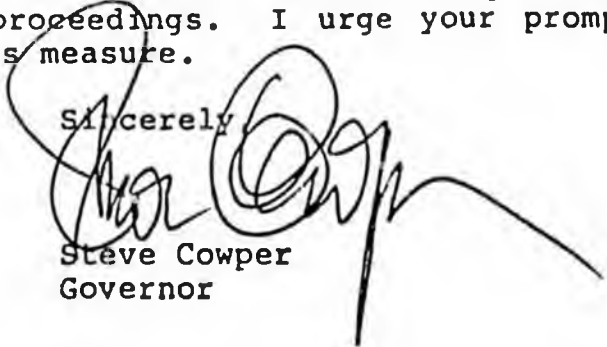
The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the Alaska Statutes regarding divorce proceedings and marriage dissolution proceedings. The bill deals expressly with award of spousal maintenance and attorney fees during the pendency of a proceeding, judicial scrutiny of marriage dissolution agreements, and name changes in connection with divorces and dissolutions. The bill includes some clean-up and technical amendments, and, in so doing, seeks to simplify the dissolution statutes by removing the present inconsistency in references to the dissolution petition being "filed" or being "brought." (Normally, "actions" are "brought" and "petitions" are "filed.")

I believe that the changes proposed in this bill will result in significantly greater justice in divorce and dissolution proceedings, as well as providing some basic clean-up in the statutes governing those proceedings. I urge your prompt and favorable action on this measure.

Sincerely,


Steve Cowper
Governor

STATE OF ALASKA 1989 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 195
Publish Date: HOUSE 2/24/89

REQUEST:

Revision Date:
Title: An act related to divorce and dissolution

Agency Affected: Alaska Court System
ERRU: Trial Courts

Sponsor:
Requestor:

Components:

EXPENDITURES/REVENUES (Thousands of Dollars)		FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING							
Personal Services		67.6	67.6	67.6	67.6	67.6	67.6
Travel		10.4	7.5	7.5	7.5	7.5	7.5
Contractual							
Supplies							
Equipment		3.1					
Land & Structures							
Grants & Claims							
TOTAL OPERATING	0.0	83.1	75.1	75.1	75.1	75.1	75.1

CAPITAL

REVENUE

FUNDING (Thousands of Dollars)		FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
General Funds	0.0	83.1	75.1	75.1	75.1	75.1	75.1
Federal Funds							
Other							
TOTAL	0.0	83.1	75.1	75.1	75.1	75.1	75.1

POSITIONS		FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Full-time	2.0	2.0	2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							

ANALYSIS (Attach a separate page if necessary)

See attached analysis.

Prepared by: Jan Strandberg, General Counsel Phone: 264-8228
 Division: Alaska Court System Date: 02/23/89

Approved by: *Arthur H. Snowden, II* Administrative Director Date: 02/23/89
 Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

ALASKA COURT SYSTEMFISCAL ANALYSISDivorce and Dissolution

<u>Personal Services</u>	<u>SALARY</u>	<u>BENEFITS</u>	<u>TOTAL</u>
Special Master, Range 24A, Fairbanks, PPT - 6 months	\$32,310	\$9,723	\$42,033
Custody Investigator, Range 18A, Anchorage, PPT - 6 months	18,774	6,763	25,537

Total Personal Services			67,570

Travel:			
Custody investigator travel-			
Monthly service to Kenai and Kodiak. Quarterly service to Ketchikan, Sitka, Wrangell, & Petersburg			7,500
Forms Committee meeting- (one time cost)			
Cost of Dissolution Forms Committee meeting in Anchorage for two days with one and one-half days of in-transit time.			2,900

Total Travel			10,400

Equipment: (one time cost)			
Desk, chair, filing cabinet, and typewriter for each new employee			5,148

Total First Year Cost			\$83,118

ALASKA COURT SYSTEM

HB 195
HOUSE 2/24/89FISCAL ANALYSISSUMMARY of FY 88 Filings - Dissolution of Marriage

<u>Court</u>	<u>Number of Filings</u>	<u>Estimated # of Cases Involving Children (1)</u>	<u>Estimated # of Cases Requiring Custody Investigation (2)</u>
Anchorage	1,455	975	98
Fairbanks	500	335	34
Palmer	191	128	13
Kenai	131	88	9
Kodiak	50	34	3
Juneau	139	93	9
Ketchikan	73	49	5
Sitka	39	26	3
Wrangell/ Petersburg	26	17	2
Others	76	51	5

- (1) Two-thirds of dissolution cases are estimated to involve children.
- (2) Ten percent of dissolution cases involving children are estimated to require custody investigations.



