ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5874 HOUSE JUDICIARY

278

as mediators.

(c) A person may participate in the pilot child visitation mediation project if the person is a party to a valid visitation order and submits a written request for mediation to the Alaska Judicial Council. The request must state the existing visitation schedule as set out in the current visitation order, the actual visitation being exercised, what the party hopes that mediation will accomplish, and the efforts that the party has made to resolve the party's concerns.

(d) If a minor child for whom visitation rights are made the subject of mediation has a guardian ad litem, the guardian ad litem

(1) shall be involved in all aspects of mediation; and

(2) shall approve any agreement to child visitation that arises out of mediation.

(e) If one party to the visitation order files a request for mediation and the person qualifies for mediation, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the protocols developed under (b)(2) of this section, notify the other party that a request for mediation has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option to participate in mediation. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation at any time.

(f) Mediation under the pilot child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who has been contacted under (e) of this section and agrees to participate in mediation under the pilot child visitation

mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A party's refusal to participate may not be used against the party in any proceeding.

(h) Mediation conferences under the pilot child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party"

(1) means a person having either custody of or rights of visitation for a minor child; and

(2) includes, when appropriate, the guardian ad litem of the minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for visitation mediation services if this pilot child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until February 1, 1992.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the pilot child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR
William T. Cotton

NON ATTORNEY MEMBERS
Hilbert J. Hendrickson, M.D.
Leonn Okinkok
James G. Roller

ATTORNEY MEMBERS
Mark E. Ashburn
Daniel L. Callahan
William T. Council

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

RECEIVED MAY - 1990

TELECOMMUNICATIONS COVER SHEET

DATE: 5/5/90 TIME: 3:00 pm

NUMBER DIALING: 465-4565

OFFICE/FIRM: Rep. Goll

The following document, including this cover sheet, is 2 pages.

Please deliver this transmission to: Hayden Kaden

This document is from: THE ALASKA JUDICIAL COUNCIL

If you have any problems or questions, please contact (907) 279-2526

Attn: Bill Cotton

SPECIAL INSTRUCTIONS:

(1) The language in the bill is acceptable to the Judicial Council. However, I do not believe that a moratorium past July 1, 1991 is acceptable to the court system. (Sec. 3)

(2) The fiscal note is OK with changes attached. I will submit revised analysis Mon.

w/c

MAY-5-90 SAT 15:08 P.01

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HCS SB 522(JUD)
PUBLISH DATE: 5/5/90

FISCAL NOTE

REQUEST:

Revision Date: 5/5/90
Title: Child Visitation Mediation Project
Sponsor: Senate Judiciary Committee
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Judicial Council
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars) see previous fiscal note. cost of ½ secretary is 17.6. I reduced contractual accordingly w/c

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.6	8.8				
TRAVEL	1.6	1.9				
CONTRACTUAL	56.0	16.7				
SUPPLIES	2.0	.5				
EQUIPMENT	5.6	0.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	82.9	27.9				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	82.9	27.9				
FEDERAL FUNDS						
OTHER						
TOTAL	82.9	27.9				

POSITIONS:

FULL-TIME	2.0					
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

1 1 one part time secretary - not 2 full-time mediators (that was court version. w/c

Prepared by: House Judiciary Committee
Division:
Phone: 465-4990
Date: 5/5/90

Approved by: Co-Chairman Peter Goll
Co-Chairman Max Gruenberg
Date:

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

page ___ of ___

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HCS SB 522(JUD)
PUBLISH DATE: 5/5/90

FISCAL NOTE

REQUEST:

Revision Date: 5/5/90
Title: Child Visitation Mediation Project
Sponsor: Senate Judiciary Committee
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Judicial Council
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars) /see previous fiscal note, cost of ½ secretary is 17.6. If reduced contractual accordingly w/c

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.6	8.8				
TRAVEL	1.6	1.9				
CONTRACTUAL	56.20	16.7				
SUPPLIES	2.0	.5				
EQUIPMENT	5.6	0.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	82.9	27.9				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	82.9	27.9				
FEDERAL FUNDS						
OTHER						
TOTAL	82.9	27.9				

POSITIONS:

FULL-TIME	~~2.0~~ 2					
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

1 1 one part time secretary - not 2 full time mediators (that was court version. w/c

Prepared by: House Judiciary Committee
Division:
Phone: 465-4990
Date: 5/5/90

Approved by: Co-Chairman Peter Goll
Co-Chairman Max Gruenberg
Date:

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

page ___ of ___

MAY-5-90 SAT 15:01 P.02

BILL NO: SB 522 DATE: March 22, 1990

TITLE: An Act authorizing the Alaska Court System to establish a mediation pilot project

CONTACT: Barbara Miklos 465-4356

SB 522 authorizes the Court System to establish and evaluate a mediation pilot project. The Council on Domestic Violence and Sexual Assault appreciates and supports the following provisions in the bill agreed upon by the Court System: the exclusion from the project of cases involving domestic violence; limiting mandatory mediation to one session, after which either party may choose to withdraw; ensuring that cases participating in mediation will not be delayed by the court; informing all parties of their rights, and the scope and purpose of the mediation project before mediation begins; disqualifying the mediator from making recommendations to the court about the disposition of the controversy should mediation fail; and allowing parties to consult with their attorneys at any point during the mediation process.

It is very important to exclude domestic violence cases from mediation. Mediation depends on equality of personal, social and economic power between the disputing parties. Violence severely distorts the balance of power in a relationship. Violent men physically and psychologically coerce women, by domination and intimidation. Women who are severely intimidated and frightened of the violence will not be able to make independent decisions in their own best interests or those of their children. It is important to note that violence often does not decrease after a separation and, in fact, may increase in severity.

The Council has concerns about the pilot project being mandatory. To be effective, mediation must be voluntary. Research on conflict resolution indicates that to the extent that one or both parties to mediation feels coerced, negotiations will be deadlocked, or agreements that are reached are likely to fail to be implemented.

Another concern about the project is that it will not exclude property from mediation. There are built-in protections in our legal system for addressing financial and property matters. Mediation will occur behind closed doors, without legal protections, and may be done by persons with no expertise in financial matters. It has been known that, in divorce cases, some women have bargained away financial assets in order to retain custody of minor children. We believe that this could be a serious problem under the pilot project, leading to unfair settlements.

We believe that the evaluation criteria need to be revised. The primary goal of mediation, when there are children, should be the best interests of the children; therefore, this needs to be an evaluation criteria. If property is included in mediation, criteria need to be developed to evaluate the settlements to insure they are just for both parties.

The Council is generally neutral about this project. Our major concern, that all cases of domestic violence be excluded from the project, has been addressed in this legislation.

for Arthur English
Commissioner

DEPARTMENT OF PUBLIC SAFETY

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 522 (a)
PUBLISH DATE: 3/28/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act ... to establish and evaluate a mediation pilot project
Sponsor: Senate Judiciary
Requestor: Senate Judiciary

Agency Affected: Public Safety
BRU: Council on Domestic Violence and Sexual Assault
Component:

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

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

CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

REVENUE	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill is expected to have no fiscal impact on the Department of Public Safety.

BJM

Prepared by: Barbara Miklos, Executive Director
Phone: 465-4356
Division: Council on Domestic Violence and Sexual Assault
Date: 3/22/90
Approved by Commissioner: Arthur English
Date: 3-22-90
Agency: Department of Public Safety

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: SB 522 (b)
Publish Date: 3/26/90

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Alaska Court System
Title: An Act authorizing the Alaska Court System to establish mediation pilot project
BRU: Trial Courts
Sponsor: Senate Judiciary Committee
Components:
Requestor: Senate Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services		107.5				
Travel						
Contractual						
Supplies						
Equipment		3.3				
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	110.8	0.0	0.0	0.0	0.0
CAPITAL	-					
REVENUE						

FUNDING: (Thousands of Dollars)

General Funds	0.0	110.8	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	110.8	0.0	0.0	0.0	0.0

POSITIONS:

Full-time		2.0				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Dan Strandberg, General Counsel
Phone: 264-8228
Division: Alaska Court System
Date: 3/23/90

Approved by: Arthur H. Snowden, II, Administrative Dir.
Date: 3/23/90
Agency: Alaska Court System

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

Alaska Court System
SB 522
Fiscal Analysis

Personal Services

	Salary	Benefits	Total
1 - Mediator, PFT, 18A, Anchorage	$37,548	$12,900	$50,448
1 - Mediator, PFT, 18A, Fairbanks	42,984	14,096	57,080
Total Personal Services			107,528

Equipment

File cabinet, typewriter and dictating machine for each position	3,270
Total one-time cost	$110,798

Fiscal Analysis of Mediation Pilot Project

Purpose of Project

The purpose of this pilot project is to determine the effectiveness of mediation in divorce cases in Anchorage and Fairbanks. In the 1988 court system budget the legislature stated its intent:

> that the court system educate judges, attorneys and the public on the potential benefits of mediation. The court system should evaluate and quantify the potential benefits to the consumers as well as the court system of mediation, as an option.

Scope of Project

During the period of the project, contested domestic relations cases would be assigned to one of two "tracks" upon filing. Cases assigned to the "trial track" would be handled under current procedures, which focus on readying the case for trial before a judge. Cases assigned to the "mediation track" would be transferred to the office of the mediator, where the parties would be scheduled for mediation session. Should mediation not be successful in an individual case, the case will be assigned a trial date.

Guidelines for assignment of cases to the tracks will insure that a number of each type of dispute (custody, visitation and/or property issues) will be assigned to both tracks. Information will be gathered about the resolutions of the cases handled on each track, through the use of questionnaires and statistics from case files. The court should be able to compare the two tracks to determine:

1. the time to resolution of the dispute
2. the parties' satisfaction with the process
3. the parties' satisfaction with the result
4. the cost to the parties

At the end of the pilot period, information about the value of mediation services in domestic relations disputes in Anchorage and Fairbanks will be available. Using this information, a determination can be made whether mediation services should continue to be provided.

Other states have found that mediation is most successful in jurisdictions where there is some degree of court support. Because the pilot project will require some but not all parties in domestic disputes to participate in mediation, it is not feasible to assess a cost to the parties for the mediation services during the pilot period. However, should mediation be expanded to require that all domestic disputes attempt mediation prior to proceeding to trial, systems would be developed to require the parties to bear the cost of mediation. Charges could also be assessed if a system is developed in which parties have the option to enter mediation, but it is not required.

