

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7023 HOUSE JUDICIARY

246

**Administrative
Order No. 81**

1984

DEPARTMENT OF ALASKA

serve a legitimate management purpose.

3. DEFINITIONS

3.1 Harassment: Unwanted communication and/or conduct by a supervisor, co-worker or non-employee in the workplace which adversely affects the employment relationship or working environment for the employee or applicant for employment and is based on the sex, race, religion, national origin, age, handicap, marital status, changes in marital status, pregnancy or parenthood of that individual. Harassment may include slurs, abusive language, threats, derogatory comments, unwelcome jokes, teasing and other such verbal or physical conduct.

3.2 Sexual harassment: Addressed and defined by the U.S. Equal Employment Opportunity Commission in the Federal Guidelines on Discrimination Because of Sex published on November 10, 1980, and codified as 29 CFR Section 1604.11, sexual harassment is defined as follows:

"(a) Harassment on the basis of sex is violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment."

4. GUIDELINES FOR THE IMPLEMENTATION OF POLICY

4.1 Responsibility for Implementation:

- (a) Overall responsibility for the administration of this order is delegated to the Director of the Division of Equal Employment Opportunity.
- (b) All agency heads, managers and supervisors within the Executive Branch of State Government are responsible for taking immediate and appropriate corrective action where they have any knowledge of such prohibited practices. Such corrective actions should be taken only after consultation with the State Division of Equal Employment Opportunity.

4.2. Complaints:

- (a) Employees believing they have been subjected to harassment

1/22/92
Anchorage Daily News

Bill aims to 'get the word out' on sexual harassment

The Associated Press

JUNEAU — Employers with 15 or more workers would be required to post information about sexual harassment in the workplace under proposed legislation introduced in the Senate Tuesday.

Notices must be placed in "prominent and accessible" locations, and include the federal definition of sexual harassment, a list of state and federal agencies that accept harassment complaints, and deadlines for filing complaints.

"I just don't think people know what constitutes sexual harassment in the workplace," said Sen. Rick Uehling, R-Anchorage and the bill's sponsor. "This bill is just trying to get the word out. It's a start."

Maine has adopted a similar law, he said.

Paula Haley, executive director of the state Human Rights Commission in Anchorage, said she reviewed a copy of the proposal Monday and planned to discuss it with the seven commissioners this week.

"I think posting notices about discrimination can be effective in advising employees of their rights and reminding employers of their responsibilities," Haley said.

Sexual harassment complaints filed with the commission last year doubled to about 28 cases from 14 the year before, Haley said. At least one of the cases investigated last year involved sexual harassment against a man.

Senate Bill 363 was assigned Tuesday to the Finance and Labor and Commerce committees.

SJR

|

(7)

HOUSE COMMITTEE REPORT

Date Referred: May 18, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/6/92

The JUDICIARY Committee considered:

SJR 1

SENATE JOINT RESOLUTION NO. 1

RIGHT TO KEEP AND BEAR ARMS

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

RECOMMENDATIONS:

be replaced with HCS SJR 1 (JUDICIARY) [X] the same title [] a new title

[] have attached amendment(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) Gov-Elections 3/6/92 Law-Proc. 3/6/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dave Donley</i>	✓				
<i>Mike Henderson</i>	✓				
<i>Terry Martin</i>	✓				
<i>Mark Stanley</i>	X				
		<i>J. Ellis</i>		X	
<i>Tim St. ...</i>	✓				

Dave Donley
CHAIRMAN'S SIGNATURE

Alaska State Legislature



House of Representatives House Judiciary Committee

Chairman Dave Donley

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

LETTER OF INTENT

HCS SJR 1 (JUD), PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF ALASKA RELATING TO THE INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS.

It is the intent of the House Judiciary Committee in adopting the language in Section 2 of HCSSJR 1 (JUD), providing that the 1992 amendment of Article I, Section 19, of the Alaska Constitution does not "affect or change the judicial standard of review applicable to laws relating to the misuse of arms", that the standard of review used by the courts should remain flexible over time.

In cases involving firearms, the Alaska courts have applied the appropriate standard of review in the past, and there is no reason to adopt one specific standard of review to be applied for all time. The flexibility of this approach allows the legislature and the court to adequately respond to future problems that may not be apparent now. Decisions in this area must be made on a case-by-case basis, weighing the individual interests in bearing arms and in privacy, versus the state interests in public safety and welfare.

In addition, in adopting Section 1 of this resolution and removing the "well-regulated militia" language, the House Judiciary Committee does not intend to affect in any way the status of the state militia.

FISCAL NOTE

No. 1

Version: SJR 1

(S) Publish Date: 3/6/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: 01/29/91

Department Affected: OFFICE OF THE GOVERNOR - ELECTIONS

Title: Amendment to Constitution

BRU: Elections

Right to keep and Bear Arms

Component: II - Primary and General Elections

Sponsor: Senator Rodey

Requestor: Judiciary

COMPONENT SERIAL NO.

0	0	2	2
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		2.2*				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2.2*				

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		2.2*				
FEDERAL FUNDS						
OTHER						
TOTAL		2.2*				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: -0-

ANALYSIS: (Attach a separate page if necessary.) * This figure covers cost of inclusion of information about this issue in the Official Election Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared By: Linda Edgeworth, Information Officer Phone: 465-4611
Division: Division of Elections Date: 01/29/91

Approved by Commissioner: Charles E. Mickelson
Agency: Division of Elections Date: 1-29-91

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

FISCAL NOTE

No. 2
 Version: STR 1
 (S) Publish Date: 3/6/91

STATE OF ALASKA
 1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "...amendment to the Constitution... BRU: Prosecution
relating to the...right to keep & bear arms." Component: Criminal Justice Litigation
 Sponsor: Senator Rodey
 Requestor: Senate Judiciary COMPONENT SERIAL NO.

		8	9
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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.)
 Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: February 4, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: February 4, 1991

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 1

Senate Joint Resolution No. 1 would place a ballot proposition before the voters at the next general election to amend Article 1, Section 19, of the state's constitution, regarding the right to bear arms. Because the purpose of the resolution is to place a constitutional amendment proposal before the voters, adoption of the resolution by itself will not have a fiscal impact on the Department of Law.

Eventual voter adoption of the amendment might lead to a fiscal impact at some future date; however, determination of such a possible impact, at this time, is speculative at best. No one can predict the full legal effect of the proposed constitutional amendment with any degree of certainty, but there is a possibility that adoption of the proposed amendment would invalidate existing state laws regulating firearms. These include laws relating to concealed weapons and the possession of guns by felons. They also include laws that prohibit possession of certain weapons such as switchblades, fully automatic weapons or sawed-off shotguns, possessing firearms while intoxicated, and removing a firearm's serial number.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SJR 1

Revision Date: 01/13/92
Title: Amendment to the Constitution RE: Right to Bear Arms
Sponsor: Senator Rodey
Requestor: House Judiciary

Department Affected: Office of the Governor-Elections
BRU: Division of Elections
Component: 11-Primary and General Elections

COMPONENT SERIAL NO.

0	0	2	2
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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	2.2*	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	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	2.2*	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	2.2*	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.) * This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on this measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be: 53.4.

Prepared by: Elizabeth Ziegler, Deputy Director
Division: Elections

Phone: 465-4611
Date: 01/13/92

Approved by Commissioner: *Charles E. Hickman*
Agency: Office of the Governor

Date: 01-13-92

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCS SJR 1 (STA

Revision Date: January 21, 1992 Department Affected: Department of Law
 Title: "...amendment to the Constitution..." BRU: Prosecution
 relating to the...right to keep & bear arms. Component: Criminal Justice Litigation
 Sponsor: Representative Zawacki
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

		8	9
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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						
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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.)

Please see the attached analysis.

Richard I. Pegues

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services / FAR Date: January 21, 1992
 Approved by Commissioner: Charles B. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HCS SJR 1 (STA)

The House State Affairs Committee Substitute for SJR 1 would place a ballot proposition before the voters at the next general election to amend Article 1, Section 19, of the state's constitution, regarding the right to bear arms. Because the purpose of the resolution is to place a constitutional amendment proposal before the voters, adoption of the resolution by itself will not have a fiscal impact on the Department of Law.

The proposed amendment expands the current constitutional provision to state in the title a right to keep and bear arms, and not simply bear arms. It also states that the right of the people to keep and bear arms shall not be denied where formerly it stated that this right shall not be infringed. Last, the proposed amendment adds the statement: "The individual right to keep and bear arms shall not be unreasonably infringed by the State or a political subdivision of the State."

No one can predict the full legal effect of this proposed amendment. However, inclusion of the qualifying phrase that the right to keep and bear arms shall not be unreasonably infringed, appears to retain the existing legislative power to adopt laws regulating firearms. These include laws relating to concealed weapons and the possession of guns by felons. They also include laws that prohibit possession of certain weapons such as switchblade knives, fully automatic weapons or sawed-off shotguns, possessing firearms while intoxicated, and removing a firearm's serial number. Because current state laws regulating firearms will probably be maintained if this substitute proposal is eventually adopted by the voters, there should not be a long-term fiscal impact.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HCS SJR 1(SA)

Revision Date: _____ Department Affected: Public Safety

Title: An Amendment relating to the BRU: Alaska State Troopers
individual right to keep and bear arms Component: Detachments

Sponsor: Senator Rodey

Requestor: House Judiciary COMPONENT SERIAL NO.

	7	9	9
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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-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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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 estimate what fiscal impact the adoption of HCS SJR 1(SA) would have on the Alaska State Troopers and law enforcement.

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

Division: Commissioner's Office Date: 3/16/92

Approved by Commissioner: _____ Richard L. Burton

Agency: Department of Public Safety Date: 3/16/92

CPB
3/16/92

(7)

Date Referred: April 26, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 5-17-91

The STATE AFFAIRS Committee considered:

SJR 1

SENATE JOINT RESOLUTION NO. 1

RIGHT TO KEEP AND BEAR ARMS

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

RECOMMENDATIONS:

be replaced with H.C.S. SJR 1 (HSTA) 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)

fiscal impact _____

zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Senate Division of Elections 3-6-91

zero fiscal note(s) Senate Law 3-6-91

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>E. Bruckman</u>	<input type="checkbox"/>				
<u>X. Gruenberg</u>	<input type="checkbox"/>				
<u>TAMM</u>	<input checked="" type="checkbox"/>				
<u>Vladimir Choguet</u>	<input checked="" type="checkbox"/>				
<u>Gene Kubisa</u>	<input checked="" type="checkbox"/>				

Gene Kubisa
CHAIRMAN'S SIGNATURE

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376



CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Representative Dave Donley
RE: Department of Law memorandum of 3/13/92 on SJR 1.
DATE: March 16, 1992

This is a brief response to the position paper of the Department of Law on the changes I have proposed to SJR 1 (See 2/27/92 Chenoweth draft). Mr. Guaneli's letter sets up and knocks down a straw man by stating that "proponents of the amendment have stated emphatically that no court has ever struck down a weapons law based on the right to bear arms, that simply is not accurate." I have never stated that.

