ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

5827 HOUSE JUDICIARY

231

islature now possesses full legislative power to achieve this result.

While the amendment as rewritten articulates a uniform public policy, the application of the amendment to the legislature proceeds from different premises than its application to the executive.

The application of the amendment equally to the legislature and the executive may weaken this distinction.

If I may be of further assistance, please advise.

RAB:gc
WKG8/081

Enclosure

6-0050H
Bradley
3/28/89

Original sponsors: Brown, Ellis,
Boucher, et al.

IN THE HOUSE

CS FOR HOUSE JOINT RESOLUTION NO. 1 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

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

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

SECTION 24. MEETINGS OPEN. Unless the legislature or a committee of the legislature or a governing or an administrative body of the state or of a municipality is meeting in executive session to consider matters authorized by law, the discussions and debates of each house of the legislature and its committees and of each governing and administrative body of the state and a municipality shall be open to the public. The legislature may implement this section.

* Sec. 2. INTENT. (a) The purpose of the amendment to art. I, Constitution of the State of Alaska, proposed in sec. 1 of this resolution is to make openness in government the rule and secrecy the exception.

(b) This amendment provides a basis for judicial enforcement of the existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to it against a member of the legislature to the extent that the provisions are consistent with the amendment proposed in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12, Constitution of the State of Alaska.

(c) The amendment also establishes a policy to govern the meetings of governing and administrative bodies of the executive branch of state government and of municipal government.

(d) In the preparation of its neutral summary under AS 15.58.-

020(6)(C), the Legislative Affairs Agency shall consider the statement of legislative intent contained in (a) - (c) of this section.

* Sec. 3. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

By Brown, Ellis, Boucher, Cotten, Donley, Ulmer, M. Davis, Koponen and Navarre

Prepared by:
Rep. Kay Brown
March 1, 1989

CS HJR 1 (State Affairs) proposes to amend the State Constitution by:

- mandating legislative adherence to the Open Meetings Act;
- providing for court enforcement in the instance of a violation;
- requiring that the discussions and debates of the legislature or a committee of the legislature be open unless the house of the legislature or a committee is meeting in executive session to consider matters authorized by law;
- prohibiting a quorum of a house of the legislature or a committee of the legislature from engaging in private formal or informal discussions that lead to promises, agreements, or votes on legislation under its jurisdiction,
- providing that a court may not prescribe rules or procedures for the conduct of legislative business, or invalidate legislation because of an open meetings violation;
- providing for a civil fine for a wilful violation; and
- exempting from the open meetings requirement subcommittees of a committee of the legislature

CS HJR 1(S.A.) includes intent language making it clear that this amendment is not intended to prevent the free flow of ideas among legislators or their participation in public forums, community events, site visitations, or social events. It intends to make openness in government the rule and secrecy the exception, and ensures that the public is not excluded during the substantive deliberative and decision-making stages of the budgetary and lawmaking process.

6-0605Aa
Bradley

AMENDMENT #1

OFFERED IN THE HOUSE BY BROWN

TO: HB 140

Page 1, line 6:

Delete "relating to violations of"

Insert "implementing"

Page 1, lines 8 - 9:

Delete "and amending Alaska Rule of Civil Procedure 82 and Alaska Rule of Appellate Procedure 508;"

Page 1, lines 19 - 25:

Delete all material.

Page 1, line 26:

Delete "Sec. 24.40.070"

Insert "Sec. 24.40.060"

Page 2, line 7:

Delete "Sec. 24.40.080"

Insert "Sec. 24.40.070"

Page 2, line 11:

Delete "Sec. 24.40.090"

2/27/89

Insert "Sec. 24.40.080"

Page 2, lines 16 - 19:

Delete all material.

Insert a new bill section to read:

"* Sec. 2. AS 44.62.310 is amended by adding a new subsection to read:

(g) This section does not apply to subcommittees of the legislature."

6-0050Ea
Bradle

AMENDMENT #2

OFFERED IN THE HOUSE BY BROWN

TO: CSHJR 1(State Affairs)

Page 1, lines 24 - 25:

Delete all material.

Reletter the following subsection accordingly.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House State Affairs

January 19, 1989 8:30 Am

January 24, 1989 8:30 Am

HJR 1

Prepared by: Rep. Kay Brown
March 14, 1989

PROPOSED AMENDMENTS TO HJR 1, HB 140, and UNIFORM RULE 23

INTRODUCTION: THE NEED FOR AN AMENDMENT TO THE CONSTITUTION

- **Openness is fundamental to good government.**

- In the **League of Women Voters** lawsuit over the **closed budget discussions in caucus** meetings during the **1986** session; the crucial issue concerned the **right of the press and public to know and understand the deliberations of their elected representatives.** Defense lawyers for the legislature did not contest the charges that **the legislature held secret budget meetings** or that **these meetings violated the legislature's Uniform Rule 22.**

- The **SUPERIOR COURT** found an **implied right of access** to proceedings of the legislature under the Constitution, and appeared to hold that **discussion and binding decisions on substantive legislation cannot be made in a private caucus.**

- The **SUPREME COURT** ruled that it had **no jurisdiction in the open meetings dispute** and accordingly could not force the legislature to comply with the Open Meetings Act.

- One legislator characterized the **Supreme Court ruling as giving legislators a "blank check"** in view of the Court's finding that the **legislature's conduct was above the law** that requires other state and local officials to conduct public business openly.

- The only way to **remedy this deficiency** is a constitutional amendment that would **mandate legislative adherence** to the Open Meetings Act and

provide for judicial enforcement in the instance of a violation. It provides the legal framework to protect the public's right to openness in the legislative process.

ISSUES THAT HAVE ARISEN DURING CONSIDERATION OF HJR 1:

1. Subcommittees

- Does "**committee**" imply subcommittee as well? (Under the current statute, subcommittee meetings must be open and noticed.) Is a **quorum** just two people, in the case of a three-person subcommittee?

- There is a need for flexibility by subcommittees appointed to work on legislation. The need for quick resolution of concerns on bills in order to speed action by the full committee requires the flexibility to meet and talk informally, at times, without the notice requirement.

- Budget subcommittees seem to be the area of most concern. The budget process must be open; decisions made in Juneau are of vital interest to all Alaskans as the state comes to terms with declining revenues.

- The appropriate place to address subcommittees is in the Uniform Rules. The current Rule 23 applies to notice requirements of standing, special and joint committees.

Proposed amendment to the Open Meetings statute would exempt all legislative subcommittees except budget subcommittees, and would not affect the existing law regarding subcommittees of all other public bodies.

Proposed amendment to Uniform Rules would require budget subcommittees to meet openly, give notice.

2. Legislative immunity

- A legislator, if sued, might be required to leave Juneau during a legislative session to appear in court.

- Proposed amendment would strengthen the existing immunity in Article 2, Section 6 of the Constitution and make it clear that the open meetings provision does not invalidate legislative immunity during a session.

3. Frivolous or malicious lawsuits

- Only one lawsuit has been brought over closed legislative meetings since statehood, and it wasn't frivolous (League of Women Voters: closed budget meetings in1986).

- This section is unnecessary and will discourage the public from bringing legitimate complaints.

- Proposed amendment deletes this provision.

Prepared by: Rep. Kay Brown
March 14, 1989

PROPOSED AMENDMENTS TO HJR 1, HB 140 AND UNIFORM RULE 23

AMENDMENTS TO HJR 1:

- **silent on subcommittees of a committee of the legislature;**
  (Page 1, Lines 24-25: delete all material)

- **would defer judicial proceedings against a legislator for an open meetings violation until ten days after that session adjourns.**
  (Page 1, after line 25: insert a new subsection (d))

AMENDMENTS TO HB 140:

- **would delete the section relating to frivolous or malicious complaints, and the assessment of attorney fees and costs and a civil fine of $1000 on the plaintiff;**
  (Page 1, lines 19-25: delete all material)

- **would amend the Open Meetings Statute, AS 44.62.310, to exempt subcommittees of the legislature except budget subcommittees from the open meetings requirement;**
  (Page 2, after line 15: insert a new bill section; Sec. 2.(d)(6))

- **would change bill title to reflect first amendment above, and renumber the bill sections.**

AMENDMENT TO UNIFORM RULE 23:

- **draft legislation that would create a new Rule 23A that does not affect the existing Rule 23a regarding standing, special and joint committees.**

  this new rule would require budget subcommittees of the finance committees of the legislature to post written notice and give 24-hour notice of scheduled meetings to the chief clerk or secretary; and would require budget subcommittees to provide written notice to the chief clerk or secretary of a delay, cancellation, or change in a scheduled meeting.

  provides for an immediate effective date.

  (Section 1 amends Uniform Rules by adding a new rule, Rule 23A BUDGET SUBCOMMITTEES; Section 2 adds effective date)

6-0050Ea
Bradley

A M E N D M E N T

OFFERED IN THE HOUSE BY BROWN

TO: CSHJR 1(State Affairs)

Page 1, lines 24 - 25:

Delete all material.

Reletter the following subsection accordingly.

6-0050Eb
Bradley

A M E N D M E N T

OFFERED IN THE HOUSF BY BROWN

TO: CSHJR 1(State Affairs)

Page 1, after line 25:

Insert a new subsection to read:

"(d) A judicial proceeding brought during a session of the legislature against a member of the legislature for a violation of this section shall be deferred until ten days after the adjournment of that session of the legislature."

Reletter the following subsection accordingly.

6-0605Ac
Bradley

A M E N D M E N T

OFFERED IN THE HOUSE BY BROWN

TO: HB 140

Page 1, line 6:

Delete "relating to violations of"

Insert "implementing"

Page 2, after line 15:

Insert a new bill section to read:

"* Sec. 2. AS 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; [OR]

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline; or

(6) subcommittees of the legislature except for the budget subcommittees of the finance committees."

Renumber following bill sections accordingly.

3/10/89

6-1008A
Cook
3/9/89

IN THE HOUSE BY BROWN

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to budget subcommittees; and providing for an effective date.

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

* Section 1. The Uniform Rules of the Alaska State Legislature are amended by adding a new rule to read:

RULE 23A. BUDGET SUBCOMMITTEES. Written notice of the time, place, and subject matter of a meeting of a subcommittee of a finance committee charged with working on the state budget shall be posted and provided by the person who chairs the subcommittee to the chief clerk or secretary at least 24 hours before the meeting. A scheduled meeting of a budget subcommittee of a finance committee may be delayed or cancelled, or a change in the place or subject matter may be made at any time. Written notice of a delay, cancellation, or change shall be posted and provided to the chief clerk or secretary. If possible, notice of a meeting, delay, cancellation, or change shall be announced by the chief clerk or secretary and published as a notice in the journal of the house.

* Sec. 2. The amendment proposed by this resolution takes effect immediately.

6-0605Ab
Bradley

A M E N D M E N T

OFFERED IN THE HOUSE BY BROWN

TO: HB 140

Page 1, lines 8 - 9:

Delete "and amending Alaska Rule of Civil Procedure 82 and Alaska Rule of Appellate Procedure 508;"

Page 1, lines 19 - 25:

Delete all material.

