ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6953 HOUSE JUDICIARY

to identify the people who constitute the association; a political party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

Constitutional Law § 940.5 — political organization — privacy of members

6a, 6b. A political organization has a constitutional right to protect the privacy of its membership rolls, where acts of public affiliation may subject the members of the organization to public hostility or discrimination.

Elections § 3 — time, place, and manner — right to vote

7. The power of a state under the United States Constitution (Art I, § 4, cl 1) to regulate the time, place, and manner of holding elections for United States Senators and Representatives, which power is matched by state control over the election process for state offices, does not justify, without more, abridgment of the fundamental right to vote.

Constitutional Law § 940.5; Elections § 2 — party primary — freedom of association — administrative cost

8. Even assuming the factual accuracy of contentions as to the possibility of future increases in the cost of administering a state's primary election system due to a party rule permitting independents—registered voters not affiliated with any political party—to vote in the party's primary elections for federal and statewide office, such contentions do not form a sufficient basis for infringing the First Amendment right of freedom of political association by prohibiting such a party rule.

Elections § 2 — primaries — raiding by other party

9. A possible state interest in seeking to curtail "raiding"—a practice whereby voters in sympathy with one political party designate themselves as voters of another party so as to influence or determine the results of the other party's primary—is not implicated by the state's prohibition of one party's choice to permit independents (registered voters not affiliated with any political party) to vote in certain party primaries, where, under state law, (1) the independents need only register as party members to vote in the primary, and (2) the state permits such registration as late as noon on the business day preceding the primary.

Constitutional Law § 940.5; Elections §§ 1, 2 — primary and general elections — relation — freedom of association

10a, 10b. A state has a legitimate interest in fostering informed and educated expressions of the popular will in a general election, but this interest is not sufficient to justify, under the First and Fourteenth Amendments to the United States Constitution, the state's prohibition of a party rule permitting independents—registered voters not affiliated with any political party—to vote in certain party primaries, on the grounds that voters would be misled by party labels in the ensuing general election, where (1) the United States Supreme Court's cases reflect faith in the ability of individual voters to inform themselves about campaign issues, (2) in the state in question, to be listed on a primary ballot requires that a candidate have obtained at least 20% of the vote at a party convention which only party members may attend, and (3) the argument in favor of such a prohibition disregards the substantial benefit the party rule provides the party and its members in seeking to choose successful candidates, given the numerical strength of independent voters in that state. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented in part from this holding.)

Constitutional Law § 940.5; Elections § 2 — party primary — freedom of association — protecting integrity of party

11a, 11b. Even if a state is correct that its prohibition of a political party's rule permitting independents —registered voters not affiliated with any party—to vote in certain party primaries protects the integrity of the two-party system and the responsibility of party government, a state or court may not constitutionally substitute its own judgment for that of the party; under the freedom of association for the advancement of political beliefs, as is true of all First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented from this holding.)

Elections § 2 — single nominations

12a, 12b. A state may adopt a policy of confining each voter to a single nominating act.

Constitutional Law § 9 — construction — new subject matter

13. In determining whether a provision of the United States Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar, for in setting up an enduring framework of government, they undertook to carry out for the indefinite future and in all the vicissitudes of changing human affairs, those fundamental purposes which the instrument itself discloses.

Elections §§ 2, 4 — constitutional voter qualifications — stages applicable

14. The goal—under Art I, § 2, cl 1, and the Seventeenth Amendment to the United States Constitution—of assuring that the members of the United States Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process; the constitutional voter qualifications of these clauses apply to primaries as well as to general elections (1) where the state law has made the primary an integral part of the procedure of choice, or (2) where in fact the primary effectively controls the choice.

SYLLABUS BY REPORTER OF DECISIONS

A Connecticut statute (§ 9-431), enacted in 1955, requires voters in any political party primary to be registered members of that party. In 1984, appellee Republican Party of Connecticut (Party) adopted a Party rule that permits independent voters —registered voters not affiliated with any party—to vote in Republican primaries for federal and statewide offices. The Party and the Party's federal officeholders and state chairman (also appellees) brought an action in Federal District Court challenging the constitutionality of § 9-431 on the ground that it deprives the Party of its right under the First

and Fourteenth Amendments to enter into political association with individuals of its own choosing, and seeking declaratory and injunctive relief. The District Court granted summary judgment in appellees' favor, and the Court of Appeals affirmed.

Held:

1. Section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments.

(a) The freedom of association protected by those Amendments includes partisan political organization. Section 9-431 places limits upon the group of registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. The fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association.

(b) The interests asserted by appellant Secretary of State of Connecticut as justification for the statute—that it ensures the administrability of the primary, prevents voter raiding, avoids voter confusion, and protects the integrity of the two-party system and the responsibility of party government—are insubstantial. The possibility of increases in the cost of administering the election system is not a sufficient basis for infringing appellees' First Amendment rights. The interest in curtailing raiding is not implicated, since § 9-431 does not impede a raid on the Republican Party by independent voters; independent raiders need only register as Republicans and vote in the primary. The interest in preventing voter confusion does not make it necessary to burden the Party's associational rights. And even if the State were correct in arguing that § 9-431 in providing for a closed primary system is designed to save the Party from undertaking conduct destructive of its own interests, the State may not constitutionally substitute its judgment for that of the Party, whose determination of the boundaries of its own association and of the structure that best allows it to pursue its political goals is protected by the Constitution.

2. The implementation of the Party rule will not violate the Qualifications Clause of the Constitution—which provides that the House of Representatives "shall be composed of Members chosen . . . by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature"—and the parallel provision of the Seventeenth Amendment, because it does not disenfranchise any voter in a federal election who was qualified to vote in a primary or general election for the more numerous house of the state legislature. The Clause and the Amendment are not violated by the fact that the Party rule establishes qualifications for voting in congressional elections that differ from the qualifications in elections for the state legislature. Where state law, as here, has made the primary an integral part of the election procedure, the requirements of the Clause and the Amendment apply to primaries as well as to general elections. The achievement of the goal of the Clause to prevent the mischief that would arise if state voters found themselves disqualified from participating in federal elections does not require that qualifications for exercise of the federal franchise be precisely equivalent to the qualifications for exercising the franchise in a given State.

770 F2d 265, affirmed.

Marshall, J., delivered the opinion of the Court, in which Brennan, White, Blackmun, and Powell, JJ., joined. Stevens, J., filed a dissenting opinion, in which Scalia, J., joined. Scalia, J., filed a dissenting opinion, in which Rehnquist, C. J., and O'Connor, J., joined.

APPEARANCES OF COUNSEL

Elliot F. Gerson argued the cause for appellant.

David S. Golub argued the cause for appellees.

Briefs of Counsel, p 1089, infra.

OPINION OF THE COURT

[479 US 210]

Justice **Marshall** delivered the opinion of the Court.

[1a, 2a] Appellee Republican Party of the State of Connecticut (Party) in 1984 adopted a Party rule which permits independent voters—registered voters not affiliated with any political party—to vote in Republican primaries for federal and statewide offices. Appellant Julia Tashjian, the Secretary of the State of Connecticut, is charged with the administration of the State's election statutes, which include a provision requiring voters in any party primary to be registered members

[479 US 211]

of that party. Conn Gen Stat § 9-431 (1985).[1] Appellees, who in addition to the Party include the Party's federal officeholders and the Party's state chairman, challenged this eligibility provision on the ground that it deprives the Party of its First Amendment right to enter into political association with individuals of its own choosing. The District Court granted summary judgment in favor of appellees. 599 F Supp 1228 (Conn 1984). The Court of Appeals affirmed. 770 F2d 265 (CA2 1985). We noted probable jurisdiction, 474 US 1049, 88 L Ed 2d 762, 106 S Ct 783 (1986), and now affirm.

I

In 1955, Connecticut adopted its present primary election system. For major parties,[2] the process of candidate selection for federal and statewide offices requires a statewide convention of party delegates; district conventions are held to select candidates for seats in the state legislature. The party convention may certify as the party-endorsed candidate any person receiving more than 20% of the votes case in a roll-call vote at the convention. Any candidate not endorsed by the party who received 20% of the vote may challenge the party-endorsed candidate in a primary election, in which the candi-

1. The statute provides in pertinent part: "No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party in the municipality or voting district . . . ."

2. A "major party" is defined as "a political party or organization whose candidate for governor at the last-preceding election for governor received . . . at least twenty per cent of the whole number of votes cast for all candidates for governor." Conn Gen Stat § 9-372(5)(B) (1985). The Democratic and Republican parties are the only major parties in the State under this definition.

date receiving the plurality of votes becomes the party's nominee. Conn Gen Stat §§ 9-382, 9-400, 9-444 (1985). Candidates selected by the major parties, whether through convention or primary, are automatically accorded a place on the ballot at the general election.

[479 US 212]

§ 9-379. The costs of primary elections are paid out of public funds. See, e.g., § 9-441.

The statute challenged in these proceedings, § 9-431, has remained substantially unchanged since the adoption of the State's primary system. In 1976, the statute's constitutionality was upheld by a three-judge District Court against a challenge by an independent voter who sought a declaration of his right to vote in the Republican primary. Nader v Schaffer, 417 F Supp 837 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). In that action, the Party opposed the plaintiff's efforts to participate in the Party primary.

Subsequent to the decision in Nader, however, the Party changed its views with respect to participation by independent voters in Party primaries. Motivated in part by the demographic importance of independent voters in Connecticut politics,[3] in September 1983 the Party's Central Committee recommended calling a state convention to consider altering the Party's rules to allow independents to vote in Party primaries. In January 1984 the state convention adopted the Party rule now at issue, which provides:

"Any elector enrolled as a member of the Republican Party and any elector not enrolled as a member of a party shall be eligible to vote in primaries for nomination of candidates for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Secretary of the State, Attorney General, Comptroller and Treasurer." App 20.

During the 1984 session, the Republican leadership in the state legislature, in response to the conflict between the newly enacted Party rule and § 9-431, proposed to amend the statute to allow independents to vote in primaries when permitted by Party rules. The proposed legislation was defeated,

[479 US 213]

substantially along party lines, in both houses of the legislature, which at that time were controlled by the Democratic Party.[4]

The Party and the individual appellees then commenced this action in the District Court, seeking a declaration that § 9-431 infringes the appellees' right to freedom of association for the advancement of common political objectives guaranteed by the First and Fourteenth Amendments, and injunctive relief against its further enforcement. After discovery, the parties submitted extensive stipulations of fact to the District Court, which granted summary judgment for appellees. The District Court concluded that "[a]ny effort by the state to substitute its judgment for that of the party on . . . the question of who is and is not sufficiently allied in interest with the

3. The record shows that in October 1983 there were 659,268 registered Democrats, 425,695 registered Republicans, and 532,723 registered and unaffiliated voters in Connecticut. 2 App to Juris Statement 244.

4. In the November 1984 elections, the Republicans acquired a majority of seats in both houses of the state legislature, and an amendment to § 9-431 was passed, but was vetoed by the Democratic Governor.

party to warrant inclusion in its candidate selection process . . . substantially impinges on First Amendment rights." 599 F Supp, at 1238. Rejecting the state interests proffered by appellant to justify the statute, the District Court held that "as applied to the Republican Party rule permitting unaffiliated voters to participate in certain Republican Party primaries, the statute abridges the right of association guaranteed by the First Amendment." Id., at 1241.

The Court of Appeals affirmed, holding that § 9-431 "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association." 770 F2d, at 283.

II

[3] We begin from the recognition that "[c]onstitutional challenges to specific provisions of a State's election laws . . . cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions." Anderson v Celebrezze,

[479 US 214]

460 US 780, 789, 75 L Ed 2d 547, 103 S Ct 1564 (1983) (quoting Storer v Brown, 415 US 724, 730, 39 L Ed 2d 714, 94 S Ct 1274 (1974)). "Instead, a court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

[4, 5a] The nature of the appellees' First Amendment interest is evident. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." NAACP v Alabama ex rel. Patterson, 357 US 449, 460, 2 L Ed 2d 1488, 78 S Ct 1163 (1958); see NAACP v Button, 371 US 415, 430, 9 L Ed 2d 405, 83 S Ct 328 (1963); Bates v Little Rock, 361 US 516, 522-523, 4 L Ed 2d 480, 80 S Ct 412 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. Elrod v Burns, 427 US 347, 357, 49 L Ed 2d 547, 96 S Ct 2673 (1976) (plurality opinion); Buckley v Valeo, 424 US 1, 15, 46 L Ed 2d 659, 96 S Ct 612 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." Kusper v Pontikes, 414 US 51, 57, 38 L Ed 2d 260, 94 S Ct 303 (1973).