I have, however, stated that I believe that there have been no appellate court decisions objectively expanding this right contrary to compelling public safety concerns. Of the cases cited by the Attorney General, only the Colorado case appears to raise a question; and, as with all the other cases cited, it is clearly distinguishable.

Mr. Gauaneli stated also that the department's "fear is not that the courts will find an absolute right to keep and bear arms. Rather, as with all other constitutional rights, the legislature will have some residual authority to pass laws."

I agree and so the question then becomes what standard of proof must be met by the state to justify its action under that residual authority. "(W)ill the state be required to prove that there is merely a 'rational basis' for the law, or will the state have to show something close to a 'compelling state interest'?"

My intent is that the latter be the standard. The rational basis test is far too lenient a test to be used in order to limit this constitutional right.

DD/hk

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 463-3892 (FAX) 463-5661



Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

State Capitol
Juneau, Alaska 99801-1182
(907) 465-4990

MEMORANDUM

TO: Members of the House Judiciary Committee
FROM: Representative Dave Donley
RE: SJR 1, constitutional right of an individual to keep and bear arms.
DATE: March 16, 1992

I have attached a draft change to SJR 1, "Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms."

Some members of the law enforcement community have raised concerns that Alaska courts will expansively interpret the language of SJR 1 to prohibit the state or a political subdivision of the state from passing laws regulating the carrying of concealed weapons, the misuse of arms, or the use or possession of arms by individuals convicted of a crime or by those with diminished mental capacity.

In recognition of those concerns, I have had this version of SJR 1 drafted to state specifically that the ratification of this amendment would not affect or change any law relating to arms that is in effect at the time of ratification. Thus, state and local laws that are presently on the books would not suffer a potential constitutional infirmity as a result of the passage of this amendment.

Courts in other states, which have what appears to be an absolute constitutional right to keep and bear arms, have consistently interpreted that right to not be absolute, but rather to be subject to state regulation necessary for public safety. This proposed change to SJR 1 would make that absolutely clear.

DD/hk

Alaska State Legislature
House of Representatives



INTERIM

3111 C Street
Anchorage, Alaska 99503
(907) 561-2032

SESSION

P.O. Box V
Juneau, Alaska 99811
(907) 465-2995

Representative Dave Choquette

M E M O R A N D U M

DATE: April 6, 1992

TO: Rep. Dave Donley, Chairman
House Judiciary Committee

FROM: Rep. Dave Choquette *LC*

RE: HCS SJR 1 (State Affairs), "Proposing an amendment to the Constitution of the State of Alaska relating to the individual right to keep and bear arms."

When SJR 1 was considered by the House State Affairs Committee on May 17, 1991, I made the motion to adopt the House State Affairs CS for SJR 1 after it became clear the bill would not move out of committee without the adoption of the CS.

In the State Affairs CS, the word "unreasonably" was added on line 7, so that the resolution read "The right to keep and bear arms shall not be unreasonably infringed by the State or a political subdivision of the State."

I do not support the inclusion of the word "unreasonably", and, as the committee member having made the motion to adopt the CS, request that the Judiciary Committee delete the word.

Thank you for your consideration.



STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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

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

March 23, 1992

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (right to bear arms)

Dear Representative Donley:

During Wednesday's Judiciary Committee hearing you asked if I would research whether the right to bear arms in the constitution could be amended in a way that would provide separate "transitional" language that would protect all current laws and would not alter the judicial standard of review.

It appears that Article XV in the state constitution could be used for just that purpose. In that article you will find miscellaneous provisions that were needed for an orderly transition from territory to statehood. More recently, however, Article XV has been used for measures other than those related to statehood, such as section 26 (capital move appropriations) and sections 27 and 28 (limiting appropriation increases).

It may therefore be possible to amend Article 1, section 19, so that it contains straightforward, direct, and "clean" language recognizing the "individual" right to bear arms, while at the same time providing a transitional section in Article XV that contains a clear statement of intent of the effect on current laws and on the standard of judicial review. The voters would therefore be voting for two amendments to the constitution. Both amendments would appear in a single ballot measure, and only one vote would be required.

This method of specifying intent seems preferable to others that were discussed during the hearing. For example, even if the legislature adopted a statement of intent, or legislative findings, that would not necessarily reflect the intent of the voters. While legislative intent is one indication of the meaning of the constitution, the intent of the voters is also of critical

importance. State v. Lewis, 559 P.2d 630, 637-38 (Alaska), appeal
dism. 432 U.S. 901, 97 S. Ct. 2943, 53 L.Ed.2d 1073-74 (1977).

If the intent is not clearly specified in the constitution itself, then in order to determine intent, the courts will scrutinize the specific language on the ballot pamphlet, which is provided by proponents and opponents of the measure, as well as the public debate that accompanies the measure. In this instance I think it is quite risky to let the intent of the voters be decided on the basis of statements appearing on the ballot pamphlet, and in political advertisements by proponents and opponents.

Because of your desire to expedite consideration of SJR 1, my research has been cursory and I do not claim any expertise in the area of the law governing constitutional amendments and ballot measures. I urge you to seek the opinion of appropriate attorneys in the Department of Law and the Legislative Affairs Agency. If they concur with my preliminary analysis, then I urge you to amend SJR 1 to create Article XV, section 29, of the constitution, which would contain the language in subsection (b) that is described in my March 17 letter, as follows:

The 1992 amendment of Article I, section 19, does not affect or change any law relating to arms that is in effect at the time of ratification of the 1992 amendment, nor does it affect or change the judicial standard of review applicable to laws relating to misuse of weapons.

As always, I am prepared to work with you or your staff to create a resolution that is acceptable to all concerned.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Dean J. Ganeli
Assistant Attorney General

DJG/jf

cc: The Honorable Pat Rodey
Alaska State Legislature

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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

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

March 17, 1992

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

Re: SJR 1 (right to bear arms)

Dear Representative Donley:

I greatly appreciated the courtesy extended to me by the House Judiciary Committee yesterday in carefully considering my analysis of the legal consequences of different wordings of SJR 1.

As you correctly observed, the primary issue at this point is whether a constitutional amendment will change the standard of review applied by the courts in determining the validity of laws relating to the misuse of weapons.

From the telephonic testimony, it appears that many supporters of the amendment (though by no means all) believe the word "unreasonably" in the State Affairs version would lower the legal standard of review because what is "reasonable" to an "anti-gun" person may not seem "reasonable" to a gun collector.

My fear is just the opposite. As I have indicated in my testimony in your committee and in the State Affairs Committee, and in my recent letter to you, I believe that removing the word "unreasonably" would greatly increase the legal standard of review that the state would bear in seeking to uphold the validity of laws.

As lawyers, I know that you and Rep. Gruenberg and Sen. Rodey are aware that the outcome of a case very often depends on the standard of review applied by the judiciary. Sen. Rodey's comments during yesterday's hearing seemed to indicate no intent to change the standard of review applied to laws relating to misuse of weapons. I recall he specifically mentioned that the Alaska courts had never struck down a law relating to weapons, and had relied on the "police power", rather than the right to bear arms, to uphold laws in the past.

At Sen. Rodey's request, I discussed with him a possible way in which all of the above interests can be accommodated. This could be accomplished by adopting paragraph (a) from your version of the resolution (that is, without the word "unreasonably"), and changing paragraph (b) to read:

The 1992 amendment of this section does not affect or change any law relating to arms that is in effect at the time of ratification of the 1992 amendment of this section, nor does it affect or change the judicial standard of review applicable to laws relating to misuse of weapons.

Another possible way of drafting this concept, along the lines suggested to me by Sen. Rodey, would be:

. . . nor does it affect or change the interpretive powers of the court in reviewing or determining the validity of laws relating to the misuse of weapons.

In this way the constitution will recognize the "individual", rather than the "collective", right to bear arms, yet the laws now on the books will be protected, and future laws that will respond to future problems will not be subjected to a higher judicial standard than under current law.

This wording should address the specific concerns of both the proponents and the opponents of the measure. I have not had an opportunity to thoroughly discuss this wording with, and obtain the support of, Commissioner Burton or Anchorage Deputy Chief Duane Udland, but I will do so if it appears that this solution will be acceptable to the committee and to Sen. Rodey.

Respectfully Submitted,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Dean J. Guaneli*
Dean J. Guaneli
Assistant Attorney General &
Criminal Division Administrator

DJG/sf

CC: Senator Rodey

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
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PHONE: (907) 465-3428

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

March 13, 1992

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (right to bear arms)

Dear Representative Donley:

This responds to your March 3 memorandum to the Criminal Division, in which you requested our thoughts about your proposed changes to SJR 1 (amending the constitution to create an "individual" right to bear arms).

As you know, the House State Affairs Committee substitute for SJR 1 would add the following underlined language to Article 1 of the state constitution:

Section 19: RIGHT TO KEEP AND BEAR ARMS. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be denied. The individual right to keep and bear arms shall not be unreasonably infringed by the State or a political subdivision of the State.

Your proposed change would, in effect, remove the clause "shall not be unreasonably infringed," and would include a second paragraph saying that the amendment does not affect any existing weapons law.

Because the State Affairs version specifically permits regulation of weapons that is not "unreasonable," I believe it will not draw the same level of opposition from police groups as past versions have encountered. Moreover, in my opinion the State Affairs version does not raise the same serious legal questions that I have raised in previous legislative committees.

The committee substitute by the State Affairs Committee was adopted after testimony showing that current or future laws relating to weapons could be invalidated by court action pursuant to a broad constitutional right to bear arms. Although proponents

of the amendment have stated emphatically that no court has ever struck down a weapons law based on the right to bear arms, that simply is not accurate. Among the examples given in testimony before the State Affairs Committee were cases from Oregon in which the court struck down laws relating to switchblade knives, State v. Delgado, 692 P.2d 610 (Or. 1984), and blackjacks, State v. Kessler, 614 P.2d 94 (Or. 1980). Colorado has struck down portions of its laws relating to carrying a concealed weapon. People v. Ford, 568 P.2d 26 (Colo. 1977). Other courts have also struck down weapons laws based on the right to bear arms.

Although your draft proposal explicitly protects current laws, it implicitly suggests that future laws have no similar protection. There are several proposed amendments to the state's weapons laws now pending before this legislature, including one in your own HB 396. Controlling the improper use of weapons is very much like "hitting a moving target." The technology in the weapons industry, and our changing social structure, may make today's laws obsolete tomorrow. Because of the proliferation of new and deadlier weapons, and because of the spread of weapons to heretofore sacrosanct areas, such as our schools, future legislatures must have the greatest possible latitude in dealing with this serious matter of public safety.

I have heard it said many times by proponents of the amendment that the legislature's power to impose reasonable restrictions on weapons would not be altered. Your March 3 memorandum seems to echo that point. However, if that is the intent of the amendment, then the constitution should say so explicitly and directly. In that way, Alaska can avoid the experience encountered in other states, where state laws have been struck down by the courts.