Page 1, line 26:

Delete "Sec. 24.40.070"

Insert "Sec. 24.40.060"

Page 2, line 7:

Delete "Sec. 24.40.080"

Insert "Sec. 24.40.070"

Page 2, line 11:

Delete "Sec. 24.40.090"

Insert "Sec. 24.40.080"

Page 2, lines 16 - 19:

Delete all material.

Renumber following bill section accordingly.

6-0050J
Bradley
4/6/89

Original sponsors: Brown, Ellis,
Boucher, et al.

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 1 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska requiring that the meetings of each house of the legislature and its committees be open to the public unless meeting in executive session to consider matters authorized by law.

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

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

SECTION 24. MEETINGS OPEN. The meetings of each house of the legislature and its committees shall be open to the public unless meeting in executive session to consider matters authorized by law. The legislature may implement this section.

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

6-0050H
Bradley
3/30/89

Original sponsors: Brown, Ellis, Boucher, et al.

RECEIVED [illegible]

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 1 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to open meetings.

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

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

SECTION 24. MEETINGS OPEN. Unless the legislature or a committee of the legislature or a governing or an administrative body of the state or of a municipality is meeting in executive session to consider matters authorized by law, the meetings of each house of the legislature and its committees and of each governing and administrative body of the state and a municipality shall be open to the public. The legislature may implement this section.

* Sec. 2. INTENT. (a) The purpose of the amendment to art. I, Constitution of the State of Alaska, proposed in sec. 1 of this resolution is to make openness in government the rule and secrecy the exception.

(b) This amendment provides a basis for judicial enforcement of the existing open meetings law (AS 44.62.310 - 44.62.312) or an amendment to it against a member of the legislature to the extent that the provisions are consistent with the amendment proposed in sec. 1 of this resolution, notwithstanding art. II, secs. 6 and 12, Constitution of the State of Alaska.

(c) The amendment also establishes a policy to govern the meetings of governing and administrative bodies of the executive branch of state government and of municipal government.

(d) In the preparation of its neutral summary under

AS 15.58.020(6)(C), the Legislative Affairs Agency shall consider the statement of legislative intent contained in (a) - (c) of this section.

* Sec. 3. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

HJR 1

COMMITTEE FOR AN OPEN LEGISLATURE

c/o League of Women Voters of Alaska, 3605 Arctic Blvd., Suite 797, Anchorage, AK 99503

March 13, 1989

Sen. Tim Kelly
Senate President
Rep. Sam Cotten
Speaker of the House
Members, 16th Alaska Legislature
Box V
Juneau, AK 99811

Dear Sen. Kelly, Rep. Cotten, Legislators:

As you know, the Committee for an Open Legislature has been aggressively pursuing an amendment to the state constitution that would require all substantive business of the legislature to be conducted publicly. The Committee, which includes the Alaska Public Interest Research Group; the League of Women Voters of Alaska; the Alaska Press Club and the Anchorage Daily News is far more broadly representative than some have asserted. Not only do we want to correct any false impressions you may have about the participants in this effort, but we also want to clarify our escalating problems with HJR 1 and SJR 1.

As we expressed during our testimony to the House and Senate State Affairs committees, we have extreme reservations about anything that does not make a good faith attempt to embrace the substantive activities of sub-committees and, if somehow possible, of "ad hoc" groups of influential leaders (such as the leadership of either body).

We are also extremely concerned at the move to eliminate the public interest provisions for attorneys' fees contained in the companion legislation. And finally, we believe that the most meaningful enforcement mechanism is to maintain the option of judicial voidability. Otherwise, the public, even when found to have been truly wronged by a violation, will have no recourse to undo the damage. We believe that the court is the appropriate place to determine whether or not voiding the relevant action is the proper remedy.

+Hayden/Kelly
file
Bill

We have taken no position on the feature of ensuring government representation for legislators. However, the notion that legislators should be financially shielded from costs of representation while at the same time taking away the public interest provisions for attorneys' fees in meritorious public interest suits is unacceptable. Further, it tips the balance unfairly against the citizens whose rights these measures are designed to protect. The idea that lawsuit upon lawsuit will be filed is just not supported by the historical facts. Few lawsuits have been filed against any governing bodies since the Open Meetings Act was adopted and further, there is already provision for the dismissal of frivolous suits.

We are generally sympathetic to your concerns about how the amendment would apply to sub-committees (especially those with four or fewer members where two members meeting randomly would constitute a quorum). But first and foremost we are defending the public's right of access. We maintain that it is appropriate to explicitly provide, within the resolution, for meaningful one-on-one discussions while still clearly including sub-committees otherwise. Remember, we are not seeking major changes in notice requirements. We are only expecting that the meetings be adequately noticed locally (within the capitol) and that they be open to anyone who wants to attend. That seems neither onerous nor unreasonable.

It is important to remember a fundamental point. Until the question was raised through the League of Women Voters of Alaska/Anchorage Daily News lawsuit, there was universal assumption by the public that the current Open Meetings statute applied fully to the legislature. The fact that the law proved not to be enforceable against the legislature does not change the long-standing public perception that you should be conducting the public's business in public. The public expects you to be providing a constitutional equivalent of the statute that will eliminate the problem of its non-justiciability. We do not expect you to be offering anything less.

The resolutions in their current form are a far cry from the clear treatment found in the statute. They appear to provide constitutional protection for the abuses which have lead to the visibility of this issue. The Committee will continue its efforts to achieve a meaningful amendment and to respond to the separate actions of the legislature. However, we view legislative "progress" at this point as negative, not positive. Current language retreats substantially from the strong and positive effort undertaken by Rep. Kay Brown and Sen. Arliss Sturgulewski during the 1988 session.

We sincerely hope that HJR 1 and SJR 1 can be revamped to include the important provisions cited above. To that end and to the principle of keeping "the public's business public," we pledge to work cooperatively with you.

Sincerely,

Jeff Bohman, Exec. Director
Alaska Public Interest
Research Group

Jeff Bohman

Carol Murkowski Sturgulewski
Pres., Alaska Press Club

Carol J. M. Sturgulewski

Cheryl D. Anderson
League of Women Voters
of Alaska

Cheryl D. Anderson

Rosemary Shinohara
Anchorage Daily News

Rosemary Shinohara

HJR

3

HOUSE COMMITTEE REPORT

4/11

(5)

Date Referred: January 9, 1989 FURTHER REFERRALS: JUDICIARY

(E) Fin added 4/11

Date of Committee Action: _____

HJR 3

The STATE AFFAIRS Committee recommends that:

HOUSE JOINT RESOLUTION NO. 3 [AUTHORIZE CONST. AMEND'T BY INITIATIVE]
Proposing amendments to the Constitution of the State of Alaska authorizing use of the initiative to amend the Constitution of the State of Alaska.

[ ] be replaced with _____ [ ] the same title [ ] a new title

[ ] have attached amendment(s)

[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the Fin Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[X] fiscal impact Elections
[ ] zero fiscal note
[ ] zero with analysis

APPROVES PREVIOUS:

[ ] fiscal note(s) published:

_____

[ ] zero fiscal notes(s) published:

_____

SIGNING DO PASS:

Bruce Hanley
Scott Menard
Jim Zayacki
D.L.C. Boucher

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

D.L.C. Boucher
Chairman's signature

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HJR 3

Authorize Const. Amend't by Initiative

Received January 9, 1989
by Rep. Martin

Heard April 27, 1989
Heard April 10, 1990

Passed Out of Committee April 10, 1990
4 Do Pass

TABLE OF CONTENTS

HJR 3: Authorize Const. Amend't by Initiative

Item 3

REP. TERRY MARTIN

ELECTIVE DISTRICT 13
MOUNTAIN VIEW
RUSSIAN JACK SPRINGS
NUNAKA VALLEY
ELMENDORF A.F.B.
CREEKSIDE
EAST ANCHORAGE

HOME
3960 REKA DRIVE 86
ANCHORAGE, AK 99508
PHONE 333-6990

DURING SESSION
P. O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE 465-3783

Alaska House of Representatives

April 12, 1989

MEMORANDUM

To: H.A."Red" Boucher, Chairman
House State Affairs Committee

From: Rep. Terry Martin TM

Subject: HJR 3 - Allowing initiated changes in constitution

Thank you for scheduling HJR 3 for a hearing. I think the members of your committee will find it an interesting and informative discussion. Attached you will find the following back-up information:

- Sponsor statement
- Fiscal note from division of elections
- A list of the 17 states that currently allow amendment of their constitutions through initiative
- A quote from Thomas Jefferson regarding the need for constitutions to be able to change with changing times.
- A portion of a study of direct legislation done for the California Roundtable in the early 1980s
- A list of all amendments proposed to the Alaska constitution between statehood and the general election of 1982

SPONSOR STATEMENT

HJR 3 - Proposing amendments to the constitution of the State of Alaska authorizing the use the initiative to amend the Constitution of the State of Alaska.

This resolution would place before the voters of the state an amendment to the state constitution that would have the effect of allowing the constitution to be amended by direct popular initiative.

Currently, amendments to the constitution can be proposed only by approval of two-thirds vote of each house of the legislature, and then approved by affirmative vote of the majority of the voters in the next general election following passage of the measure by the legislature.

HJR 3 would still require approval of all proposed constitutional amendments by a majority of the voters, but would allow amendments to be proposed in the same way that a statute may be initiated. Sponsors of an initiative would be required to obtain a number of signatures on their petition equal to 10% of the number of voters who had voted in the preceding gubernatorial election. They would have one year to gather signatures and file the petition. The signators would have to be verified to be qualified voters from at least two-thirds of the election districts of the state. And the legislature would retain the ability to supercede an initiative by passing substantially the same proposed change.

This is a fair step forward in placing faith in the genius of the people and in their ability to correct and update their constitution as experience and maturity of our society dictates.

Article I, Section 2 of the constitution states, "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." Furthermore, in Article 1, Section 6, we find, "The right of the people peaceably to assemble, and to petition the government shall never be abridged." Yet, in other sections of the constitution - such as those delegating powers to the three branches of government - we see that the foundations of power of the people have been seriously eroded, and their abilities to regain these rights are prohibited.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HJR 3
PUBLISH DATE: 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: 4/12/89
Title: Authorizing the use of the initiative to amend the Constitution
Sponsor: Martin
Requestor: Martin

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	2.2*	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	2.2*	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Linda Edgeworth
Division: Elections
Phone: 465-4611
Date:

Approved by Commissioner: for SMc
Agency: Division of Elections
Date: 4-12-89

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

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

Under these circumstances the fiscal note would be:

53.4

Table 1.3

CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE

Constitutional Provisions

State	*Number of signatures required on initiative petition*	*Distribution of signatures*	*Referendum vote*
Arizona	15% of total votes cast for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Arkansas	10% of voters for governor at last election.	Must include 5% of voters for governor in each of 15 counties.	Majority vote on amendment.
California	8% of total voters for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Colorado	5% of total legal votes for all candidates for secretary of state at last general election.	None specified.	Majority vote on amendment.
Florida	8% of total votes cast in the state in the last election for presidential electors.	8% of total votes cast in each of 1/2 of the congressional districts.	Majority vote on amendment.
Illinois(a)	8% of total votes cast for candidates for governor at last election.	None specified.	Majority voting in election or 3/5 voting on amendment.
Massachusetts(b)	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters).	No more than 1/4 from any one county.	Majority vote on amendment which must be 30% of total ballots cast at election.
Michigan	10% of total voters for all candidates at last gubernatorial election.	None specified.	Majority vote on amendment.
Missouri	8% of legal voters for all candidates for governor at last election.	The 8% must be in each of 2/3 of the congressional districts in the state.	Majority vote on amendment.
Montana	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election.	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts.	Majority vote on amendment.
Nebraska	10% of total votes for governor at last election.	The 10% must include 5% in each of 2/5 of the counties.	Majority vote on amendment which must be at least 35% of total vote at the election.
Nevada	10% of voters who voted in entire state in last general election.	10% of total voters who voted in each of 75% of the counties.	Majority vote on amendment in two consecutive general elections.
North Dakota	4% of population of the state.	None specified.	Majority vote on amendment.
Ohio	10% of total number of electors who voted for governor in last election.	At least 5% of qualified electors in each of 1/2 of counties in the state.	Majority vote on amendment.
Oklahoma	15% of legal voters for state office receiving highest number of voters at last general state election.	None specified.	Majority vote on amendment.
Oregon	8% of total votes for all candidates for governor at last election at which governor was elected for four-year term.	None specified.	Majority vote on amendment.
South Dakota	10% of total votes for governor in last election.	None specified.	Majority vote on amendment.