[5b] The Party here contends that § 9-431 impermissibly burdens the right of its members to determine for themselves with whom they will associate, and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we have said, the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who constitute the associa-

tion." Democratic Party of
[479 US 215]
United States v Wisconsin ex rel. La Follette, 450 US 107, 122, 67 L Ed 2d 82, 101 S Ct 1010 (1981).

[6a] A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be in any sense the most important.[5]

[1b] Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, "'[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.'" Democratic Party, supra, at 122, 67 L Ed 2d 82, 101 S Ct 1010 (quoting Sweezy v New Hampshire, 354 US 234, 250, 1 L Ed 2d 1311, 77 S Ct 1203 (1957)).[6] The statute here places limits upon the group of
[479 US 216]
registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. Kusper v Pontikes, supra, at 58, 38 L Ed 2d 260, 94 S Ct 303. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community.[7]

5. [6b] Indeed, acts of public affiliation may subject the members of political organizations to public hostility or discrimination; under those circumstances an association has a constitutional right to protect the privacy of its membership rolls. Bates v Little Rock, 361 US 516, 523-524, 4 L Ed 2d 480, 80 S Ct 412 (1960); NAACP v Alabama ex rel. Patterson, 357 US 449, 462, 2 L Ed 2d 1488, 78 S Ct 1163 (1958).

6. [1c] It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. See Rosario v Rockefeller, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973); Nader v Schaffer, 417 F Supp 837 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. See Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US 107, 67 L Ed 2d 82, 101 S Ct 1010 (1981); Cousins v Wigoda, 419 US 477, 42 L Ed 2d 595, 95 S Ct 541 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale LJ 117 (1984).

7. [1d] Appellant contends that any infringement of the associational right of the Party or its members is de minimis, because Connecticut law, as amended during the pendency of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary. Conn Gen Stat § 9-56 (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so.

[1e] This is not a satisfactory response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which the members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F2d, at 281, n 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless of the actual beliefs of the individual voter. Cf. Wooley v Maynard, 430 US 705, 714-715, 51 L Ed 2d 752, 97 S Ct 1428 (1977); West Virginia Board of Education v Barnette, 319 US 624, 633-634, 87 L Ed 1628, 63 S Ct 1178, 147 ALR 674 (1943). As counsel for appellees conceded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[t]he problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." Tr of Oral Arg 40.

8. The District Court entered no findings of fact as to the potential administrative changes necessary to implement the Party rule. As appellant conceded at oral argument, the only evidence in the record before the District Court relating to the administration of the rule was a statement by the State's election attorney in testimony before the legislature that the system would be "workable." Id., at 20. Appellant relies here upon affidavits concerning potential administrative burden which were submitted to the Court of Appeals in support of appellant's request for a stay, entered after this Court noted probable jurisdiction.

[479 US 217]

[1f, 7] It is, of course, fundamental to appellant's defense of the State's statute that this impingement upon the associational rights of the Party and its members occurs at the ballot box, for the Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art I, § 4, cl 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, see Wesberry v Sanders, 376 US 1, 6-7, 11 L Ed 2d 481, 84 S Ct 526 (1964), or, as here, the freedom of political association. We turn then to an examination of the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

Appellant contends that § 9-431 is a narrowly tailored regulation which advances the State's compelling interests by ensuring the administrability of the primary system, preventing raiding, avoiding voter confusion, and protecting the responsibility of party government.

A

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the administrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of
[479 US 218]
§ 9-431.[8]

Appellant contends that the Party's rule would require the purchase of additional voting machines, the training of additional poll workers, and potentially the printing of additional ballot materials specifically intended for independents voting in the Republican primary. In essence, appellant claims that the administration of the system contemplated by the Party rule would simply cost the State too much.

[8] Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major-party primary. Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. Anderson v Celebrezze, 460 US 780, 75 L Ed 2d 547, 103 S Ct 1564 (1983); Williams v Rhodes, 393 US 23, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236 (1968). While the State is of course entitled to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

[479 US 219]

B

[9] Appellant argues that § 9-431 is justified as a measure to prevent raiding, a practice "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." Rosario v Rockefeller, 410 US 752, 760, 36 L Ed 2d 1, 93 S Ct 1245 (1973). While we have recognized that "a State may have a legitimate interest in seeking to curtail 'raiding,' since that practice may affect the integrity of the electoral process," Kusper v Pontikes, 414 US, at 59-60, 38 L Ed 2d 260, 94 S Ct 303; Rosario v Rockefeller, supra, at 761, 36 L Ed 2d 1, 93 S Ct 1245, that interest is not implicated here.[9] The statute as applied to the Party's rule prevents independents, who otherwise cannot vote in any primary, from participating in the Republican primary. Yet a raid on the Republican Party primary by independent voters, a curious concept only distantly related to the type of raiding

9. As we have previously noted, a study commission established by the national Democratic Party concluded that "'the existence of "raiding" has never been conclusively proven by survey research.'" Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US, at 122-123, n 23, 67 L Ed 2d 82, 101 S Ct 1010 (quoting Openness, Participation and Party Building: Reforms for a Stronger Democratic Party 68 (Feb. 17, 1978)). In view of our conclusion that § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

discussed in Kusper and Rosario, is not impeded by § 9-431; the independent raiders need only register as Republicans and vote in the primary. Indeed, under Conn Gen Stat § 9-56 (1985), which permits an independent to affiliate with the Party as late as noon on the business day preceding the primary, see n 7, supra, the State's election statutes actually *assist* a "raid" by independents, which could be organized and implemented at the 11th hour. The State's asserted interest in the prevention of raiding provides no justification for the statute challenged here.

[479 US 220]

C

Appellant's next argument in support of § 9-431 is that the closed primary system avoids voter confusion. Appellant contends that "[t]he legislature could properly find that it would be difficult for the general public to understand what a candidate stood for who was nominated in part by an unknown amorphous body outside the party, while nevertheless using the party name." Brief for Appellant 59. Appellees respond that the State is attempting to act as the ideological guarantor of the Republican Party's candidates, ensuring that voters are not misled by a "Republican" candidate who professes something other than what the State regards as true Republican principles. Brief for Appellees 28.

[10a] As we have said, "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." Anderson v Celebrezze, 460 US, at 796, 75 L Ed 2d 547, 103 S Ct 1564. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." Id., at 797, 75 L Ed 2d 547, 103 S Ct 1564. Moreover, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party

[479 US 221]

members may attend. Conn Gen Stat § 9-400 (1985). If no such candidate seeks to challenge the convention's nominee in a primary, then no primary is held, and the convention nominee becomes the Party's nominee in the general election without any intervention by independent voters.[10] Even assuming, however, that putative candidates defeated at the Party convention will have an increased incentive under the Party's rule to make primary challenges, hoping to attract more substantial support from independents than

10. The record does not disclose the proportion of Connecticut Republican Party nominations that are the result of primary contests.

from Party delegates, the requirement that such challengers garner substantial minority support at the convention greatly attenuates the convention greatly attenuates the State's concern that the ultimate nominee will be wedded to the Party in nothing more than a marriage of convenience.

[10b] In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. "A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." Anderson v Celebrezze, supra, at 798, 75 L Ed 2d 547, 103 S Ct 1564. The State's legitimate interests in preventing voter confusion

[479 US 222]

and providing for educated and responsible voter decisions in no respect "make it necessary to burden the [Party's] rights." 460 US, at 789, 75 L Ed 2d 547, 103 S Ct 1564.

D

[11a] Finally, appellant contends that § 9-431 furthers the State's compelling interest in protecting the integrity of the two-party system and the responsibility of party government. Appellant argues vigorously and at length that the closed primary system chosen by the state legislature promotes responsiveness by elected officials and strengthens the effectiveness of the political parties.

The relative merits of closed and open primaries have been the subject of substantial debate since the beginning of this century, and no consensus has as yet emerged." Ap-

11. At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See Ariz Rev Stat Ann § 16-467 (1984); Cal Elec Code Ann § 501 (West Supp 1986); Colo Rev Stat § 1-2-203 (Supp 1986); Conn Gen Stat § 9-431 (1985); Del Code Ann, Tit, 15 § 3161 (1981); Fla Stat § 101.021 (1985); Kan Stat Ann § 25-3301 (1981); Ky Rev Stat §§ 116.045, 116.055 (1982); Me Rev Stat Ann, Tit 21-A, § 141 et seq. (Supp 1986-1987); Md Ann Code, Art 33, § 3-8 et seq. (1985); Neb Rev Stat § 32-530 (1984); Nev Rev Stat § 293.287 (1985); NM Stat Ann § 1-4-16 (1985); NY Elec Law § 1-104.9 (McKinney 1978); NC Gen Stat § 163.74 (1982 and Supp 1985); Okla Stat, Tit 26, § 1-104 (1976); Ore Rev Stat § 247.201 (1985); Pa Stat Ann Tit 25, § 2832 (Purdon 1963); SD Codified Laws § 12-4-15 (1982); W Va Code § 3-1-35 (1979); Wyo Stat § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See Ala Code § 17-16-14(b) (1985); Ark Stat Ann § 3-126 (1976); Ga Code Ann § 21-2-235 (1982); Ill Rev Stat, ch 46, § 7-43(a) (1986); Ind Code § 3-10-1-6 (Supp 1986); Iowa Code §§ 43.41, 43.42 (1985); Mass Gen Laws § 53:37 (1984); Miss Code Ann § 23-15-575 (1986 pamphlet); Mo Rev Stat § 115.397 (1978); NH Rev Stat Ann § 654:34II (1986); NJ Stat Ann § 19:23-45 (West Supp 1986); Ohio Rev Code Ann § 3513.19 (Supp 1985); RI Gen Laws § 17-9-26(c) (1981); SC Code §§ 7-5-120, 7-9-20 (1976 and Supp 1985); Tenn Code Ann § 2-7-115(b)(2) (1985); Tex Elec Code Ann § 162.003 (1986). Four States provide for nonpartisan primaries in which all registered voters may participate, Alaska Stat Ann §§ 15.05.010, 15.25.090 (1982); La Rev Stat Ann §§ 18:401B, 18:521B (West 1979 and Supp 1986); Va Code § 24.1-182 (1985); Wash Rev Code § 29.18.200 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. Haw Rev Stat § 12-31 (Supp 1984); Idaho Code §§ 34-402, 34-404, 34-904 (Supp 1986); Mich Comp Laws §§ 168.575, 168.576 (1967 and Supp 1986); Minn Stat § 204D.08(4) (1985); Mont Code Ann § 13-10-301(2) (1985); ND Cent Code § 16.1-11-22 (Supp 1985); Utah Code Ann § 20-3-19(2) (Supp 1986); Vt Stat Ann, Tit 17, § 2363 (1982); Wis Stat §§ 5.37, 6.80 (1983-1984).

pellant

[479 US 223]

invokes a long and distinguished line of political scientists and public officials who have been supporters of the closed primary. But our role is not to decide whether the state legislature was acting wisely in enacting the closed primary system in 1955, or whether the Republican Party makes a mistake in seeking to depart from the practice of the past 30 years.[12]

We have previously recognized the danger that "splintered parties and unrestrained factionalism may do significant damage to the fabric of government." Storer v Brown, 415 US, at 736, 39 L Ed 2d 714, 94 S Ct 1274. We upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. We said:

> "[T]he one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late

[479 US 224]

rather than an early decision to seek independent ballot status." Ibid.

The statute in Storer was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees. This protection, like that accorded to parties threatened by raiding in Rosario v Rockefeller, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), is undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates. The forms of regulation upheld in Storer and Rosario imposed certain burdens upon the protected First and Fourteenth Amendment interests of some individuals, both voters and potential candidates, in order to protect the interests of others. In the present case, the state statute is defended on the ground that it protects the integrity of the Party against the Party itself.