American Association of University Women
Alaska Division

TESTIMONY ON ~~HB 195~~ March 20, 1989

By Rosemary van der Laan, President American Association of University Women, Alaska Division, 3549 Spinnaker Drive, Anchorage, AK 99516: tel: 345-4644

The American Association of University Women (AAUW) in Alaska supports HB195. *Our division consists of 300 men and women.*

Alaska is one of eight states to have adopted a no-fault divorce law, allowing people to fashion their own divorces without legal assistance. Currently about two thirds of all Alaskan divorces are terminated through dissolution procedures as opposed to the more traditional and structured divorce proceedings. Recent research, however, suggests that many women and children suffer severe 'downward mobility' as the unintended result of these reforms. Economic settlements are often unfair, and women and children appear to be losing ground financially because of them.

Current Alaskan law does not authorize spousal support while a divorce is pending. In addition, the court often awards insufficient attorney's fees to a spouse already in financial need. Proposed Divorce and Dissolution Bills address these problems; furthermore proposed legislation would clarify that "career assets" are part of marital property under dissolution law. In addition reform would require greater judicial scrutiny to ensure fair and equitable economic settlements.

AAUW advocates reform in the Divorce and Dissolution laws. Inadequate and poorly enforced child support awards, the near absence of spousal support, and unequal division of marital property are creating a new class of poor. Legislative reform, such as HB 195, is necessary to correct these inequities.

STEVE COWPER
GOVERNOR



PHONE
(907) 861-4227

STATE OF ALASKA
OFFICE OF THE GOVERNOR
ALASKA WOMEN'S COMMISSION
3401 C STREET - SUITE 742
ANCHORAGE, ALASKA 99503

March 17, 1989

POSITION PAPER ON HB 195

In the last two decades, the divorce process has undergone major reform. The introduction of no-fault divorce and the procedure of dissolution for terminating marriages have had a major impact on divorce and its consequences in Alaska. The impetus behind this legislation was to remove the bitter court battles that had traditionally accompanied divorce and to lessen the financial burden of divorce. While emotionally less traumatic and, in the case of dissolutions, much cheaper, we are seeing a serious negative economic impact of divorce on women and children. A recent study by the Alaska Women's Commission showed that women's per capita income declines 33% after divorce and men's increases 17%.

Dissolution is used by 2/3 of Alaskan couples who end their marriages. Alaska is one of only 8 states that permit dissolution. It is also one of the most liberal in its provisions. Most other states do not permit dissolutions if there are minor children, if the marriage is one of long duration, or if the couple has property. Alaska law places no limitations on the use of dissolutions.

What we have found is that women who choose dissolution suffer even more financial hardship than women who go through divorce. Our study indicated that women using dissolutions received only 29% of the marital property. Physical custody of the children was awarded to the mother in 70% of cases using divorce compared with 52% of cases using dissolution. Women are not faring so well with dissolutions because there is often an imbalance of power in marital relationships and women are pressured or threatened to agree to settlements which are not in their or their children's best interests. In Alaska 26% of women report having been in a violent relationship. Domestic violence is a factor in a significantly high number of divorces.

For all of the above reasons, the Alaska Women's Commission believes that there should be heightened judicial scrutiny of dissolutions under certain circumstances. HB 195 would require increased judicial scrutiny for dissolutions where there are minor children, there is evidence of domestic violence, one party has an attorney, or there is a patently inequitable division of property. In addition to statements currently required in a dissolution of marriage petition, parties must state whether either spouse needs medical care, whether a domestic violence complaint has been filed, whether either party has received legal counsel and whether the petition constitutes the entire agreement between the parties. Both parties are required to be present at the hearing except upon a finding that there are compelling circumstances warranting absence.

Page 2

A second area addressed by HB 195 is the division of property and spousal maintenance. In many marriages the couple's major investments are in the education and career of the primary wage earner, usually the husband. Homemaking and child raising, which are usually done by women, enable the primary wage earner to make career advancements. The value of homemaking and child raising, which are essential to the marriage partnership and thus to the building of career assets, are presently virtually ignored. The division of marital property usually excludes career assets, thus allowing the major wage earner to keep what are often the most valuable assets of the marriage. For example, not only do almost twice as many men as women have retirement benefits, but the median value of the husband's benefits is three times that of the wife's. Retirement benefits were divided by only 20% of couples in our study. Other types of career assets were rarely included in the division of property. By not including career assets we are contributing to the rising number of women and children in poverty.