(a) Only Article IV, The Legislature, may be amended by initiative petition.

(b) Before being submitted to the electorate for ratification, initiative measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

ome men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. But I know also that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times.

Thomas Jefferson, letter

Source: The Initiative and Referendum: A Study and Evaluation of Direct Legislation
Presented as a working paper to the California Roundtable
November, 1981 by Dr. Alfred Balitzer

CHAPTER II

THE THEORY OF DIRECT LEGISLATION REVIEWED AND CRITIQUED

With the increasing use of direct legislation in both statutory and constitutional matters, it is well to examine the theory behind such legislation--the underlying assumptions of the advocates of the initiative and referendum.

A short review of the philosophy of governmental "reform" will assist in comprehending of the impulse behind direct legislation. Our system of government, it is said, is unresponsive to the needs of the people. The distance between elected representatives and electors is too great. Moreover, between the voters and the representatives are many intervening structures--including corporations, political parties, and political machines--that act as "special interests" and unduly influence the governors to the detriment of the governed. Too often, special interests constitute well-organized and well-financed elites whose agents are able to corrupt legislators. The laws made by corrupt public officials lack legitimacy in the eyes of the people, so that the people become alienated from their government.

The initiative and referendum, on the other hand, close the gap between the people and their government, circumvent the power of special interests, encourage representatives to be honest and attentive (because the threat of the initiative process is always present), and provide the ultimate degree of democratic legitimacy for laws and political decisions. Governor Hiram Johnson of California, in the midst of the battle over adoption of the initiative and referendum in his state, expressed the Progressive position, saying: "There are two kinds of government, government in secret, the spring of which no man knows, and government in the open--government that takes into confidence all the people of all the state all the time."

It would be grossly inaccurate to assume that the Progressive champions of

direct legislation were only reacting to the power of money in politics. It is true that their ire was raised in part by their perception of special-interest money and its ill effects on the political system; underlying this perception, however, was their peculiar view of the relationship between democracy and egalitarianism. They drew their political philsophy of participatory and egalitarian democracy from many sources, including elements of the American religious tradition, experiments with utopian communities, the popular utopian literature, the works of the French philosopher Jean Jacques Rosseau and the German Karl Marx, the budding industrial labor movements, and the ideas of America's small but articulate Socialist Party. Indeed, the Progressives believed that their political philosophy represented a furthering of the American political tradition which was, from its inception, devoted to the equal rights of all men.

In fact, the Progressive belief in the equality of all men led to their insistence on direct democracy and to their implicit distrust of representative government. Their views, expressed early in the twentieth century, represented the continuation of a debate that was first heard in the eighteenth, between the advocates of the new Constitution and those who had opposed it. During the debates between the Federalists and the anti-Federalists, the latter offered the opinion that popular government is only secure in a small country where the people can meet to administer government directly. Many anti-Federalists believed that a scheme of representative government, necessary in a large country, was subversive of the principle of popular government, and held the seed of despotism. Although the advocates of the Constitution won the day, the arguments of the anti-Federalists faintly persisted down through the decades, from time to time growing more influential when taken up by able leaders battling for a good cause.

Underlying the reformist philsophy of the Progressives was a sentimental and romantic vision of the democratic citizen. According to the historian Richard

Hofstadter:

> At the core of their conception of politics was a figure quite as old-fashioned as the figure of the little competitive entrepreneur who represented the most commonly accepted economic ideal. This old-fashioned character was the Man of Good Will, the same innocent, bewildered, bespectacled, and mustached figure we see in the cartoons today labeled John Q. Public. . . . In a great deal of Progressive thinking the Man of Good Will was abstracted from association with positive interests; his chief interests were negative. He needed to be protected from unjust taxation, spared the high cost of living, relieved of the exactions of the monopolies and the grafting of the bosses. . . . The problem was to devise such governmental machinery which would empower him to rule. Since he was dissociated from all special interests and biases and had nothing but the common weal at heart, he would rule well. He would act and think as a public-spirited individual, unlike all the groups of vested interests that were ready to prey on him.

According to this view, such democratic citizens, when left to their own devices, would freely meet, deliberate, and arrive at decisions that furthered the best interests of society as a whole. However, when confronted by well-organized and well-financed elites, the noble citizen would withdraw from public participation, leaving the government to the oligarchs; alienated himself, he would deny to the democracy its most valuable assets—his public spiritedness and innate good sense. At the heart of the Progressive reform philosophy, then, was a desire to elevate this mythical model citizen to power.

Of course, public spiritedness and innate good sense may not be sufficient to guide society in an age of technological progress and industrial expansion. According to Progressive thought, the social and economic problems that arise as a result of these forces are too complex for sensible but simple men. Thus, communities of democratic citizens need the expertise of professional and technical advisers--specialists who are devoted to sharing their special knowledge of social structure, economics, government, management, and physical science. It is no wonder that so many leaders of the Progressive movement were middle-class technocrats, managers, lawyers, journalists, and other professionals whose educational attainments and general background prepared them to lead the movement.

Indeed, they elected themselves a President of the United States—Woodrow Wilson, formerly the president of Princeton University.

The Progressives in general believed strongly in the virtues of enlightened public discussion. They advocated the creation of public forums for the discussion of topics of the day. These forums, they thought, would create a climate conducive to honesty in government. The Progressives also tried to establish civic and fraternal clubs of bankers, businessmen, lawyers, and others who would devote their energies to informing the public about corruption and about proposed reforms in government and elsewhere. These self-appointed elites, once organized, encouraged government officials to address the people both directly and through the press—all in the hope that a better-informed people would be better able to affect their government in a positive fashion.

The union of sentimental, democratic idealism with a faith in professionalism and technical expertise generally suggests the intellectual character of the Progressives. This union also suggests the ultimate aspirations for society of those who advocated the initiative and the referendum. In its prime, Progressivism represented a great movement for the creation of "apolitical politics."

Although the initiative and referendum are supposedly intended to defend the rights of the people, they represent a significant departure from the American political tradition as it relates to representative government. While they were first designed as corrections to misuses of power in the representative system, it is now claimed by some that the initiative and referendum threaten the procedural safeguards of the legislative process under the representative system. "Without these safeguards the rights of minorities, and civil liberties generally, are acutely vulnerable to oppression by an anonymous majority of voters." In today's political environment, marked by extensive media influence and by a substantial degree of political polarization, the danger increases.

The danger posed to minority rights and civil liberties by direct popular rule was a subject on which the American Founders spoke and wrote at length. The Founding Fathers recognized that direct democracy posed a profound threat to individual rights and liberty. Not only the Federalist Papers, but the records of the Federal Constitutional Convention, show that the Constitution was designed to provide a system of government that would prevent either a tyranny of the majority or a tyranny of the few. James Madison described the danger as one of "faction," as he warned against the power of a majority or a minority of the population "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interest of the community."

History had taught Madison that factionalism was the undoing of all previous experiments in popular government.

> If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote: It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government on the other hand enables it to sacrifice to its ruling passion or interest, both the public good and the rights of other citizens. To secure danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our enquiries are directed: Let me add that it is the great desideratum, by which alone this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

The history of popular rule, from ancient Greece to Rome to the city-states of Renaissance Italy, offered numerous examples of turmoil, anarchy, and finally tyranny. In sum, the history of free government until the American experiment was a sordid and unhappy one. Direct democracy, Madison believed, only exacerbated the problem of faction. On the other hand, he thought a representative government promised a remedy for the illness. Madison was keenly aware that the attempt to create a union of the states under a republican constitution was an action

unprecedented in modern history. Boldly, Madison urged Americans to undertake the Herculean effort to rescue the reputation of popular government by creating political structures that would secure and preserve both majority rule and minority rights.

Although the danger of factionalism was manifest, Madison did not seek to extirpate factions from society. Faction, he held, was "sown in the nature of man"; any effort to extirpate it would require a tyranny sufficient to destroy all liberty. Madison and his fellow Federalists did not pretend to possess a "final solution" for the chief problem of democracy. Rather, as Alexander Hamilton said: "We are now forming a republican government. Real liberty is neither found in despotism or the extremes of democracy, but in moderate governments."

The effort to create moderate government culminated in the establishment of representative government--a republic. Direct democracy was avoided partly because it exacerbated the tensions between factions by pitting one group of citizens against another in an open, public forum. This inevitably led to "confrontational" politics. If one group of citizens proved to be a majority, it would act for its own sake, disregarding the rights of the minority. Minorities, by contrast, would seek to compel the whole of society to support their special interests. The New England town meeting was no model of popular government, as far as Madison was concerned. Rather, popular government was best when the sphere of territory subject to popular government was enlarged. This necessitated a scheme of representation, and also enlarged the number of interests competing for the public's support.

> The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of Republican, than of Democratic Government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former, than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals

> composing a majority; and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.

Madison expected that a "multiplicity of interests" would provide for political freedom in America, just as the multiplicity of sects provided for religious freedom. A multiplicity of interests would force each interest to moderate its views as it sought, through compromise, to satisfy its desires in the legislative process. Representative government, in short, allowed for consideration of a great many interests in the lawmaking process, whereas direct or "pure" democracy allowed a bare majority to set the rules for society.

What Madison was saying, in effect, was that direct democracy, including the rule of the people as lawmakers, hold no answer to the problem of special interest. Rather, he believed that the solution to the problem of special interest lay in creating those circumstances--geographic, cultural, economic, and political--that would allow for the development of a multiplicity of interests, and for their subsequent competition through the vehicle of representative government. Madisonian theory, applied to the realities of today's politics, raises troubling questions about the initiative and referendum.