[5c, 11b, 12a] Under these circumstances, the views of the State, which to some extent represent the views of the one political party tran-

12. We note that appellant's direst predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore.

siently enjoying majority power, as to the optimum methods for preserving party integrity lose much of their force. The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US, at 123-124, 67 L Ed 2d 82, 101 S Ct 1010 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." Id., at 124, 67 L Ed 2d 82, 101 S Ct 1010.[13]

[479 US 225]

We conclude that the State's enforcement, under these circumstances, of its closed primary system burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

[2b] Appellant argues here, as in the courts below, that implementation of the Party rule would violate the Qualifications Clause of the Constitution, Art I, § 2, cl 1, and the Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in elections for the more numerous house of the state legislature.[14] The Party rule as adopted permits independent voters to vote in Party primaries for the offices of United States Senator and Member of the House of Representatives, and for statewide offices, but is silent as regards

[479 US 226]

primaries held to contest nominations for seats in the state legislature. See supra, at 212, 93 L Ed 2d, at 522. Appellant contends that the Qualifications Clause and the Seventeenth Amendment require an absolute symmetry of qualifications to vote in elections for Congress and the lower house of the state legislature, and that the Party rule, if implemented according to its terms, would require lesser qualifications for voting in Party primaries for federal office than for state legislative office.

The Court of Appeals rejected appellant's argument, holding that the Qualifications Clause and the parallel provision of the Seventeenth Amendment do not apply to primary elections. 770 F2d, at 274. The concurring opinion took a different view, reaching the conclusion that these provisions require only that "anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote" in federal legislative elections. Id., at 286 (Oakes, J., concurring). We agree.

[13, 14] We recognize that the Federal Convention, in adopting the Qualifications Clause of Article I, § 2, was not contemplating the effects of that provision upon the modern system of party primaries. As we have said:

> "We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." United States v Classic, 313 US 299, 315-316, 85 L Ed 1368, 61 S Ct 1031 (1941).

[479 US 227]

The fundamental purpose underlying Article I, § 2, cl 1, that "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States," like the parallel provision of the Seventeenth Amendment, applies to the entire process by which federal legislators are chosen. "Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice," the requirements of Article I, § 2, cl 1, and the Seventeenth Amendment apply to primaries as well as to general elections. United States v Classic, supra, at 318, 85 L Ed 1368, 61 S Ct 1031; see Smith v Allwright, 321 US 649, 659-660, 88 L Ed 987, 64 S Ct 757 (1944). The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process. If primaries were not subject to the requirements of the Qualifications Clauses contained in Article I, § 2 and the Seventeenth Amendment, the fundamental principle of free electoral choice would be subject to the sort of erosion these prior decisions were intended to prevent.

13. [12b] Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in Storer v Brown, 415 US 724, 39 L Ed 2d 714, 94 S Ct 1274 (1974), and Rosario v Rockefeller, 410 US 752, 36 L Ed 2d 1, 93 S Ct 1245 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See Anderson v Celebrezze, 460 US 780, 802, n 29, 75 L Ed 2d 547, 103 S Ct 1564 (1983); Storer v Brown, supra, at 743, 39 L Ed 2d 714, 94 S Ct 1274. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" Anderson v Celebrezze, supra, at 789-790, 75 L Ed 2d 547, 103 S Ct 1564 (quoting Storer v Brown, supra, at 730, 39 L Ed 2d 714, 94 S Ct 1274).

14. Article I, § 2, cl 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment, which provides for the direct election of United States Senators, states in pertinent part that "[t]he electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

[2c] Accordingly, we hold that the Qualifications Clauses of Article I, § 2, and the Seventeenth Amendment are applicable to primary elections in precisely the same fashion that they apply to general congressional elections. Our task is then to discover whether, as appellant contends, those provisions require that voter qualifications, such as party membership, in primaries for federal office must be absolutely symmetrical with those pertaining to primaries for state legislative office.

Our inquiry begins with an examination of the Framers' purpose in enacting the first Qualifications Clause. It is clear that the Clause was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections. The state governments represented at the Convention had established varying voter qualifications, and substantial concern was expressed by delegates as to the likely effects of a federal voting qualification which disenfranchised voters eligible to vote in the States. James

[479 US 228]

Wilson argued that "[i]t would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature." J. Madison, Journal of the Federal Convention 467 (E. Scott ed 1893) (hereinafter Madison's Journal). Oliver Ellsworth predicted that "[t]he people will not readily subscribe to a National Constitution, if it should subject them to be disfranchised." Id., at 468. Benjamin Franklin argued, in the same vein, that "[t]he sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description." Id., at 471. James Madison later defended the resulting provision on similar grounds:

> "To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p 354 (J. Cooke ed 1961).

[2d] In adopting the language of Article I, § 2, cl 1, the Convention rejected the suggestion that a property qualification was necessary to restrict the availability of the federal franchise. See Madison's Journal 468-473; 2 M. Farrand, The Records of the Federal Convention of 1787, pp 200-216 (1966). Far from being a device to limit the federal suffrage, the Qualifications Clause was intended by the Framers to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections. The achievement of this goal does not require that qualifications for exercise of the federal franchise be at all

[479 US 229]

times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given State. The fundamental purpose of the Qualifications Clauses contained in Article I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the state legislature are also qualified to participate in the election of Senators and Members of the House of Representatives.

[2e] Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In Oregon v Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See id., at 117-118, 27 L Ed 2d 272, 91 S Ct 260 (Black, J., announcing the judgments of the Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

[1g] We conclude that § 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are insubstantial. The judgment of the Court of Appeals is affirmed.

SEPARATE OPINIONS

[479 US 230]

Justice **Stevens**, with whom Justice **Scalia** joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in Oregon v Mitchell, 400 US 112, 27 L Ed 2d 272, 91 S Ct 260 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789[1] and on senatorial elections since the Seventeenth Amendment was ratified in 1913.[2]

---

1. Article I, § 2, cl 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

2. "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

As the Court recognizes, ante, at 227, 93 L Ed 2d, at 531, a primary election is part of the process by which Members of the House and Senate are "chosen . . . by the People." US Const, Art I, § 2, cl 1. Cf. United States v Classic, 313 US 299, 315, 85 L Ed 1368, 61 S Ct 1031 (1941). In Connecticut one of the qualifications for voters in Republican Party primary elections for the lower house of the state legislature is that the person be "on the last-completed enrolment list of such party in the municipality or voting district . . . ." Conn Gen Stat § 9-431 (1985). Thus, only enrolled Republicans may vote in the Republican primary for the state legislature.

[479 US 231]

The Court today holds, however, that pursuant to the Republican Party of Connecticut's rules, the State must permit independent, as well as enrolled Republican, electors to vote in the Republican primary for the House of Representatives and the Senate of the United States. This facial disparity between the qualifications for electors of House and Senate candidates and the more stringent qualifications for electors to the state legislature violates both Qualifications Clauses.

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the mandatory "shall have" language of the Clauses as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in Oregon v Mitchell, supra, 27 L Ed 2d 272, 91 S Ct 260. Neither of these arguments withstands scrutiny.

The excerpts from the debate among the Framers quoted by the Court, ante, at 227-229, 93 L Ed 2d, at 531-533, related to a motion made by Gouverneur Morris to amend a draft of proposed Art I, § 1, that had been prepared by the Committee on Detail. To understand the full significance of that debate it is necessary first to consider the provision that Gouverneur Morris wanted to change and then to consider the nature of his proposed amendment.

Justice Stewart accurately summarized that background in his opinion in Oregon v Mitchell, supra:

"An early draft of the Constitution provided that the States should fix the qualifications of voters in congressional elections subject to the proviso that these qualifications might 'at any Time be altered and superseded by the Legislature of the United States.' The records of

[479 US 232]

the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifications 'the same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

"'The qualifications of the electors *shall be the same*, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.' Art IV, § 1." Id., at 289, 27 L Ed 2d 272, 91 S Ct 260 (concurring in part and dissenting in part) (footnotes omitted; emphasis added).

Thus, the draft that the Federal Convention of 1787 was considering when Gouverneur Morris made his motion was abundantly clear—the qualifications of the federal electors "shall be the same" as the electors of the legislatures of the several States. J. Madison, Journal of the Federal Convention 449-450 (E. Scott ed 1893). This provision would ensure uniformity of electors' qualifications within each State, but would not impose a uniform nationwide standard.[3]

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral qualifications or to adopt a provision "which would restrain the right of suffrage to freeholders." Id., at 467. Not surprisingly, his proposal was defeated by a vote of 7-1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. Id., at 467, 468, 471-472. Despite the Court's reliance on the concerns that led the

[479 US 233]

Framers to reject the Morris proposal, they shed absolutely no light on the reasons why the Committee on Detail had previously decided that the voters' qualifications in state and federal elections "shall be the same."

The Court's reliance on the holding in Oregon v Mitchell is equally misguided. That case tested the constitutionality of certain parts of the Voting Rights Act Amendments of 1970, 84 Stat 314, including the section that lowered the minimum age of voters in both state and federal elections from 21 to 18. Four Members of the Court concluded that Congress had no such power;[4] four other Members of the Court concluded that the entire statute was valid.[5] Thus, the conclusions of all eight of those Justices were consistent with the proposition that the Constitution requires the same qualifications for state and federal elec-

3. James Wilson referred to this part of the Report of the Committee on Detail as "well considered," and "he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States." J. Madison, Journal of the Federal Convention 467 (E. Scott ed 1893).

4. See opinion of Justice Harlan, 400 US, at 152, 212-213, 27 L Ed 2d 272, 91 S Ct 260 (concurring in part and dissenting in part), and opinion of Justice Stewart, id., at 281, 287-289, 27 L Ed 2d 272, 91 S Ct 260 (joined by Burger, C. J., and Blackmun, J.).

5. See opinion of Justice Douglas, id., at 135, 141-144, 27 L Ed 2d 272, 91 S Ct 260, and the joint opinion, id., at 229, 280-281, 27 L Ed 2d 272, 91 S Ct 260 (opinion of Brennan, White, and Marshall, JJ.).

tions.[6] Only Justice Black concluded that the statute was invalid insofar as it applied to state elections but valid insofar as it applied to federal elections. 400 US, at 125-130, 27 L Ed 2d 272, 91 S Ct 260.

Even Justice Black's reasoning, however, supports a literal reading of the Qualifications Clause in the absence of a federal statute prescribing a different rule for federal elections. For he relied entirely on the provision in Art I, § 4, that empowers Congress to alter a State's regulations concerning the times, places, and manner of holding elections for Senators and Representatives. 400 US, at 119-124, 27 L Ed 2d 272, 91 S Ct 260. In Justice

[479 US 234]

Black's opinion, the qualifications that the State prescribed for their own voters for state offices "were adopted for federal offices unless Congress directs otherwise under Art I, § 4." Id., at 125, 27 L Ed 2d 272, 91 S Ct 260.

In this case there is no federal statute that purports to authorize the State of Connecticut to prescribe different qualifications for state and federal elections. Thus, there is no authority whatsoever for the Court's refusal to honor the plain language of the Qualifications Clauses. An interpretation of that language linking federal voters' qualifications in each State to the States' existing qualifications exactly matches James Madison's understanding:

"The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p 354 (J. Cooke ed 1961).

I respectfully dissent.

Justice **Scalia**, with whom The **Chief Justice** and Justice **O'Connor** join, dissenting.

Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case. See Anderson v Celebrezze, 460 US 780, 788-790, 75 L Ed 2d 547, 103 S Ct 1564 (1983); Storer v Brown, 415 US 724, 730, 39 L Ed 2d 714, 94 S Ct 1274 (1974). Even so, the conclusion reached on the individuated facts of one case sheds some measure of light upon the conclusion that will be reached on the individuated facts of the next. Since this is an area, moreover, in which the predictability of decisions is important,

[479 US 235]

I think it worth noting that for me today's decision already exceeds the permissible limit of First Amendment restrictions upon the States' ordering of elections.

6. This was certainly the view of Justice Harlan, see id., at 210-211, 27 L Ed 2d 272, 91 S Ct 260, and of Justice Stewart and the two Justices who joined his opinion, see id., at 287-290, 27 L Ed 2d 272, 91 S Ct 260. As Justice Stewart observed: "The Constitution thus adopts as the federal standard the standard which each State has chosen for itself." Id., at 288, 27 L Ed 2d 272, 91 S Ct 260. The opinions of Justice Douglas and Justice Brennan are silent on the issue.