Our fear is not that the courts will find an absolute right to keep and bear arms. Rather, as with all other constitutional rights, the legislature will have some residual authority to pass laws. The question, however, is whether the state's legal burden will be slight or great when faced with a constitutional challenge to a weapons law. In other words, will the state be required to prove that there is merely a "rational basis" for the law, or will the state have to show something close to a "compelling state interest?" This question is not one of academic interest only, because in most cases it will mean the difference between the law being upheld or being struck down.

As I expressed in my testimony before the State Affairs Committee, I believe the only legal effect of creating an "individual" right to bear arms, while at the same time explicitly refusing to recognize the power of the legislature to "reasonably"

The Honorable Dave Donley
Alaska State Legislature

March 13, 1992
Page 3

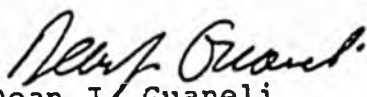
regulate weapons, is to greatly increase the state's burden in meeting challenges to the constitutionality of weapons laws.

Thank you for the opportunity to present our legal analysis.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Dean J. Guaneli
Assistant Attorney General

DJG:jf

cc: Lori Nottingham
Office of the Governor

Members of the House Judiciary Committee

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322

March 13, 1992

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (Right to Bear Arms)

Dear Representative Donley:

Thank you for your memorandum of March 3 requesting our comment upon a proposed draft change to SJR 1, relating to the constitutional right to keep and bear arms.

As you know, the Department of Public Safety has no opposition to the stated purpose of SJR 1: to establish that the Alaska constitutional right to keep and bear arms is an individual one, not a militia-related "collective" right. We believe it essential that this right not be absolute, however, but be subject to reasonable regulation by the legislature. Some persons also believe that local communities should also retain their present authority to reasonably regulate the possession and use of weapons within their boundaries.

We do not see any need for SJR 1. Alaska has the least restrictive firearms laws in the country. If some measure of this sort is to be adopted, however, we urge the Judiciary Committee to adopt the House State Affairs Committee substitute for SJR 1. That version of the proposed constitutional amendment establishes that the right to keep and bear arms is an individual one, but specifically states that the right may not be "unreasonably infringed", thus allowing for reasonable regulation of arms.

Your proposed draft eliminates this language, and includes instead a new subsection (b) stating that the amendment does not "affect or change any law relating to arms in effect at the time of ratification." What about future laws? What about the ability of future lawmakers to respond to changing technology or social conditions, and to express the collective will of future generations of Alaskans? The fact that the Legislature adopted a significant revision to the state's weapons laws last year (your bill, HB 104) and has another pending now (your HB

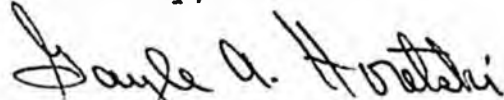
The Honorable Dave Donley
March 13, 1992
Page 2

396) is compelling evidence that the law in this area is not settled.

An amendment to the state constitution, by its very nature, is forward-looking--it is intended to guide future actions of legislators, public officials, judges and citizens. The proposed draft substitute for SJR 1 does not adequately safeguard local and state lawmakers' ability to reasonably regulate the possession and use of weapons, thus the Department of Public Safety opposes it.

Thank you for this opportunity to comment on the proposed draft.

Sincerely,

A handwritten signature in cursive script that reads "Gayle A. Horetski".

Gayle A. Horetski
Deputy Commissioner

STATE OF ALASKA

DEPARTMENT OF EDUCATION

WALTER J. HICKEL, GOVERNOR

GOLDBELT PLACE
801 WEST 10TH STREET, SUITE 200
JUNEAU, ALASKA 99801-1894

OFFICE OF THE COMMISSIONER

March 16, 1992

The Honorable Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SJR 1 (Right to Bear Arms)

Dear Representative Donley:

The Department of Education is concerned with the restrictive language of the proposed draft change to SJR 1, relating to the constitutional right to bear arms.

While the draft adds language preserving current laws relating to arms, it restricts the ability of a municipality to pass laws concerning public safety. While last year's passage of HB 104 gave authority to school administrators to limit firearms on school grounds, there is no assurance that this law will meet all future needs. Both the State and Municipalities need the ability to reasonably regulate the use and possession of arms on school grounds.

Thank you for the opportunity to comment on the draft.

Sincerely,



Karen R. Crane
Acting Deputy Commissioner

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

GOLDBELT PLACE
801 WEST 10TH STREET
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JUNEAU, ALASKA 99811-0500

POSITION PAPER

SJR 1

Proposing an Amendment to the Constitution...
Relating to the Individual Right to Keep and Bear Arms

The Department of Education opposes SJR 1 as it is presently written because it would prevent the state and its political subdivisions from exercising control governing the right of students and others to possess firearms on school grounds. This action has been taken in at least one community in Alaska. The Anchorage Municipal Assembly banned guns from schools because of two incidents where students brought loaded hand guns onto school grounds. We believe it is absolutely essential that the state and communities continue to have the authority to prohibit firearms on school grounds to assure the safety of teachers and students.

Therefore, the Board and Department of Education oppose the present language of SJR 1, and recommends that passage be opposed unless the state and municipalities be assured the right to regulate, at the least, the possession of firearms on school grounds.

4-23-91

Date

Steve Hole

Steve Hole, Acting Commissioner

Alaska Public Defender Agency

John B. Salemi, Public Defender

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 279-7541

March 12, 1992

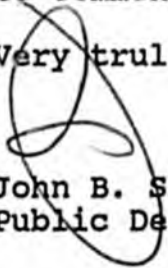
The Honorable Dave Donley
Alaska State Representative
State Capitol
Juneau, Alaska 99801-1182

Re: SJR 1, constitutional right of an individual to
keep and bear arms.

Dear Representative Donley:

Thank you for the material regarding the above-referenced matter.
The Public Defender Agency will be happy to review the draft change
to SJR 1 and provide appropriate comment.

Very truly yours,


John B. Salemi
Public Defender

JBS/le

DIVISION OF LEGAL SERVICES

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M E M O R A N D U M

April 24, 1991

SUBJECT: Amendment to SJR 1
TO: Senator Sam Cotten
FROM: Jack Chenoweth
Legislative Counsel

When it comes before the Senate on reconsideration, you intend to offer an amendment to Senate Joint Resolution 1. SJR 1 would revise article I, section 19, Alaska Constitution, to declare that "the right to keep and bear arms may not be denied or infringed." The amendment you contemplate would place "unreasonably" before "denied," thereby modifying the concluding provisions of that section.

You have asked me to review the Alaska Supreme Court's interpretation of the term "unreasonably" (or its analog "reasonably") and to relate what conclusions those decisions might have with respect to the amendment you may propose.

In my judgment, while an analysis of the court's interpretation of the term "unreasonably" in earlier cases provides only limited guidance, it does indicate a sense of the court's thinking. The court's decisions conclude as follows:

(1) "unreasonableness" is not amenable to a single definition, and whether conduct by government officials was or was not reasonable will depend on the facts and circumstances giving rise to the question litigated;

(2) at least in the context of application of constitutional provision providing protection in the case of search and seizure, government conduct is "unreasonable" if it is conduct that constitutes an unwarranted intrusion or an arbitrary intrusion or invasion of personal privacy.

"Unreasonable" is used in article I, section 14 of the Alaska Constitution, in the following context:

SEARCHES AND SEIZURES. The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .

Under the state constitution's search and seizure provision, the court has spelled out what it understands to constitute "[un]reasonableness." It has concluded and consistently stated that the test of whether governmental conduct was allegedly "unreasonable" must be determined on a case basis, taking into consideration the specific facts and circumstances of the case. Ellison v. State, 383 P.2d 716, 719 (Alaska 1963). See Merrill v. State, 423 P.2d 686, 699 (Alaska 1967), cert. den. 316 U.S. 1040, 87 S.Ct. 1497, 18 L.Ed.2d 607 (1967); Weltz v. State, 438 P.2d 502, 505 - 507 (Alaska 1967); Sleziak v. State, 454 P.2d 252, 260, cert. den. 396 U.S. 921, 90 S.Ct. 252, 24 L.Ed.2d 202 (1969); Ferguson v. State, 488 P.2d 1032, 1037 (Alaska 1971). In other words, there is no single interpretation of the word "unreasonable" that would be dispositive in all situations.

In the Weltz decision, cited above, the court, called upon to ascertain whether a note used as evidence has been obtained by an illegal search and seizure in violation of the Fourth Amendment of the United States Constitution and article I, section 14 of the Alaska constitution, determined that it was not. As the basis for its conclusion, the court explained that

The primary purpose of these constitutional provisions [i.e. the federal and Alaska constitutional provisions relating to unreasonable search and seizure] is the protection of "personal privacy against unwarranted intrusion by the State." Although not determinative of the issue, we note that under either [one of two competing] version[s], no arbitrary intrusion or invasion of . . . privacy . . . occurred.

431 P.2d at 506, 507 (emphasis added). Thus, implicit in a working definition of conduct that is "unreasonable" is this element: at least in the context of evaluating assertions that searches and seizures are unconstitutional, government conduct is unreasonable if that conduct constitutes either an "unwarranted intrusion" or an "arbitrary intrusion or invasion" of personal privacy.

If article I, section 19 is amended by insertion of a reference to "unreasonably" and the court is later called upon to interpret and apply that section, I think it is likely that the court would base its analysis on the discussions set out and conclusions reached in these earlier decisions.

DIVISION OF LEGAL SERVICES

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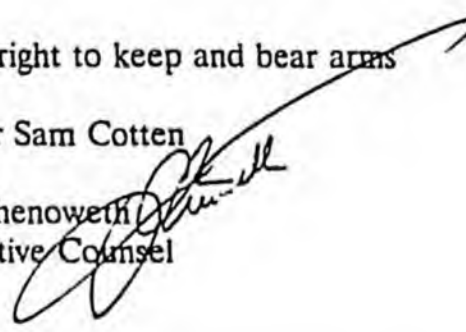
MEMORANDUM

April 12, 1991

SUBJECT: SJR 1, right to keep and bear arms

TO: Senator Sam Cotten

FROM: Jack Chenoweth
Legislative Counsel



Insertion of "unreasonably" as a modifier before "denied or infringed" in this joint resolution would place into article I, section 2 an explicit justification for the legislature to regulate by law some situations that involve the possession and handling of arms. If, as I noted in my earlier memo, there is authority elsewhere in the state constitution to regulate arms under the state's general police power, the justification provided by the insertion of "unreasonably" would complement that authority. If there is not, this justification would then be the sole source of the legislature's ability to concern itself with such circumstances as concealed weapons, definition of crimes or sentences for offenses involving use of weapons, and the like.