Alimony or spousal maintenance was awarded in only 10 percent of divorces surveyed. Awards lasted usually for one year, at most two, and averaged \$500 month. Yet most who received it had no job, no other income and were of an age which made it difficult to find paid work.

In HB 195 career assets are defined as the ability of a spouse to earn money resulting from education, profession or employment acquired in part as a result of the contributions, including homemaking and child rearing, provided by the other spouse. This legislation would require that career assets be considered in the division of property and award of spousal maintenance. Retirement benefits are also specified.

A third area addressed by HB 195 is the ability of the parties involved to obtain legal representation, support and protection prior to a settlement. Half of the women we surveyed felt pressured to reach a divorce settlement by economic factors such as non-support of the children until settlement of the divorce. Only 15% indicated that the other spouse paid any portion of the respondent's attorney fees. HB 195 clarifies and strengthens orders during the pendency of the action providing for spousal maintenance, attorney's fees, child support and protective restraining orders.

Finally, the bill provides for name changes in divorce and dissolution proceedings, which will have the effect of amending Rule 84(a), Alaska Rules of Civil Procedure.

In Alaska, with a divorce rate of 63% compared with 47% nationally, it is imperative that the economic hardships for women and children created by divorce be addressed and increased judicial scrutiny of dissolutions be incorporated into the statute. Divorce laws are based upon the notion that women have achieved equality of opportunity in the job market. Married women earn on average half of what their spouse's earn. Many have put their own careers or education on hold and thus not attained an earning power adequate to support themselves and their children, even with child support. Hardest hit are older homemakers. HB 195 is a critical piece of legislation. The Alaska Women's Commission strongly urges your support.

RESOURCES:

Community resources exist to assist people who are considering divorce. The following is a list of some of the agencies who provide legal assistance or counseling.

Legal Assistance:

Alaska Legal Services— Provides legal assistance to low income people. It also screens applicants for the Pro Bono Program which provides free legal assistance to low income people. "Do It Yourself" (Pro Se) Divorce Clinics are also conducted by Alaska Legal Services in some communities. Legal Services is located in Anchorage, Barrow, Bethel, Dillingham, Fairbanks, Juneau, Ketchikan, Kodiak, Kotzebue, Nome, Unalaska.

Dispute Resolution Services, Fairbanks

Counseling and Support:

Women's Resource Centers are located in Anchorage, Barrow, Bethel, Cordova, Fairbanks, Homer, Kenai/Soldotna, Kodiak, Kotzebue, Nome and Wasilla.

Men's Support Network, Anchorage

Father's Rights Group, Fairbanks

RELATED RESEARCH ON DIVORCE:

Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1986).

Heather Wishtik, "Economics of Divorce: An Exploratory Study," *Family Law Quarterly*, Vol. 20, No. 1, Spring 1986.

California Senate Task Force on Family Equity (Sacramento, State of California, 1987).

S. Hoffman and T. Holmes, "Husbands, Wives, and Divorce," *Five Thousand American Families—Patterns of Economic Progress* (Ann Arbor, Michigan: Institute for Social Research, 1976).

William Goods, *After Divorce* (New York: The Free Press, 1956).



ALASKA WOMEN'S COMMISSION

RESEARCH SUMMARY

October 1987

FAMILY EQUITY AT ISSUE: A Study of the Economic Consequences of Divorce on Women and Children

During the 1970's social reformers sought to ease the acrimony of divorce and create more fairness and equity for the families involved. "No fault" divorce reform was introduced in many states including Alaska. In addition, Alaska developed a dissolution procedure that allows people to file without the expense of an attorney. Unfortunately, many of these changes have had unintended economic results for women. It now appears that women and children are suffering major financial inequities as a direct result of some of the changes in divorce law and procedure.

The most striking documentation of the "downward mobility" of women and children created by "no fault" divorce was in the state of California. Because of the seriousness of the findings there, in 1986 the Alaska

Women's Commission undertook a study to determine if Alaskan women and children were suffering the same effects.

The study of divorce is important because so many people are affected by it. The divorce rate in Alaska is 63 percent compared to 46 percent nationally. More than 11,000 people are affected each year, 3,000 of them children. Even though the two-decade increase in the divorce rate seems to have peaked, each year thousands of Alaskan families are affected by divorce.