Costs of Project

The costs associated with the project would be incurred only once as the project would last one year. The project would consist of a mediator in Anchorage and a mediator in Fairbanks. Their personal services and associated equipment costs would total $110,798.

If the pilot project were to be limited to one mediator in Fairbanks, the cost would be $58,715.

If the pilot project were to be limited to one mediator in Anchorage, the cost would be $52,083.

If section three is deleted in its entirety, the bill has no fiscal impact.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: 5/5/90
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date: 5/5/90
Title: Child Visitation Mediation Project
Sponsor: Senate Judiciary Committee
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Judicial Council
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.6	8.8				
TRAVEL	1.6	1.9				
CONTRACTUAL	56.0	16.7				
SUPPLIES	2.0	.5				
EQUIPMENT	5.6	0.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	82.9	27.9				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	82.9	27.9				
FEDERAL FUNDS						
OTHER						
TOTAL	82.9	27.9				

POSITIONS:

FULL-TIME						
PART-TIME	1.0	1.0				
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Judiciary Committee
Phone: 465-4990
Division: Legislative Affairs
Date: 5/5/90

Approved by Commissioner: Co-Chair Peter Goll
Date: 5/5/90
Agency: Co-Chair Max Gruenberg

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

Introduced: 3/13/90
Referred: Judiciary

BY THE JUDICIARY COMMITTEE

IN THE SENATE

SENATE BILL NO. 522

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing the Alaska Court System to establish and evaluate a mediation pilot project."

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

* Section 1. MEDIATION PILOT PROJECT. (a) The Alaska Court System shall

(1) create a pilot project for mediation using a court mediator in Anchorage and Fairbanks for specified cases; and

(2) evaluate the project created under (1) of this subsection for cost effectiveness, efficiency, and participant satisfaction.

(b) In establishing the pilot project for mediation under (a) of this section, the Alaska Court System shall

(1) exclude from the scope of the project cases involving domestic violence on any family members;

(2) limit mandatory participation of parties to one mediation session, after which either party may choose to withdraw from mediation;

(3) inform all parties of their rights and the scope and purpose of the pilot project before mediation begins; and

(4) allow parties to consult with their attorneys at any point during the mediation process.

(c) If a matter is submitted to mediation under the pilot project for mediation established under (a) of this section and the mediation fails, the Alaska Court System shall

(1) ensure that the resolution of the matter is not delayed by the court because of the mediation; and

(2) disqualify the mediator from making recommendations to the court about the disposition of the controversy.

* Sec. 2. Section 1 of this Act is repealed one year after the effective date of this Act.

Original sponsor(s): Judiciary Committee

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 522 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring the Alaska Judicial Council to establish and evaluate a pilot child visitation mediation project; and providing for an effective date."

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

* Section 1. PILOT CHILD VISITATION MEDIATION PROJECT. (a) A pilot child visitation mediation project is established to promote the best interests of children who are the subject of a visitation order. In order to determine whether the best interests of children are served by mediation intended to enable persons having either custody of or rights of visitation for a minor child to reach voluntary agreement relating to child visitation, the Alaska Judicial Council shall

(1) establish a pilot child visitation mediation project using mediators to mediate child visitation disputes; the pilot mediation project shall be located in and serve residents of the judicial district of the state determined by the Alaska Judicial Council to have the greatest caseload relating to court-ordered child visitations; and

(2) evaluate the pilot child visitation mediation project created under (1) of this subsection; the evaluation must measure

(A) the success of the project in terms of its ability to promote and serve the best interests of the child;

(B) the satisfaction of the legitimate and appropriate needs of the persons who participate in the project;

(C) the project's efficiency;

(D) the project's economy;

(E) whether the project has decreased the time required to resolve disputes relating to child visitation;

(F) whether the project has reduced litigation relating to visitation disputes; and

(G) whether mediation under the project improves compliance with court-ordered child support payments.

(b) In establishing the pilot child visitation mediation project under (a) of this section, the Alaska Judicial Council shall

(1) require the screening of cases and exclude from the scope of the pilot child visitation mediation project cases in which

(A) there has been an indication of domestic violence as defined in AS 18.66.900 or a pattern of harassment of one party by another; or

(B) a party has indicated the intent to materially change an existing court-ordered visitation schedule;

(2) develop protocols for the initial contact and for the mediation orientation session that describes the process and purpose of mediation and informs all parties of their rights and the scope and purpose of the project before mediation begins;

(3) consult, as to the pilot child visitation mediation project's design and evaluation

(A) with the Alaska Court System; and

(B) in a formal process, with custodial and noncustodial parents and other appropriate parties;

(4) consult with other states to determine their experiences with child visitation mediation and to obtain their recommendations relating to mediation of child visitation disputes; and

(5) develop a list of qualifications for persons who may serve

as mediators.

(c) A person may participate in the pilot child visitation mediation project if the person is a party to a valid visitation order and submits a written request for mediation to the Alaska Judicial Council. The request must state the existing visitation schedule as set out in the current visitation order, the actual visitation being exercised, what the party hopes that mediation will accomplish, and the efforts that the party has made to resolve the party's concerns.

(d) If a minor child for whom visitation rights are made the subject of mediation has a guardian ad litem, the guardian ad litem

(1) shall be involved in all aspects of mediation; and

(2) shall approve any agreement to child visitation that arises out of mediation.

(e) If one party to the visitation order files a request for mediation and the person qualifies for mediation, a mediator shall contact the other party and, in a nonthreatening manner and consistent with the protocols developed under (b)(2) of this section, notify the other party that a request for mediation has been filed and that visitation mediation services are available. In making the contact, the mediator shall outline the parties' option to participate in mediation. The mediator shall also invite the notified party to attend an initial orientation session, advising the party that the party may withdraw from mediation at any time.

(f) Mediation under the pilot child visitation mediation project is limited to the visitation dispute. Mediation must be conducted informally and may be conducted as a conference or series of conferences, by telephone or in person. The parties need not be present in the same location. Counsel for the parties may attend each conference.

(g) A person who has been contacted under (e) of this section and agrees to participate in mediation under the pilot child visitation

mediation project must attend a mediation orientation session. After the mediation orientation session, either party may choose to withdraw from mediation. A party's refusal to participate may not be used against the party in any proceeding.

(h) Mediation conferences under the pilot child visitation mediation project are confidential. The mediator may not submit recommendations to a court about the disposition of the dispute.

(i) In this section, "party"

(1) means a person having either custody of or rights of visitation for a minor child; and

(2) includes, when appropriate, the guardian ad litem of the minor child.

* Sec. 2. PROJECT EVALUATION. The Alaska Judicial Council shall complete the evaluation required under sec. 1(a)(2) of this Act and report the evaluation to the legislature by February 1, 1992. The evaluation of the project must consider establishing a sliding scale fee system for visitation mediation services if this pilot child visitation mediation program is continued after February 1, 1992.

* Sec. 3. ADDITIONAL MEDIATION PROJECTS PROHIBITED. The Alaska Court System may not establish and conduct another mediation project until February 1, 1992.

* Sec. 4. USE OF FEDERAL FUNDS. The Alaska Judicial Council shall apply for federal money that may be available for the pilot child visitation mediation project.

* Sec. 5. This Act is repealed February 1, 1992.

* Sec. 6. This Act takes effect July 1, 1990.

BY THE JUDICIARY COMMITTEE

IN THE HOUSE

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

Suspending Uniform Rules 41(b), 24(c), and 35 of the Alaska State Legislature concerning Senate Bill No. 522.

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

That under Rule 54 of the Uniform Rules of the Alaska State Legislature the provisions of Rule 41(b), Rule 24(c), and Rule 35 of the Uniform Rules, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 522, relating to a child visitation mediation project. The new title will be: "An Act requiring the Alaska Judicial Council to establish and evaluate a child visitation mediation project; and providing for an effective date."

SJR

3

HOUSE COMMITTEE REPORT

4/21

(7)
Date Referred: April 10, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered: CSSJR 3(JUD)

CS FOR SENATE JOINT RESOLUTION NO. 3 (Judiciary)
[REPEAL OF REGULATIONS BY LEGISLATURE]
Proposing an amendment to the Constitution of the State of Alaska relating to repeal of regulations by the legislature.

RECOMMENDATIONS:
[ ] 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 _____ Committee

ADOPTS: [✓] Senate letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[X] zero fiscal note LAA
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date/Dept)
[X] Senate fiscal note(s) HAnnalyse Elections 3/29/89
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Alyce Hanley HANLEY
David Donley DONLEY
Tom Menard MENARD
Jim Zawacki ZAWACKI
Eileen P. MacLean MACLEAN
O/O Bruce Bochert BOUCHER

SIGNING: (Check approp column)

	Do Not Pass	No Rec	Amend
Ken Finkelstein FINKELSTEIN		X	

O.G. Bruce
Chairman's Signature

CO-

Alaska State Legislature

Senate

Committee on Finance

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT

FOR

CS FOR SENATE JOINT RESOLUTION NO. 3 (JUDICIARY)

It is the intent of the Legislature that the Division of Elections publish in the elections pamphlet the statements supporting the proposition as drafted by the prime sponsor of the resolution.

Senator Rick Uehling
Co-chair
April 4, 1989

Senate adopted 4/8

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSJR-3 (Judiciary)
PUBLISH DATE: 3/29/89

FISCAL NOTE

REQUEST:

Revision Date: 4/5/89
Title: Relating to repeal of regulations by the legislature
Sponsor: Judiciary Committee
Requestor: Judiciary Committee

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 Eugeworth Phone: 465-4611
Division: Elections Date:
Approved by Commissioner: for SM Date: 4.6.89
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. CSSJR-3 (Judiciary)

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION CSSJR 3 (JUD)
PUBLISH DATE HOUSE 4/21/89

FISCAL NOTE

REQUEST:
Revision Date:
Title: Proposing an amendment to the Constitution of the State of Alaska relating to...
Sponsor: Senate Judiciary
Requestor: House State Affairs

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No fiscal impact.

Prepared By: Pamela Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 4/17/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 4/17/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

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

FISCAL NOTE

REQUEST:

Revision Date: 12/8/89
Title: Repeal of regulations by the Legislature
Sponsor: Coghill
Requestor: Coghill

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 Election Pamphlet, for printing and typesetting, and costs estimated to cover computer programming requirements for vote counting purposes.