The issue is clearly joined by Justice Hugo Black's often-quoted statement regarding referenda: "Provisions for referendums demonstrate devotion to democracy, not to bias, discrimination or prejudice." Setting aside the fact that a successful referendum or initiative campaign represents an unadulterated victory for the larger part of the electorate over the lesser part, it should be pointed out that, in California at least, referenda and initiatives have been used most frequently by special interest groups seeking to influence "life styles" and to legislate morality. Throughout the 1960's, when racial tension was especially high, local and statewide

direct legislation was used, according to many commentators, to maintain segregated neighborhoods. These same commentators point to the use of direct legislation to continue patterns of racial segregation in public schools. Likewise, initiatives have been used to try to limit the employment opportunities of homosexuals in education. Popular measures aimed at homosexuals possess the same "moral tone" as initiatives of an earlier period that sought to restrict drinking and gambling.

Madison feared the direct injection of religious and moral issues into the political process. These are the most inflammatory kinds of issues, sharply dividing society, and sometimes creating a "civil war"-like atmosphere. They are the kinds of issues that dominated European politics throughout the Middle Ages, producing zealots for political leaders and subjecting whole societies to the rule of organized elites. Although Madison strongly believed in the need for moral and religious principles among democratic peoples, he felt that the development and inculcation of these principles was best left to men in their private capacities as educators, religious leaders, and molders of public opinion. The American Founders consciously rejected the medieval approach to politics, seeing in the distinction between state and moral order, and in the processes of representative government, the guarantee of the civil liberties of all men.

While initiatives and referenda have often had a negative impact on racial and ethnic minorities, it is also true that these devices have often adversely affected the business community. The initiative has been particularly popular among a coalition of special-interest groups, including consumer advocates, environmentalists, educators, and some lawyers, who see business--especially "corporate America"--as the single greatest impediment to a better "life style" for the American people. This coalition, which one critic has termed the coalition of the "utopian coercives," has, in the name of a moral vision, sought to curtial "business as

usual." Their antagonism is most often aimed at the "private sector" and at the "profit motive," which they see as corrupting forces that threaten to destroy basic human values. When the "utopian coercives" speak politically, it is usually against the influence of corporations. Opposing private profits with moral values, they seek to involve the people directly. They tend to reject the representative system, because too often they see their designs frustrated by the compromises that are a necessary part of representative government.

This special-interest coalition also possesses a class bias and seeks to promote a class interest. For example, environmentalists tend to consider environmental quality more important than the production of energy; many also appear more sensitive to the quality of animal life than to the quality of human life (understood in terms of jobs and economic well-being). The environmentalist can usually afford the luxury of his position, but what then becomes of the economic rights of the poor, of disadvantaged racial minorities, and of the business community? By their very nature, initiatives and referenda can seldom balance moral principles and class interests in the same way as a legislative act may balance such principles and interests. Not only is direct legislation absolute, but as with direct or pure democracy itself, it is insensitive to the issues and differences separating economic classes and moral perspectives. Rather than producing reconciliation and consensus, an initiative often hardens class differences. The sophisticated politics that bridges class interests for the sake of the commonweal is sometimes totally absent in the politics of the initiative and referendum.

The foregoing argument is not intended to suggest that initiatives and referenda do not often carry with them a subtle "hidden agenda." For example, Blacks are often disliked by lower-class whites who feel their economic security threatened by the prospect of Black advancement. It has been noted, also, that many of those who seek to prevent the further development of natural resources and

productive capacity, in order to protect a particular "life style," do so out of base motives. As one observer has stated: "It is clear . . . that direct legislation is used effectively by residents of homogenous middle-class communities to prevent unwanted development—especially development that portends increased size or heterogeneity of population." The argument was stated differently by another observer: "Comparison of the voters and nonvoters confirms that direct democracy also has a distinct social bias. Because of low turnouts, local referenda are likely to have more class bias than major elections."

The popularity of the initiative and referendum among those who seek to legislate "life styles" and morality is no accident. Not only is an initiative or a referendum an absolute measure—requiring in California only a simple majority of the votes for passage--but once it becomes law, it is very difficult to repeal. Opposition by the legislature to a successful measure, for example, is tantamount to opposing majority rule and "the will of the people." Generally, the legislative process, filtering legislation through committees and other mechanisms that encourage deliberation and compromise, tends to produce laws that are less stringent and less likely than direct legislation to impede individual choice. The legislative process usually requires more than a mere numerical majority of the representatives in order to produce legislation as restrictive and severe as that which can come from the initiative and referendum.

James Madison believed that irresponsible majorities would be controlled by the legislative process as established under a representative form of government. In a legislature, numerical support for a proposal can be roughly determined in advance of a formal vote, as can the comparative strength of various competing interests. A representative must determine what a given measure means to his constituency in terms of the votes he might win or lose in the next election. The voter in the initiative process does not have to make such a judgment.

take place in the future, how are the interests of majorities and minorities to be protected against unwise, selfish, irresponsible, or unjust pieces of direct legislation?

The Madisonian concern with the problems of direct democracy reminds us that any effort to improve the processes of direct legislation must focus attention on the questions of majority rule and minority rights. Because there are no standing or permanent majorities in American politics, initiatives and referenda can become the instruments of special interests on both the "right" and the "left." On the other hand, there are permanent rights in this country, promised to all Americans by the Declaration of Independence, the Constitution, the Bill of Rights, and by subsequent Constitutional Amendments. Thus, in considering the present standing of the initiative and referendum, and their possible future improvement, it is necessary to set aside partisan and class interests in favor of attention to those structures that, in providing for majority rule, also protect the rights of individuals and minorities.

If improvements are to be contemplated in the process of direct legislation, they should begin by making possible a clearer expression of the will of the majority. For example, efforts should be made to distinguish more clearly between measures promoted by special interests and elite organizations and measures that are genuinely popular. This can be accomplished by changing in the way that direct legislation reaches the ballot. Such change may also give greater protection to minority rights. Specific suggestions for change, and possible alternate approaches to direct legislation, will be discussed in a later chapter. These discussions will focus on what may be the most important question in American politics: how to truly determine and implement the will of the majority while protecting the rights of the individual and the minority.

One may argue that the media and public debate are the only checks on the initiative process, and, indeed, are the only real checks left against unjust measures. This may be true enough—but it is also true that public debate is especially effective in a representative system. Representative government enlarges and refines public discussion through such devices as committee hearings and other public hearings, the testimony of expert witnesses and interested parties, the production of studies by government and private agencies, and the "give and take" of legislators in debate as they express differing views and partisan opinions. Such processes and devices regularly attract the attention of the media, giving any particular measure greater exposure than it might receive as a statewide ballot proposition (except in the case of an occasional "Proposition 13"). In fact, the ambiguity of many initiatives, the "hidden agendas" that underlay them, the technical nature and wording of some propositions, the extraordinary length of many ballots, and the widespread lack of interest in off-year elections, often discourage public debate, not to mention media coverage of the issues and personalities involved in an initiative campaign.

The problem, then, persists: How does the American body politic protect itself against irresponsible initiatives and referenda? The use of the initiative and referendum to legislate "life styles" and morality promises to grow more widespread in the decade of the 1980's. Supporters of the "Moral Majority," of the "Right to Life" and of environmental causes--including opponents of nuclear power and of economic growth and development--will continue to create a circus-like atmosphere in the political arena. The initiative and referendum are not now, and will not become, the exclusive tools of the "right" or the "left," of conservatives, liberals, radicals, or reactionaries. From Jerry Falwell to Tom Hayden, initiatives and referenda are contemplated as instruments for purifying private and public life. Given the expanded use of the initiative and referendum that is almost certain to

CONSTITUTIONAL AMENDMENTS APPEARING ON
THE BALLOT IN ALASKA

	For	Against
August 23, 1966 SJR 1 - Residence Requirement to Vote for President	36,667	12,383
August 27, 1968 HJR 74 - Judicial Qualifications, Commission and Remedial Powers	32,481	12,823
August 27, 1968 Compensation of Judicial Qualification Commission	27,156	17,467
August 25, 1970 Establishing Voting Age at 18 years	36,590	31,216
August 25, 1970 English Eliminated as Requisite for Voting	34,079	32,578
August 25, 1970 Secretary of State Designated Lieutenant Governor	46,102	18,781
August 25, 1970 Chief Justice Election by Supreme Court	44,055	19,583
August 25, 1970 Term of Office for Judicial System Administrator	43,462	18,651
August 22, 1972 Residency Requirement for Voting	31,130	20,745
August 22, 1972 Prohibition of Sexual Discrimination	43,281	10,278
August 22, 1972 Right of Privacy	45,539	7,303
August 22, 1972 Borough Assemblies	30,132	19,354
August 22, 1972 Limited Entry Fisheries	39,837	10,761
August 27, 1974 Time of Voting on Constitutional Amendments	56,017	20,403

	For	Against
November 2, 1976 Capital Site Selection Ballot Measure		
Larson Lake	33,170	
Mount Yenlo	16,169	
Willow	56,219	
November 2, 1976 Action on Veto of Bills	71,829	39,980
November 2, 1976 Permanent Fund From Non-Renewable Resource Revenue	75,588	38,518
November 2, 1976 Administration and Review of State Land Disposals	46,652	64,744
November 2, 1976 Direct Financial Aid to Students	54,636	64,211
November 7, 1978 Powers of Legislative Interim Committees	48,078	68,403
November 4, 1980 Legislative Annulment of Regulations	58,808	82,010
November 4, 1980 Disqualification of Legislators	47,054	99,705
November 4, 1980 Interim and Special Legislative Committees	41,868	102,270
November 4, 1980 Appointment and Confirmation of Members	56,316	90,506
November 2, 1982 Veterans' Housing Bonding Authority	111,460	69,497
November 2, 1982 Changes in Commission on Judicial Qualifications	123,172	53,424
November 2, 1982 Amendment Limiting Inceases in Appropriations	110,669	71,531

Item4

Chapter - Initiative.

All political power is inherent in the people. All government originates with the people, id founded upon their will only, and is instituted solely for the good of the people as a whole." So declares section 2, Article 1 (Declaration of Rights) in the Constitution of the State of Alaska. In section 6 of this same article, "The right of the people peaceably to assemble, and to petition the government shall never be abridged\" is guaranteed.Now before one becomes too comfortable in these expressions of freedom and power it is most important to read other provisions of the constitution that seriously diminishes this concept in the foundation of power or one's expressed freedom of speech through the initiative or referendum process as a means of petitioning the government.

Let's take a look at section 7 of Article XI - restrictions. "The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local of special legislation. The referendum shall not be applied to dedications of revenues, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety." Do you now get the feeling that perhaps too much power may have been given to the elected? Even when the people are successful in passing an initiative or referendum it may be amended at any time by the legislature and even be repealed after two years.What other limitations are there in your susposed rights to petition the government? Would you believe in the age of enlightenment Alaskans do not have direct access to changing their Constitution? No, in this state you must get permission through the legislature.

Why was there ever such limitations imposed? Generally there seems to have been a paranoiac amount of little faith in the people of Alaska during the writing of her Constitution. Some said government functions would be totally disrupted if the electorate, through the initiative, could direct how municipal revenues are to be expended of utilized.

Other arguments made to limit the rights of petition are:
(1)The true beneficiary of direct legislation will not be the people but the special interests. This however pails when evaluating the power of special interest groups and individuals who can afford to go to Juneau to lobby for special legislation or appropriations.
(2) Direct legislation will result in an unreasonably complex ballot and "frivolous" propositions. Welling over the ballot propositions that the legislature has proposed doesn't any superior ability in writing initiatives.
(3) Voters are ill-equipped to understand complicated proposals and unprepared to grapple with the confusing campaigns and appeals which are a part of the initiative process. What a indirect way to say the voters are not as intelligent as those they elected.