The study site chosen was Anchorage, where more than half of the state's divorces occur. A statistically valid sample drawn from all divorce and dissolution cases occurring in a one-year period was analyzed.



ALASKA WOMEN'S COMMISSION
3601 "C" STREET, SUITE 742
ANCHORAGE, AK 99503

Members of Commission:

Kris Chatfield, chair
Anchorage
Joy Green-Armstrong, vice chair
Anchorage
Loretta Bullard
Nome
Elizabeth (Pat) Kennedy, Anchorage
Mary Pete, Bethel
Betty Ramage, Anchorage
Wendy Redman, Fairbanks
Paula Ziegler, Juneau

Executive Director
Christine Callahan

Research Analyst
Barbara Baker

State of Alaska
Steve Cowper, Governor
Stephen McAlpin, Lt. Governor

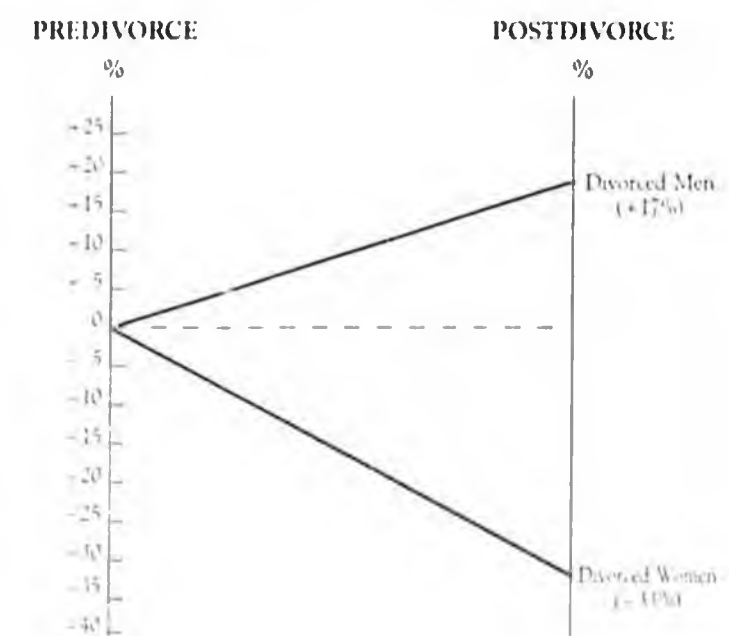
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GENERAL FINDINGS:

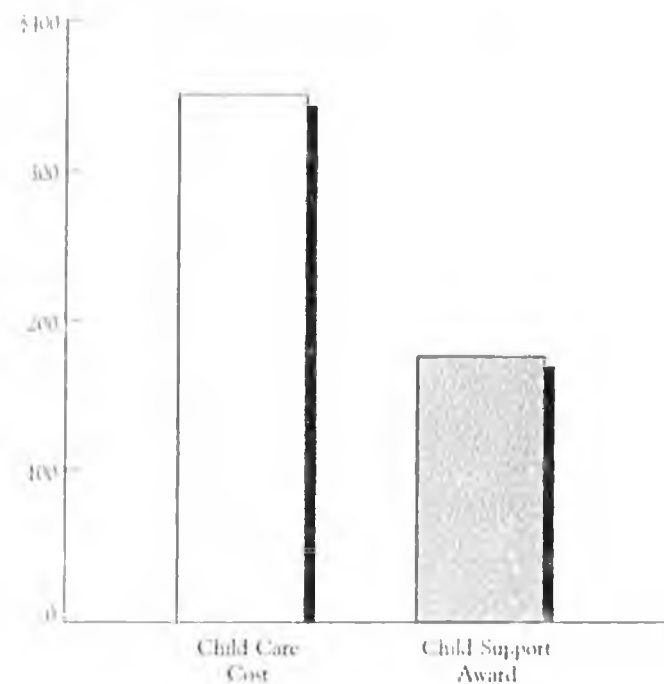
- In Alaska, divorce has substantially different economic consequences for women and men.
- Divorced women and their children experienced a 33 percent decline in per capita income resulting in a radical downward shift of their standard of living (see Figure 1). The greatest relative deprivation was experienced by women and children of middle and upper middle class families.
- Divorced men, however, experienced an improvement in their standard of living as a result of a 17 percent rise in their per capita incomes (see Figure 1).
- In many marriages the couple's major investments were in the education and career of the primary wage earner. Yet the division of marital property often excluded career assets. Disregarding this property allows the major wage earner, usually the husband, to keep what are often the most valuable assets of the marriage.