The test of reasonableness is already operative as to several rights enumerated in article I. "Reasonableness" is explicit in the context of the right provided under article I, section 14 to be secure against unreasonable searches and seizures and is implicit in the court's decisions taken under article I, section 22 that construe and apply the right of privacy.

Based on the use of the term in article I, section 14, presumably the court's test of reasonableness would consider whether the government purpose in regulating possession and bearing of arms would be justifiable.

JBC:lmb
91-111.lmb

DIVISION OF LEGAL SERVICES

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MEMORANDUM

November 26, 1990

SUBJECT: The Law Regulating the Possession and Use of Weapons
(W.O. No. 16LS1985)

TO: Representative Dave Donley

FROM: Gerald P. Luckhaupt *GLP*
Legislative Counsel

The right to keep and bear arms is provided by the Second Amendment to the United States Constitution and by Art. I, § 19 of the Alaska Constitution. The provisions are identical and state:

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

The Second Amendment to the United States Constitution applies only to insure that this right is not infringed by Congress and has no application to the states through the 14th Amendment. Presser v. Illinois, 116 U.S. 252, 6 S.Ct. 580, 29 L.Ed. 615 (1886); Quilici v. Morton Grove, 695 F.2d 261 (7th Cir. 1982), cert. denied, 464 U.S. 863. The Second Amendment, though, does not bar all infringements of this right by the federal government. While, strictly speaking, the federal government has no police powers (those powers being reserved to the states), the federal courts have affirmed the federal government's authority to enact police regulations in any area of constitutionally granted sovereignty. Laws regulating the possession and use of weapons on a federal level have been upheld on a number of grounds including the commerce clause, the taxing power, the limitation of potential threats to the president, limitation of impediments to the exercise of free speech and other rights guaranteed by the Bill of Rights, and pursuant to the federal government's power to define and proscribe federal felonies.

What weapons or arms does the Second Amendment protect and who may possess them? The United States Supreme Court has interpreted the Second Amendment to provide only a collective right to possess arms for the common defense; no individual right to possess arms has ever been articulated. It applies only to the possession of those arms which are necessary to maintain a well-regulated militia, or,

in other words, does the possession of the arm or weapon bear some reasonable relationship to the preservation or efficiency of a well-regulated militia. United States v. Miller, 307 U.S. 174, 59 S. Ct. 816, 83 L.Ed. 1206 (1939); Quilici, supra; Cody v. United States, 460 F.2d 34 (8th Cir. 1972), cert. denied, 409 U.S. 1010. Miller involved a prosecution for the possession of an illegal sawed-off shotgun. The defendant claimed that his right to possess the shotgun was protected by the Second Amendment. The court looked to the early colonial requirements imposed upon the able-bodied men of the colonies and found that all the members of the militia (composed of all men of certain specified ages) were required to keep at the ready a musket or long rifle and adequate ammunition to defend the state. Other weapons, other than a bayonet to affix to the musket, were not required. The Court then found the possession of the shotgun to not be protected as its possession was not necessary for the maintenance of a well-regulated militia. Similarly, the possession of handguns and other weapons, and the possession of weapons by certain classes of people, have been found to not be protected. Quilici, supra; United States v. Oakes, 564 F.2d 384 (6th Cir. 1977), cert. denied, 435 U.S. 926 (1978); United States v. Houston, 547 F.2d 104 (9th Cir. 1976).

Since art. 1, § 19 of the Alaska Constitution is identical to its federal counterpart the interpretation given the Second Amendment by the federal courts is, at least, instructive as to the interpretation given the Alaska provision. The Alaska Court of Appeals has said regarding the interpretation of an Alaska constitutional provision similar to a federal provision:

We recognize that the state constitutional provision, while using different language, is essentially the same as its federal counterpart and was intended by the constitutional convention to be so. [Citation omitted.] Thus we find persuasive the line of cases interpreting the federal provision and utilize the same analysis in interpreting our own constitution.

State v. Dankworth, 672 P.2d 148, 151 (Alaska App. 1983).

From this reasoning it would appear that art. 1, § 19 grants only a collective right to the citizens of Alaska to bear arms which are necessary for the common defense of the state. This right may not be eliminated but is subject to the state's authority to enact reasonable restrictions pursuant to its police power. See e.g., Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), cert. denied, 368 U.S. 517. Therefore, statutes regulating the possession and use of certain weapons appear to be permissible.

Nor would the privacy provision of our constitution (art. 1, § 22) appear to inhibit regulation in this area. In State v. Weaver, 736 P.2d 781 (Alaska App. 1987) the

Alaska Court of Appeals found that a prosecution pursuant to AS 11.61.200 for possession of an illegal weapon, a gravity knife, in one's home not to be violative of art. 1, § 22 of the Alaska Constitution. The court said:

The legislature may properly prohibit the possession of an object which 'interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare.' State v. Erickson, 574 P.2d 1, 21 (Alaska 1978). 'No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely.' Ravin v. State, 537 P.2d 494, 504 (Alaska 1975). The legislative commentary to AS 11.61.200, discussing the definition of 'prohibited weapon,' states: 'Such weapons have little or no legitimate function, are unnecessary for protection and are not commonly used for commercial or recreational purposes. Substantial risk of harm to others and the furtherance of crime result from private possession of such weapons.' Commentary on the Alaska Revised Criminal Code, Senate Journal Supp. No. 47 at 101, 1978 Senate Journal 1399. The legislature could reasonably conclude that gravity knives have no legitimate purpose and are too dangerous to be casually possessed.

Weaver, supra, at 783.

The court also observed that the pertinent characteristics of a gravity knife or switchblade are that they are easily concealed, quickly brought to bear, and more closely resemble weapons than tools. Weaver, supra. In State v. Strange, 785 P.2d 563 (Alaska App. 1990) the court found that a balisong or butterfly knife, though being easily concealed and quickly brought to bear (and, apparently, having little or no legitimate function as discussed in the legislative commentary to AS 11.61.200, quoted in Weaver, supra), was not prohibited by AS 11.61.200 as it was not specifically defined in the statute nor did it fit within the definition of the other weapons prohibited there. The legislature's failure to include this weapon among those prohibited appears to be inconsistent with the purposes behind AS 11.61.200. The regulation of metal knuckles appears consistent with these purposes.

While no individual federal right to bear arms has been recognized (and no individual state right in Alaska would be recognized as explained earlier) other states have found an individual right to bear arms based upon their own unique constitutional provisions. As pointed out in City of Princeton v. Buckner, 377 S.E.2d 139 (W.Va. 1988) at least 14 states have a constitutional provision that protects an individual's right to bear arms for self-defense, and in some cases defense of home and property, in addition to common defense of the state. These states, though, have been nearly

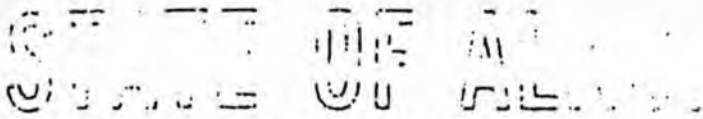
uniform in finding that this individual right is not absolute and is subject to reasonable regulation by the state pursuant to its police power. Buckner, supra.

The Oregon courts have been especially active in finding broad statutory regulation of defensive arms unconstitutional. State v. Blocker, 291 Or. 255, 630 P.2d 824 (1981) (possession of billy club outside of home constitutionally protected); State v. Kessler, 289 Or. 359, 614 P.2d 94 (1980) (possession of billy club in home constitutionally protected). In State v. Delgado, 298 Or. 395, 692 P.2d 610 (1984) the Oregon Supreme Court found a statute which prohibited the mere possession of a switchblade to be unconstitutional. The court found such an absolute ban violative of art. 1, § 27 of the Oregon Constitution which provides: "The people shall have the right to bear arms for the defence of themselves, and the State. ..." The court noted that the legislature may regulate the possession of weapons but may not absolutely ban defensive weapons.

That decision and the decision of the Alaska Court of Appeals in State v. Weaver, while both dealing with switchblades, are not inconsistent. The Oregon decision is based upon the particular language of that state's constitution concerning the right to bear arms for individual defense. While the court in Weaver did not specifically address whether the possession of a switchblade was protected by art. 1, § 19 of the Alaska Constitution, as noted herein that provision completely lacks any individual self-defense language, thereby removing any possible inconsistency in reasoning with the Oregon courts or with the decisions of those other states that have found an individual constitutional right to bear arms for self-defense based upon their own constitutions.

If you have any questions, please contact me at your convenience.

GPL:gc
90-056.GLC



Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: 1907) 465-3600

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

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

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

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

Dear Senator Rodey and Representative Bussell:

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

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

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

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

CELH

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

April 13, 1963
Page 2

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

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

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

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

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

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

April 13, 1983
Page 3

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

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

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

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

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

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

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

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

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

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

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

Redated 7/1/83 for printing purposes

Hon. Pat Rodey, Senator
Hon. Charlie Bussell, Representative
Our File No.: 366-444-83

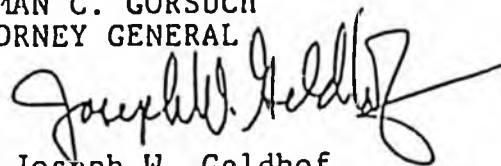
April 13, 1983
Page 5

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

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Joseph W. Geldhof
Assistant Attorney General

JWG:vrh

cc: Norman C. Gorsuch
Attorney General

Ronald W. Lorensen
Deputy Attorney General



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

February 6, 1989

MEMORANDUM

TO: Representative Dave Donley
ATTN: Michael Ward
FROM: Sandi Depue *Sandi*
Administrative Officer
RE: State Constitutional Amendments for the "Right to Bear Arms"
Research Request 89.199

You asked which states have amended their constitutions to include the right to bear arms. According to the National Rifle Association of America (NRA), the following states provide for that right:

- | | | |
|-----------------------------|--------------------------------|--------------------------------|
| <u>Alabama</u> Δ | <u>Louisiana</u> Δ | <u>Oregon</u> * |
| <u>Alaska</u> | <u>Maine</u> Δ | <u>Pennsylvania</u> Δ |
| <u>Arizona</u> Δ | <u>Massachusetts</u> * | <u>Rhode Island</u> * |
| <u>Arkansas</u> | <u>Michigan</u> \square | <u>South Carolina</u> |
| <u>Colorado</u> \square | <u>Mississippi</u> Δ | <u>South Dakota</u> Δ |
| <u>Connecticut</u> Δ | <u>Missouri</u> Δ | <u>Tennessee</u> Δ |
| <u>Delaware</u> | <u>Montana</u> \square | <u>Texas</u> Δ |
| <u>Florida</u> * | <u>Nebraska</u> | <u>Utah</u> \square |
| <u>Georgia</u> * | <u>Nevada</u> Δ | <u>Vermont</u> * |
| <u>Hawaii</u> | <u>New Hampshire</u> \square | <u>Virginia</u> |
| <u>Idaho</u> * | <u>New Mexico</u> Δ | <u>Washington</u> Δ |
| <u>Illinois</u> Δ | <u>North Carolina</u> | <u>West Virginia</u> \square |
| <u>Indiana</u> * | <u>North Dakota</u> \square | <u>Wyoming</u> Δ |
| <u>Kansas</u> * | <u>Ohio</u> * | |
| <u>Kentucky</u> | <u>Oklahoma</u> Δ | |

The following seven states do not have right to bear arms amendments to their constitutions:

- California
- Iowa
- Maryland
- Minnesota
- New Jersey
- New York
- Wisconsin

\square "individual person" (7)

* "the people" (10)

Δ "citizen(s)" (17)

STATE CONSTITUTIONAL GUARANTEES ON
THE RIGHT TO KEEP AND BEAR ARMS

42
Forty-one (41) states have constitutional guarantees on the right to keep and bear arms.

Alabama: That every citizen has a right to bear arms in defense of himself and the state. Article I, Section 26.