Prepared by: Linda Edgeworth
Phone: 465-4611
Division: Division of Elections
Date: 12/8/89

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

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

CONTINUATION Of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSJR 3

However, these costs are based on the assumption th all candidates and issues will fit on three ballot cards, which .. 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

Item 2

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION CSSJR 3 (Jud)
PUBLISH DATE

FISCAL NOTE

REQUEST:
Revision Date:
Title: Proposing an amendment to the Constitution of the State of Alaska relating to...
Sponsor: Senate Judiciary
Requestor: House State Affairs

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

No fiscal impact.

Prepared By: Pamela Stoops, Director — Pamela Stoops — Phone: 465-3850
Division: Administrative Services — Date: 4/17/89

Approved By: Warren Endicott, Executive Director — Warren W Endicott
Agency: Legislative Affairs Agency — Date: 4/17/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☑ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 28, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SJR 3, repeal of regulations by legislature

Dear Senator Faiks:

SJR 3, proposing a constitutional amendment authorizing legislative repeal of administrative regulations, appears on your committee's agenda for today. For the record, this letter briefly expresses the Department of Law's opposition to that resolution.

First, this resolution would present essentially the same question to the voters for the fourth time in 10 years (1980, 1984, 1986, and 1990). The voters rejected the idea three times already. Changing "annul" to read "repeal," as this resolution does, is not likely to change their minds. We recommend that the decision of the voters, given and reaffirmed recently, be accepted.

Second, the legislature does not need this shortcut method to perform its proper oversight function. We recommend reliance on current statutory and constitutional procedures.

Third, the State Affairs Committee substitute deletes some of the original resolution's protections, relying on the Uniform Rules of the Alaska State Legislature in its provisions on handling resolutions. Whatever the probability of changing the Uniform Rules, having the accountability provisions spelled out in the constitution provides greater assurance to the public.

Fourth, a simple repeal of a regulation, by the legislature, does not provide the responsible executive-branch agency

ATTACHMENT #6

CS for SJR 3 (JUD) 4/25/89

03-C5LH

sufficient direction as to statutory policy or legislative intent. Such a repeal is not an efficient management tool.

Thank you for this opportunity to comment.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb

cc: Honorable Jack Coghill
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Robert A. Evans
Legislative Liaison
Office of the Governor

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☑ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 17, 1989

Honorable H. A. Boucher, Chair
House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99801

Re: CSSJR 3(Jud) -- constitutional amendment re legislative repeal of administrative regulations

Dear Representative Boucher:

CSSJR 3(Jud) appears on this week's schedule for a hearing before your committee on April 20. We believe that this resolution, and the constitutional amendment that it proposes, should not pass.

For your and your committee's convenience, a copy of my March 28, 1989 letter to Senator Jan Faiks, chair of the Senate Judiciary Committee, is attached, briefly summarizing the basic reasons for our opposition.

Some people might regard it as an affront to the voters to hit them for the fourth time in 10 years with the same question. Although there is a slight difference in wording in the current proposal, the voters soundly rejected, in 1980, 1984, and 1986, the idea proposed in this resolution. It seems unnecessary and inappropriate to subject them to this issue again in 1990.

It should be noted that in sec. 2(a) of this resolution, at page 2, lines 5 and 6, there is a vague reference to certain circumstances, such as achieving the constitutionally required two-thirds vote to override a veto, resulting "in adverse effects on the public." While various legislators might believe that to be the case, there has been no evidence brought forward to substantiate that claim.

It should also be noted that the Division of Elections' fiscal note for CSSJR 3(Jud) deals only with the cost of putting the proposition on the ballot, not with the consequences of voter approval of the amendment.

If you would like to have additional information regarding the constitutional issues involved in this resolution,

ATTACHMENT #7
CS for SJR 3 (JUD) 4/25/89

03-C5LH

Item 5

Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

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

From: Senator Jack Coghill

Re: Backup for CS for SJR 3; Legislative Repeal of Administrative Regulations.

Date: April 13, 1989

Intent: The intent of this proposed amendment to the Constitution of the State of Alaska, is to provide a mechanism for the legislature, as representatives of the people from which we derive our legislative authority, to oversee the rule making power granted the executive branch as a result of enacted legislation.

Background: This proposal has been placed on the ballot on three previous occasions, each time it failed. The following chart is provided for your consideration.

	1980	1982	1984	1986	1988
Yea's	58,808	N/A	91,174	65,176	N/A
Nay's	82,010	N/A	98,856	94,299	N/A
Total Proposition Votes	140,818	N/A	190,030	159,475	N/A
Total Election Vote Cast	162,653	199,358	213,173	182,526	203,433
Total Reg. Voters	258,742	266,224	305,262	292,274	292,441
Proposition Failure %	16.0%	N/A	4.0%	18.2%	N/A
% Voter Turn Out	63%	75%	70%	62%	70%

NOTE: N/A means Not Applicable because the proposition was not on the ballot.

From this chart it is interesting to note the difference between the total number of votes cast on the proposition and the total number of votes cast in the election. For 1980 this number is 21,835; for 1984 it is 23,147; and for 1986 the difference is 23,143. It appears that each time this ballot measure has been brought up, between 11 percent (1984) an 13 percent (1980 and 1986) of the electorate did not know what they were voting for.

The second interesting observation that has been made, is that in 1982 when the proposition almost passed, voter turn out was high. In 1990, voter turn out is also likely to be high for a number of reasons, which I am sure you are aware of.

The Administration has always opposed this resolution. This is to be expected.

Attachments

1. Ballot Proposition No. 1, 1980.

2. Ballot Proposition No. 1, 1984.

3. Ballot Proposition No. 2, 1986.

4. Letter from the Department of Law,
   to Representative M. Mike Miller, Dated May 8, 1986.

5. Division of Elections Fiscal Note and Analysis.

Rational: I have resurrected this issue of legislative oversight of the policy setting ability of the executive branch, because the Constitution established the Legislature as the policy branch of government.

We have seen increasing numbers of administrative regulations promulgated to implement legislative policy, as established in the legislation we pass, that either ignores the legislative directive or goes beyond the limits of what the Legislature intended.

As an example, in 1985 the Legislature passed a bill that allowed "work commitments" on certain oil and gas leases to be extended by the Department of Natural Resources. The bill was half a page long and very direct. The intent, as I recall, was to retain the nearly 30% royalty rate that would result from production on these lease and to give the lease holder relief from the crashing oil market. The DNR wrote 14 pages of regulations to implement this policy. The result was that the lease holder lost his leases, the state put them up in another lease sale, and the leases were sold at 12 3/4 percent royalty.

Another example is the regulations established by the State Board of Dental Examiners regarding licensure of new dentists by credentials. It is obvious that the intent of the Statute (AS 08.36.234) was to allow the Board to establish

criteria where dentists could gain access to Alaska patients based on their track record in other states. The Board simply wrote a regulation prohibiting licensure by credential. And to further exemplify the need for this resolution, the proposal to change this situation, SB 126, is a one word change, from "may" to "shall". You might think this is a simple policy change, however, in public hearings we have learned that this is substantial. The Board should promulgate regulations that address the intent of the law, and not the purview of the Board.

There are other examples from resource industries, and labor training programs to motor vehicle regulations. The broader issue however, and the complaint I receive most from my constituents, is that it is becoming increasing evident that administrative agencies are using regulations to perpetuate their bureaucratic empires. The problem is that this was never intended by the Constitution.

Recommendation: I recommend you move the CS for SJR 3 (Jud) from committee, with "do pass" recommendations.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS
Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution; regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 18	Nays 0	Absent or Not Voting 2
House	(40 members):	Yeas 36	Nays 0	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— **Charles H. Parr**
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— **Katherine D. Nordale**
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

BALLOT MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5[Jud]))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas **19**	Nays **0**	Absent or Not Voting **1**
House	(40 members):	Yeas **34**	Nays **2**	Absent or Not Voting **4**

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. **ANNULMENT OF REGULATIONS.** The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently **not** directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law.

The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would **not** be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

—Katherine D. Nordale,
Delegate to the Alaska Constitutional Convention, 1955-1956

BALLOT MEASURE NO. 2

Constitutional Amendment
Legislative Annulment of Administrative Regulations
(1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR ☐

A vote "AGAINST" rejects the amendment. AGAINST ☐

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	31
	Nays	4
	Absent or Not Voting	5
Senate:	Yeas	17
	Nays	0
	Absent or Not Voting	3

LEGISLATIVE AFFAIRS AGENCY SUMMARY
(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate...and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention, 1955—1956

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 8, 1986

Honorable M. Mike Miller
Chairman
House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SJR 40 (constitutional amendment on annulment of regulations)
Our file: 66-3-86-0493

Dear Representative Miller:

I understand that Senate Joint Resolution No. 40, proposing an amendment to the Alaska Constitution, is on your committee's agenda for tomorrow. This letter is to express the Department of Law's opposition to that resolution. If the resolution is passed, that proposed amendment would hit the voters for the third time in six years.

BRIEF STATEMENT

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical constitutional amendment by a substantial margin -- 82,010 to 58,808. In 1984, they even rejected an improved version (improved in terms of accountability to the public). We should assume that the voters knew what they were doing.

2. The legislature does not need this shortcut method to perform its proper oversight function.

(A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.

(B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines,

limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable to bills, which provisions tend to assure protection of and accountability to the public.

4. An annulment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

DISCUSSION

The amendment proposed by SJR 40 is virtually identical to the Eleventh Legislature's CSHJR 82 am (1980 Legislative Resolve No. 5). That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They again rejected the amendment in 1984 -- in the form of the Thirteenth Legislature's SCS HJR 5(Jud) (1983 Legislative Resolve No. 15) -- even though it contained provisions for a deferred effective date, three readings on separate days, and recording in the journal the yeas and nays on final passage. The voters should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions did not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislating are "designed to engender a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively

votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example

-- the single subject rule of art. II, sec. 13;

-- the descriptive title rule of art. II, sec. 13;

-- the requirement of separate readings on separate days, under art. II, sec. 14;

-- the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14;

-- the provisions on gubernatorial veto, under art. II, secs. 15 and 16; and

-- the deferred effective date, under art. II, sec. 18.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act take effect only after the required public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. Curiously, the current version of this proposed constitutional amendment omits the improvements contained in 1983 LR 15. Neither the constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to a concurrent resolution's annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment by means of a concurrent resolution, provides for the legislature to make what can be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of

course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to interpret the annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statutes. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

In Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983), affirming Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), the United States Supreme Court held invalid what has become known as the "legislative veto." The U.S. Supreme Court's decision is consistent with our state supreme court's decision in A.L.I.V.E. Voluntary. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State laws; see, especially, the art. III introductory comments

which discuss the legislative/executive/public interrelationship regarding administrative regulations.