In my view, the Court's opinion exaggerates the importance of the associational interest at issue, if indeed it does not see one where none exists. There is no question here of restricting the Republican Party's ability to recruit and enroll Party members by offering them the ability to select Party candidates; Conn Gen Stat § 9-56 (1985) permits an independent voter to join the Party as late as the day before the primary. Cf. Kusper v Pontikes, 414 US 51, 38 L Ed 2d 260, 94 S Ct 303 (1973). Nor is there any question of restricting the ability of the Party's members to select whatever candidate they desire. Appellees' only complaint is that the Party cannot leave the selection of its candidate to persons who are *not* members of the Party, and are unwilling to become members. It seems to me fanciful to refer to this as an interest in freedom of association between the members of the Republican Party and the putative independent voters. The Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use. See Democratic Party of United States v Wisconsin ex rel. La Follette, 450 US 107, 130-131, 67 L Ed 2d 82, 101 S Ct 1010 (1981) (Powell, J., dissenting) ("[Not] every conflict between state law and party rules concerning participation in the nomination process creates a burden on associational rights"; one must "look closely at the nature of the intrusion, in light of the nature of the association involved, to see whether we are presented with a real limitation on First Amendment freedoms").

The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably

[479 US 236]

implicates an associational freedom—but it can hardly be thought that that freedom is unconstitutionally impaired here. The Party is entirely free to put forward, if it wishes, that candidate who has the highest degree of support among Party members and independents combined. The State is under no obligation, however, to let its party primary be used, instead of a party-funded opinion poll, as the means by which the party identifies the relative popularity of its potential candidates among independents. Nor is there any reason apparent to me why the State cannot insist that this decision to support what might be called the independents' choice be taken *by the party membership in a democratic fashion*, rather than through a process that permits the members' votes to be diluted—and perhaps even absolutely outnumbered—by the votes of outsiders.

The Court's opinion characterizes this, disparagingly, as an attempt to "protec[t] the integrity of the Party against the Party itself." Ante, at 224, 93 L Ed 2d, at 529. There are two problems with this characterization. The first, and less important, is that it is not true. We have no way of knowing that a majority of the Party's members is in favor of allowing ultimate selection of its candidates for federal and statewide office to be determined by persons outside the Party. That decision was not made by democratic ballot, but by

the Party's state convention—which, for all we know, may have been dominated by officeholders and office seekers whose evaluation of the merits of assuring election of the Party's candidates, vis-à-vis the merits of proposing candidates faithful to the Party's political philosophy, diverged significantly from the views of the Party's rank and file. I had always thought it was a major purpose of state-imposed party primary requirements to protect the general party membership against this sort of minority control. See Nader v Schaffer, 417 F Supp 837, 843 (Conn), summarily aff'd, 429 US 989, 50 L Ed 2d 602, 97 S Ct 516 (1976). Second and more important, however, *even if* it were the fact that the majority of the Party's members wanted its candidates to be

[479 US 237]

determined by outsiders, there is no reason why the State is bound to honor that desire—any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed primary requirement itself, which we have hitherto considered "too plain for argument," American Party of Texas v White, 415 US 767, 781, 39 L Ed 2d 744, 94 S Ct 1296 (1974), presupposes that the State *has* the right "to protect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic—whether the Party wants that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican Convention can be proscribed, but its delegation of that choice to nonmembers of the Party cannot.

In the case before us, Connecticut has said no more than this: Just as the Republican Party may, if it wishes, nominate the candidate recommended by the Party's executive committee, so long as its members select that candidate by name in a democratic vote; so also it may nominate the independents' choice, so long as its members select him by name in a democratic vote. That seems to me plainly and entirely constitutional.

I respectfully dissent.

[479 US 238]

FEDERAL ELECTION COMMISSION, Appellant

v

MASSACHUSETTS CITIZENS FOR LIFE, INC.

479 US 238, 93 L Ed 2d 539, 107 S Ct 616

[No. 85-701]

Argued October 7, 1986. Decided December 15, 1986.

Decision: Ban on corporate election expenditures under § 316 of Federal Election Campaign Act (2 USCS § 441b) held to violate freedom of speech as applied to nonprofit corporation formed to promote "pro-life" causes.

SUMMARY

A nonprofit, nonstock corporation, formed to promote "pro-life" causes, used its general treasury funds to prepare and distribute a "special election edition" of its newsletter which (1) urged readers to "vote pro-life" in an upcoming primary election, (2) reported the positions of candidates on "pro-life" legislation, and (3) carried pictures of candidates who supported such legislation, but (4) disclaimed any endorsement of particular candidates. Investigating a complaint, the Federal Election Commission (FEC) found probable cause to believe that this publication violated the provision of § 316 of the Federal Election Campaign Act (2 USCS § 441b) which bars corporations from using treasury funds to make expenditures in connection with any election to any public office. After conciliation efforts failed, the FEC filed a complaint against the corporation in the United States District Court for the District of Massachusetts, seeking a civil penalty and other appropriate relief. The District Court dismissed the complaint, holding (1) that the special edition did not violate § 441b, and (2) that if § 441b did prohibit this publication, then it violated First Amendment freedoms of speech, press, and association as applied to this corporation (589 F Supp 646). The United States Court of Appeals for the First Circuit affirmed, holding (1) that § 441b was applicable to the special edition, but (2) that § 441b violated the First Amendment as so applied (769 F2d 13).

On appeal, the United States Supreme Court affirmed. In an opinion by BRENNAN, J., part of which (Parts I, II, III-B and III-C) constituted the opinion of the court, expressing in part (as to holding 1 below) the unani-

Briefs of Counsel, p 1091, infra.

HB

328

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 13, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 2-28-92

The JUDICIARY Committee considered: HB 328

HOUSE BILL NO. 328 PUBLIC COMMENT ON PROPOSED REGULATIONS

"An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

RECOMMENDATIONS: [✓] the same title
be replaced with CS HB 328 (JUD) [ ] a new title

[ ] have attached amendments(s)

[✓] do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal note(s) DCED, Law

[✓] zero fiscal note(s) DPS, DEC, CPA, DOE, Gov. Rev., Corrections, ANR, Labor

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	X				
[illegible]					
[illegible]		Mark Stanley		X	
Kevin Pat Parnell	✓	Terry Martin		✓	
		Mike Miller			

Dave Donley
CHAIRMAN'S SIGNATURE

~~Revised~~ Revised **FISCAL NOTE** ~~Revised~~ Revised

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: February 6, 1992
Title: "...relating to the notice and public comment requirements for...regulations"
Sponsor: House Judiciary Committee
Requestor: House State Affairs Committee

Department Affected: Community and Regional Affairs
BRU:
Component:
COMPONENT SERIAL NO. 0 0 0 0

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)
* It is impossible to determine the true impact of this bill because that will depend on the amount of regulatory activity in any given year, and whether draft regulations are changed during the adoption process. Fiscal impact, as well as delay, could be considerable since any change in substance would trigger the renotice requirement and the costs of readvertising.

Prepared By: Rimond Henderson
Division: Administrative Services Division
Phone: 465-4708
Date: 2/11/92

Approved by Commissioner:
Agency: Department of Community and Regional Affairs
Date: 2-12-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: 24-Jan-92
Department Affected: Natural Resources
Title: Notice & Public Comment Requirements
BRU: Management & Administration
Components: Commissioner's Office
Sponsor: Judiciary
Requestor: House State Affairs
COMPONENT SERIAL NO. 423

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS.CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER Funding Source:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Carol Wilson
Phone: 465-2400
Division: Commissioner's Office
Date: 24-Jan-92

Approved by Commissioner: Harold C. Heinze
Date: 24-Jan-92
Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,

REV 10/91

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Public Safety

Title: An Act relating to public notice of proposed regulations BRU: DPS Statewide Support

Component: Commissioner's Office

Sponsor: House Judiciary

Requestor: House State Affairs COMPONENT SERIAL NO. | | 5 | 2 | 3 |

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

It is impossible to predict how often substantive changes requiring "re-notice" of regulations under this bill would be made.

Prepared By: Gayle A. Horetski Phone: 465-4322

Division: Commissioner's Office Date: 1/28/92

Approved by Commissioner: D. Hoffman for Richard L. Burton

Agency: Department of Public Safety Date: 1/28/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

JAN 28 1992

BILL NO. HB 328

Revision Date: _____ **Department Affected:** Environmental Conservation

Title: Notice and Public Comment Requirements for Regulations **BRU:** Administration

Component: Office of the Commissioner

Sponsor: (H) Judiciary

Requestor: (H) State Affairs **COMPONENT SERIAL NO.** | | 6 | 3 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair **Phone:** 465-5050

Division: Commissioner's Office **Date:** 1/27/92

Approved by Commissioner: Janice Adair for John Sandor

Agency: Environmental Conservation **Date:** 1/28/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date:
Title: Public Comment on Proposed Regulations.
Sponsor: House Judiciary Committee
Requestor: (H) State Affairs

Department Affected: Community and Regional Affairs
BRU:
Component:
COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Rennard Henderson
Division: Administrative Services Division
Phone: 465-4708
Date: 1/27/92

Approved by Commissioner: Ed Bethy
Agency: Department of Community and Regional Affairs
Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ **Department Affected:** Education

Title: An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations. **BRU:** Executive Administration

Component: Executive Administration

Sponsor: _____

Requestor: Judiciary Committee / State Affairs **COMPONENT SERIAL NO.** 1 8 9

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

The Department currently confers with the Attorney General's Office to determine if rewriting changed the "substance" of regulations. If the answer is yes, the public notice process renewed.

Prepared By: Mike Maher **Phone:** 465-2800

Division: Commissioner's Office **Date:** 1/24/92

Approved by Commissioner: M. L. Miller for JC Jerry Covey

Agency: Education **Date:** 1/24/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Department of Law

Title: "...relating to the notice and public comment requirements...regulations." BRU: Legal Services

Component: Operations

Sponsor: House Judiciary Committee

Requestor: House State Affairs Committee COMPONENT SERIAL NO. | | | 9 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	****	****	****	****	****	****
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: January 24, 1992

Richard I. Pegues for

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: January 24, 1

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 328

This bill amends AS 44.62 to require that when an agency has proposed adoption, amendment, or repeal of a regulation, the agency must go through a second public review process if the agency made substantive changes in the regulation proposal as a result of the initial public review. We cannot predict how often this may occur if this bill is approved. To the extent that it cause extensive re-review by our legislation and regulations text editor, significant delays in the adoption of regulations changes will occur. At some point, this could result in the department having to increase its text editing staff. There will likewise be additional burdens for those departments that propose new regulations or regulations changes that could delay implementation of new legislation.

STATE OF ALASKA FISCAL NOTE BILL NO. HB 328

1992 LEGISLATIVE SESSION

Revision Date. _____ Department Affected: Commerce & Economic Development

Title: Relating to the notice and public comment requirements for the adoption, amendment & repeal of regs. BRU: Occupational Licensing

Component: Administration

Sponsor: House Judiciary Committee

Requestor: House State Affairs COMPONENT SERIAL NO. 0 3 5 6

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	6.5	6.5	6.5	6.5	6.5	6.5
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	7.7	7.7	7.7	7.7	7.7	7.7
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER - GF/PR	7.7	7.7	7.7	7.7	7.7	7.7
TOTAL	7.7	7.7	7.7	7.7	7.7	7.7

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 328 amends existing statutes (AS 44.62.200) to require that agencies provide additional notices for public comment if a regulation project is rewritten, amended or repealed and the content of the project varies from the subject matter that was originally provided in the first public notice.