(4) The legislative process is a much better way to make public policy! Oh! Are those elected better equipped to say what is best for society. Were they not once average citizens?
(5) Direct legislation will not educate the voters nor will it increase interest in government. Well then how does indirect legislation educate the public?
(6) Direct legislation will endanger democracy and undermine representative government. Wow! Would the founding father like to hear this one. James Madison was once quoted to say "the best medicine for a sick or weak democracy is more democracy"

Now before we become too depressed there are those over the years who have shown tremendous faith is the abilities of the people to govern themselves.They argue:

(1) Direct legislation will reduce the power of political parties and political bosses.

(2)Direct legislation will reduce the power of special interests.

(3) Direct legislation will educate the people and allow them to develop civic virtue.

(4) Citizens are better (or at least equally) suited to decide public policy questions than are elected representatives.

(5) Citizens want to decide public policy issues directly, and permitting them to have full participation will decrease public apathy and dissatisfaction with government.

Why is that the people of Alaska surrender their right of direct legislative power? Was it the rush and hype of becoming a State? Were they afraid of becoming controversial and jeopardizing the efforts of statehood? Did they only read Article I sections two and six and become secured in the knowledge of their maximum and always final action of making and repealing laws. Had no one explained to the people or even the press not concern itself with the later expressed superior powers of the created legislature?

HJR

7 (FILE 1)

1C (7)
(5)

HOUSE COMMITTEE REPORT

2/10

Date Referred: January 9, 1989

FURTHER REFERRALS: (JUDICIARY)

added 2/10 - Finance

HJR 7

Date of Committee Action: ________

The STATE AFFAIRS Committee recommends that:

HOUSE JOINT RESOLUTION NO. 7 [RIGHT TO KEEP AND BEAR ARMS]
Proposing an amendment to the Constitution of the State of Alaska relating to individual right to keep and bear arms.

[X] be replaced with CS HJR 7 (SA)

[X] the same title
[ ] a new title

[ ] have attached amendment(s)

- [X] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the ________ Committee

ADOPTS: ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- [X] fiscal impact Elections
- [ ] zero fiscal note
- [ ] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published: ________
- [ ] zero fiscal notes(s) published: ________

SIGNING DO PASS:

[signature] DONLEY

[signature] MENARD

DO PASS

[signature] (Allows Alaskans ZAWACKI
to express their opinion and
vote for their personal right)

[signature] BOLTER

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

[signature] do not pass without amendment HANLEY

[signature] Do not pass without amendment SCHOHNHOLZ

Eileen P MacLean Do not pass without amendment MACLEAN

[signature]
Chairman's signature

BRISTOL BAY BOROUGH POLICE DEPARTMENT

FLOYD E. STEELE
CHIEF OF POLICE

P.O. BOX 189
NAKNEK, ALASKA 99633
(907) 246-4222

APRIL 30, 1990

HOUSE OF REPRESENTATIVES

IF I MAY TAKE A MOMENT OF YOUR TIME TO EXPRESS A CONCERN OF MINE AS A LAW ENFORCEMENT OFFICER IN OUR GREAT STATE OF ALASKA.

ON FRIDAY EVENING, APRIL 27, 1990 I RECEIVED WORD THAT SENATE JOINT RESOLUTION (4) PASSED THE SENATE ON A VOTE OF 18 TO 2. IF ADOPTED BY THE HOUSE, SJR4 WOULD BE PLACED ON THE BALLOT IN NOVEMBER A PROPOSAL TO AMEND THE STATE CONSTITUTION TO SAY THAT THE RIGHT TO KEEP AND BEAR ARMS IS AN INDIVIDUAL RIGHT (RATHER THAN A "COLLECTIVE" RIGHT RELATED TO A CITIZEN MILITIA).

SJR4 AND IT'S COMPANION IN THE HOUSE HJR7 WOULD MAKE THIS RIGHT ABSOLUTE, WITH NO LIMITING OR QUALIFYING LANGUAGE.

IT IS EXPECTED THAT SJR4 WILL BE HEARD IN THE HOUSE JUDICIARY COMMITTEE ON MAY 3RD. I WOULD ASK THAT YOU SUPPORT THE LANGUAGE THAT THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS "MAY BE REASONABLY REGULATED BY LAW".

YOUR CONSIDERATION AND TIME IN SUPPORTING THIS LANGUAGE CHANGE WILL BE APPRECIATED BY MOST ALL LAW ENFORCEMENT OFFICERS IN THIS STATE.

SINCERELY,

Floyd E. Steele

FLOYD E. STEELE
CHIEF, BRISTOL BAY BOROUGH
P.O. BOX 189, NAKNEK, AK. 99633
PHONE 246-4222
FAX 246-4451

MEMO

NO OF PAGES 1

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHJR 7
PUBLISH DATE: 2/10/89

FISCAL NOTE

REQUEST:

Revision Date: 12/8/89
Title: Const. Amend. Right to keep and Bear Arms.
Sponsor: Donley
Requestor: Donley

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	2.2*	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	2.2*	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

* Costs included cover 2 to 3 pages in each Official Elections Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes. (Continued)

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Divison 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)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHJR 7

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

Under these circumstances the fiscal note would be:

City of Ketchikan
Police Department

334 Front Street
Ketchikan, Alaska 99901
907-225-31[illegible]

May 1, 1990

House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Committee Members:

As a member of the Executive Board of the Alaska Association of Chiefs of Police, a vice president of the Alaska F.B.I. National Academy Association, and Chief of Police in Ketchikan, I share the concerns of my law enforcement colleagues regarding the passage of SJR4 and HJR7. Our present constitutional clause has placed no unreasonable constraints upon the abil.ty of responsible citizens to keep and bear arms. Please don't endanger the citizens of Alaska by attempting to fix a problem which doesn't exist, particularly since the fix may create real problems.

Thank you for your consideration.

Sincerely,

D. A. Anslinger, III
Chief of Police

DAA:mp

REP. DONLEY'S LATEST DRAFT

WORK DRAFT WORK DRAFT WORK DRAFT

6-0341D
Bradley
12/6/89

Original sponsor(s): REP. DONLEY, Boucher, Menard, Gruenberg, Leman

IN THE HOUSE

CS FOR HOUSE JOINT RESOLUTION NO. 7 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms.

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

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

SECTION 19. RIGHT TO KEEP AND BEAR ARMS. The individual [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right [OF THE PEOPLE] to keep and bear arms shall not be denied or infringed by the State or a political subdivision of the State. Except as provided in this section, no law shall impose limits on the ownership or possession of arms or require licensure, registration, or special taxation on the ownership or possession of arms. The legislature may regulate the carrying of concealed weapons and the use or possession of arms by individuals convicted of a crime. The exercise of the right to bear arms may be regulated by the legislature when there is a compelling public safety interest in the regulation.

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

NATIONAL RIFLE ASSOCIATION OF AMERICA
INCORPORATED 1871
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

RUPE ANDREWS
FIELD REPRESENTATIVE
ALASKA

9416 LONGRUN DRIVE
JUNEAU AK 99801
907/789-7422

MEMORANDUM

TO: Senator Pat Rodey
Representative Dave Donley

DATE: November 28, 1989

SUBJECT: SJR-4, HJR-7 Amendments

FROM: Rupe Andrews
NRA Field Representative

Attached is a proposed amendment to SJR-4 and HJR-7. This amendment was discussed recently between Laurie Otto, Assistant AG, Criminal Division, and myself. As you are aware, Laurie Otto is de facto the liaison between the law enforcement groups, APOA and Alaska Chiefs of Police Association, and the administration. An agreement between yourselves and Laurie Otto is tantamount to non-objection from the administration and state law enforcement organizations re the constitutional amendment.

There are several points to consider in the amended proposal. First, the amendment provides a pre-emption of local firearm ordinances regarding individual ownership. Cities retain an exception as to discharge. Secondly, it provides a constitutional guarantee that the State will not impose any special registration, licensure or taxes. These are positive points to consider.

The amendment provides for "reasonable" regulation of firearm ownership, purchase, bearing and use under state statute. NRA has always supported reasonable regulation of firearms. NRA is just as concerned as every citizen should be that criminals, juveniles, alcoholics or those persons adjudged mentally incompetent not be able to purchase or possess firearms. The original position of NRA counsel is that reasonable regulation of firearms is understood in the introduced versions of SJR-4 and HJR-7. This was challenged by the Attorney General's office, the Department of Public Safety, and law enforcement organizations. Laurie Otto has advised that the proposed amendment will satisfy the concerns expressed by the foregoing.

If you agree to this amendment we can get the constitutional amendment on a fast track and through this session, providing no further problems arise. The amendment does take care of the major concerns expressed earlier by law enforcement while clearly protecting the right of the individual to own, possess and lawfully use firearms.

DRAFT: November 21, 1989

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 7 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms.

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

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

SECTION 19. RIGHT TO <u>KEEP AND</u> BEAR ARMS. <u>The individual</u> [A WELL-REGULATED MILITIA BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE] right [OF THE PEOPLE] to keep and bear arms shall not be <u>denied or</u> infringed <u>by the state or a political subdivision of the state except that the exercise of this right may be reasonably regulated by law. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms.</u>

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

OPINION OF THE SUPREME COURT OF NEBRASKA

Case Title

State of Nebraska, Appellant,
v.
Charles A. Comeau, Appellee.

State of Nebraska, Appellant,
v.
Larry L. Rush, Appellee.

Case Caption

State v. Comeau

Filed December 1, 1989. Nos. 89-186, 89-187.

Appeals from the District Court for Lincoln County: John P. Murphy and Donald E. Rowlands II, Judges. Exceptions sustained, and causes remanded for further proceedings.

Robert M. Spire, Attorney General, and William L. Howland, and Kent D. Turnbull, Lincoln County Attorney, and John H. Marsh for appellant.

Kent E. Florom, Lincoln County Public Defender, for appellees.

Robert I. Eberly and Robert Dowlut for amici curiae National Rifle Association of America and Nebraska Rifle and Pistol Association.

Jerry Soucie for amicus curiae Nebraska Criminal Defense Attorneys Association.

STATE V. COMEAU

NOS. 89-186, 89-187 - filed December 1, 1989.

1. Constitutional Law: Statutes: Presumptions: Proof. A statute is presumed to be constitutional, and the burden of establishing unconstitutionality is on the party attacking its validity.

2. Constitutional Law: Statutes: Proof. Unconstitutionality must be clearly established before a statute will be declared void.

3. Constitutional Law: States: Statutes. The police power is an attribute of state sovereignty, and, within the limitations of state and federal Constitutions, the state may, in its exercise, enact laws for the promotion of public safety, health, morals, and generally for the public welfare.

4. Constitutional Law. The constitutional right to keep and bear arms is not absolute.

5. Constitutional Law: Statutes. The constitutional right to keep and bear arms is subject to reasonable regulation by statute if the statute does not frustrate the guarantee of the constitutional provision.