In a nutshell, the problem is that once the legislature passes a statute creating a program or function it is then up to the executive to execute that statute and up to the court system to determine whether the executive has exceeded its authority or otherwise violated the law. This proposed amendment would alter that balance by injecting the legislature into the execution stage of the system.

As the voters have done twice before, your committee should reject this proposed constitutional amendment.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Hon. Paul Fischer
Alaska State Senate

Jim Ayers, Director
Legislative Relations
Governor's Office

STATE OF ALASKA

THE LEGISLATURE

1983

Source: SCS HJR 5(Jud)

Legislative Resolve No. 15

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

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

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

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

* 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.

Rejected by voters
98,856 to 91,174.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSJR-3 (Judiciary)
PUBLISH DATE: 3/29/89

FISCAL NOTE

REQUEST:

Revision Date: 4/5/89
Title: Relating to repeal of regulations by the legislature
Sponsor: Judiciary Committee
Requestor: Judiciary Committee

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: 4.6.89

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

Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Representative Peter Goll
House Judiciary Committee Co-Chairman

From: Senator Jack Coghill

Re: Backup for CS for SJR 3: Legislative Repeal of Administrative Regulations.

Date: April 25, 1989

Intent: The intent of this proposed amendment to the Constitution of the State of Alaska, is to provide a mechanism for the legislature, as representatives of the people from which we derive our legislative authority, to oversee the rule making power granted the executive branch as a result of enacted legislation.

Background: This proposal has been placed on the ballot on three previous occasions, each time it failed. The following chart is provided for your consideration.

	1980	1982	1984	1986	1988
Yea's	58,808	N/A	91,174	65,176	N/A
Nay's	82,010	N/A	98,856	94,299	N/A
Total Proposition Votes	140,818	N/A	190,030	159,475	N/A
Total Election Vote Cast	162,653	199,358	213,173	182,526	203,433
Total Reg. Voters	258,742	266,224	305,262	292,274	292,441
Proposition Failure %	16.0%	N/A	4.0%	18.2%	N/A
% Voter Turn Out	63%	75%	70%	62%	70%

NOTE: N/A means Not Applicable because the proposition was not on the ballot.

From this chart it is interesting to note the difference between the total number of votes cast on the proposition and the total number of votes cast in the election. For 1980 this number is 21,835; for 1984 it is 23,147; and for 1986 the difference is 23,143. It appears that each time this ballot measure has been brought up, between 11 percent (1984) an 13 percent (1980 and 1986) of the electorate did not know what they were voting for.

The second interesting observation that has been made, is that in 1982 when the proposition almost passed, voter turn out was high. In 1990, voter turn out is also likely to be high for a number of reasons, which I am sure you are aware of.

The Administration has always opposed this resolution. This is to be expected.

Attachments

1. Ballot Proposition No. 1, 1980.

2. Ballot Proposition No. 1, 1984.

3. Ballot Proposition No. 2, 1986.

4. Letter from the Department of Law,
   to Representative M. Mike Miller, Dated May 8, 1986.

5. Division of Elections Fiscal Note and Analysis.

6. Letter from the Department of Law,
   to Senator Faiks, Dated March 28, 1989.

7. Letter from the Department of Law,
   to Representative Boucher, Dated April 17, 1989.

Rational: I have resurrected this issue of legislative oversight of the policy setting ability of the executive branch, because the Constitution established the Legislature as the policy branch of government.

We have seen increasing numbers of administrative regulations promulgated to implement legislative policy, as established in the legislation we pass, that either ignores the legislative directive or goes beyond the limits of what the Legislature intended.

As an example, in 1985 the Legislature passed a bill that allowed "work commitments" on certain oil and gas leases to be extended by the Department of Natural Resources. The bill was half a page long and very direct. The intent, as I recall, was to retain the nearly 30% royalty rate that would result from production on these lease and to give the lease holder relief from the crashing oil market. The DNR wrote 14 pages of regulations to implement this policy. The result was that the lease holder lost his leases, the state put them up in

another lease sale, and the leases were sold at 12 3/4 percent royalty.

Another example is the regulations established by the State Board of Dental Examiners regarding licensure of new dentists by credentials. It is obvious that the intent of the Statute (AS 08.36.234) was to allow the Board to establish criteria where dentists could gain access to Alaska patients based on their track record in other states. The Board simply wrote a regulation prohibiting licensure by credential. And to further exemplify the need for this resolution, the proposal to change this situation, SB 126, is a one word change, from "may" to "shall". You might think this is a simple policy change, however, in public hearings we have learned that this is substantial. The Board should promulgate regulations that address the intent of the law, and not the purview of the Board.

There are other examples from resource industries, and labor training programs to motor vehicle regulations. The broader issue however, and the complaint I receive most from my constituents, is that it is becoming increasing evident that administrative agencies are using regulations to perpetuate their bureaucratic empires. The problem is that this was never intended by the Constitution.

Recommendation: I recommend you move the CS for SJR 3 (Jud) from committee, with "do pass" recommendations.

BALLOT PROPOSITION NO. 1

LEGISLATIVE ANNULMENT OF REGULATIONS
Constitutional Amendment

(Committee Substitute for House Joint Resolution No. 82 Amended)

SUMMARY

(As it will appear on the November 4, 1980 General Election Ballot)

This proposal would permit the legislature to annul, by adopting a resolution, regulations adopted by state agencies. Annulment of regulations by resolution was authorized by the First State Legislature in 1959; however, in 1980 the Alaska Supreme Court held that the constitution permits the legislature to annul a regulation only by passing a bill, which requires three readings of the bill and a roll call vote which is recorded. The procedures for adopting resolutions are governed by legislative rules and require only the approval of the resolution by voice vote of a majority of both houses. A bill passed by the legislature annulling a regulation could be vetoed by the governor or repealed by referendum. A resolution annulling a regulation could not.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTE CAST BY MEMBERS OF 11TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 18	Nays 0	Absent or Not Voting 2
House	(40 members):	Yeas 36	Nays 0	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal would add a new section, section 22, to Article II of the state constitution. If adopted, the proposal would authorize the legislature to annul or set aside a regulation which has been adopted by a state department or agency. In order to annul a regulation, the legislature could adopt a concurrent resolution by approval of the resolution by majority vote of the membership of each house of the legislature. The resolution specifies the date on which the annulment of a regulation would take effect.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 22. **ANNULMENT OF REGULATIONS.** The legislature by a concurrent resolution approved by a majority vote of the membership of each house may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective on the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date.

ATTACHMENT # 1

CS for SJR 3 (JUD) 4/25/89

STATEMENT IN FAVOR OF BALLOT PROPOSITION NO. 1

The legislature, when it writes a law, cannot foresee all of the possible details involved in carrying it out. The appropriate administrative agency is therefore allowed to write regulations which spell out who does what, when, where, and how. If the agency does no more than this no problem is created.

Unfortunately agency regulations are not always consistent with the intent the legislature had in passing the law. Sometimes an agency will get carried away and put out regulations that cause an unnecessary burden for the citizens. The First State Legislature realized this and provided a simple solution. The legislature could, by a concurrent resolution passed by a majority of each house, annul an administrative regulation. Such a resolution is not subject to the governor's veto.

The Alaska Supreme Court recently held, in a 3-2 decision, that the legislature must use a bill rather than a resolution to annul administrative regulations. But a bill is subject to the governor's veto. The governor can hardly be expected to approve a bill overruling his subordinates, who put out the regulation in the first place. The present governor has already vetoed one such bill.

The court ruling gives agency regulations equal standing with laws, *even though no single person elected by the voters has approved them.*

Our government is wisely based on dividing power among the three branches: legislative, executive and judicial. The current situation gives entirely too much power to the executive branch. Your approval of this constitutional amendment will restore the better balance under which the state operated from 1961 to 1980.

— **Charles H. Parr**
Chairman, House Judiciary Committee
Alaska State Legislature

STATEMENT AGAINST BALLOT PROPOSITION NO. 1

This is still another proposal by the legislature to free itself from the checks and balances of our constitution. Under the constitution, the legislature has all the power it needs to make laws and annul administrative regulations. This proposal does not aid the public in any way. What it does is allow the legislature to exercise its power to annul regulations in disregard of the constitutional requirements that each bill have a single subject, that each bill have three readings in each house, and that there be a recorded vote of the ayes and nays on final passage. It would also free the legislature from the executive veto and it would allow it to ignore the prohibition against special and local legislation.

The Alaska Supreme Court has recently ruled that the legislature must abide by the constitution's checks and balances on its power whenever it exercises that power, including when it acts to annul regulations. This amendment is intended to overrule the court's decision and erode the constitution's safeguards. It aids legislators, not the public, and it should be rejected.

— **Katherine D. Nordale**
Delegate to the Alaska
Constitutional Convention,
1955-1956

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency.

BALLOT MEASURE NO. 1

Constitutional Amendment

LEGISLATIVE ANNULMENT OF ADMINISTRATIVE REGULATIONS

(1983 Legislative Resolve No. 15 (SCS HJR 5[Jud]))

SUMMARY

(As it will appear on the November 6, 1984 General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive-branch regulations by passing a resolution. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals. The resolution is not subject to veto by the governor, and it is not subject to repeal by referendum.

BALLOT FORM:

A vote "FOR" adopts the amendment.
A vote "AGAINST" rejects the amendment.

FOR ☐
AGAINST ☐

VOTES CAST BY MEMBERS OF THE 13TH STATE LEGISLATURE ON FINAL PASSAGE

Senate	(20 members):	Yeas 19	Nays 0	Absent or Not Voting 1
House	(40 members):	Yeas 34	Nays 2	Absent or Not Voting 4

LEGISLATIVE AFFAIRS AGENCY SUMMARY

(As required by law)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by concurrent resolution. The annulment is effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specifies a different date. Adoption requires three readings in each house on three separate days except it may be advanced from second to third reading on the same day by concurrence of three fourths of the membership of the house considering it. Adoption requires approval by a majority vote of the membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. **ANNULMENT OF REGULATIONS.** The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

ATTACHMENT # 2

CS for SJR 3 (JUD) 4/25/89

STATEMENT IN FAVOR OF BALLOT MEASURE NO. 1

Voters who have ever experienced irritation or anger as a result of a problem they have had with state regulations should vote in favor of Ballot Measure No. 1. While many regulations do conform to and support state laws, there are occasionally regulations which are imposed that go beyond the intent of the law and cause undue hardship on our citizens. These regulations often make no sense at all, state agency people are often at a loss to explain the meaning or sense of the regulations, and yet the state agencies involved continue to enforce them, and voters are powerless to change them.