Alaska: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 19.

Arizona: The right of the individual citizen to bear arms in defense of himself or the State shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article 2, Section 26.

Arkansas: The citizens of this State shall have the right to keep and bear arms for their common defense. Article II, Section 5.

Colorado: The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons. Article II, Section 13.

Connecticut: Every citizen has a right to bear arms in defense of himself and the state. Article I, Section 15.

Florida: The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law. Article I, Section 8.

Georgia: The right of the people to keep and bear arms, shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne. Article I, Section I, para. VIII.

Hawaii: A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed. Article I, Section 15.

Idaho: The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person, nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent passage of legislation providing penalties for the possession of firearms by a convicted

felon, nor prevent the passage of legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony. Article I, Section 11.

Illinois: Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed. Article I, Section 22.

Indiana: The people shall have a right to bear arms, for the defense of themselves and the State. Article I, Section 32.

Kansas: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be tolerated, and the military shall be in strict subordination to the civil power. Kansas Bill of Rights, Section 4.

Kentucky: All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: *** 7. The right to bear arms in defense of themselves and of the state, subject to the power of the general assembly to enact laws to prevent persons from carrying concealed weapons. Kentucky Bill of Rights, Section I, para. 7.

Louisiana: The right of each citizen to keep and bear arms shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person. Article I, Section 11.

Maine: Every citizen has a right to keep and bear arms for the common defense; and this right shall never be questioned. Article I, Section 16.

Massachusetts: The people have a right to keep and bear arms for the common defense. And as, in times of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Massachusetts Declaration of Rights, Part I, Article XVII.

Michigan: Every person has a right to keep and bear arms for the defense of himself and the state. Article I, Section 6.

Mississippi: The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power where thereto legally summoned, shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons. Article 3, Section 12.

Missouri: That the right of every citizen to keep and bear

arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons. Article I, Section 23.

Montana: The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons. Article II, Section 12.

Nevada: Every citizen has the right to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. Art. 1, Section II, para. 1.

New Hampshire: All persons have the right to keep and bear arms in defense of themselves, their families, their property, and the state. Part First, Art. 2-a.

New Mexico: No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms. Article II, Section 6.

North Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice. Article I, Section 30.

North Dakota: All individuals are by nature equally free and independent and have certain inalienable rights, among which are ... to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreatnal, and other lawful purposes, which shall not be infringed. Article I, Section 1.

Ohio: The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power. Article I, Section 4.

Oklahoma: The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the

Legislature from regulating the carrying of weapons. Article 2, Section 26.

Oregon: The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power. Article I, Section 27.

Pennsylvania: The right of the citizens to bear arms in defence of themselves and the State shall not be questioned. Article I, Section 21.

Rhode Island: The right of the people to keep and bear arms shall not be infringed. Article I, Section 22.

South Carolina: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. Article I, Section 20.

South Dakota: The right of the citizens to bear arms in defense of themselves and the state shall not be denied. Article VI, Section 24.

Tennessee: That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime. Article I, Section 26.

Texas: Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime. Article I, Section 23.

Utah: The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for the other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms. Article I, Section 6.

Vermont: That the people have a right to bear arms for the defence of themselves and the State -- and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to and governed by the civil power. Chapter I, Article 16.

Virginia: That a well regulated militia, composed of the

body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power. Article I, Section 13.

Washington: The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain, or employ an armed body of men. Article I, Section 24.

West Virginia: A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use. Article III, Section 22.

Wyoming: The right of citizens to bear arms in defense of themselves and of the state shall not be denied. Article I, Section 24.

STATES WITHOUT CONSTITUTIONAL PROVISIONS:

Nine (9) states do not have a constitutional provision on arms: California, Delaware, Iowa, Maryland, Minnesota, Nebraska, New Jersey, New York, and Wisconsin.

Nebraska approved a
Constitutional provision
November, 1988.

RIGHT TO KEEP AND BEAR ARMS
 CONSTITUTIONAL AMENDMENTS
 HISTORY SINCE 1983

LEGISLATURE	RESOLUTION #	SPONSOR	PASSED BY	DIED IN
13th ('83-'84)	SJR 28	Rodey		S. St. Aff.
14th ('85-'86)	HJR 45 HJR 63 SJR 39	Marrou Szymanski Rodey	H. & Sen.	H. Jud. H. Jud. Conf. Com.
15th ('87-'88)	SJR 15	Rodey	Sen.	H. Jud.
16th ('89-'90)	HJR 7 SJR 4	Donley Rodey	Sen.	H. Jud. H. Jud.

ANALYSIS OF SJR 15

Claim: SJR 15 not needed; Second Amendment provides protection to gun owners.

Consider the opinion handed down in State v. Friel, 508 A.2d 123 (Me. 1986):

"The Second Amendment is inapplicable to this case; it operates as a restraint solely upon the power of the national government and does not restrict the power of the states to regulate firearms."

Other cases culminating with the same decision:

Miller v. Texas, 153 U.S. 535 (1894)
Presser v. Illinois, 116 U.S. 252 (1886)
Quilici v. Village of Morton Grove, 695 F.2d 261 (1983)
U.S. v. Kozerski, 740 F.2d 952 (1st Cir. 1984)
State v. Sanne, 116 N.H. 583 (1976)
State v. Skinner, 189 Neb.57 (1973)

Additionally, in State v. Skinner, the Nebraska Supreme Court ruled that the Second Amendment to the U.S. Constitution guarantees the right to keep and bear arms to an organized militia, not individuals.

This aspect of the Skinner decision is quite similar to the April 13, 1983, opinion of Alaska Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution, stating: "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

Claim: Individual language in SJR 15 will allow felons to own/possess firearms.

Courts in states with "individual" constitutional guarantees have consistently rejected challenges to state statutes restricting or denying the possession of firearms by convicted felons:

(State: Citation: Constitutional Language: Proscription By Felons.)

North Dakota: State v. Ricehill, 415 N.W.2d 481 (1987); "All individuals...."; ownership or possession of firearms.

Maine: State v. Friel, 508 A.2d 123 (1986); "Every citizen...."; possession of firearm.

Kentucky: Eary v. Commonwealth, 659 S.W.2d 198 (1983); "All men...."; possession of handgun.

Alabama: Bristow v. State, 418 So.2d 927 (1982); "Every citizen...."; possession of pistol.

Wyoming: Carfield v. State, 649 P.2d 865 (1982); "The right of citizens...."; possession of any firearm.

- Texas: Shepperd v. State, 586 S.W.2d 500 (1979); "Every citizen...."; possession of firearm away from residence.
- Louisiana: State v. Amos, 343 So.2d 166 (1977); "Each citizen...."; possession of firearms.
- Colorado: People v. Blue, 544 P.2d 385 (1975); "The right of no person to keep and bear arms...."; possession of firearms.
- Washington: State v. Tully, 89 P.2d 517 (1939); "The individual citizen...."; possession of pistol.

In addition to the cases cited above, courts in Georgia, Oregon, and Arizona have also rejected challenges based on state constitutional keep-and-bear-arms provisions to statutes making illegal a felon's possessing a firearm.

Claim: SJR 15 will invalidate reasonable laws currently on the books

Specifically mentioned have been laws regulating the carrying of concealed weapons and proscribing possession of firearms by intoxicated persons. As above, numerous citations can be offered indicating that courts regularly and routinely rule that the right to bear arms is subject to reasonable regulation:

(State: Citation; Decision.)

- Wyoming: State v. McAdams, 71 P.2d 1236 (1986); concealed carrying of arms subject to regulation.
- Oregon: State v. Delgado, 692 P.2d 610 (1984); legislature may regulate possession and use of arms.
- Indiana: Schubert v. DeBard, 398 N.E.2d 1339 (1980); license may be required to carry a pistol concealed.
- Oregon: State v. Kessler, 614 P.2d 94 (1980); concealed weapon carrying regulations permissible.
- Colorado: People v. Garcia, 595 P.2d 228 (1979); carrying a gun while drunk is outside the protected boundaries of the right to bear arms.
- North Carolina: State v. Dawson, 159 S.E.2d 1 (1968); open carrying for unlawful purposes may be prohibited.
- Kentucky: Holland v. Commonwealth, 294 S.W.2d 83 (1956); limits carrying of concealed weapons.
- Idaho: State v. Hart, 157 P.2d 72 (1945); upholds statutes prohibiting the carrying of concealed weapons.

Alaska Association Chiefs of Police



March 13, 1992

Representative Dave Donley
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Donley,

Thank you for the opportunity to comment on your latest draft of the Right to Keep and Bear Arms amendment. This is an issue that has been with us for a long time, and we appreciate your attempt to come up with a compromise. The new language does address some of our concerns, however it still does not solve the problem from our perspective. I have spoken to a number of Chiefs about this issue since receiving your new draft.

If for no other reason, we oppose the new language because municipalities would still be preempted from passing firearms laws. We as Chiefs simply cannot support legislation that would severely restrict the ability of a municipality to pass laws concerning public safety.

In addition, there may be some other practical problems with your latest draft. For instance, if the new language passed, would there be two standards the courts would have to decide constitutionality upon? Would the courts apply one standard for laws prior to 1992 and another standard for laws passed after 1992? Frankly, we have never seen or heard of a constitutional amendment that was crafted in this fashion and we are very concerned about the ramifications of such wording.

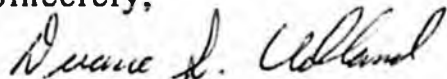
As you know, we have consistently opposed any change to our constitution, with strong feeling that existing law is more than adequate to protect firearms rights. At the same time we have indicated we could be somewhat flexible, because we do not philosophically oppose the concept that firearms are an individual right. In other words, we believe that it is possible to come to a compromise.

To date, the compromise version we have been most comfortable with is House Committee Substitute for SJR 1 as amended in House State Affairs. At our annual Chiefs meeting last November, in which a high percentage of our members were present, we agreed that if the State Affairs version becomes the final language, we will drop our opposition to the proposed constitutional change.