6. ____: ____. Neb. Rev. Stat. § 28-1206 (Reissue 1985) is held not to be invalid as in conflict with article I, § 1, of the Constitution of Nebraska.

7. ____: ____. Neb. Rev. Stat. § 28-1207 (Reissue 1985) is held not to be invalid as in conflict with article I, § 1, of the Constitution of Nebraska.

Hastings, C.J., Boslaugh, White, Caporale, Shanahan, Grant, and Fahrnbruch, JJ.

BOSLAUGH, J.

These cases involve an interpretation and application of the "Right to Bear Arms" amendment to the Nebraska Constitution, which was proposed by the initiative process and adopted at the general election on November 8, 1988. Article I, § 1, of the Constitution of Nebraska, as amended, now provides as follows:

> All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed.

In case No. 89-186, the defendant, Charles A. Comeau, was charged with possessing a firearm from which the manufacturer's identification marks or serial numbers had been removed, defaced, altered, or destroyed. The defendant filed a "demurrer" which alleged that the information failed to state a crime because Neb. Rev. Stat. § 28-1207 (Reissue 1985), under which the defendant was being prosecuted, was now unconstitutional. Treating the demurrer as a motion to dismiss, the trial court sustained it and dismissed the information.

In case No. 89-187, the defendant, Larry L. Rush, was charged, as a habitual criminal, with being a felon in possession of a [illegible] having a barrel less than 18 inches in length. The

defendant filed a "demurrer" which alleged that the information failed to state a crime because Neb. Rev. Stat. § 28-1206 (Reissue 1985), under which the defendant was being prosecuted, was now unconstitutional. Treating the demurrer as a motion to dismiss, the trial court sustained it and dismissed the information.

The State then commenced proceedings under Neb. Rev. Stat. § 29-2315.01 (Reissue 1985) to review the orders dismissing the informations. In this court the cases have been consolidated for briefing and argument.

It is fundamental that a statute is presumed to be constitutional, and the burden of establishing unconstitutionality is on the party attacking its validity. In re Guardianship and Conservatorship of Sim, 225 Neb. 181, 403 N.W.2d 721 (1987). Unconstitutionality must be clearly established before a statute will be declared void. State v. Copple, 224 Neb. 672, 401 N.W.2d 141 (1987).

Essentially, the question presented by these appeals is whether the amendment prevents the Legislature from passing any laws regulating the possession of firearms.

The defendants contend that the amendment must be read literally and that the language which states that the right to keep and bear arms is "inalienable" and shall not be "infringed" by state statute or local ordinance prevents any regulation by the Legislature of the right to possess arms. The defendants concede that the use of weapons may be regulated, but argue that mere possession may not be.

The State contends that the plain meaning of the amendment is that the right to keep and bear arms is limited to "lawful

purposes." Lawful purposes are not defined in the amendment except as "for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes . . . ." The State argues that in the exercise of the police power, the Legislature may define what purposes are lawful purposes.

The police power is an attribute of state sovereignty, and, within the limitations of state and federal Constitutions, the state may, in its exercise, enact laws for the promotion of public safety, health, morals, and generally for the public welfare. Finocchiaro, Inc. v. Nebraska Liq. Cont. Comm., 217 Neb. 487, 351 N.W.2d 701 (1984).

There are very few rights which are absolute, and this is of necessity. In every phase of everyday experience, there are extremes beyond which some restraint or regulation is necessary for the common good.

Even in those cases where statutes have been held to be invalid because in conflict with a constitutional provision concerning the right to keep and bear arms, many courts have recognized that the right is not absolute. In City of Princeton v. Buckner, 377 S.E.2d 139 (W. Va. 1988), in which the Supreme Court of Appeals of West Virginia held a statute requiring a license to carry certain weapons invalid, the court said:

> The question remains whether the State may reasonably regulate the right of a person to keep and bear arms in this State.
>
> We stress that our holding above in no way means that the right of a person to bear arms is absolute. See cases cited infra at p. 146. Other jurisdictions concluding that state statutes or municipal ordinances have violated constitutional

provisions guaranteeing a right to bear arms for defensive purposes, though not specific in what ways this is to be done, have recognized that a government may regulate the exercise of the right, provided the regulations or restrictions do not frustrate the guarantees of the constitutional provision. See, e.g., In Re Brickey, 8 Idaho 597, 599, 70 P. 609, 609 (1902); City of Las Vegas v. Moberg, 82 N.M. 626, 627, 485 P.2d 737, 738 (Ct.App.1971). Particularly, on three occasions, the Supreme Court of Oregon, in striking statutes as violative of the state's constitutional right to bear arms, has repeatedly stressed that the court's holdings should not be construed to mean that an individual has an "unfettered right" to possess or use constitutionally protected arms in any way he chooses. The Oregon court has consistently emphasized that the legislature may regulate such possession and use. State v. Delgado, 298 Or. at 403, 692 P.2d at 614; State v. Blocker, 291 Or. at 259, 630 P.2d at 826; State v. Kessler, 289 Or. at 370; 614 P.2d at 99.

. . . .

Our research has revealed that courts throughout the country have recognized that the constitutional right to keep and bear arms is not absolute, and these courts have uniformly upheld the police power of the state through its legislature to impose reasonable regulatory control over the state constitutional right to bear arms in order to promote the safety and welfare of its citizens. See, e.g., Bristow v. State, 418 So.2d 927, 930 (Ala.Crim.App.), cert. denied (Ala.1982); People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 385, 390-91 (1975); State v. Rupp, 282 N.W.2d 125, 130 (Iowa 1979); In re Atkinson, 291 N.W.2d 396, 399 (Minn.1980); State v. Angelo, 3 N.J.Misc. 1014, 1015, 130 A. 458, 459 (1925); State v. Dees, 100 N.M. 252, 254-55, 668 P.2d 261, 263-64 (Ct.App.1983); Commonwealth v. Ray, 218 Pa.Super. 72, 79, 272 A.2d 275, 279 (1970); Carfield v. State, 649 P.2d 865, 871 (Wyo.1982). We stress, however, that the legitimate governmental purpose in regulating the right to bear arms

. . . . . while the exercise

of this right where the governmental purpose can be more narrowly achieved. City of Lakewood, supra.

At least forty-two jurisdictions have constitutional provisions guaranteeing a right to bear arms; however, most are distinguishable from art. III, § 22 either in their failure to specifically recognize the right to self-defense, or in their express recognition that the constitutional provision is subject to legislative regulation. See R. Dowlut & J. Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okla. City U.L.Rev. 177, 236-240 (1982). The State, in the appendix to its brief, cites thirteen states which, like art. III, § 22, grant a rather broad, unrestrictive right to bear arms for the defense of self and the state. With the exception of Vermont, which imposes no significant regulation, the remaining jurisdictions regulate the ownership and use of arms in general, particularly handguns.

Again excluding Vermont, certain statutory regulations are common to most of the jurisdictions having constitutional provisions comparable to West Virginia's. For instance, the prohibition against the possession or ownership of handguns by persons previously convicted of a felony or other specified crime is widely accepted. Four states prohibit the open or concealed carrying of handguns without a license or permit; several others specifically prohibit carrying a concealed handgun without a license, while at least one of these jurisdictions, namely, Arizona, further prohibits carrying a handgun in public establishments or certain specified public places.

. . . .

Based upon the foregoing, we conclude that the right to keep and bear arms guaranteed by W.Va. Const. Art. III, § 22 is not unlimited. The individual's right to keep and bear arms and the State's duty, under it [sic] police power, to make reasonable regulations for the purpose of protecting the health, safety and welfare of its citizens must be balanced. See People v. Blue, 190 Colo. 95, 102-03, 544 P.2d 383, 390-91 (1975). Accordingly, the West Virginia legislature may,

> through the valid exercise of its police power, reasonably regulate the right of a person to keep and bear arms in order to promote the health, safety and welfare of all citizens of this State, provided that the restrictions or regulations imposed do not frustrate the constitutional freedoms guaranteed by article III, section 22 of the West Virginia Constitution, known as the "Right to Keep and Bear Arms Amendment."

(Emphasis supplied.) 377 S.E.2d at 145-49.

If the use of arms is subject to regulation, then regulation of the right to possession may be the only practical way to make an effectual regulation of the use. For example, if the use of arms by persons of unsound mind is to be prohibited, probably the only effectual way to prevent their use is to prohibit the possession of arms by such persons.

/ POSSESSION

It is well known that the identification and tracing of a weapon is an important factor in solving crimes involving the use of a weapon. It is for that reason that identifying marks are sometimes removed from weapons. It would be of little use to prohibit the use of weapons from which identifying marks have been removed if the possession of such weapons is lawful. The most effective way to prevent the use of such weapons is to prohibit their possession. Similarly, the most effective way to prevent the use of handguns by felons is to prohibit the possession of handguns by felons.

We think the better view is that reasonable regulation of the possession of arms is not prohibited by the amendment.

In People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975), the Supreme Court of Colorado held that a statute prohibiting

possession of guns by persons convicted of a felony was not invalid under a constitutional provision guaranteeing the right to bear arms. The Colorado constitutional provision was as follows:

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

Colo. Const. art. II, § 13.

The Colorado court said:

> It is argued that the statute, which prohibits possession, use, and carrying of a weapon, is a blanket proscription that cannot be reconciled with the literal constitutional language. A felon is a "person" within the meaning of Article II, Section 13, the argument runs, and once he has served his term he is reinstated to the full rights of citizenship, Colo. Const. Art. VII, Sec. 10, including the absolute right to bear arms.
>
> However, not all constitutional rights are absolute. Mosgrove v. Town of Federal Heights, 190 Colo. 1, 543 P.2d 715; Stapleton, Jr. v. Dist. Ct., 179 Colo. 187, 499 P.2d 310; Anderson v. People, 176 Colo. 224, 490 P.2d 47, cert. denied, 405 U.S. 1042, 92 S.Ct. 1316, 31 L.Ed.2d 583; United States v. Akeson, 290 F. Supp. 212 (D. Colo. 1968); Sigma Chi Fraternity v. Regents of the University of Colorado, 258 F. Supp. 515 (D. Colo. 1966). When rights come into conflict, one must of necessity yield. The conflicting rights involved here are the individual's right to bear arms and the state's right, indeed its duty under its inherent police power, to make reasonable regulations for the purpose of protecting the health, safety, and welfare of the people. Cottrell v. Teets, 139 Colo. 558, 342 P.2d 1016; Denver v. Denver & Rio Grande Co., 63 Colo. 574, 167 P. 969, aff'd 250 U.S. 241, 39 S.Ct. 450, 63 L.Ed. 958; The People v. Hupp, 53 Colo. 80, 123 P. 651.

We do not read the Colorado Constitution as granting an absolute right to bear arms under all situations. It has limiting language dealing with defense of home, person, and property. These limitations have been recognized by the General Assembly in the enactment of section 18-12-105, C.R.S. 1973, which restricts the right to bear arms in certain circumstances, while permitting in other circumstances the carrying of a concealed weapon in defense of home, person, and property, and also when specifically authorized by written permit.

In our view, the statute here is a legitimate exercise of the police power.

"* * * To limit the possession of firearms by those who, by their past conduct, have demonstrated an unfitness to be entrusted with such dangerous instrumentalities, is clearly in the interest of the public health, safety, and welfare and within the scope of the Legislature's police power." People v. Trujillo, 178 Colo. 147, 497 P.2d 1.