The Alaska Constitution, patterned essentially upon the Constitution of the United States and the experience of the other states, provides a system of checks and balances among the three branches of government, and further entitles the people to their own checks and balances through the voting booth, the initiative process, and final authority over amendments to the constitution. The one major area of government that is currently **not** directly accessible to the people's checks and balances is the very considerable volume of administrative regulations which are written by the state agencies in the executive branch of government.

These regulations deal with every aspect of government and our lives: fish and game, education, health and social services, traffic, land development, utilities, taxes; the list is endless. And once the regulations go into effect, they have all the force of law.

The problem is, that unlike the situation that occurs with laws, the agency people who make and enforce regulations are not subject to voter approval at election time; they are either appointed by the governor or by his commissioners.

While the legislature is often made aware of foolish bureaucratic requirements by unhappy constituents, it is almost powerless to do anything about them. Currently, to annul a regulation, the legislature must pass a new bill which is then subject to veto by the governor. This puts the governor in the powerful position of being able to stop a bill that would overturn a regulation made by his own subordinates.

It was never intended by the framers of our State Constitution that any governmental body except the legislature have the power to make laws. Yet, bad regulations have been written, on occasion by state agencies, which go beyond the letter and intent of the law as passed by the legislature and in effect create law on their own.

This measure would provide a reasonable avenue for annulment of bad regulations. It would allow your elected representatives in the legislature, through a majority vote of both houses, to annul regulations in the same way they pass any legislative bill, except it would **not** be subject to veto by the governor, who clearly has a biased position in the matter.

The House Joint Resolution which created the ballot measure had bi-partisan sponsorship during the last legislative session, and was passed with near-unanimous support by both houses of the legislature.

—Mike Szymanski,
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 1

This proposed amendment to the Alaska Constitution is very similar to the one proposed in 1980 and rejected by the voters 82,010 to 58,808. Although the present version includes some improvements over the 1980 version, it is another attempt by the legislature to concentrate governmental power in its own hands.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. The regulations are adopted to implement statutes. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that could be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power among the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation; and it would empower the legislature to act in place of the executive by nullifying a specific executive-branch decision.

The annulment is like a repeal. In using this expedited procedure to annul a regulation, the legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. And it would not be providing the thoughtful analysis necessary to solve a problem. The legislature would be saying to the agency "your decision to adopt that regulation is wrong". But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor an appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the Constitution's checks and balances on its power when it exercises that power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As argued four years ago, when the voters rejected the 1980 proposal, this amendment would aid legislators, not the public, and it should be rejected.

—Katherine D. Nordale,
Delegate to the Alaska Constitutional Convention, 1955-1956

BALLOT MEASURE NO. 2

Constitutional Amendment
Legislative Annulment of Administrative Regulations
(1986 Legislative Resolve No. 60 HCS SJR 40 [Jud] am H)

BALLOT LANGUAGE
(As it will appear on the November 4, 1986, General Election Ballot)

This amendment of the Alaska Constitution would permit the legislature to annul executive branch regulations by passing a resolution that is not subject to veto by the governor or repeal by referendum. The annulment would become effective 30 days after passage by the legislature, unless the resolution sets a different date. The resolution must have three readings in each house on separate days, except that it may be advanced from second to third reading on the same day by a three-fourths vote of the house considering it. The resolution must receive approval of a majority of the membership of each house. The yeas and nays on final passage must be entered in the legislative journals.

A vote "FOR" adopts the amendment. FOR ☐

A vote "AGAINST" rejects the amendment. AGAINST ☐

VOTES CAST BY MEMBERS OF THE 14TH ALASKA LEGISLATURE ON FINAL PASSAGE

House:	Yeas	31
	Nays	4
	Absent or Not Voting	5
Senate:	Yeas	17
	Nays	0
	Absent or Not Voting	3

LEGISLATIVE AFFAIRS AGENCY SUMMARY
(HCS SJR 40 (Jud) am H)

This proposal for a constitutional amendment would allow the legislature to annul a regulation adopted by a state department or agency by its adoption of a concurrent resolution. Under the present provisions of the constitution, the legislature may annul a regulation only by the enactment of a bill that is subject to the veto of the governor; if the governor vetoes the bill, the constitution now requires a two-thirds affirmative vote of the legislature assembled in joint session to override the veto.

If the legislature adopts a concurrent resolution to annul a regulation under the authority proposed here, the annulment would be effective thirty days after the date the concurrent resolution is approved by both houses unless the resolution specified a different date. The concurrent resolution would not be subject to the veto of the governor. Adoption would require three readings in each house on three separate days except that it may be advanced from second to third reading on the same day by the concurrence of three-fourths of the membership of the house considering it. Adoption would require approval by a majority vote of each membership of each house. The vote on final passage must be entered into the journal.

FULL TEXT OF PROPOSED CONSTITUTIONAL AMENDMENT

(This amendment would add the following section to article II of the Alaska Constitution.)

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

ATTACHMENT #3
CS for SJR 3 (JUD) 4/25/89

BALLOT MEASURE NO. 2

STATEMENT IN SUPPORT OF BALLOT MEASURE NO. 2

The issue is basically simple: should bureaucrats or the Legislature be the ultimate lawmaking authority?

All 60 members of the Legislature (40 House and 20 Senate) are elected by the people. They are all voted into, and out of, office by individual voters. The Alaska Constitution says, "The legislative (i.e., lawmaking) power of the State is vested in a Legislature consisting of a Senate...and a House of Representatives..." The Legislature proposes, considers, and enacts laws, known collectively as the Alaska Statutes (if general and permanent) or as the Session Laws of Alaska (if specific and temporary).

All bureaucrats who promulgate (i.e., enact and enforce) regulations (theoretically, to put laws into effect) are in the Executive Branch, headed by the Governor. Bureaucrats are not voted into office and thus cannot be removed by the people. Instead, bureaucrats are hired by the Governor or by his/her appointees, and thus can only be removed from office by the Governor or by somebody answerable to him/her. However, the regulations promulgated by the bureaucrats, known collectively as the Alaska Administrative Code, have the force of law and affect all of us, sometimes adversely.

What can be done about a law that's bad? It can be repealed by the Legislature or, in some cases, by the people directly via an initiative petition.

What about a regulation that's bad? It can only be repealed by the bureaucrats who promulgated it, up to and including the Governor. If the Legislature tries to repeal a regulation by passing a bill, the Governor will almost certainly (and always has, in the past) veto the bill so that the bad regulation stays in full force and effect.

Now, if the Legislature had the power to repeal regulations by passing a concurrent resolution (instead of a bill), then the resolution could not be vetoed by the Governor. Thus, the Legislature would be able to get rid of bad regulations, which in effect it cannot do now.

Would this give the Legislature too much power? Not hardly. Since the Legislature already has full power to enact laws, why shouldn't it have full power to repeal all laws, including regulations?

Why do Governors and bureaucrats oppose giving the Legislature such regulatory repeal power? Because Governors and their handpicked bureaucrats, which are answerable only to the Governor (and cannot be removed by the people, which can remove Legislators), don't want to lose the power they now have to promulgate and enforce any regulation they want. It's that simple.

If you feel that the Legislature should have the power to repeal regulations via concurrent resolution (not vetoable by the Governor), vote FOR the ballot measure. If you feel that bureaucrats should be the ultimate lawmaking authority, vote otherwise.

I recommend that you vote FOR. Only in this way will we realistically be able to get rid of bad regulations.

Andre Marrou
State Representative

STATEMENT OPPOSING BALLOT MEASURE NO. 2

For the third time in six years, the legislature insists on confronting the voters with a proposed constitutional amendment giving the legislature a short-cut to law-making—another attempt by the legislature to concentrate governmental power in its own hands. The voters rejected a similar proposal in 1980 and the identical proposal in 1984. It should be rejected again.

Under the current constitution and statutes, the legislature has all the power it needs to make laws and to limit or guide the adoption of administrative regulations. Regulations are adopted to implement statutes. They have the force of law. Annulling them changes the law. This proposal would enable legislators to use a law-making procedure that is not subject to veto by the governor or repeal by referendum, and that would be used to ignore the prohibition against special and local legislation.

The constitution now provides for a balance of power between the legislative, executive, and judicial branches of the government. This balance requires a blending or sharing, as well as a dividing, of governmental responsibilities. If this constitutional amendment were to be approved by the voters, it would enable the legislature not only to write the laws, as has traditionally been the legislature's function, but it would also enable the legislature to act in place of the courts in deciding whether the executive has lawfully executed the laws when adopting a regulation, and it would empower the legislature to act in place of the executive by reversing a specific executive-branch decision.

In its intent statement accompanying this proposal, the legislature admitted that the "difficulty in achieving [the two-thirds] majority [to override a veto] in opposition to the governor and the governor's administration has led the legislature to propose this amendment." In other words, the fear that the governor might veto a bill and that not enough legislators would agree to override that veto prompted this short-cut approach to law-making. That fear overlooks the governor's accountability to the voters throughout the state.

The annulment is like a repeal. The legislature would act only in a negative way. It would not be providing the sort of policy guidance and direction that is appropriate to its law-making function. The legislature would be saying to the agency "your decision to adopt that regulation is wrong." But it would not be telling the agency what would be right. This is especially troublesome when dealing with a complex subject. Without any guidance beyond the statute that the executive-branch agency was trying to implement in the first place, the agency is left with only the option to guess again. That is neither an efficient nor appropriate way to run the government.

The Alaska Supreme Court has ruled that the legislature must abide by the constitution's checks and balances on its power, including when it acts to annul regulations. The present proposal is intended to overrule the court's decision. As mentioned when the voters rejected the 1980 and 1984 proposals, this amendment would aid legislators, not the public, and it should be rejected.

Katherine D. Nordale
Delegate to the Alaska
Constitutional Convention, 1955—1956

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 8, 1986

Honorable M. Mike Miller
Chairman
House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SJR 40 (constitutional amendment on annulment of regulations)
Our file: 66-3-86-0493

Dear Representative Miller:

I understand that Senate Joint Resolution No. 40, proposing an amendment to the Alaska Constitution, is on your committee's agenda for tomorrow. This letter is to express the Department of Law's opposition to that resolution. If the resolution is passed, that proposed amendment would hit the voters for the third time in six years.