FIGURE 1: PERCENTAGE CHANGE IN PER CAPITA INCOME OF DIVORCED MEN AND WOMEN



- Fifty-four percent of divorcing men had pensions compared to 33 percent of divorcing women. The median value of the husband's pension was worth more than 3 times that of the wife's (\$27,500 and \$7,500 respectively). Yet, only 20 percent of the couples in the study divided pensions.
- Other types of career assets such as life insurance, paid leave, professional licenses, medical and dental insurance were rarely included in the division of property, even though they were acquired during the marriage.
- Award of the family home was influenced by the presence of children. In 74 percent of the cases, the home was given to the parent having physical custody. Fathers with physical custody almost always got the home (93 percent) while mothers with custody were awarded the family home only 6 percent of the time.
- Among the families who moved following divorce were accounts of children traumatized by the dislocation. New schools and neighborhoods increased the disruption already generated from economic and emotional distress.
- In the absence of children, husbands were awarded the family home and mortgage more frequently (60 percent) than wives (40 percent).
- Alimony was awarded in only 10 percent of the divorces surveyed. For the few who receive it, this "safety net" appears to be an illusion. Awards usually lasted for only one year and provided an average of only \$500 a month, despite the fact that most who received it had no job, no other income or were of an age which makes it difficult to find paid work.
- Divorced mothers are the primary caretakers of children. Sole custody was awarded to mothers in 58 percent of the cases, while fathers received it in 18 percent of the cases. Joint custody was awarded 19 percent of the time.
- Child support was awarded in 80 percent of the divorces where minor children were present. However, the average amount per child was \$191. This barely meets half the monthly cost of child care in Anchorage today (see Figure 2). This figure also falls below the standard used to determine eligibility for welfare.
- Cost of living increments were included in only 23 percent of the child support awards. Without these adjustments, the purchasing power of the support award continually declines because of inflation and the increased costs associated with older children.
- Only 22 percent of child support awards were written beyond the age of majority although financial burdens such as education continue for several years beyond this point.

FIGURE 2: AVERAGE MONTHLY COST OF CHILD CARE COMPARED TO AVERAGE MONTHLY CHILD SUPPORT AWARD



- Only 58 percent of the people in the survey received the full amount of child support awarded. This is consistent with statewide data from the Child Support Enforcement Agency.
- Divorced men are rarely required to pay more than 15 percent of their predivorce income to support their children.

IMPACT OF DISSOLUTION:

In Alaska people can end their marriage in two ways. Both are considered "no-fault." One, a divorce, usually involves attorneys' fees and court hearings, with the judge making a final decision in areas where the two parties cannot agree. The other, a dissolution, can be done without attorneys, with minimal expense, and requires that both parties agree about every issue. About two-thirds of all Alaskan couples who end their marriages choose a dissolution.