Prepared By: Jennifer Strickler Phone: 465-2144

Division: Occupational Licensing Date: 01/29/92

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: 1/29/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 328

The Division of Occupational Licensing produces an average of eighteen (18) new regulation projects each year. Regulation projects are often amended by licensing boards at meetings held during the year. Therefore, assuming that at least half of the regulation projects will fall under this bill, at least nine (9) projects will require a second public notice. An average of 400 notices in addition to publication in major newspapers, consisting of at least 15 pages per project, will also be necessary. This fiscal note addresses the following anticipated costs:

CONTRACTUAL:

Average cost of publishing a regulations notice in three newspapers ($620.00) x 9 projects per year: $5,580.00

Postage for 400 notices on interested persons list: $580.00

Copying costs of the regulation projects: $360.00

Sub-total: $6,520.00

SUPPLIES: Paper, envelopes, etc.: $1,200.00

TOTAL COSTS: $7,720.00

New revenues are not anticipated to be collected as a result of this bill.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Revenue

Title: An Act relating to the notice and public comment for regulations

BRU: Administration and Support

Component: Administrative Services Division

Sponsor: Judiciary Committee

Requestor: State Affairs

COMPONENT SERIAL NO. 0125

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) We are unable to estimate the number of regulations that could be affected without further definition of "changes of substance" as stated in Sec. 44.62.215. The estimated contractual expenditures for full notice and public proceedings for new regulations in the Department of Revenue is 3.0. This does not include the additional personal services that could be required.

Prepared By: Tracy L. McGill, Director Phone: 465-2313

Division: Administrative Services Division Date: January 25, 1992

Approved by Commissioner: _____

Agency: Department of Revenue Date: 1/25/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.B. 328

Revision Date: -

Department Affected: Department of Corrections

Title: "An Act relating to notice and comment for...regulations..."

BRU: Administration and Support

Component: Administrative Services

Sponsor: House Judiciary

Requestor: House State Affairs

COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) The Department of Corrections generally adopts, amends, or appeals regulations less frequently than once per year. Public comments are generally requested in writing rather than at hearings. Therefore, anticipated fiscal impact is negligible.

Prepared By: Carl Nickel, Director **Phone:** 465-3376

Division: Administrative Services **Date:** 1-24-92

Approved by Commissioner: Lloyd Hames, Commissioner

Agency: Department of Corrections **Date:** 1-24-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

Alaska State Legislature

House of Representatives

House Judiciary Committee

Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

MEMORANDUM

TO: Representative Gene Kubina, Chair
House State Affairs Committee

FROM: Representative Dave Donley, Chair
House Judiciary Committee

RE: Request for hearing on HB 328, "relating to the notice and public comment requirements for the adoption, amendment and repeal of regulations."

DATE: January 14, 1992

On behalf of the House Judiciary Committee, I am requesting a hearing on HB 328. This bill would remedy a problem with existing provisions of the Administrative Procedure Act relating to notice of adoption, amendment, or repeal of regulations.

At the present time, an agency need only give initial public notice of the adoption, amendment, or repeal of regulations. If, after giving notice, the agency substantially rewrites the regulation, amendment or order of repeal, it need not give notice of what often amounts to major, substantive changes in that which was originally noticed.

This bill would require new public notice the first time an agency substantially rewrites a proposed regulation, amendment, or order of repeal. We feel that this bill represents good public policy and will help prevent abuses of the regulatory process, without placing an onerous burden on an agency.

DD/hk

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 14, 1991 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/12/92

The STATE AFFAIRS Committee considered: HB 328

HOUSE BILL NO. 328 PUBLIC COMMENT ON PROPOSED REGULATIONS

"An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

RECOMMENDATIONS: [X] the same title
be replaced with CS HB 328 (STA) [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)
X Indeterminate LAW
[X] fiscal impact DCED [ ] fiscal note(s) _____

[X] zero fiscal note Rev, Corr, DNR, Labor, DPS, DEC, C+RA, DOE [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eugene G. Kubina	✓				
Mike Miller	✓				
[illegible]	✓				
[illegible]	✓				
[illegible]	✓				
[illegible]	✓				
[illegible]	✓				

Eugene G. Kubina
CHAIRMAN'S SIGNATURE

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE SUITE 200*
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ *KEY BANK BUILDING*
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☒ *P.O. BOX K— STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 7, 1992

Hon. Dave Donley
Hon. Max Gruenberg
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley and Representative Gruenberg:

Hayden Kaden stopped by and asked me to provide comments in writing on the most recent proposed committee substitute for HB 328 (relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations).

While the proposed committee substitute is an improvement, I continue to have legal concerns which I raised at the committee meeting.

I have drafted the attached two options, which improve the proposed committee substitute. Frankly, I'm more comfortable with the existing statute, because state agencies now have the discretion to issue supplemental notices if the adopting authority believes that substantial change was made. The present system avoids a potential legal challenge for the failure to renotice if a commissioner "guesses" wrong as to whether the rewrite was a "significant" change in substance.

Also, I wanted to propose technical changes to the proposed committee substitute to acknowledge the statutory requirement that emergency regulations must be made permanent within 120 days after their filing. It would be difficult for a state agency to hold public hearings and consider public comments twice during this period, if the supplemental notice requirement for substantial rewrite were applied to them. The language in a

prior draft was confusing to me because it arguably implied that there was a notice requirement to adopt emergency regulations. Present statutes have no preadoption notice requirement for emergency regulations. To fix this problem, I propose the following amendment:

page 2, line 9:

(2) regulations that are necessary to meet federal requirements; **and**

(3) regulations adopted to make emergency regulations permanent under AS 44.62.260.

To clarify the intended timing of the supplemental notice, I propose the following amendment:

page 2, line 4, following "agency," insert:

, before adoption,

If you have questions, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Assistant Attorney General
and Regulations Attorney

DEB:cl

cc: Hon. Gene Kubina, Chair
House State Affairs Committee

Paul Fuhs, Senior Legislative Liaison
Office of the Governor

OPTION #1

After-the-fact Notice and Right of Petition

Sec. 44.62.215. SUPPLEMENTAL NOTICE. (a) If a state agency rewrites a proposed regulation, amendment of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the rewriting is a significant change in the substance of the regulation, amendment, or order, the agency shall provide notice as provided in (b) of this section after filing of the regulation, amendment, or order under AS 44.62.080.

(b) Within 10 days after the filing, the state agency shall give public notice of a filing described in (a) of this section. The notice under this subsection shall be distributed in the same manner as the notice of proposed action was required to be distributed in AS 44.62.190(a). The notice of filing must include

(1) a statement of significant changes made in the adoption, amendment, or repeal of the regulations; and

(2) an informative summary of the regulations filed.

(c) A person aggrieved by the regulatory change may petition the agency to take action regarding the regulation under AS 44.62.220.

(d) The failure to provide supplemental notice and public proceedings as provided in this section does not invalidate a regulation adopted under AS 44.62.010 - 44.62.300.

****

OPTION #2

Failure to do Pre-Adoption Notice Does not Nullify Regulations

AS 44.62.215(b) and (c)

(b) The failure to provide supplemental notice and public proceedings as provided in this section does not invalidate an action taken by an agency under AS 44.62.010 - 44.62.300.

(c) If the state agency fails to provide supplemental notice and public proceedings as provided in this section, the state agency shall report the noncompliance to the legislature and the governor by the following January 20 with an explanation of the failure to comply and proposed corrective action by the department to remedy the causes of the noncompliance.

HB

334

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 16, 1991 FURTHER REFERRALS:

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered: HB 334

HOUSE BILL NO. 334 RULE AGAINST PERPETUITIES

"An Act adopting the Uniform Statutory Rule Against Perpetuities; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 334 (JUD) [X] the same title [ ] a new title

[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[X] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[X] zero fiscal note Law - Legal Services

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Dave Donley		✓	
Terry Martin	✓				
				X	

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 334

Revision Date: January 21, 1992 Department Affected: Department of Law

Title: "An Act adopting the Uniform Statutory Rule Against Perpetuities..." BRU: Legal Services

Component: Operations

Sponsor: House Rules by the Governor

Requestor: House Judiciary Committee COMPONENT SERIAL NO. 9 3

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.) This bill amends the state's Uniform Probate Code, AS 13.11, to provide for a Uniform Statutory Rule Against Perpetuities. This rule has been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Because the bill deals with inheritance issues between private parties it will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: January 21, 1992

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: January 21, 19

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/7/91

Bill Version: HB 334
(H) Publish Date: 5/16/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law

Title: "An Act adopting the Uniform Statutory Rule Against Perpetuities..." BRU: Legal Services

Component: Operations

Sponsor: By Request of the Governor

Requestor: Governor's Office COMPONENT SERIAL NO. | | | 9 | 3 |

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) This bill amends the state's Uniform Probate Code, AS 13.11, to provide for a Uniform Statutory Rule Against Perpetuities. This rule has been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Because the bill deals with inheritance issues between private parties it will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: April 18, 1991

Approved by Commissioner: Charles E. Cole, Attorney General

Agency: Department of Law Date: April 18, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

HB337

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 16, 1991

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

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to adopt the Uniform Statutory Rule Against Perpetuities, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The NCCUSL has promulgated this statutory rule as both a freestanding Act and as part of the Uniform Probate Code (UPC). Since Alaska has enacted the UPC, it behooves us to keep abreast of the national standard -- especially since this new formulation of the rule is better than both the old common law rule and our own statutory modification of it, AS 34.27.010. Moreover, the Alaska Supreme Court has expressed its approval of the "wait and see" approach, a more modern and simpler version of which is proposed in this bill. See Hansen v. Stroecker, 699 P.2d 871 (Alaska 1985).

In its January 23, 1991 publication of the statutory rule, the NCCUSL's Prefatory Note explains the common law rule, its problems, and the improvements made by this statutory rule. A well-known statement of the common law rule sets it out as follows:

> No [nonvested property] interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

In other words, under the common law rule, a nonvested property interest is determined either valid or invalid as of the time of its creation. The actual time of vesting is immaterial. The hypothetical possibility of an interest not vesting, considered at the time of the creation of the interest, determines the validity

of the interest. The NCCUSL's official publication of the Act, with commentary, gives numerous illustrations.

Like most rules of property law, the common law rule against perpetuities has two sides -- a validating side and an invalidating side. With the two sides stated separately, the rule is as follows:

> Validating side. A nonvested property interest is valid when it is created (initially valid) if it is then certain to vest or terminate (fail to vest) -- one or the other -- no later than 21 years after the death of an individual then alive.
>
> Invalidating side. A nonvested property interest is invalid when it is created (initially invalid) if there is no such certainty.

Since actual post-interest-creation events are immaterial at common law, even those that are known at the time of the lawsuit in which various parties' rights are being disputed, interests that are likely (and in fact would, if given the chance) to vest well within the period of a life in being plus 21 years are nevertheless invalid if at the time of the interest's creation there was a possibility, no matter how remote, that they might not have done so. This makes the invalidating side of the common law rule harsh: the possibility of events that rarely, if ever, happen can invalidate an interest (and the intent of the donor).

The statutory rule, including Alaska's 1983 version (AS 34.27.010), alters the common law rule by establishing a "wait and see" element. Briefly, Alaska's current approach alleviates the harsh aspects of the common law rule by stressing actual rather than possible events.

However, our causal-relationship method of determining the measuring lives has been shown to be ambiguous and uncertain in application. It is difficult to understand. The NCCUSL's statutory rule in the attached bill alleviates the harshness of the common law rule by allowing an otherwise invalid nonvested property interest a maximum period of time to vest. The Uniform Rule adopts a flat period of 90 years for marking off the maximum period for vesting. This approach grants a nonvested interest a period of time during which it can validly vest or terminate. It also avoids the confusion and ambiguity of identifying actual measuring lives and it avoids the administrative costs of tracing those persons to see when the survivor dies. And it eliminates potentially wasteful litigation.

This new rule has been approved by the House of Delegates of the American Bar Association, the Board of Regents of the American

College of Probate Counsel, the Board of Governors of the American College of Real Estate Lawyers, and the Joint Editorial Board for the Uniform Probate Code. By August 1989, this Uniform Statutory Rule Against Perpetuities had already been enacted in nine states. Upon request, the Department of Law will be pleased to furnish the legislature with informative material (one item specifically analyzing Alaska law) written by Professor Lawrence W. Waggoner, of the University of Michigan Law School, and provided by the NCCUSL, along with the NCCUSL's official publication of the Act and its commentary.

I believe that this bill will make a significant improvement in Alaska perpetuities law. It will alleviate the harshness of the common law rule and provide a much more workable and less costly rule than our current AS 34.27.010. The statutory rule embodied in this bill is strongly recommended and supported by national organizations most concerned with and knowledgeable about this area of the law.

The multi-state nature of most family and other relationships in American life urges uniform treatment of these inheritance issues. I urge your favorable consideration of this bill.