I'm not sure how closely you have followed this issue in the Senate, but the House State Affairs language appears to have some support on that side of the Legislature. Last year, the same language was debated and voted upon on the Senate floor. It failed by only two votes, despite heavy opposition from some of the original sponsors of SJR 1. In years past there had been almost unquestioned support for the original language. I think this is a strong indication that once people become more educated about this amendment, there is a willingness to consider other language that is less radical in nature.

I would be happy to discuss this further with you. If you have any questions about our position, please contact me.

Sincerely,



Duane S. Udland, President
Alaska Association of Chiefs of Police
4501 South Bragaw
Anchorage, Alaska 99507



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

April 19, 1991

 FAX TRANSMITTAL MEMO
 TO: Mike Navarre - Linda
 DEPT: _____ FAX #: 465-4937
 FROM: Chief Ross PHONE: 283-7879
 CO: Kenai PD FAX #: 283-3014
 Post-It brand fax transmittal memo 7671

NO. OF PAGES
2

The Honorable Mike Navarre
 Alaska State Legislature
 P. O. Box V
 Juneau, AK 99811

Dear Representative Navarre:

I am requesting your support in amending HJR 1 or SJR 1 should they come to the House floor for a vote. While I do not believe the Constitution needs to be changed, I can understand why proponents of HJR 1 want to clarify the right of the individual versus the collective right in the constitution. The amended HJR 1 would read as follows:

"The individual right to keep and bear arms shall not be unreasonably denied or infringed by the State or a political subdivision of the state."

The proposed amendment would hopefully protect our present firearms regulatory statutes from successful challenge if the Constitution were to be changed. I have heard no complaint, even from the strongest proponent of HJR 1/SJR 1, that our present State Statutes are onerous or unduly interfere with the rights of the individual.

If the resolutions are passed without amendment, it is questionable whether present statutes (possession while intoxicated, possession on a licensed premises, carrying concealed weapon, etc.) will be found constitutional. In any case it would cause considerable expense and unnecessary litigation on each statute.

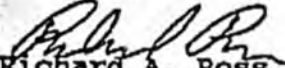
Insertion of the word unreasonably puts this Constitutional protection on the same level as that of the right to be secure from unreasonable searches and seizures. The burden will still be on the government to show that firearms regulations are not unreasonable. However, it would not result in an insurmountable burden that cannot be overcome in the interest of public safety.

HJR 1
April 19, 1991
Page 2

I would request that you resist the local pre-emption argument of some advocates. If adopted this could become a two-edged sword. If the State were to pre-empt all local firearms regulations, the ultimate loser could be small communities and rural areas. As the needs of Anchorage, Fairbanks, and Juneau are dictated in the future, so would State Statute because of their political power. These attempts to resolve their local problems would become State law and broadly apply to areas without the problems they are trying to address.

Your consideration of these thoughts and support for an amended HJR 1 and SJR 1 is appreciated.

Very truly yours,


Richard A. Ross
Chief

RAR/elr



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

March 13, 1992

Representative Dave Donley
Alaska State Legislature
P.O.Box V
Juneau, Alaska 99811

Re: SJR1

Dear Representative Donley,

It was good to see you at the Alaska Police Standards Council meeting. Your obvious interest and comments were appreciated.

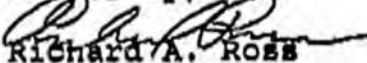
In response to your letter of March 3, 1992, I still believe that the CS for SJR1 as amended in the House State Affairs is the best alternative if a Constitutional change is deemed necessary. It addresses the concerns of those that want the recognition of a clearly defined individual right, while still recognizing the need for reasonable regulation. The constitutional protection to the individual under that version would be equivalent to that afforded individuals against unreasonable searches and seizures.

The working draft proposal you forwarded does accomplish the recognition of the individual right while protecting the present statutory and regulatory requirements. However, two possible problems are present if this version is passed:

1. Anchorage has ordinances that no other City has, or may need at this time. Should another City grow to the size of Anchorage, or encounter problems that its citizen's would want to address by adoption of similar ordinances, it would require a Constitutional change in order for them to do this.
2. Without being too futuristic in our thinking, it is not hard to envision "Arms" technology development that is not even conceived of, or addressed in our present statutes and regulations. This could also require a constitutional change if this version were adopted.

I am very much interested in this issue and appreciate your solicitation of input.

Sincerely,


Richard A. Ross
Chief of Police

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



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- Police (907) 224-3330
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

March 16, 1992

Representative Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Ref: SJR1

Dear Mr. Donley,

I am writing to express my opinions on SJR1, and your amendment as presented to the Legislature in Juneau.

Let me begin by saying that I firmly believe that the Constitutional Amendment is a mistake. I am one of the law enforcement officers that are of the opinion that Alaska courts will interpret the language of SJR1 as to prohibit any regulation of carrying concealed weapons, misuse of firearms, or prohibiting anyone from using or owning firearms of any sort. That would include convicted felons or those with diminished mental capacity.

I have not heard of courts in other states with similar amendments ruling that the language was short of an absolute rule. They, in fact, invalidated carrying concealed weapon, and felon in possession laws that were in effect.

Further, and regretfully, I cannot support your CS to the amendment. Specifically, the change in language to make the "Right to keep and bear arms" an "individual right", would guarantee the Court's interpretation of the amendment as an absolute rule. I am basing my opinion on the history of the Alaska Supreme Court's love of the rights of the individual.

The exclusion of the rights of Municipalities to pass any ordinance regulating firearms, anytime in the future also causes me grief. The City of Seward is not large enough now for it to be a real problem. However, we don't know what it will be 20 years from now. I think that it will be much more difficult repealing this amendment, should it pass than it is to enact it.

In closing, I am apposed to any changes in Alaska's Constitution that would decrease our right and ability to reasonably regulate the sale, ownership and carrying of firearms.

Sincerely

Thomas C. Walker
Chief of Police



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

March 16, 1992

Position Paper

SJR 1 - RIGHT TO KEEP AND BEAR ARMS

The League and its members support the concept of individual rights to keep and bear arms; however, they are opposed to any legislation that would limit or preempt the authority of municipalities to pass reasonable laws or regulations concerning the use of firearms.

Amendments to the Alaska Constitution that would address the rights of individuals to keep and bear arms have been introduced several times by legislators. The League does not feel that such amendments are appropriate or desirable because they would limit the ability of municipalities to regulate the use of firearms in a reasonable manner. Municipalities must be allowed to retain their authority to pass laws that concern public safety within their boundaries.

Alaskan municipalities have not abused the rights of gun owners, nor are they expected to because of Alaskan's historical tradition of possessing and using firearms. However, the proposed constitutional amendment would preempt the rights of Alaskan municipalities to pass such limited restrictions on the use of firearms as are appropriate to the situations within the varied communities of the state.

District 29: Republican Convention

March 14, 1992

RE: A resolution in support of the individual right to keep and bear arms.

Resolution

Whereas: The Republican Party of Alaska supports the individual right to keep and bear arms.

And whereas: This right could be jeopardized by the vague wording in the Alaska State Constitution.

Be it resolved: The Republican Party of Alaska supports SJR1 as introduced by Sen. Pat Rodey, an amendment to preserve the individual right to keep and bear arms.

Proposed by: Gary Hammond

Second by: Steven Colboch

Results: Passed by unanimous consent.



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

April 6, 1992

Mr. Dick Bishop
Alaska Outdoor Council
P.O. Box 34097
Juneau, AK 99083

Dear Mr. Bishop,

After reviewing the proposed House CS for Senate Joint Resolution Number 1, the National Rifle Association feels that it's passage would be a step in the right direction for the citizens of Alaska. And, it would certainly be an improvement on the current constitutional provision.

As to the first part of Section 29, since there are no existing state or local laws which are particularly onerous or restrictive, this would not "freeze" into place any laws which are overly burdensome. As to the portion relating to the judicial standard of review applicable to state and local laws involving "misuse", because this focuses on "misuse", the language will not limit the legislature's authority to impose penalties on misuse.

Again, we believe this constitutional amendment initiative to be a much needed one. We commend those who have devoted their efforts to positive change. If we can be of assistance, please let us know.

Sincerely,

Jeff Rabon
Alaska State Liaison
Institute for Legislative Action

cc: Hayden Kaden, House Judiciary Committee



NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1800 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20030

March 16, 1992

The Honorable Dave Donley
Chairman
House Judiciary Committee
Room 120, State Capitol
Juneau, Alaska 99801-1182

Dear Chairman:

I would like to take this opportunity to commend you and the Committee on the fine work you have done in drafting SJR 1. We at the NRA feel the proposed amendment to the Alaska Constitution would be a positive step forward for individual gun owner's rights in Alaska.

In all states that have the constitutional provision for the right to keep and bear arms, the courts have universally held without exception, that a state is not prohibited from banning possession of firearms by felons and mental incompetents. Therefore, the wording in subsection (b) of Section 1 is unnecessary.

Alaska has always been among the top states in the country to both recognize and support individual's rights to purchase and own firearms, whether it be for hunting, collecting, sporting, or defense of self and family. Today, with gun-control advocates increasing their efforts to restrict law-abiding citizens' rights regarding gun ownership, this amendment would assure Alaskans for generations to come, their individual constitutional right to keep and bear arms.

Again, congratulations on your fine work with SJR 1. We at the NRA support this much needed endeavor. If I, or anyone at the Institute for Legislative Action can be of service, please let me know.

Sincerely,

Jeff W. Rabon
Institute for Legislative Action
Alaska Liaison

P.S.

If it appears that adding the wording contained in subsection (b) is necessary to gain the support of all parties, then we would agree to the language. However, if a consensus cannot be reached, then we feel it should be omitted.



ALASKA OUTDOOR COUNCIL, INC.

430 WEST 7TH AVE., SUITE 117, ANCHORAGE, AK 99501
(907) 277-1617

May 9, 1991

Dear Legislator:

Enclosed for your information is a Resolution of the Board of Directors of the Alaska Outdoor Council regarding SJR 1, the Right to Keep and Bear Arms Amendment.

We encourage you to support SJR 1 and protect the rights of law-abiding Alaskans to own and use firearms.

If you have any questions or comments, please contact me at 474-0437, or please call our legislative office in Juneau at 463-3830.

Sincerely,

Oliver E. Burris
President

Enclosure



ALASKA OUTDOOR COUNCIL, INC.