See also People v. Trujillo, 184 Colo. 387, 524 P.2d 1379. To be sure, the state legislature cannot, in the name of the police power, enact laws which render nugatory our Bill of Rights and other constitutional protections. Lakewood v. Pillow, supra; People v. Hinderlider, 98 Colo. 505, 57 P.2d 894; Platte Etc., C. & M. Co. v. Dowell, 17 Colo. 376, 30 P. 68, appeal dismissed, 154 U.S. 512, 14 S.Ct. 1150, 38 L.Ed. 1079. But we do not read this statute as an attempt to subvert the intent of Article II, Section 13. The statute simply limits the possession of guns and other weapons by persons who are likely to abuse such possession.

190 Colo. at 102-03, 544 P.2d at 390-91.

In State v. Ricehill, 415 N.W.2d 481 (N.D. 1987), the Supreme Court of North Dakota held that a statute prohibiting possession of firearms by convicted felons did not violate that state's constitutional guarantee of the right to keep and bear arms.

The constitutional provision was as follows:

> All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

N.D. Const. art. I, § 3.

The North Dakota court stated:

> Ricehill argues that the right to bear arms is absolute. He argues that the language of the provision states that the right to bear arms "shall not be infringed," and that this means that the Legislature may place no limits on the possession of arms. We disagree with such a broad reading of the provision. Instead, we believe our Constitution's protection of the right to keep and bear arms is not absolute; although it prevents the negation of the right to keep and bear arms, that right nevertheless remains subject to reasonable regulation under the State's police power. As the Michigan Supreme Court stated in construing that State's right to bear arms, "regardless of the basis of the right to bear arms, the State, nevertheless, has the police power to reasonably regulate it." People v. Brown, 253 Mich. 537, 235 N.W. 245, 246 (1931).
>
> In this case the Legislature prohibited the possession of firearms by persons who have previously committed serious crimes. It is patently reasonable for the Legislature to conclude that it is protecting the public welfare by enacting legislation that keeps firearms out of the hands of people who have shown a disposition to harm others. The Louisiana Supreme Court stated, in rejecting a State constitutional right-to-bear-arms challenge to its prohibition against possession of a firearm by a felon under a police-power rationale:

"It is beyond question that the statute challenged in the instant case was passed in the interest of the public and as an exercise of the police power vested in the legislature. Its purpose is to limit the possession of firearms by persons who, by their past commission of certain specified serious felonies, have demonstrated a dangerous disregard for the law and present a potential threat of further or future criminal activity." State v. Amos, 343 So.2d 166, 168 (La.1977).

415 N.W.2d at 483. The North Dakota court also cited People v. Blue, 190 Colo. 95, 544 P.2d 385 (1975), with approval.

We conclude that the statutes in question are reasonable regulations of the right to keep and bear arms and the judgments dismissing the informations were erroneous. Since the defendants have not been placed in jeopardy, the cause in each case is remanded for further proceedings.

EXCEPTIONS SUSTAINED, AND CAUSES REMANDED FOR FURTHER PROCEEDINGS.

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE NAVARRE

NAME: BILL LUND
TITLE: 376-5149 WK
DRESS: POB 870366
CITY: WASILLA ZIP: 99687
PHONE: 376-6533
LL NO:
BJECT: LOCAL AUTONOMY-ILLEGALIZE HOME BREWING???
SSAGE: DEAR SIRS
PLEASE WORK TO REPEAL OR AMEND THE LAW WHICH MAKES HOME BREWING ILLEGAL IN THE STATE. I REALIZE AFTER TALKING TO MISTER LARSON'S OFFICE, THAT THE INTENT WAS NOT TO ILLEGALIZE IN THIS AREA AND WAS ADVISED THAT I COULD PROBABLY CONTINUE. BUT THIS IS A HOBBY OF MINE THAT I LIKE TO BRAG ABOUT AND I LIKE TO BE LEGAL. WOULD APPRECIATE A REPLY.

POMID: 14112057
DATE: 01/17/89
TIME: 11:20:57
ONAME: MAT-SU LIO

OPIES:

REPRESENTATIVES	REPRESENTATIVES	SENATORS
LARSON	MENARD	KERTTULA
BARNES	BOUCHER	SZYMANSKI
BOYER	CATO	BINKLEY
COLLINS	COTTEN	FAHRENKAMP
DAVIS, M.	DONLEY	FAIKS
ELLIS	FOSTER	HALFORD
FURNACE	GOLL	JONES
HANLEY	HOFFMAN	PEARCE
KOPONEN	MARTIN	STURGULEWSKI
MILLER	PETTYJOHN	UEHLING
PHILLIPS	SHARP	ZHAROFF
SHULTZ	SHACKHAMMER	
TAYLOR	ULMER	
ZAWACKI		

PUBLIC OPINION MESSAGE

1360

DEAR: REPRESENTATIVE NAVARRE

NAME: RICHARD ROSS
TITLE: CHIEF OF POLICE
ADDRESS: 107 S. WILLOW ST
CITY: KENAI, ALASKA ZIP: 99611
PHONE: 283-7879
BILL NO: HJR 7
SUBJECT: RIGHT TO KEEP AND BEAR ARMS
MESSAGE: REQUEST THAT YOUR COMMITTEE NOT MOVE THIS RESOLUTION UNTIL IT HAS BE CEIVED THOROUGH LEGAL REVIEW. THE CONCERN BEING THAT THE MINIMAL STATUATORY R ULATION CURRENTLY PLACED ON FIREARMS POSSESSION (IE FELON IN POSSESSION;POSSES ION ON LICENSED PREMISES; WHILE INTOXICATED; OF ILLEGAL WEAPONS; CONCEALED WEA PONS) MAY BE JUDICALLY NULLIFIED IF ADOPTED.

POMID: 13143834
DATE: 01/17/89
TIME: 14:38:34
LIONAME: SOLDOTNA LI

COPIES:

REPRESENTATIVE	SENATOR
SHACKHAMMER	FISCHER

Copy Rep. Go!

Hopkins
feb 2

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 13, 1983
Redated 7/1/83 for printing purposes

The Honorable Pat Rodey
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

The Honorable Charlie Bussell
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Handgun Ban
Our file No.: 366-444-83

Dear Senator Rodey and Representative Bussell:

You have asked this office whether a landlord, through a leasehold agreement, may prohibit a tenant from possessing handguns. We conclude that in certain circumstances a landlord may restrict or prohibit the use and/or possession of handguns on property which is leased to another individual.

Our initial inquiry regarding this matter commenced with a review of relevant Alaskan Constitutional provisions. The Alaska Constitution directly addresses a citizens ability to bear arms at Article I, Section 19 which states:

> A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

The language embodied in Alaska's Constitution pertaining to arms is virtually identical, save for two changes in punctuation, to language found in Article II of the United States Constitution. Article II of the United States Constitution was proposed by the Congress on September 25, 1789 and became the law of the United States on December 15, 1791. During the one hundred and ninety two years since adoption of the Second Amendment to the United States Constitution and the twenty-four years since the Alaska Constitution has been in effect, numerous court cases have interpreted the constitutional language which establishes the right to bear arms.

CELH

We note the period since the adoption of the Second Amendment has witnessed an ever increasing issuance of opinions from the judiciary of the various states and the federal courts which place limits on an individual's ability to bear arms. Some commentators have theorized that the legislative and judicial limitations increased significantly with the availability of inexpensive surplus weapons following the American Civil War. 1/ According to this theory, the increase in restrictive gun control measures and corresponding judicial interpretations was associated with increasing acquisition of firearms by recently emancipated Black Americans and immigrants coupled with the increased availability of firearms in the post Civil War industrial America. The right of 'bearing arms' is not a right granted by the Constitution nor is it in any manner dependant upon that instrument for its existence. U.S. v. Cruikshank, 92 U.S. 553 (D.C.La. 1875).

While offering no judgment on the propriety or effectiveness of the restrictive legislative and judicial measures, we observe that the current state of the law pertaining to the constitutional language holds that:

> [The] purpose of this amendment, guaranteeing that the right of the people to keep and bear arms, was to preserve the effectiveness and assure the continuation of the state militia. U.S. v. Oakes, 564 F.2d, cert. denied 98 S.Ct. 1493 (C.A. Kan. 1977).

The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia. The contemporary judicial view in the great majority of states interprets the constitutional language as posing no limitations on the legislature's power to regulate the ownership or control of firearms. Whatever the scope of any common-law or constitutional right to bear arms, it is not absolute and does not guarantee to individuals the right to carry weapons abroad at all times and in all circumstances. Application of Atkinson, 291 N.W.2d 396 (Minn. 1980). By analogy then, a landlord, too, could restrict

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1/ Kates, Don B. Restricting Handguns, North River Press, pages 7-30 (1979)

the possession of handguns on property he or she owns and leases. If the State can restrict arms without running afoul of constitutional provisions, an individual almost certainly has similar abilities.

It is conceivable that a landlord's ban on handgun ownership could be challenged under constitutional doctrines which afford a right of privacy. The United States Constitution, while not containing an express provision guaranteeing privacy has been interpreted to afford an individual certain protections, Cf. Griswold v. Connecticut, 381 U.S. 479 (1965). "The Constitution extends special safeguards to the privacy of the home, including activities which might be prohibited in other contexts." Cf. U.S. v. Orito, 413 U.S. 137, 142 (1973).

While it is unlikely that a court would find that an individuals right to possess arms (for example a gun collection) is protected by the privacy shield of the U.S. Constitution, the argument could be maintained. We are unaware of this argument being successfully asserted in any anglo-american jurisdiction.

A more likely source of protection under the right to privacy doctrine may be afforded by the Alaska Constitution at Article I, Section 22 which states that:

> The right of the people to privacy shall not be infringed. The legislature shall implement this section.

The Alaska Supreme Court has explicitly stated that the right of privacy guaranteed to Alaskans is broader in scope than that guaranteed by the federal constitution. Woods & Rohde, Inc., v. State, 565 P.2d 138 (1977). Even so, the meaning of privacy or necessity must vary depending on the factual context and the often compelling interests of society and the individual. State v. Glass, 583 P.2d 879 (1978). The test for what interests are protected under Alaska's constitutional right to privacy are, first, whether a person has exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable". Hilbers v. Municipality of Anchorage, 611 P.2d 31 (1980).

The question of handgun ownership in Alaska and whether such ownership is "reasonable" in the context of a landlord tenant relationship is open ended. Probably the "expectation" and reasonableness of gun ownership in Alaska is different than the reasonableness of gun ownership in many other jurisdictions where actual firearm ownership and use is reduced. In any event,

absent specific language under the Alaska Uniform Residential Landlord and Tenant Act, AS 34.03.010 et seq., or other relevant Alaska law, prohibiting inclusion of provisions in a leasehold agreement, we believe a landlord can properly restrict the terms of the tenancy. 2/ In all probability, under existing Alaska law, a landlord can restrict possession of handguns for tenants in a manner not unlike a landlord's ability to prohibit tenants from possessing dogs, operating businesses in a residential leasehold or operating obnoxious stereo equipment.