Sincerely,

Walter J. Hickel

Walter J. Hickel
Governor

FAX (907) 463-3055 (907) 586-3539

DOUGLAS L. GREGG, Esq.
A Professional Corporation
ATTORNEY-AT-LAW
107 MUNICIPAL WAY, SUITE 2
JUNEAU, ALASKA 99801

April 22, 1992

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Re: House Bill 334;
Rule Against Perpetuities

Dear Mr. Donley:

The proposed Uniform Statutory Rule Against Perpetuities is, I understand, in your committee and may be coming up for consideration shortly. I am writing in support of the legislation. I think it would be fine if it were made part of the Uniform Probate Code (Title 13) but it could stand as a separate act, also.

There is common law rule against perpetuities as well as various state enactments including the Alaska statute on that subject and now this proposed legislation. All of these rules have one thing in common: They keep property from being held "in limbo" indefinitely. The ability to reach out "from the cold hand of the grave" and control property for excessive periods of time is very bad public policy and I think we all support the idea that sooner or later property has to vest in some person or entity.

The reason that we don't like some of the existing rules that attempt to remedy the problem is that they are subject to varying interpretations. Typically, the IRS will challenge someone's estate plan on the basis that it is "possible" that the property will not vest soon enough under the rule. The result can be the levying of a huge Federal estate tax. Some of the legislation already on the books around the country helps alleviate the problem of dealing with perpetuities but problems persist.

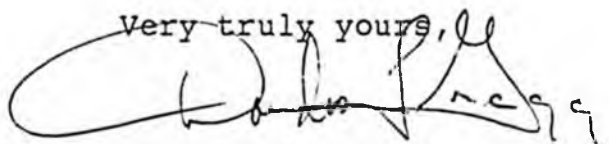
Bar examinations for hapless would-be attorneys may still include complicated questions involving the rule against perpetuities. Maybe HB 334 will even discourage such vicious practices in the preparation of bar examinations! Everyone who ever studied law remembers it as a difficult subject.

Any legislation that lays easy to follow ground rules for deciding whether the rule has been violated in a given document will be a blessing.

The proposed legislation makes it much easier to analyze any particular fact situation thereby resulting in fewer contests, court cases, and heartbreaks.

Thank you for allowing me to comment on this legislation.

Very truly yours,



DOUGLAS L. GREGG

DLG:wmg
Hand Delivery

LAW OFFICES
DILLON & FINDLEY
ONE SEALASKA PLAZA, SUITE 202
JUNEAU, ALASKA 99801
TELEPHONE (907) 586-4000
FACSIMILE (907) 586-3777

DENNIS C. BAILEY
CAROLINE B. CRENNA
PAUL L. DILLON
THOMAS W. FINDLEY
RICHARD D. MONKMAN
ARTHUR H. PETERSON

SITKA OFFICE:
514 LAKE STREET
SITKA, ALASKA 99835
TELEPHONE (907) 747-3900
FACSIMILE (907) 747-3990

February 26, 1992

Hon. Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: HB 334 (Uniform Statutory Rule Against Perpetuities) -- AARP support

Dear Rep. Donley:

A copy of the November 27, 1991 letter to me from the chair of the Alaska State Legislative Committee of the American Association of Retired Persons, Keith Campbell, supporting HB 334, is attached.

Please schedule the bill for a committee hearing soon.

The bill is highly desirable in two basic respects:

1. It provides a much better, simpler approach to the rule against perpetuities than both the common law rule and Alaska's current modification of that rule (AS 34.27.010). This version of the rule is easier to understand and apply.

2. It helps keep Alaska's Uniform Probate Code up to date.

If you would like to have more information on HB 334, please let me know.

In addition to the hearing, I urge favorable committee action on this bill. Thank you for your consideration.

Yours truly,

Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh

Enclosure: AARP letter

cc: w/enc.: Rep. Max Gruenberg
Alaska State Legislature

cc: w/o enc.: Rep. Fran Ulmer
Alaska State Legislature

Deborah Behr, Supervisor
Legislation/Regulations Section
Alaska Department of Law

Lori Nottingham, Dep. Legis. Liaison
Governor's Office

AARP

Bringing lifetimes of experience and leadership to serve all generations.

ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mr. C. Keith Campbell
P.O. Box 722
Seward, AK 99664
(907) 224-5631

VICE CHAIRMAN
Mrs. Mary Lou Meiners
805 Gold Bell
Juneau, AK 99801
(907) 586-2568

SECRETARY
Miss Ann L. Walsh
924 Kellum #201
Fairbanks, AK 99701
(907) 456-6737

COORDINATOR
Capital City Task Force
Mr. Joe Aller
Box 20301
Juneau, AK 99802
(907) 586 6680

November 27, 1991

Mr. Art Peterson
P.O. Box 20444
Juneau, Alaska 99802

Dear Mr Peterson

The State Legislative Committee of AARP wishes to inform you that we support HB 334 in its present form.

The Association advocates that states "Adopt theUniform Probate Code and other probate procedures that simplify, expedite, and reduce the costs of settling an estate, including probating wills, appointment of personal representatives, administrating estates, small estate procedures and fees."

The support of AARP would need to be reevaluated should substantial changes be made in the legislative process. We will have a member of our organization monitor the progress of HB 334.

Thank you for bringing this piece of legislation to our attention.

Sincerely,

Mr. C. Keith Campbell Chmn.

HB

341

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 15, 1992 FURTHER REFERRALS: Finance

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered: HB 341

HOUSE BILL NO. 341 COMPENSATE INNOCENT VEHICLE OWNERS

"An Act relating to compensation for propelled vehicles in the custody of a law enforcement agency; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 341 (TRA) [X] the same title [ ] a new title

[ ] have attached amendments(s)

[ ] do pass

[ ] do not pass

[X] no recommendations

[ ] individual recommendations

[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

[X] fiscal note(s) PS 4/15/92

[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		Dave Donley		✓	
		Elton		X	
		Mark Hamilton		X	
		G. Thomas		✓	

Dave Donley
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

Version: CSHB 341(TRA)

(H) Publish Date: 4/15/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Public Safety

Title: Compensation for loss of certain motor vehicles BRU: Violent Crimes Compensation Board

Component: Violent Crimes Compensation Board

Sponsor: Representative Parnell

Requestor: Representative Parnell COMPONENT SERIAL NO. | | 5 | 2 | 0 |

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

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	37.8	37.8	37.8	37.8	37.8	37.8
TRAVEL	3.0	3.0	3.0	3.0	3.0	3.0
CONTRACTUAL	110.8	110.8	110.8	110.8	110.8	110.8
SUPPLIES	8.2	8.2	8.2	8.2	8.2	8.2
EQUIPMENT	10.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	169.8	159.8	159.8	159.8	159.8	159.8
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER PFD Fund FUND SOURCE: 1050	169.8	159.8	159.8	159.8	159.8	159.8
TOTAL	169.8	159.8	159.8	159.8	159.8	159.8

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared By: Nola Capp Phone: 465-3040

Division: Violent Crimes Compensation Board Date: 3/17/92

Approved by Commissioner: Paula A. Hattan for Richard L. Burton

Agency: Department of Public Safety Date: 3/17/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

DRAFT SS HB 341 will require the Violent Crimes Compensation Board to compensate owners of motor vehicles seized by law enforcement agencies as evidence in criminal cases. The amount of compensation would be based on an estimate of the vehicle's value at the time it is seized and the vehicle's expected useful life. The fiscal impact is anticipated to be as follows:

Personal Services: A new position would be needed to provide support to the two-person staff of the Board. Each owner would have to file an application and go through the same process as any other claimant for compensation. This includes processing and numbering each claim, entering this information on the computer, writing letters to claimants, law enforcement agencies, and other persons who may have an interest in the motor vehicle in question. Each claim is reviewed and when complete, is xeroxed for the Board members. After the Board meeting, letters must be written and sent certified mail telling the claimants of the decision of the Board. If the claimant does not agree with the decision of the Board, he or she may request a hearing. The complete file is xeroxed for the hearing officer and the hearing is transcribed verbatim. The Board anticipates an additional 250 claims per year under this bill, which would more than double the claims filed in a fiscal year.

Clerk Typist III, Range 8/A (See New Position Request Form)	$ 37.8

Travel: By statute, all decisions on awards must be made by the Board. Because of the volume of claims that would be generated by this bill, it is estimated the number of Board meetings would increase from 4 meetings per year to 6 meetings per year.

2 Board meetings at $1500.00 per meeting	$ 3.0

Contractual: Payments to vehicle owners are estimated by Alaska State Troopers and the Anchorage Police Department as follows:

Payments	
Out of the estimated 250 additional claims a year, it is anticipated that 60 will be awarded. At an average value of $10,000, and with an expected life of 96 months, the monthly value would be $104	
(60 vehicles x $104 x 12 months) =	$ 74.8

Hearings	By statute, each claimant has the right to a hearing if they disagree with the Board decision. Each hearing costs approximately $1000 and it is estimated there would be an additional cost of 36 hearings based on 18 hearings per year at the current number of claims.	$ 36.0
	TOTAL CONTRACTUAL	$110.8
Supplies:	Estimated cost of office supplies	$ 4.0
	Estimated cost of new brochures and applications	$ 4.2
	TOTAL SUPPLIES	$ 8.2
Equipment:	Desk, chair, table, computer, printer, etc.	$ 10.0
	TOTAL	$169.8

Notes:

1) Equipment is needed in the first year only.

Position Title	Number of Positions	Range/Step	Bargaining Unit
Clerk Typist III	1	8/A	ASEA

Time Status	Staff Months	Location	Election District
PFT	12	Juneau	

Type of Expenditure		Amount
1	2	3
Salary*	25.2	
Benefits*	12.6	
Premium Pay (Included in Above)		
Other		
Total Personal Services		37.8
Travel		3.0
Contractual		110.8
Commodities		8.2
Equipment		10.0
Other		
Total Cost		169.8

Funding Source For Total Cost		
Federal Receipts	1002	
G.F. Match	1003	
General Fund	1004	
Program Receipts/GF	1005	
I-A Receipts	1007	
CIP Receipts	1061	
Other		169.8

* Personal Services Salary and Benefits Costs are from PACS calculations.

Justification

Passage of this legislation will increase the workload of the Violent Crimes Compensation Board office staff.

This position will be needed to provide support to the two-person staff of the Board. Each owner requesting compensation would have to file an application and go through the same process as any other claimant for compensation. This includes processing and numbering each claim, entering this information on the computer, writing letters to claimants, law enforcement agencies, hospitals, doctors and employers verifying and documenting expenses. Each claim is reviewed and when complete, is xeroxed for the Board members. After the Board meeting, letters must be written and sent certified mail telling the claimants of the decision of the Board. If the claimant does not agree with the decision of the Board, they request a hearing. The complete file is xeroxed for the hearing officer and the hearing is transcribed verbatim. It is estimated this legislation would more than double the claims filed in a fiscal year.

REQUEST FOR NEW POSITION

AGENCY Department of Public Safety

BRU Violent Crimes Compensation Bd.

COMPONENT Violent Crimes Compensation Bd.

Revised Date

FY 93

Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Kevin "Pat" Parnell

University - Midtown, District 10

(907) 465-2647
State Capitol, Rm. 125
Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 341 "VEHICLE REIMBURSEMENT"

House Bill 341 came about as a result of a shooting on the Glenn Highway in Anchorage last year. This is where three young people were in a car and one of them shot the window out of another vehicle from the back, killing the passenger in the front seat.

The vehicle in which the passenger was riding, was then impounded as evidence. The owner was not a party to the incident and was an innocent bystander. He was not able to keep his car for use to and from work, or for any other purpose. The owner was still responsible for making car and insurance payments. Because of this, he was not able to afford another piece of transportation. Luckily for him, a group rallied and donated a car for his use.

In this particular case, the gentleman was exposed to not having his vehicle for almost one year. It seems only fair that in cases where the owner of the vehicle is not charged with anything by the authorities, that if they need the vehicle for evidence, compensation should be forthcoming. For this and for further damage sustained to the vehicle.

"Violent Crimes Compensation Board" will allow people to file claims with the Board for reimbursement.

Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Kevin "Pat" Parnell

University - Midtown, District 10

(907) 465-2647
State Capitol, Rm. 12S
Juneau, AK 99801-1182

SECTIONAL ANALYSIS FOR SSHB 341

Section 1. AS 12.36 is amended with a new section,

DISPOSITION OF RECOVERED OR SEIZED PROPERTY.