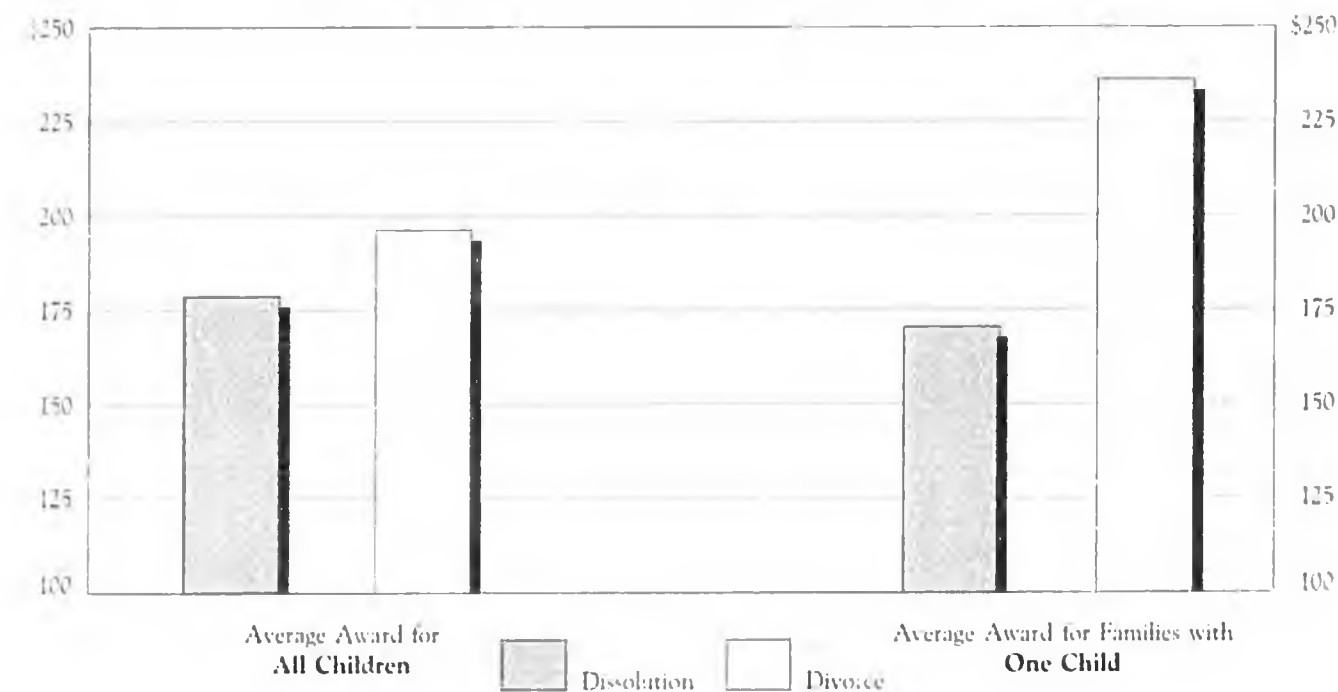
Alaska is one of only 8 states that permit dissolutions. It is also one of the most liberal in its provisions. Most

other states do not permit dissolutions if there are minor children, if the marriage is one of long duration, or if the couple has property. Alaska law places no limitations on the use of dissolutions.

In addition to the study's general findings, it appears that women who choose dissolution suffer even more financial hardship than women who go through a divorce.

- Women who used the dissolution procedure received far less than half of the couple's property. Wives received only 29 percent of the property in dissolutions. Women who used divorce received 50 percent of the marital property.
- Child support awards were lower when the dissolution procedure was used. Particularly hard hit were families with one child where average awards were 27 percent lower than in divorce (see Figure 3).

FIGURE 3: AVERAGE MONTHLY CHILD SUPPORT AWARD FOR ALL CHILDREN AND ONE CHILD FAMILIES BY LEGAL PROCEDURE



SUMMARY:

The findings of this study together with a growing body of research suggest that the current legal system of divorce creates economic hardships for women and children instead of providing greater family equity. Inadequate and poorly enforced child support awards, the near absence of spousal support, and unequal division of marital property are creating a new class of poor.

Divorced women and their children face a precipitous drop in family income. Some face certain impoverishment. Women who choose the dissolution procedure suffer even more financial hardship than those who go through a divorce.

The Alaska Women's Commission was created to ensure equity for women in Alaska. The Commission's current legislative platform attempts to correct many of the inequities that occur under existing divorce laws. The findings of the Commission's study support these efforts.

The report was written by Barbara Baker, research analyst for the Alaska Women's Commission. For a copy of the full report or for more information about the Commission's legislative advocacy, research efforts and educational services, please contact the Commission ofice at 3601 "C" Street, Suite 742, Anchorage, Alaska 99501 or call 561-4227.

JAMES M. PRESTON

CERTIFIED
PUBLIC
ACCOUNTANT1205 E INTERNATIONAL AIRPORT ROAD, SUITE 103
ANCHORAGE, ALASKA 99518
(907) 562-3272House Judiciary Committee
Testimony regarding ~~House Bill 195~~
March 20, 1989

Mr. Chairman:

Please see attached resumes as my introduction. I intended to testify at the Anchorage teleconference, but could not due to the delay. The following are my notes:

This proposed law has two provisions which are unfair to a working spouse. It is an attempt to legislate fairness that merely shifts unfairness from a limited set of circumstances to the population at large. I do support all other provisions and encourage their adoption this session. The two provisions that I take issue with are good concepts, but are not developed to the point of becoming workable legislation. I have volunteered to assist the Alaska Women's Commission in finding more workable wording for introduction in the next session.