While a landlord will probably be able to impose a restriction prohibiting future tenants from possessing handguns, an across-the-board ban applicable to tenants with existing leasehold agreements may be invalid. Under classic contract principles, neither party to an agreement may superimpose an additional term on a valid contract without the consent of each party to the contract. Consequently, a landlord may not prohibit handgun possession among tenants during the pendency of an existing lease. Conversely, where a landlord and tenant agree to a lease agreement which contains a restriction banning handguns, remedial legislative action interpreting Alaska's right to privacy law to permit such possession probably would not invalidate existing prohibitions.

Finally, concern was expressed regarding the state's liability with respect to landlord/tenant agreements which prohibit handgun ownership in buildings located on property owned by the State. This last point is conceivably problematic if the land on which the Panoramic View Apartments are located is conveyed to the state as a result of the current Alaska Railroad transfer negotiations. Attached is a copy of a memorandum by Assistant Attorney General Jack McGee which deals with this subject.

2/ In passing, we note that a landlord concerned with unjustified gun play need not necessarily prohibit gun ownership. Other remedies exist for controlling individual tenants with a propensity to abuse gun ownership. Cf. Osness v. Dimond Estates, Inc., 615 P.2d 605 (1980), where the landlord obtained a Forcible Entry and Detainer (F.E.D.) thereby removing a tenant that proved incapable of properly handling firearms.

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We trust this response answers your inquiry. If you have any additional questions, please let me know.

Sincerely,

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ANALYSIS OF PROPOSED ALASKA CONSTITUTIONAL GUARANTEE TO KEEP AND BEAR ARMS

"The individual right to keep and bear arms shall not be denied or infringed by the state or any subdivision thereof."

This proposal protects the traditional lawful rights that gun owners assumed were guaranteed in Alaska.

The Individual Right

The proposed amendment guarantees an individual right. Nevertheless, a person in a high-risk category would not enjoy this right. That, e.g., felons, minors, and the mentally infirm are treated differently has gained such universal acceptance that commentators mention only in passing that such persons do not enjoy the full benefits of this right. Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L. Rev. 177, 191 & n. 71 (1982). See also Richardson v. Ramirez, 418 U.S. 24 (1974) (felons have no right to vote).

The constitutions of 42 states contain a right to bear arms. These guarantees have not been an obstacle to reasonable regulation. Statutes prohibiting possession of firearms, e.g., by convicted felons have been consistently upheld. Examples of such decisions include State v. Ricehill, 415 N.W.2d 481 (N.D. 1987); Carfield v. State, 649 P.2d 865 (Wyo. 1982); State v. Fant, 53 Oh. App.2d 87, 371 N.E.2d 588 (1977); State v. Amos, 343 So. 2d 166 (La. 1977); State v. Cartwright, 246 Ore. 121, 418 P.2d 822 (1966). Over a century ago a court upheld a conviction under a statute forbidding selling, giving, or lending weapons to minors. Coleman v. State, 32 Ala. 581 (1858).

Keep and Bear Arms

The term "arms" refers only to such arms as are commonly kept by the people. Constitutionally protected arms would include the rifle, shotgun, and pistol. State v. Kessler, 289 Ore. 359, 614 P.2d 94 (1980); Taylor v. McNeal, 523 S.W.2d 148, 150 (Mo.App. 1975); Rinzler v. Carson, 262 So.2d 661, 666 (Fla. 1972); State v. Shelby, 90 Mo. 302, 2 S.W. 468 (1886); State v. Duke, 42 Tex. 455, 458-59 (1875); State v. Andrews, 50 Tenn. 165, 8 Am. Rep. 8 (1871); Nunn v. State, 1 Ga. (1 Kel.) 243 (1846).

Bombs, cannon, poison gas and other arms of mass destruction or which are exclusively used by the organized military do not come under the protection of the constitutional umbrella. State v. Kessler, Rinzler v. Carson, State v. Kerner, State v. Shelby, supra.

A person may only keep or bear constitutionally protected arms. The right to keep arms includes the following:

> What, then, is involved in this right of keeping arms? It necessarily involves the right to purchase and use them in such a way as is usual, or to keep them for the ordinary purposes to which they are adapted ... The right to keep arms, necessarily involves the right to purchase them, to keep in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair. Andrews v. State, 50 Tenn. 165, 178, 8 Am. Rep. 8, 13 (1871).

The bearing of constitutionally protected arms may be regulated. Concealed carrying statutes, e.g., are routinely upheld. State v. McAdams, 714 P.2d 1236 (Wy. 1986); State v. Kessler, 289 Ore. 359, 614 P.2d 94, 99 (1980); Holland v. Commonwealth, 294 S.W.2d 83, 85 (Ky. 1956). Even open carrying for an unlawful purpose may be prohibited. State v. Dawson, 272 N.C. 535, 159 S.E.2d 1 (1968). A license may be required to carry a pistol concealed. Schubert v. DeBard, 73 Ind. Dec. 510, 398 N.E.2d 1339 (Ind. App. 1980). Carrying a gun while drunk is outside the protected boundaries of the right to bear arms. People v. Garcia, 197 Colo. 550, 595 P.2d 228 (1979) (en banc). One may not be armed in court, church, at elections or concerts. Hill v. State, 53 Ga. 473, 476 (1874). Unauthorized parading with arms may be prohibited. Commonwealth v. Murphy, 166 Mass. 171, 44 N.E. 138 (1896). Discharging a firearm without justification within the city limits is not constitutionally protected conduct. State v. Johnson, 76 S.C. 39, 56 S.E. 544 (1907).

The traditional lawful defense of self, family, and home has ancient roots. Halbrook, The Jurisprudence of the Second and Fourteenth Amendment, 4 Geo. Mason L. Rev. 1, 5 (1981); Caplan, The Right of the Individual to Bear Arms: A Recent Judicial Trend, 1982 Detroit Col. L. Rev. 789, 794; Dowlut & Knoop, State Constitutions and the Right to Keep and Bear Arms, 7 Okl. City Univ. L. Rev. 177, 183 (1982); Malcolm, The Right of the People to Keep and Bear Arms: The Common Law Tradition, 10 Hastings Const. L. Q. 285 (1983).

There is no social interest in preserving the lives and wellbeing of criminal aggressors at the cost of their victims. The only defensible policy society can adopt is one that will operate as a sanction against unlawful aggression. The police have no duty to protect the individual. Warren v. District of Columbia, 444 A.2d 1 (D.C. App. 1981) (en banc). One court reduced this principle of law to the succinct comment that "there is no constitutional right to be protected by the state against being murdered by criminals or madmen." Bowers v. DeVito, 686 F.2d 616, 618 (7th Cir. 1982).

The proposed guarantee is a victims' rights measure. It will guarantee that a person may exercise the choice to have arms to lawfully and effectively resist violent criminal aggression against self, family or home.

Conclusion

This legislative history indicates that the legislature is left with the power to deal effectively with criminal misconduct. On the other hand, it would prevent the decent people of this state from being disarmed. State v. Kessler, 289 Ore. 359, 614 P.2d 94 (1980); City of Lakewood v. Pillow, 180 Colo. 20, 501 P.2d 744 (1972); City of Las Vegas v. Moberg, 82 N.M. 626, 485 P.2d 737 (Ct. App. 1971); Glasscock v. City of Chattanooga, 157 Tenn. 518, 11 S.W.2d 678 (1928); People v. Zerillo, 219 Mich. 635, 189 N.W. 927 (1922); State v. Kerner, 181 N.C. 574, 107 S.E. 222 (1921); In re Brickey, 8 Idaho 597, 70 P. 609 (1902).

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WHY DOES ALASKA NEED A FIREARMS PRE-EMPTION LAW?

The right to keep and bear arms is at the forefront of the various emotional issues that currently confront our society. Legislators, judges and bureaucrats at all levels of government — federal, state and local — are being called upon by citizens who wish to see this right expanded or restricted.

One underlying question is at what level should such legislation occur. The National Rifle Association has traditionally believed that the government most representative of the people is best. The explosion over the past few years of local ordinances that are more restrictive than current state law has, however, created the need for the states to pre-empt these local actions. Such legislation will prevent a hodgepodge of varying gun laws within a state, and thereby protect the law-abiding citizen not only from unwitting violation of the law, but also from arbitrary infringements of his or her rights. Indeed, in enacting pre-emption legislation, thereby expressly preventing local governments from infringing the rights of citizens and effectively eliminating the need for citizens to undertake costly litigation to protect their rights, state legislators fulfill their constitutional duty to protect the rights of citizens.

A state firearms pre-emption law will guarantee to the citizens of your state their right to own and use firearms for legitimate purposes based on state statutes and federal law.

Federal Law

Many people do not realize the full extent of federal law. Under the Gun Control Act of 1968 and as amended by the McClure-Volkmer Amendments (May 19, 1986), anyone convicted of a felony, adjudicated mentally defective, or addicted to drugs is prohibited from owning, purchasing or receiving or transporting any firearms or ammunition. The Gun Control Act also bans mail order sales of firearms by other than federally licensed dealers and requires that the sale of handguns is restricted to residents of the same state of the purchaser and seller.

Federal law also requires persons engaged in the business of dealing in firearms to be federally licensed. Dealers must

require from all firearms purchasers proof of identity and residence, and buyers must sign, under penalty of perjury, a statement certifying eligibility to purchase. Dealers are required to keep records of all firearms sales and are forbidden from selling handguns to persons under 21 or rifles and shotguns to persons under 18. Additionally, dealers are prohibited from making any sale of firearms or ammunition which would place the buyer in violation of state or local law.

The History of Firearms Pre-Emption Legislation

The first pre-emption firearms law was passed in the late 1960s, when, in response to the assassinations and urban rioting of that time, a number of localities passed "gun control" measures. Recognizing that these ordinances were based on emotional response rather than logical efforts to control crime, citizens of California and Pennsylvania led the way in enacting firearms pre-emption statutes. Today, some 15 states have firearms pre-emption either by statute or by legal precedent including: Alabama, Arizona, California, Indiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, South Dakota, Virginia, Washington and West Virginia.

The Problem Behind Local Firearms Laws

The renewed popularity in passing local ordinances effecting gun ownership has triggered a great debate over the benefits of local rule on this issue. Clearly, all legislation — whether federal, state, or local — must be designed to ensure uniform and nondiscriminatory access to the rights and privileges of the citizenry as guaranteed by the U.S. and State Constitutions. Yet, a close look at the passage of the Morton Grove, Illinois, handgun ban, the most infamous of these local ordinances, proves beyond doubt that local firearms legislation does not guarantee this. In passing their ban, the Morton Grove Village Trustees were acting in defiance of a majority of the village citizenry as the opponents of the measure greatly outnumbered supporters at all public hearings on the ban. Morton Grove was acting not to control crime, which was minimal in the village, but rather to gain the attention of national media and to create a situation of harassment for individual firearms owners. Their gimmick worked! Today, Morton Grove is almost a household word and it is estimated that close to a thousand formerly law-abiding citizens are now technically "criminals" for exercising a right guaranteed by both the U.S. and the Illinois Constitutions.

The local intent to harass gun owners and sportsmen, rather than control crime, is even more apparent in the recent actions of the Friendship Heights (Maryland) Township. This tiny