Sec. 12.36.070. NOTICE OF RIGHT OF COMPENSATION FOR LOSS OF MOTOR VEHICLE.

The law enforcement agency who seizes a motor vehicle for purpose of an investigation, shall notify the owner of the right to obtain compensation for the temporary or permanent loss of it.

Section 2. AS 18.67.010 VIOLENT CRIMES COMPENSATION BOARD [PURPOSE], is amended.

Places wording or whose motor vehicles are seized by law enforcment agencies, to give the "Violent Crimes Compensation Board the needed authority to hear these cases.

Section 3. AS 18.67.030(b) APPLICATION FOR COMPENSATION.

Has wording inserted that requires that a report of the condition of the vehicle in question, shall be submitted to the Board by the applicant, in the application process.

Section 4. AS 18.67.070, STANDARDS FOR COMPENSATION.

States that one of the standards for compensation is the loss of a motor vehicle. Also that the Board shall determine the amount of compensation payable for the loss, based on current value of car, and the expected usage of it.

The formula for usage is determined as value of car (V) divided by expected life (EL), yields monthly compensation (MC) owed [v/el = mc].

Section 5 - 8. AS 18.67.080 (a, b, c, & d) AWARDING COMPENSATION is amended.

Includes temporary or permanent loss of a motor vehicle[.]

Section 9. AS 18.67.101 INCIDENTS AND OFFENSES TO WHICH THIS CHAPTER APPLIES, is amended to include new subsection.

(b) Allows Violent Crimes Compensation Board to determine compensation for victims under this section. It is noted that the vehicle in question must be necessary to the conduct of the owner's trade or business. It is not considered to be necessary solely because the vehicle is driven between the owner's home and principal place of work.

Section 10 - 11. AS 18.67.110 (a & b) NATURE OF THE COMPENSATION is amended.

Places temporary or permanent loss of a motor vehicle into these sections.

Section 12. AS 18.67.115 is a new section, SPECIAL PROCEDURES FOR COMPENSATION LOSS OF A MOTOR VEHICLE.

If the board determines cost of vehicle is less than $1000 dollars, it shall pay a lump sum to the victim.

Section 13 - 15. AS 18.67.130 (a, b, & c) LIMITATIONS ON AWARDING COMPENSATION is amended.

Includes temporary or permanent loss of a motor vehicle (a) and also including in a claim for compensation for personal injury or death, (b & c) to give them standing.

Section 16. AS 18.67.130 LIMITATIONS ON AWARDING COMPENSATION is amended with a new section.

States that compensation for this cannot be done if the person making the claim is or could be charged with the criminal offense for which the motor vehicle was seized.

Section 17. AS 18.67.135 is amended with a new section, ACTION FOR INVERSE CONDEMNATION OR DAMAGE TO A MOTOR VEHICLE.

Section 18. AS 18.67.140, RECOVERY FROM OFFENDER, is amended.

Adds temporary or permanent loss of a motor vehicle, and loss of the motor vehicle to this section.

Section 19. AS 18.67.180, DEFINITIONS, is amended.

Includes definition "motor vehicle," and adds to the definition of "victim," to include temporary or permanent loss of a motor vehicle.

Section 20. Effective date is July 1, 1992.

(7) B

HOUSE COMMITTEE REPORT

4-15-92

Judiciary
Finance

Date Referred: May 18, 1991 FURTHER REFERRALS:

Date of Committee Action: 4/14/92

The TRANSPORTATION Committee considered: HB 341

HOUSE BILL NO. 341 CRIME VICTIM COMPENSATION

"An Act relating to compensation for propelled vehicles in the custody of a law enforcement agency; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 341 (TRA) [ ] the same title [✓] a new title
[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[✓] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[✓] fiscal impact OPS [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Richard Foster	*	Phil Hinson		✓	
		Drew A. Kenan		✓	
Eugene A. Kulynych	@				

Richard Foster
CHAIRMAN'S SIGNATURE

Anchorage Daily News

Gerald E. Grilly
Publisher

Howard Weaver
Editor

Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

Justice?

Innocent victims find indifference

Alaska, like the rest of the country, strives to have a law enforcement system in which justice is blind. For those accused of crimes, it's a noble and appropriate goal.

But as presently structured, the criminal justice system too often is blind to the plight of innocent victims and witnesses. All the attention focuses on uncovering suspects and proving their guilt or innocence. The needs of victims and witnesses are an afterthought.

Take the case of Eagle River resident Rob Chamberlain. He was driving his $5,000 sports car when his passenger was shot and killed by another motorist. His car has been impounded as evidence until the suspect goes on trial. In the meantime, Mr. Chamberlain has to bum rides for his lengthy trip to work, while he's stuck paying for a car he cannot use.

In a system that cared about justice for innocent bystanders, there would be a simple process for helping people like Mr. Chamberlain. Society has a legitimate need to take his car for evidence. It's less clear why society should be allowed to take it without just compensation.

The violent crimes compensation board, welcome as it is, provides no relief here. The board does not compensate victims of property crimes. It cannot pay for economic losses that an investigation or prosecution inflicts on innocent witnesses.

One reason society doesn't do more for victims and witnesses is money. The $600,000 a year Alaska spends on victims of violent crimes is barely enough to meet the demand. Helping innocent witnesses with their losses and expenses could cost considerably more.

But then, no one ever said justice is cheap.

Justice takes toll of innocent man

Driver of car impounded after highway killing must still pay

By SHEILA TOOMEY
Daily News reporter

The last time Rob Chamberlain saw his nifty red sports car it was surrounded by police and his friend lay dead in the front seat.

Chamberlain, 21, is the owner of the 1985 Toyota MR2 where Jeffrey Cain died, shot to death last month from another car at the Muldoon exit off the Glenn Highway. Chamberlain was driving that night, on his way to drop Cain off at Kentucky Fried Chicken, when a high-powered rifle bullet pierced the rear window and killed his friend instantly.

Chamberlain bought the car for $5,000 three weeks before the shooting and, for a while, what happened to it was the least of his concerns. The police impounded it for their investigation, which he figured would take a few weeks, maybe even a month or two, and that seemed reasonable.

But now Chamberlain has been told he can't have the car until after the two men accused in Cain's death are tried — which could be a year or more. That seems unreasonable, he said.

"I can't afford to make the payments and get another car."

Assistant District Attorney Steve Branchflower, who will be taking the case to trial, said he really has no choice but to keep the Toyota.

"You never know what kind of argument a defense attorney is going to make," Branchflower said. "I certainly don't want to heap any more inconvenience on the owner, but it's important in a case like this that we preserve until after the trial every piece of evidence. We have no way of telling today what might develop as an issue tomorrow."

Also, Branchflower said, jurors might ask to see the car. "My duty is to err on the side of caution."

In the face of death, the inconvenience of losing a car seems a small thing. But in the life of a real person, a young man who lives

Please see Back Page, TALES

HB

348

..OUSE COMMITTEE REPC..T

Rules
4/27

(7)
Date Referred: March 25, 1992 FURTHER REFERRALS:

Jud.
cc

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered: HB 348

HOUSE BILL NO. 348 GROUP HEALTH & LIFE INS: STATE EMPLOYEES

"An Act relating to the provision of group life and health insurance for state employees by means of self-insurance; and to payment of administrative costs of providing group health and life insurance for state employees."

RECOMMENDATIONS: [ ] the same title
be replaced with CS HB 348 (STATE AFFAIRS) [X] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _____ [X] zero fiscal note(s) Admin/Revenue 2-26-92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Dave Donley	✓				
Meg Gruenberg	✓				
Terry Martin	✓	Mark Donley		X	

Dave Donley

FISCAL NOTE

BILL NO. CSHB 348 (SA)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: March 18, 1992
Title: An Act relating to the provision of group life and Health insurance by means of self-insurance

Department Affected: Administration
BRU: Retirement and Benefits

Component: Retirement and Benefits

Sponsor: House Rules Committee
Requestor: House State Affairs Committee

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
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

Estimate of current year impact: none

ANALYSIS: (attach a separate page if necessary.) This bill would authorize the Department of Administration to utilize self-insurance in addition to the competitive bid process for insurance carriers. Self-insurance could then be undertaken assuming that savings or other advantages could be demonstrated.

Prepared By: Gary Bader Gary M. Bader
Division: Retirement and Benefits
Phone: 465-4470
Date: March 18, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 3/20/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).
Rev 10/90

FISCAL NOTE No. 2

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: HB 348
(H) Publish Date: 2-26-92

Revision Date:

Department Affected: Administration

Title: An Act relating to group life and health insurance for State employees by means of self-insurance.

BRU: Risk Management

Component: Risk Management

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO. 0 0 7 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Donald J. Hitchcock
Phone: 465-2180
Division: Risk Management
Date: 12.11.91

Approved by Commissioner: Nancy Bear Usera
Agency: Administration
Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
bt/FN34601B.KPn

COMMITTEE COPY

HB 348

CONTINUATION OF FISCAL NOTE ANALYSIS
House Bill No. 348

This bill is enabling legislation to allow the State to self insure state employee medical and/or life insurance benefits. It is anticipated that any possible increased state administrative costs for such a program should be more than offset through increased income from cash flow and other cost savings. In other words a self insurance program would be implemented only if cost savings is possible.

Potential benefits of a self insurance program would be elimination of certain insurance company charges; positive control of the insurance program which might include use of employee incentives to reduce costs; and increased competition from bidders for administration and/or aggregate loss (excess) insurance policies.

The present medical benefits program for active state employees costs the State approximately $65,000,000. a year therefore cash flow and interest earnings may become an important fiscal consideration.

Possible problems due to a catastrophic increase in claims costs for any one year may be controlled through purchase of aggregate loss policies to pay excess costs either on an individual claim basis or in the aggregate.

Passage of this enabling legislation is fundamental to making all options available to the State in the administration and implementation of a cost effective group health and life benefits plan for its employees.

COMMITTEE COPY

CSHB 348(State Affairs)
Sectional Analysis

April 14, 1992

"An Act relating to the provision of group life and health insurance for state employees by means of self-insurance; and to payment of administrative costs of providing group health and life insurance for state employees."

Section 1. Current law requires DOA to obtain health coverage from an insurance company or HMO licensed in Alaska.

The proposed language extends the "licensed in Alaska" requirement to the procurement of excess loss insurance and includes hospital or medical service corporations in the carriers eligible to provide group health tc the the state. Excess loss insurance is commonly used in self-insurance situations.

Section 2. Current law requires the State to request bids from Alaska licensed insurance carriers for health coverage at least every five years and that the carrier with the lowest responsible bid shall be the winning bidder.

The proposed language would mandate the same five year bid cycle and "licensed in Alaska" requirement for excess loss coverage and benefit claims administration. Amending language would also include hospital and medical service corporations as a carrier eligible to receive bids.

Section 3. Current law requires the health insurance benefits to be provided by insurance companies as outlined in Section 2.

The proposed language authorizes DOA to self-insure health insurance benefits as an alternative to using insurance companies. The language also requires that any excess loss coverage be procured the same as health insurance.

Section 4. Current law establishes the group health and life benefits fund as a special account in the general fund to provide carrier insured health and life coverage. Current language describes what money the fund shall consist of and requires the commissioner of administration to maintain accounts and records for the fund. Inasmuch as payment of premium has been made directly to insurance carriers, this fund has not been used. However, it would be necessary under a self-insurance arrangement.

Proposed language would expand the purposes of the fund to include self-insurance arrangements.

Section 5. Current law requires the commissioner to obtain an actuarial determination of the estimated cost of the insured coverages and to set the contribution rate to the fund for both employer and employee. The

current language further requires that premiums and claims for carrier insured benefits be paid with money in this fund.

The proposed language broadens the kinds of payments that can be made from the fund to include self-insurance arrangements. The proposed language would also allow administrative costs of the health program to be paid from the fund.

Section 6. Current law allows the State to receive reimbursement of its administrative expenses from insurance carriers.

The proposed language would allow the department to also contract with a third party administrator or a hospital or medical service corporation to pay claims and payments. A third party administrator is normally used in a self-insurance situation.

Section 7. Current law allows the commissioner to have the surplus of the fund or some part of it invested by the commissioner of revenue.