Section 25.24.140 (1) Legal Fees (Page 1)

Minnesota has recently reversed this law. It was being abused by vengeful spouses who used it as a weapon. Let's not create more divorce horror stories by including this sentence in the proposed changes. Again, something should be done, but not this.

Section 25.24.350 Career Assets (page 13)

- 1) The valuation of any asset that is not sold at fair market value is highly subjective and may not be possible in many circumstances. Valuing career assets is a tangled web of conflicting theories with no good answers.
- 2) The word "ability" as in the proposal will result in gross distortions of forecasted income. Not everyone can or will be paid based on ability. This word opens a can of worms in a legal setting. It is similar to the "comparable worth" problems recently addressed and rejected in Washington.
- 3) This proposal does not consider circumstances where the man suffers economic loss because the wife is not working. He may have been harassed into having kids by a determined wife. Using legislation to force a reluctant husband to economically maintain the wife's avocation based on his potential career earnings is unfair in at least some circumstances. Alimony should certainly be given when the wife needs to stay home with children or has to accept low pay during child rearing years.

Testimony
March 20, 1989
Page 2

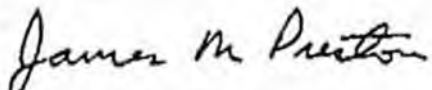
- 4) The definition of career assets does not take into account the value of child rearing to the wife. She may have more earning potential than the husband, but choose to forego this for child rearing. How are her potential earnings calculated and used? What a nightmare this would be in trial.
- 5) My experience has been that wives and mothers are walking out on marriages that are not abusive, just not as satisfying as they would like. In these situations, why hurt the husband even more than he 's. Most of my divorced friends were in this situation. Interestingly, the husbands have custody of the children. Most of the former wives are college educated and working at high paying jobs now. Most wanted children and then tired of raising them. In these cases men could gain from the proposed changes. This is not justification for enacting the changes as written.

Conclusion:

These provisions would create more tangled, lengthy, and costly trials. It increases the opportunity for unfairness to a much larger part of our population. I would not get married under this law as proposed. I feel that these two provisions will accelerate the trend away from marriage and that trend is not healthy for our society.

We should be encouraging intelligent, hard working people to enjoy the emotional and spiritual benefits of marriage, not scaring them away. People rarely get married for economic reasons. When the marriage contract is signed the couple usually does not have a meeting of the minds regarding long-range economic obligations. Let's not make marriage and it's dissolution more complicated than it is now. Let's work together to find a workable solution to the injustices that do exist.

Sincerely,



James M. Preston

JAMES M. PRESTON

CERTIFIED
PUBLIC
ACCOUNTANT

RESUME

1206 E INTERNATIONAL AIRPORT ROAD, SUITE 403
ANCHORAGE, ALASKA 99518
(907) 862-3272EDUCATION

West Valley College - Saratoga, CA: AA Degree in Business,
3.6 GPA (4.0 Basis) (1974 - 1977)

San Jose State University - San Jose, CA: BS Business Admin-
istration (Accounting), 3.5 GPA (1977 - 1979)

* LaSalle Extension University: Completed one half of a three-year
correspondence law school, 3.3 GPA (1972 - 1974)

* Lindenwood College - St. Charles, MO: Business valuation courses,
accredited. (1987)

Continuing professional education.

ACTIVITIES

American Institute of Certified Public Accountants (AICPA)

AICPA Division for CPA Firms (quality control peer review)

Alaska Society of Certified Public Accountants

Rotary International (Anchorage East club)

Resource Development Council

* American Society of Appraisers

Active in and founder of various civic organizations since 1962

Founder, Prince William Sound Recreation Association

University of Alaska, Anchorage, occasional teaching positions

Alaska Repertory Theatre, Board of Directors, treasurer

PROFESSIONAL AND BUSINESS EXPERIENCE

* Professional: Owner, James M. Preston, CPA. December 1982 to
present. Public accounting firm specializing in
individual and business taxation, business plans,
business valuations, financial statements.

Peat, Marwick, Mitchell & Co. July 1979 to June
1982. Auditing, taxation, and special projects.

Business: Preston Pipelines, Inc., 1972 to June 1979. Pipeline
construction. Left this financial opportunity to
live in Alaska and pursue a professional career.
Worked in all aspects of the family business before
and during college.

Skis and Such, August 1976 to March 1977. Sporting
goods, business start-up with friends.

PERSONAL

Married to Kelly. Enjoys boating, skiing, wilderness float trips.