BRIEF STATEMENT

Essentially, the Department of Law's position is that:

1. In 1980, the voters rejected a virtually identical constitutional amendment by a substantial margin -- 82,010 to 58,808. In 1984, they even rejected an improved version (improved in terms of accountability to the public). We should assume that the voters knew what they were doing.

2. The legislature does not need this shortcut method to perform its proper oversight function.

(A) The Alaska Administrative Procedure Act includes provisions giving multiple notice to the legislature and enabling legislators to participate in the regulations-adoption process.

(B) If an executive-branch agency, in adopting a regulation, goes in a direction that is not supported by the current legislature, the legislature may legislate further -- enact guidelines,

ATTACHMENT #4

CS for SJR 3 (JUD) 4/25/86

03 – C32LH

limitations, prohibitions.

3. A concurrent resolution, the vehicle proposed by this resolution to annul administrative regulations, is not covered by the constitutional and other provisions applicable to bills, which provisions tend to assure protection of and accountability to the public.

4. An annulment resolution's bare negative statement does not afford the executive-branch agency responsible for executing the law any guidance in performing its constitutionally mandated duties.

DISCUSSION

The amendment proposed by SJR 40 is virtually identical to the Eleventh Legislature's CSHJR 82 am (1980 Legislative Resolve No. 5). That amendment was rejected by the voters on November 4, 1980 by a vote of 82,010 to 58,808. That is a substantial margin, and we should assume that the voters knew what they were doing. They again rejected the amendment in 1984 -- in the form of the Thirteenth Legislature's SCS HJR 5(Jud) (1983 Legislative Resolve No. 15) -- even though it contained provisions for a deferred effective date, three readings on separate days, and recording in the journal the yeas and nays on final passage. The voters should not be repeatedly subjected to the same ballot issue.

As you know, these proposals for constitutional amendments are intended to reverse the effect of the Alaska Supreme Court's decision in State of Alaska v. A.L.I.V.E. Voluntary, 606 P.2d 769 (1980). The essence of that court decision, which held invalid the statute (AS 44.62.320(a)) that provided for legislative annulment of administrative regulations by concurrent resolution, is that (1) procedurally and substantively valid regulations have the force of law, (2) an "annulment" of a regulation has the effect of changing the law, and (3) when the legislature changes the law, it must do so by following the constitutional procedures for law-making. Since AS 44.62.320(a)'s concurrent resolutions did not follow the procedures for law-making, the court held that that statute was invalid.

As the court pointed out in Plumley v. Hale, 594 P.2d 497, 500 (Alaska 1979), the various constitutional provisions specifying the mechanics of legislating are "designed to engender a responsible legislative process worthy of the public trust." Those provisions are "to ensure deliberation prior to passage, to ensure that the requisite majority of each house affirmatively

votes to enact a bill into law, and to provide a public record of the vote cast by each legislator." Id. Those procedures include, for example

-- the single subject rule of art. II, sec. 13;

-- the descriptive title rule of art. II, sec. 13;

-- the requirement of separate readings on separate days, under art. II, sec. 14;

-- the requirement that the ayes and nays on final passage be recorded in the legislative journal, under art. II, sec. 14;

-- the provisions on gubernatorial veto, under art. II, secs. 15 and 16; and

-- the deferred effective date, under art. II, sec. 18.

Those provisions provide for public accountability, public notice, and an opportunity for the public to prepare for the application of new law. Regulations adopted under the Alaska Administrative Procedure Act take effect only after the required public notice, opportunity for public comment, legal review by the Department of Law, and a deferred effective date. Curiously, the current version of this proposed constitutional amendment omits the improvements contained in 1983 LR 15. Neither the constitutional protections nor the corresponding Administrative Procedure Act protections would be applicable to a concurrent resolution's annulment of an administrative regulation.

The proposed constitutional amendment before you is not a "mere adjustment" or technical correction of the constitution. It proposes a substantial realignment of the constitutionally specified powers. Although the adoption of administrative regulations by an administrative agency is considered a "quasi-legislative function," it is an essential part of the executive branch's execution or implementation of a statute. The proposed amendment, by providing for legislative annulment by means of a concurrent resolution, provides for the legislature to make what can be considered executive-branch decisions -- executing a program created by statute. This concentration of power in the legislative branch -- both enacting the program statute and then participating in executing it -- does not reflect a sound policy in the face of the separation-of-powers doctrine as expressed in the Federalist Papers and other writings. That doctrine, of

course, involves a blending or sharing of powers. The purpose is to avoid an inappropriate concentration of power.

In addition, when the legislature makes a simple negative statement by merely annulling a regulation, it interferes with the executive-branch's execution of the statute and offers nothing in its place. For example, the regulation involved in the A.L.I.V.E. Voluntary case was a Department of Revenue regulation dealing with permits for such things as lotteries. It contained several elements: a dollar limitation, a time limitation, and a provision for the cumulative effect of the value of individual prizes in reaching the dollar limitation. When the legislature annuls a provision such as that, is the agency to interpret the annulment as meaning that the dollar limitation is not appropriate, or that the time period is not appropriate, or that the cumulative effect is not appropriate? If the agency concluded that the legislature must have been primarily concerned about the dollar limitation, and adopted a new regulation specifying a different dollar amount, would it be guessing right?

I do not believe that anyone questions the legislature's right to review the executive-branch's execution of the statutes. Nor does anyone question the legislature's right to enact statutes setting guidelines and imposing limitations or prohibitions. We may disagree as to the merit of a particular guideline or prohibition, but not as to the right of the legislature to enact it (subject, in some circumstances, to the applicability of other constitutional provisions).

The Alaska Administrative Procedure Act (AS 44.62) provides a carefully structured system with many opportunities for legislator involvement in the adoption of administrative regulations. If one of those opportunities was missed, or proved otherwise unavailing in some circumstance, further legislation might be appropriate. Such legislation would, of course, supersede the offending regulation.

In Immigration and Naturalization Service v. Chadha, 462 U.S. 919, 77 L.Ed.2d 317, 103 S.Ct. 2764 (1983), affirming Chadha v. Immigration and Naturalization Service, 634 F.2d 408 (9th Cir. 1980), the United States Supreme Court held invalid what has become known as the "legislative veto." The U.S. Supreme Court's decision is consistent with our state supreme court's decision in A.L.I.V.E. Voluntary. Your committee might also find helpful the discussion in the official commentary to the 1981 Revised Model State Administrative Procedure Act, promulgated by the National Conference of Commissioners on Uniform State laws; see, especially, the art. III introductory comments

which discuss the legislative/executive/public interrelationship regarding administrative regulations.

In a nutshell, the problem is that once the legislature passes a statute creating a program or function it is then up to the executive to execute that statute and up to the court system to determine whether the executive has exceeded its authority or otherwise violated the law. This proposed amendment would alter that balance by injecting the legislature into the execution stage of the system.

As the voters have done twice before, your committee should reject this proposed constitutional amendment.

Thank you for this opportunity to comment. I would be happy to discuss the matter further with you at your convenience.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General

AHP:md

cc: Hon. Paul Fischer
Alaska State Senate

Jim Ayers, Director
Legislative Relations
Governor's Office

STATE OF ALASKA

THE LEGISLATURE

1983

Source: SCS HJR 5(Jud)

Legislative Resolve No.: 15

Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

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

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

SECTION 22. ANNULMENT OF REGULATIONS. The legislature by concurrent resolution may annul a regulation adopted by a state department or agency. The annulment of the regulation is effective thirty days after the date the concurrent resolution is approved by both houses unless the concurrent resolution specifies a different date. The concurrent resolution requires three readings in each house on three separate days, except that it may be advanced from second to third reading on the same day by concurrence of three-fourths of the house considering it, and approval by a majority vote of the membership of each house. The yeas and nays on final passage shall be entered into the journal.

* 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. XII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Rejected by voters
98,856 to 91,174.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSJR-3 (Judiciary)
PUBLISH DATE: 3/29/89

FISCAL NOTE

REQUEST:

Revision Date: 4/5/89
Title: Relating to repeal of regulations by the legislature
Sponsor: Judiciary Committee
Requestor: Judiciary Committee

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: 4.6.89

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

ATTACHMENT #5
CS for SJR 3 (JUD) 4/25/89

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☑ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

March 28, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SJR 3, repeal of regulations by legislature

Dear Senator Faiks:

SJR 3, proposing a constitutional amendment authorizing legislative repeal of administrative regulations, appears on your committee's agenda for today. For the record, this letter briefly expresses the Department of Law's opposition to that resolution.

First, this resolution would present essentially the same question to the voters for the fourth time in 10 years (1980, 1984, 1986, and 1990). The voters rejected the idea three times already. Changing "annul" to read "repeal," as this resolution does, is not likely to change their minds. We recommend that the decision of the voters, given and reaffirmed recently, be accepted.

Second, the legislature does not need this shortcut method to perform its proper oversight function. We recommend reliance on current statutory and constitutional procedures.

Third, the State Affairs Committee substitute deletes some of the original resolution's protections, relying on the Uniform Rules of the Alaska State Legislature in its provisions on handling resolutions. Whatever the probability of changing the Uniform Rules, having the accountability provisions spelled out in the constitution provides greater assurance to the public.

Fourth, a simple repeal of a regulation, by the legislature, does not provide the responsible executive-branch agency

ATTACHMENT #6

CS for SJR 3 (JUD) 4/25/89

03-C5LH

sufficient direction as to statutory policy or legislative intent. Such a repeal is not an efficient management tool.

Thank you for this opportunity to comment.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: Arthur H. Peterson
Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb

cc: Honorable Jack Coghill
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Robert A. Evans
Legislative Liaison
Office of the Governor

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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☑ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 17, 1989

Honorable H. A. Boucher, Chair
House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99801

Re: CSSJR 3(Jud) -- constitutional amendment re legislative repeal of administrative regulations

Dear Representative Boucher:

CSSJR 3(Jud) appears on this week's schedule for a hearing before your committee on April 20. We believe that this resolution, and the constitutional amendment that it proposes, should not pass.

For your and your committee's convenience, a copy of my March 28, 1989 letter to Senator Jan Faiks, chair of the Senate Judiciary Committee, is attached, briefly summarizing the basic reasons for our opposition.

Some people might regard it as an affront to the voters to hit them for the fourth time in 10 years with the same question. Although there is a slight difference in wording in the current proposal, the voters soundly rejected, in 1980, 1984, and 1986, the idea proposed in this resolution. It seems unnecessary and inappropriate to subject them to this issue again in 1990.