The proposed language would allow administrative costs to be included in the makeup of the fund when determining whether a surplus existed. This fund would become more relevant if the State were to implement self-insurance.

FISCAL NOTE

. BILL NO. HB 348

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:

Title: An Act relating to the provision of group life and health insurance for state employees by means of self-insurance

Department Affected: Administration
BRU: Retirement & Benefits

Component: Retirement & Benefits

Sponsor: House Rules Committee
Requestor: Governor

COMPONENT SERIAL NO. 64

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
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

Estimate of current year impact: None

ANALYSIS: (attach a separate page if necessary.) This bill would authorize the Department of Administration to utilize self funding for health insurance in addition to the competitive bid process for insurance carriers. Self-insurance could then be undertaken assuming that savings or other advantages could be demonstrated.

Prepared By: Gary Bader
Division: Retirement and Benefits
Phone: 465-4470
Date: 12.12.91

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 1/27/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).
Rev 10/90

FISCAL NOTES

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 348

Revision Date:

Department Affected: Administration

Title: An Act relating to group life and health insurance for State employees by means of self-insurance.

BRU: Risk Management

Component: Risk Management

Sponsor: Rules Committee

Requestor: Governor

COMPONENT SERIAL NO. 0 0 7 1

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Donald J. Hitchcock
Phone: 465-2180
Division: Risk Management
Date: 12.11.91

Approved by Commissioner: Nancy Hear Usera
Agency: Administration
Date: 1/27/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

Rev 10/07/91
SH/FN/346018.KPH

CONTINUATION OF FISCAL NOTE ANALYSIS
House Bill No. 348

This bill is enabling legislation to allow the State to self insure state employee medical and/or life insurance benefits. It is anticipated that any possible increased state administrative costs for such a program should be more than offset through increased income from cash flow and other cost savings. In other words a self insurance program would be implemented only if cost savings is possible.

Potential benefits of a self insurance program would be elimination of certain insurance company charges; positive control of the insurance program which might include use of employee incentives to reduce costs; and increased competition from bidders for administration and/or aggregate loss (excess) insurance policies.

The present medical benefits program for active state employees costs the State approximately $65,000,000. a year therefore cash flow and interest earnings may become an important fiscal consideration.

Possible problems due to a catastrophic increase in claims costs for any one year may be controlled through purchase of aggregate loss policies to pay excess costs either on an individual claim basis or in the aggregate.

Passage of this enabling legislation is fundamental to making all options available to the State in the administration and implementation of a cost effective group health and life benefits plan for its employees.

(7)

HOUSE COMMITTEE REPORT

Date Referred: February 26, 1992 FURTHER REFERRALS: Judiciary

Date of Committee Action: 3/23/92

The STATE AFFAIRS Committee considered: HB 348

HOUSE BILL NO. 348 GROUP HEALTH & LIFE INS: STATE EMPLOYEES

"An Act relating to the provision of group life and health insurance for state employees by means of self-insurance; and to payment of administrative costs of providing group health and life insurance for state employees."

RECOMMENDATIONS: [ ] the same title
be replaced with CS HB348 (STA) [X] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[ ] zero fiscal note _ _____ 2[X] zero fiscal note(s) ADMIN

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM

CHAIRMAN'S SIGNATURE

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

March 20, 1992

The Honorable Gene Kubina
Chairman, House State Affairs
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative Kubina:

During the State Affairs Committee's consideration of HB 348, the department was asked to provide a compilation of the various risk exposures of the State and how these risks were insured.

Enclosed is a general listing of insurance coverages administered by the State. The amount of self-insurance on each of these areas, if any, is indicated.

I appreciate the committee's interest, and if additional clarification or information is needed, please let me know.

Sincerely,

Nancy Bear Usera
Commissioner

NBU/nl
Enclosure
cc: Paul Fuhs
Legislative Liaison
Office of the Governor

02-B9LH

STATE OF ALASKA

FY 92 Insurance Program

Coverage	Amount of Self-Insurance Per Occurrence	Limit of Insurance Coverage
PROPERTY (all risk)	$1,000,000	$100,000,000
(EARTHQUAKE & FLOOD)	$1,000,000 minimum or 2%	$100,000,000
BOILER & MACHINERY	$10,000	$10,000,000
LIABILITY - Per occurrence (including general liability, auto, professional liability, medical malpractice, directors & officers, etc.)	$5,000,000	$100,000,000 (excludes discrim., pollution, asbestos, punitive, etc.)
LIABILITY SIR AGGREGATE	$10,000,000	$100,000,000
FOREIGN LIABILITY	NONE	$1,000,000
WORKERS' COMPENSATION	Full self insurance	None
MARINE LIABILITY	$1,000,000	$200,000,000
Marine Vessels	$1,000,000	Specified values
FERRY DOCKS	$250,000	Stated values $5,000,000 Limit
AVIATION LIABILITY		
Airports	$250,000	$500,000,000
Aircraft	$250,000	$500,000,000
National Guard	$250,000	$500,000,000
MULTI-LINE AGGREGATE		
(Property & Marine)	$1,000,000 SIR	$5,000,000
(Aviation)	$1,500,000 SIR	$300,000,000
EMPLOYEE FIDELITY BOND	$250,000	$20,000,000
FOUR DAM POOL (AEA)	$10,000,000 except quake & flood 2% - values at locations	$50,000,000
SBS Employee Life Insurance	None	$48,000/occurrence
SBS Acc. Death & Dismemberment	None	$100,000/occurrence

Coverage	Amount of Self-Insurance Per Occurrence	Limit of Insurance Coverage
SBS Disability	None	Varies with salary
Basic Employee Life Insurance	None	$2000/occurrence
Basic Employee Acc. D & D	None	$5000/occurrence
Optional Employee Life	None	$60,000/occurrence
Optional Employee Acc. D & D	None	$120,000/occurrence
Employee Travel Accident	None	$100,000/occurrence
Employee Health Insurance	None	$250,000/lifetime
SBS Health Insurance II	None	$250.000/lifetime
SBS Health Insurance I	None	$1,000,000/lifetime

MEMORANDUM

State of Alaska
Department of Law

TO: Honorable John Andrews
Commissioner
Department of Administration

DATE: March 14, 1989

FILE NO. 663-89-0230

TEL. NO. 465-3600

SUBJECT: Authority for self-insurance and cafeteria plan

FROM: Virginia B. Ragle
Assistant Attorney General
Governmental Affairs-Juneau

You have asked whether the Department of Administration (the department) has authority to provide group health insurance coverage for state employees by self-insuring or through cafeteria plan policies. There is no clear statutory authority for the department to provide the coverage by self-insuring. We recommend that legislation be introduced, or that a pending bill be amended, to establish authority for self-insurance, if the department chooses to pursue that method of providing group health coverage. We conclude that the department currently has authority to obtain a policy that provides insurance coverage through a cafeteria plan. However, depending upon how the cafeteria plan is implemented, regulatory and statutory changes may be required.

I. Self-insurance

The department is authorized by AS 39.30.090 to provide group insurance for employees. Under that statute, the department may obtain a policy or policies of group insurance for state employees, retirees, and employees of other participating governmental units. The statute sets out the kinds of coverage that may be provided in a policy, the persons who must be covered by a policy (unless exempt under regulations), and the manner in which the department must obtain the policy from insurance carriers.

The statute neither specifically prohibits nor specifically authorizes provision of group health coverage through self-insurance. However, the statute includes mandatory language such as, "The Department of Administration shall obtain the insurance policy from any insurer authorized to transact business in the state," and also requires that an opportunity to bid to provide the insurance benefits be made available to insurance carriers at least every five years. These provisions indicate that the legislature contemplated that liability for group coverage for state employees would be insured under policies obtained from insurance companies, with rates established competitively.

AS 39.30.095 requires the commissioner of administration to establish a group health and life benefits fund. The language of AS 39.30.095 does not clearly authorize self-insurance. Although this statute provides that the department shall pay premiums and claims from the fund, the department is required to make the payments in accordance with insurance policies in effect under AS 39.35.090 and under the Supplemental Benefits System (SBS).

Legislative history does not shed much light on the purpose of AS 39.30.095. We have traced the origin of that section to "housekeeping" legislation requested by the department in 1980. Dept. of Law file no. J-77-054-81. The department explained that the fund would

> eliminate the advantage the insurance company now has to the interest earned from the funds it holds. The language is permissive rather than mandatory; the state could still allow the insurance company to hold the funds. [1/]

The section-by-section analyses that accompanied the bills in which the provisions of AS 39.30.095 appeared during the 1981 and 1982 legislative sessions (HB 121, SB 121, and SB 827) explained that the section was

> included at the urging of the State's benefits consultants. The existence of a fund will provide the flexibility needed to negotiate for and procure more favorable terms from insurance companies. Our consultants inform us that such added flexibility has led to substantial savings in other systems.

The private consultants have advised us that it was their intention that in recommending establishment of the fund, in addition to earning interest on the fund, the state would gain the flexibility to self-insure. The consultants' initial recommendation of language for the section included specific reference to self-insurance. However, no such specific reference was included in any draft of the bills that we have found. Furthermore, the section was not explained to the legislature as having the effect of authorizing self-insurance. In testimony to legislative committees, representatives of the division of retirement and benefits

---

1/ October 30, 1980 memorandum from Director of Administrative Services Crondahl to Commissioner Hudson.

included the section with provisions of the bills that were characterized as "strictly housekeeping." 2/

Because the statutes provide for provision of group health coverage through policies obtained from insurance companies and there is no specific authorization for provision of group health coverage by self-insurance, or even an indication that the legislature ever considered self-insurance as an option, we recommend that legislation be pursued to provide specific authority for alternatives to conventional insured plans, such as self-insurance. We note that last year the Washington legislature passed legislation, known as the Washington State Health Care Reform Act of 1988, which includes specific authority for self-insurance of state employee health benefits. A copy of the Washington statutes, RCW 41.05, is enclosed.

II. Cafeteria plan

There are no provisions in AS 39.30.090 that prescribe the level of health insurance coverage that must be provided in the policy or policies obtained by the department, the amount of deductable that a policy may require covered individuals to pay, or the manner in which premiums to insurance companies must be paid. The department has broad authority to determine the terms and structure of the insurance policies it obtains. 3/ Provision of health insurance coverage under a "cafeteria plan" qualified under 26 U.S.C. 125 would be within the scope of that authority, and would not conflict with any provision of AS 39.30.090. 4/

2/ March 18, 1982 testimony of Director Paul Arnoldt on SB 827 to Senate State Affairs Committee; May 12, 1982 testimony of Deputy Director Ken Humphreys on SB 121 to House Health, Education, and Social Services Committee.

3/ Of course, some issues regarding employee health benefits are subject to collective bargaining under the Public Employment Relations Act, AS 23.40.070 -- 23.40.260. See 1978 Op. Att'y Gen. No. 3 (Jan. 23); 1988 Inf. Op. Att'y Gen. (Jan. 1; 366-356-83).

4/ The advantage of such a plan is that, if any of the benefit options offered by the plan require payment of part of the premium by the employee, the employee's part of the premium could be paid by a voluntary reduction of pretax wages, which would reduce the employee's federal income taxes. Nothing in AS 39.30.090 precludes the department from offering insurance options that require employees to contribute to premiums.

Depending upon how the department chooses to implement the cafeteria plan, regulatory and statutory changes may be needed. For example, since AS 30.30.090 requires the group policy to cover state employees, their spouses, and their dependent children unless exempt under regulation, if the plan allows an employee to elect individual or family coverage, a regulation must be adopted to permit exemption of coverage for family members upon election by the employee.

Some mention has been made of a plan that would allow employees to choose between receipt from the state of cash or of various levels of health insurance coverage. Cash received by employees from the state under the plan would constitute taxable income under the Internal Revenue Code. If this kind of provision is included in a cafeteria plan chosen by the department, statutory changes may be needed to clarify that cash received under the plan does not constitute "compensation" for purposes of determining employees' contributions to the state's retirement systems or SBS or determining the amount of employees' retirement benefits. Legislative authorization may also be needed to allow cash to be paid under the cafeteria plan to state employees who are subject to the state pay plan under AS 39.27.

Please let us know if we can provide further advice in this matter.

VBR/pjg

Enc.

cc: Sally Smith, Director
Division of Retirement and Benefits
Department of Administration