430 WEST 7TH AVE., SUITE 117, ANCHORAGE, AK 99501
(907) 277-1617

A RESOLUTION
OF THE ALASKA OUTDOOR COUNCIL
IN SUPPORT OF PENDING LEGISLATION
PROVIDING FOR A CONSTITUTIONAL AMENDMENT
GUARANTEEING THE RIGHT OF THE INDIVIDUAL CITIZEN
TO KEEP AND BEAR ARMS

WHEREAS, the Alaska Outdoor Council is an organization of thousands of Americans who cherish and seek to protect the freedoms we all enjoy as citizens of these United States, and

WHEREAS, among these freedoms is the right of the individual to keep and bear arms as guaranteed by the Second Amendment to the Constitution of the United States of America, and

WHEREAS, the Alaska Outdoor Council supports the lawful ownership of firearms and their lawful use for defense of the government and the individual and his or her family, hunting, sport shooting, and collecting, and also supports increased penalties for criminal misuse of firearms, and,

WHEREAS, some Alaskans, including members of the Alaska Department of Law in an Attorney General's opinion, have stated that Alaska's Constitution, Section 1, Article I, section 19, does not guarantee to the Alaskan citizen the individual right to keep and bear arms, but only provides for a collective right to use firearms in the militia, and

WHEREAS, the Alaska Outdoor Council wishes to make it abundantly clear to all citizens of this State that this Attorney General's opinion is erroneous, and that there IS an individual right to keep and bear arms in this State under Alaska's Constitution, and

WHEREAS, there is presently pending in the Alaska State Legislature a bill, Senate Joint Resolution 1, which provides for a Constitutional Amendment that should make clear to everyone that Alaskans have the individual right to keep and bear arms, and

NOW THEREFORE BE IT RESOLVED that the Alaska Outdoor Council hereby declares its full support for SJR 1, and, calls upon all Alaskans who support individual liberty to join in the effort to pass this important Constitutional Amendment.

DATED AT ANCHORAGE, ALASKA, THIS 7th DAY OF May, 1991.

Olin E. Burris

PRESIDENT
ALASKA OUTDOOR COUNCIL

FAX TO: REP. DAVE DONLEY, 907-465-2299



ALASKA OUTDOOR COUNCIL, INC.
430 WEST 7TH AVE., SUITE 117, ANCHORAGE, AK 99501
(907) 277-1617

3/22/92

REPRESENTATIVE DONLEY:

I FORGOT TO DROP THIS LETTER OFF
AFTER YOUR COMMITTEE ROOM CLEARED
THE EVENING OF 3/20. SORRY.

IT'S BEEN DISTRIBUTED TO ALL
LEGISLATORS.

RE: SJR1, WE SUPPORT YOUR PROPOSAL,
AS OUTLINED IN A LETTER TO YOU.
BARRING FURTHER DISCUSSION, THAT'S
OUR BOTTOM LINE.

THANKS.

Dick Bishop

I'M IN FAIRBANKS 907-455-6151 ;
I HAVE NO FAX AT HOME. IF NECESSARY,
FAX TO FAI, L.I.O. & I CAN PICK UP.



ALASKA OUTDOOR COUNCIL, INC.

P O Box 34097
Juneau, AK 99803
463-3830

March 17, 1992

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
Juneau, AK 99811

Dear Representative Donley:

The Alaska Outdoor Council Board of Directors at its March 16 teleconference voted to support, at this time, your House Judiciary Committee version of SJR1.

The Board's understanding is that this version incorporates SJR 1 as passed by the Senate in 1991 plus a paragraph (b) which ensures that no laws existing when the amendment is ratified are revoked or otherwise made inoperative. The Board also understands that laws covered by (b) are not immune to future change through normal processes.

We appreciate the efforts that you and Senator Rodey have made to reach a satisfactory compromise on an issue involving fundamental individual rights of all Alaskans.

Sincerely,

Richard W. Bishop
Legislative Affairs

CC: Senator Rodey
Paul Fuhs



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
committee name

committee on SJI-1, dated 3-16-92
bill/subject

I object to the addition of the
word unreasonably to the resolution.

Signed: Norm Amstrup
Testifier

Representing (Optional)
1109 Red Ridge Rd. Fairbanks AK.
Address
479-3036
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the H. JUDICIARY
committee name

committee on SJR 1, dated 16 MAR 92
bill/subject

I STRONGLY SUPPORT SJR 1
AS PRESENTED BY SEN. PAT RODEY.

I DO NOT WANT ANY WORDING
INCLUDED WHICH WOULD DILUTE
THE INTENT OF SJR 1, I.E. "UNREA-
SONABLE" AS PRESENTED BY SEN. COTTON

Signed: Steven L. Colborn
Testifier

MYSELF + WIFE + CHILDREN
Representing (Optional)

223 GOLDSTREAM ROAD, FDKS 99712
Address

455-6842
Phone No.



Alaska State Legislature

State wide deligation &

Please enter into the record my testimony to the House Judiciary. Comtee.
committee name

committee on SJR #1 , dated March 16, 1992
bill/subject

Dear Sirs;

I strongly object to the word "unreasonably" being injected into the wording. Government tyranny can always find a reason to disarm the public, just ask the people of the former Soviet Union, They certainly wouldn't have put up with the ^{70 years} ~~of~~ slavery government imposed on them if they had retained their right to bear ARMS! History has proven that the people should Fear the Government that Fears your Guns. We have 2 Important rights that to bear ARMS and that to vote you all OUT!

Signed: Steven S. Guildner S.S. Guildner
Testifier

Representing (Optional)

PO Box 75303 Fairbanks, AK 99707

Address

907-488-8313

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Comte.
committee name

committee on SJR 1, dated 16 MAR, 1992
bill/subject

I OBJECT TO THE USE OF THE WORD "UNREASONABLY"
IN SJR #1. LEAVE IT AS WRITTEN BY SEN. ROOEV.

Signed: Cliff A. Hudson
Testifier

Representing (Optional)
322 SLATER DR. W. FBKS, AK 99701

Address
456-6149
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House State Affairs Committee
 committee on SJR 1 , dated 16 MARCH 92
 bill/subject committee name

NO MORE Hog wash, me and
 All Alaskan's I call friend ~~Don't~~
 like the word UNreasonably in-
 cluded in the state constitution
 pertaining to the Right to keep
 & Bear Arms

I support the Resolution Except the
 word UNreasonably *ARH*

Signed: *Alan R Hultberg*
 Testifier Alan R Hultberg (voter)

Representing (Optional)
863 Resse Rd
 Address
488 6737
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the H. JUDICIARY
committee name

committee on SJR 1, dated 3-16-92
bill/subject

I support and strongly feel Pat Rodey is right on Key, with the right to keep and bear arms. I do not want any amendments approved that would put our rights as citizens to Bear arms in danger. I support SJR 1 as presented by Rodey.

Signed:

Pat R. Keiper
Testifier

Ascring
Representing (Optional)

PO. 23402
Address

(907) 488-5688
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on Panel to Hear & Review, dated March 16 92
bill/subject

*Leave the unreasonable out
life in the justice unreasonable
How the Senators are being unreasonable*

Signed: *Steve C. Szymanski*
Testifier

Representing (Optional)
1644 Willows Rd #4

Address
452 2639

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the [Redacted] STATE AFFAIRS
committee name

committee on STR0016, dated 5/18/91
bill/subject

your wording (unreasonably) leaves many
ways open deciphering of who's denied:
State or Subdivision of the State should
have the right to decide this on any
Person -- ~~person~~ -- Leave it or change
it back to shall not be denied period.

Signed: [Signature]
Testifier

William Wood

Representing (Optional)

Address

10. Box 3622, Palmer, AK 99645

Phone No.

746-4644

Public Opinion Message

Only short, single messages delivered by the signing individual to the Legislative Information Office by phone, hand-delivered or written at the Legislative Information Office will be accepted for transmission via electronic mail as a Public Opinion Message. We require the following information to be held confidential: (1) name address and phone number of sender, (2) who the POM should be addressed to, (3) the text of the POM (50 words or less), and (3) when possible, the bill number referenced in the POM. Your message may be directed to any individual or combination of the following members of the Legislature.

Delegations	
	Anchorage Delegation (*)
	Fairbanks Delegation (+)
	Mat-Su Delegation (*)
	Bush Caucus (#)

Senate	
Adams	Jones
Collins*	Kerrula**
Coben*	Menard**
Craft*	Pearce*
Duncan#	Pourchot*
Eliazon	Rodey*
Fischer	Shultz*
Frank*	Sturgulowski*
Hallford*	Uehling*
Hoffman#	Zharoff#

House		
Baker*	Foster#	MacLean#
Barnes*	Gonzalez-	Martin*
Boyer*	Gruenberg*	Miller, Mary*
Brown*	Gruessendorf*	Miller, Mike*
Bruckman*	Hartley*	Movell*
Carney*	Hudson	Navarre
Choquette*	Ivan#	Parnell*
Davidson#	Jacks#	Phillips, G
Davis, B.*	Koponen*	Phillips, R.*
Davis, C.	Kubina#	Sharp*
Dorsey*	Larson*	Taylor
Ellis*	Leman*	Ulmer
Finkelstein*	Lincoln#	Zawack*
	Mackee	

Committees	
Indicate H for House or S for Senate.	
	Community & Regional Affairs
	Finance
	Health, Education & Social Services
H	Judiciary
	Labor & Commerce
	Resources
	Rules
	State Affairs
	Transportation

Name	Donald P. Chase	Phone (H)	835-4640
Title		Phone (O)	835-3858
Address	Box 1251 Valdez Alaska	ZIP	99686

Subject: <u>STR1 Amendment to State Constitution 2nd Amendment</u>			
1	2	3	4
support	amendment	to	specify
individual	right	to	buy
and	bear	arms	however
2	prefer	the	language
of	Senator	Podewis	original
Senate	Resolution	held	revision
of	bill	passed	on
nonpassage	language	on	debate
own	language	2	word
support	current	version	place
before	the	voters	the
year			

Support Oppose Amend None

Signature: Donald P. Chase

METRO

MONDAY
SECTION B July 10, 1989

Look out, Bush: Gun lovers want you out of NRA

By STAN JONES
Daily News reporter

George Herbert Walker Bush had better watch out. A posse of his fellow gun lovers wants to blast him out of the National Rifle Association.

Some 400 of them were riled up enough this weekend to sign petitions calling on the politically potent organization to expel the president of the United States, according to petition promoter Mark Chryson.

Why are they so mad?

"He has imposed the semi-automatic ban," said an outraged Chryson. "And he's a lifetime member of the NRA."

The ban in question was Bush's decision, announced Friday, to permanently outlaw the importation of foreign-made assault rifles. It was an about-face for the president, who opposed banning the weapons when he ran for the White House last year.

Importation was suspended this spring after a drifter armed with an AK-47 assault rifle opened fire on an elementary schoolyard in Stockton, Calif., and killed five children. Critics also complain the weapons are used by the crack gangs that terrorize some urban areas in the Lower 48.

Assault rifles can still be manufactured in the United States, and foreign models brought in before the ban can still be owned, traded, bought and sold by Americans.

Chryson spoke from behind a table at the Alaska Gun Collectors gun show at the Egan Convention Center Sunday. On the table were two rifles — including one assault rifle — and lots of papers.

"It has now become blatantly evident that George Herbert Walker Bush has in fact used the NRA in his bid to obtain the presidency and has allied himself with those who seek to abolish our right to keep and bear arms," declared the anti-Bush petition.

Chryson, a former oil field worker who wouldn't disclose his current line of work, said the petitions are sponsored by a group called No Compromise.