It should be noted that in sec. 2(a) of this resolution, at page 2, lines 5 and 6, there is a vague reference to certain circumstances, such as achieving the constitutionally required two-thirds vote to override a veto, resulting "in adverse effects on the public." While various legislators might believe that to be the case, there has been no evidence brought forward to substantiate that claim.

It should also be noted that the Division of Elections' fiscal note for CSSJR 3(Jud) deals only with the cost of putting the proposition on the ballot, not with the consequences of voter approval of the amendment.

If you would like to have additional information regarding the constitutional issues involved in this resolution,

ATTACHMENT # 7
CS for SJR 3 (JUD) 4/25/89

03-C5LH

Item 4

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

☑ *P.O. BOX K—STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

April 17, 1989

Honorable H. A. Boucher, Chair
House State Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99801

Re: CSSJR 3(Jud) -- constitutional amendment re legislative repeal of administrative regulations

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It should also be noted that the Division of Elections' fiscal note for CSSJR 3(Jud) deals only with the cost of putting the proposition on the ballot, not with the consequences of voter approval of the amendment.

If you would like to have additional information regarding the constitutional issues involved in this resolution,

along with a fuller statement of our opposition to the resolution, please let me know. Thank you.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: Art Peterson
Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb:pjg

Enclosure

cc w/o encl.: Honorable Jack Coghill
Alaska State Senate

Robert A. Evans
Legislative Liaison
Office of the Governor

March 28, 1989

The Honorable Jan Faiks, Chair
Senate Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: SJR 3, repeal of regulations by legislature

Dear Senator Faiks:

SJR 3, proposing a constitutional amendment authorizing legislative repeal of administrative regulations, appears on your committee's agenda for today. For the record, this letter briefly expresses the Department of Law's opposition to that resolution.

First, this resolution would present essentially the same question to the voters for the fourth time in 10 years (1980, 1984, 1986, and 1990). The voters rejected the idea three times already. Changing "annul" to read "repeal," as this resolution does, is not likely to change their minds. We recommend that the decision of the voters, given and reaffirmed recently, be accepted.

Second, the legislature does not need this shortcut method to perform its proper oversight function. We recommend reliance on current statutory and constitutional procedures.

Third, the State Affairs Committee substitute deletes some of the original resolution's protections, relying on the Uniform Rules of the Alaska State Legislature in its provisions on handling resolutions. Whatever the probability of changing the Uniform Rules, having the accountability provisions spelled out in the constitution provides greater assurance to the public.

Fourth, a simple repeal of a regulation, by the legislature, does not provide the responsible executive-branch agency

sufficient direction as to statutory policy or legislative intent. Such a repeal is not an efficient management tool.

Thank you for this opportunity to comment.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:
Arthur H. Peterson
Assistant Attorney General
Legislation/Regulations Section

AHP:cb

cc: Honorable Jack Coghill
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Robert A. Evans
Legislative Liaison
Office of the Governor

SJR

4

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

☒ *CRIMINAL DIVISION CENTRAL OFFICE*
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
PHONE: (907) 465-3428

☐ *OFFICE OF SPECIAL PROSECUTIONS AND APPEALS*
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 12, 1989

Commissioner William G. Demmert
Department of Education
P.O. Box F
Juneau, Alaska 99811

Dear Commissioner Demmert:

You have asked whether school districts will be able to prohibit the possession of weapons on school property if the Alaska constitution is amended as set out SJR 4. It is our opinion that the proposed amendment could present a constitutional impediment to adoption of laws that infringe on the right to keep or bear arms, including regulation of weapons on school grounds.

As set out more fully in the attached letter to Senator Jan Faiks, to support a finding of constitutionality in the face of a challenge based on the proposed amendment, each law infringing on the right to keep and bear arms must be based on a compelling state interest. Although we believe that a compelling state interest can be shown for prohibiting young children from having weapons, we are concerned that the new amendment could limit the prohibiting of adults, or older students, from having weapons on school property.

We must emphasize that the legal effects of the proposed constitutional amendment can not be predicted with any degree of certainty. However, based on the broad reading the Alaska court gives to the provisions of our constitution, and the lack of any language in the amendment giving the legislature the authority to regulate the exercise of the constitutional right, it is much more likely than at present that laws regulating firearms will be declared unconstitutional.

The constitutional hurdle could easily be avoided if the legislature amends the language of SJR 4 to specifically reserve the right to reasonably regulate arms. Language that would accomplish this result is set out at page 37 of the attached

letter, as well as in the attached document entitled "Alternative Methods of Reserving the Right of the Legislature to Reasonably Regulate Arms in SJR 4."

Please let us know if you have any remaining questions about this important issue.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

Attachments: Letter to Senator Faiks, January 29, 1989
"Alternative Methods of Reserving the Right of the Legislature to Reasonably Regulate Arms in SJR4"

1/8/90 SFC

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SJR 4
PUBLISH DATE: 4/21/90

FISCAL NOTE

REQUEST:

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

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: Division of Elections
Date: 12/8/89

Approved by Commissioner: David Valle (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. SJR 4

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

1739 -----
u nbx

Peter —
For your information
HK

^PM-Right To Arms NPT,740(
^Judge Says Right To Bear Arms Means Felons Can Have Guns(
^ss2(

NORTH PLATTE, Neb. (AP) _ The new right-to-bear-arms amendment in Nebraska's Constitution grants felons the same rights as others to possess firearms, Lincoln County District Judge Don Rowlands ruled.

Rowlands said in a legal opinion Monday the law banning felons from possessing guns is unconstitutional in light of the new amendment.

His ruling was the second in the last few days to strike down gun-possession laws in the wake of voters' passage in November of Initiative 403, which was placed on the ballot by petition.

Last week, the 13th Judicial District's other district judge, John Murphy, ruled the statute that prohibits possession of a defaced firearm also is unconstitutional because of the new language.

The rulings are the first in the state to address the implication of the amendment. Other challenges over the wording are pending in Douglas County, including one that maintains the amendment makes the death penalty unconstitutional.

The challenge that led to Rowlands' ruling was filed by attorney Kent Florom on behalf of Larry Rush, who had been charged with being a felon in possession of a firearm and being a habitual criminal.

After Rowlands dismissed the weapons charge, the habitual criminal charge also was dismissed at County Attorney Kent Turnbull's request.

Turnbull said both the Lincoln County cases will be appealed to the Nebraska Supreme Court.

The language at issue in both cases is found in Article I, Section 1 of the Constitution. As amended by the voters it now says:

''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.''

Like his colleague Murphy, Rowlands said that courts can look only to the specific language of the Constitution in interpreting it. And like Murphy, Rowlands looked to a 1986 Nebraska Supreme Court case that upheld the validity of Initiative 300.

In that case, the state's high court wrote that courts cannot ''sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.

''Even more so,'' the Supreme Court said, ''in a case involving the people's amendment to their Constitution, we make no attempt to judge the wisdom or the desirability in enacting such amendments.''

Based on that reasoning, then, Rowlands wrote, his opinion on the desirability of the right-to-bear-arms language is ''entirely irrelevant.

''One may argue that the voters of the state of Nebraska were duped by a special interest group from outside the state to pass an amendment to the Nebraska Constitution which was unnecessary or imprecisely drafted,'' Rowlands wrote.

''Similarly, a logical person might argue that Initiative Measure No. 403 should have permitted the state of Nebraska to exercise reasonable restrictions to prevent the possession of: semiautomatic or automatic assault rifles originally developed for combat; plastic handguns designed to evade detection at airport security stations; other types of firearms which are unreasonably dangerous and without social utility in a civilized society; or firearms by persons previously convicted of a felony.

''Whatever the relative merits or demerits of those positions might be,'' he continued, ''they must be considered matters of public policy more properly left to debate and decision by the people of the state of Nebraska and their elected representatives. ... If the voters of this state are dissatisfied with their Constitution, they may modify the language at any time in their sole and absolute discretion.''

In this specific case, Rowlands said, Rush was not charged with using the firearm for any unlawful purpose, but rather just a ''status'' offense of possession of a firearm with a barrel less than 18 inches long.

''If the Nebraska Legislature passed a law after the adoption of Initiative Measure No. 403 prohibiting the possession of handguns but not shotguns and rifles

Re: NRA.

Omaha World-Herald
Editorial Page
Unsigned articles are the opinion of the World-Herald.

Nebraskans Were Warned

Ironic Use of Gun Law Shouldn't Be Surprise

Nebraskans shouldn't be surprised at the news that some defense attorneys are using the state's new right-to-bear-arms amendment to defend clients against gun-related criminal charges. Voters had adequate warning that the amendment could make it harder to prevent the misuse of firearms. Unfortunately, a majority chose to vote for the amendment anyway.

Omaha Police Chief Robert Wadman expressed concern before the Nov. 8 election. He called attention to the fact that the amendment, which was backed by the National Rifle Association, guarantees "all persons" an "inherent and inalienable" right to bear arms and lists a number of purposes for which the right to bear arms is protected. State and local governments are forbidden to deny or abridge the right.

"All people," as Wadman pointed out, could be construed to include felons. It could include children, drug addicts and the mentally deranged. The amendment left too many questions unanswered, Wadman and other opponents of the measure said, and therefore could undermine reasonable laws restricting the possession and use of firearms.

The NRA's response, in effect, was that nothing would go wrong. Former Nebraska State Sen. Gary Anderson, an Olympic gold medal rifleman and the NRA's director of operations, said that the amendment would not change restrictions that have been upheld in court.

"How does he know?" we asked in a July 2 editorial commenting on his assurance. "No one can accurately predict how the courts, under new constitutional language, might rule on questions concerning laws forbidding the ownership of machine guns, the carrying of concealed weapons and the purchase of firearms without a mandatory waiting period."

Recent news stories magnify the concerns. Among them:

— Attorneys for death row inmate C. Michael Anderson are using the amendment as a basis for appealing Anderson's death sentence in a 1975 murder. The attorneys contend that the amendment made the death penalty unconstitutional by forbidding government from abridging the rights to life, liberty and the pursuit of happiness and the right to bear arms.

— The amendment has been the basis of defense motions for two other defendants. One is charged with second-degree assault and the use of a weapon to commit a felony. The other is charged with being a felon in possession of a firearm.

— Lancaster County Public Defender Dennis Keefe has said: "Attorneys are going to be looking at any offense involving a firearm, given the amendment. The consensus of attorneys in our office is that there are serious questions about felon-in-possession charges and carrying-a-concealed-weapon charges that are going to have to be answered."

How ironic. The NRA and other backers of the amendment said they wanted to block future laws that would abridge the right of law-abiding people to bear arms. But no such laws have been contemplated. Now Nebraska is stuck with potentially far-reaching language in the constitution, where it can't be repealed or amended without another statewide vote.

Omaha World-Herald
Editorial Page
Unsigned articles are the opinion of the World-Herald.

Another Nebraska Vote Needed

Rulings on Gun Laws Show NRA Was Wrong

A statewide vote may be needed to clear up the mess that passage of Nebraska's right-to-bear-arms amendment has caused. But a petition campaign, which some people have suggested, should not be necessary. The Legislature should use its authority to place the issue on the 1990 ballot.

The need for action became clearer when two Lincoln County district judges ruled that two important Nebraska gun laws were unconstitutional. Judge Donald Rowlands II struck down a law prohibiting the possession of a handgun by a felon. Judge John P. Murphy threw out a law prohibiting the possession of a firearm with its serial number obliterated.

The judges said those laws are unconstitutional because the right-to-bear-arms amendment, approved by the voters in November, prohibits state government from denying or infringing on the right to bear arms.

One way of correcting the situation would be to repeal the amendment, as Nebraska Attorney General Robert Spire recommended. Spire said Nebraskans should consider repeal "for public safety reasons" unless the Lincoln County decisions are overturned.

The Legislature shouldn't wait for the Supreme Court to act, however. No one knows how long that would take.

Another approach that has been discussed is to draft substitute language. The idea would be to balance the concerns of people who want a right-to-bear-arms provision and the concerns of people who believe that the elected officials need the flexibility to pass gun laws that are needed to protect the public. Omaha Police Chief Robert Wadman and State Sen. Brad Ashford have said they will push for a vote that would repeal the current language and give the voters a chance to approve language that would guarantee the right of sportsmen to own firearms but leave room for reasonable gun regulations.

The Spire approach would be preferable, in our opinion. A number of Nebraskans, including the editors of this newspaper, have been concerned since the beginning of the right-to-bear-arms campaign about the risk of embedding the amendment's restrictive language in the constitution, where it is difficult to change or repeal.

The National Rifle Association and Nebraska backers of the amendment assured the public that such concerns were misplaced. The Lincoln County decisions demonstrate that the NRA was wrong. Another sign of trouble was a recent statement by Alan Stoler, a defense attorney who suggested that the voters inadvertently made the death penalty unconstitutional when they approved the right-to-bear-arms amendment.

Stoler said he believes the amendment opened the door for anyone to possess firearms -- children, felons, drug addicts and people who are mentally ill and dangerous. If Nebraskans are smart, Stoler said, "they'll get an initiative petition drive going right now ... to change it."

Ashford had proposed a seven-day waiting period for purchasers of handguns. In a recent World-Herald Poll, 79 percent of the 621 registered voters who were interviewed expressed support for a seven-day waiting period. Ashford says that, in view of the Lincoln County decisions, he now believes that a seven-day waiting period would be found unconstitutional.

Wadman, Ashford and Stoler mentioned a petition campaign. We hope it doesn't come to that. The Legislature has the authority to place the question of repealing the amendment before the voters and should do so this session.

FILED
1993 FEB -2 PM 3:13
ANITA R. CHILDERSTON
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF LINCOLN COUNTY, NEBRASKA

THE STATE OF NEBRASKA, Plaintiff,	)	Case No. 96-300
v.	)	ORDER
CHARLES A. COMEAU, Defendant.	)	

> "Democracy is the worst form of Government except all those other forms that have been tried from time to time."

Winston Churchill's words remind us of the occasional difficulties that arise in the continual evolution of the democratic process. That is so because in a democracy the government must bend to the will of the governed. This, by its very nature creates change and dynamism. The predictability of life where government controls those who are governed is not present in a democracy. This lack of predictability in democracy creates occasions where the exercise of the will of the people has unforeseen consequences and, perhaps, unfortunate results. But this does not mean we turn our back on the democratic process and ignore the results of democratic action.

The cornerstone of our nation and our state is the will of the people. Abraham Lincoln said:

> This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it.

So too, the Constitution of the State of Nebraska belongs to the people. It is not the legislature's constitution, the Governor's constitution, or the courts' constitution. It is the people's constitution and they may amend it as they see fit.

The argument has been advanced that the proponents of the amendment to Article I, Section 1, and the voters did not mean for it to be read too literally. The argument has been advanced that the amendment is poorly worded and overbroad. The argument has been advanced that the amendment was pushed to a vote by outside interests who had no concern for its full ramification on the state. All of these arguments may be fit and proper topics for debate, discussion, or editorials. They are not, however, fit topics for consideration by the courts of this state.

No court is free to presume that it can interpret the "will of the people." No court is free to substitute its judgment for that of the citizenry. No court can arrogate to itself the sole power to determine that the voters did not understand the full import of their vote. If the language of the amendment is clear, the duty of the courts to give free reign to that language is equally clear. To ignore the plain language of the amendment and to put restrictions upon the amendment by way of interpretation is to invite the replacement of the exercise of the people's will with judicial flat. That way lies tyranny.

This position finds expression in cases previously decided by the Nebraska Supreme Court. In Omaha National Bank v. Spire, 223 Neb. 209 (1986), the court stated

> "With regard to an initiative enactment, however, a different rule must apply. There is no meaningful way to determine the intent which motivates voters to sign a petition for the submission of an enactment, nor is there any real way to determine the intent of those voters who vote for the adoption of an enactment. The motivations and mental processes of the voter in Verdigre or the elector in Elkhorn cannot be determined - except from the words of the enactment itself. Beyond that, all that can be known by this court is that the voters have been subjected to tornadolike winds in voting on this highly

political question We hold that the intent of the voters adopting an initiative amendment to the Nebraska Constitution must be determined from the words of the initiative amendment itself.

What we do know, and may use in our interpretations of a part of our Constitution, are the historical or operative facts in connection with the adoption of a constitutional amendment. As stated in State ex rel. State Railway Commission v. Ramsey, 151 Neb. 333, 341, 37 N.W. 2d 502, 507 (1949), 'It is permissible to consider the facts of history in determining the meaning of language of the Constitution.'

In considering Omaha National's contentions in this regard, we must consider the words of the initiative petition, as the initiative petition signers submitted those words to the voters for enactment, and the words actually voted on and adopted by the voters. Any other approach would only be a selective choice, made by a reviewing court, of diametrically opposed allegations made by those favoring or opposing the enactment. The intent with which a statute is adopted by a small number of legislators, or even the intent with which a larger group in a constitutional convention adopt a Constitution, or a part thereof, may be divined from examination of the proceedings of such groups, but it is impossible to divine the intent of myriad voters who adopt a constitutional amendment."

More recently, in Banner County v. State Board of Equalization, 226 Neb. 236 (1987), the Nebraska Supreme Court once again stated:

"In determining the meaning of a Constitutional provision, we must look to the plain and clear language contained therein."

This Court, then, must look to the clear and plain language of the amendment in order to determine whether Section 28-1207 R.R.S. 1943, can withstand constitutional scrutiny.

The language that appeared on the ballot for Initiative Measure #403 is as follows:

"Shall Article I, Section 1, of the Constitution of Nebraska, be amended to establish a right to keep and bear arms for lawful purposes, and to provide that such

right shall not be infringed by the State or any subdivision of the State?"

The explanatory language contained on the ballot stated:

> "A vote 'FOR' will amend the Constitution of Nebraska to establish a right to keep and bear arms for lawful purposes, and to provide that such rights shall not be infringed by the State or any subdivision of the State.
>
> "A vote 'AGAINST' will not cause the Constitution of Nebraska to be amended in such a manner."

Article I, Section 1 of the Constitution of the State of Nebraska now states as follows:

> "All persons are by nature free and independent, and have certain inherent and inallenable 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."

It is obvious, that the people have decided that the possession of firearms is an inherent and inallenable right that may only be infringed upon by the State if the firearm is possessed for something other than a "lawful purpose".

Section 28-1207 R.R.S. (1943), makes the possession of a firearm that has been defaced a criminal offense. It is the possession, not the use of the weapon that is prohibited. It can not be said that the statute prohibits an unlawful purpose in regard to the possession of the firearm, and, therefore, logic leads to a determination that this statute is prohibited by the clear language of Article I, Section 1 of the Nebraska Constitution.

The legislature may prohibit unlawful uses of firearms, but may not prohibit their possession, unless that possession is for an unlawful

purpose. It may be argued that any statute that prohibits the possession of a weapon, unaccompanied by any affirmative act on the part of the possessor which is unlawful, cannot withstand constitutional scrutiny. The Court need not reach such a conclusion but only needs to determine the constitutionality of Section 28-1207 R.R.S. 1943. Since the defendant in this case in not charged with actually defacing a firearm, his mere passive possession of a firearm may not be prohibited.

Therefore, the Court finds that Section 28-1207, R.R.S. (1943) is unconstitutional and may not be the basis of an information filed against the Defendant in this case. Therefore, the Demurrer, which the Court treats as a Motion to Dismiss, is sustained; the Information dismissed at the State's costs; and the Defendant released from his recognizance.

SO ORDERED.

John P. Murphy
District Judge

FILED
1989 FEB -6 AM 11:38
ANITA R. CHILDERSTON
CLERK DISTRICT COURT

IN THE DISTRICT COURT OF LINCOLN COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

v.

LARRY L. RUSH,

Defendant.

CASE NO. 97-26

ORDER

NOW ON THIS 6th day of February, 1989, the above-captioned matter comes on for Disposition on the Demurrer to Count I of the Amended Information. The Demurrer filed by the Defendant asks this Court to declare that portion of Neb. Rev. Stat. Section 28-1206 (1) restricting possession of a firearm unconstitutional in light of the recent amendment to Article I, Section 1 of the Constitution of the State of Nebraska by Initiative Petition Measure #403.

This Court in deciding the issue advanced by the Defendant and opposed by the State of Nebraska is required to look to the decisions of the Nebraska Supreme Court for precedent. In so doing, the recent decision of Omaha National Bank v. Spire, 223 Neb. 209 (1986), is directly on point. In the Spire decision the Nebraska Supreme Court upheld the validity of Initiative 300 prohibiting corporate ownership of farm and ranch property and stated:

> "The judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.
>
> Even more so, in a case involving the people's amendment to their Constitution, we make no attempt to judge the wisdom or the desirability in enacting such amendments.
> ***