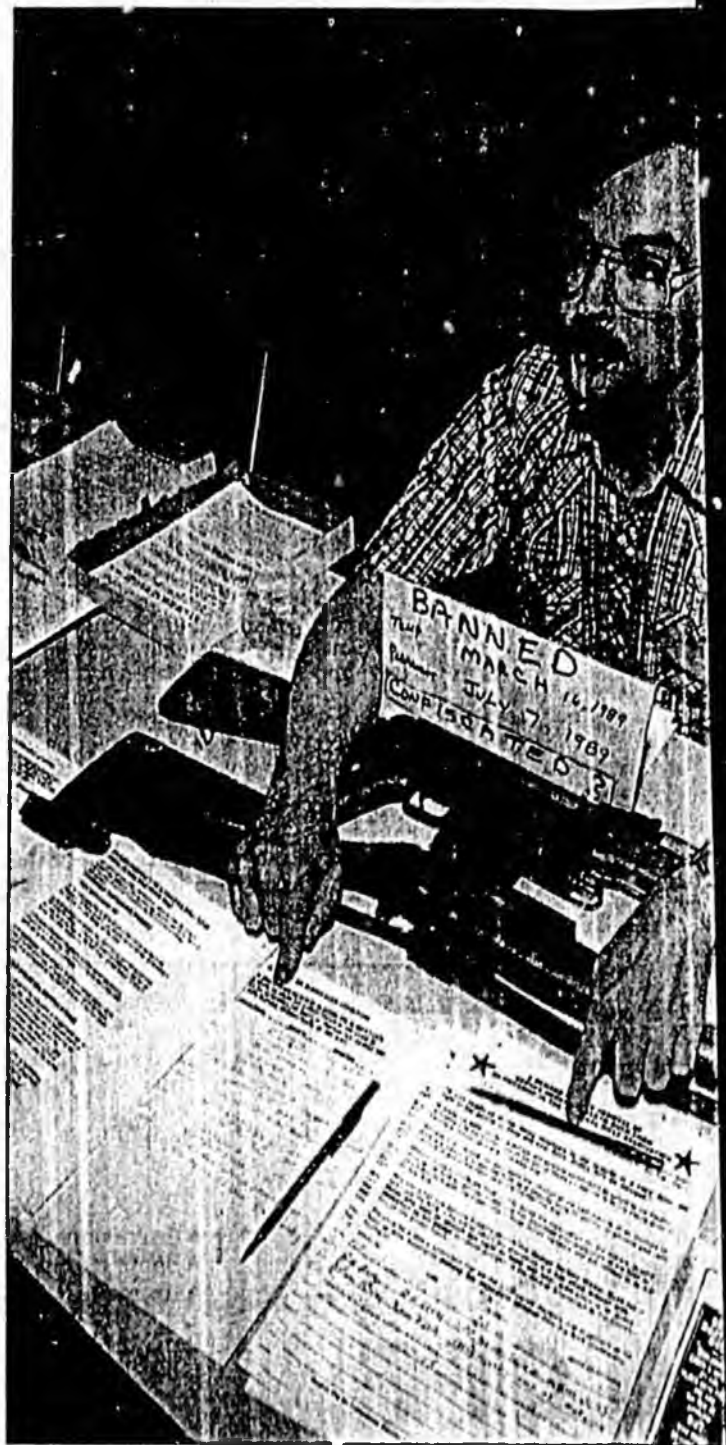
"The NRA is compromised by not censoring George Bush," Chryson said.

Chryson said he was a spokesman for No Compromise. And who heads it?

"We have no head," Chryson said.

Other people at the gun show Sunday were also reluctant to say much about themselves. One man behind a table with several assault rifles on it talked loudly about gun-owner's rights until asked for his name.

"It doesn't make any difference," he said, refusing to identify himself.



Please see Page B-2, GUN SHOW

Mark Chryson of the National Rifle Association points to two

Vigilance In Behalf Of Liberty: The Second Amendment In Its 200th Year.

By Richard Gardiner

In the last several decades, a vocal minority, popular with the major news media, has put forth a distorted interpretation of the Second Amendment to the United States Constitution.

This has been done for the avowed political purpose of removing the Second Amendment as an obstacle to their goal of depriving private citizens of some or all of their firearms. And, as with virtually all attempts to minimize precious freedoms guaranteed by the Bill of Rights, this vocal minority has twisted the original and very plain meaning of the right to keep and bear arms.

The right to keep and bear arms, like many of the other rights guaranteed by the Bill of Rights, did not have its origin in the Second Amendment. Rather, this fundamental, individual right, largely developed in English jurisprudence prior to the Revolutionary War, pre-dates the U.S. Constitution and was part of the common-law heritage of the original colonies.

The tenets of this common law were echoed by individual rights champions including Patrick Henry who, fearful of the power of Congress over both a standing army and the militia, told delegates to the Virginia Constitutional Convention, "the great object is, that every man be armed ... Everyone who is able may have a gun." Furthermore, Henry said, "Are we at last brought to such a humiliating and debasing degradation, that we cannot be trusted with arms for our own defense? ... If our defense be the real object of having those arms, in whose hands can they be trusted with more propriety, or equal safety to use, as in our own hands?"

Noted contemporary jurists like Supreme Court Justice Black have upheld the principles set down in the Second Amendment, commenting, "Its provisions may be thought outdated abstractions by some. And it is true that they were designed to meet ancient evils. But they are the same kind of human evils that have emerged from century to century wherever excessive power is sought by the few at the expense of the many."

Social strife dating back to the Reconstruction Period has issued continuous challenges to the Second Amendment. Firearm prohibition laws have been passed to satisfy political opportunity or appease vested interests. Yet upon 15 occasions various courts have struck down laws that violated the peoples' right to keep and bear arms.



Richard Gardiner is an attorney and director of State and Local Affairs for the National Rifle Association's Institute for Legislative Action.

In *United States v. Cruikshank*, the first case in

which the Supreme Court had the opportunity to interpret the Second Amendment, the Court plainly recognized that the right of the people to keep and bear arms was a fundamental right which existed prior to the Constitution when it stated that such a right "is not a right granted by the Constitution ... neither is it in any manner dependent upon that instrument for its existence."

In *Presser v. Illinois*, although the Supreme Court affirmed the holding in *Cruikshank* that the Second Amendment, standing alone, applied only to action by the federal government, it nonetheless found the states without power to infringe upon the right to keep and bear arms:

"It is undoubtedly true that all citizens capable of bearing arms constitute the reserved military force or reserve militia of the United States as well as of the States, and in view of this prerogative of the general government, as well as of its general powers, the States cannot, even laying the constitutional provision in question out of view, prohibit the people from keeping and bearing arms, so as to deprive the United States of their rightful resource for maintaining the public security and disable the people from performing their duty to the general government."

More recently, the Supreme Court has continued to uphold the classic interpretation of the peoples' right to keep and bear arms. In *Perpich v. Department of Defense*, the Court, in 1990, affirmed that "militia" referred to a body of armed citizens trained to perform military duty. And in *U.S. v. Verdugo-Urquidez*, the Court held that the term "the people," protected by the Second Amendment, as well as the First, Fourth and Ninth Amendments, are a class of persons who are part of a national community, or who have otherwise developed sufficient connection with this country to be considered a part of that community, i.e., all citizens, as well as legal aliens in the United States.

The Second Amendment will continue to be tested by the tribulations of the moment, just as it will continue to prevail due to the unyielding power and clarity of its intent. This is the Bill of Right's legacy to a free people, and the truth on which it endures.

Point

in their careers as these jobs move to the private sector. Upward mobility is greatly reduced and minority and female workers in the supervisory levels suffer the most.

Furthermore, government services that employ large numbers of women and minorities are frequently turned over to private companies. The private firms that take over public services usually have two groups of workers: high-level management and low-level workers. The ability to move from lower- to higher-skilled positions is limited since many mid-level positions are eliminated. Moreover, since the low level jobs traditionally pay little and are stressful, high turnover rates result.

A 50-state study by Sangamon State University in Springfield, Ill., showed in 1989 that state legislators believed it was inappropriate to have private companies provide certain public services, such as the care and treatment of the mentally ill. State legislators were most apprehensive about accountability and liability concerns.

There also is evidence that the poor are hurt when human service functions are shifted to the private sector. A federal subcommittee issued a report to Congress in 1990 showing that many private hospitals illegally used money from the National Institute for Mental Health Construction Grant program to build luxurious mental health facilities for the wealthy. Since public facilities were closed, poor people were effectively barred from receiving care.

State officials dissatisfied with the performance of public services should not assume that contracting with the private sector is the answer. Contracting is an admission by the state that its managers have lost the ability to manage. Abdicating control of the state's services and transforming the relationship between a state and its citizens from one of direct responsibility to remote guardianship is not the answer. Involving the workers who perform the services to help recommend changes is a necessary first step to improving the system. □

Linda M. Lampkin is director of research for the American Federation of State, County and Municipal Employees. AFSCME, AFL-CIO represents 1.4 million public and health care employees around the nation.

Counterpoint

In Kentucky, the Department for Mental Health and Mental Retardation Services has shared its mandate, money and responsibilities with regionally based, private, non-profit agencies and has found greater acceptance and support for services. Agency employees provide an array of mental health, mental retardation and substance abuse services, including crisis intervention, counseling, rehabilitation and education.

The boards of these non-profit agencies are composed of community leaders and other individuals who have a personal interest in the services.

Citizen involvement on the boards contributes to a feeling of community ownership. As a result, volunteers are eager to lend a hand in everything from raising funds to delivering services. Volunteer participation promotes public acceptance, increases the availability of services and improves fund raising. Many corporations only contribute to programs in which employees show a personal interest by serving as board members or volunteers.

Also important is the agency's status as a private, non-profit organization. For example, a review of the 1989-1990 financial statements of the community mental centers in Kentucky shows that for every dollar generated 27 cents comes

from state tax support, 39 cents from Medicaid, 10 cents from other federal funds, 11 cents from third party payors and 13 cents from local taxes and other local funding.

The ability to attract funds from all sources makes possible the multiplication of about three times the total value of service for each dollar of state support.

With the help of non-profit, private agencies, the Kentucky Department for Mental Health and Mental Retardation Services can concentrate on doing the things the public counts on it to do: promote and develop public policy, administer public funds and regulate programs and services.

In the area of human services, no state agency has enough resources to meet all needs. Contracting is an opportunity to maximize public resources. Moreover, it gives public officials a stronger voice in advocating for the needs that remain. □

Margaret Pennington serves as director for the Division of Mental Health of the Kentucky Department for Mental Health and Mental Retardation Services. The department contracts with 14 regional community mental health/mental retardation boards to deliver services.

**Cronyism,
payoffs
and
Inadequate
services
result when
states
contract
with the
private
sector.**

**Greater
flexibility
is just
one of the
many
benefits
of
contracting
for
state
services.**